

Overall Score:

56 - Very Weak

Legal Framework Score:

61 - Weak

Actual Implementation Score:

47 - Very Weak

Category 1. City Information Transparency

1.1. ³⁹City 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?

50

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

Yes

No

Comments:

There were no documented cases during the study period as from the above sources.but there were cases of harassment and intimidation especially by top management and other prominent personnel to journalists which were not documented.

References:

Interview with Journalists:

1.Joseph Akwiri, Journalist, Baraka FM, 19th May 2011,Baraka FM offices Cannon Towers.

2.Mwakera Mwajefa, Editor,Nation Media Group,21st May 2011,Nation House, Nkrumah Road.

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:

There were no documented cases but there were threats and attacks which were not documented during the study period as from the sources above. A very famous investigative reporter by the name Mohammed Ali of KTN was directly threatened by an undisclosed source while in Mombasa and told to go slow on his investigations.

References:

Interview with academics

1. Mr. Miano Kihu, Lecturer, Mombasa Polytechnic University College, 19th May 2011, Mombasa Polytechnic media department office.

2. Mr. Brian Otieno, Journalist, The Star newspaper, 20th May 2011, Mombasa Star offices, TSS Towers, Nkrumah Road.

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:

Media owners influence the publication of corruption related stories cases depending on whom it affects, as the stories may/will affect their friends/clients who are business partners.

The Government also hinders and provide unfavourable conditions to journalist investigating on corruption related cases.

References:

1. Brian Otieno, Journalist, The Star newspaper, 20th May 2011, Mombasa Star offices, TSS Towers Building, Nkrumah Road.

2. Mwakera Mwajefa, Journalist, The Daily Nation Newspaper, 21st May 2011, Nation offices, Nkrumah Road

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:

The Media Act 2007, mandates the Media Council of Kenya to keep a register of media owners which over the years has proven hard due to lack of disclosure laws

References:

Publication "The Media we want, The Kenya Media Vulnerabilities Study"

Chapter 3.0. Media Ownership and Consolidation in Kenya.

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:

The Media Act 2007, mandates the Media Council of Kenya to keep a register of media owners which over the years has proven hard due to lack of disclosure laws

References:

Publication "The Media we want, The Kenya Media Vulnerabilities Study"

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

Comments:

Some journalists do not adhere to strict professional practices because of various incentives given to them by victims of their stories which is the main problem in Kenya, some are compromised and they are also part of these tycoons.

They also fail to adhere to strict code of conduct due to the low salaries while the incentives offered to them are quite high making them irresistible.

For example, investigative reporters especially on drug tycoons at the Coast are easily lured by the tycoons huge sums of money hence end up not adhering to strict, professional practices.

References:

1. Anthony Kitimo, Correspondent, Daily Nation Newspaper, 21st May 2011, Mombasa Trade Center.

2. Joseph Akwiri, Reporter, Baraka FM, 19th May 2011, Baraka FM offices, Cannon Towers Moi Avenue

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:

The media practitioners enjoy almost absolute freedom in covering local news, though freedom is relative, they enjoy exclusivity.

References:

1. Joseph Akwiri, Reporter, Baraka FM, 19th May 2011, Baraka offices Cannon Towers, Moi Avenue.

2. Maureen Budi, Journalist, The Star newspaper, 20th May 2011, Mombasa Star offices, TSS Towers building Nkrumah Road

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?

33

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

Yes

No

References:

The constitution of Kenya

Chapter 4 Bill of Rights

Part 2 Rights and Fundamental Freedoms

Article 35 Access to information

1 (b) which states that Every citizen has the right of access to information held by another person and required for the exercise or protection of any right or fundamental freedom.

<http://www.icj-kenya.org>

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 formal procedure/process of appeal for rejected information requests.

References:

Abdalla Mwambanda, Director of Social Services

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:

City government information has been used by the officials to conceal facts of the ongoing at the city government, one can get information but through non-formal structures

References:

There is no known established institutional mechanism through which public can request for records

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 ?

25

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

100 | 75 | 50 | 25 | 0

Comments:

Responses to access information by the city government to the public depends on whom you are, whom you know and the urgency of the information.

References:

1. Abdalla Mwambanda, Director of Social Services, Municipal Council of Mombasa, 2nd June 2011, Social Services Department office, Town Hall
2. George Wandera, Consultant/Lecturer, Mt. Kenya University, 26th May 2011, Castle Royal 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. 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 records range between Kenya shillings.300-500 which to some citizens may be a financial burden.

References:

1. Abdalla Mwambanda, Director of Social Services, Municipal Council of Mombasa, 2nd June 2011, Social Services Department office, Town Hall
2. George Wandera, Consultant/Lecturer, Mt. Kenya University, 26th May 2011, Castle Royal Hotel

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:

The Municipal Council of Mombasa has no system of appeals to access information requests

References:

1. Abdalla Mwambanda, Director of Social Services, Municipal Council of Mombasa, 2nd June 2011, Social Services Department office, Town Hall
2. George Wandera, Consultant/Lecturer, Mt. Kenya University, 26th May 2011, Castle Royal Hotel

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

Comments:

There is no form of appeal therefore we could not specify the cost

References:

1. Abdalla Mwambanda, Director of Social Services, Municipal Council of Mombasa, 2nd June 2011, Social Services Department office, Town Hall
2. George Wandera, Consultant/Lecturer, Mt. Kenya University, 26th May 2011, Castle Royal Hotel

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:

Depending on the nature of service provision, they give vague reasons and play hard. For example, some information regarding the executive officials at the city government are mostly denied access to and no reasons are given to that or they are cited as confidential.

References:

1. Abdalla Mwambanda, Director of Social Services, Municipal Council of Mombasa, 2nd June 2011, Social Services Department office, Town Hall
2. George Wandera, Consultant/Lecturer, Mt. Kenya University, 26th May 2011, Castle Royal Hotel

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?

50

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

Yes | **No**

Comments:

Through the Local Authority Service Delivery Action Plan (LASDAP), there is regular involvement of local citizens and the municipal council where they share and exchange ideas and information is proactively provided to the public

References:

1. Abdalla Mwambanda, Director of Social Services, Municipal Council of Mombasa, 2nd June 2011, Social Services Department office, Town Hall
2. George Wandera, Consultant/Lecturer, Mt. Kenya University, 26th May 2011, Castle Royal Hotel

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 | 50 | 25 | 0

Comments:

They participate through the LASDAP initiative where they conduct open forums and seminars between the public and the council.

References:

1. Abdalla Mwambanda, Director of Social Services, Municipal Council of Mombasa, 2nd June 2011, Social Services Department office, Town Hall
2. George Wandera, Consultant/Lecturer, Mt. Kenya University, 26th May 2011, Castle Royal Hotel

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.

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

Comments:

The by-laws are there but are rarely adhered to.

References:

Local Government Act Cap 265 part (3) Constitution of Local Authority Municipal Councils,Section 14,Election of mayor sub section (2) which states that "On the election of the mayor,the outgoing mayor shall preside and if the outgoing mayor is a candidate for re-election,the councilors present shall elect s chairman from among themselves who shall preside for the purpose of such elections.

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?

50

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

Yes | No

Comments:

The fact that the Local Government minister is involved in the nomination of a chairperson,definitely the elections of other members will tend to be in favor of one party.

References:

Local Government Act Cap 265, Part III Constitution of Local Authorities, Section 26 and 30
Section 26 1 (b) states The Minister is provided in this sub section to nominate councilors
Section 30 (1) states "The Minister is provided by this by-laws to nominate the chairman of a county/town council.

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

Comments:

Appointments are made based on political considerations i.e people with vested interests.

References:

Interviews.

1. Government official

Kenneth Arana, Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Municipal Legal Offices.

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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

Comments:

The agency has no full time staff as some of them are not fully qualified to carry out their mandate. For instance, most of these staff are politically appointed and there ways of carry out their duties are politically directed and with a lot of favoritism.

References:

1. Government official
Kenneth Arana, Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Municipal Legal Offices.

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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:

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

References:

1. Government official
Kenneth Arana, Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Municipal Legal Offices.

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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:

The agency incorporation with Resident Magistrates court within or nearest to the area of the local authority penalizes offenders.

For example, during the last mayor's election, one of the councillors was disqualified from voting due to his improper conduct. Also during the councillors last elections, a few voters were disqualified from voting due double registration which is an offence.

References:

1. Government official

Kenneth Arana, Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Municipal Legal Offices.

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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:

People register and there is time for verification of names and errors are corrected before voting.

References:

1. Government official

Kenneth Arana, Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Municipal Legal Offices.

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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

References:

Local Government Act Cap 265 Part IV Local Government Election and Membership (Elections and Membership) Section 61 (1) states "If the validity of an election to a local authority under this Act is brought into question by any person qualified either to be elected or to vote at the election or by the returning officer on any grounds or for any cause whatsoever, that person or the returning officer as the case may be, may at anytime within fifteen days after the publication of the results of the elections apply to a Resident Magistrates court within or nearest to the area of the Local Authority to set the election aside.

61 (3) If the elections is declared void, a new election shall be held.

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:

Appeals are influenced and the courts are compromised. Councillors have major links with tycoons who protect them. Appealing candidates are intimidated and harassed e.g their projects at the ward level might suffer financial constraints.

The score is 50 because

1. The 2007 General elections were marred by cases of rigging which led to appeals from voters and candidates, some cases were delayed while others were dealt with promptly resulting into a repeat of the election process for both members of parliament and civic leaders e.g in civic elections in Malindi, a nominated councilor had been nominated but there was an appeal which resulted to a halt for the swearing in of the councilor until the case was heard and later the councilor was sworn in after the court battle was over.

2. In most cases, elections appeals were tampered with resulting to incomplete investigations and some of the plaintiffs surrendering due to harassment and being awarded huge sums of money.

References:

1. Government official

Kenneth Arana, Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Municipal Legal Offices.

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

3. Councilor Lilian Odera, Timbwani Ward, Likoni Constituency, 26th May 2011, Castle Royal Hotel

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:

The security officers are neutral but to some extent they are at times compromised so as to get further trainings for promotions and other incentives including bribery.

For instance, during the last elections, we could see that the military forces had taken sides with the government and to some extent with the city government executive officials and as a result a lot of opposing candidates and their supporters were publicly harassed and intimidated.

At other times, the military and security officers remained neutral and even to some extent publicly encouraged fair elections as noted in most parts of Mombasa Island during the last elections of civic leaders.

References:

1. Government official

Kenneth Arana, Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Municipal Legal Offices.

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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?

75

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:

Campaign activities are generally possible in different locations but encounter obstructions in some areas e.g.in the election of a Councillor within the ward,opposing candidates in their areas create unfriendly/hostile environment for others.

For instance, during the last civic election, there were cases of supporters from different camps fighting as a result of a civic leader campaigning in another civic leader's area (Chaani Sub-location). There were also many other cases of such reported both nationally and at the city level during the last civic election.

There were also cases of civic leaders campaigning freely in their opponents' areas as clearly illustrated in the campaigns of a civic leader at Maweni in Likoni where she campaigned without harassment and intimidation from her opponent's supporters.

References:

1.Government official
Kenneth Arana,Legal Officer,Municipal Council of Mombasa,2nd June 2011,Municipal Legal Offices.

2.Academics
Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy offices near Mombasa Law Courts

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:

During the specific study period, there were no organized election related violence but a lot of organized election related violence was hugely experienced during the last election in 27.

References:

1. Government official
Kenneth Arana, Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Municipal Legal Offices.

2. Academics
Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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

Comments:

At the city level there is no such provision while at the National level the bill is in the 3rd stage.

References:

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa 6th June 2011 Town hall offices

2. Academics
Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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**

Comments:

There is support but it is not explicitly regulated by laws or regulations, neither are there limits on this kind of support.

Only individual donations to political parties have limits of Kshs 5 million.

References:

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa 6th June 2011 Town hall offices

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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**

Comments:

There are no limits on corporate donations to individual political candidates.

References:

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa 6th June 2011 Town hall offices

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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**

Comments:

There are no requirements for the disclosure of donations to individual candidates, it is only applicable to political parties provided in the political parties act.

References:

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa 6th June 2011 Town hall offices

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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**

Comments:

There is independent auditing for political parties as stipulated in the political parties act but not for individual political candidates.

References:

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa 6th June 2011 Town hall offices

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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**

Comments:

There is no entity that monitors the financing of individual political candidate's campaigns.

References:

1.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa 6th June 2011 Town hall offices

2.Academics

Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy offices near Mombasa Law Courts



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**

Comments:

There are no limits hence individuals donate willingly depending on their financial capability resulting to huge donations from others.

References:

1.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa 6th June 2011 Town hall offices

2.Academics

Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy offices near Mombasa Law Courts

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

Comments:

There are no limits to corporate donations to individual political candidates hence corporate bodies donate freely and willingly without restrictions.

References:

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa 6th June 2011 Town hall offices

2. Academics

Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy offices near Mombasa Law Courts

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:

Being no agency, therefore there is no monitoring of the financing of individual candidates' campaigns.

References:

1.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa 6th June 2011 Town hall offices

2.Academics

Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy offices near Mombasa Law Courts

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:

There is no agency thus the offenders are not subject to law enforcement.

References:

1.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa 6th June 2011 Town hall offices

2.Academics

Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy offices near Mombasa Law Courts

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

Comments:

They are not subject to any regular random auditing.

References:

1.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa 6th June 2011 Town hall offices

2.Academics

Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy offices near Mombasa Law Courts

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

Comments:

Individual candidates have never published/disclosed their sources of funding and expenditures.

References:

1.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa 6th June 2011 Town hall offices

2.Academics

Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy offices near Mombasa Law Courts

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

Comments:

The financial records are there but they are not acquired nor made public.

References:

1.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa 6th June 2011 Town hall offices

2.Academics

Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy offices near Mombasa Law Courts

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

Comments:

The records being inaccessible and them not being for the public , there costs can not be determined neither can they be said to be free nor prohibitive.

References:

1.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa 6th June 2011 Town hall offices

2.Academics

Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy offices near Mombasa Law Courts

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. ⁵¹City Executive Accountability

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

81

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

100 | 75 | 50 | 25 | 0

Comments:

Mayors/Executive officials implement decisions made by Councillors.All these must be in writing and give formal explanations of all policy matters.

References:

1.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa,6th June 211.Town Hall offices.

2.Kenneth Arana,Municipal Legal Officer,Municipal Council of Mombasa 2nd June 2011,Town Hall Offices

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

References:

Civil Procedure Act Cap 21 Order 53 which states that 53. (1) A commission for the examination of any person may be issued by the High Court to any subordinate court or to any advocate, and by a subordinate court of the first or second class to any other subordinate court situate in a district other than the district in which the court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

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:

When possible violations are raised, the judiciary is aggressive in reviewing executive actions and it can void illegal or unconstitutional actions. e.g. The Town Clerk Mr. Tubman Otieno had awarded a tender to his ally illegally and was taken to court and the tender process after review was nullified.

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.

2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.

3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.

4. Kenneth Arana, Municipal Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall offices.

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:

Due to his position, he utilises only when there is no constitutional or legal requirement for official legislative action or approval e.g. he initiates projects.

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.
2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.
3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.
4. Kenneth Arana, Municipal Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall offices.

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?

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

Yes | No

References:

The Kenyan Constituion,Chapter 6 on Leadership and Integrity Article 75 on conduct of state officers clause 2 a) which states that a person who contravenes clause 1 or article 76,77 or 78 shall be subject to the applicable disciplinary procedure for the relevant office.

Kenyan Constitution Chapter 10 on Judiciary Part I on Judicial Authority and Legal system Article 159 on Judicial Authority clause 2 a) states that Justice shall be done to all irrespective of status.

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:

The Kenyan Constituion,Chapter 6 on Leadership and Integrity Article 75 on conduct of state officers clause 2 a) which states that a person who contravenes clause 1 or article 76,77 or 78 shall be subject to the applicable disciplinary procedure for the relevant office.

Kenyan Constitution Chapter 10 on Judiciary Part I on Judicial Authority and Legal system Article 159 on Judicial Authority clause 2 a) states that Justice shall be done to all irrespective of status.

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.

Comments:

Yes they are investigated and prosecuted but there are few exceptions where by the investigations started are not well concluded due to harrasment by those in power. The Mombasa Town Clerk (Mr.Tubman Otieno) was taken to court for engaging in corrupt practices through influencing the awarding of tenders to close friends who had been blacklisted.The case is still on and is fairing on badly to shoddy investigation and he might be cleared of the charges.

References:

- 1.Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy Offices.
- 2.Annette Mbogoh,Advocate,Kituo Cha Sheria,25th May 2011,Kituo Cha Sheria offices.
- 3.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa,6th June 2011,Town hall offices.
- 4 Kenneth Arana,Municipal Legal Officer.Municipal Council of Mombasa,2nd June 2011,Town hall offices.

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.

Comments:

Executive heads are investigated and prosecuted.

References:

- 1.Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy Offices.
- 2.Annette Mbogoh,Advocate,Kituo Cha Sheria,25th May 2011,Kituo Cha Sheria offices.
- 3.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa,6th June 2011,Town hall offices.
- 4 Kenneth Arana,Municipal Legal Officer.Municipal Council of Mombasa,2nd June 2011,Town hall offices.

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?

71

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

Yes

No

References:

Local Government Act Cap 265 Section 136. (1) Every officer employed by a local authority, whether under this Act or any other written law, including a public officer seconded to a local authority, shall at such times during the continuance of his office, or within three months of his ceasing to hold office, and in such manner as the local authority directs, make out and deliver to the local authority, or as it directs, a true account in writing of all money and property committed to his charge and of his receipts and payments, with vouchers and other documents and records supporting the entries therein, and a list of persons from whom or to whom money is due in connexion with his office, showing the amount due from or to each.

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

References:

Public Officer Ethics Act, 2003, Part 3 on General code of Conduct and Ethics, Article 11 on no improper enrichment clause 3 which states that
" A public officer may accept a gift given to him in his official capacity but the gift is a non monetary that does not exceed the value prescribed by the regulation, such a gift shall be deemed to be a gift to the public officer's organization"

weblink:

www.marsgroupkenya.org/.../Kenya_PublicOfficer_Ethics_Act_23.pdf

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

References:

Kenyan Constitution, Chapter 12 on Public Finance, part 7 on Financial Officers and Institutions Article 229 on Auditor General, section 4 sub section

(a-h) Within 6 months after the end of each financial year, the Auditor General shall audit and report in respect of that financial year on (a) The accounts of National and County Governments (h) The account of any other entity that Legislation require the Auditor General to audit.

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

References:

Public Procurement and Disposal Act
Part IV General Procurement Rules

Article 33. on Limitation on Contracts with employers etc

- (1) Except as expressly allowed under the regulations, a procuring entity shall not enter into a contract for a procurement with –
- (a) an employee of the procuring entity or a member of a board or committee of the procuring entity;
 - (b) a Minister, public servant or a member of a board or committee of the Government or any department of the Government or a person appointed to any position by the President or a Minister; or
 - (c) a person, including a corporation, who is related to a person described in paragraph (a) or (b).
- (2) Whether a person is related to another person for the purpose of subsection (1)(c) shall be determined in accordance with the regulations.

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:

Some executive members are given more than the required amount and and no one has ever forwarded any amount. For example, there was a case where an executive official was gifted with a huge sum of money, accepted it, it was known by his superiors but no action was taken against him. (they could not disclose the person nor the amount gifted).

References:

- 1.Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy Offices.
- 2.Annette Mbogoh,Advocate,Kituo Cha Sheria,25th May 2011,Kituo Cha Sheria offices.
- 3.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa,6th June 2011,Town hall offices.
- 4 Kenneth Arana,Municipal Legal Officer.Municipal Council of Mombasa,2nd June 2011,Town hall offices.

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 law is generally applied though few exemptions exist e.g a tender was awarded to an executive official's relative who under quoted and later requested for more funds above the other bidders.

There was another case where a great ally of a top executive official at the city council was awarded a tender without a proper procurement process. (could not be disclosed due to fear).

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.
2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.
3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.
4. Kenneth Arana, Municipal Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall offices.

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:

Forms are filled and taken to Nairobi once a year i.e within 6 months after the end of each financial year.

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.
2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.
3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.
4. Kenneth Arana, Municipal Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall offices.

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:

The form is filed but not available to the public.

References:

Official Secrets Act which bars state officers/public officials from providing sensitive information.

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:

There is no accessibility of these records therefore there is no time period for such.

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.

2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.

3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.

4. Kenneth Arana, Municipal Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall offices.

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:

Since the records are not accessible, their cost cannot be said to be free nor prohibitive.

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.
2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.
3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.
4. Kenneth Arana, Municipal Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall 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/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?

100

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

Yes | No

Comments:

The by-laws passed by the city council must be satisfied by the Judiciary to ensure they conform to the supreme laws of the land.

References:

Civil Procedure Act Cap 21 Order 53 which states that53. (1) A commission for the examination of any person may be issued by the High Court to any subordinate court or to any advocate, and by a subordinate court of the first or second class to any other subordinate court situate in a district other than the district in which the court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

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:

The Judiciary aggressively reviews laws passed by the city council and can void illegal and unconstitutional actions e.g recently the Kenya Ports Authority went to court trying to block the city council from passing by laws that they thought unfavorable to them.

References:

- 1.Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy Offices.
- 2.Annette Mbogoh,Advocate,Kituo Cha Sheria,25th May 2011,Kituo Cha Sheria offices.
- 3.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa,6th June 2011,Town hall offices.
- 4 Kenneth Arana,Municipal Legal Officer.Municipal Council of Mombasa,2nd June 2011,Town hall offices.

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

Comments:

All members of the city council are subject to criminal proceedings, no member is immune to the law

References:

The Kenyan Constitution, Chapter 6 on Leadership and Integrity Article 75 on conduct of state officers clause 2 a) which states that a person who contravenes clause 1 or article 76, 77 or 78 shall be subject to the applicable disciplinary procedure for the relevant office.

Kenyan Constitution Chapter 10 on Judiciary Part I on Judicial Authority and Legal system Article 159 on Judicial Authority clause 2 a) states that Justice shall be done to all irrespective of status.

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?

50

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

Yes

No

References:

Local Government Act Cap 265 Part VIII on Offences under Status and duties of certain officers Article 136 on Accountability of officers section (1) states that

Every officer employed by a local authority, whether under this Act or any other written law, including a public officer seconded to a local authority, shall at such times during the continuance of his office, or within three months of his ceasing to hold office, and in such manner as the local authority directs, make out and deliver to the local authority, or as it directs, a true account in writing of all money and property committed to his charge and of his receipts and payments, with vouchers and other documents and records supporting the entries therein, and a list of persons from whom or to whom money is due in connexion with his office, showing the amount due from or to each.

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

References:

Public Officers Ethics Act 2003 Part III on General code of Conduct and Ethics, Article 11 (3) A public officer may accept a gift given to him in his official capacity but, unless the gift is non-monetary gift that does not exceed the value prescribed by regulation, such a gift shall be deemed to be a gift to the public officers organization.

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

References:

Public Procurement and Disposal Act Chapter 412 C, Part VI General Procurement Rules, Article 33 on Limitation on Contracts with employers section 1(a,b,c) and 2

33. (1) Except as expressly allowed under the regulations, a procuring entity shall not enter into a contract for a procurement with

(a) an employee of the procuring entity or a member of a board or committee of the procuring entity;

(b) a Minister, public servant or a member of a board or committee of the Government or any department of the Government or a person appointed to any position by the President or a Minister; or

(c) a person, including a corporation, who is related to a person described in paragraph (a) or (b).

(2) Whether a person is related to another person for the purpose of subsection (1)(c) shall be determined in accordance with the regulations.

web-link:

www.marsgroupkenya.org/.../LawsandConventions/Kenya_Public_Procurement_and_Disposal_Act_25.pdf

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:

The Constitution of Kenya Chapter 12 on Public Finance Part 7 Financial Officers and Institutions. Article 229 on Auditor General section 4 Within 6 months after the end of each financial year, the Auditor General shall audit and report in respect of that financial year (a) on the accounts of the national and county governments and (h) the accounts of any other entity that legislation requires the Auditor General.

Local Government Act Cap 265 Article 136 (1)

(1) Every officer employed by a local authority, whether under this Act or any other written law, including a public officer seconded to a local authority, shall at such times during the continuance of his office, or within three months of his ceasing to hold office, and in such manner as the local authority directs, make out and deliver to the local authority, or as it directs, a true account in writing of all money and property committed to his charge and of his receipts and payments, with vouchers and other documents and records supporting the entries therein, and a list of persons from whom or to whom money is due in connexion with his office, showing the amount due from or to each.

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:

Regulations are in place but they are not effective. For example, there are some officials both the executives and their minors who receive huge sums of money having in mind the various regulations governing such. There were many cases as such but our sources could not disclose them due to fear.

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.

2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.

3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.

4. Kenneth Arana, Municipal Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall offices.

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:

They are not effective.

For example, a prominent cabinet minister influenced the granting of concessions to close family member.

There have also been some instances where some executive officials have granted projects to their relatives and family members without proper procurement processes.

References:

1.Yusuf Abubakar,Advocate,Timamy Advocates,25th May 2011,Timamy Offices.

2.Annette Mbogoh,Advocate,Kituo Cha Sheria,25th May 2011,Kituo Cha Sheria offices.

3.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa,6th June 2011,Town hall offices.

4 Kenneth Arana,Municipal Legal Officer.Municipal Council of Mombasa,2nd June 2011,Town hall offices.

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.

Comments:

Asset disclosure are at least subject to random auditing.

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.
2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.
3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.
4. Kenneth Arana, Municipal Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall offices.

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**

References:

Public Officers Ethics Act Part IV Declaration of Income Assets and Liabilities Article 26 (1) Every public officer shall annually submit to the responsible commission for the public officer a declaration of the income, assets and liabilities of himself, spouse (s) and his dependent children under the age of 18 years.
Article 30 (2) No person shall, allow access or acquire information collected under this part and held by the commission except in accordance with this section.

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:

Records cannot be accessed by the public unless one is an authorized staff

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.

2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.

3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.

4. Kenneth Arana, Municipal Legal Officer. Municipal Council of Mombasa, 2nd June 2011, Town hall 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 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:

To access such records can be prohibitive to most.

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.

2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.

3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.

4. Kenneth Arana, Municipal Legal Officer. Municipal Council of Mombasa, 2nd June 2011, Town hall 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 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?

33

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

Yes

No

References:

Local Government Act Cap 265 Part V on Meetings and Proceedings. Section 84 Admission of Press and Public

(1) Every meeting of a council shall, within the limits of available accommodation, be open to the public and to duly accredited representatives of any newspaper.

(2) The proceedings of any committee, including a committee of the whole council, or a joint committee shall not be open to the public or the press unless the council or councils appointing the committee or joint committee or the council in the case of a committee of the whole house resolve to admit the public and the press or one or other of them.

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 may be available sooner but there may be delays.

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.
2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.
3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.
4. Kenneth Arana, Municipal Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall 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 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:

Legislative records imposes a major financial burden e.g. fifty cents per 100 words.

References:

1. Yusuf Abubakar, Advocate, Timamy Advocates, 25th May 2011, Timamy Offices.
2. Annette Mbogoh, Advocate, Kituo Cha Sheria, 25th May 2011, Kituo Cha Sheria offices.
3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall offices.
4. Kenneth Arana, Municipal Legal Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall 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 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.

4.1. City Budget Processes

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

83

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

References:

Local Government Act Cap 265

part XV Financial Provisions

212. (1) Not less than fourteen days before the commencement of every financial year, the finance committee of every local authority shall present to the local authority detailed estimates of its income and expenditure during the forthcoming financial year, and the local authority, that is not a municipality, shall approve the same with or without amendments; in the case of a municipality the council shall either approve the same without amendments, or shall remit the estimates to the finance committee, for resubmission thereto by that committee:

Provided that in the case of the City Council of Nairobi

(i) the estimates shall be passed at a meeting of the council especially convened for the purpose, by a majority;

(ii) the estimates shall not be amended without prior consultation with the finance committee in reference to the proposed amendments

(8) A summary of all estimates prepared by the local authority may be published by the local authority in a local newspaper (if any) circulating in its area, or in such other manner as the local authority may direct.

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:

Local Government Act Cap 265 part XV on Financial Provision Article 231 sub section 4 which states that "A summary of all estimates approved by the Minister under this section, and of all estimates which did not require such approval, shall be recorded in the minutes of the local authority which prepared them or caused them to be prepared."

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**

Comments:

They do not publish the in year budget reports for the public's accessibility but for their own internal interests.

References:

As stipulated under the Local Government Act Cap 265 Part XV and XVII respectively, Section 212 and 228 1-3, there are two types of budget reports which include the budget report at the beginning of each financial year and the budget report at the end of each financial year.

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:

Local Government Act Cap 265 Part XVII on Accounts and Audit Section 228 sub section 1-3 which states that

1. Every local authority shall cause proper books and accounts to be kept and true and regular records to be entered therein of all transactions of the local authority

(2) Such accounts shall be kept so as to secure that sums raised by rates or otherwise or other sums received by the local authority are not applied to purposes to which such sums are not properly applicable or that sums so raised or received for specific purposes are not applied to other purposes, and the capital moneys are not applied to any other than a purpose to which capital moneys are properly applicable.

(3) Every local authority shall cause its accounts (including those relating to funds or property held by the local authority in trust) to be kept in such manner as to show in respect of the financial year to which accounts relate

(a) all receipts and payments of the local authority during the year; and
(b) any capital moneys due but not paid to or by the local authority in that year,

and, where the local authority is a municipal council, county council or town council, it shall cause such accounts to be kept in such manner as to show, in addition, in respect of the said financial year, any revenue and expenditure relating to revenue in respect of that year not received or paid in that year.

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

Comments:

This includes the citizen's budget among many others.

Local Authority Service Delivery Action Plans (LASDAPs) were introduced in all Local Authorities in 2002 with the intention of putting in place a participatory planning system, which would directly engage the citizenry in planning, implementing and monitoring service delivery projects in their communities through council funding

Lasdap, Governance and Service delivery

One of its initiatives undertaken in the area of governance include:

LA Budget Day

The Kenya Local Government Reform Programme (KLGRP) developed the concept of a Local Authority Budget Day during which Local Authorities are expected to present their budgets to the citizens in their jurisdiction and defend their performance. The first was successfully held on 28th June 2007 and a second was held in June 28. This is now an annual event held on the last Thursday of June.

References:

GOVERNMENT OF KENYA
MINISTRY OF LOCAL GOVERNMENT
KENYA LOCAL GOVERNMENT REFORM PROGRAMME
STUDY ON THE IMPACT OF THE LOCAL AUTHORITY
SERVICE DELIVERY ACTION PLAN
SEPTEMBER 2007

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

References:

The Constitution of Kenya Chapter 12 on Public Finance Part 6 on Control of Public Money Article 226 on Accounts and Audit of public entities Clause 1(a) which states that “An act of parliament shall provide for the keeping of financial records and the auditing of accounts of all governments and other public entities and prescribe other measures for securing efficient and transparent fiscal management.

Local Government Act Cap 265 section 231 sub section 1 and 2 which states

(1) The Minister may from time to time appoint one or more persons as Local Government Inspectors to conduct extraordinary inspections and examinations of the accounts and records of local authorities and an inspector so appointed may institute such inspection or examination (hereinafter referred to as an extraordinary inspection) into any aspect of the accounts and records of any local authority that he deems necessary.

(2) Where an inspector institutes an extraordinary inspection he shall notify the local authority concerned and the Controller and Auditor-General of the institution of such inspection.

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:

These budget proposals are made public through the notice boards at the council offices

References:

1. Professional Studies
GOVERNMENT OF KENYA
MINISTRY OF LOCAL GOVERNMENT
KENYA LOCAL GOVERNMENT REFORM PROGRAMME
STUDY ON THE IMPACT OF THE LOCAL AUTHORITY SERVICE DELIVERY ACTION PLAN
SEPTEMBER 2007
Prepared by:
Grace Lubaale, Elijah Agevi and Jobson Ngari
MPEREEZA ASSOCIATES
www.mpereeza.net

2. Government Official
John Njuguna, Chief Accountant, Municipal Council of Mombasa 2nd June 2011, Accounts Office.

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:

The enacted budget is published through the minutes which is only accessed by the public on request.

References:

1. Professional Studies
GOVERNMENT OF KENYA
MINISTRY OF LOCAL GOVERNMENT
KENYA LOCAL GOVERNMENT REFORM PROGRAMME
STUDY ON THE IMPACT OF THE LOCAL AUTHORITY SERVICE DELIVERY ACTION PLAN
SEPTEMBER 2007

Prepared by:

Grace Lubaale, Elijah Agevi and Jobson Ngari
MPEREEZA ASSOCIATES
www.mpereeza.net

2. Government Official

John Njuguna, Chief Accountant, Municipal Council of Mombasa 2nd June 2011, Accounts Office.

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

Comments:

They are published and recorded at the accounts department notice board.

Yes there is no law that stipulates that, the in-year budget report are supposed to be published but in practice, the accountants put and keep the records for the sake of other budgets including the end of year budget reports to avoid inconveniences later. The in-year budget reports are also recorded for the sake of other key executive officials, as they would like to know what was spent and the income got in between the year or evenly on monthly basis.

References:

1.Government Official
John Njuguna,Chief Accountant,Municipal Council of Mombasa 2nd June 2011 ,Accounts Office.

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:

Only accessible at the Provincial level and at city council meetings where the public can get access to the published end-of-year reports at a cost.

During the meeting, the report is summarized or even read as a whole to the people attendance.

References:

1.Government Official
John Njuguna,Chief Accountant,Municipal Council of Mombasa 2nd June 2011 ,Accounts Office.

2.Mrs.Ngoa,Deputy Town Clerk,Municipal Council of Mombasa,6th June 2011 ,Town Hall Offices

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:

There are organized meetings and seminars between the finance committee's at the municipal council and the public on matters concerning the citizen's budget and the other budget regularly held at the Town hall.

References:

1.Professional Studies

GOVERNMENT OF KENYA
MINISTRY OF LOCAL GOVERNMENT
KENYA LOCAL GOVERNMENT REFORM PROGRAMME
STUDY ON THE IMPACT OF THE LOCAL AUTHORITY SERVICE DELIVERY ACTION PLAN
SEPTEMBER 2007
Prepared by:
Grace Lubaale, Elijah Agevi and Jobson Ngari
MPEREEZA ASSOCIATES
www.mpereeza.net

2. Government Official
John Njuguna, Chief Accountant, Municipal Council of Mombasa 2nd June 2011, Accounts Office.

3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town Hall Offices

www.nta.or.ke/nta-reports/citizen-report.../51-mombasa-latf-march-2010

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

Comments:

The audits of the council are published once a year.

References:

1. Professional Studies
GOVERNMENT OF KENYA
MINISTRY OF LOCAL GOVERNMENT
KENYA LOCAL GOVERNMENT REFORM PROGRAMME
STUDY ON THE IMPACT OF THE LOCAL AUTHORITY SERVICE DELIVERY ACTION PLAN
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2. Government Official
John Njuguna, Chief Accountant, Municipal Council of Mombasa 2nd June 2011, Accounts Office.

3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town Hall Offices

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.

100 | 75 | 50 | 25 | 0

Comments:

The public has access to budget formulation processes and records of budget proceedings through the meetings held by the municipal finance committees at the Town hall offices.

References:

1. Government Official
John Njuguna, Chief Accountant, Municipal Council of Mombasa 2nd June 2011, Accounts Office.
2. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town Hall Offices

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?

63

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

Yes | No

Comments:

This is captured in the new constitution, before that, new constitution came into force the Local Authority Transfer Fund Act had provided for citizen participation in city budget, their input would however not change the decision of the council

References:

Constitution of Kenya. Art 201 (a) The following principles shall guide all aspects of public finance in the Republic (a) there shall be openness and accountability, including public participation in financial matters;

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:

Citizens in the city/municipality usually act through the CSOs or directly provides information or commentary to the budget debate through a formal process

References:

1. Professional Studies
GOVERNMENT OF KENYA
MINISTRY OF LOCAL GOVERNMENT
KENYA LOCAL GOVERNMENT REFORM PROGRAMME
STUDY ON THE IMPACT OF THE LOCAL AUTHORITY SERVICE DELIVERY ACTION PLAN
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2. Government Official
John Njuguna, Chief Accountant, Municipal Council of Mombasa 2nd June 2011, Accounts Office.

3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town Hall Offices

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?

100

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

Yes

No

References:

The Kenyan Constitution, Chapter 12 on Public Finance
Part 4 on Revenue Allocation, Article 219 on Transfer of equitable share which states that “A county’s share of revenue raised by the national government shall be transferred to the county without undue delay and without deduction, except when the transfer has been stopped under Article 225.

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?

75

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

100

75

50

25

0

Comments:

As stipulated in the Kenyan Constitution, the city government receives its share of funds from the central government, so that the implementation of local projects is not delayed.

References:

1. Professional Studies
GOVERNMENT OF KENYA
MINISTRY OF LOCAL GOVERNMENT
KENYA LOCAL GOVERNMENT REFORM PROGRAMME
STUDY ON THE IMPACT OF THE LOCAL AUTHORITY SERVICE DELIVERY ACTION PLAN
SEPTEMBER 2007
Prepared by:
Grace Lubaale, Elijah Agevi and Jobson Ngari
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2. Government Official
John Njuguna, Chief Accountant, Municipal Council of Mombasa 2nd June 2011, Accounts Office.

3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town Hall Offices

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

Comments:

The public can access information about the transfer of funds from the national to the city government at a reasonable period as the information is readily available during parliamentary proceedings which are aired live on local televisions and on-line.

References:

1. Government Official
John Njuguna, Chief Accountant, Municipal Council of Mombasa 2nd June 2011, Accounts Office.
2. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town Hall Offices

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 information about the transfer of funds from the national to the city level at a reasonable cost as they free vie local television stations, local dailies and on-line.

References:

1. Professional Studies
GOVERNMENT OF KENYA

2. Government Official

John Njuguna, Chief Accountant, Municipal Council of Mombasa 2nd June 2011, Accounts Office.

3. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town Hall Offices

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.

100 | 75 | 50 | 25 | 0

Comments:

At the city level, there is a fully functioning committee formed to assist and recommend changes in the budgetary allocations to the local chief executive as stipulated in the Local Government Act cap 265, part 6 on Committee, Joint Committees and Sub-Committees Article 92 on Financial Committees, clause 1 which states that,

" A municipal council and a county council or town council shall appoint, and the Minister may require any other local authority to appoint, from time to time, a finance committee consisting of the chairman and the vice-chairman of the local authority, who shall be ex officio members of the finance committee, and such number of other members of the local authority as it thinks fit for regulating and controlling the finances of that local authority, and shall fix the term of office of the members of the committee: Provided that an urban council, and any other local authority with the approval of the Minister, may assign to the committee appointed under this section, the regulation and management of such general purpose or purposes as the local authority may determine in addition to regulating and controlling the finances of that local authority and such committee shall thereupon be the finance and general purposes committee of that local authority and in this Act or any other written law any reference to the finance committee of a local authority shall in any such case be construed as a reference to the finance and general purposes committee appointed under this subsection."

References:

1. Government Official

John Njuguna, Chief Accountant, Municipal Council of Mombasa 2nd June 2011, Accounts Office.

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:

The budget has to pass through the council assembly and he is the chair.

References:

Local Governemnt Act, CAP 265 Art 130-Financial matters are the responsibility of the treasurer and finance committee (art 92)

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

Comments:

Budgets of the city government are approved at full members assembly

References:

92. (1) A municipal council and a county council or town council shall appoint, and the Minister may require any other local authority to appoint, from time to time, a finance committee consisting of the chairman and the vice-chairman of the local authority, who shall be ex-officio members of the finance committee, and such number of other members of the local authority as it thinks fit for regulating and controlling the finances of that local authority, and shall fix the term of office of the members of the committee:

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:

Members of the city council are able to amend the budget whenever necessary.

References:

1. Government Official
John Njuguna, Chief Accountant, Municipal Council of Mombasa 2nd June 2011, Accounts Office.

2. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town Hall Offices

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?

75

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

Yes | No

References:

Procurement and Disposal Act 2005, Part 4 on Open Tendering Section 54 on Advertisement, sub-section 1 and 2 which states that,

" The procuring entity shall take such steps as are reasonable to bring the invitation to tender to the attention of those who may wish to submit tenders.

If the estimated value of the goods, works or services being procured is equal to, or more than the prescribed threshold for national advertising, the procuring entity shall advertise, at least twice in a newspaper of general nationwide circulation which has been regularly published for at least two years before the date of issue of the advertisement, and on its website in instances where the procuring entity has a website, and the advertisement shall also be posted at any conspicuous place reserved for this purpose in the premises of the procuring entity as certified by the head of the procurement unit."

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

References:

Procurement and Disposal Act

part IX – Debarment from participating In procurement proceedings

115. (1) The Director-General, with the approval of the Advisory Board, may debar a person from participating in procurement proceedings on the ground that the person –

- (a) has committed an offence under this Act;
- (b) has committed an offence relating to procurement under any Act;
- (c) has breached a contract for a procurement by a public entity;
- (d) has, in procurement proceedings, given false information about his qualifications; or
- (e) has refused to enter into a written contract as required under section 68.

(2) The Director-General, with the approval of the Advisory Board, may also debar a person from participating in procurement proceedings on a prescribed ground.

(3) A debarment under this section shall be for a period of time of not less than five years, as may be specified by the Director-General.

www.kenyalaw.org

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

References:

Public Procurement and Disposal Act, Part 7 on Administrative Review Of Procurement Proceedings , Section 93 (1) which states that,

” Subject to the provisions of this Part, any candidate who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the regulations, may seek administrative review as in such manner as may be prescribed.”

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

References:

Procurement and Disposal Act, Part 6(b) on Direct Procurement Section 74(b)sub-section 1,2,3

” (1) A procuring entity may use direct procurement as allowed under subsection (2) or (3) as long as the purpose is not to avoid competition.

(2) A procuring entity may use direct procurement if the following are satisfied-

(a) there is only one person who can supply the goods, works or services being procured; and
(b) there is no reasonable alternative or substitute for the goods, works or services.

(3) A procuring entity may use direct procurement if the following are satisfied-

(a) there is an urgent need for the goods, works or services being procured;
(b) because of the urgency the other available methods of procurement are impractical; and
(c) the circumstances that gave rise to the urgency were not foreseeable and were not the result of dilatory conduct on the part of the procuring entity.

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:

They are made open for public competition but just for formalities as the tenders have already been awarded to individuals. There was a case where a bid called by the city government had already been awarded to a supplier even before being made public. Still the bid was made public so as to seem it was fair. Our sources could neither disclose what the bid was for nor the bidder. We could not score it as “0” because it was not a regular practice as some bids follow the process.

References:

Government Official

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall Offices

2. Mr. James Njogu, City procurement Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall

Academics

1. Mr. Roland Ebole, Legal Officer, Transparency International, 18th May 2011, Castle Royal Hotel

Civil Society

1. Mr. Robert Makau, Supplier, Tudor Lobby Group, 18th May 2011, Cafe Mondolina

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:

A system of blacklisting is in place but it has flaws e.g. Kasamba Suppliers had been blacklisted but still participated in other tendering processes.

References:

Government Official

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall Offices

2. Mr. James Njogu, City procurement Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall

Academics

1. Mr. Roland Ebole, Legal Officer, Transparency International, 18th May 2011, Castle Royal Hotel

Civil Society

1. Mr. Robert Makau, Supplier, Tudor Lobby Group, 18th May 2011, Cafe Mondolina

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:

It happens mostly in emergency situations and justifications are clearly provided for.

References:

Government Official

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall Offices

2. Mr. James Njogu, City procurement Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall

Academics

1. Mr. Roland Ebole, Legal Officer, Transparency International, 18th May 2011, Castle Royal Hotel

Civil Society

1. Mr. Robert Makau, Supplier, Tudor Lobby Group, 18th May 2011, Cafe Mondolina

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

References:

The Kenyan Constitution, Chapter 4 on Bill of Rights, Part 2 on Rights and Fundamental freedoms section 35 1(b) which states that "every citizen has the right of access to information held by another person and required for the exercise or protection of any right or fundamental freedom"

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

References:

Procurement and Disposal Act 2005, part 5 on Open tendering, Section 55 on Time for preparing Tenders
55. (1) The time allowed for the preparation of tenders must not be less than the minimum period of time prescribed for the purpose of this subsection.
(2) For the purpose of this section, the time allowed for the preparation of tenders is the period of time between whatever steps the procuring entity takes to bring the invitation to tender to the attention of those who may wish to submit tenders and the deadline for submitting tenders.
(3) If the tender documents are amended under section 53 when the time remaining before the deadline for submitting tenders is less than one third of the time allowed for the preparation of tenders, the procuring entity shall extend the deadline as necessary to allow the amendment of the tender documents to be taken into account in the preparation or amendment of tenders.

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

References:

Procurement and Disposal Act 2005, Part 5 on Open tendering, section 67 on notification of award of contract
67. (1) Before the expiry of the period during which tenders must remain valid, the procuring entity shall notify the person submitting the successful tender that his tender has been accepted.

(2) At the same time as the person submitting the successful tender is notified, the procuring entity shall notify all other persons submitting tenders that their tenders were not successful.

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:

Getting access to the records depends on whom you are, whom you know hence a determining factor on the time to access the records.

References:

Government Official

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall Offices

2. Mr. James Njogu, City procurement Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall

Academics

1. Mr. Roland Ebole, Legal Officer, Transparency International, 18th May 2011, Castle Royal Hotel

Civil Society

1. Mr. Robert Makau, Supplier, Tudor Lobby Group, 18th May 2011, Cafe Mondolina

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:

For one to access these records, one must be ready to part with Kenya shillings 300-500 which to some the cost is prohibitive.

References:

Government Official

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall Offices

2. Mr. James Njogu, City procurement Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall

Academics

1. Mr. Roland Ebole, Legal Officer, Transparency International, 18th May 2011, Castle Royal Hotel

Civil Society

1. Mr. Robert Makau, Supplier, Tudor Lobby Group, 18th May 2011, Cafe Mondolina

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?

81

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

Yes

No

Comments:

This body merges together with Kenya Institute of Suppliers and Management to train officials.

References:

Public Procurement Act 2005 , Part II – Bodies Involved In The Regulation Of Public procurement
A – Public Procurement Oversight Authority

c) to assist in the implementation and operation of the public procurement system and in doing so-

(i) to prepare and distribute manuals and standard documents

to be used in connection with procurement by public entities;

(ii) to provide advice and assistance to procuring entities;

(iii) to develop, promote and support the training and professional development of persons involved in procurement.

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:

They are advertised in websites and newspapers not less than two weeks.

References:

Government Official

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall Offices

2. Mr. James Njogu, City procurement Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall

Academics

1. Mr. Roland Ebole, Legal Officer, Transparency International, 18th May 2011, Castle Royal Hotel

Civil Society

1. Mr. Robert Makau, Supplier, Tudor Lobby Group, 18th May 2011, Cafe Mondolina

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 advertisements 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:

Procurement and Disposal Act 2005

part II – Bodies Involved In The Regulation of Public Procurement

A – Public Procurement Oversight Authority

8. (1) The Public Procurement Oversight Authority is hereby established as a body corporate.

(2) The Authority shall have all the powers necessary or expedient for the performance of its functions.

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

Comments:

The oversight agency examines city public procurement processes and reports are acted on but they are not effective due to lack of adequate personnel. For example, there ineffectiveness is mainly due to lack of adequate skilled personnel at the city level hence their findings are more likely to be insufficient, not up to of the required standard and the reports are also more likely to be delayed.

References:

Government Official

1. Mrs. Ngoa, Deputy Town Clerk, Municipal Council of Mombasa, 6th June 2011, Town hall Offices

2. Mr. James Njogu, City procurement Officer, Municipal Council of Mombasa, 2nd June 2011, Town hall

Academics

1. Mr. Roland Ebole, Legal Officer, Transparency International, 18th May 2011, Castle Royal Hotel

Civil Society

1. Mr. Robert Makau, Supplier, Tudor Lobby Group, 18th May 2011, Cafe Mondolina

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.

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

References:

Constitution of Kenya Part 6 on Control of Public Money Article 226 on Accounts and Audit of Public Entities,Section 1 (a) which states An act of Parliament shall provide for the keeping of financial records and the auditing of all governments and other public entities and prescribe other measures for securing efficient and transparent fiscal management.

Local Government Act Cap 265 Part XVIII on Accounts and Audit,Article 231 section 1 which states

231. (1) The Minister may from time to time appoint one or more persons as Local Government Inspectors to conduct extraordinary inspections and examinations of the accounts and records of local authorities and an inspector so appointed may institute such inspection or examination (hereinafter referred to as an extraordinary inspection) into any aspect of the accounts and records of any local authority that he deems necessary.

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?

85

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

Yes

No

References:

Constitution of Kenya Part 2 on Rights and Fundamental Freedoms Article 41 on labour relations sub section 4 a,b,c

Every trade union and every employers organization has a right

a) To determine its own administration, programmes and activities

b) To organise and

c) To form and join a federation.

Kenya National Audit Act 2003

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

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:

They are generally known to be independent of city government officials but some interference may occur. For instance, there are some members of the audit team that have relations with key executive officials at the city council and their appointments were hugely influenced by these officials.

References:

Government Officials

1.Mr.Edward Gichana,Internal Auditor,Municipal Council of Mombasa,3rd June 2011,Town Hall.

2..Steven Muli,Auditor,Kenya National Audit office,Mombasa 25th May 2011 NSSF Building Nkrumah

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 reports presented to the city government are seriously taken into considerations,with negative findings drawing prompt

corrective action. These reports have to be taken into great consideration as they are checked and examined by the auditor-general appointed by the president. The reports are also taken into great consideration by the city council as each and every member of the council would like to know on the reports, how accountable is the citizens' money and what measures are to be taken to avoid loss of money in future.

References:

Government Officials

1.Mr.Edward Gichana,Internal Auditor,Municipal Council of Mombasa,3rd June 2011 ,Town Hall.

2..Steven Muli,Auditor,Kenya National Audit office,Mombasa 25th May 2011 NSSF Building Nkrumah

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

Comments:

The audit entity conducts its own investigations depending on the time period allocated to them.

References:

Government Officials

1.Mr.Edward Gichana,Internal Auditor,Municipal Council of Mombasa,3rd June 2011 ,Town Hall.

2..Steven Muli,Auditor,Kenya National Audit office,Mombasa 25th May 2011 NSSF Building Nkrumah

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

Comments:

The reports are not published by the audit firm but are submitted to the relevant bodies as required by the legislation.

References:

Government Officials

1. Mr. Edward Gichana, Internal Auditor, Municipal Council of Mombasa, 3rd June 2011, Town Hall.

2. Steven Muli, Auditor, Kenya National Audit office, Mombasa 25th May 2011 NSSF Building Nkrumah

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?

67

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

Yes | No

Comments:

The public cannot access the reports because they are submitted to the relevant authorities.

References:

Constitution of Kenya Part 6 Article 229 Auditor General Section 7

(7) Audit reports shall be submitted to Parliament or the relevant county assembly.

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:

There is no single time when the public can access these audit reports.

References:

Government Officials

1.Mr.Edward Gichana,Internal Auditor,Municipal Council of Mombasa,3rd June 2011,Town Hall.

2..Steven Muli,Auditor,Kenya National Audit office,Mombasa 25th May 2011 NSSF Building Nkrumah

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

Comments:

To get access to such reports is not easy as they may be costly to citizens.

References:

Government Officials

1.Mr.Edward Gichana,Internal Auditor,Municipal Council of Mombasa,3rd June 2011,Town Hall.

2..Steven Muli,Auditor,Kenya National Audit office,Mombasa 25th May 2011 NSSF Building Nkrumah

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?

100

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

Yes

No

References:

Constitution of Kenya Part 2 on Rights and Fundamental Freedoms, Article 35 on Access to information which states that

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

(b) Information held by another person and required for the exercise or protection of any right or fundamental freedom.

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:

The local taxation scheme are easily upon request.

References:

Government Officials

1.Felix Munga,Chief Revenue Officer,Municipal Council of Mombasa,2nd June 2011, Chief Revenue office Town hall

2.Fatma S.Yusuf,Senior Assistant Commissioner Marketing and Communication Department,Southern Region,25th May 2011, Kenya Revenue Authority office.

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?

83

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

References:

Constitution of Kenya Chapter 12 on Public Finance,Part 3 on Revenue raising powers and the public debt,Article 209 section 5 states

“The taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national,economic policies,economic activities across county boundaries or the national mobility of goods,services,capital or labour.

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:

Citizens are taxed without discrimination and evading tax is not easy.

References:

Government Officials

1..Mr.Edward Gichana,Internal Auditor,Municipal Council of Mombasa,3rd June 2011,Town Hall.

2..Steven Muli,Auditor,Kenya National Audit office,Mombasa 25th May 2011 NSSF Building Nkrumah

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:

When irregularities are discovered,corrective actions/measures are taken but still some of the servants go unnoticed,e.g.Municipal officers are still bribed.

References:

Government Officials

1..Mr.Edward Gichana,Internal Auditor,Municipal Council of Mombasa,3rd June 2011,Town Hall.

2..Steven Muli,Auditor,Kenya National Audit office,Mombasa 25th May 2011 NSSF Building Nkrumah

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.

5.1. ⁶⁸City 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:

It is a requirement that if there is any relationship of appointing authority and candidates to be considered, such relationships are disclosed and the relative of the candidate disqualifies him/herself.

References:

CAP 265 art 137. (1) If it comes to the knowledge of an officer employed, whether under this Act or any other written law, by a local authority, that a bargain, contract or arrangement in which he has any pecuniary interest, whether direct or indirect (not being a bargain, contract or arrangement to which he is himself a party) has been, or is proposed to be, made or entered into by the local authority or any committee thereof, he shall as soon as practicable, give notice in writing to the local authority of the fact that he is interested therein.

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?

100

132. In practice, city civil servants who are appointed/promoted are qualified for the positions they fill.

100 | 75 | 50 | 25 | 0

Comments:

The administrators are appointed by the Public Service Commission and the basis of merit and competence.

References:

Government Official

1.Mrs.Rose Ngowa,Deputy Town Clerk,Municipal Council of Mombasa, 6th June 2011, Town hall office

Private Sector

1.Mr.Sondhi,Proprietor, Reef Hotel Mombasa,31st May 2011,Reef Hotel

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:

They are dismissed from office when there is a valid cause and the law protects them from arbitrary dismissal as stipulated in the Constitution of Kenya.

References:

Government Official

1.Mrs.Rose Ngowa,Deputy Town Clerk,Municipal Council of Mombasa, 6th June 2011, Town hall office

Private Sector

1.Mr.Sondhi,Proprietor, Reef Hotel Mombasa,31st May 2011,Reef Hotel

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?

56

134. In law, there are regulations governing gifts and hospitality offered to civil servants at the city level.

Yes

No

References:

Constitution of Kenya Chapter 6 on Leadership and Integrity Article 76 on Financial probity of state officers which states that (1) A gift or donation to a state officer on public or official occasion is a gift or donation to the Republic and shall be delivered to the state unless exempted under an Act of Parliament.

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:

Local Government Act Cap 265 Part 4 on General Procurement Rules

33. (1) Except as expressly allowed under the regulations, a procuring entity shall not enter into a contract for a procurement with

- (a) an employee of the procuring entity or a member of a board or committee of the procuring entity;
 - (b) a Minister, public servant or a member of a board or committee of the Government or any department of the Government or a person appointed to any position by the President or a Minister; or
 - (c) a person, including a corporation, who is related to a person described in paragraph (a) or (b).
- (2) Whether a person is related to another person for the purpose of subsection (1)(c) shall be determined in accordance with the regulations.

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:

Civil servants accept huge amounts of money contrary to the restriction in law. Just like the executive officials, there are examples of civil servants who have received huge sums of money prior to the regulations governing such. At the same time, some have been severely punished for that while others have not as a result of their influence to the council.

References:

Government Official

1.Mrs.Rose Ngowa,Deputy Town Clerk,Municipal Council of Mombasa, 6th June 2011, Town hall office

Private Sector

1.Mr.Sondhi,Proprietor, Reef Hotel Mombasa,31st May 2011,Reef Hotel

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

Comments:

Regulations governing the grant of public concessions to family members and relatives of civil servants at the city are generally applied though exceptions exist. There has been a lot of instances where procurements and bids called by the city government are granted to relatives and family members of civil servants prior to the regulations governing such. For example, there was an instance where a top servant's relative was granted a bid to supply some commodities to the city government clearly having in mind of the regulations. There has been instances where, a bid has been awarded to a relative of a civil servant without the knowledge of others, only to be discovered later through investigations.

References:

Government Official

1.Mrs.Rose Ngowa,Deputy Town Clerk,Municipal Council of Mombasa, 6th June 2011, Town hall office

Private Sector

1.Mr.Sondhi,Proprietor, Reef Hotel Mombasa,31st May 2011,Reef 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 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

References:

Public Health Act Chapter 242 which states that

The object of this Act is the protection of the health of the population and the establishment of conditions favourable to the maintenance and enhancement of the health and well-being of the general population.

and The Food Drugs and Chemical Substance Act Chapter 254 laws of Kenya states

32 (1) It is the duty of every municipal council to exercise such powers with which it is invested as may be in its special circumstances reasonably practicable so as to provide proper safeguards for the sale of food,drugs,cosmetics,devices and chemical substances in a pure and genuine condition,and in particular to direct its officers to procure samples for analysis.

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

Comments:

The basic regulatory requirements for meeting public health standards covering businesses are found the health departments of the city government in printed forms where they are made available upon request by the public and at a cost if need be.

References:

Government Officials

1.Dr.S.J.Chidagaya,Medical Officer of Health (MD,MHPDC MPH) Municipal Council of Mombasa, 6th June 2011,Public Health Offices.

2.Mr.David Ngomo,District Public Health Officer,Tudor Health Center,2nd June 2011,Castle Royal Hotel

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?

50

140. In practice, city government offices that enforce public health standards on businesses are appropriately staffed.

100

75

50

25

0

Comments:

They are under staffed e.g.Public Health Officers currently are 2076 and Public Health Technicians 2109 out of the proposed 6,600 a shortfall of 2,415

References:

Government Officials

1.Dr.S.J.Chidagaya,Medical Officer of Health (MD,MHPDC MPH) Municipal Council of Mombasa, 6th June 2011,Public Health Offices.

2.Mr.David Ngomo,District Public Health Officer,Tudor Health Center,2nd June 2011,Castle Royal Hotel

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:

Some inspections are carried out in an even handed way and some officers are bribed for favorable treatment. For instance, these officers have a program/schedule to follow but in most cases due to the influence of the wealthy end up ignoring their schedules for the sake of them. For example, as from one of our sources, there has been an instance where, a public health officer was poached by a wealthy businessman from his duties while attending to a poor community so as to attend to the businessman was in risk of loosing his business due to healthy issues.

References:

Government Officials

1.Dr.S.J.Chidagaya,Medical Officer of Health (MD,MHPDC MPH) Municipal Council of Mombasa, 6th June 2011,Public Health Offices.

2.Mr.David Ngomo,District Public Health Officer,Tudor Health Center,2nd June 2011,Castle Royal Hotel

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:

The public health reports are produced with recommendations but they are sometimes not acted upon. For example, during a field operation, a health officer prepared a report and some recommendations based on her findings but the report was never acted upon by her seniors for fear of her being promoted due her excellent report. (they could not disclose what the report was on for fear).

References:

Government Officials

1. Dr. S. J. Chidagaya, Medical Officer of Health (MD, MHPDC MPH) Municipal Council of Mombasa, 6th June 2011, Public Health Offices.

2. Mr. David Ngomo, District Public Health Officer, Tudor Health Center, 2nd June 2011, Castle Royal Hotel

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?

42

143. In law, the public can access reports on the compliance of businesses with public health standards.

Yes

No

Comments:

Even though there laws providing for public access of information o the council, getting such reports and approval has not been easy in practice

References:

Public Health Act Chapter 242 laws of Kenya section 120 (1) says failure to comply with the statutory notice from the public health authority, necessary action .

CAP 265 art 82. The minutes of the proceedings of a local authority shall at all reasonable times be open to the inspection of any ratepayer or voter of the area of the local authority, and the ratepayer or voter may obtain a copy thereof or an extract therefrom; and for the purposes of this section the minutes of any committee which have been formally adopted shall be deemed part of the minutes of the proceedings of the local authority.

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:

Reports are always on line but you have to be specific on what you want. For example, reports on compliance of businesses with public health standards are always made public on request so as for the business owners and other interested parties to be able know on their cases in case taken to court or sued by the municipal council for not obliging to the required health standards.

References:

Government Officials

1.Dr.S.J.Chidagaya,Medical Officer of Health (MD,MHPDC MPH) Municipal Council of Mombasa, 6th June 2011,Public Health Offices.

2.Mr.David Ngomo,District Public Health Officer,Tudor Health Center,2nd June 2011,Castle Royal Hotel

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:

A further visit to a health officer and an affected business owner has resulted in the score "100", because as from the two sources, the reports are free to the owner upon request and he/she had to pay a few shillings to get a copy of the report. The reports are acquired at a public health office which are at the town centre, convenient location for all.

References:

Government Officials

1.Dr.S.J.Chidagaya,Medical Officer of Health (MD,MHPDC MPH) Municipal Council of Mombasa, 6th June 2011,Public Health Offices.

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.

64 5.3. City Safety Regulation

5.3.1. Are the regulatory requirements for basic safety standards for businesses in the city transparent?

100

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:

Local Government Act Cap 265 Part XI on Certain Powers,duties and Provisions relating to Municipalities
160 (k) to establish and maintain one or more fire brigades and to take all necessary steps for the prevention and extinguishing of fires and to compensate the owners of property demolished or damaged for the purpose of preventing or extinguishing fires;

Constitution of Kenya Chapter 4 Bill of Rights Part 2 Article 35 on Access to information which states that
(1) (b) Every citizen has the right of access to information held by the another person and required for the exercise or protection of any right or fundamental freedom.

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:

They are available because of business opportunities available.

-Staff from the council monitor and explain to business owners what they need to have in case of emergencies.

-The municipal also have radio talk shows concerning safety fire drills and vigorous monitoring of the business.

References:

Government Official

1.Fredrick Imongi,Kenya Bureau of Standards Officer Kenya Bureau of Standards,20th May 2011,Kenya Bureau of Standards offices Mombasa Trade Center Nkrumah Road

2.Albert T.Keno,City Engineer,Municipal Council of Mombasa,2nd June 2011,Town Hall offices.

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?

67

148. In practice, city government offices that enforce public safety standards on businesses are appropriately staffed.

100

75

50

25

0

Comments:

Government offices that enforce public safety standards are adequately staffed but they require more since they cannot respond adequately to the whole city population.

References:

Government Official

1.Fredrick Imongi,Kenya Bureau of Standards Officer Kenya Bureau of Standards,20th May 2011,Kenya Bureau of Standards offices Mombasa Trade Center Nkrumah Road

2.Albert T.Keno,City Engineer,Municipal Council of Mombasa,2nd June 2011,Town Hall offices.

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:

The inspection is done by specific team trained on the same e.g. ocean, fire etc. The team conducts the inspections independently and may lead to collusion hence the possibility of being compromised cannot be played down.

References:

Government Official

1. Fredrick Imongi, Kenya Bureau of Standards Officer Kenya Bureau of Standards, 20th May 2011, Kenya Bureau of Standards offices Mombasa Trade Center Nkrumah Road

2. Albert T. Keno, City Engineer, Municipal Council of Mombasa, 2nd June 2011, Town Hall offices.

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:

The city government offices operate independently in that their reporting on compliance are seriously considered and they are highly encouraged by their seniors e.g. after inspection by the relevant authorities in conjunction with the municipal Kongowea market was closed down and they lost nearly kshs 70 million.

References:

Government Official

1.Fredrick Imongi,Kenya Bureau of Standards Officer Kenya Bureau of Standards,20th May 2011 ,Kenya Bureau of Standards offices Mombasa Trade Center Nkrumah Road

2.Albert T.Keno,City Engineer,Municipal Council of Mombasa,2nd June 2011,Town Hall offices.

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 governmental 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?

50

151. In law, the public can access reports on compliance of businesses with public safety standards.

Yes

No

References:

Constitution of Kenya Chapter 4 Bill of rights Article 35 on Access to information (1) (b) Every citizen has the right of access to information held by another person and required for the exercise or protection of any right or fundamental freedom.

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:

Reports are available online,it also depends on compliance of business.

References:

Government Official

1.Fredrick Imongi,Kenya Bureau of Standards Officer Kenya Bureau of Standards,20th May 2011,Kenya Bureau of Standards offices Mombasa Trade Center Nkrumah Road

2.Albert T.Keno,City Engineer,Municipal Council of Mombasa,2nd June 2011,Town Hall offices.

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:

Once compliant e.g.for Kenya Bureau of Standards you pay a fee of kshs 2,000.

References:

Government Official

1.Fredrick Imongi,Kenya Bureau of Standards Officer Kenya Bureau of Standards,20th May 2011,Kenya Bureau of Standards offices Mombasa Trade Center Nkrumah Road

2.Albert T.Keno,City Engineer,Municipal Council of Mombasa,2nd June 2011,Town Hall offices.

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?

100

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:

The Environmental management and Coordination Act (EMCA) of 1999 section 5 (5.2) states

"This act is enacted to provide an appropriate legal and institution framework for the management of the environment and for matters connected thereto. EMCA coordinates the activities of the various institutions tasked to regulate the various sectors. These institutions are referred to as Lead agencies in EMCA and these are Government ministry, departments, parastatals, state corporations or Local Authorities in which any law vests function or management of any element of the environment.

Constitution of Kenya Chapter 5 on Land and Environment Part 2 on Environment and natural resources.

Legislation relating to the environment

72) Parliament shall enact legislation to give full effect to the provisions of this part (Environment)

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:

At National Environment Offices (NEMA), they are readily available on their notice boards where various requirements are in place.

References:

Government Officials.

1. Peter Mwadime, Environmental Officer, Municipal Council of Mombasa 3rd June 2011, Environment Department Office.

2. Godfrey Wafula, Senior Environmental Information and Public Participation Officer, 31st May 2011, National Environment Management offices

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?

42

156. In practice, city government offices that enforce environmental protection standards on businesses are appropriately staffed.

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

Comments:

The offices that enforce environmental protection standards are constrained by staffing problems.

The staffing problems include:

1. lack of adequate staff,
2. unskilled personnel and
3. lack of required resources to perform their duties.

References:

Government Officials.

1.Peter Mwadime,Environmental Officer,Municipal Council of Mombasa 3rd June 2011,Environment Department Office.

2.Godfrey Wafula, Senior Environmental Information and Public Participation Officer,31st May 2011,National Environment Management offices

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.

Comments:

Even though standards are met, exceptions exist in that other companies do not undergo the due process but get certification from officers in charge. Just like in the public health standards, the same applies here where the rich are first and quickly served upon request and on demand.

References:

Government Officials.

1. Peter Mwadime, Environmental Officer, Municipal Council of Mombasa 3rd June 2011, Environment Department Office.

2. Godfrey Wafula, Senior Environmental Information and Public Participation Officer, 31st May 2011, National Environment Management offices

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:

Regular inspections are carried out and reports with appropriate recommendations are produced which are sometimes not acted upon. Just like in public health, environmental officers on duty produce reports and their recommendations which in most cases are not acted upon quickly/immediately or even never by their superiors for fear of promotions.

References:

Government Officials.

1. Peter Mwadime, Environmental Officer, Municipal Council of Mombasa 3rd June 2011, Environment Department Office.

2. Godfrey Wafula, Senior Environmental Information and Public Participation Officer, 31st May 2011, National Environment Management 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

References:

Environmental Management and Coordination Act Part X ON Inspection, Analysis and Records Section 123 (1) states "Any person may have access to any records transmitted to the authority under this Act."

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:

The reports may be available after one month or more but at the city level, reports are rarely prepared.

References:

Government Officials.

1. Peter Mwadime, Environmental Officer, Municipal Council of Mombasa 3rd June 2011, Environment Department Office.

2. Godfrey Wafula, Senior Environmental Information and Public Participation Officer, 31st May 2011, National Environment Management offices

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.

100 | 75 | 50 | 25 | 0

Comments:

Getting information at the council is not easy, the bureaucratic system is still in place and accessing information is costly.

References:

Government Officials.

1. Peter Mwadime, Environmental Officer, Municipal Council of Mombasa 3rd June 2011, Environment Department Office.

2. Godfrey Wafula, Senior Environmental Information and Public Participation Officer, 31st May 2011, National Environment Management offices

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.

64
5.5. City Land Record Management

5.5.1. Are there transparent regulations governing land records at the city level?

162. In law, there is a transparent system at the city level to track and update land records.

Yes

No

References:

Survey Act, Cadastral system

Article 130 (1) Every surveyor who executes any survey in accordance with the provisions of this Act and of any regulations made thereunder shall send to the Director all plans, field notes and computation relating thereto, and all such plans, field notes and computation shall be deposited in the survey office and shall become the property of the Government.

2) No plans deposited in the survey office in accordance with sub-section(1) shall be altered or amended in any way without the permission of the Director.

31 (1) The Director or a Government surveyor authorized in writing by the director in that behalf, may at any time undertake such field and office checks on the survey work of a licensed surveyor as he thinks fit.

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

References:

Constitution of Kenya Chapter 5 Land and Environment Article 67 section 2 states

(a) The National land commission will manage public land on behalf of the national and county governments.

(h) The National land commission will monitor and have oversight responsibilities over land use planning throughout the country.

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:

Training is voluntary and for any government office dealing with land matters to achieve the desired goals in transparent land administration, they will have to take officers for regular trainings and have an oversight agency to look into such.

References:

Constitution of Kenya Chapter 5 Land and Environment, Legislation on land
Parliament shall (b) revise sectoral land use laws in accordance with the principles set out in article 60 (1) states "Land in Kenya shall be held, used, managed in a manner that is equitable, efficient, productive and sustainable and in accordance with the following principles

- a) equitable access
- b) security of land rights
- c) transparent and cost effective administration of land.

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

References:

Rating Act chapter 267 section 17 sub section (2) states

"If any person who has had such demand served upon him makes default, the rating authority may take proceedings in a subordinate court of the first class to secure the payment of such rate and interest in the manner hereinafter prescribed.

Constitution of Kenya Chapter 4 Bill of Rights, Part 2 Rights and Fundamental Freedoms, Article 48 on Access to justice states "The state shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice."

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?

38

166. In practice, the public can access city land records and regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

City land records usually take 2 weeks or even less and some delays may be experienced.

References:

Government Official

1.Martin Odhiambo,Chief Valuer, Municipal council of Mombasa, 28th May 2011,Town Hall Valuation department.

Academic.

1.Macmillan Jengo,Advocate,Jengo Associates, 25th May 2011,Yusuf Ali Trust Building Moi Avenue

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:

It costs around kshs 500 and some visits outside the city may be required.

References:

Government Official

1.Martin Odhiambo,Chief Valuer, Municipal council of Mombasa, 28th May 2011,Town Hall Valuation department.

Academic.

1.Macmillan Jengo,Advocate,Jengo Associates, 25th May 2011,Yusuf Ali Trust Building Moi Avenue

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 entity has limited staff and resources and to some extent the staff may be without necessary qualifications. For instance, most of these staff are appointed and recruited based on whom you in the top management, they are recruited based on tribe line and among other things are appointed based on corruption.

As from a land surveyor, it is a practice of one staff (surveyor) to survey fourteen plots of land and keep the records and the amount allocated for the 14 plots is kshs 350,000 and one plot has 1,000 families making it very hard for the practice. .

References:

Government Official

1. Martin Odhiambo, Chief Valuer, Municipal council of Mombasa, 28th May 2011, Town Hall Valuation department.

Academic.

1. Macmillan Jengo, Advocate, Jengo Associates, 25th May 2011, Yusuf Ali Trust Building Moi Avenue

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**

Comments:

Bringing land records dispute is costly around kshs 50,000-70,000 which is not affordable to citizens.

References:

Government Official

1. Martin Odhiambo, Chief Valuer, Municipal council of Mombasa, 28th May 2011, Town Hall Valuation department.

Academic.

1.Macmillan Jengo,Advocate,Jengo Associates, 25th May 2011,Yusuf Ali Trust Building Moi Avenue

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?

75

170. In law, there is a transparent process governing land development and zoning processes at the city level.

Yes

No

Comments:

In practice, understanding how land related transactions are conducted in the municipalities has not been easy, one has to know some who trust you to be able to access certain information even where the laws are very clear.

References:

National Land Policy

Constitution of Kenya Chapter 5 Land and Environment Article 60 (1)

Land in Kenya shall be held,used,managed in a manner that is equitable,efficient,productive and sustainable and (2) these principles shall be implemented through a national land policy developed and reviewed regularly by the national government and through legislation.

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 agencies i.e of the Central government,Local Authorities and private land owners are a problem of planning.The planning law is ineffective in the planning and management of land development. The law is dominated by statutory provisions which are in the form of ordinances or legal orders and the law exists in numerous pieces of legislation.

References:

Land Planning Act Chapter 303,Development and use of land (planning) regulations.

4. (1) Where an area plan or town plan has been prepared and approved for a local authority area, or any part thereof, in accordance with regulation 6 of these Regulations, and if it appears to the Minister to be expedient in the interests of securing the proper control of development in such area, he may, with the agreement of that local authority, by order published in the Gazette, constitute that local authority as the interim planning authority for that area or part thereof, as aforesaid.

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:

In the absence of a comprehensive law to advocate for mandatory professional training for staff at the city land development and zoning might lead to symbolic management of public and community land. there is a need for a law that does not promote conflict and competition in the public domain.

References:

There is no law that ensures mandatory training for staff responsible for city land development and zoning,the training is voluntary.

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

References:

Constitution of Kenya, Chapter 4 on Bill of rights Part 2 on Fundamental Rights and Freedoms Article 48 on access to justice "The state shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice."

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?

31

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:

It takes 14 days although some delays may be experienced due to their own reasons.

References:

Government official

1. Martin Odhiambo, Chief Valuer, Municipal Council of Mombasa, 28th May 2011, Town hall Valuation office.

Academics

1. Macmillan Jengo, Advocate, Jengo Associates, 25th May 2011, Yusuf Ali Trust Building, Moi Avenue

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.

Comments:

Applications for such approvals are costly e.g.it ranges between kshs 3,000-6,500 which is a financial burden on citizens.

References:

Government official

1.Martin Odhiambo, Chief Valuer,Municipal Council of Mombasa, 28th May 2011,Town hall Valuation office.

Academics

1.Macmillan Jengo,Advocate, Jengo Associates,25th May 2011,Yusuf Ali Trust Building,Moi Avenue

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.

Comments:

They have limited staff and resources.

For instance, most of these staff are appointed and recruited based on whom you in the top management, they are recruited based on tribe line and among other things are appointed based on corruption.

The staff are not sufficient and to some extent not qualified because of the many cases of collapsed buildings in parts of the country including Mombasa whereby it emerged that the council do not have qualified land personnel thus the poor planning,land development and zoning processes.

References:

Government official

1.Martin Odhiambo, Chief Valuer,Municipal Council of Mombasa, 28th May 2011,Town hall Valuation office.

Academics

1.Macmillan Jengo,Advocate, Jengo Associates,25th May 2011,Yusuf Ali Trust Building,Moi Avenue

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:

Costs are prohibitive, it ranges between kshs 50,000-kshs 70,000.

References:

Government official

1. Martin Odhiambo, Chief Valuer, Municipal Council of Mombasa, 28th May 2011, Town hall Valuation office.

Academics

1. Macmillan Jengo, Advocate, Jengo Associates, 25th May 2011, Yusuf Ali Trust Building, Moi Avenue

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.