



Responsible Land Governance: Towards an Evidence Based Approach

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LAND REGISTRATION DATA STANDARDS, INTEROPERABILITY AND DATA ACCESS IN KENYA.

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Abstract.

Land Registration and Administration in Kenya is currently operated on a multi-legal platform [UN 2013]. The Land Registration Act No. 3 of 2012 (LRA) was in that regard enacted to consolidate, harmonize and rationalize land registration goals; which are yet to be achieved. This is majorly because in as much as the 2012 statute repealed five out of the seven major land registration laws, they all remain in force under LRA's transitional clauses.

The Government of Kenya is making efforts to avail land registration information online via the e-citizen platform. This is the official Government portal for e-payments. It is meant to facilitate e-land searches from the point of payment to downloading the land information instantly without the need to go to the lands office physically. The uptake of this search is however slow because it is not fully legally recognized.

Key words: Data access, Land information, Land registration, land Search.

1 Introduction

There are two types of registration in Kenya; title and deed registration. Deed registration in Kenya falls under Registration of Documents Act, (RDA), the Land Titles Act (LTA) (now repealed) and the Government Lands Act (GLA) (now repealed). In deed registration the State just acknowledges that a conveyance was registered but beyond that they are not vouching for the validity of that transaction. It is just a record of deeds or documents. One has to trace the good root of title as there is no State guarantee. It is up to one to establish the validity of title deeds held by the person(s) purporting to transfer land (Wayumba G., 2013).

Title registration is governed by the Registration of Titles Act (RTA) (repealed), Cap 281 of 1920, and the Registered Land Act (RLA) (now repealed) Cap 300 of 1963. The State guarantees title and this thus calls for thorough scrutiny before registration of transactions under title registration. The RLA and RTA registers are clear that what you see is what you get and one should not even worry about who had the title before unlike in the registration of deeds where one has to worry about who owned the deed before. This denotes both the mirror and curtain

principles of title system of land registration. The difference in deed and title land registration systems is however not very significant in practice.

2 Problem Statement

It is currently a challenge to have unified standards and data models in land registration. This is majorly because of the legal multiplicity of the laws governing land registration in Kenya. Each statute stipulates different ways of parcel identification, conveyancing instruments and even apply different systems because some are deed while others are title. Indeed even under title systems there is the English type applied under RLA, Torrens title system applied under RTA and the German type partly applied under the GLA and LTA (This is partly because LTA and GLA are majorly deed systems).

The problem is furthered by the fact different departments in the Ministry of Lands apply different filing systems and they use different parameters to identify land parcels. The fact that majority of operations at the more than 55 land registries are largely manual does not help data interoperability. Data access is hindered by the application of different filing standards in the various Ministry departments. The manual operations do not help the situation especially because one has to travel to the county headquarters to carry out a search or peruse land records.

3 Research Methodology

During the research qualitative methodologies were used. These included focused group discussions, face to face interviews of the stakeholders in the land registration, evaluation of the previous research and findings, desktop study, online journals, books and periodicals. Other methods applied included observations and direct involvement as public servants to gather the material.

4 The Land registration Laws in Kenya

In Kenya there are various land laws that govern the land registration system in Kenya. Some of the land laws have been repealed by the new 2012 land laws. These laws are as discussed hereunder;

4.1 Registration of Documents Act

Registration of Documents Act is a deeds registration system introduced in 1901 to register land and transactions in land in favor of the white settlers by the East Africa protectorate administrators. The RDA is partly an optional registration system where land deeds are registered as deeds without any supporting documents such as, survey plans, deed plans, power of attorneys, agreements and any other document that one may wish to register. The Act also registers non land related documents like marriage certificates, deed polls for change of name, architectural plans, aerial photographs and building plans. The Act requires that registration of transactions be affected within six months of execution (Wayumba, 2004)]. A copy of the registered documents is retained in the registry is kept file.

The registration processes under the Act are not supported by any survey plans hence it can be difficult to locate the registered property on the ground. The proprietor has to trace the root of the title to the satisfaction of any party intending transact over a property. Initially, registries for the RDA transactions were opened up at Mombasa, Nairobi, Malindi, and Naivasha. The Malindi and Naivasha registries were closed in 1915 and their records were amalgamated with Mombasa and Nairobi registries (Gok., 2016). Two records were established under the RDA system; the compulsory register which was compulsory and the voluntary register which was voluntary. The compulsory register recorded all the transactions in land and immovable property while the voluntary register was used as a public record of any deeds or other instruments which might be accidentally lost.

The registration details under the RDA include the volume number, folio number, entry number and a file number. Different documents are registered under different volumes though the numbering is almost the same.

4.2 Land Titles Act

The Land Titles Act No. 282 of 1908 (now repealed) was enacted to cover only the land claims within the ten nautical miles along Kenya's coastal strip. Initially the system of registration was quite rudimentary, even the way boundaries were demarcated was rudimentary and was not systematized. The Act provided for the establishment of a land Registration Court presided over by a Recorder of Titles (Wayumba G. , 2013). A surveyor was attached to the court to define the boundaries of the adjudicated land claims. Upon adjudication, the successful claimants were issued with certificates of title. These certificates, according to the nature of the title adjudicated, were of three kinds; certificate of ownership, giving a freehold title, a certificate of mortgage, and a certificate of interest, covering fixed assets on the land, e.g. bore holes, houses or plants (Onalo, 1986). The Act was quasi-adjudication apart from it being a land registration law.

This law's registration details just as under RDA includes volume, folio, entry and file numbers. Though repealed in the year 2012, this law continues to be operational under LRA's transitional clauses.

4.3 Government Lands Act

This Act is a deeds registration system that makes use of authenticated survey plans and approved deed plans. This Act repealed the Crown Lands Ordinance of 1902 and any titles registered under the RDA 1901 had to be registered afresh under the GLA. The Act gave the Commissioner of Lands Authority to issue 99 years leases for urban plots and 999 year and 9999 year leases for the agricultural land. Under the GLA there is only one registry in Nairobi. The GLA introduced a more refined system of the register where there are deed plans as part of the ownership deeds.

Land documents registered under the GLA are recorded in volumes and folios of the GLA register, with one folio being devoted to each parcel of land. Each parcel of land is also assigned a deed file where copies of transaction deeds are filed. Any transaction over the land parcels are supported by indentures/deeds. Registration system under the GLA is either considered as conveyance or assignment, depending on whether the property is a freehold or leasehold.

Conveyances are freehold titles while the assignments are leaseholds. Under this system of registration, the owner keeps the original registered documents and only copies are kept at the land registry in GLA deed files. The numbering system and filing system is just as under RDA and LTA since they are all deed systems. This Act just as the LTA though repealed continues to be felt and applied under LRA's transitional clauses.

4.4 Registration of Titles Act

RTA was enacted principally to provide for a title registration system as opposed to the deeds registration which was practiced under the RDA, LTA and the GLA. The Act was modeled upon the Torrens system of Australia and partly on the English common law as spelt out in the Land Registry Act of 1862 (Wayumba G. , 2013). The Act took over all the previously registered deeds under GLA, under LTA and the RDA. It also applied to all leaseholds that had been converted from the terms of 99 years since 1902 (or even those of 999 years) to freeholds, and to any titles converted on a voluntary basis from GLA or LTA to RTA Titles.

The conversion however was not mandatory and so the RDA, GLA and LTA continue to operate. With the enactment of the RTA, the disinheritance of the African communities in Kenya, within the framework of colonial Law, was complete (Okoth-Ogendo, 1991). RTA has two registries; one in Nairobi and the other in Mombasa.

4.5 Registered Land Act, Cap 300, of 1963

The Registered Land Act (RLA) (now repealed) was enacted to provide a complete code of land registration system in Kenya (Onalo, 1986) and to replace all the other Acts dealing with land registration in Kenya. At the time of enactment, the Act superseded the registration provisions of the Native Lands Registration Ordinance of 1959 and the Land Registration (Special Areas) Ordinance of 1960. The Act applies in areas where land have been surveyed under the general boundaries, areas where land have been fixed under Section 22 of the Act; or areas which are being converted from the RTA to RLA and under the Sectional Properties Act.

This system is based on Britain's title registration system and as opposed to mathematically coordinated boundaries, it makes use of loose boundaries. It uses registry index maps (RIMs) in place of deed plans and it is the Act under which majority of Kenya's land is registered having registries across the country totaling to over 50. The land register under RLA comprises of green and white card for each parcel and parcel files. The cards enumerate a chronology of transactions touching on the parcels while in the files, original transaction instruments are filed. This Act was also repealed by the LRA in the year 2012 but is operational.

4.6 The Sectional Properties Act NO. 21 of 1987

The Sectional Properties Act No.21 was enacted to provide ways and means of registering sectional properties including flats, apartments, offices and other sectional properties on land. It makes it possible for an owner to own a property on a floor without owning the ground on which the property stands. This is one of the two statutes that were not repealed in 2012. The other is the RDA. It borrows its system of registration wholly from the RLA so it is a title registration system.

4.7 Land Registration Act No.3 of 2012 (LRA)

Land Registration Act was enacted to revise, consolidate and rationalize the registration of title to land, to give effect to the principles and objects devolved government in land registration, and connected purposes. Its enactment repealed five of the previous land registration Statutes in Kenya (Iseme, 2012).

Section 7 (1) stipulates that *there shall be mentioned, in each registration unit, a land registry in which there shall be - (d) any plans which shall, after a date appointed by the Commission, be geo-referenced.*

Section 104 (1) of LRA provides that *“A register maintained under any of the repealed Acts shall, on the commencement of LRA, be deemed to be the land register for the corresponding registration unit established under this Act.”*This is the spirit behind this Act's transitional clauses that run from sections 104 to 110.

Further section 108 provides that *“Until the Cabinet Secretary (in charge of lands) makes the regulations contemplated under section 110, any rules, or other administrative acts made, given, issued or undertaken before the commencement of this Act under any of the Acts of Parliament repealed by this Act or any other law, shall continue in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring them into conformity with this Act”*. It is important to note that there are no timelines that are put in place to guide the transition and full operationalization of LRA.

The import of this is that all the statutes and the different systems of land registration will continue to operate for a while longer. The much needed consolidation and uniformity of title and the tilting processes remain a goal to be achieved.

5 The Institutional Organization

5.1 The Ministry of Lands and Physical Planning.

The functions of the Ministry of Lands (GoK, 2016) are national land policy and management, physical planning, land transactions, survey and mapping, land adjudication, settlement matters, rural settlement planning, land reclamation, land registration, national spatial infrastructure, land and property valuation services, administration of public land as designated by the constitution and land information services.

The Ministry of Lands is organized into departments as follows; administration and planning (management and support services), survey, physical planning, lands, and land adjudication and settlement.

5.1.1 The Administration and Planning Department

This department is responsible for overall policy direction and co-ordination, planning and management of resources; human and financial, legal advisory services, coordination of parastatals under the Ministry mandate, liaison with International Organizations, development partners and other stakeholders, information communication technology services, land reform

transformation unit (LRTU), public relations, cross cutting issues, management of information systems, gender mainstreaming and HIV/AIDS control.

This department is also responsible for the overall policy direction and co-ordination, resource planning and management. It has also been very instrumental in the design of National Land Information Management System.

5.1.2 The Department of Survey

The department is mandated with surveying and mapping, photogrammetric and remote sensing services, map printing and general publishing, maintenance of land registration maps, inspection and re-establishment surveys of national and international boundaries, provision of hydrographical survey services, supervision and maintenance of quality control and assurance on surveying and mapping data, pre-service and in-service training courses at the Kenya Institute of Surveying and Mapping (KISM). The Acts involved are the Survey Act (299) and the Land Act Laws of Kenya.

5.1.3 The Department of Physical Planning

This Department is responsible for the formulation of national, regional and local physical development policies and guidelines, preparation of regional and local physical development plans, initiate and undertake research on matters concerning physical planning. The statutes that govern the operations of the department are physical planning Act 2010, The Land Control Act and the Environmental Management and Coordination Act.

The department also Advises the Government on matters concerning alienation of land under Government Lands Act (repealed) and Trust Land Act, and county governments on most appropriate use of land and requires county governments to ensure proper execution of physical development controls plans and preservation orders.

5.1.4 Department of Land Adjudication and Settlement

The department deals with Land Adjudication, consolidation, group ranches and Settlement of landless citizens. The department operates under four Acts of Parliament which govern its mandate namely, Land Consolidation Act CAP 283, and Land Adjudication Act CAP 284, Group Representatives Act CAP 287 and Agriculture Act CAP 318 laws of Kenya.

The land adjudication division is mandated to ascertain rights and interests on land in trust land areas, and transformation of ownership from customary tenure to individual ownership through demarcation, survey and registration. Currently the data collected from the adjudication areas, spatial data is geo-referenced and digitally availed together with the area lists and supporting documents to the National Titling Centre where the same is captured, verified before digitized titles are printed and issued.

The settlement division is mandated with the acquisition, planning, demarcation, survey and allocation of economically viable agricultural settlement land to landless, poor and unemployed Kenyans on loan basis. Similarly those lands set aside for settlement of the landless are subdivided and allocated to the beneficiaries. Upon completion of the loans from Settlement Fund Trustees, the titles are prepared at the National Titling Centre using the digital data.

5.1.5 Department of Lands

The department is mandated with registration of titles and various land transactions, valuation of land for various purposes, resolution of land and boundary disputes, establishment and management of Land Control Boards, generation of revenue in the form of Appropriation in Aid (AiA) for example consent fee, approval fee, title preparation and registration fee and through assessment of stamp duty and land rent, Management, updating and custody of land resource records.

The department of lands participates in the approval of development plans and part development plans for urban areas, preparation, registration and issuance of land title deeds for all categories of land under Registered Land Act, Government Land Act, Registration of Titles Act, Land

Titles Act and Sectional Property Act, stamping and registration of documents relating to land, consideration and approval of building plans to ensure leasehold land is developed as intended.

It has three substantive divisions; Land Valuation, Land Registration and Land Administration. Cutting across these divisions in terms of services are the Accounts branch, General Land Records office, the Plan Records office and the Clerical establishment.

Every department holds different land data in different form and standards and has different professionals who handle the data. For individual departments in the Ministry of lands in Kenya, there are different statutes that govern the functioning and operations.

5.2 The County Land Registries

The county land registries are under the Ministry of lands and physical Planning. In Kenya there are 57 land registries that help in serving the citizens from the county levels. All the land matters at the county level for the adjudicated land parcels is held and managed at the county land registries. Initially all the land information was held in a paper based system but currently there are efforts to digitize all the land records even at the county level. So far there are thirteen land registries that are being digitized.

6 Other Institutions Dealing with Land Matters in Kenya

6.1 National Land Commission

The National Land Commission was established under the Constitution of Kenya 2010 and the National Land Commission Act of 2012 as an independent body. The major functions being management of public land on behalf of the national and county governments, recommendation of a national land policy to the national government, Advising the national government on a comprehensive programme for the registration of title in land throughout Kenya, conducting research related to land and the use of natural resources, and make recommendations to appropriate authorities, initiating investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress, encouraging the application of traditional dispute resolution mechanisms in land conflicts, assessing tax on land

and premiums on immovable property in any area designated by law and Monitoring and oversight responsibilities over land use planning throughout the country.

6.2 The County Governments

Under the Constitution of Kenya 2010, Schedule 4 county governments are in charge of county planning, land survey and mapping within their jurisdictions. The county governments are responsible for management of the public lands and collection of land rates as well as approvals and implementation of development plans.

6.3 Kenya Revenue Authority (KRA)

KRA has been mandated with collection of land rent upon all the leasehold properties and stamp duties during transfer of land. This assessment is done online and payment of the land rent and stamp duties through the bank. This has helped in making the land rent collections more effective and efficient.

7 Data Standards and Interoperability

To evaluate data standards, interoperability and data access in land registration in Kenya, this paper looks at the various particulars (numbers and/or parcel identifiers) that are applicable under the various statutes.

Statute	Year	Act No.	No. of registries	Major ID No.	Registry No.s
RDA	1901	285	2	D1	Vol/Folio/Entry
GLA	1902	280	1	LR	Vol/Folio/Entry
LTA	1908	282	1	LR	Vol/Folio/Entry
RTA	1920	281	2	LR	IR or CR
RLA	1963	300	54	BLOCK No.	Area/Block/Parcel
LRA	2012	3	(54)	BLOCK No.	Area/Block/Parcel

Table 1: Table of Statutes applicable on Land Registration in Kenya

Examples of land registration details

RDA ó D1 folio 125/9058, file mmxxvi

GLA ó LR 209/1111/1, Vol. N 26 folio 26, entry No. 26, and GLA file 26

LTA ó LR 11/2222, LT Vol. 10, folio 10, entry No. 10 and LT file 103000

RTA ó LR 1/201 and IR 604010

RLA ó Nairobi Block 12/2222

These differences in the filing and data storage under the various land registration statutes bring forth some confusion in data interoperability. In the area of land registration which is just a portion of land administration, the file identification methods under different statutes and offices are not uniform. This in a way hinders data access because most land owners or prospective land buyers are not sure as to which numbers and or details are required in order to carry out transactions and/or searches. Data standards (if any) or modules are thus very diverse depending each on the land registration system. We can thus comfortably assume that there are no specific data standards for land registrations in Kenya. Most geospatial data sets are manual, are not regularly updated (Mulaku, 2013) and the processing and storage of land data is manual.

Kenya being a 3rd world country (now transiting to a lower middle income economy), most records in the registries are held in analogue format. This has resulted to bulky records since the colonial era. This increasingly calls for more storage space and thus there is need for construction of more offices. The data held under different laws, by different departments and various institutions is scattered in many formats and there is no central repository for the land records in Kenya. The standards of some of these land records have been tampered with since it is easy to manipulate a hard copy record. The spatial records in the departments have been highly affected since they are continuously changing (due to the frequent subdivisions, sale and other transactions in land parcels) and it takes time before they are updated in the cadastral maps and land registers.

There are different cadastral maps that are used by different land departments which have different spatial details and information. There is no interoperability between these spatial records for instance the part development plans used by the physical planning department is not geo-referenced unlike the registry index maps and deed plans used by the survey Department in Kenya. This has greatly affected the standards of the spatial records in Kenya hence making land administration and management ineffective. The lands department that administers and manages various land parcel attributes records uses different records and files from other departments to process ownership documents and titles.

8 Data access

In Kenya land information is held in paper format managed and administered by different departments. To use or access these data one has to contact an individual department to get the information they need at a cost. To get land records and information thereof, one has to pay a fee either by cash, cheque or mobile money transfers. Land data is accessed from an analogue platform which takes a lot of time (to retrieve) while only a small percentage of land data is accessible online. The various institutions are protective of their data, making data sharing and access restrictive. The access to information in Kenya including GIS is challenging, where data is seen as a source of power by those who control it (Sarah Williams, 2014).

There are policies in place that ensure effective and efficient data access in Kenya by different organizations and offices. The National Land Commission for instance is required under the Land Act, section 8 (c) to share data with the public and relevant institutions in order to discharge their respective functions and powers. The Land Registration Act No. 3 of 2012 stipulates that the Registrar is to provide data held in the registers in electronic format or an integrated land resource register. Upon full development of the county land management systems (LIMS) land data will be effectively and efficiently be accessed on an online platform in real time maybe at a fee for maintain the system.

Application of searches and processing of the same is also manual. This inhibits the free flow of information in this era of information technology/revolution. If one wants to carry out a search,

he or she has to travel to the specific registry where the specific land they are interested in searching is registered. This in some cases is only in the capital city in Nairobi while in other instances it is at the county headquarters. It suffices to say therefore that access to justice and access to information is curtailed. Further, one has to pay Kenya Shillings Five Hundred (Kshs 500/- approximately US \$ 5) per title to be searched.

Property transactions may get tedious when official documents disappear at the Ministry of Lands (AYODO, 2014). In deed due to the manual nature of the search processes in Kenya, sometimes the files are missing and it can take up to several months before a missing file resurfaces for the applicant to get a land search or have a transaction processed.

The Government of Kenya is making efforts to avail land registration information online via the e-citizen platform. This is the official Government portal for e-payments. It is meant to facilitate e-land searches from the point of payment to downloading the land information instantly without the need to go to the lands office physically. The uptake of this search is however slow because it is not fully legally recognized. The e-search is only available in one out of the 57 land registries in Kenya.

Sections 9 and 10 of the LRA provides that:-

Sec 9. (1) *The Registrar shall maintain the register and any document required to be kept under this Act in a secure, accessible and reliable format including—*

(a) publications, or any matter written, expressed, or inscribed on any substance by means of letters, figures or marks, or by more than one of those means, that may be used for the purpose of recording that matter;

(b) Electronic files; and

(c) An integrated land resource registers.

Sec 10 stipulates. *“Subject to the Constitution and any other law regarding freedom of and access to information, the Registrar shall make information in the register accessible to the*

public by electronic means or any other means as the Chief Land Registrar may reasonably prescribe.

Due to the transition, there needs to be both rules and regulations or in the least practice notes to breathe life into these two provisions. Without the enabling rules, lawyers and banks would rather carry out the physical manual searches that are signed and sealed by the registrar as provided for under the repealed laws now applied under transition. Electronic land searches and electronic processing of land transactions is a much needed pillar in Kenya's economic development agenda but quite elusive. There is currently in place a rules and regulations committee for the full implementation of the LRA.

9 Way Forward

- Formulate rules and regulations to fully implement sections 9 and 10 of the LRA in line with the new and emerging communication technologies.
- Design a unique and uniform parcel identifier of all lands in Kenya (away from the more than five identifications applied currently) as envisaged by the LRA and thus having a uniform titling system.
- Design standard formats and instruments of titling, conveyancing and land registration so as to standardize all titles and land information across the country.
- Fund the Director of Surveys to fully carry out survey and resurvey so as to standardize the cadastral maps which are a key ingredient in the titling processes and the much needed uniform land title document.
- Formulate rules and regulations and put in place a system that facilitates prompt and timely recording of all changes in and to land together with any changes on any attributes to land.
- Digitize all the land records in all the departments and have a digital and online platform where the registration process can take place without necessarily having physical involvement.

10 Conclusion

Data standards, access and interoperability in the land sector in Kenya is experienced to some extent. This is however to the extent that one can access the information or exchange the same either physically or to some limited online access now that there is ongoing digitalization especially at selected land registries. Interoperability is almost nil considering that there are no technological linkages amongst the various authorities that deal with land data. These authorities include the various departments in the Ministry of Lands and Physical Planning (Administration, Survey, physical planning, adjudication and settlement and lands), the NLC, county governments KRA and others including the civic bodies.

There is however hope that in the not so far future, all land data standards and models, access and interoperability will be within reach. This is from the current drive and technological push from the Government and stakeholders in the land sector. The fact that a number of land registries and other land departments and institutions are putting in efforts to digitalize their records and processes is quite evident and telling of a better future. The land laws have also been harmonized, rationalized and consolidated through the 2012 statutes. Though enactment of the new laws is a process, it has already begun. The laws that have been repealed though felt under transitional clauses variously are the ITPA, LTA, GLA, RTA and RLA.

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Table 1: Table of Statutes applicable on Land Registration in Kenya