

69568

ECA / NRD / CRSU / 91-4

**COMPENDIUM ON  
CADASTRAL REGULATIONS AND LAND TENURE POLICIES  
IN AFRICA**

First Instalment

**CARTOGRAPHY & REMOTE SENSING UNIT  
DECEMBER 1991**

## CONTENTS

	<u>Page</u>
PART I	
1. Background	1
2. Introduction	3-6
3. Objective of a Cadaster	7-9
4. Comments	10-11
5. Observations	12-13
6. References	14-15

## PART II

7. Compendium: Ghana, Kenya, Liberia, Mozambique, Niger, Tanzania, Zambia, Burundi and Chad

## BACKGROUND

In recent times Africa witnessed cyclic droughts and famines which not only degraded the soil and plants, but also killing lives that depend on them. The pride of nations was touched when they were reduced to begging for food aid from donor agencies most of these from outside Africa. The causes of droughts have been studied but measures to avert them require long term action, national participation and the backing of huge financial resources. Medium-term measures taken to address the situation involved, among others, putting in place strategies for self-sufficiency in food production, safeguards against post-harvest food losses and early warning systems for drought and desertification in Africa. The Lagos Plan of Action (LPA) for the economic development of Africa adopted by Heads of State and Government of the Organisation of African Unity in 1980, provided a blueprint for development until the year 2000 AD. In order to address topical food emergencies and to contribute to the realization of the LPA goals, new strategies namely, Africa's Priority Programme for Economic Recovery (1986-1990) as well as the United Nations Programme of Action for African Economic Recovery and Development (1986-1990) were adopted as medium-term measures to combat food emergencies, increase levels of food production and to ensure development.

In other equally key areas such as in industrial development and housing, land security has been a crucial determinant factor. Looking at Africa in general, agriculture is carried out on a small scale by the rural poor. They have no equitable access to arable land due to discriminatory land policies some of them inherited from colonial days, or those laws designed to favour the emergence of rural capitalism. The study in succeeding chapters of the compendium is designed to list different land tenure policies as provided in the documents on the countries studied, at the same time indicate the cadastre in force. The Compendium was included in the secretariat's work programme as a working document for the group of experts who would conduct an in-depth study on land tenure policies in Africa, and cadastral survey regulations as applied in selected countries. The experts will point out elements in the laws which require improving upon and which could be useful in agrarian reforms; thus making land accessible to all sections of the community. Regarding cadastral survey regulations, the group of experts will recommend sets of survey standards and regulations that could eliminate fraud and enhance the usefulness of survey records as well as the inviolability of property. The compendium and the expected recommendations will provide the basis for the formulation of land policies that are fair to all. Armed with protected legal rights to land, more and more farmers and other investors will have access to the banks to raise the capital necessary for investment in agricultural and industrial production.

Whilst developed countries are currently working on cadastral renovation, in other words working on conceptual and legal aspects of the cadastre in the development of systems for handling standardized manipulation of cadastral data, African countries on the other hand should first build a framework on which to carry out the modernisation of their cadastre.

COMPENDIUM ON CADASTRAL REGULATIONS AND LAND TENURE

POLICIES IN AFRICA

First Instalment

PART I

Introduction

This compendium on cadastral regulations and land tenure policies in Africa covering both English and French speaking countries is prepared under the terms of reference of U.N. Economic Commission for Africa. The reader of this compendium may not find it quite up-to-date in the case of all countries. But no one will fail to realise, after reading this notes, the importance and the unique role of cadastral surveying and Land Registration in the all round development of any Nation, be it economic, social or political field.

The governments of industrial countries are today faced with the difficult task of improving the general quality of life of their citizens without impinging on the freedom of the individual. A better quality of life does not mean more material well-being and economic growth at any cost. The preservation of the environmental, fundamental bases of human life are also part and parcel of a better quality of life. Particularly in countries with relatively advanced economic structures and relatively high population density this goal can be achieved only when, in addition to an effective administration system, a differentiated and smoothly functioning information and data bank network is at hand.

This information network must regularly supply the government authorities with the data and information necessary to enable them to gain a clear idea of all essential aspects of the current situation and of development trends of the society and its institutions. The authorities must have recourse to reliable comparative statistical data if they are to properly set priorities for further planning. Only then will it be possible to properly coordinate the partial objectives of the various authorities in a policy of wise resource husbandry. And certainly in nearly all countries the land remains one of the most important resources from

both the political and the economic point of view and the prime object of both public and private planning efforts.

Land is not reproducible, and this static situation is one of the main sources of disequilibrium between freedom of the individual and restrictions which must be abided by. Government policy makers must therefore draw all aspects which relate to the land and its distribution into their planning measures. To this end they require reliable and target processed land data. Involved are physical planning measures such as industrial settlement planning, town planning, agricultural planning, transport planning, social planning, environmental protection planning, etc. In the long term, therefore, it will be necessary to establish a computer based national data and information network in this field.

In most developing African countries there is increasing need for cadastral maps and plans, which are essential to the efficient assessment of land management. The absence of maps and registration of rights greatly complicates dealings in land. It hinders the implementation of land reform programmes and programmes for the establishment of proper land revenue systems. In these countries, where the policy of registering ownership of land is relatively new, the survey and legal aspects of a cadastral system should be based on a thorough investigation of a human and environmental circumstance in relation to the use of the land.

All of us know only too well that the political, economic, social and administrative activities of a country are largely based on the knowledge the country has been able to acquire. Knowledge in this context means exact knowledge on how to establish surveys of the countries natural resources, determine type and size of land coverage and its utilization, undertake value assessments of landed property, and demarcate inviolable national borders. All reform measures undertaken by the parliament and government of a country must be based on an effective and well-functioning administrative machinery, equipped with the necessary data on the country's landed property. However, only those administrators are able to make unbiased and wise decisions who, in assessing future development, can rely on accurate land surveys and analyses.

It cannot be denied that without the compilation of reliable maps based on accurate measurements even of the remotest area of a country and subsequent interpretation of results, all attempts aimed at reforming and developing this country must remain piecemeal. The need for cadastral surveying and land registration procedures as instruments and prerequisites for administration and systematic social development of a country should be fully recognized and financially supported by government, and policy makers.

Land is gradually becoming scarce in many parts of developing countries. The population increase is not being matched by a

corresponding growth in industry or other occupations. Consequently, there will be increasing competition for land. Originally in many developing countries, especially in Africa, land tenure has mostly been developed for a state of abundance in which there is plenty of uncultivated land and every mature members of the group has both the right and the opportunity to use it. Under such conditions there is not much need for concepts of ownership or similar rights. Now we are, however, rapidly leaving this old state of affairs behind. When competition for land increases, a tendency towards the individualization of land will normally develop. Every one will try to retain the land which he occupies and leave it to his children. Also litigation about land will increase, partly because the customary law will weaken, and discrepancies between old rules and modern concepts will cause uncertainty about the real rights. In short, the system will break down because it is not adopted to new conditions. This situation is especially critical in area around rapidly developing cities, but it is more and more becoming a general problem in great parts of Africa. Cadastral activities may in these cases be an efficient means to conquer such obstacles to development.

In view of the great number of word combinations used in connection with the term "Cadastre" however, the first thing to do is to define this word. It has meanwhile been generally accepted that "Catastrum", originating from middle Greek "Catastichon", denotes a notebook or a business record. In the course of time many attempts have been made to eliminate this word, being obsolete and suspect, from general usage. In recent time, however, the term in its many combination has enjoyed a certain comeback.

Today a cadastre has assumed the character of a compilation of records, an inventory, a collection of de facto and de jure data. Since the term "Cadastre" no longer relates exclusively to property it should be replaced by the term "property cadastre" when this sense is to be implied. Word combination in which "Cadastre" appears in connection with land taxation, demarcation of boundaries, planning, etc. (there is even a multipurpose cadastre) are used by experts all over the world. It would, however, seem advisable to eliminate all these terms in favour of "property cadastre". The same applies to the terms rural and urban cadastre.

Alone the word combinations which illustrate the purpose of a cadastre are proof of its importance for the political, economic and social development of a country. Here, I would like to mention the very important role of cadastral surveying and land registration in the economic development of developing countries.

There are three essential elements in an efficient cadastre:

- an unambiguous definition of each parcel of land, whether a unit of ownership or of use, within a given area, usually, the parcels are defined on maps;

- related descriptive records which contain in respect of each parcel name and number and usually area, but which also may give details of all legally recognized rights affecting ownership, or details of use, or such other information as is required for the particular purposes for which the cadastre is designed;
- once the map and record has been established, they must from that moment be continuously maintained. Any information which affects the parcel definition or the related record must be registered.

In 19th century most countries on the European continent established cadastre. This was normally done by survey organizations, which were also responsible for maintenance. The registration of transfers and other deeds concerning land was on the other hand the responsibility of the courts or special registration organizations. The registration usually gave validity to a deed against a third person, but did not guarantee ownership or other rights in land. In the middle of the 19th century Sir Robert Torrens introduced the famous South Australian legislation for registration of titles instead of deeds. His ideas have greatly influenced many other countries. According to this system, each unit of land is described on a map and is given a special entry in the register, showing all existing rights - ownership, mortgages, servitude, etc. - in this unit. All titles shown in the register are guaranteed. Unregistered documents give no title and no rights against a third person. A record which gives legal force to right may be called "legal cadastre", while a record used for mainly taxation purposes may be called "fiscal cadastre".

### Objective of Cadaster

Of the advantages which may follow from an efficient system of cadastral surveying and land registration, the following seem most important:

(a) Land registration provides certainty and security to the owner as well as to other having rights in the land. This is especially important, where discrepancies between customary but unwritten rules and foreign concepts cause uncertainty about ownership and other rights. The situation can also be difficult in area where, traditionally, some family or tribe supremacy rights have existed but where these are now in question because a growing sense of individual ownership, which is especially the case in Africa South of the Sahara. In the register everyone's rights will be clearly defined. Greater security stimulates private investment and agricultural development as the individual is more willing to carry out improvements of a long-term nature.

(b) Disputes and litigation concerning land will be greatly reduced, resulting in better social and human relationship, less work for the courts, and less cost to the individual. Experience shows that otherwise litigation concerning customary land tends to increase with development and increased commercialization.

(c) Registration greatly facilitates all transactions concerning land and makes dealings in land easier, cheaper and safer. Private conveyance of unregistered land is often expensive, especially when the community has reached a certain stage of development and recourse to law becomes necessary.

(d) The credit aspect is one of the main reasons for land registration. Most banking institutions insist on plans and good title before giving loans on mortgages, or request special insurance to be taken. Development of the land, both development of an efficient and modern agriculture and urban development, often requires more means than the poor owners can produce themselves or borrow from cooperative societies which normally only take care of short-term credit or from private moneylenders, who as a rule demand high rates of interest. Unless money is available on reasonable interest, it is not possible for most private owners to make considerable investments in their land without entailing disproportionate economic hazards.

This aspect may not seem so important in a rather primitive society, where the tendency for investment still is low, the credit possibilities in any case are limited because of general poverty in the society, and the land values seldom are high. But, as the

country develops, the credit question will become more and more important, and some solution must be reached, least development be seriously delayed.

(e) If land reform measures are going to be implemented, maps and records of land are almost imperative. It has been the experience of several countries that even when reform laws are enacted, it is very difficult to enforce them unless precise information about land tenure is available.

Without registration, it is also impossible to control fragmentation, and no programme of consolidation of fragmented holdings can be carried out. When implementing big investment schemes such as main irrigation, a land register is also helpful.

(f) A complete land register based on cadastral maps has a wide multipurpose use within public administration. It is thus self-evident that the register can be used for determining land taxes and wealth taxes. Information concerning rights in land, the extent of the land, the boundaries and the location is valuable for fixing taxes. The framework of the assessment books can be obtained from the land register, showing the parcel number, owner and extent of the land. This framework can then be supplemented by inserting land and building values and the tax to be paid. A well maintained land register also makes it easier to control taxes of these types as well as stamp duties in cases of transfer.

The register can further be used for establishing a population register. The most natural way to determine and group a population is according to the dwelling sites, most suitably defined through the plot number. The land register can thus also be the base for such a register showing names, ages and occupations of all the people living on a certain plot. A register of this type might be needed for elections, for social services, for old-age pensions, food rationing, etc., and it is the general experience that such functions increase as a community develops. In the beginning, separate registers are often kept for each function (for election purposes, etc.) but gradually, as the shortcomings of maintaining a multiplicity of such registers become obvious, a population register may be worked out from which all the needs can be satisfied. Such a register is also important when establishing a well controlled register of income tax.

Building registers are useful in many connections. The natural grouping in this case, too, is according to the plot numbers. Such a register may be established in connection with taxation. Information collected about buildings is often lost if it is not systematized in maps and registers.

It is also be obvious that a land register will greatly facilitate censuses concerning population, dwellings, agriculture, etc. Some of the information needed can be taken directly from the

land register and other registers built upon it. They will also serve a skeletons from which random selections can be made of units for more detailed survey.

The land register, containing information of all registered transfers within a certain area, may also be used for collecting statistics concerning values of land of different types. A fairly good idea about values is needed for public valuation in connection with assessment, compensation in case of acquisition, public sales and purchases, fixing rent on Crown land, control of land values, valuation for stamp duty, etc., as well as for private transfers. In most western countries governmental or private agencies therefore systematically collect statistics of sale prices from registered deeds. The land registers are also widely used for collecting price information from all sales within a limited area, especially when the courts have to determine compensation for acquisition, etc.

Land registers can also otherwise be widely used in local administration. Current and up-to-date information about ownership is needed not only for controlling the collection of taxes but also for sending notices about meetings, public activities, orders from the authorities, measures required in cases of offenses against sanitation rules, etc. An up-to-date map is, of course, also very useful for controlling unauthorized building, and for controlling that building are lawfully placed in relation to each other and to the streets, and that public regulations are observed.

(g) Cadastral surveying and land registration give basic data for urban planning. A close connection between cadastral and urban mapping makes it possible to keep maps and ownership records up-to-date. It is an unquestionable fact that urban mapping should be one of the main objectives of cartographic activity in the future. With the expected large increase in urban population, the need for planning is tremendous. The result will be disastrous if planning does not keep pace with this increase. Development areas must be provided and planning must be ahead of the population movement. This is of utmost importance if the cities in developing countries are not to be irreparably damaged.

The urban development area should therefore mostly be given the highest priority when cadastral operations are to be initiated in a country.

These are some examples of a multipurpose use of a cadastre. It must be understood, however, that the advantages will vary considerably under different conditions. In a rather undeveloped area with primitive farming and lots of land available for new cultivation, the sense of property right is often rather vague and the need to fix ownership is not felt very much outside urban areas. In any case, land values are low and the possibilities to get loans with land as security are small. Even in such area

records may be valuable from a public point of view as a basis for planning and developing the land. But the methods must be simple to keep the costs low. Little support from the landowners can be expected at the start in such areas.

### Comments

In the course of preparation of this, it is realised that the system adopted in some countries is highly sophisticated and well organised.

In many other countries, there is need for great improvements. In realisation of this fact, the following comments are to be made.

1. In some countries Archaic land law should be modernized.
2. The laws pertaining to urban and rural cadaster should be combined and new law should be enacted.
3. A new law should be amended to permit the renewal of a cadaster which has lost its technical value.
4. (a) To provide individual title in place of customary tenure:  
Abolish the existing orders and give the authorities new powers of disposition under a land administration act.  
(b) To make the laws governing natural resources, town and country planning, forests and game conservation of more general application and to apply the law of compulsory acquisition to all the land.
5. High cost of conveyancing:  
The law applicable to land held on statutory tenure should be amended, simplified, and enacted as part of the legislation so as to form the basic land law.
6. To prevent fragmentation of holdings which would render the land uneconomical to use, provision must be made in legislation for minimum - size lots that can be created through mutation or succession.
7. In some countries the standard of land records is generally inadequate.  
(a) Large areas of the country are held under customary land law; in such areas there are no records in land and no cadastral mapping.

- (b) Even where records exist they are confined, particularly in former colonial territories, to a very small part of the total land area, mainly to land in towns or to scattered rural holdings held by nonindigenous persons. In many instances these records have been inadequately maintained.
- (c) The extent and location of land available for disposition by the state is often in doubt.
- (d) In some countries different systems of registration and of land law exist side by side.

Observations

1. ECA wishes to urge high level policy makers to appreciate that, for efficiency in planning and carrying out all kinds of economic and social development projects, the cadaster is a vital instrument.
2. ECA realises the importance to gather experts from different African countries to initiate a pilot project.
3. All possible steps to be taken to encourage the preparation of a reference book on cadastral practices which will contain information about the latest practices and experience throughout Africa.
4. Since training in Cadastral Surveying operation is a vital factor to be considered, courses at appropriate national or regional training centres and other institutions be organized for all levels so that African countries have the required staff for the establishment and maintenance of cadastre.
5. Noting that legislation governing cadastral services exist in many African countries; all African countries when formulating or reviewing their legislation for cadastral services should take account of existing legislation in other countries.
6. It is recommended, that the existence of an efficient and effective cadastral service depends on the smooth and harmonious relationship between the land survey services and the legal services which support the cadaster; and that such smooth and harmonious relationship is likely to exist when the two services are within one organization, and this is not the case in some countries;
7. It is recommended that the cadastral system should be based on a national trigonometric network;
8. Considering the usefulness of a good cadastral records system; for easy and speedy recovery of all cadastral data; it is recommended the adoption of a simple method of unique parcel numbering system which is adoptable to modern recording and compilation methods;
9. Recognized the necessity of automation for an efficient updating of a cadastral system and further recognize that the use of automation will permit the establishment of a data bank for landed property which could be integrated into a national information system;

- 10. That technical and legal cooperation among member States in the form of training, exchange of qualified personnel, equipment, and any other technical information is recommended.

It is imperative to recommend certain steps for bettering the information contained in the compendium of the different countries.

They could have been updated, if notes of first hand experiences and records of on-the-spot observations were available. This could have been possible only by visiting the countries under discussion. So in view of the great contribution such visit will render, it may not be a mistake to recommend such trips.

Insufficiency of time has resulted in inadequacy of materials - presentation. Meaning the absence of statistical tables and charts. The reader is requested to overlook these omissions. They are not intentional.

ECA wishes to record its wholehearted appreciation to the consultant, Eng. Zewdu Taddese, for having prepared the compendium in its totality.

References

1. FAO Seminar on Land Policies in East and Central Africa, October 1960.
2. Report of Working Party on African land tenure, 1957-1958.
3. United Nations Inter-regional Seminar Cadastral Surveying and Urban Mapping, Berlin (West), June - July 1974.
4. E/CN 14/CART/265 The System of Registration in Ghana
5. E/CN 14/CART/262 An Outline of a Model Ordinance for Africa, (United Kingdom).
6. Republic of Botswana  
National Policy on Land Tenure the Tribal Land Act (CAP 32:02) and the regulations
7. Republic du Cameroun  
Régime foncier et dominal
8. Régime de la Propriete Fonciere en Republique du Benin
9. Decret No. 81.557 du 21 Mai 1981
10. Survey of Kenya  
Information on the Cadaster Activities