LAND WATCH NOTE

STATUS OF LAND INFORMATION MANAGEMENT IN KENYA

1. LAND INFORMATION MANAGEMENT

1.1 About land information management

A land information system provides various types of information about land for decision making by institutional managers and transactions by land owners, or prospective investors. It should allow for the input, processing, storage, update, retrieval, analysis and dissemination of land data. A good land information system should contain accurate, current, complete and accessible data. It should be designed with the user in mind, rather than the producer of the information. The system may provide land data in form of products such as maps, official searches or ownership documents, or in the form of a professional service, and payment of land revenues. These systems should be protected through strong security and data back-up protocols.

Computer based land information management systems are vogue in today’s world. The systems have the capacity to hold large volumes of digital land records, and have tremendous computing power to support multiple user requests. They provide an opportunity for users to access land information, and transact on their properties, online. They force organizations to reorganize their records and reduce the need for physical interactions, hence helping them to declutter and reduce in-person customer traffic. The system design should be informed by data standards and formats that allow easy data sharing and access by state and non-state stakeholders, and the use of user-friendly interfaces. Depending on a country’s circumstances, such systems may be developed in-house, bought off-shelf or entrusted to a contracted agency. Ordinarily, due to the centrality of land to development, the records in a land information management system form the core data sets within a broader National Spatial Data Infrastructure (NSDI).

1.2 Continental guide

Land remains central to sustainable livelihoods and development in Africa. In the recent past, the continent has been developing policy frameworks to guide African Union member states in land policy development and implementation. Without effective collection, custody and sharing of land information, the implementation of land policies at country level would remain challenged. This concern is echoed in the Framework and Guidelines on Land Policy in Africa which observes that land delivery systems in Africa are largely paper-based and are manually operated. It is therefore advised that such
systems need not be merely redesigned, but also be technologically upgraded, including the establishment of computerized Land Information Systems. Specific principles to guide land policy processes and the development of land information systems in African Union member States have also been developed. Some of the continental principles that would be helpful to the establishment of land information management systems include:

i. *Information about land must be geo-referenced and descriptions of parcels must be unambiguous.* This helps to ensure that one can obtain accurate information on the location and shape of parcels in a system.

ii. *The value of information can be increased by making it widely accessible.* The principle of free access to all data and information in a system developed and maintained by public resources should be promoted.

iii. *The private and public sectors should form partnerships.* While public access is best assured when the state is the custodian to a system, the private sector plays a key role in gathering the information that goes into it.

iv. *Good and effective governance is essential.* The management of land information must be transparent, and the information itself must promote good and effective governance. Such governance should also be inclusive of all user groups.

v. *Land information management encourages and requires change in institutional cultures.* Computer-based systems require different management and work techniques from paper-based systems. They provide the opportunity to redesign the institutional infrastructure of a country.

vi. *Indigenous and gender issues must be captured in any land management information system.* Much land tenure in Africa is based on customary and religious systems. So any LIMS must adapt, and adapt to, such heritage. Land information management can and should empower women by recognizing the significant role that they play in development.

vii. *Public awareness is central to transparency and openness.* The government is expected to employ decision-making processes that are open and transparent to stakeholders and the public. It should enhance the sensitization of all groups including government officials, professional bodies and traditional leaders to the benefits of better managed land information.

Kenya, being a signatory to the “African Union Declaration on Land Issues and Challenges” which is based on the “Framework and Guidelines on Land Policy in Africa”, has been making progressive efforts towards their implementation.
1.3 National Land policy, constitutional and statutory guides

Kenya’s road to the development of a national system for managing land records has been rather long. It has been informed by a review of the national status of land records, stakeholder inputs, benchmarking against other jurisdictions, and the development of the governing policy and law. Kenya’s national land policy, contained in the Sessional Paper No 3 of 2009, underscores that the country lacks up to date information on various land uses such as agriculture, forestry, wildlife, water and infrastructure. This gap complicates effective planning, zoning and overall management of land.

The policy notes that land information in Kenya is held mostly in paper form and managed manually. This is inefficient, time consuming and does not support timely decisions. The Government has therefore committed to:-

i. Establish a comprehensive computer-based land information management system that would be efficient, user-friendly, accessible, affordable, transparent and gender sensitive.
ii. Ensure that the system would facilitate the accurate classification and mapping of all categories of land
iii. Establish national guidelines on land information to govern matters such as land information standards, security, dissemination and pricing
iv. Make land information available in a form and language that can be understood by most citizens, including accessible and clear hard copy information products and simple maps
v. Reorganize, update and authenticate existing land records
vi. Establish a National Spatial Data Infrastructure (NSDI) to ensure integration of and access to spatial data sets held by different national agencies
vii. Provide necessary infrastructure at all levels, promote a viable land information market and facilitate the sharing of information across all government departments.

The Constitution of Kenya 2010iii, has set out land policy principles that require land administration to be efficient, transparent and cost effective. It has further made it a right for every citizen to obtain information held by the state required for exercise or protection of any right or fundamental freedomiv.

The Country has put in place statutes and their attendant regulations to implement these policy commitments. These include the Land Act 2012 (as amended in 2016), the Land Registration Act 2012
(as amended in 2016), the National Land Commission Act 2012 (as amended in 2016). These laws require that the Cabinet Secretary responsible for Lands develops and maintains an efficient land information management system at national and county levels. The cabinet secretary is further obliged to coordinate the management of the National Spatial Data Infrastructure. The laws require that the Cabinet Secretary works in collaboration with the National Land Commission in establishing and implementing a National Land Information Management System (NLIMS). It is expected that these Constitutional, Statutory and Policy provisions would guide the development and management of NLIMS.

2. NATIONAL LAND INFORMATION MANAGEMENT SYSTEM (NLIMS)

2.1 National context

In the past, there have been different attempts to introduce modern land information management in Kenya. Some of the efforts predate our national land policy of 2009 and the constitution which was promulgated in 2010. Other recent efforts have been spurred by devolution. Our 2010 constitution established county governments, which are lower level governance organs with some land governance roles.

At the national level, efforts to computerize the management of land records have been going on for the last two decades, without much success. There has also been efforts at national level to establish a National Spatial Data Infrastructure. The effort has been ongoing for long and remains work-in-progress. There is not much clarity about the challenges that continue to hold the NSDI initiative back. Ideally, our NLIMS should provide the core dataset to our NSDI, an infrastructure which would integrate all other spatial datasets in Kenya.

At the devolved level, different Counties have been establishing their preferred computer-based systems. Working with donors, a number of counties have for instance established GIS laboratories to assist in their spatial data management. This has called for the digitization of some land records. Counties like Nairobi and Kiambu have designed standalone computerized systems to manage their planning and development applications, and the subsequent approvals. Lessons from all these counties are yet to be documented and reviewed for an understanding on how they have served their intended purposes, and how they can be integrated with a wider national system.

2.2. “Ardhisasa” online management system

Kenya recently launched a National Land Information Management System (NLIMS), dubbed “Ardhisasa”. This system fits into our wider policy and legal contexts, which require that Kenya establishes a modern land information management system. To make it possible to transact on electronic records, an amendment of the statutes governing the submission and processing of land
records, and the payment of land revenues, had been done through the Business Laws Amendment Act of 2020. These statutes included: the Survey Act, the Land Registration Act, the Stamp Duty Act, the Registration of Documents Act and the Kenya Information and Communications Act.

The launch of the “Ardhisasa” digital platform on 27\textsuperscript{th} of April, 2021 was a culmination of efforts to digitize existing cadastral maps and the corresponding ownership records. The databases to these two have now been linked through the new online system, making it possible to pose real time queries on property ownership to the system. However, the first phase of this system, which will serve as a pilot case before a wider national roll out, was restricted to only records for Nairobi City County. The Government reported that at the time of the launch, about 240,000 parcel records had been uploaded.

The government anticipates to have uploaded records to a further 20 counties by the end of year 2021, and the balance of 26 counties by the end of year 2022.

2.3 User registration

To use the system, one has to pre-register using their national identification card details, email address and their contact mobile telephone contacts. The first level registration option allows one to be registered against their private account. A second level registration option allows land professionals to upgrade their private accounts in order to be able to submit their respective professional work, such as conveyance documents, development applications or survey records, for processing and/or approval. Currently, the system is designed to upgrade private accounts from four categories of professionals. These are: advocates; licensed surveyors; registered physical planners; and registered county physical planners. Evidently, this list excludes key land professionals like valuers and real estate management agents, registered under the Valuers Registration Board, and the Estate Agents Registration Board respectively.

2.2 Official searches, transfers and maps

The system allows one to make property searches, transfer property, order for a cadastral map or a title. It allows one to request department-specific services provided by the Ministry of Lands and Physical Planning including: land registration, land administration, surveying and mapping, valuation, adjudication and settlement, and services relating to the national land commission. The government has however informed that, when one requests for an official search to a property, the property owner must give permission for the search to be given. This requires that the person intending to undertake a search, and the proprietor to the property targeted for a search, must pre-register in the system. Moreover, the property owner must have entered the details of the property through the “My Properties” option available in the system menu. The government has further clarified that only parcels
whose titles have been converted to the registration regime under the Land Registration Act of 2012 can be uploaded onto the system.

3. USER FEEDBACK / CONCERNS

As anticipated, land professionals, land owners and other users who have used the system have had mixed experiences with it. Some report having been able to easily log into the system and register. Some have had challenges, reporting that it took them long, while others have not been able to register at all.

Some of these may be routine teething challenges. Some professionals are having challenges getting their accounts upgraded. There are however some substantive issues that can be distilled from regular user experiences for necessary policy and technical action. Some of these, picked from the Institute’s direct experience and some stakeholder forums that our members have attended, are documented below. The list is not exhaustive and its numbering does not denote priority:

1. **Conversion issues**: Many proprietors do not know the new numbers to their properties following conversion to the Land Registration Act and will therefore have a problem registering them on the system.
2. **Data security**: There are concerns on the security of the data in the system, the user details fed into the system and the data submitted into the system by practicing professionals. For instance, can such data be seized and used by other persons?
3. **Accounts for professionals**: There are concerns that the list of professionals whose accounts qualify for upgrading is too short. There has been suggestions that registered private valuers, registered real estate agents and registered survey assistants, who regularly engage in land transactions on behalf of clients, ought to be included.
4. **Identity theft**: There is concern that there is the likelihood of identity theft, where someone in possession of another’s name and national identity card details can register an account, using their personal mobile telephone details, and subsequently be able to transact on the system.
5. **Sectional properties**: There are some high rise developments that were georeferenced under the Sectional Properties Act. Such properties qualify for uploading onto the system, provided they have undergone conversion to the Land Registration Act.
6. **Restricted searches**: The public, investors and Practicing professionals will have difficulties where they seek to conduct official searches without the proprietors consent. Valuers and Banks will for instance face difficulties in searching and doing due diligence for properties targeted for forced sale by lending institutions. Owners to such properties are unlikely to give permission for searches to be conducted against their properties.
7. **Power of attorney**: There will be instances where some proprietors are not able to register on the system for varied reasons including digital illiteracy, unavailability of infrastructure, costs of
access to the internet or even illness. It has been suggested that the system should be able to allow professionals who have been given power of attorney to deal on behalf of such proprietors.

8. **User guides**: The government has been encouraged to prepare guides for users, and practice guides for professionals, for ease of engaging the system. The practice guides for professionals should highlight the technical standards and data formats that should be observed in the submission of records through the system.

9. **Irregularly allocated land**: Concerns have been raised on the possibility of irregularly allocated property such as that listed in the Ndung’u Report getting inadvertently or deliberately uploaded onto the system, hence sanitizing them.

4. **KEY OBSERVATIONS AND RECOMMENDATIONS**

From the above highlights on the broad, continental and national contexts relating to land information management and the user-feedback on the new Ardhisasa online system, LDGI makes the observations below:-

1. **Stakeholder support**

The efforts to digitize land records, and subsequently develop a national land information management system for Kenya, have been on for the last two decades. That we now have some integrated system around which we can begin to do serious practical piloting using Nairobi City County records is laudable and a welcome effort by the land sector in Kenya. The Institute therefore supports government efforts in this regard, and appeals to sector stakeholders to take a progressive view on this national initiative, whose success will be transformative, enhance efficiency and reduce costs of transacting on land in Kenya. The Institute urges the Ministry to continue receiving and promptly addressing related user feedback, in order to improve and perfect the system incrementally.

2. **Ambitious timelines; Options for pending manual records**

The timelines shared by the government look rather ambitious. Given that the uploading of records must be preceded by the conversion of title deeds, we take the view that the process to attain national coverage will go far beyond the provided December 2022 deadline. And this is quite fine, provided the authentication, vetting and input of records is accurately done. This however means that until such a time that all the parcel records go online, we will continue to have two parallel sets of transactable land records. Some of these will be online, while others will be manually held in the respective land registries and can only be transacted face-to-face. The Ministry must therefore reflect upon how to ensure that business for each of these sets of records is done. This should begin with Nairobi, whose Central Land
Registry records have reportedly not yet been uploaded. This quest to ensure that everyone is served at all times must however not be allowed to slow down the digitization and uploading of records for online transactions.

3. Adherence to guiding policy and legal provisions

While we commend the government for the development and launch of an integrated land information management system, we wish to point out that this will be a long term journey and needs to be treated as such. For optimal results, it will help to align the design and management of the system to the broad guiding continental and national principles. In addition, full compliance with the provisions of our constitution and laws is critical.

In this regard, we note that quite a lot of effort has been made to align the system with our policy and laws. But consistent and systematic effort should be put to ensure that the system is accessible to a wide range of users, embraces transparency, and is able to anchor indigenous information (including cultural sites and shrines) and that the data hosted is amenable to gender disaggregation. The principle of public-private partnership should also be continuously embraced, given that a lot of the land information available was originated by the private sector, which will continue to be relied upon to provide more data to the system, especially through property subdivisions and transfers. The systematic and long-term sensitization of stakeholders for general awareness and use of the system will need to be very well targeted and inclusive. A good communication program to support this should be established, or sustained, if already in place.

The government will also need to ensure that all the counties scheduled for inclusion onto the system have sufficient infrastructure to store, process and disseminate electronic data real-time. In some places, this will require extra/secure physical space and/or reliable power. There will also be need to develop guidelines with information on issues relating to standards, formats, security and dissemination of information in the system for ease of reference or use by users or institutions planning to develop sub-systems compatible with the national system.

Finally, the government should refocus on the NSDI initiative, which will be well complemented by NLIMS. In doing so, compatibility issues must be kept in mind. In this regard, good thought should also be given on how to harness the standalone sub-systems that existed in some counties, how to guide any other counties that may be in the process of establishing similar ones, in order to ensure national integration or compatibility so that county land information needs are also served through the national system.
4. **Restricted Searches: Closed or open registry system for Kenya?**

Right from inception, Kenya’s land registry system has remained open. This meant that anyone with an interest on a registered piece of land could apply and obtain an official search in the various land registries without restriction. Many jurisdictions operate such systems. They allow individuals and institutions to obtain information on the proprietorship and encumbrances on any registered land parcel to use in transactions of their interest, whenever they may wish, provided they pay for any required statutory fees, unrestricted.

However, after a long period of operating an open registry system, the government clawed back and introduced the practice where to conduct an official search against a land parcel, one needed provide a copy of the title deed to the parcel. This means therefore that one must know the owner to a parcel before they undertake a search against it. This practice, which actually contradicts constitutional requirements for transparency, citizen right to information, and the key objective for property searches, has gone on for quite a while now.

The new “Ardisasa” online system seeks to cement the practice, by requiring anyone intending to conduct an official search against any registered land parcel to obtain prior permission from the proprietor. The practice is also contrary to the principle of transparency, and the constitutional right to information held by the state. In practical terms, it constricts land governance.

For instance, valuers, investigation agencies, construction companies and investors who wish to make official searches for very legitimate reasons such as establishing the ownership and status of a parcel for reasons such as valuation for forced sale by a lending institution, criminal investigations, compensation or negotiations for investments, will be limited. The practice restricts opportunities for business prospection on property.

Moreover, the restriction could give Kenyans the perception that the state has designed a system that helps to hide the identities of some property owners against public interest. This unnecessarily hurts public perceptions on “Ardisasa”, and in reality undermines its potential. The Institute therefore proposes that in order to tap into the full capacity and potential of the new system for effective land governance, official searches against all properties within the system should be left open as used to happen before. This is the greater good and any other associated concerns should be addressed separately.

5. **Data on Irregularly allocated public land**

The matter of irregularly allocated public land, which cuts across records for the land allocated in diverse circumstances from institutions and reservations such as Kenya Railways, Kenya Airports Authority, Agricultural Development Corporation farms, Agricultural Research Institutes, former local authorities,
former trust land, forests (Karura, Ngong, Mau etc) and riparian reserves needs careful handling. While the Ministry has assured that all such records have been isolated and will not be uploaded onto the system, due to the sensitivity of this matter, transparency and accountability is necessary. These properties should be provided on the portal under a special classification to inform those who may be seeking to do due diligence on them. A close collaboration between the National Land Commission and the Ministry should help to openly and conclusively deal with these properties. It is hoped that the exercise of setting aside such records has been entrusted to officers who are not conflicted, by having been involved in their very allocation in the first place. The Ministry may therefore need to look for mechanisms to ensure that its assurance on this matter is verifiable through well-meaning independent officers and stakeholders.

6. **System security, back-up and maintenance**

As is always the case with such systems, the matter of system security, back-up of records and its long term maintenance are of cardinal concern. The government has given assurances on each of these. Kenyans however must remain conscious of the fact that this system is long-term, and will hold all land ownership records across the country for posterity. Yet, for various reasons, there will be transitioning by the pioneer team of experts responsible for the design and implementation of the system. There will be transitioning of the high level champions and professional staff responsible for its policy. There will also be transitioning of the technical staff responsible for data input, technical processes and system maintenance with time.

Furthermore, technology will evolve and require that updates to the system software and hardware are done. The Ministry therefore needs to ensure that there are good arrangements for the continuous mentoring, training and retraining of the staff responsible for the technical processes, data management, system security and maintenance in the immediate and long-term. It is also hoped that there will be comprehensive and secure back-up of all the digital records, and safe archiving of the hard copies as extra back-up, and for posterity. For all this to happen effectively, the management and technical staff entrusted to the system must be well vetted for professional integrity, competence, patriotism and commitment to our quest for an efficient, accessible, affordable and accurate land information management system.

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2. UNECA, 2008, *Land Management Information Systems in the Knowledge Economy*