

Overall Score:

49 - Very Weak

Legal Framework Score:

62 - Weak

Actual Implementation Score:

37 - Very Weak

Category 1. City Information Transparency

1.1. ⁶⁰City Media

1.1.1. Are media practitioners protected from recrimination or negative consequences in reporting corruption, graft, abuse of power, or abuse of resources at the city level?

100

1. In practice, media practitioners are able to report on corruption cases without intimidation or harassment.

Yes

No

Comments:

This is supported by the new constitution of Kenya Article 34 which gives Freedom to the Media to report without any form of intimidation or harassment.

References:

Nicholas Anyuor, Journalist, Standard Media Group – Kisumu, 10/5/2011, Standard Media Group Kisumu Offices – Al Imran Plaza

Victor Otieno Juma, Journalist, Radio Nam Lolwe (Local vernacular radio station), 12/5/2011, Radio Nam Lolwe Offices – Tom Mboya Estate Kisumu

Abude Awiti, Journalist, Nation Media Group – Kisumu, 17/5/2011, Nation Media Group Offices – Mega Plaza 4th Floor

Yes : A YES score is earned if there were no documented cases of media practitioners being intimidated or harassed in the specific study period. A YES score can be earned if intimidation or harassment took place, but it was clearly unrelated to the media practitioner's work. YES is a positive score.

No : A NO score is earned if there were any documented cases during the study period of intimidation or harassment of media practitioners related to stories that they have published or are currently working on.

2. In practice, media practitioners are able to report on corruption cases without threat to their lives or that of their families.

Yes

No

Comments:

This is supported by the new constitution of Kenya Article 34 which gives Freedom to the Media to report without any form of intimidation or harassment.

References:

Nicholas Anyuor, Journalist, Standard Media Group – Kisumu, 10/5/2011, Standard Media Group Kisumu Offices – Al Imran Plaza

Victor Otiemo Juma, Journalist, Radio Nam Lolwe (Local vernacular radio station), 12/5/2011, Radio Nam Lolwe Offices – Tom Mboya Estate Kisumu

Abude Awiti, Journalist, Nation Media Group – Kisumu, 17/5/2011, Nation Media Group Offices – Mega Plaza 4th Floor

Yes : A YES score is earned if there were no documented cases of media practitioners or members of their families being killed or their lives being threatened in the specific study period. A YES score can be earned if the above occurred, but it was clearly unrelated to the media practitioner's work. YES is a positive score.

No : A NO score is earned if there were any documented cases during the study period of the murder of media practitioners related to stories that they have published or are currently working on.

1.1.2. Are the media credible sources of information at the city level?

35

3. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100

75

50

25

0

Comments:

There are instances where the government do restrict Media Groups from reporting corruption cases in situations where the report may portray it negatively. The Standard Group wanted to report a story on how the Local Authority Transfer Funds were being managed but were denied the audience for unexplained reasons. Local Authority Transfer Funds are monies from the Central government channeled to the Local Government for development projects within the City Council.

References:

Nicholas Anyuor, Journalist, Standard Media Group – Kisumu, 10/5/2011, Standard Media Group Kisumu Offices – Al Imran Plaza

Victor Otieno Juma, Journalist, Radio Nam Lolwe (Local vernacular radio station), 12/5/2011, Radio Nam Lolwe Offices – Tom Mboya Estate Kisumu

Abude Awiti, Journalist, Nation Media Group – Kisumu, 17/5/2011, Nation Media Group Offices – Mega Plaza 4th Floor

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

4. In law, print media companies are required to publicly disclose their ownership.

Yes | **No**

Comments:

There are no legal requirements that Print Media Companies publicly disclose their ownership. However, there is an assumption that the public is aware of the Print Media Companies ownership.

References:

Nicholas Anyuor, Journalist, Standard Media Group – Kisumu, 10/5/2011, Standard Media Group Kisumu Offices – Al Imran Plaza

Victor Otieno Juma, Journalist, Radio Nam Lolwe (Local vernacular radio station), 12/5/2011, Radio Nam Lolwe Offices – Tom Mboya Estate Kisumu

Abude Awiti, Journalist, Nation Media Group – Kisumu, 17/5/2011, Nation Media Group Offices – Mega Plaza 4th Floor

Yes : A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

No : A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

5. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes | **No**

Comments:

There are no legal requirements that Print Media Companies publicly disclose their ownership. However, there is an assumption that the public is aware of the Print Media Companies ownership.

References:

Nicholas Anyuor, Journalist, Standard Media Group – Kisumu, 10/5/2011, Standard Media Group Kisumu Offices – Al Imran Plaza

Victor Otieno Juma, Journalist, Radio Nam Lolwe (Local vernacular radio station), 12/5/2011, Radio Nam Lolwe Offices – Tom Mboya Estate Kisumu

Abude Awiti, Journalist, Nation Media Group – Kisumu, 17/5/2011, Nation Media Group Offices – Mega Plaza 4th Floor

Yes : A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

No : A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

6. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

References:

A Handbook on Code of Ethics & Business Conduct, Nation Media Group, Date of Publication not available, Code of Ethics & Business Conduct, <http://www.nationmedia.com>

Nicholas Anyuor, Journalist, Standard Media Group – Kisumu, 10/5/2011, Standard Media Group Kisumu Offices – Al Imran Plaza

Victor Otieno Juma, Journalist, Radio Nam Lolwe (Local vernacular radio station), 12/5/2011, Radio Nam Lolwe Offices – Tom Mboya Estate Kisumu

Abude Awiti, Journalist, Nation Media Group – Kisumu, 17/5/2011, Nation Media Group Offices – Mega Plaza 4th Floor

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to “sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

7. In practice, media can freely cover news without the need to secure any form of clearance or permission from the city government.

100 | 75 | 50 | 25 | 0

Comments:

This depends on the news to be covered because the privacy and the security of the institutions, organizations or individuals must be considered.

References:

Nicholas Anyuor, Journalist, Standard Media Group – Kisumu, 10/5/2011, Standard Media Group Kisumu Offices – Al Imran Plaza

Victor Otieno Juma, Journalist, Radio Nam Lolwe (Local vernacular radio station), 12/5/2011, Radio Nam Lolwe Offices – Tom Mboya Estate Kisumu

Abude Awiti, Journalist, Nation Media Group – Kisumu, 17/5/2011, Nation Media Group Offices – Mega Plaza 4th Floor

100: Media enjoys absolute freedom in covering local news. Media does not need to secure any form of clearance or permission from the city government.

75:

50: Media enjoys limited freedom in covering local news. At times, the media needs to secure some form of clearance or permission from the city government.

25:

0: Media does not enjoy any freedom in covering local news. Media is prohibited from covering local events without express permission from the city government.

1.2. City Public Access to Information

1.2.1. Does the public have a legal right of access to information at the city level?

100

8. In law, the public has a right of access to city information and basic records.

Yes | No

Comments:

Article 35 (1) Every citizen has a right of access to-

- (a) information held by the State; and
- (b) information held by another and required for the exercise or protection of any right or fundamental freedom.

Article 35 (2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person

Article 35 (3) The state shall publish and publicize any important information affecting the nation

References:

Access to information by the public is provided for in the new Constitution of Kenya in Article 35.

Link to a PDF download of the new Constitution of Kenya being implemented:

http://www.kenyalaw.org/family/statutes/download.php?file=The_Constitution.pdf

Yes: A YES score is earned if there is a formal right to access city government documents, including constitutional guarantees. Exceptions can be made for local security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon public request.

No : A NO score is earned if there is no such right.

9. In law, the public has a right of appeal if access to a basic city record is denied.

Yes | No

Comments:

There is no information on Access to Information at City Level since the City By-Laws are not made accessible to the public.

References:

This is supported in the new Constitution of Kenya Article 35.

Link to a PDF download of the new Constitution of Kenya being implemented:

http://www.kenyalaw.org/family/statutes/download.php?file=The_Constitution.pdf

Yes : A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

No : A NO score is earned if there is no such formal process.

10. In law, there is an established institutional mechanism through which the public can request city government records.

Yes | No

Comments:

There is a District Information Center and the Department of Information Access at the City Government (Municipal Council) where such information is available. City Council information in particular information pertaining financial records are not available to the public. The City Council by-law is also not accessible to the public.

References:

This is supported in the new Constitution of Kenya Article 35.

Link to a PDF download of the new Constitution of Kenya being implemented:

http://www.kenyalaw.org/family/statutes/download.php?file=The_Constitution.pdf

Yes : A YES score is earned if there is a formal mechanism/institution through which the public can access city government records available under freedom of information laws. This mechanism could be a city office (or offices within agencies) or an electronic request system.

No : A NO score is earned if there is no such formal mechanism or institution.

1.2.2. Is the right of access to information at the city level effective ?

55

11. In practice, the public receives responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Depending on the type of information, some may take a shorter duration while some may take a longer duration as indicated above. City Council Budget Information is accessible at their readings or through radio, but information on events that occurred long in the past may take a longer duration to access or get detailed information as concerns the event.

References:

Mr. Gighana, Kisumu East District Information Officer, District Information Centre, 11/5/2011, District Information Centre Offices

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive security-related information.

75:

50: Records take from two weeks to one month to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than one month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. Security exemptions may be abused to avoid disclosure of information.

12. In practice, the public can use the access information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The size of the document in terms of pages can affect the cost of access to this information. Documents with several pages can be quite expensive to reproduce by print or photocopy.

References:

Mr. Gighana, Kisumu East District Information Officer, District Information Centre, 11/5/2011, District Information Centre Offices

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at no/minimal cost, such as by mail, or on-line. A visit to city offices may be necessary to procure documents.

75:

50: Records impose a financial burden on citizens, journalists or CSOs/NGOs. Retrieving records may require a visit outside the city, such as to provincial or regional offices.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs/NGOs trying to access this information.

13. In practice, the city acts on appeals to access information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Appeals can be denied depending on the type of information, as this may threaten the privacy or security of an institution, government, organization or an individual. If one appeals to access information on City Council Banking records, his request will be denied. This also applies to information that entails the security of the City Council as an Office.

References:

Mr. Gighana, Kisumu East District Information Officer, District Information Centre, 11/5/2011, District Information Centre Offices

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly, but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two weeks to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion. Appeals may be unacknowledged for many months, and simple issues may take more than a month to resolve.

14. In practice, the city acts on appeals to access information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Mr. Gighana, Kisumu East District Information Officer, District Information Centre, 11/5/2011, District Information Centre Offices

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

15. In practice, the city gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

In most cases denial of information requests will depend on the privacy and security of the government, institutions, organizations or an individual as this might threaten them.

References:

Mr. Gighana, Kisumu East District Information Officer, District Information Centre, 11/5/2011, District Information Centre Offices

100: The city government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The city government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The city government does not regularly give reasons for denying an information request to the requestor.

1.2.3. Does the city government establish mechanisms to proactively disseminate information to the public?

0

16. In practice, the city government establishes and maintains regular mechanisms to proactively provide information to the public.

Yes

No

Comments:

There are rare disclosure meetings and limited mechanisms to release information to the public. For example: the Municipal Council of Kisumu does not have a website.

References:

Mr. Gighana, Kisumu East District Information Officer, District Information Centre, 11/5/2011, District Information Centre Offices

Nicholas Anyuor, Journalist, Standard Media Group – Kisumu, 10/5/2011, Standard Media Group Kisumu Offices – Al Imran Plaza

Victor Otieno Juma, Journalist, Radio Nam Lolwe (Local vernacular radio station), 12/5/2011, Radio Nam Lolwe Offices – Tom Mboya Estate Kisumu

Abude Awiti, Journalist, Nation Media Group – Kisumu, 17/5/2011, Nation Media Group Offices – Mega Plaza 4th Floor

Yes : A YES score is earned if there is a mechanism that the city government uses to release information to the public. These mechanisms may include a website, prominent billboards, or bulletin boards. It may also include regular meetings with local journalists where such information is conveyed.

No : A NO score is earned if there is no such mechanism.

17. In practice, the public can access information provided by the city's proactive information disclosure mechanism.

100

75

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0

Comments:

This question was scored a zero because the City Council does not have an open mechanism to provide information to the citizens. Information is made available on a Notice Board which is rarely updated.

References:

Mr. Gighana, Kisumu East District Information Officer, District Information Centre, 11/5/2011, District Information Centre Offices

Nicholas Anyuor, Journalist, Standard Media Group – Kisumu, 10/5/2011, Standard Media Group Kisumu Offices – Al Imran Plaza

Victor Otieno Juma, Journalist, Radio Nam Lolwe (Local vernacular radio station), 12/5/2011, Radio Nam Lolwe Offices – Tom Mboya Estate Kisumu

Abude Awiti, Journalist, Nation Media Group – Kisumu, 17/5/2011, Nation Media Group Offices – Mega Plaza 4th Floor

100: The information dissemination mechanisms are easily accessible to citizens, and information is regularly updated. Accessible mechanisms may include a functioning website, bulletin boards that are prominent and located in areas that are generally open to the public, and publication in local newspapers with a general circulation.

75:

50: In most cases, the information dissemination mechanisms are accessible to citizens, but there are some exceptions. In some cases, citizens face some difficulty in accessing information. There is also some considerable lag in the information posted for citizen viewing.

25:

0: Information dissemination mechanisms, if they exist, are not accessible to citizens. They may be located in areas where access is limited. Posted information is rarely updated.

Category 2. City Elections

2.1. Integrity of City Elections

2.1.1. Is there an election monitoring agency in the city?

100

18. In law, there is an agency or set of election monitoring agencies/entities at the city level.

Yes

No

References:

This is provided for in the new Constitution. Article 88 of the constitution establishes the Independent Electoral and Boundaries Commission which is responsible for monitoring of City Election Process.

The new constitution of Kenya is available in this URL as a PDF document.

http://www.communication.go.ke/documents/published_draft.pdf

Yes : A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the city election process.

No : A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

2.1.2. Is the election monitoring agency effective at the city level?

80

19. In law, the election monitoring agency is protected from political interference.

Yes

No

Comments:

The constitution of Kenya is available in the following URL as a PDF document:

http://www.communication.go.ke/documents/published_draft.pdf

References:

This is provided for in the new Constitution. Article 88 of the constitution establishes the Independent Electoral and Boundaries Commission which is an independent body free of any political interferences.

Yes : A YES score is earned only if the election monitoring agency has some formal organizational independence from the bodies contesting in the election.

No : A NO score is earned if the election monitoring agency is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the local council). A NO score is automatically earned if there is no domestic election monitoring agency.

20. In practice, election monitoring agency appointments are made that support the independence of the agency.

100

75

50

25

0

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: Appointments to the election monitoring agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

21. In practice, the election monitoring agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: The election monitoring agency has staff sufficient to fulfill its basic mandate at the local level.

75:

50: The election monitoring agency has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The election monitoring agency has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

22. In practice, the election monitoring agency makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The reports are released immediately at the end of the counting at the polling station. This only applies to the elections of the Councillors at the Ward Level. This is in relation to the City Council Elections where only the Ward Councilors are subjected to an election. The IIEC releases other reports for other elections but they do not apply to the City Council.

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The election monitoring agency makes no public reports, issues reports which are effectively secret, or issues reports of no value.

23. In practice, when necessary, the election monitoring agency imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

IIEC's role is restricted to counting and releasing the election results only. (In accordance to the old Constitution).

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: When rules violations are discovered, the election monitoring agency is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The election monitoring agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The election monitoring agency does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

2.1.3. Are city elections systems transparent and effective?

75

24. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

This only applies to the elections of Councillors at the Ward Level. With the implementation of the IIEC, is a new and transparent Election Body affected after the Post Election Violence of 2007 the Electoral processes at all levels are thoroughly monitored. Registration of all voters are accurately ascertained and errors are corrected before voting.

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote, but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. The city government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and "ghost" voting by non-existent voters are common.

25. In law, election results can be contested through the judicial system.

Yes

No

Comments:

This is a general electoral law that also applies to civic elections.

The electoral Bill is an implementation of electoral disputes as stipulated in the Kenyan New Constitution

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

The New Kenya constitution Chapter Seven Article 87 (1) (2) (3) provides for electoral disputes to be enacted as law.

http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya210.pdf

The electoral Bill working draft

<http://www.iiec.or.ke/index.php/281-election-bill-211.html>

Yes : A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms. Quasi-judicial systems outside the city, such as national-level election monitoring agency, also earns a YES score.

No : A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

26. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

This only applies to Councillors at the Ward level.

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

27. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

This law applies to all state officer.

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

The New Kenyan Constitution Chapter 6 article 75, 76,77

http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya210.pdf

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in local politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

2.1.4. Are city elections fair and free from violence and intimidation?

25

28. In practice, citizens and candidates are able to campaign freely and have equal access to campaign advertising opportunities.

100 | 75 | **50** | 25 | 0

Comments:

Even though there is law, there is always regional political affiliation which hinders rival politicians.

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: Citizens and candidates, and their political parties, have equal access to campaign advertising opportunities within the constraints of campaign funds. They may conduct campaign activities in different locations without obstruction or harassment.

75:

50: Some candidates and parties experience constraints in gaining access to advertising opportunities. Campaign activities are generally possible in different locations, but encounter obstruction in some areas.

25:

0: There are significant constraints to the campaign activities of some citizens, candidates, and parties, including access to regulated advertising opportunities, and the conduct of campaign activities in many areas.

29. In practice, elections are free from violence.

Yes | **No**

Comments:

The documentation of this violence is available in the IIEC archives. This only applies to the City Councillors at the Ward level.

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

<http://www.standardmedia.co.ke/news/InsidePage.php?id=2000038094&cid=159&story=More%20confusion%20over%20Kisumu%20mayoral%20polls>

Yes : A YES score is earned if there were no documented cases of organized election-related violence in the specific study period. YES is a positive score.

No : A NO score is earned if there were any documented cases during the study period of election-related violence.

2.2. City Political Financing

2.2.1. Are there regulations governing the financing of individual political candidates?

0

30. In law, there are regulations governing private contributions to individual political candidates.

Yes

No

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

Yes : A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

No : A NO score is earned if there is no regulation of private contributions to individual political candidates.

31. In law, there are limits on individual donations to political candidates.

Yes

No

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town

Yes : A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

No : A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

32. In law, there are limits on corporate donations to individual political candidates.

Yes | **No**

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

Yes : A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

No : A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

33. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | **No**

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

Yes : A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

No : A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

34. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

Yes | **No**

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

Yes : A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party. Random auditing also merits a YES score.

No : A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

35. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | **No**

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

Yes : A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No : A NO score is earned if there is no such agency or entity.

2.2.1. Are the regulations governing the political financing of individual candidates effective?

0

36. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | **0**

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

37. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

38. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits, no auditing, no regulations or laws. This only applies to City Councillors Elections at the Ward level.

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

39. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Currently the IIEC is restricted by the old constitution, with the implementation of the new constitution the IIEC will be able to aggressively penalize its offenders.

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

40. In practice, the finances of individual candidates' campaigns are subject to at least random auditing.

100 | 75 | 50 | 25 | 0

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: The finances of individual candidates' campaigns are subject to random auditing using generally accepted auditing practices. Regular auditing of all candidates' records also earns a 100 score.

75:

50: The finances of individual candidates' campaigns are subject to some form of random auditing, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not subject to any regular random auditing, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

2.2.2. Can the public access records related to the financing of individual candidates' campaigns?

0

41. In practice, individual political candidates disclose their sources of funding and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: Individual candidates disclose their sources of funding and expenditures not later than one month after the election.

75:

50: Individual candidates disclose their sources of funding and expenditures one to two months after the election. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information many months after the election. Politically sensitive information is regularly withheld from public disclosure.

42. In practice, the public can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take from two weeks to one month to obtain. Some delays may be experienced.

25:

0: Records take more than one month to acquire. There may be persistent delays in obtaining politically sensitive records.

43. In practice, the public can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Mr. Onyango, IIEC Coordinator Kisumu Town West, Interim Independent Electoral Commission, 30/5/2011, IIEC Kisumu Town West Offices

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. A visit to city offices may be necessary to procure documents.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. a visit outside the city to provincial or regional offices may be necessary to procure documents.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category 3. City Government Conflicts of Interest Safeguards
& Checks and Balances

3.1. ⁴⁶City Executive Accountability

3.1.1. Can mayors/executive officials be held accountable for their actions?

75

44. In practice, the mayor/executive officials give reasons for his/her actions/decisions.

100 | 75 | **50** | 25 | 0

Comments:

The local authorities act defines the role and terms of office of the Mayor and the councilors.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

100: The mayors/executive officials give formal explanations of all policy matters. There is no censoring of such sessions.

75:

50: The mayors/executive officials give explanations of policy, but not always in a timely or complete way. Particular issues of political sensitivity may be censored by local government broadcasters.

25:

0: The mayors/executive officials do not give substantial justifications for policy. The local government routinely censor such sessions.

45. In law, the judiciary can review the actions of the mayors/executive officials.

Yes | No

Comments:

If any individual challenges the legality/constitutionality of accounts taken by the Council in court.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

Local Government Act as a law

http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

Yes : A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

No : A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a local security exemption, for example).

46. In practice, when necessary, the judiciary reviews the actions of the mayors/executive officials.

100 | 75 | 50 | 25 | 0

Comments:

This is well stipulated in the Kenyan Constitution which is superior to all other legislations law in Kenya

The video link above on you tube shows Geoffrey Majiwa Nairobi City Mayor being prosecuted in a court of law for fraud

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

The New Kenya constitution Chapter One article 2 supremacy of the Constitution

The Local Government Act

http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

Video Link

<http://www.youtube.com/watch?v=9bBkPOS3IXM>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

47. In practice, the mayor limits the use of executive orders for establishing new regulations, policies, or local government practices.

100 | 75 | **50** | 25 | 0

Comments:

At times, in practice, the mayor uses his/ her executive powers to influence policies in circumstances where councilors have vested interest.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

100: The mayor utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The mayor sometimes relies on executive orders to implement policies and regulations opposed by the local council. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The mayor routinely abuses executive orders to render the local council practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

3.1.2. Is the executive leadership subject to criminal proceedings?

75

48. In law, the mayors/other appointed non-civil service executive officials can be prosecuted for crimes they commit.

Yes | No

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

The constitution of Kenya Chapter Ten Part 1 article 159

http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya210.pdf

Yes : A YES score is earned if the mayors/other appointive non-civil service executive officials can be investigated, charged or prosecuted for criminal allegations.

No : A NO score is earned if the mayors/other appointive non-civil service executive officials cannot be investigated, charged or prosecuted for criminal allegations, or the executive branch controls whether investigative or prosecutorial immunity can be lifted.

49. In law, executive department heads can be prosecuted for crimes they commit.

Yes | No

References:

This is in accordance with the criminal procedure Act chapter 75, laws of kenya, and it applies to everyone who commits a crime in Kenya.

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

Yes : A YES score is earned if executive department heads can all be investigated, charged or prosecuted for criminal allegations.

No : A NO score is earned if any executive department heads cannot be investigated, charged or prosecuted for criminal allegations, or the executive branch controls whether investigative or prosecutorial immunity can be lifted.

50. In practice, the mayors/other appointed non-civil service executive officials are prosecuted for crimes they commit.

100 | 75 | **50** | 25 | 0

Comments:

This is provided for in the Constitution of Kenya, the Criminal Procedure Act. This applies to anybody in the country who commits a criminal offense.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

100: Mayors/other appointive non-civil service executive officials are investigated, charged or prosecuted for criminal allegations.

75:

50: Mayors/other appointive non-civil service executive officials are usually investigated, charged or prosecuted for criminal allegations, but exceptions may happen.

25:

0: Mayors/other appointive non-civil service executive officials are not investigated, charged or prosecuted for criminal allegations. Exceptions are a rule.

51. In practice, executive department heads are prosecuted for crimes they commit.

100 | 75 | **50** | 25 | 0

Comments:

The Constitution of Kenya has a provision in the Criminal Procedure Act. Everyone who commits a criminal offense can be prosecuted in a court of law.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

100: Executive department heads are investigated, charged or prosecuted for criminal allegations.

75:

50: Executive department heads are usually investigated, charged or prosecuted for criminal allegations, but exceptions may happen.

25:

0: Executive department heads are not investigated, charged or prosecuted for criminal allegations. Exceptions are a rule.

3.1.3. Are there regulations governing conflicts of interest by the executive branch at the city level?

43

52. In law, the mayor is required to file a regular asset disclosure form.

Yes | **No**

Comments:

In the old constitution, there was no such a thing, but according to the New constitution, the relevant ministry is supposed to draft law and present to the parliament for enactment to become a law but this has not yet been done by the ministry.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

Yes : A YES score is earned if the mayor is required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No : A NO score is earned if the mayor is not required to disclose assets.

53. In law, there are regulations governing gifts and hospitality offered to the mayor and other top executive officials (i.e., department heads) of the city executive branch.

Yes | No

Comments:

If there is any formal guideline then the public (the respondent included) is not aware of. But the public officer Ethics Act 2003 requires all public officers to act ethically in their undertakings, gifts and hospitality to relatives included. However, no specific legislation has been put in place stop the city executive from favoring their families and relatives with gifts and hospitality.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

Yes : A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the city executive branch of government.

No : A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the city executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

54. In law, there are requirements for the independent auditing of the mayor's asset disclosure form.

Yes | **No**

Comments:

Currently, there is no requirement.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

Yes : A YES score is earned if there is a legal or regulatory requirement for independent auditing of the mayor's asset disclosure. The auditing is performed by an impartial third-party. Random auditing also merits a YES score.

No : A NO score is earned if there are no legal or regulatory requirements for the independent auditing of mayoral asset disclosures or if such requirements exist but allow for self-auditing.

55. In law, there are regulations governing the grant of public concessions, such as contracts for government projects or the procurement of goods and services, to business proxies or family members and relatives of city executive officials.

Yes | No

Comments:

If there is the public (the included respondent) is not aware of.

References:

The Public Procurement and Disposal Act

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

Yes : A YES score is earned if there are formal guidelines regulating the grant of public concessions (such as contracts for government projects or the procurement of goods and services) to business proxies or family members and relatives of city executive officials.

No : A NO score is earned if there are no such guidelines or regulations. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

56. In practice, the regulations governing gifts and hospitality offered to members of the city executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

We are not aware of any form of guidelines/regulations towards gifts and concessions.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

100: The regulations governing gifts and hospitality to members of the city executive branch are regularly enforced. Members of the city executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the local executive branch are generally applied though exceptions exist. Some executive officials are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the city executive branch are routinely ignored and unenforced. Members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

57. In practice, the regulations governing the grant of public concessions, such as contracts for government projects or the procurement of goods and services, to business proxies or family members and relatives of local executive officials are effective.

100 | 75 | 50 | 25 | 0

Comments:

The interviewee has never any regulations regulating gifts and hospitality given to relatives and family members by the mayor or the city executive.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

100: The regulations governing the grant of public concessions to business proxies or family members and relatives of local executive officials are regularly enforced.

75:

50: The regulations governing the grant of public concessions to business proxies or family members and relatives of local executive officials are generally applied though exceptions exist.

25:

0: The regulations governing the grant of public concessions to business proxies or family members and relatives of local executive officials are routinely ignored and unenforced. Public concessions are routinely granted to business proxies or family members and relatives of local executive officials without any criteria.

58. In practice, asset disclosures of mayors are audited.

100 | 75 | 50 | 25 | 0

Comments:

It is not applicable because there is no auditing.

There is no day that the mayors auditing has ever been done and thus the city residence are not aware of this neither are they aware of such law

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

100: The mayor's asset disclosures are subject to at least random auditing using generally accepted auditing practices.

75:

50: The mayor's asset disclosures are subject to random auditing, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The mayor's asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

3.1.4. Can the public access the asset disclosure records of the mayor?

0

59. In law, the public can access the asset disclosure records of the mayor.

Yes | **No**

Comments:

This is not provided for in law and so there are no disclosure forms.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/5/2011, Hang Over Hotel

Yes : A YES score is earned if the mayor files an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No : A NO score is earned if there is no asset disclosure for the mayor. A NO score is earned if the form is filed, but not available to the public.

60. In practice, the public can access the asset disclosure records of the mayor within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

The record is not there and if it is then the public are not aware not even how to access it.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available.

75:

50: Records take from two weeks to one month to obtain. Some additional delays may be experienced.

25:

0: Records take more than one month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

61. In practice, the public can access the asset disclosure records of the mayor at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no requirements that the mayor keeps records of assets, therefore there are no asset disclosure records

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. A visit to city offices may be necessary to procure documents.

75:

50: Records impose a financial burden on citizens, journalists or CSOs/NGOs. A visit outside the city to provincial or regional offices may be necessary to procure documents.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs/NGOs trying to access this information.

3.2. City Legislative Accountability

3.2.1. Can members of the city council be held accountable for their actions?

92

62. In law, the judiciary can review laws passed by the city council.

Yes | No

Comments:

If the legality of the laws passed are challenged in court.

References:

http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya210.pdf

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

Yes : A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the city council.

No : A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a local security exemption, for example).

63. In practice, when necessary, the judiciary reviews laws passed by the city council.

100 | 75 | 50 | 25 | 0

Comments:

If an individual raises it in a court of law. The constitution of Kenya also give room for people to a peal on the same

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

64. In law, the members of the city council are subject to criminal proceedings.

Yes | No

References:

<http://www.kenyalaw.org/klr/index.php?id=741>

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

Yes : A YES score is earned if all members of the city council can, in law, be investigated and prosecuted for criminal allegations.

No : A NO score is earned if any member of the city council cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the city legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the council.

3.2.2. Are there regulations governing conflicts of interest by the city legislative branch?

14

65. In law, members of the city council are required to file an asset disclosure form.

Yes | No

Comments:

There is no legal requirement for this.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

Yes : A YES score is earned if all members of the city council are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No : A NO score is earned if any member of the city council is not required to disclose assets.

66. In law, there are regulations governing gifts and hospitality offered to members of the city council.

Yes | **No**

Comments:

The public is not aware of any guidelines for these.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

Yes : A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the city council.

No : A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the city council. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

67. In law, there are regulations governing the grant of public concessions, such as contracts for government projects or the procurement of goods and services, to business proxies or family members and relatives of the city council members.

Yes | **No**

Comments:

There are no formal guidelines known to the public. Even though the respondent do not know the existence of such law, this section is governed by the Public Procurement Act Cap 3

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

Public Procurement and Disposal Act

http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

Yes : A YES score is earned if there are formal guidelines regulating the grant of public concessions, such as contracts for government projects or the procurement of goods and services, to business proxies or family members and relatives of members of the city council.

No : A NO score is earned if there are no such guidelines or regulations. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

68. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the local council.

Yes | **No**

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

Yes : A YES score is earned if there is a legal or regulatory requirement for independent auditing of local legislative branch asset disclosures. The auditing is performed by an impartial third-party. Random auditing also merits a YES score.

No : A NO score is earned if there are no legal or regulatory requirements for the independent auditing of local legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

69. In practice, the regulations governing gifts and hospitality offered to members of the city council are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no regulations that the respondent is aware of.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

100: The regulations governing gifts and hospitality to members of the city council are regularly enforced. Members of the council never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the city council are generally applied though exceptions exist. Some members of the council in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the city council are routinely ignored and unenforced. Members of the council routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

70. In practice, the regulations governing the grant of public concessions, such as contracts for government projects or the procurement of goods and services, to business proxies or family members and relatives of the city council are effective.

100 | 75 | 50 | 25 | 0

Comments:

The respondent is not aware of any such regulations. But the Public Procurement and disposal Act governs this

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

100: The regulations governing the grant of public concessions, such as contracts for government projects or the procurement of goods and services, to business proxies or family members and relatives of members of the city council are regularly enforced.

75:

50: The regulations governing the grant of public concessions to business proxies or family members and relatives of members of the city council are generally applied though exceptions exist.

25:

0: The regulations governing the grant of public concessions to family members and relatives of members of the city council are routinely ignored and unenforced. Public concessions are routinely granted to family members and relatives of members of the council without any criteria.

71. In practice, city legislative branch asset disclosures are subject to at least random auditing.

100 | 75 | 50 | 25 | 0

Comments:

There are no requirements for audit disclosure that the respondent is aware of.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

100: The city legislative branch asset disclosures are subject to at least random auditing using generally accepted auditing practices.

75:

50: The city legislative branch asset disclosures are subject to at least random auditing, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The city legislative branch asset disclosures are not subject to random auditing, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

3.2.3. Can the public access the asset disclosure records of members of the city council?

0

72. In law, the public can access the asset disclosure records of members of the city council.

Yes | **No**

Comments:

There are no asset disclosure forms that the respondents are aware.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

Yes : A YES score is earned if members of the city council file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No : A NO score is earned if there is no asset disclosure for members of the city council. A NO score is earned if the form is filed, but not available to the public.

73. In practice, the public can access asset disclosure records of city council members within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are no requirements for asset disclosure that the respondent is aware of.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take from two weeks to one month to obtain. Some additional delays may be experienced.

25:

0: Records take more than one month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

74. In practice, the public can access asset disclosure records of local council members at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure records are not available at all, since there are no legal requirements for asset disclosures.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. A visit to city offices may be necessary to obtain documents.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. A visit outside the city to provincial or regional offices may be necessary to obtain documents.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

3.2.4. Can the public access city legislative processes and documents?

75. In law, the public is allowed to access to city legislative decisions and agendas.

Yes | No

Comments:

The records/documents can easily available at the cost of photocopy. The local government act has given the local authorities the privilege of putting in place by – laws which enables interested persons to access to city council records.

References:

http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya210.pdf

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

Yes : A YES score is earned if there is a general legal right to access records of legislative proceedings/decisions/ agendas including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to city security).

No : A NO score is earned if there is no general right to access documents recording legislative proceedings/decisions/agendas. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

76 In practice, the public can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are available within a week, but photocopying costs are charged. Some of the document are at a fee e.g the full council meeting minutes at Kshs 2500, but some can only be found from government printers at a fee e.g the Public Procurement and disposal act at Ksh 400.

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take from two weeks to one month to obtain. Some additional delays may be experienced.

25:

0: Records take more than one month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

77. In practice, the public can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Some record requires one to write a letter to the City Town clerk who authorises for one to be issued with that document but at a fee for example; the full council Meetings Minutes at Kshs 2, 500

References:

Akwacha Omumbo, Proprietor, Hang Over Hotel, 18/05/2011, Hang Over Hotel

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. A visit to city offices may be necessary to obtain documents.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. A visit outside the city to provincial or regional offices may be necessary to obtain documents.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category 4. City Fiscal and Budgetary Management

4.1. ~~67~~ City Budget Processes

4.1.1. Is there a legal framework that mandates the city government to proactively disclose budget information to the public?

50

78. In law, the city government is required to proactively disclose the following key budget information to the public: The executive's budget proposal

Yes | No

Comments:

The budget is all inclusive; The City residents are only involved on the budget reading but not on proposal level.

References:

The Local government Act Cap 265

http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

Yes : A YES score is earned if there is a requirement, under law or regulation, for the city government to publish an executive budget summary that presents the government's detailed declaration of the policies and priorities it intends to pursue in the upcoming budget year, including the specific allocations to be made to each city department or agency.

No : A NO score is earned if no such requirement exists.

79. In law, the city government is required to proactively disclose the following key budget information to the public: The enacted budget

Yes | No

References:

The Local Authorities Act, Chapter 265 of the Laws of Kenya

Local Authority Transfer Fund and the Local Authority Service Delivery Action Plan

Yes : A YES score is earned if there is a requirement, under law or regulation, for the city government to publish the legal document that authorizes the executive to implement the policy measures the budget contains. The enacted budget is issued by the city council after it approves the budget proposal presented to it by the executive.

No : A NO score is earned if no such requirement exists.

80. In law, the city government is required to proactively disclose the following key budget information to the public: In-year budget reports

Yes | No

References:

N/A

Yes : A YES score is earned if there is a requirement, under law or regulation, for the city executive to publish any in-year budget report. These could be monthly or quarterly revenues collected, expenditures made, and debt incurred.

No : A NO score is earned if no such requirement exists.

81. In law, the city government is required to proactively disclose the following key budget information to the public: End-of-year budget report

Yes | No

References:

N/A

Yes : A YES score is earned if there is a requirement, under law or regulation, for the city executive to publish an end-of-year report summarizing the financial situation at the end of the fiscal year. This report should include an update on progress made in achieving the policy goals of the enacted budget.

No : A NO score is earned if no such requirement exists.

82. In law, the city government is required to proactively disclose the following key budget information to the public: A "citizen's budget" or other form of easy to understand budget summary

Yes | No

Yes : A YES score is earned if there is a requirement, under law or regulation, for the city government to publish a "citizen's budget" or other simplified versions of the budget that are easily accessible for a broad audience.

No : A NO score is earned if no such requirement exists.

83. In law, the city government is required to proactively disclose the following key budget information to the public: Audit reports assessing the city budget

Yes | No

Comments:

Budget information is only re-actively relayed to the public, but not proactively.

References:

Mr. Dickson Orongo, a political activist in the city

Yes : A YES score is earned if there is a requirement, under law or regulation, for the city government to publish regularly updated audit reports covering the city budget. These audit reforms are performed by governmental entities independent from the city executive and cover all activities undertaken by the executive.

No : A NO score is earned if no such requirement exists.

4.1.2. Can the public access information on the city budget?

57

84. In practice, the city government makes the following key budget information available in a timely and updated manner:
The executive's budget proposal

Yes

No

Comments:

The secretary of Kisumu residents association, Mr. John Obure states that the budget proposal is not read to residents prior to endorsement by the full council.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

The secretary of Kisumu Residents Association, Mr. John Obure

Yes : A YES score is earned if the city government publishes an executive budget summary that presents the government's detailed declaration of the policies and priorities it intends to pursue in the upcoming budget year, including the specific allocations to be made to each city department or agency.

No : A NO score is earned if no executive budget proposal is published, or if the information is so vague or outdated as to render it meaningless.

85. In practice, the city government makes the following key budget information available in a timely and updated manner:
The enacted budget

Yes

No

Comments:

Even though the budget are read to the public, the City residents feel they are always not fully involved but only invited during budget reading dates

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Mr. John Obure, chairman of Kisumu city Resident Association

Yes : A YES score is earned if the city government publishes the legal document that authorizes the executive to implement the policy measures the budget contains. The enacted budget is issued by the city council after it approves the budget proposal presented to it by the executive.

No : A NO score is earned if no enacted budget is published, or if the information is so vague or outdated as to render it meaningless.

86. In practice, the city government makes the following key budget information available in a timely and updated manner: In-year budget reports

Yes | **No**

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Yes : A YES score is earned if the city executive publishes any in-year budget report. These could be monthly or quarterly revenues collected, expenditures made, and debt incurred.

No : A NO score is earned if no in-year budget reports are published, or if the information is so vague or outdated as to render it meaningless.

87. In practice, the city government makes the following key budget information available in a timely and updated manner: End-of-year budget report

Yes | No

Comments:

Catherine Achieng clarifies that even though this budget are read, Residents are always not involved at the proposal time but only invited to attend and hear the reading every July of each year immediate after the National budget reading. It is normally done at the City Social Center.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Catherine Achieng A Kisumu resident and a leader of Kisumu City Street Hawkers

Yes : A YES score is earned if the city executive publishes an end-of-year report summarizing the financial situation at the end of the fiscal year. This report should include an update on progress made in achieving the policy goals of the enacted

budget.

No : A NO score is earned if no end-of-year budget reports are published, or if the information is so vague or outdated as to render it meaningless.

88. In practice, the city government makes the following key budget information available in a timely and updated manner: A “citizen’s budget” or other form of easy to understand budget summary

Yes | No

Comments:

The City council during budget reading issues the people who attend the reading with a summarized document of the budget.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Audi Ogada: Kisumu Resident and Human rights Activist and a politician

Yes : A YES score is earned if the city government publishes a “citizen’s budget” or other simplified versions of the budget that are easily accessible for a broad audience.

No : A NO score is earned if no “citizen’s budget” or equivalent documents are published, or if the information is so vague or outdated as to render it meaningless.

89. In practice, the city government makes the following key budget information available in a timely and updated manner: Audit reports assessing the city budget

Yes | No

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Yes : A YES score is earned if the city government publishes regularly updated audit reports covering the city budget. These audit reforms are performed by governmental entities independent from the city executive and cover all activities undertaken by the executive.

No : A NO score is earned if no audit reports are published, or if the information is so vague or outdated as to render it meaningless.

90. In practice, the public has access to information about the budget formulation process in the city.

Comments:

Audi Ogada

The public are always only brought in during budget reading, with summaries. The meetings are always very brief and short and hence does not give enough room for critics and analysis of the budget by members of the public. It is always a have a Day Meeting

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Audi Ogada: Kisumu Resident and Human rights Activist and a politician 18/07/2011

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happen in other, closed settings.

4.1.3. Can the public provide input to the local budgetary allocation processes?

75

91. In law, the public has the right to participate and provide input into city budget debates and discussions.

Yes

No

References:

Local Authority Transfer Fund Act (LATF Act)

http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya210.pdf

Yes : A YES score is earned if there is a law that guarantees the right of the citizens to participate and provide input into city budget deliberations.

No : A NO score is earned if there is no such law.

92. In practice, the citizens' input in budget hearings are considered in the review of the budget allocation plan.

100 | 75 | **50** | 25 | 0

Comments:

The input from CSOs are not always factored in the budget allocations, even though the city council normally seeks for such inputs. The city council does not factor in the inputs of CSOs even though the council normally sought for such inputs.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Mr. Kirui, the provincial Local Government Officer, Nyanza Province

100: Citizens in the city, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens in the city or CSOs can provide input, but this may be through an informal process. This information may not be relevant for budget decisions.

25:

0: Citizens in the city or CSOs have no access to provide input to the budget debate.

4.1.4. Are there transparent regulations governing the transfer of funds from the national government to city governments?

0

93. In law, the national government provides the city government with their planned allocation of national wealth within a given period.

Yes | **No**

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Yes : A YES score is earned if the city government receives a planned allocation of national wealth from the national government as a reference to the budgetary planning of the city government.

No : A NO score is earned if the national government is not required to provide a planned allocation of national wealth to the city government. A NO score is earned if such is given, but not within the period of local budgetary planning.

4.1.5. Are the regulations governing the transfer of funds from national to city governments effective?

100

94. In practice, the city government receives its share of funds from the national government without delay.

100 | 75 | 50 | 25 | 0

Comments:

The transfers are announced by the ministry and banked into the account of the city council directly. The funds are allocated according to the budget of the city council. The score of 100 is adequate because there is a well stipulated guidelines concerning how funds should be requested and which activities or items should be placed in the budget estimate to be funded.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Mr. Kirui, the provincial Local Government Officer, Nyanza Province.

100: The city government receives its share of funds from the national government in a timely manner, so that the implementation of local projects is not delayed.

75:

50: There may be delay in the receipt of funds from the national government. The implementation of some local projects gets delayed as a result.

25:

0: The national government regularly withholds releases of city government funds.

95. In practice, the public can access information about the transfer of funds from the national to the city level at a reasonable period.

100 | 75 | 50 | 25 | 0

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Mr. Kirui, the provincial Local Government Officer, Nyanza Province

100: Information about transfer of funds are available on-line, or can be obtained within two weeks. Information about transfer of funds are uniformly available; there are no delays for politically sensitive information.

75:

50: Information about transfer of funds takes from two weeks to one month to obtain. Some delays may be experienced.

25:

0: Information about transfer of funds takes more than one month to acquire. In some cases, information may be available sooner, but there may be persistent delays in obtaining politically sensitive information about transfer of funds.

96. In practice, the public can access information about the transfer of funds from the national to the city level at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The public can access such information through the media (daily newspaper reports, television and electronic media) and through the ministry internet

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

www.localgovernment.go.ke

100: Information about transfer of funds are free to all citizens, or available for the cost of photocopying. Information about transfer of funds can be obtained at little cost, such as by mail, or on-line. A visit to city offices may be necessary to obtain the information.

75:

50: Information about transfer of funds impose a financial burden on citizens, journalists or CSOs. Retrieving information about transfer of funds may require a visit to a specific office outside the city, such as a provincial or regional capital.

25:

0: Retrieving information about transfer of funds imposes a major financial burden on citizens. Information about transfer of funds costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

4.1.6. Are there effective mechanisms to prevent the concentration of budget powers in one person/department/agency?

100

97. In practice, there is a city finance committee responsible for assisting and giving recommendations to the mayor regarding budgetary allocations.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Mr. Alfred Adong, Team Leader, SANA International.

100: There is a fully-functioning committee formed to assist and recommend changes in the budgetary allocations to the local chief executive. The recommendations of the committee are fully considered by the city mayor and the city council during budget deliberations.

75:

50: There is a committee formed to assist and recommend changes in the budgetary allocations to the city mayor, but their recommendations are sometimes ignored.

25:

0: There is no committee in the local government responsible for assisting and making recommendations in the budget allocation to the city mayor, or such a body exists but is not allowed to assist and make recommendations.

98. In law, the city council can amend the budget proposed by the city mayor.

Yes | No

Comments:

This is a provision in the constitution of kenya, Which contains the local government act.

References:

City Council By Laws

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya210.pdf

Yes : A YES score is earned if the city council has the power to see the proposed budget and amend it if necessary.

No : A NO score is earned if the city council has no such power.

99. In law, budget authorization is done by the city legislative body.

Yes | No

References:

Local Governments Act

Website: http://www.kenyalaw.org/kenyalaw/klr_home/

Interview: Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

<http://www.localgovernment.go.ke/> through this link, go to FAQs and you will find how LATF is structured and how budgets are structured for funding.

Yes : A YES score is earned if the law mandates that budget authorization be done by the city legislative body.

No : A NO score is earned if budget authorization is not done by the city legislative body.

100. In practice, the city budget is enacted after deliberations by the city council where members are able to discuss proposed amendments.

100 | 75 | 50 | 25 | 0

Comments:

0

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Mr. Alfred Adongo, The team leader of SANA

100: The budget proposal is submitted by the city mayor to the local legislative body with adequate time for council deliberations. Members of the city council are able to amend the proposed budget.

75:

50: The city council is able to conduct some deliberations on the budget proposed by the city mayor, but there are constraints to these discussions. The budget proposal may not have been submitted early enough, or portions of the budget proposal are not open for discussions.

25:

0: City council deliberations on the budget proposed by the city mayor are largely constrained. The city council is unable to propose amendments to the budget.

4.2. City Procurement

4.2.1. Are there regulations or laws for the public procurement process at the city level?

64

101. In law, bids called by the city government are made open for public competition.

Yes

No

Comments:

Part V of the Public Procurement Act (2005) states how open tendering is supposed to be done in the public sector.

References:

Public Procurement and Disposal Act 2006, Chapter 412C

<http://www.kenyalaw.org/Downloads/Acts/Public%20Procurement%20and%20Disposal%20Act.pdf>

Yes : A YES score is earned if the procurement process is based on open public competition. A YES score is still earned if there are a few exceptions to competitive procurement processes, so long as these are minimal and there are clear guidelines covering these exceptions.

No : A NO score is earned if the procurement process is not based on open public competition.

102. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes

No

Comments:

In as much as the Public Procurement Act is place at times there are political interference when it comes to tendering. Part 9 of the procurement Act states situations in which the Director General can debar a person from participating in a procurement or tendering proceeding. Four grounds are listed.

References:

Public Procurement and Disposal Act 2006, Chapter 412C

<http://www.kenyalaw.org/Downloads/Acts/Public%20Procurement%20and%20Disposal%20Act.pdf>

Yes : A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No : A NO score is earned if no such process exists.

103. In law, the losing bidder can file a protest against the decision within a reasonable period.

Yes | No

Comments:

If a bidder is not satisfied with the tender award he/she can write to the Town Clerk to inform him/her before he can seek legal redress through the Court of Law.

References:

Public Procurement and Disposal Act 2006, Chapter 412C

<http://www.kenyalaw.org/Downloads/Acts/Public%20Procurement%20and%20Disposal%20Act.pdf>

Public Procurement and Disposal Act Cap 3 section 112 A peals

http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

Yes : A YES score is earned if there is a formal appeals process for unsuccessful bidders.

No : A NO score is earned if no such process exists.

104. In law, procurement without competitive bidding can only be made with clear justification.

Yes | No

Comments:

There has never been an emergency bidding situations. Otherwise if any arises the City Council must abide by the Public Procurement Act.

References:

Public Procurement and Disposal Act 2006, Chapter 412C

<http://www.kenyalaw.org/Downloads/Acts/Public%20Procurement%20and%20Disposal%20Act.pdf>

Section 74 of the public procurement Act states when direct procurement may be done.

Yes : A YES score is earned if procurement without bidding is only allowed in emergency situations.

No : A NO score is earned if procurement without bidding is not limited to emergency situations.

105. In practice, bids called by the city government are made open for public competition.

100 | 75 | 50 | 25 | 0

Comments:

There are cases of interference from City Councillors who have interest in the bidding process. Most of the tenders are “won” by firms associated with the councillors or their relatives. The act of awarding these tenders to themselves makes the whole process not to be an open and competitive exercise.

References:

Kefas Kasera, City Council Procurement Officer, Kisumu City Council, 24/05/2011 , City Hall

100: The procurement process is based on open public competition. There are only a few exceptions to competitive procurement process, but they are minimal and guidelines covering these exceptions are respected.

75:

50: The public openness of the procurement process may face significant obstacles. These exceptions to competitive procurement process or guidelines covering these exceptions may not be respected.

25:

0: The procurement process is not based on open public competition. A competitive procurement process is exception, rather than a rule. There are no guidelines covering the exception to the rule and/or they are not respected.

106. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Those who violate the procurement rules cannot be blacklisted because they are either amongst the city leaders or are related to the city leaders.

References:

Kefas Kasera, City Council Procurement Officer, Kisumu City Council, 24/05/2011 , City Hall

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

107. In practice, the city government provides clear justification for procurement without competitive bidding.

100 | 75 | 50 | 25 | 0

Comments:

Section 74 of the public procurement Act states the grounds under which direct procurement is allowable.

References:

Kefas Kasera, City Council Procurement Officer, Kisumu City Council, 24/05/2011 , City Hall

Aloice Ager of Satnet Technologies (A consultant in IT, and a supplier of IT stationery)

100: Procurement without bidding happens only in emergency situations, and city government provides a timely and comprehensive justification for such action.

75:

50: Procurements without bidding may happen in situations other than emergency ones. City government may not provide justification for such procurements or such justification may not be clear.

25:

0: Procurement without bidding is not limited to emergency situations. City government does not provide any justification for its decision.

4.2.2. Are city public procurement rules publicly transparent?

70

108. In law, the city procurement rules are available to the general public.

Yes | No

Comments:

The above mentioned act is available on the internet and can also be accessed from the Government Printers at a fee.

References:

Public Procurement Act revision 2009, Chapter 412C

Section 76 of the public Procurement Act, along with sections 77, 78 and 79 sets out how those want to participate in the procurement process are invited in an open and transparent manner, with rules and regulations governing the whole process openly available to those who want to bid.

Yes : A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No : A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

109. In law, the call for bids are required to be extensively publicized within a reasonable period before the actual bidding commences.

Yes

No

Comments:

Bids are advertised on print media for 3 consecutive days and also on their public notice board.

References:

Public Procurement Act revision 2009, Chapter 412C
Section 76 to 79 of the Public Procurement Act

Yes : A YES score is earned if the city government is required to publicly post or announce the call for bids. This can be done through major media outlets or on a publicly-accessible government register or log.

No : A NO score is earned if there is no requirement for the city government to publicly announce call for bids.

110. In law, the results of the bidding are required to be made public.

Yes

No

Comments:

When the Tender Box is opened, bidders and other members of the public are welcomed. Members of the media are invited, along with all those who sent requests to participate (tenderers), and the outcome are communicated to all those who participated through formal letters and sometimes the outcome is placed on city council notice boards.

References:

Public Procurement Act revision 2009, Chapter 412C
Sections 83 to 86 states how the process is communicated to those who participated in the procurement process.

Yes : A YES score is earned if the city government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

No : A NO score is earned if there is no requirement for the city government to publicly announce the results of the public procurement process.

111. In practice, the public can access public procurement records (including regulations and results) within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

You must write to the Town Clerk who will then authorize your access to the Procurement Records.

References:

Kefas Kasera, City Council Procurement Officer, Kisumu City Council, 24/05/2011 , City Hall

100: Procurement records are available on-line, or procurement records can be obtained within two weeks. Procurement records are uniformly available; there are no delays for politically sensitive information. These procurement records are defined here as the rules governing the competitive procurement process, as well as the results of public bidding.

75:

50: Records take from two weeks to one month to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than one month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

112. In practice, the public can access public procurement records (including regulations and results) at a reasonable cost.

100 | 75 | 50 | 25 | **0**

Comments:

0 is scored and not 100 because even though the records should be availed to any member of the public who request for them, those who hold them at the city council normally delay handing them over as requested because most of those who win tenders at the city hall are the same city executive officers. Therefore they may fear that their identities might be known and therefore their reputation might be soiled.

Individuals can photocopy the procurement records once they are availed to them by the city council.

References:

Kefas Kasera, City Council Procurement Officer, Kisumu City Council, 24/05/2011 , City Hall

The secretary of the Kisumu Residents Association, Mr. John Obure

100: Procurement records are free to all citizens, or available for the cost of photocopying. Procurement records can be obtained at little cost, such as by mail, or on-line. A visit to cityity offices may be necessary to obtain documents. These procurement records are defined here as the rules governing the competitive procurement process, as well as the results of public bidding.

75:

50: Procurement records impose a financial burden on citizens, journalists or CSOs. A visit outside the city to provincial or regional offices may be necessary to obtain documents.

25:

0: Retrieving procurement records imposes a major financial burden on citizens. Procurement records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

4.2.3. Is the public procurement process at the city level effective?

75

113. In law, there is mandatory training for public procurement officials.

Yes

No

Comments:

In as much as trainings are organized for Procurement Officials, there is no law that provides for this. However, the Procurement Act states that Procurement Officials must be qualified for the office.

References:

The Public Procurement Act of Kenya

Yes : A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No : A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

114. In practice, major procurement projects in the city level are effectively advertised.

100

75

50

25

0

Comments:

The failure to advertise some major procurements or tenders is normally due to vested interests that some city executive officers may have, either when they want to be awarded the tenders or they want their relatives to be awarded the same. 50 is scored because even though there is a formal process of advertising procurement exercise, this is not done at times because of vested interest the city Councillors may have.

References:

Kefas Kasera, City Council Procurement Officer, Kisumu City Council, 24/05/2011 , City Hall

Mr. John Obure, the secretary of Kisumu Residents Association, 24th of may 2011 at Kondele Estate

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it may be flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisments and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

115. In law, there is an oversight agency that examines city public procurement processes and results.

Yes | No

References:

Public Procurement Oversight Authority

Website: <http://www.ppoa.go.ke>

Yes : A YES score is earned if there exists an oversight agency, whether at the national or local level, to examine city public procurement processes and results, including adherence to procurement guidelines.

No : A NO score is earned if no such body exists. A NO score is earned if such body exists but does not implement public procurement policies.

116. In practice, the oversight agency that examines city public procurement processes and results is effective.

100 | 75 | 50 | 25 | 0

References:

Kefas Kasera, City Council Procurement Officer, Kisumu City Council, 24/05/2011 , City Hall

Satnet Technologies Managing Director, Mr. Aloice Ager

100: The oversight agency that examines city public procurement processes and results is able to produce reports in a timely manner. Its findings prompt the appropriate corrective action.

75:

50: In most cases, oversight agency reports are acted on, though some exceptions may occur.

25:

0: Oversight agency reports are often ignored, and do not lead to corrective action of public procurement processes and results.

70 4.3. City Auditing

4.3.1. In law, is there an audit institution, auditor general or equivalent agency covering the entire public sector at the city level?

100

117. In law, there is a entity that audits all accounts of the city including government revenues and expenditures.

Yes | No

Comments:

The City Council also has its own Auditors.

References:

The Auditor General, Local Government Act 265, The Accountancy Act

<http://www.kenyalawreports.or.ke/klr/fileadmin/pdfdownloads/Acts/LocalGovernmentAct.pdf>

http://www.kenyalaw.org/kenyalaw/klr_home/

Yes : A YES score is earned if there is an entity whose primary mandate is to audit and track the movement of money through the city. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No : A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

4.3.2. Is the audit institution covering the entire public sector at the city level effective?

75

118. In law, the audit institution is protected from political interference.

Yes

No

Comments:

At times there is political interference in the process since some of the seats in office are politically awarded.

References:

The Auditor General, Local Government Act 265, The Accountancy Act

Article 226, Section 4 provides for the accounts of Office of the Auditor General to be audited and reported on by a professionally qualified accountant appointed by the National Assembly. Article 249, Section 2 (a) and (b) states:

The commissions and the holders of independent offices

(a) are subject only to this Constitution and the law; and

(b) are independent and not subject to direction or control by any person or authority.

<http://www.kenyalawreports.or.ke/klr/fileadmin/pdfdownloads/Acts/LocalGovernmentAct.pdf>

http://www.kenyalaw.org/kenyalaw/klr_home/

Yes : A YES score is earned only if the agency has some formal organizational independence from the government.

No : A NO score is earned if the agency is a subordinate part of any government department or agency.

119. In practice, audit institution personnel assigned at the city level are free from political interference by city government officials.

100

75

50

25

0

Comments:

The Local Audit personnel are suppose to be independent but due to the fact that this position are many times influenced politically, the then officers serve interested for those who gave them the positions or in that case serve the interest of their bosses to be safe on their job.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

100: Local audit personnel are generally known to be independent of city government officials. Regulations exist that prevent the city personnel from colluding with local government officials. When such collusions are proven, local audit personnel are appropriately sanctioned.

75:

50: Local audit personnel are generally known to be independent of city government officials, but some personal relations may exist. Regulations that prevent city local audit personnel from colluding with local government officials may not exist. There is some difficulty in sanctioning local audit personnel for inappropriate actions.

25:

0: Local audit personnel are known to have close personal relations with city government officials. city audit personnel do not produce audit reports regularly, or audit reports contain missing documents.

120. In practice, the audit entity is able to make recommendations to improve the effectiveness of the city.

100 | 75 | **50** | 25 | 0

Comments:

The public is mostly not informed of the purpose of the City Audit Reports.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

100: Audit reports are taken seriously by the city government, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored by the city government, or given superficial attention. Audit reports do not lead to policy changes.

121. In practice, the audit agency is able to initiate its own investigations

100 | 75 | 50 | 25 | 0

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Catherine Achieng ; Kisumu resident who works with an organization that do social auditing to all government funds projects in the city

The Auditor General, Local Government Act 265, The Accountancy Act

<http://www.kenyalawreports.or.ke/klr/fileadmin/pdfdownloads/Acts/LocalGovernmentAct.pdf>

http://www.kenyalaw.org/kenyalaw/klr_home/

100: The audit agency can control the timing and pace of its investigations without any input from the executive or legislative bodies in the city.

75:

50: The audit agency can generally decide what to investigate, and when, but is subject to pressure from the executive or legislative bodies in the city on politically sensitive issues.

25:

0: The audit agency must rely on approval from the executive or legislative bodies in the city before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

122. In practice, the audit agency submits and publishes audit reports within the required time period.

100 | 75 | 50 | 25 | 0

References:

Mr. Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Kisumu Residents Association secretary, Mr. John Obara

The Auditor General, Local Government Act 265, The Accountancy Act

<http://www.kenyalawreports.or.ke/klr/fileadmin/pdfdownloads/Acts/LocalGovernmentAct.pdf>

http://www.kenyalaw.org/kenyalaw/klr_home/

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

4.3.3. Can the public access reports of the city audit institution?

50

123. In law, the public can access reports of the audit agency.

Yes

No

Comments:

The public are not interested in accessing the audit report because they believe that the reports are always in favor of the City Council, but the reports are always available.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

The Auditor General, Local Government Act 265, The Accountancy Act

<http://www.kenyalawreports.or.ke/klr/fileadmin/pdfdownloads/Acts/LocalGovernmentAct.pdf>

http://www.kenyalaw.org/kenyalaw/klr_home/

Yes : A YES score is earned if all auditor reports for the city are available to the general public.

No : A NO score is earned if any auditor reports for the city are not publicly available. This may include reports made exclusively to the legislature or the executive, or to other national agencies, which those bodies may choose not to distribute.

124. In practice, the public can access audit reports within a reasonable time period

100

75

50

25

0

Comments:

The reports are several years behind schedule. The records are several years behind and at times even tracing the previous reports becomes difficult due to the process and lack of proper archiving at the City council.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

The Auditor General, Local Government Act 265, The Accountancy Act

<http://www.kenyalawreports.or.ke/klr/fileadmin/pdfdownloads/Acts/LocalGovernmentAct.pdf>

http://www.kenyalaw.org/kenyalaw/klr_home/

100: Reports are available on-line, or records can be obtained within two weeks. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take from two weeks to one month to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than one month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

125. In practice, the public can access audit reports at a reasonable cost

100 | 75 | **50** | 25 | 0

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Mr. John Obara, the secretary of Kisumu Residents Association

The Auditor General, Local Government Act 265, The Accountancy Act

<http://www.kenyalawreports.or.ke/klr/fileadmin/pdfdownloads/Acts/LocalGovernmentAct.pdf>

http://www.kenyalaw.org/kenyalaw/klr_home/

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line. A visit to city offices may be necessary to obtain documents.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. A visit outside the city to provincial or regional offices may be necessary to obtain documents.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

4.4. City Taxes

4.4.1. Can the public access information on local taxation schemes at the city level?

126. In law, the public has the right to access information such as policies and guidelines in paying taxes.

Yes | No

References:

Part IV Sections 21 to 27 of the Public Audit Act provide for preparation and submission of accounts for audit and reporting on the audit. This includes revenue collection which is basically composed of tax structures in the city.

City Council By Laws

Yes : A YES score is earned if tax information is required by the law to be made public.

No : A NO SCORE is earned if there is no law that requires the city government to make tax information public.

127. In practice, the local taxation schemes are made available to the public

100 | 75 | 50 | 25 | 0

Comments:

Taxation schemes are available at the City Council Offices. The score is given 25 because as much as these taxation schemes are their, they are only available at the city Council offices, and once can only access them if they only request to and hence other members of the public cannot access them unless they visit the offices.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

100: Local taxation schemes are available on-line or in the city hall and the provision of information is indiscriminate.

75:

50: Local taxation schemes are available online or in the city hall but some specific information may be hard to obtain. The website may not always be updated or records are not always available in the city hall.

25:

0: Local taxation schemes are not available online or in the city hall. Citizens have to undergo a long process before they can get the information. Information may be orally communicated to inquiring citizens, but no document is available to show officially adopted local taxation schemes.

4.4.2. Do the city tax collection agencies enforce taxation schemes effectively?

128. In law, the rules governing the collection of city taxes are fair and do not discriminate against any particular group or taxpayers.

Yes | No

Comments:

As much as there is a law that governs this, each City council decides on their own rates as per their By law which is passed in a full council meetings

References:

Local Government Act Cap 265 Sections 148 and 149

Powers to guarantee tax liability and pay deposits in respect thereof, and to recover payments made respecting tax.

http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Yes : A YES score is earned if the rules governing the collection of city taxes are not unjust, excessive, oppressive, confiscatory or discriminatory to particular groups or taxpayers.

No : A NO score is earned if the rules governing the collection of city taxes are unjust, excessive, oppressive, confiscatory or discriminatory to particular groups or taxpayers.

129. In practice, tax laws at the city level are enforced uniformly and without discrimination.

100 | 75 | 50 | 25 | 0

Comments:

Strict implementation is a problem due to corruption.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Kisumu Residents Association secretary Mr. John Obara

100: Tax laws (which may be economically unfair as written) at the city level are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws at the city level are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law at the city level is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

130. In practice, the city tax collection agency practices are free from irregularities in the conduct of tax collection.

100 | 75 | 50 | **25** | 0

Comments:

Those tax payers who are closely related to some powerful politicians seldom pay tax and tax collectors normally fear being strict with them because the linked powerful politicians can influence the appointment of tax collectors, hence the fear of losing a job runs in the minds of those who are charged with tax collection.

References:

Mr, Muga, Chairman of Finance, City Council of Kisumu, 25/05/2011, City Hall Kisumu

Mr. Thomas Odire, Chairman Boda Boda SACCO, Victoria Boda Boda SACCO, 25/05/2011, Manyatta Estate

100: When irregularities are discovered, there is aggressive investigation and prosecution of erring city public officials. Tax collection agencies referred to here are those that collect city taxes.

75:

50: The agency starts investigations, but is limited in its effectiveness. It may be slow to act, unwilling to take on politically powerful and other offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively investigate financial irregularities. It may start investigations but not complete them, or may fail to detect offenders. Agency personnel may be partisan in its application of power.

Category 5. City Public Administration and Business
Regulation

5.1. ~~City~~ Civil Service Regulations

5.1.1. Are there regulations for the city civil service encompassing, at least, the managerial and professional staff?

100

131. In law, there are regulations requiring an impartial, independent and fairly managed civil service at the city level.

Yes

No

Comments:

Section 5 of the Employment Act stipulates that there shall be no discrimination in the nature of sexual harassment, political harassment or intimidation of any nature in employment in Kenya. The minister for labor and the Industrial court are empowered to punish those who violate this provision.

References:

Employment Act Cap 226 Laws of Kenya, Collective Bargaining Agreement between Local Govt. Union and the Local Authorities, <http://www.ilo.org/public/english/dialogue/ifpdial/info/national/ken.htm>

Yes : A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference in the city level. "Civil service" here refers to department personnel employed by the city government, rather than personnel of national government agencies assigned to the city.

No : A NO score is earned if there are no formal rules establishing an independent civil service in the city.

5.1.2. Is the law governing hiring practices for the administration and civil service at the city level effective?

50

132. In practice, city civil servants who are appointed/promoted are qualified for the positions they fill.

100

75

50

25

0

Comments:

50 is scored because competency (as in right certificates and skill) is normally not the basis of recruitment, but favoritism and influence of the Councillors play a major role.

References:

Chrispine O. Siganda, Human Resource Manager, Kisumu City Council, 26/05/2011, Kisumu Town Hall

Mr. Dick Orongo, a voter and a resident who has lived in Kisumu for over 40 years

100: city civil servants are generally appointed and promoted on the basis of merit. They possess competencies required for the performance of their duties.

75:

50: city civil servants are generally appointed and promoted on the basis of merit, with some exceptions. Though there is no systematic favoritism in the local civil service, basic competencies in the performance of duties is somewhat lacking.

25:

0: Appointment and promotion of city civil servants are generally made due to favoritism and patronage. Basic competencies in the performance of duties is systematically lacking.

133. In practice, city civil servants are protected by law against arbitrary dismissal or demotion.

100 | 75 | **50** | 25 | 0

Comments:

The laws governing employment (the Employment Act) is there, but at times the elected leaders (the councillors) would sometimes intimidate and force out of office chief officers who do not toe their lines.

References:

Christpine O. Siganda, Human Resource Manager, Kisumu City Council, 26/05/2011, Kisumu Town Hall

George Ondoro, Youth Leader, Kisumu Town, 19/05/2011, Anderson Estate

100: city civil servants are protected by the law against arbitrary dismissal or demotion. Officers and employees can only be removed from their position if there is a valid cause. There is a hearing and a notice given to the officer/employee prior to his/her dismissal.

75:

50: Although city civil servants are protected by the law, there are some instances where employees/officers are removed from the position without just cause.

25:

0: city civil servants are routinely removed from office indiscriminately without any documented just cause.

5.1.3. Are there effective regulations addressing conflicts of interest for civil servants at the city level?

25

134. In law, there are regulations governing gifts and hospitality offered to civil servants at the city level.

Yes | **No**

Comments:

Other respondents say that there is no guidelines at all and the City Civil Servants accept gifts and hospitalities a lot.

References:

These guidelines are in the Code of Ethics.

Yes : A YES score is earned if there are formal guidelines regulating gifts and hospitality for civil servants at the city level.

No : A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to civil servants at the city level. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

135. In law, there are regulations governing the grant of public concessions, such as contracts for government projects or the procurement of goods and services, to business proxies or family members and relatives of civil servants at the city level.

Yes | No

References:

The respondent (Human Resource Manager – Kisumu City Council) claims that there is a guideline in the code of ethics but does not mention any section or act in a legal provision.

Other respondents outside the City Council say that there are no guidelines at all.

Yes : A YES score is earned if there are formal guidelines regulating the grant of public concessions, such as contracts for government projects or the procurement of goods and services, to business proxies or family members and relatives of civil servants at the city level.

No : A NO score is earned if there are no such guidelines or regulations. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

136. In practice, the regulations governing gifts and hospitality offered to civil servants at the city level are effective.

100 | 75 | 50 | 25 | 0

Comments:

The Human Resource Manager claims that there are regulations but enforcement is difficult because of interference (politics and those with vested interests).

The external respondent (George Ondoro) says there is no enforcement at all.

References:

Chispine O. Siganda, Human Resource Manager, Kisumu City Council, 26/05/2011, Kisumu Town Hall

George Ondoro, Youth Leader, Kisumu Town, 19/05/2011, Anderson Estate

100: The regulations governing gifts and hospitality to civil servants at the city level are regularly enforced. Civil servants at the city level never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants at the city level are generally applied though exceptions exist. Some civil servants are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to civil servants at the city level are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

137. In practice, the regulations governing the grant of public concessions, such as contracts for government projects or the procurement of goods and services, to business proxies or family members and relatives of civil servants at the city level are effective.

100 | 75 | 50 | 25 | 0

References:

Chrispine O. Siganda, Human Resource Manager, Kisumu City Council, 26/05/2011, Kisumu Town Hall

George Ondoro, Youth Leader, Kisumu Town, 19/05/2011, Anderson Estate

100: The regulations governing the grant of public concessions, such as contracts for government projects or the procurement of goods and services, to business proxies or family members and relatives of civil servants at the city level are regularly enforced.

75:

50: The regulations governing the grant of public concessions to business proxies or family members and relatives of civil servants at the city level are generally applied though exceptions exist.

25:

0: The regulations governing the grant of public concessions to family members and relatives of civil servants at the city level are routinely ignored and unenforced. Public concessions are routinely granted to business proxies or family members and relatives of civil servants without any criteria.

5.2. City Health Regulation

5.2.1. Are the regulatory requirements for basic health standards for businesses in the city transparent?

100

138. In law, basic regulatory requirements for meeting public health standards covering businesses operating in the city are available to the general public.

Yes

No

Comments:

External respondents (J. Fish Kenya Limited – Administrative Manager, Nicholas Ndavela and Businessman, Joseph Abiola) say that the regulatory requirements in question are not publicly available to them and they are hardly aware of the same.

References:

The regulations, if they are there, are not known to quiet a number of business persons.

Yes : A YES score is earned if there is a legal framework that requires the city government to make public health regulatory requirements for businesses publicly available.

No : A NO score is earned if there is no such legal framework.

139. In practice, basic regulatory requirements for meeting public health standards covering businesses operating in the city are made available to the public.

Yes

No

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Nicholas Ndavela, Administrative Manager, J. Fish Kenya Limited, 19/05/2011

Joseph Abiola, Kisumu City – Businessman (Hotel Industry), Abiola Cafe, 19/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Mr. Adongo, Coordinator, SANA International, 26/05/2011, SANA International Offices – Milimani

Merab Okwara, Project Coordinator, STIPA, 26/05/2011, STIPA Offices – Migosi Estate

Yes : A YES score is earned if there is a mechanism through which city governments publish health regulatory requirements for businesses. These mechanisms may include a website, publication in a local newspaper, bulletin boards, or billboards.

No : A NO score is earned if there is no such mechanism.

5.2.2. Does the city government effectively enforce basic health standards on businesses?

140. In practice, city government offices that enforce public health standards on businesses are appropriately staffed.

100 | 75 | 50 | 25 | 0

Comments:

Due to lack enough staff, inspections have been done inadequately. The few officers available feel overworked.

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Nicholas Ndavela, Administrative Manager, J. Fish Kenya Limited, 19/05/2011

Joseph Abiola, Kisumu City – Businessman (Hotel Industry), Abiola Cafe, 19/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Mr. Adongo, Coordinator, SANA International, 26/05/2011, SANA International Offices – Milimani

Merab Okwara, Project Coordinator, STIPA, 26/05/2011, STIPA Offices – Migosi Estate

100: City government offices that enforce basic health standards on businesses are staffed with adequate personnel. These personnel have the necessary competencies for their tasks.

75:

50: City government offices that enforce public health standards on businesses are somewhat constrained by staffing problems.

25:

0: There are no functioning city government offices that enforce public health standards on businesses.

141. In practice, business inspections by city government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

There are instances where other officers are bribed. According to the respondents human beings are different in behavior, hence others fall in the trap of bribery.

Inspections vary depending on the type and size of a business

According to the respondents from the private sector, business inspections are only done when the city council officials want to extort money from them.

Like those who run restaurant businesses in town would at times contribute money for bribing public health inspectors when they are threatened with closure of their premises due to violation of hygiene rules. Also worth noting is that the business entities in town do not have cabbage collection points but due to the fact that the public health inspectors are always compromised, they are not threatened.

Inspections are done in an ad hoc fashion designed to extract or extort money from the business persons.

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Nicholas Ndavela, Administrative Manager, J. Fish Kenya Limited, 19/05/2011

Joseph Abiola, Kisumu City – Businessman (Hotel Industry), Abiola Cafe, 19/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Mr. Adongo, Coordinator, SANA International, 26/05/2011, SANA International Offices – Milimani

Merab Okwara, Project Coordinator, STIPA, 26/05/2011, STIPA Offices – Migosi Estate

100: Business inspections by the city government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the city government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by city government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

142. In practice, city government offices can make recommendations for improved public health regulations based on compliance activities.

100 | 75 | 50 | 25 | 0

Comments:

Inspections are conducted once a year and reports or recommendations are not made regularly.

Private sector respondents believe that the inspections are only done at the convenience of the City Council bosses (when they want to extort money from the businesses)

No investigations are done to assess compliance and assessment is done at all, then no compliance report is availed to the public.

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Nicholas Ndavela, Administrative Manager, J. Fish Kenya Limited, 19/05/2011

Joseph Abiola, Kisumu City – Businessman (Hotel Industry), Abiola Cafe, 19/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Mr. Adongo, Coordinator, SANA International, 26/05/2011, SANA International Offices – Milimani

Merab Okwara, Project Coordinator, STIPA, 26/05/2011, STIPA Offices – Migosi Estate

100: City government offices that enforce public health standards on businesses are able to operate independently. They produce regular reports describing compliance. Recommendations for improving compliance are seriously considered by governmental and other relevant entities, and acted upon.

75:

50: City government offices that enforce public health standards produce regular reports with appropriate recommendations, but these recommendations are sometimes not acted upon.

25:

0: No investigations are conducted to assess compliance with public health standards. If investigations are conducted, they are generally not acted upon and/or made public.

5.2.3. Does the public have access to reports on compliance of businesses with public health standards?

0

143. In law, the public can access reports on the compliance of businesses with public health standards.

Yes

No

Comments:

The businesses are not assessed for compliance with any standards and the said standards are not availed to the businesses to comply with in the first place.

The compliance reports are not publicly available, and if you request to be availed with any such report, then you will not get any and the officers responsible will not even understand what your request is.

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Yes : A YES score is earned if all compliance reports are available to the general public.

No : A NO score is earned if any compliance reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

144. In practice, the public can access reports on compliance of businesses with public health standards within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The reports are not available in the first place.

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Mr. Ndavela, the Administrative Manager of J. Fish (k) Ltd

100: Reports are available on-line, or records can be obtained within two weeks. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take from two weeks to one month to obtain. Some delays may be experienced.

25:

0: Reports take more than one month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

145. In practice, the public can access reports on compliance of businesses with public health standards at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are not available online.

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line. A visit to city offices may be necessary to obtain documents.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. A visit outside the city to provincial or regional offices may be necessary to obtain documents.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39

5.3. City Safety Regulation

5.3.1. Are the regulatory requirements for basic safety standards for businesses in the city transparent?

50

146. In law, basic regulatory requirements for meeting public safety standards covering businesses operating in the city are available to the general public.

Yes

No

References:

Part 4 of the Occupational Safety and Health Act of Kenya. Sections 32 to 42 of the Act stipulates the roles of the OSH officer as far as the assessment of business premises is concerned. The proceeding part, Par 5, states what has to be observed for a business to qualify for registration and safety situations which can cause denial of registration. Sections 43 to 46 has this in detail.

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Mr. Caroly Omondi, Municipal Chief Fire Officer, Municipal Fire Department, 27/05/2011, Municipal Fire Departments Office

Yes : A YES score is earned if there is a legal framework that requires the city government to make public safety requirements for businesses publicly available.

No : A NO score is earned if there is no such legal framework.

147. In practice, basic regulatory requirements for meeting public safety standards covering businesses operating in the city are made available to the public.

Yes | **No**

Comments:

These safety standards are available at City Council Offices but are not made available to the public

References:

Mr. Caroly Omondi, Municipal Chief Fire Officer, Municipal Fire Department, 27/05/2011, Municipal Fire Departments Office

Yes : A YES score is earned if there is a mechanism through which city governments publish public safety requirements for businesses. These mechanisms may include a website, publication in a local newspaper, bulletin boards, or billboards.

No : A NO score is earned if there is no such mechanism.

5.3.2. Does the city government effectively enforce basic safety standards on businesses?

25

148. In practice, city government offices that enforce public safety standards on businesses are appropriately staffed.

100 | 75 | **50** | 25 | 0

Comments:

Since the Ministry of Public Health and the City Council operate independently the much work load at times requires the City Council to hire staff from the Ministry of Health. This has made their service delivery lag.

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Mr. Caroly Omondi, Municipal Chief Fire Officer, Municipal Fire Department, 27/05/2011, Municipal Fire Departments Office

100: City government offices that enforce basic safety standards on businesses are staffed with adequate personnel. These personnel have the necessary competencies for their tasks.

75:

50: City government offices that enforce public safety standards on businesses are somewhat constrained by staffing problems.

25:

0: There are no functioning city government offices that enforce public safety standards on businesses.

149. In practice, business inspections by city government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Business inspections are routinely done in an ad hoc fashion designed to extract money from the business persons.

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Mr. Caroly Omondi, Municipal Chief Fire Officer, Municipal Fire Department, 27/05/2011, Municipal Fire Departments Office
Mr. Ndavela, the Administrative Manager, J. Fish (K) Ltd.

100: Business inspections by the city government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the city government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by city government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

150. In practice, city government offices can make recommendations for improved public safety standards based on compliance activities.

100 | 75 | 50 | 25 | 0

Comments:

Because of corruption safety standards recommendations (if there are any) are not acted upon. Safety standards are only assessed by the ministry of labour (under the occupational Safety and Health department), but the city council is not to do anything. The Chief Fire officer at he city Hall is only in charge of the Fire Brigade and could only be seen when there is a case of fire break out.

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Mr. Caroly Omondi, Municipal Chief Fire Officer, Municipal Fire Department, 27/05/2011, Municipal Fire Departments Office
Mr. Ndavela, the Administrations Manager, J Fish (K) Ltd

100: City government offices that enforce public safety standards on businesses are able to operate independently. They produce regular reports describing compliance. Recommendations for improving compliance are seriously considered by governemntal and other relevant entities, and acted upon.

75:

50: City government offices that enforce public safety standards produce regular reports with appropriate recommendations, but these recommendations are sometimes not acted upon.

25:

0: No investigations are conducted to assess compliance with public safety standards. If investigations are conducted, they are generally not acted upon and/or made public.

5.3.3. Does the public have access to reports on compliance of businesses with public safety standards?

0

151. In law, the public can access reports on compliance of businesses with public safety standards.

Yes | No

References:

Not known

Yes : A YES score is earned if all compliance reports are available to the general public.

No : A NO score is earned if any compliance reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

152. In practice, the public can access reports on compliance of businesses with public safety standards within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The reports can never be accessed if at all they are there.

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Mr. Caroly Omondi, Municipal Chief Fire Officer, Municipal Fire Department, 27/05/2011, Municipal Fire Departments Office
Mr. Ndavela, the Administrative Manager, J Fish (K) Ltd

100: Reports are available on-line, or records can be obtained within two weeks. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take from two weeks to one month to obtain. Some delays may be experienced.

25:

0: Reports take more than one month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

153. In practice, the public can access reports on compliance of businesses with public safety standards at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The reports are not known to be available in the first place.

References:

Mr. Elijah Ojola, Deputy District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011, District Health Offices

Mr. Naftali Mbudi, District Public Health Officer – Kisumu East District, District Health Office, 15/05/2011

Mr. David Odera, Acting Deputy Chief Public Health Officer – Municipal Council of Kisumu, Department of Health – Kisumu Municipality, 27/05/2011, Municipal Health Offices – Migosi Estate

Mr. Caroly Omondi, Municipal Chief Fire Officer, Municipal Fire Department, 27/05/2011, Municipal Fire Departments Office
Mr. Ndavela, the Administration Manager J Fish (K) Ltd.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line. A visit to city offices may be necessary to obtain documents.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. A visit outside the city to provincial or regional offices may be necessary to obtain documents.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

5.4. City Environmental Regulation

5.4.1. Are the regulatory requirements for basic environmental protection standards for businesses in the city transparent?

50

154. In law, basic regulatory requirements for meeting public environmental protection standards covering businesses operating in the city are available to the general public.

Yes

No

References:

Section 59 and 60 of the National Environment Management Authority Act .

The Local Governments Act, Chapter 265 of the Constitution

Yes : A YES score is earned if there is a legal framework that requires the city government to make public environmental protection requirements for businesses publicly available.

No : A NO score is earned if there is no such legal framework.

155. In practice, basic regulatory requirements for meeting public environmental protection standards covering businesses operating in the city are made available to the public.

Yes | **No**

Comments:

Private sector respondents have not seen or been able to access any publication on environmental protection requirement from the City Council even though the M&E Officer at the City Hall states otherwise (They post the publications on public notice boards and at times they give copies to stake holders.)

References:

Grace Osore, Monitoring and Evaluation Officer, Kisumu City Council, 26/05/2011

Joseph Abiola, Kisumu Business Man, Abiola Cafe, 31/05/2011

Yes : A YES score is earned if there is a mechanism through which city governments publish public environmental protection requirements for businesses. These mechanisms may include a website, publication in a local newspaper, bulletin boards, or billboards.

No : A NO score is earned if there is no such mechanism.

5.4.2. Does the city government effectively enforce basic environmental protection standards on businesses?

17

156. In practice, city government offices that enforce environmental protection standards on businesses are appropriately staffed.

100 | 75 | 50 | **25** | 0

Comments:

They are staffed but not with personnel that have the right competencies.

References:

Grace Osore, Monitoring and Evaluation Officer, Kisumu City Council, 26/05/2011

Joseph Abiola, Kisumu Business Man, Abiola Cafe, 31/05/2011

100: City government offices that enforce basic environmental protection standards on businesses are staffed with adequate personnel. These personnel have the necessary competencies for their tasks.

75:

50: City government offices that enforce environmental protection standards on businesses are somewhat constrained by staffing problems.

25:

0: There are no functioning city government offices that enforce environmental protection standards on businesses.

157. In practice, business inspections by city government officials to ensure environmental protection standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The Monitoring and Evaluation Officer at the Kisumu City Hall claims that inspections are done in a uniform and even-handed manner.

However, respondents owning businesses within the city say that inspections are only done at the convenience of the City Hall Officials with aims of extorting money from them. No schedule for inspection and regulatory requirements is available to them.

References:

Grace Osore, Monitoring and Evaluation Officer, Kisumu City Council, 26/05/2011

Joseph Abiola, Kisumu Business Man, Abiola Cafe, 31/05/2011

100: Business inspections by the city government to ensure that environmental protection standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the city government to ensure environmental protection standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that environmental protection standards are met are routinely carried out by city government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

158. In practice, city government offices can make recommendations for improved environmental protection regulations based on compliance activities.

Comments:

The M&E Officer at the City Hall says that they produce reports but not regularly while the private sector respondents say that they are not aware of any reports that the Dept. of City Environment has produced.

The M&E Officer says that recommendations for improving compliance are never considered.

The Private Sector respondents are not aware of any recommendations for improving compliance.

References:

Grace Osore, Monitoring and Evaluation Officer, Kisumu City Council, 26/05/2011, City Hall

Joseph Abiola, Kisumu Business Man, Abiola Cafe, 31/05/2011, Abiola Cafe

Nelson Ndavela, Administrative Manager, J. Fish Kenya Limited, 31/05/2011, J. Fish Kenya Limited Offices

100: City government offices that enforce environmental protection standards on businesses are able to operate independently. They produce regular reports describing compliance. Recommendations for improving compliance are seriously considered by governmental and other relevant entities, and acted upon.

75:

50: City government offices that enforce environmental protection standards produce regular reports with appropriate recommendations, but these recommendations are sometimes not acted upon.

25:

0: No investigations are conducted to assess compliance with environmental protection standards. If investigations are conducted, they are generally not acted upon and/or made public.

5.4.3. Does the public have access to reports on compliance of businesses with environmental protection standards?

50

159. In law, the public can access reports on the compliance of businesses with environmental protection standards.

Yes | No

Comments:

The private sector says that they have never accessed any compliance reports.

References:

Grace Osore, Monitoring and Evaluation Officer, Kisumu City Council, 26/05/2011, City Hall

Joseph Abiola, Kisumu Business Man, Abiola Cafe, 31/05/2011, Abiola Cafe

Nelson Ndavela, Administrative Manager, J. Fish Kenya Limited, 31/05/2011, J. Fish Kenya Limited Offices

Mitch Odidi, Environmental Officer, National Environmental Management Authority, 11/05/2011, NEMA Offices Kisumu

Wafula John, Research Planner, National Environmental Management Authority, 24/05/2011

Yes : A YES score is earned if all compliance reports are available to the general public.

No : A NO score is earned if any compliance reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

160. In practice, the public can access reports on the compliance of businesses with environmental protection standards within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

According to the Monitoring and Evaluation Officer at the City Council, reports are generated and submitted to the superiors.

Private sector respondents do not have access to these reports, they are not made available to the public.

References:

Grace Osore, Monitoring and Evaluation Officer, Kisumu City Council, 26/05/2011, City Hall

Joseph Abiola, Kisumu Business Man, Abiola Cafe, 31/05/2011, Abiola Cafe

Nelson Ndavela, Administrative Manager, J. Fish Kenya Limited, 31/05/2011, J. Fish Kenya Limited Offices

Mitch Odidi, Environmental Officer, National Environmental Management Authority, 11/05/2011, NEMA Offices Kisumu

Wafula John, Research Planner, National Environmental Management Authority, 24/05/2011

100: Reports are available on-line, or records can be obtained within two weeks. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take from two weeks to one month to obtain. Some delays may be experienced.

25:

0: Reports take more than one month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

161. In practice, the public can access reports on the compliance of businesses with environmental protection standards at a reasonable cost.

Comments:

Reports from the City Council are not accessible to the public, but Environmental Impact Assessment reports from NEMA are available to the public.

References:

Grace Osore, Monitoring and Evaluation Officer, Kisumu City Council, 26/05/2011, City Hall

Joseph Abiola, Kisumu Business Man, Abiola Cafe, 31/05/2011, Abiola Cafe

Nelson Ndavela, Administrative Manager, J. Fish Kenya Limited, 31/05/2011, J. Fish Kenya Limited Offices

Mitch Odidi, Environmental Officer, National Environmental Management Authority, 11/05/2011, NEMA Offices Kisumu

Wafula John, Research Planner, National Environmental Management Authority, 24/05/2011

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line. A visit to city offices may be necessary to obtain documents.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. A visit outside the city to provincial or regional offices may be necessary to obtain documents.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39 5.5. City Land Record Management

5.5.1. Are there transparent regulations governing land records at the city level?

25

162. In law, there is a transparent system at the city level to track and update land records.

Yes | **No**

Comments:

The by laws are there but the specific articles stipulating this could not be mentioned.

References:

N/A

Yes : A YES score is earned if there is a clear system, in law, that tracks and updates information on land property rights, land titles, and land transactions at the city level. These records are publicly available to all citizens, including those who are subject to customary/tribal property practices.

No : A NO score is earned if there is no legal framework that tracks and updates information on land property rights, land titles, and land transactions at the city level. A NO score is earned if these records are not available to all citizens, including those who are subject to customary/tribal property practices.

163. In law, there is an agency or set of agencies that maintains land records and regulations at the city level.

Yes | **No**

Comments:

The by laws are there but the specific articles stipulating this could not be mentioned.

References:

N/A

Yes : A YES score is earned if there is an agency or set of agencies that maintains and manages land records and regulations at the city level.

No : A NO score is earned if no such agency or set of agencies exists.

164. In law, there is mandatory professional training for staff responsible for land records issues at the city level.

Yes | **No**

Comments:

The by laws are there but the specific articles stipulating this could not be mentioned.

References:

N/A

Yes : A YES score is earned if staff receive regular mandatory training to ensure professional standards in managing land records issues at the city level.

No : A NO score is earned if there is no required training of staff responsible for managing land records issues at the city level, or if training is sporadic, inconsistent, unrelated to land records and rights processes, or voluntary.

165. In law, citizens can bring land record disputes at the city level to a court of law.

Yes | No

Comments:

The by laws are there but the specific articles stipulating this could not be mentioned.

References:

Article 40 of the New Constitution provides for protection to right of property for every citizen. This references Article 65 which deals with land ownership.

Yes : A YES score is earned if citizens can bring land record disputes at the city level to a court of law.

No : A NO score is earned if there is no legal right for citizens to bring land record disputes at the city level to a court of law.

5.5.2. Are the regulations governing city land records effective?

13

166. In practice, the public can access city land records and regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Mr. Hassan Otieno Mbithi, Senior Cartographer, Ministry of Lands – Nyanza Province, 17/05/2011, Ardhi House

100: City land records and regulations are available on-line, or can be obtained within two days. Regulations and records are uniformly available; there are no delays for politically sensitive information. City land records and regulations are defined here as the rules governing land records, land titles, and records of transfers of land ownership.

75:

50: City land records and regulations take around two weeks to obtain. Some delays may be experienced.

25:

0: City land records and regulations take more than a month to acquire. There may be persistent delays in obtaining politically sensitive regulations or records.

167. In practice, the public can access city public land records and regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

All land records including the land owned by the City Council can be from the Ministry of lands offices within the City council at a cost

References:

Mr Hassan Otieno Mbithi, Senior Cartographer – Nyanza Province, Ministry of Lands, 17/05/2011, Ardhi House

100: City land records and regulations are free to all citizens, or available for the cost of photocopying. Regulations and records can be obtained at little cost, such as by mail, or on-line. City land records and regulations are defined here as the rules governing land records, land titles, and records of transfer of land ownership.

75:

50: Obtaining city land records and regulations imposes a financial burden on citizens, journalists or CSOs. Retrieving regulations and records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving city land records and regulations imposes a major financial burden. The costs are prohibitive to most citizens, journalists, or CSOs.

168. In practice, the agency or entity responsible for maintaining city land records and regulations has sufficient staff and resources.

100 | 75 | 50 | 25 | 0

Comments:

The staff here do not possess specialized skill requisite for the execution of land matters.

References:

Mr Hassan Otieno Mbithi, Senior Cartographer – Nyanza Province, Ministry of Lands, 17/05/2011, Ardhi House

100: The agency or entity responsible for maintaining city land records and regulations has sufficient staff and resources to fulfill its basic mandate.

75:

50: The agency or entity has limited staff and resources, or staff without necessary qualifications and resources to fulfill its basic mandate.

25:

0: The agency or entity has no staff and resources, or such limited staff and resources that the agency or entity is clearly unqualified to fulfill its mandate.

169. In practice, bringing a land records dispute to court is affordable for the average citizen or business.

100 | 75 | 50 | 25 | 0

References:

Mr Hassan Otieno Mbithi, Senior Cartographer – Nyanza Province, Ministry of Lands, 17/05/2011, Ardhi House

Steven Tuju, Land Agent, Tom and Associates Agents, 17/05/2011, Tom and Associates Agents Offices

100: In most cases, bringing a case to court is an affordable option to citizens or businesses seeking to resolve land record disputes.

75:

50: In some cases, bringing a dispute to court is not an affordable option to citizens or businesses seeking to resolve land record disputes.

25:

0: The prohibitive cost of utilizing the court prevents citizens or businesses from resolving land record disputes.

5.5.3. Are there transparent regulations governing land development and zoning (defined as the formal approval process to begin construction and land development projects) at the city level?

25

170. In law, there is a transparent process governing land development and zoning processes at the city level.

Yes | No

Comments:

The respondent does not know the exact laws.

References:

N/A

Yes : A YES score is earned if there is a clear system that governs the process by which businesses and individuals can apply for approval to initiate construction or other land enhancement projects at the city level. The process is publicly available, including those who are subject to customary/tribal land use practices.

No : A NO score is earned if the rules governing land development and zoning processes at the city level are unclear, or no such governing framework exists.

171. In law, there is an agency or set of agencies that regulate land development and zoning processes at the city level.

Yes | **No**

Comments:

The sections could not be specifically mentioned.

References:

N/A

Yes : A YES score is earned if there is an agency or set of agencies that regulates land development and zoning processes at the city level.

No : A NO score is earned if no such agency or set of agencies exists.

172. In law, there is mandatory professional training for staff responsible for city land development and zoning.

Yes | **No**

Comments:

The sections could not be mentioned by the respondents

References:

N/A

Yes : A YES score is earned if staff receive regular mandatory training to ensure professional standards in managing land development and zoning issues at the city level.

No : A NO score is earned if there is no required training of staff responsible for managing land development and zoning issues at the city level, or if training is sporadic, inconsistent, unrelated to zoning or land development processes, or voluntary.

173. In law, citizens and businesses can bring land development or zoning disputes at the city level to a court of law.

Yes | **NO**

Comments:

The specific sections could not be mentioned by the respondents

References:

N/A

Yes : A YES score is earned if citizens and businesses can bring land development or zoning disputes at the city level to a court of law.

NO: A NO score is earned if there is no legal right for citizens or businesses to bring land development or zoning disputes at the city level to a court of law.

5.5.4. Are the regulations governing land development and zoning processes effective?

44

174. In practice, citizens and businesses can apply for city land development and zoning approvals within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

This is dependent on the work load and the criteria of requests.

After the application for city land development , the applicant must wait for a full council meeting which is always called by the City Town Clerk and this always takes a while. The request is presented to the full council meeting and is either passed or rejected. And this process take a while it involve the investigation of the land or property requested to avoid conflicts.

References:

Mr Hassan Otieno Mbithi, Senior Cartographer – Nyanza Province, Ministry of Lands, 17/05/2011, Ardhi House

Steven Tuju, Land Agent, Tom and Associates Agents, 17/05/2011, Tom and Associates Agents Offices

100: Requests for city land development and zoning approvals are available on-line, or can be obtained within two days. The process for submitting land development or zoning applications is uniformly available; there are no delays for politically sensitive projects.

75:

50: Requests for city land development and zoning approvals take around two weeks to submit. Some delays may be experienced.

25:

0: Requests for city land development and zoning approvals take more than a month to submit. There may be persistent delays for politically sensitive requests.

175. In practice, citizens and businesses can apply for city land development and zoning approvals at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Mr Hassan Otieno Mbithi, Senior Cartographer – Nyanza Province, Ministry of Lands, 17/05/2011, Ardhi House

Steven Tuju, Land Agent, Tom and Associates Agents, 17/05/2011, Tom and Associates Agents Offices

100: Applications for city land development and zoning approvals are can be obtained at little cost, such as by mail, or on-line, and/or for a small administrative fee.

75:

50: Applications for city land development and zoning regulation impose a financial burden on citizens and businesses. Applications may require a visit to a specific office, such as a regional or national capital.

25:

0: Applications for city land development and zoning approvals impose a major financial burden on citizens and businesses.

176. In practice, the agency or entity responsible for managing the city land development and zoning process has sufficient staff and resources.

100 | 75 | 50 | 25 | 0

Comments:

There are no enough resources like vehicles which the staff can use for fieldwork. Replacement of the staff who have retired or died has not been prompt.

References:

Mr Hassan Otieno Mbithi, Senior Cartographer – Nyanza Province, Ministry of Lands, 17/05/2011, Ardhi House

Steven Tuju, Land Agent, Tom and Associates Agents, 17/05/2011, Tom and Associates Agents Offices

100: The agency or entity responsible for managing the city land development and zoning process has sufficient staff and resources to fulfill its basic mandate.

75:

50: The agency or entity has limited staff and resources, or staff without necessary qualifications and resources to fulfill its basic mandate.

25:

0: The agency or entity has no staff and resources, or such limited staff and resources that the agency or entity is clearly unqualified to fulfill its mandate.

177. In practice, bringing a zoning or land development dispute to court is affordable for the average citizen or business.

100 | 75 | 50 | **25** | 0

Comments:

The cost of litigation in the Kenyan court is expensive to the common citizen. It costs Kenya Shillings 40,000.00 for an individual to a civil case through an advocate of the court. It is also not easy for an individual to open up a case without an advocate in court.

References:

Mr Hassan Otieno Mbithi, Senior Cartographer – Nyanza Province, Ministry of Lands, 17/05/2011, Ardhi House

Steven Tuju, Land Agent, Tom and Associates Agents, 17/05/2011, Tom and Associates Agents Offices

100: In most cases, bringing a case to court is an affordable option to citizens and businesses seeking to resolve zoning or land development disputes.

75:

50: In some cases, bringing a dispute to court is not an affordable option to citizens or businesses seeking to resolve zoning or land development disputes.

25:

0: The prohibitive cost of utilizing the court prevents citizens or businesses from resolving zoning or land development disputes.
