LAND REFORMS IN KENYA: GAINS & CHALLENGES ONE YEAR INTO IMPLEMENTATION

REVIEW PERIOD: 27th August 2010 – 26th August 2011

THE FOURTH SCORE CARD REPORT ON THE IMPLEMENTATION OF LAND REFORMS IN KENYA

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1.0 Background

On 27th August 2010, Kenya’s new constitution was promulgated. This set in place a process of implementation through the enactment of different legislations and setting up of new institutional frameworks as envisaged in the new constitutional dispensation. For the land sector, far reaching legal and institutional reforms are envisaged in Chapter 5 of the constitution. The Chapter on Land and Environment also lays out broad principles through which land and the environment shall be managed. These broad principles are expounded in the National Land Policy (NLP) which informed the Constitutional provisions. In essence the constitution requires that among other principles, land be managed in an equitable, non-discriminatory, efficient, productive and sustainable manner. The constitution further requires that community-based dispute resolution mechanisms be applied in resolving conflicts.

The need for land reforms in Kenya arose from a long history of inefficient and ineffective land administration and governance system. Over the years, Kenya’s land sector has faced various challenges that arose from a highly centralized and an inefficient institutional governance set up, a complex and outdated legal framework and lack of a coherent land policy framework. These challenges led to insecurity of tenure, excessive fragmentation and degradation, disparities in distribution, historical injustices in land distribution, environmental degradation, proliferation of urban informal settlements and landlessness among others. To address these challenges, the country has put in place a legal and policy framework that will guide the land reform process in the country. The entrenchment of land issues in the new constitution and the adoption of the National land policy have set the stage for the process of comprehensive land reforms to take place. Once the land reforms have been fully implemented, it is expected that land administration system will abide by principles of equity, non-discrimination, efficiency, productivity and sustainability among others.

While the constitutional and policy framework for reforms in the land sector are in place, there exists various implementation challenges. First and foremost it is important to note that the land reforms arose from a contested process. Opinions on land reforms are divided among
actors in the sector as clearly demonstrated during the debates that preceded the constitution’s referendum. This situation sets a stage for a tug-of-war between the pro-reform agenda vis-à-vis the anti-reform agenda. Furthermore, the reforms will take away hitherto excessive powers from some state organs such as the presidency and the ministry of land and redistribute them to others such as the National Land Commission. Therefore, some resistance is expected from individuals, groups of individuals and institutions that are likely to loose out in the reform process. In order to ensure a sustained momentum of the reform process, it is critical that the reform process is continuously monitored and the performance of key implementing institutions evaluated in line with principles of the NLP and Chapter 5 of the constitution. Furthermore, the views of stakeholders in the land sectors must be taken into account, particularly those of the common citizens who are the ultimate beneficiaries of the reforms.

Given this background, the LDGI has been tracking the land reform implementation process through the scorecard reports initiative. This involves the release of quarterly scorecard reports on the land reform implementation process. Among other things, this is intended to advocate not only for the timely implementation of land reforms but also ensuring they are done in accordance with the principles set out in Chapter 5 of the constitution and the NLP. In addition, the score card reports, act as a barometer for public awareness and perception on the land reform implementation process and their satisfaction with key implementing institutions.

The current scorecard report coincides with the anniversary of promulgation of the constitution. Given the important milestone, the current report attempted to undertake a trend analysis of the data and information collected during the last one year. Furthermore, LDGI sought to map the policy actors in the land reform implementation process with a view to clarify their influence, interests, policy discourses, relationships and the barriers or impetus they bring into the implementation process. The mapping also helped to identify winners and losers within the process and made proposals for possible trade-offs. Information derived from
the mapping exercise is synthesized to come up with recommendations on possible ways of navigating around some of the overt and subtle barriers to implementation.
2.0 Actors, Interests and Policy discourses in the Land Reform Process: Threats and Opportunities

The policy actors in the land reform process can be broadly categorized as state or non-state actors. The state actors can be further categorized into the executive (the presidency, the cabinet, the line ministries, government parastatals, local councils, constitutional commissions among others); the legislature and the judiciary. The non-state actors consists of the individual land owners, collective land owners (cooperatives), community groups civil society organizations, development partners, professional societies among others. It is clear that these actors are motivated by different interests (economic, social or political) over land and their policy discourse in the reform process is informed and influence by these interests. These interests can either be overt or covert and this in-turn influences the policy positions/narratives that the actors take. The policy position adopted by a given constituency determines whether they will be for or against proposed policy interventions and given their strength and level of influence in the policy debate and implementation process, they can either make or break the policy implementation process. In other instances, they may dilute the policy and legislative framework such that at the end of the day, their interests are not affected negatively. In essence the land reform process can be described as a tug of war between forces for and those against the reform process.

Among the state actors, the Ministry of Land and its offices such as the commissioner of Land have had immense powers in the land sector. The privilege position of the state in land management and governance endow them with political power which is associated with power to allocate land for purposes of consolidating political power. This is especially true with regard to the presidency and the cabinet with regard to power over land control. Interestingly the Ministry of Land and the Cabinet are central to the reform process despite being the biggest potential losers in the reform process. This loss of power has led the ministry to be a hindrance to the reform process. At the drafting stage of legislation, the Ministry has actively tried to influence the direction of legislation by ignoring inputs of other stakeholders. This possibly explains the current state whereby the MoL originates draft bills before inviting other stakeholders in the formulation process. This has been
clearly demonstrated by overt efforts by the MoL to dilute the NLC bill and the slow processing of land related bills. Other big potential losers are the county councils and by extension the Ministry of Local Authorities who are interested in the retention of land allocation and administrative functions at the local levels. For some individuals (political and non-political) within the local authorities, they are also interested in the rent seeking opportunities that exist within the trust land allocation system. Some state agencies e.g. Ministry of Finance, Ministry of Tourism, etc are driven by revenue generation motive. They view land and land-based resources as sources of revenue for the government and are therefore reluctant to embrace reforms that would involve sharing of resources for example with local communities or devolved governments. The state is also interested in asserting its territorial integrity and national security interests often advanced through military might. The state and state agencies are also interested in the control of the flow of information on land especially on ownership. The predominance of efforts to slow down, dilute and sabotage the reform process sometime cloud out the genuine public interests that some state institutions or individual public servant show in land management. However, quite often public interest motives are driven by efficiency concerns rather than equitable distribution

Among the non-state actors, development partners have an underlying interest in gaining leverage in policy formulation processes for purposes of protecting their national interests and specifically their investors’ interests in the country. For the private sector/developers, the main interest lies in profit generation. For this reason, they are also interested in retaining property rights over land irrespective of the manner of the acquisition of such land and the principles of land administration and management in the country. For the civil society and the NGOs generally, their interests are driven by among other things sustaining their funding and power, survival in a highly competitive environment, and genuine interest in addressing issues affecting the citizenry. Professional organizations in the land sector are often driven by self-interest motives such as income generation from professional fees levied for their services. Other interests for them might include corporate citizenship or offering their technical expertise. Some of the religious based organizations are interested in control of the land they own all over the country, income generation from the land they own and gaining legitimacy from their followers.
The diverse mix of interests among actors in the land sector is a clear indication that the reform process will not be easy. This is further worsened by the fact the reform process arose out of a contested process in which certain sections of the society opposed the new constitution. However, despite these challenges, the Chapter 5 of the constitution and the NLP provide a tightly defined legal and policy framework through which land reforms should be carried out.

There are clear threats to the reform process that must be considered during the implementation process. These include:

a. Lack of comprehensive implementation framework including well defined monitoring and review mechanisms

b. Weak institutional capacity of key reform institutions

c. Lack of stakeholder consultation on implementation

d. Perceived loss of power and privilege by key institutions

e. Competition among land actors

f. Lack of or poor understanding of land reforms.

g. Lack of a clear legislative roadmap
3.0 Civic Awareness and Participation in the Land Reform Process

The land reforms are by design and intent targeted at delivering efficient and effective land administration and governance systems to the citizens of the country. The implementations of the reforms thus require the policy implementers to ensure a continuous dialogue with the end users of the reforms. To vet and validate this dialogue, LDGI has continually explored various aspects of the dialogue between the policy implementers and the end users of the implemented reforms. Among other things, the Institute has focused on the awareness of the land reform process, awareness and levels of awareness of the policy document on land and the constitutional provisions on land, and citizens’ satisfaction with the land reform implementation process with a particular focus on the speed and content of the implementation.

The awareness of Kenyans on the ongoing land reform process was at its peak in the period immediately after the promulgation of the constitution of Kenya in August 2010. This can be largely attributed to the robust debate on the chapter of the constitution on Land and Environment in the run-up to the referendum. This debate was due to land being one of the contentious issues of the constitution. However, with passage of time and a widening of the scope of respondent coverage in terms of geographical spread, it is observable that the awareness level of the ongoing land reforms dropped and stabilized at about 70% of the nation’s citizenry being aware of the ongoing land reforms. This is shown in Figure 3.1 below. It is therefore, clear that the majority of the citizens in Kenya are aware of the proposed land reforms.
Figure 3.1: Citizens awareness of the ongoing land reforms.

Given the observed levels of awareness, the LDGI further sought to explore whether respondents are familiar with constitutional and policy provisions that underlie ongoing land reforms. As can be seen in Figure 3.2, over 70% of the country’s citizens are familiar with the contents of the fifth chapter of the constitution on Land and Environment.

Source: Survey Data, October 2010 to August 2011.
Figure 3.2: Awareness of Chapter 5 of the constitution on land and the environment

Source: Survey Data, October 2010 – March 2011

When further probed on the levels of awareness of chapter five in the constitution (Figure 3.3), the need for sustained civic education and awareness was evident due to the high proportion of respondents who are only slightly aware of the contents of the constitutional provisions on land and the environment. As observed in Figure 3.1, the proportion of Kenyans who are aware of the constitutional provisions on Land and the environment showed a decline in progressive score card surveys which covered more remote areas. This points to the fact that the common/ordinary Kenyan in the remote rural areas and away from cities and urban centers is not adequately informed on the contents of the ongoing land reforms. However, it must be noted in the same breadth that overall, the proportion of Kenyans with an in-depth understanding of the constitutional provisions on land is greater than the proportion of those with superficial/slight understanding of the same.
Figure 3.3: Levels of awareness of the contents of chapter five of the constitution on land and the environment

The constitutional provisions on Land as contained in the fifth chapter of the constitution borrow heavily from the National Land Policy. As such, while evaluating the scope and breadth of Kenyans’ familiarity and knowledge of the ongoing land reforms, it is important to explore their awareness of the policy document. To explore this, the LDGI has been seeking to know whether or not respondents are familiar with the National Land Policy. When awareness/familiarity on the National Land Policy was queried, a majority of the respondents were found to be aware of the policy document. The key message that emerges in this is that a majority of Kenyans are aware of the existence of a policy document. As has been observed elsewhere in this document, an increase in the geographical spread of the surveyed respondents resulted in a decrease in the proportion of surveyed respondents who were aware of the policy document.
Beyond the awareness, the Institute went further to query the levels of awareness of the contents of the policy document. Often, people who are slightly aware of the policy document are those who have only heard of the existence of the policy document but are not conversant with the substantive contents of the policy document. Indeed, it is evident from the data collected by the Institute that a majority of Kenyans do not know the substantive contents of the policy document on land administration and management in the country.

However, it is indeed commendable that the number of people with an in-depth knowledge of the policy document and the constitutional provisions on land seems to be increasing compared to those who are just or on slightly aware. One of the possible reasons for this is the protracted debate in the media on the land question especially with regard to the resettlement
of IDPs around the period of interest. The effect of the resettlement debate has been wide reference to the policy document and the constitutions on matters relating to land administration and governance in the country.

Since the key objective of LDGI’s Scorecard Initiative is to monitor the land reform implementation process, the LDGI recent sought to know whether the land reform implementation process is inclusive, participatory and consultative according to Kenyans. As can be seen from Figure 3.6, Kenyans are indicting the land reform implementing agencies for a non-participatory, a non-inclusive and a non-consultative reform implementation process. Indeed, the recent protests by different professional and the civil society groups on the formulation of National Land Commission bill appear to confirm this observation.

Figure 3.6: Respondents perceptions on the whether the land reform implementation process is inclusive, participatory and consultative

By rating the land reform implementation process as non-inclusive, non-participatory and non-consultative, Kenyans are passing on a message to the implementing agencies and one of the
sentiments come out clearly is that the implementing agencies need make deliberate efforts to include views and concerns of various interest groups. The need for dialogues is especially acute at this phase of the reform process if the envisioned reforms are going to be attained and if they are going to address the needs and interests of Kenyan's.
4.0 Performance of Institutions in the Land Reform Process

In the land reform agenda, several institutions are mandated to drive the implementation process. Specifically, the Land Reform Transformation Unit (LRTU) was identified by the policy document as the institution that would spearhead the land reform implementation policy. However, with the promulgation of the constitution, another institution (Commission on Implementation of the Constitution – CIC) was created to shepherd and drive the wider constitutional and institutional reform agenda in the country. For effective and efficient implementation of the country’s reform agenda, independence of these institutions is critical. LRTU is viewed by most pro-reform groups as lacking independence; the CIC has gained the faith of this country’s populace and has maintained an unflinching stand on issues touching on implementation of the constitution and the other institutional reforms expected with the implementation of the constitution. At the same time, there exist other institutions that play a supportive role in the land reform agenda. These include, the Kenya Anti-Corruption Commission (KACC), parliament, the state law office and the Kenya Law Reform Commission (KLRC).

For the envisioned outputs of the land reform process to be realized, there is need for the mandated institutions to act in synergy. At the same time, these institutions need to be seen to be delivering on the land reforms to the country. To evaluate institutional performance vis a vis the perceptions of Kenyans in the context of the ongoing land reform implementation process, the LDGI has continually been querying surveyed respondents on how well/satisfactory the mandated land reform implementing institutions have been performing. This section thus focuses on institutional performance in the land reform implementation process in the country.

4.1. Under-performing Institutions in the Land Reform Implementation Process

A common trend that is observable from the data that the Institute has been collecting is that there are some notable institutions that are not living up to the expectations of the country’s
citizens. These are the Land Reform Transformation Unit nested within the Ministry of Lands, Parliament and the State Law Office.

4.1.1 The LRTU - MoL

When asked to rate the performance of the LRTU in the land reform implementation process, a majority of the respondents have consistently expressed dissatisfaction with the manner in which the LRTU is handling the implementation of the land reforms in the country. Rather curiously, the LRTU’s performance rating was highest in the period around the release of the second scorecard by the Institute (see Figure 4.1).

Figure 4.1: Performance of the Land Reform Transformation Unit – MoL in the reforms implementation process

Source: Survey data, October 2010 – August 2011
This was the period when the Ministry of Lands came out openly and promised the country that it would ensure that the land reform agenda as stipulated in the constitution and the policy document would be implemented fully and speedily. However, in the period after this, and recalling the raging debate of the underperformance of the MoL’s LRTU in the land reform implementation process and indeed the demonstrations on the widespread corruption that continue to be the order of the day at the MoL offices, it is no wonder then that the MoL’s already poor rating worsened further.

4.1.2 Parliament

Parliament is a key institution in ensuring successful legislation for effective reforms in the country. When respondents were probed on the performance of parliament on the land reform implementation process, a majority of the respondents have consistently been showing dissatisfaction with its performance. As matter of fact, the trend in parliament’s ratings, (See Figure 4.2) just serves to emphasize the manner in which the legislature has been handling its core function in the country’s development and reform agenda. It points to the ever decreasing faith and trust that citizens have on the legislature. The observed poor rating can be attributed to the fact that the legislature is mostly viewed by most Kenyans as only serving their selfish interests first before the needs of Kenyans. However, the poor rating can also be attributed to the fact that since the promulgation of the constitution, the MoL has not forwarded any land related draft bill for debate in the legislature.
Figure 4.2: Performance of Parliament in the land reform implementation process

Source: Survey data, October 2010 – August 2011

4.1.3 The State Law Office

In the land reform implementation process, the state law has two important functions. First, it is the mandated drafter of all government laws and bills that are debated in parliament and accentuated by the president. Second, it advises the state on legal issues be it with regard to court proceedings or administrative and governance issues. Given the important role that this office plays in the legal processes of the country, the Institute sought to explore levels of satisfaction by Kenyans on its performance with regard to the land reform agenda and the implementation of this agenda.

The trend for the performance of the state law office in the land reform implementation process is more inclined towards continued and increasing dissatisfaction (see Figure 4.3). This
can easily be related to what has been happening in the wider constitutional and institutional reform agenda that is ongoing in the country. Public accusations direct at this office for hindering the reform process is one of the reasons for the dissatisfaction shown by Kenyans in the implementation of land reforms.

**Figure 4.3: Performance of the State Law Office in the Implementation of Land Reforms**

![Performance of the State Law Office in the Implementation of Land Reforms](image)

**Source:** March – August 2011

4.2 Performing Institutions in the Land reform Implementation Process

From the data that the Institute has been collected over the past one year, there are some institutions that have consistently been viewed by Kenyans as staying true to the reform agenda and goals. These are the CIC, the KLRC and the KACC.

4.2.1 The CIC

Since its formation, the CIC has been one of the most highly rated constitutional implementation agencies in the country. As a matter of fact, its ranking has been increasing
over time (Figure 4.4). While no clear cut reasons could be discerned with regard to the implementation of land reforms in the country as exhibited by the Second and the Third Scorecard, this pointed to optimism that when it came to land issues, the CIC would deliver the constitutional provisions. Indeed, when the MoL forwarded the draft NLC bill without adequate consensus and participation by the land sector stakeholders, it was the CIC that invited the stakeholders for a forum to discuss the NLC and promised to take their sentiments on board in the final document. As such, the feelings of Kenyans are thus grounded and indeed the CIC is delivering in terms of its mandated role of shepherding the constitutional reform implementation agenda.

Figure 4.4: Performance of the CIC in the land reform implementation process

Source: March – August 2011

4.2.2 The KACC

The Kenya Anti-Corruption Commission is the mandated government agency that deals with the investigation of corruption cases in the country. It is also mandate to recommend for
prosecution those cases it investigates and finds it fit to proceed with court cases against those being investigated. In the land sector, and in particular land administration and governance, corruption is rife as is evidenced by the rating of the ministry of lands second after the police force in most corrupt index.

When probed on how they would rate the performance of the KACC in the land reform process, Kenyans have consistently shown satisfaction with the manner in which this institution has been undertaking its mandate. However, there has been a consistent decline in the proportion of respondents who are satisfied (Figure 4.5).

Figure 4.5: Performance of the KACC in the land reform implementation process

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Source: Survey data, March – August 2011.
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The basic question that then arises is why this observed trend. One of the possible explanations to this could be the perceived inability of the KACC to move beyond the investigation stage in the fight against corruption in the country. Even in those cases where corruption cases goes to
trial, suspects still manage escape punishment and thus Kenyans are perceiving the KACC as being unsuccessful if not ineffective in the fight against corruption.

4.2.3 The Kenya Law Reform Commission (KLRC)

The KLRC has a very significant role to play in the land reform process. Simply put, it plays a key role in ensuring the systematic review and development of laws in the country. Since the land reform process in the country involves a total review if not overhaul of the legislative framework on land administration and governance in the country, KLRC must effectively and efficiently execute its mandate.

In seeking to know how this institution is performing in terms of the land reform implementation process, the LDGI noted that this institution has continually been rated favorably by Kenyans. Despite this, the favorable ranking has been decreasing over time and further, the KLRC seems to be largely unknown by most Kenyans. As a matter of fact, it is during the data collection exercise that some respondents get to learn of its existence. Given the importance of ensuring that the review of all laws has the end effect of addressing the needs of Kenyans, then it is very worrying that not only is the institution unknown but it does not engage with the common citizen in order to ensure that her needs are addressed even as it carries out its functions. Figure 4.6 below shows the trend in the performance rating of the KLRC over time.

Figure 4.6: Performance of the KLRC in the land reform implementation process
Source: Survey data, March – August 2011.
5.0 Current Status of Constitutional and Policy Principles on land administration, management and governance

5.1. Equitable access to land and land based resources

The Kenyan society has been characterized by inequality between various classes and categories of people for a long time right from the colonial era. It is against this background that the constitution and the National Land Policy Identified the need for a land administration and governance regime that ensures equitable access to land and land based resources. While this principle is enshrined in both the constitution and the policy document, a large proportion of Kenya feel the need to ensure that this is actualized. A majority of Kenyans have thus been expressing dissatisfaction with the current status of this principle. This is shown in Figure 5.1 below.

Figure 5.1: Current status of the principle of equitable access to land and land based resources

Source: Survey data, April –August 2011

When further probed on what their expectations are regarding this principle, Kenyans said that to actualize this principle, they expect the following:
• Curb land allocation malpractices
• Elimination of discrimination (ethnic & gender)
• Land taxation
• Resolution of historical injustices

• Improve tenure security
• Facilitate efficient utilization of marginal lands
• Affordable and efficient land transactions

As shown in Figure 5.2 below, the proportion of people with these expectations has been increasing over time. This closely relates to the increased dissatisfaction over time with the current status of this principle as shown in figure 13 above.

**Figure 5.2: Expectations on the principle of equitable access to land and land based resources**

Source: Survey data, April – August 2011
5.2. Security of land rights

Security of land rights has over a long time not been guaranteed in the country. This in turn affects investments in the land sector and indeed affects the exploitation of land based resources. For the land sector to contribute effectively to the economic growth of this country, it is important that the principle of secure land rights be put in place and be seen to be operational so as to encourage investments in the land sector. Given the importance of this principle, the Institute sought to know whether respondents are satisfied with the current status of this principle. Quite importantly, a large proportion of Kenyans are not satisfied with the current status of this principle. Among the reasons for the observed trend is the continued existence of IDPs in the country, and boundary disputes at both village and wider levels. The end effect of this is unwillingness of Kenyans to make investments in those areas in which they feel that land rights are not adequately protected. Figure 5.3 below shows the trends in citizen’s rating of the current status of this principle.

**Figure 5.3: Current status of the principle of secure land rights**

![Graph showing trends in citizen’s rating of the current status of the principle of secure land rights.]

Source: Survey data, April – August 2011

To operationalize this principle, respondents expected the following:
• Issueance and safeguarding of land titles
• Eliminate corruption

• Resolving land disputes
• Protection of land rights
• Harmonization of land laws

Figure 5.4: Expectations on the principle of secure of land rights

Source: Survey data, April – August 2011

5.3. Sustainable and productive land management

As the human population continues to increase, more and more pressure is continually exerted on the existing land and land based resources. For this reason, there is need to ensure that the available land and land based resources are used and managed in both a sustainable and a productive manner. The need for this is further driven by the occurrence of climate change which has made most of our land resource fragile thus exposing Kenyans to the vagaries of
increased climate variability. As such, the application of this principle is very important if the land sector is going to continually contribute optimally to Kenya’s development. The LDGI thus sought to explore Kenyans’ perception of the current status and the application of this principle. Figure 5.6 shows the observed trends on respondents rating of the current status of this principle.

**Figure 5.6: Current status of the principle of sustainable and productive land management**

![Graph showing current status of the principle of sustainable and productive land management](image)

**Source: Survey data, April – August 2011**

It can be observed that generally, Kenyans are still not satisfied with the application of this principle in land management in the country. In essence, Kenyans are indicting the nation’s land administrators and managers over their failure to ensure that this principle is applied and seen to be used in the land sector. When the respondents were further probed on what they expect to be done so as to ensure that this principle is applied, the following were listed as the expectations:
• Increase land productivity
• Repossession of illegally acquired land and equitable land distribution
• Regulate land sub-division and use
• Encourage land conservation practices

Figure 5.7: Expectations on the principle of sustainable and productive land management

Source: Survey data, April – August 2011

From Figure 5.7, it can be seen that the proportions of Kenyans with these expectations is continually increasing over time. This indeed correlates to the observed trend in figure 17 above which shows that the proportion of Kenyans dissatisfied with the current status of this principle have been increasing over time.
5.4. Transparent and cost effective land administration

The importance of transparent and cost effective land administration and governance systems in the country cannot be over emphasized. For a long time, government services have been shrouded in mystery and even where money is used, the amount charged has seldom if ever been tied to the cost effectiveness of the service being offered. For this reason, it is inclusion of this as one of the principles in land management and administration is a big step not only in land administration and management but also in other government departments. Thus, the Institute sought to know whether Kenyans think that this principle is being applied in the country. Figure 5.8 shows the trends in Kenyans’ perception on the current status of this principle.

Figure 5.8: Current status of the principle of transparent and cost effective land administration and management

Source: Survey data, April – August 2011

As can be seen, a majority of Kenyans are of the opinion that the current land administration and governance system in the country is neither transparent nor cost effective.
In the recent past, the MoL has strongly indicated that the land reform implementation process is on course simply because the ministry has seen an increase in the revenue that it has been collecting. Increases in revenue collection cannot and should not be used as a barometer for the land reform implementation process. The principal reason for the increase in the revenue collected by the MoL is its recent move to increase the cost of accessing its services. However, the key question that arises in this scenario is whether the increase in revenue collection and the fees charged by the MoL for accessing its services has resulted in an increase in the efficiency and effectiveness of service delivery by the MoL. To evaluate this, the Institute sought to know whether Kenyans had witnessed an increase in service delivery at MoL offices in the country. Figure 5.9 shows the responses and indeed the views of Kenyans on this question.

**Figure 5.9: Respondents perception on whether there has been an increase in the efficiency of service delivery in lands offices with the increase in fees charged**

![Bar chart showing responses to the question](chart.png)

**Source: Survey data, July – August 2011**

The key message that is evident from this response is that Kenyans still feel that service delivery at lands offices is still inefficient despite the ongoing reforms and the increased revenue
collection reported by the MoL. In short, Kenyans are saying that the reforms cannot be on course if they still feel no change in service delivery by the MoL.

When probed on what they thought would bring about transparency and cost effectiveness in land administration, Kenyans gave the following as their expectations:

- Fast and just resolution of disputes
- Land use and ownership regulation
- Efficient service delivery
- Protection of tenure security
- Enactment and enforcement of transparency laws

As can be seen, Kenyans still expect efficient service delivery as one of the ingredients/components of transparent and cost effective land administration. This is illustrated in Figure 5.10. It can be seen that despite the MoL’s assertions that the land reforms are on course, Kenyans’ view and feelings is that more ground needs to be covered and the principles on land administration have to be seen being applied in land administration and management.

Figure 5.10: Expectations on the principle of transparent and cost effective land administration
5.5. Biodiversity conservation and protection of fragile lands

There is urgent need to the conservation of the current stock of biological resource. Land as a resource happens to be very important to the occurrence and indeed the survival of all biological resource. It is thus important that a country’s land administration and governance system integrates the conservation of biological resource and the protection of fragile lands. Indeed, it most often occurs that biological resources found in fragile lands are most at risk of extinction. As such, the inclusion of this as a principle in land administration and management marks a key step in the conservation of biological resources in the country. However, for this principle to benefit the country, it must be found to exist and to be working in the land administration and management regime in the country. The LDGI thus sought to find out whether or not Kenyans are satisfied with the current status of this principle in the Country’s land administration and management system. The verdict by those surveyed was as shown in Figure 5.11.
Figure 5.11: Current status of the principle of biodiversity conservation and protection of fragile lands

As can be seen from Figure 5.11, a majority of the country’s population have consistently shown dissatisfaction with the current status of this principle. In essence, this means that Kenyans do not think this principle is being applied in land administration and management as required by both the constitution and the National Land Policy. When probed on what they think should be done to ensure that this principle is operationalized in land administration and governance in the country, the respondents gave the following as their expectations:

- Forest conservation
- Protection of public land from illegal/irregular land allocation/acquisition
- Increased conservation funding, awareness and participation
- Research and innovation on conservation

Source: Survey data, April – August 2011
• Reduce water pollution
• Enforce strict deterrence against environmental pollution

Just like the expectations on the other principles, the proportions of individuals with these expectations have been increasing over time as shown in Figure 5.12.

Figure 5.12: Expectations on the principle of biodiversity conservation and protection of fragile lands

Source: Survey data, April – August 2011

5.6. Elimination of gender discrimination

For a long time, women have been marginalized for a long time when it comes to issues of land administration and management in this country. This has been viewed for a long time as the reason for the continued gender inequality in terms of economic and productive opportunities.
Given the importance of this principle for gender equity, the LDGI sought to know whether this principle is being applied in land administration and management in the country. Figure 24 below shows Kenyans perceptions on the current status of this principle.

As can be seen from Figure 5.13, most of the respondents, a majority of those surveyed feel somehow satisfied with the current status of this principle. However the favorable rating of the current status of this principle seems to be dropping with time.

**Figure 5.13: Current status of the principle of elimination of gender discrimination**

When the respondents were further probed on what their expectations were for the full application of this principle, they gave the following as their expectations:

- Abolishment of gender discrimination
- Increase awareness
- Legal protection women’s rights
- Cultural sensitivities be respected

**Source: Surver data, April – August 2011**
Figure 5.14: Expectations on the principle of elimination gender discrimination

Source: Survey data, April – August 2011

5.7. Land dispute resolution through use of local mechanisms

Whenever land related disputes arise, the wish of the disputing parties is a resolution mechanism that is fast, effective and efficient. Further, disputes are sometimes better resolved when the resolution mechanism is in touch with the situation on the locality of the dispute and have a clear and unbiased historical background of the situation on the ground. This is where the judicial system fails when it come to resolving land cases/disputes. To avoid the long and tedious judicial process in the country, it is advocated for the use of local land dispute resolution mechanisms. The use of the dispute resolution mechanisms is advocated for in both
the policy document and in the constitutional provisions on land. The LDGI thus sought to know the current status of this principle and the response was as shown in Figure 5.15.

**Figure 5.15: Current status of the principle of land dispute resolution through the use of local mechanisms**

As can be seen, initially Kenyans have been dissatisfied with the application of local land dispute resolution mechanisms, but this has changed to some slight satisfaction. However, the proportion of those dissatisfied and those who are satisfied is almost equal while those who are neither satisfied nor dissatisfied are more in the fourth scorecard. This is a possible indicator of Kenyans adopting a wait and see attitude with regard to the application of this principle. When
probed on what their expectations are on this principle, Kenyans listed the following as their expectations:

- Reliable and trustworthy local mechanisms
- Ensure no favoritism and corruption
- Inclusion of women in land dispute councils/boards
- Coordination with other institutions
- Establishment of local special courts

**Figure 5.16: Expectations on the principle of land dispute resolution through use of local mechanisms**

As can be seen from Figure 5.17 above, a majority of Kenyans expect local land dispute resolution mechanisms that do not show unreliability, non-trustworthiness, non-favoritism and corruption. Most Kenyans feel that often, where land disputes resolutions are active, they are not fair in their judgments as they sometimes get influenced by the powerful in society and are thus sometimes used to rubber stamp injustices.

**Source: Survey data, April – August 2011**
5.8. Vibrant Land Markets

Land markets in the country are often thought to be distorted because of one reason or the other. However, if the land sector is to optimally contribute to this country’s development, then land markets must operate efficiently and effectively. This entails among other things the availability of information relating to land, effective regulation of land use and land use planning. Further, land must be put to the best use possible if the land markets are to operate vibrantly. However, in Kenya, there exists information asymmetry, land speculation and hoarding, and systematic if not continuous abuse of land use planning laws.

Given the inclusion of vibrancy of land markets as a principle in land administration and management, the LDGI sought to know whether land markets are vibrant in the country. As can be seen from Figure 5.18, the proportion of those dissatisfied with the current status of this principle has been consistently higher than those who are satisfied with the current status of this principle.

Figure 5.18: Current status of the principle of vibrant land markets
When further probed on what their expectations are with regard to this principle, the following were listed:

- Land market regulation and control
- Ensure everyone is able to purchase land
- Allow market forces to operate
- Ensure information is easily available

Source: Survey data, April – August 2011
5.9. Transparent and democratic land administration

Transparency and democracy is one of the key components of an effective and efficient land administration and management system. Among other things, such a land administration is inclusive, participatory and consultative. The LDGI thus sought to know whether this constitutional and policy provision was being applied in the country’s land administration and management framework. As can be seen from Figure 5.20 below, a majority of Kenyans are dissatisfied with the current status of this principle despite the ongoing land reform process. The land country’s land administration agency must thus critically evaluate the land
administration and governance structures to know why the country’s citizens are saying that these structures are neither transparent nor democratic.

**Figure 5.20: Current status of the principle of transparent and democratic land administration**

When further probed on what their expectations were with regard to this principle, the respondents indicated the following as their expectations:

- Ensure transparency, accountability, and justice
- Faster resolution of disputes
- Create awareness

**Source: Survey data, April – August 2011**
Figure 5.21: Expectations on the principle of transparent and democratic land administration

Source: Survey data, April – August 2011
6.0 Conclusions and Recommendations

Overwhelming majority of Kenyan citizens view the proposed land reforms as being very important. They are to a large extent unanimous that the current system of land management and governance is not able meet their needs. Majority there Kenyans are generally aware of the reform process as proposed in the constitution and the National Land Policy. Kenyans are unhappy with the performance of the majority of the land reform institutions. In particular the performance of the Ministry of Lands, Parliament and the State Law Office is viewed as being unsatisfactory. The land reform process in Kenya is bound to continue to face challenges due to myriad of entrenched interests by stakeholder groups that are often conflicting. It is clearly evident that some actors are overtly set to slow down, dilute and where possible sabotage the reform process. As

To ensure that the land reform process is carried out to its conclusive end it is important that:-

a. Stakeholders in the land sector urgently develop a comprehensive implementation framework with clear timeliness, responsibilities and clear monitoring and evaluation framework

b. The reform process be carried out through open dialogue and give-and-take manner among stakeholders

c. Ministry of Land embraces genuine participatory, inclusive and consultative process in the reform implementation