

**TOWARDS INDIVIDUAL STATUTORY
PROPRIETORSHIP
FROM
COMMUNAL OWNERSHIP**

PRESENTED

BY

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KENYA

THE LAND ADJUDICATION PROGRAMME

1.0 INTRODUCTION

“Our greatest asset in Kenya is our land. This is the heritage we received from our forefathers. In land lies our salvation and survival. It is in this knowledge that we fought for the freedom of our country. Whatever our plans for the future, they must spring from a resolve to put to maximum production our land, however small the acreage we may possess”

Those words are taken from the Late President Jomo Kenyatta’s stirring **“Back to Land”** speech, in September 1964.

The Land Reform Programme towards registration of individual title in land held under customary law started in 1956 with the introduction of the Land Consolidation process. Policy is guided by three statutes:-

- **The Land Consolidation Act, Chapter 283.**
- **The Land Adjudication Act, Chapter 284.**
- **The Land (Group Representatives) Act, Chapter 287**

The above statutes operate within Trust Land areas where land belongs to the Local Communities but is vested in the respective County Councils (Locals Authorities).

1.1 HISTORICAL PERSPECTIVE

By the end of the Second World War, i.e around 1948 there had developed a general feeling towards individual ownership of Land by Africans.

In October, 1953 Mr Swynnerton presented a Paper to the Kenya Government known as the **“Swynnerton Plan”** titled **‘Plan to intensify the development of African Agriculture in Kenya’**. The paper emphasized on provision of security of Tenure to the African in order to provide sound agricultural development and the need

for a sound system of Land Tenure. This would avail to the African indefeasible Title to be offered as security against financial credit.

The East African Royal Commission highlighted the barrier to Economic and Agricultural growth created by the customary tenure and emphasized the need for a policy towards individualization of land ownership.

Similarly, the Arusha Conference held in February, 1956, encouraged Governments to individualise Land Tenure where "conditions are ripe for it."

The Kenya Government accepted the general recommendations of the East African Royal Commission in this matter and made a policy announcement on 20th June, 1956 thus:

" It is the Policy of the Government to encourage the emergence of individual Land Tenure amongst Africans where conditions are ripe for it, and, in due course, to institute a system of registration of negotiable title."

This is the stage that clearly set the drive to establish individual tenure.

2.0 THE SCOPE:

2.1 Legal Framework

The Kenyan Land Reform programme was hence started by the Colonial Government and the **Land Consolidation Act Chapter 283 Laws of Kenya**, was enacted by Parliament commencing 28th July, 1959.

2.2. Areas under Land Consolidation

The core of the land consolidation programme was Central Province where registration was completed under this Act. Application of this Act was also extended to Western Province, Baringo, Taita Taveta and the Greater Meru District. At the moment, land consolidation is restricted to Meru North District where sections commenced in 1966 are yet to be registered.

2.3 Land Consolidation Process

Land consolidation process involves amalgamation of several parcels of land belonging to an individual and their consolidation into one well planned economical unit. The consolidated parcel is thereafter demarcated on the ground. This essentially involves displacement of neighbouring farmers to create room for the larger unit.

The resultant relocation of affected people gave rise to numerous disputes making the process quite unpopular.

Prior to independence, relocation was compulsorily effected. However the situation changed after Independence when people started resisting relocation from their fertile land and areas to which they had ancestral attachment.

In spite of the problems experienced, it was recognized that in the areas where land registration has taken place, there was rapid economic and agricultural growth. This led to a great demand for the process to be extended to other areas of the country.

2.4 Search For Appropriate & Acceptable Process

In an attempt to mitigate the above cited problems, **The Lawrence Commission on Land Consolidation and Registration in Kenya** was appointed in 1965 and completed its work in 1966.

The aim of the Commission, which was funded by the British Government, was to make recommendation to the Kenya Government on:

- How to accelerate the programme of Land Consolidation and registration in order to enhance agricultural productivity in the peasant farming areas.
- To establish the extent of resources needed and the level of financing required from the British Government.

2.5 New Approach towards Registration

The Lawrence Commission made several recommendations, one of them being the enactment of a new Land Adjudication Act for application elsewhere in Kenya where conditions did not warrant consolidation of parcels of land. It was noted, however, that this could only be done in areas where the local communities had changed their attitude towards land ownership i.e. individualized tenure as opposed to customary communal ownership.

The above recommendation was the reason for Parliament enacting **The Land Adjudication Act Chapter 284** . This new statute became effective commencing 28th June, 1968. The new statute also provided for registration of land to groups of people who elected to be recognized as such.

2.6 Statutory Ownership By Groups

At the same time it was recognized that land registration was necessary in range areas to provide for improved livestock husbandry among the pastoralist communities. It was clear however that individual ownership may not be appropriate given environmental conditions and also the close-knit nature of pastoralist communities. To this end, The Land (Group Representatives) Act, Chapter 287 was enacted commencing 28th June 1968.

3.0 LAND ADJUDICATION

3.1 Ascertainment and Recording of Land Claims

The Legal Statutes cited above provide for the process through which existing land rights and interests are ascertained and recorded in a register for eventual registration and issuance of title. Land whose ownership has been confirmed through the above process is titled through the Registered Land Act, Chapter 300.

3.2 Facilitative Process

It is worth pointing out that the process of the land Adjudication does not legally confer title or ownership of the land to the individual. It is a process towards registration of land to the person whose existing rights have been recognized and confirmed by being entered in the Land Adjudication Register.

4.0 THE PROCESS

4.1 Nature of Work

The process of Adjudication and Consolidation is both technical and administrative. Following application of the Act to the adjudication areas by the Minister for Lands and Housing, officials are appointed and the operating units within the area are identified. These units eventually become registration sections.

4.2 Specific Activities

The technical aspects of adjudication involve demarcation and survey of land. Survey work commences when aerial or base maps relating to the specific section are received from Survey of Kenya. These Preliminary Index Diagrams indicate boundaries of the selected adjudication sections and the permanent features in the area.

4.3 Demarcation, Survey and Preparation of Maps

It is the responsibility of the technical field staff to locate the area boundaries and the permanent features appearing in the aerial map the ground. This is followed by actual demarcation and survey of parcels of land owned by individuals/institutions. This is fairly simple where there is space population. In densely settled areas, the work becomes complicated and time consuming. This is made worse by aerial photographs that are outdated and therefore do not reflect the actual ground situation.

The technical staff then match the actual land demarcation with the area of the adjudication section. The boundaries of individual parcels are plotted on the PIDs and the parcels are given numbers.

4.3 Preparation of Adjudication Register

When the map is completed, the names of the land owners are recorded in the Adjudication Records. It is this Adjudication Record and related map that are known as the Land Adjudication Register. On completion of all technical and administrative work, this Register will be forwarded to the Chief Land Registrar for registration and issuance of title.

4.4 Ascertainment of Land Claims & Arbitration of Disputes

While the technical work is in progress, disputes normally arise over ownership of land or even over boundaries. These are routinely resolved through arbitration by the various disputes resolution levels recognised by the operating statutes. Currently there is a backlog of land disputes standing at 20,500 at various levels. While the Ministry strives to resolve them expeditiously, efficiency in this area is hampered by inadequate resources.

5.0 ACHIEVEMENTS

5.1 Status on Titling

The Programme has thus far facilitated registration of 1,559,479 parcels covering an area of 8.01 Million Hectares.

5.2 Land Registered To Groups

In addition to the above, 387 Group Ranches covering a total of 2,508,390.0 Hectares have been incorporated in 15 districts. Some have since subdivided their registered land to individual members.

5.3 On-going Programme

Currently there are over 500 adjudication sections in 35 districts various stages of implementation.

5.4 Areas Awaiting Adjudication

The Land adjudication programme has not been introduced in North Eastern Province, Turkana in Rift-Valley Province and Moyale district in Eastern Province. In Tana River district, the process was suspended due to conflict between agriculturalists and pastoralists.

6.0 CHALLENGES

At its inception the land adjudication programme was envisaged to be finalised within ten years. However, the exercise has adopted a face of permanency due to various factors:-

- Ø Inadequate resources to expedite the programmes.
- Ø Out dated survey methods.
- Ø Inappropriate/obsolete survey equipment such as chains, plane tables and measuring bands
- Ø Inadequate transport to supervise work.
- Ø Lack of camping equipment leading to technical staff walking about twenty kilometres daily over difficult terrain in the scorching sun. This often compromises the quantity and quality of work.
- Ø Training of technical staff in modern methods of survey
- Ø Recruitment of surveyors to lead technical teams.

7.0 WAY FORWARD

7.1 Adoption of Best Practices

There is urgent demand to finalise areas that are in progress and for extension of land adjudication services to the arid and semi-arid areas of this country. Given the centrality of the land resource in the Kenyan economy, it is time to come up with new and innovative ways that will ensure all land is registered as a matter of priority.

7.2 Proposals For Enhancing The Process

Proposals for expediting the titling process include:

- Digitization of maps and adjudication records

- Use of modern survey equipment like GPS and GIS.
- Amendment of operating statutes to provide for faster registration.
- Training of technical staff, committees and arbitration boards
- Sensitization of communities to actively support the programme.
- Engage communities on the place of land in relation to:-
 - Women
 - Orphans
 - HIV/AIDS infected and affected
 - Persons under disabilities
 - Other vulnerable groups

7.3 Effect of Titling On National Development

The driving force behind the growing demand for registration is need to use the title as collateral for credit. Finalisation of land registration will impact positively in:-

- Ø Promoting of harmonious co-existence among neighbours once existing land disputes are settled.
- Ø Efforts towards taxation on land.
- Ø Releasing energies now concentrated on land issues to other areas of personal endeavour and national development
- Ø Establishing a Land market that inspires confidence.
- Ø Promoting agriculture and livestock development
- Ø Providing an enabling environment for Investment

8.0 CONCLUSION

The programme intended to provide security of tenure in rural areas has taken 48 years and at that rate of implementation, it is no wonder that the intended beneficiaries in certain areas have developed apathy towards the programme. This trend needs to be reversed urgently because there are many gains to be derived from secure tenure.

The National Land Policy that is being formulated is intended to address the unique circumstances of the land question in Kenya.