

Overall Score:

57 - Very Weak

Legal Framework Score:

72 - Moderate

Actual Implementation Score:

46 - Very Weak

Category 1. City Information Transparency

1.1. ⁴⁶City 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 is less harassment reported after the passing on of the new constitution

References:

Francis Gachuri- Citizen TV on 24/05/2011

<http://eaja.org/en/contents/eaja-condemns-harassment-of-kenyan-journalist-by-nairobi-politician>

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:

No death cases related to reporting corruption during this period

References:

Francis Gachiri- Citizen TV , 24/5/2011

The Importance of Press Freedom
On May 4, 2011, in Uncategorized, by Katya Thomas

<http://blogs.usembassy.gov/nairobi/>

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?

25

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:

Nowadays we have many whistle blowers on corruption cases and therefore they are exposed whenever they arise

References:

Journalist Francis G. of Citizen TV
Media report -www.cpj.org
www.pressreference.com

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 Council of Kenya under the constitution of Kenya has the mandate to keep information about Media enterprises this includes their ownership, location etc

References:

Media Act Cap3, Establishment of the Media Council of Kenya, part of the responsibility of the council as indicated below is to keep record on Media ownership in Kenya

Section 4 Part (k) compile and maintain a register of journalists, media enterprises and such other related registers as it may deem fit;

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

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

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

Yes | **No**

Comments:

There is no law that indicates a requirement the media to publicly disclose ownership information to the public

References:

Constitution of Kenya Chapter One- Access to information.
Freedom of the media.

34. (1) Freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33 (2)

Cap 3 Media Act indicates the functions of the media Council of Kenya

k) compile and maintain a register of journalists, media enterprises and such other related registers as it may deem fit;

(l) conduct an annual review of the performance and the general public opinion of the media, and publish the results thereof in at a least two local newspapers.

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:

The Media Act on the Second Schedule provides the general Conduct of practice Journalism and therefore editors stick to the code of Journalism

References:

Interview with Journalist Francis G. of Citizen TV
media reports www.africapress.wordpress.com
www.eastafricapress.net

Media Act- Schedule 2

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

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:

Article 34 of the Constitution of Kenya Guarantees the freedom of the Media but journalist requiring information on departments from city Government have to obtain clearance from respective departments in the city to obtain related information

References:

Journalist Francis G.- Citizen TV 25/05/2011
<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154352.htm>

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

75:

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

25:

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

1.2. City Public Access to Information

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

100

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

Yes | No

References:

The constitution of Kenya Chapter 4 Section 35,
35. (1) Every citizen has the right of access to

(a) information held by the State; and

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

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

(3) The State shall publish and publicise any important information affecting the nation.
Access to information.

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

References:

The Constitution of Kenya Chapter 4 section 35

35. (1) Every citizen has the right of access to

(a) information held by the State; and

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

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

(3) The State shall publish and publicise any important information affecting the nation.
Access to information.

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:

Information can be obtained from the Government spokesman and the public relation office within the council

Citizen requiring information can always make formal request to the mayor or the townclerk

References:

The Constitution of Kenya Chapter 4 Section 35

35. (1) Every citizen has the right of access to

(a) information held by the State; and

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

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

(3) The State shall publish and publicize any important information affecting the nation.

Access to information.
www.communication.go.ke
www.naibocity.go.ke

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.

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

100 | 75 | 50 | 25 | 0

Comments:

Political sensitive information may take a while before they are produced to the public

There are two government websites as indicated above where public information is posted for citizen to access

References:

Interview with journalist Francis G. of Citizen TV- 25/5/2011
www.communication.go.ke
www.e-government.go.ke

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:

Because of bureaucracy the public feels getting information from the council is cumbersome and thus they rather not go for the information.

References:

Interview with Journalist to Citizen TV Mr. Francis G. 25/5/2011
 Interview with City Council Public Relation Officer Mr. Marube on 7/6/2011 at the Council officer

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:

With the new constitution we hope the city will now act promptly and the public will have the confidence to seek necessary information from the city Government

References:

Public relation officer City Council of Nairobi Mr. Marube 7/6/2011 at the council
Interviews with Citizen TV Journalist Francis G. on 25/5/2011 at Citizen

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 are certain information for the public that are published and therefore are made available to the public at a small fee

Not everybody can pay the required minimum fee of Ksh 500 to get certain information from the council and therefore a challenge to obtain the requested for information

References:

Interview with Citizen TV Journalist Mr. Francis Gachiri on 25/5/2011 at Citizen
Interview with Public Relations office of the City Council on Mr. Marube 7/6/2011

www.nairobicity.go.ke

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:

Information that links that indicates the involvement of the city officials in a scandal in most cases may not be made available to

the public unless disclosed by the investigating Authorities- Anti Corruption Agencies

References:

Interview with City Public Relations Officer Mr. Marube on 7/6/2011 at the Council

Interview with Citizen TV Journalist Mr. Francis G. on 25/6/2011 at Citizen

www.mzalendo.com/arthur.pdf

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?

38

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

Yes | **No**

Comments:

The council uses the local Media outlets to post related news and Notices for the public, they also use their website, local radio Stations and Public Notice Boards

References:

Interview with Citizen TV Journalist Mr. Francis G. on 25/6/2011

Interview with City Council Public relation officer Mr. Marube on 7/6/2011

www.nairobicity.go.ke

www.communication.go.ke

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:

Use of the local newspapers, Media and website and Notice Boards

Information relating to various activities of the council are available on the government website and the city council website, the council also regularly uses the local dailies to post related notices to the public

References:

www.nairobicity.go.ke

Interview with CITIZEN TV Journalist Francis G. on 25/6/2011

Interview with City Public relations Officer Mr. Marube on 7/6/2011

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

75:

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

25:

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

Category 2. City Elections

2.1. Integrity of City Elections

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

100

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

Yes | No

Comments:

For Elections of the Mayor there is an Internal committee that oversees the election of the Mayor (Administration Coordination Office led by Director legal affairs on behalf of the Town Clerk)

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

L.N.252/1992.

Local Government Act CAP 265 Sections 6

6. The Electoral Commission shall, by notice in the Gazette, appoint a public officer to be the Director of Local Government Elections.

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

www.iiec.or.ke

Local Government act CAP 270

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?

75

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

Yes | No

Comments:

With formation of IIEC and the passing of the new constitution we have not had cases of political influence in the Elections as it was before

References:

Cap 265 – Local Government Act- Part 42-Accreditation of election Observers

42. (1) The Electoral Commission may, at any election, accredit any individual, association, organization or institution who or which is manifestly non-partisan to act as an election observer.

(2) The Electoral Commission shall issue guidelines for election observers, consistent with internationally accepted standards for fair elections, which shall be binding on election observers upon accreditation to the Electoral Commission.

(3) Without prejudice to the generality of paragraph (2), the guidelines issued thereunder may specify the procedures for the accreditation of election observers.

(4) The Electoral Commission may revoke the accreditation it has granted to an election observer where it is satisfied that the election observer is partisan.

(5) No person, association, organization or institution shall observe any election unless the person, association, organization or institution has been accredited by the Electoral Commission.

(6) All the accredited election observers shall submit to the Electoral Commission a written report of their individual or group observations not later than six months after the date of the announcement of the election results in respect of the election observed.

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:

With disbanding of the Electoral Commission of Kenya and the formation of the Independent Interim Electoral Commission that now oversees all the elections in the country. The Commissioners for IIEC were selected in a transparent manner and thus giving trust in the oversight of the electoral commission.

Since the introduction of IIEC there has been no complaint in terms of unfairness by the electoral body

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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:

Independent Interim Electoral Commission (IIEC)

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

www.iiec.or.ke

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

The Independent Interim Electoral Commission (IIEC) provides information immediately the elections are concluded no delay as it used to be under the former election Commission.

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

www.iiec.or.ke

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 new Electoral Commission has not so far handled any cases of malpractices since has not been any case but the election legislation give them that power to prosecute

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

www.iiec.or.ke

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?

100

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

100 | 75 | 50 | 25 | 0

Comments:

Interim Independent Electoral Commission- IIEC

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

www.iiec.or.ke

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:

Constitution of Kenya Chapter 7 Section 87-Election Disputes

87. (1) Parliament shall enact legislation to establish mechanisms for timely settling of electoral disputes.

(2) Petitions concerning an election, other than a presidential election, shall be filed within twenty-eight days after the declaration of the election results by the Independent Electoral and Boundaries Commission.

(3) Service of a petition may be direct or by advertisement in a newspaper with national circulation.

Local Government Act CAP 265- Section 61. Disputes to validity of elections

61. (1) 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 ground or for any cause whatsoever, that person or the returning officer, as the case may be, may at any time within fifteen days after the publication of the result of the election, apply to a Resident Magistrate's court within or nearest to the area of the local authority to set the election aside.

(2) The Resident Magistrate's court shall, after due inquiry declare whether the candidate whose election is questioned, or any and what other person, is duly elected, or whether the election is void.

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

(4) The Chief Justice may make rules for the conduct of an inquiry by a Resident Magistrate's court under this section.

Local Government Act CAP 265- Section 39C. Petition to Electoral Commission about count.

39C. Where a dispute arises over the counting or tally of the votes, a candidate may within twenty-four hours petition the Electoral Commission which shall have power to order and supervise a count or tally as is appropriate provided that the decision of the Electoral Commission shall be made within forty-eight hours of such a petition.

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:

Source 3 gives link to various elections petitions in Kenya

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

http://kenyalawreports.or.ke/election_petitions/cases.php?pageNum_Recordset1=6&totalRows_Recordset1=192

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:

No military intervention during the elections has been reported in Kenya during this period of study or rather after the post election Violence

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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?

38

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:

City Elections are fair and free due to the establishment of an Independent Interim Electoral body who have brought confidence in the election process in kenya. The election laws allow candidates to conduct free and fair campaigns

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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:

in the past there are minor cases of election violence when Mayor elections are being held

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

www.iiec.or.ke

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

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

2.2. City Political Financing

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

0

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

Yes | **No**

References:

Constitution of Kenya Chapter Seven Part 3- http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

Parliament shall enact legislation to provide for◆◆◆

- (a) the reasonable and equitable allocation of airtime, by State-owned and other mentioned categories of broadcasting media, to political parties either generally or during election campaigns;
- (b) the regulation of freedom to broadcast in order to ensure fair election campaigning;
- (c) the regulation of political parties;
- (d) the roles and functions of political parties;
- (e) the registration and supervision of political parties;
- (f) the establishment and management of a political parties fund;
- (g) the accounts and audit of political parties;
- (h) restrictions on the use of public resources to promote the interests of political parties; and
- (i) any other matters necessary for the management of political parties.

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

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

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

Yes | No

References:

Kenya Constitution Chapter 7 section 92 (g), (h)

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

92. Parliament shall enact legislation to provide for 

- (a) the reasonable and equitable allocation of airtime, by State-owned and other mentioned categories of broadcasting media, to political parties either generally or during election campaigns;
- (b) the regulation of freedom to broadcast in order to ensure fair election campaigning;
- (c) the regulation of political parties;
- (d) the roles and functions of political parties;
- (e) the registration and supervision of political parties;
- (f) the establishment and management of a political parties fund;
- (g) the accounts and audit of political parties;
- (h) restrictions on the use of public resources to promote the interests of political parties; and
- (i) any other matters necessary for the management of political parties.

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:

This is still not clear on the limits since there are laws to be passed in parliament to support this section under the new Constitution

References:

Political Parties Act
Kenya Constitution Chapter 7 section 84

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:

the section of the constitution is waiting for laws to be passed in Parliament to support this section

References:

Chapter 7 of the constitution of Kenya

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

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

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

Yes | No

References:

Constitution of Kenya Chapter 7 section 92 (g)

92. Parliament shall enact legislation to provide for 

(a) the reasonable and equitable allocation of airtime, by State-owned and other mentioned categories of broadcasting media, to political parties either generally or during election campaigns;

(b) the regulation of freedom to broadcast in order to ensure fair election campaigning;

(c) the regulation of political parties;

(d) the roles and functions of political parties;

(e) the registration and supervision of political parties;

(f) the establishment and management of a political parties fund;

(g) the accounts and audit of political parties;

(h) restrictions on the use of public resources to promote the interests of political parties; and

(i) any other matters necessary for the management of political parties.

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:

though not clear on individual financing

References:

Chapter 2 section 92

Constitution of Kenya Chapter 2 section 92

92. Parliament shall enact legislation to provide for 

(a) the reasonable and equitable allocation of airtime, by State-owned and other mentioned categories of broadcasting media, to political parties either generally or during election campaigns;

(b) the regulation of freedom to broadcast in order to ensure fair election campaigning;

(c) the regulation of political parties;

(d) the roles and functions of political parties;

(e) the registration and supervision of political parties;

(f) the establishment and management of a political parties fund;

(g) the accounts and audit of political parties;

(h) restrictions on the use of public resources to promote the interests of political parties; and

(i) any other matters necessary for the management of political parties.

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 is no enforcement of violation and tracking financial contributions/donations to parties

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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:

Currently it is still difficult to track financing of political parties and campaigns, contributions in many cases have been made through other informal systems

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

There is alot of political influence on the investigations alot of patronage affects the investigations and prosecutions and so far there is no one who has ever been prosecuted on the such charges

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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:

NO such actions ever reported

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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:

Never been done in Kenya so far

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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:

Currently no disclosures have ever been made public

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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

48
3.1. City 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:

The former Mayor was taken to court over his decision to purchase cemetery land in an improper manner

<http://allafrica.com/stories/201010251368.html>

<http://www.voanews.com/english/news/africa/Nairobi-Mayor-Arrested-in-Cemetery-Scandal-10567868.html>

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

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

75:

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

25:

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

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

Yes | No

Comments:

An individual can take the mayor to court challenging a decision of the council

References:

Public Officer Ethics Act CAP 183

10. (1) A public officer shall carry out his duties in accordance with the law.

(2) In carrying out his duties, a public officer shall not violate the rights and freedoms of any person under Part V of the Constitution.

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:

The system only allows people to take such matters to court the initiation doesn't not come from the court itself- once the matter is in court then the judiciary reviews decisions of the executive and decide on prosecution.

<http://allafrica.com/stories/201010251368.html>

<http://www.voanews.com/english/news/africa/Nairobi-Mayor-Arrested-in-Cemetery-Scandal-10567868.html>

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

<http://www.judiciary.go.ke/judiciary/>

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:

Every decision made by the mayor Can always be challenged in the Court of Law in Kenya and therefore the Mayor has to use his executive orders wisely by not infringing the rights of any citizen

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

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

75:

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

25:

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

3.1.2. Is the executive leadership subject to criminal proceedings?

75

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

Yes | No

References:

Public Officer Ethics Act CAP 183

Part V – Enforcement of Code of Conduct and Ethics Referrals for possible Civil or Criminal proceeding

38. If, as a result of an investigation under this Part, the Commission is of the view that civil or criminal proceedings ought to be considered, the Commission shall refer the matter to the Attorney-General or other appropriate authority.

Cap 65 – Anti-corruption and Economic Crimes-http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

62. (1) A public officer who is charged with corruption or economic crime shall be suspended at half pay, with effect from the date of the charge.

(2) A suspended public officer who is on half pay shall continue to receive the full amount of any allowances.

(3) The public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.

(4) This section does not derogate from any power or requirement under any law under which the public officer may be suspended without pay or dismissed.

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:

CAP 183-Public Office Ethics Act

38. If, as a result of an investigation under this Part, the Commission is of the view that civil or criminal proceedings ought to be considered, the Commission shall refer the matter to the Attorney-General or other appropriate authority.

CAP 65-Anti- Corruptions & economic Crimes Act

64. (1) A person who is convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer for ten years after the conviction

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

T

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

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

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

100 | 75 | 50 | 25 | 0

Comments:

We have had cases where the council officers sell a fake single business license permits to business and thus denying the council revenues- the officers were prosecuted- <http://www.standardmedia.co.ke/InsidePage.php?id=2000032150&cid=4>

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

www.bbc.co.uk/news/world-africa-11619970

<http://www.standardmedia.co.ke/InsidePage.php?id=2000032150&cid=4>

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

Every council officer is liable for prosecution if found guilty of any crime as per the laws of Kenya. we have witnessed the mayor being taken to court.

References:

7/6/2011 Interview with the Director Legal Affairs City Council of Nairobi Mr. Owuor Aduma at the City Hall

25/5/2011 Interview with KAM Legal officer Ms. Serah Kimani

www.bbc.co.uk/news/world-africa-11619970

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?

54

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

Yes | No

References:

CAP 183-Public office Ethics Act
Part IV – Declarations of Income, Assets and Liabilities

26. (1) Every public officer shall, once every two years prescribed by section 27, submit to the responsible Commission for the public officer a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of 18 years.

(2) The declaration shall be in the form set out in the Schedule and shall include the information required by the form.

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

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:

CAP 183-Public Office Ethics Act

Part III – General Code of Conduct and Ethics

11. (1) A public officer shall not use his office to improperly enrich himself or others.

(2) Without limiting the generality of subsection (1), a public officer shall not –

(a) except as allowed under subsection (3) or (4), accept or request gifts or favours from a person who –

(i) has an interest that may be affected by the carrying out, or not carrying out, of the public officer's duties;

(ii) carries on regulated activities with respect to which the public officer's organisation has a role; or

(iii) has a contractual or similar relationship with the public officer's organisation;

(b) improperly use his office to acquire land or other property for himself or another person, whether or not the land or property is paid for; or

(c) for the personal benefit of himself or another, use or allow the use of information that is acquired in connection with the public officer's duties and that is not public.

(3) A public officer may accept a gift given to him in his official capacity but, unless the gift is a 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 officer's organisation.

(4) Subsection (2)(a) does not prevent a public officer from accepting a gift from a relative or friend given on a special occasion recognised by custom.

(5) Subsection (2)(c) does not apply to the use of information for educational or literary purposes, research purposes or other similar purposes.

(3) A public officer whose personal interests conflict with his official duties shall –

(a) declare the personal interests to his superior or other appropriate body and comply with any directions to avoid the conflict; and

(b) refrain from participating in any deliberations with respect to the matter.

(1) Notwithstanding any directions to the contrary under subsection

(3)(a), a public officer shall not award a contract, or influence the award of a contract, to-

(a) himself;

(b) a spouse or relative;

(c) a business associate; or

(d) a corporation, partnership or other body in which the officer has an interest.

(1) In this section, "personal interest" includes the interest of a spouse, relative or business associate.

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:

5CAP 65-Anti Corruption and Economics Crime Act

57. (1) Unexplained assets may be taken by the court as corroboration that a person accused of corruption or economic crime received a benefit.

(2) For the purposes of this section, the assets of an accused person shall be deemed to include any assets of another person that the court finds –

(a) are held in trust for the accused person or otherwise for or on his behalf; or

(b) were acquired from the accused person without adequate consideration
Public office Ethics Act

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

Public office ethics Act

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:

The regulations governing Gifts and Hospitality exist however not all have gone through arrest because they have found a way in through which they receive such bribes and in many cases through a third party, but because there is a sign of prosecution such cases of receiving have reduced – the anti corrupt Commission is known to set trap through proxies for council officers to receive bribes

References:

23/5/2011 Mr. Njuki deputy Town clerk City Council of Nairobi

www.kacc.go.ke/pressreleases.asp

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:

Some council officials still doing business with the council through proxy (Relatives being directors of related companies given Jobs)

References:

23/5/2011 Mr. Njuki deputy Town clerk City Council of Nairobi

www.ppoa.go.ke/index.php?option=com_jdownloads

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:

No records on audit disclosure has taken place

References:

23/5/2011 interview with Mr. Njuki Deputy Town Clerk City Council of Nairobi

Mayors and Clerks Ethics & corruption in Kenya By A. Harris -2007

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 wealth Declaration forms filled by Government officials has never been made public

References:

Public Officer Ethics Act

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**

References:

25/6/2011 Deputy Townclerk Mr. Njuki

Mayors and Clerks: ethnicity and corruption in Kenya by A. Harris -2007

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:

The public does not really know what the mayor owns privately and how it was acquired

References:

25/6/2011 Deputy Townclerk Mr. Njuki

Mayors and Clerks: ethnicity and corruption in Kenya by A. Harris -2007

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

75:

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

25:

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

3.2. City Legislative Accountability

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

92

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

Yes | No

Comments:

Any individual can take the council to court seeking judicial review of any of their laws

References:

CAP 265-Local Authority Act

238.(1) Any person who is aggrieved by a disallowance or surcharge made by an inspector, may, within thirty days of that disallowance or surcharge, where the disallowance or surcharge relates to an amount exceeding ten thousand shillings, appeal to the High Court, and may in any other case within the like period appeal either to the High Court or to the Minister.

(2) The Court or the Minister on such an appeal shall have power to confirm, vary or quash the decision of the inspector, and to remit the case to the inspector with such directions as the Court or Minister thinks fit for giving effect to the decision on appeal, and if the decision of the inspector is quashed or is varied so as to reduce the amount of the surcharge to one thousand shillings or less, the appellant shall not be subject in respect of that surcharge to the disqualification imposed by paragraph 3 (c) of the Fifth Schedule.

Constitution of Kenya, Chapter 4 Bill of rights

23. (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

kenyalawreports.or.ke/environment/content/case_download.php?go..

www.capitalfm.co.ke/.../Sh250-parking-fees-in-Nairobi-challenged-11377.html .

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:

during the research period there were no such cases taken to court but we have had cases taken to court challenging the laws passed by the council in the past example is the law on increment of parking fees which later challenged in a court of law

References:

7/6/2011 Interview with Owuor Oduma Director legal Affairs City Council of Nairobi

25/5/2011 Interview with legal Office KAM Ms. Serah Kimani

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:

in the past we have seen Council officials being prosecuted

References:

Anti-corruption and Economic Crimes Act CAP 65

63. (1) A public officer who is convicted of corruption or economic crime shall be suspended without pay with effect from the date of the conviction pending the outcome of any appeals.

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?

36

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

Yes | No

References:

Public Office Ethics Act CAP 183

Part IV – Declarations of Income, Assets and Liabilities

26. (1) Every public officer shall, once every two years prescribed by section 27, submit to the responsible Commission for the public officer a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of 18 years.

(2) The declaration shall be in the form set out in the Schedule and shall include the information required by the form.

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:

Cap 183 – Public Officer Ethics

Part III – General Code of Conduct and Ethics

11. (1) A public officer shall not use his office to improperly enrich himself or others.

(2) Without limiting the generality of subsection (1), a public officer shall not –

(a) except as allowed under subsection (3) or (4), accept or request gifts or favours from a person who –

(i) has an interest that may be affected by the carrying out, or not carrying out, of the public officer's duties;

(ii) carries on regulated activities with respect to which the public officer's organisation has a role; or

(iii) has a contractual or similar relationship with the public officer's organisation;

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

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

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

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

Yes | No

Comments:

The law is not directly specific on family members unless and until tender ins awarded irregularly

References:

Public Procurement & Disposal Act Cap 3

Anti Corruption & Economic Crimes Act CAP 65

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**

Comments:

The Public officer can declare their wealth but no provision of law in terms of Auditing those assets

References:

Public office Ethics Act CAP 783

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:

It is known that council officials still take gifts through proxy- Asking someone else who does not work in the council to receive the payments on behalf the council official then transfer it to the council official later

References:

25/5/2011 Interview with Francis G. Journalist Citizen TV

27/5/2011 Interview with Legal Officer KAM

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:

Implementation of the regulation is not working

References:

25/5/2011 Interview with Francis G. Journalist Citizen TV

27/5/2011 Interview with Legal Officer KAM

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

No random Audit is done on city Officials unless one is suspected on corruption case then he/she is investigated

References:

25/5/2011 Interview with Francis G. Journalist Citizen TV

27/5/2011 Interview with Legal Officer KAM

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

75:

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

25:

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

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

0

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

Yes | No

Comments:

it has never happened, the public has never accessed the wealth declaration forms for the city officials

References:

Public Office Ethics Act CAP 183,

Part IV of the Public Officer Ethics Act

www.tkenya.org/documents/assetdeclaration.pdf

<http://allafrica.com/stories/201101101100.html>

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:

in most cases its the law enforcement Authorities who can access this information when investigating a public officer

References:

www.tikenya.org/documents/assetdeclaration.pdf

27/5/2011 Interview with legal Officer KAM Mr. Serah Kimani

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:

The law enforcement agencies while prosecuting public officer can access the wealth declaration forms while journalist will be forced to pay for the information through the back-door schemes (using a source from within the city offices)

References:

www.tikenya.org/documents/assetdeclaration.pdf

27/5/2011 Interview with legal Officer KAM Mr. Serah Kimani

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.

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

Yes | No

Comments:

But most people do not know the procedure for getting this information. According to the Director legal affairs at the council, one is required to write an official letter requesting the information to the Town Clerk/ Mayor

References:

Local Government Act CAP 265

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.

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

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:

The legislative records can be accessed though it takes awhile to access them

References:

7/6/2011 Interview with the Director Legal Affairs -City Council of Nairobi Mr. A. Oduma at the Council

2006 Policy Brief by the International Commission of Jurist -Public Access to Information and Local Authorities in Kenya

http://docs.google.com/viewer?a=v&q=cache:LsyXSegGcTAJ:www.icj-kenya.org/index.php%3Foption%3Dcom_docman%26task%3Ddoc_download%26gid%3D84%26Itemid%3D+public+access+to+city+council+proceeding;MxskDbeRMWtBaBDMIGONyNRM5Z92bh4CEVWF1-kwmHieosCMjilVh5wGAT-BfPnkb6bYiGb9&sig=AHIEtbRyNhyJL-5ZVvfSaPavncK6E41Frg

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.

Comments:

Procedure not openly communicated to the public and the cost is prohibitive to the common public

References:

25/6/2011 interview with Journalist F. Gachiri of Citizen TV

www.nairobicity.go.ke

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

75:

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

25:

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

Category 4. City Fiscal and Budgetary Management

4.1. ⁸¹ City Budget Processes

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

67

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

Yes | No

Comments:

Members of Public are required to make formal request to the council for the budget information

References:

(4) The Controller of Budget shall oversee the implementation of the budgets of the national and county governments by authorising withdrawals from public funds under Articles 204, 206 and 207.

Constitution of Kenya Section 228. Controller of Budget.

(5) The Controller shall not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorised by law.

(6) Every four months, the Controller shall submit to each House of Parliament a report on the implementation of the budgets of the national and county governments.

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

Comments:

Under the new Constitution of Kenya Section 228. Controller of Budget will be required to give and disclose budget information to the public

References:

Constitution of Kenya Section 228. Controller of Budget.

(4) The Controller of Budget shall oversee the implementation of the budgets of the national and county governments by authorising withdrawals from public funds under Articles 204, 206 and 207.

(5) The Controller shall not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorised by law.

(6) Every four months, the Controller shall submit to each House of Parliament a report on the implementation of the budgets of the national and county governments.

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:

Legal requirement for the reports to be shared with the public

References:

Local Government Act CAP 265 section 212 (particularly part 8)

212. (1) Not less than fourteen days before the commencement 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.

(2) As soon as may be after its approval of its estimates, but not later than such date (if any) as may be determined by the local authority to which it is hereby required to forward its estimates –

(a) the council of every county division shall forward its estimates to the council of the county in which such county division is situate;

(b), (c) and (3) – (Deleted by 11 of 1984, Sch)

(4) As soon as may be after approval of its own estimates, but not later than such date (if any) as the Minister may fix as the last date for the submission of estimates of any particular local authority or class of local authorities, every municipal council and county council shall submit copies of its own estimates to the Minister and, in the case of a county council, at the same time submit copies of all estimates forwarded to it under subsection (2) (a) together with its recommendations thereon.

(5) Every municipal council and county council shall submit to the Provincial Commissioner of the Province copies of any estimates submitted to the Minister under subsection (4) and the Provincial Commissioner may thereupon make any recommendations to the Minister with respect to such estimates.

(6) Where in any financial year it appears to a local authority that-

(a) expenditure for a special purpose is desirable; and

(b) no or insufficient provision has been made for it in the annual estimates for that year,

such local authority may prepare or cause to be prepared, and may approve, supplementary estimates, and subsections (2), (3) and (4) shall apply mutatis mutandis thereto and in respect thereof.

(7) All annual, revised and supplementary estimates shall be prepared in such form and contain such detailed information as the Minister may require.

(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.

(9) The clerk of every local authority shall, on application made not earlier than twenty-one days before the meeting of the local authority to consider its annual or supplementary estimates for the purpose of approval thereof, deliver to any inhabitant of the area of jurisdiction of such local authority copy of such estimates on payment of such fee, if any, as may be prescribed by resolution of such local authority.

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

Yes : A YES score is earned if there is a requirement, under law or regulation, for the city 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 section 212 (particularly part 8)

212. (1) Not less than fourteen days before the commencement 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.

(2) As soon as may be after its approval of its estimates, but not later than such date (if any) as may be determined by the local authority to which it is hereby required to forward its estimates –

(a) the council of every county division shall forward its estimates to the council of the county in which such county division is situate;

(b), (c) and (3) – (Deleted by 11 of 1984, Sch)

(4) As soon as may be after approval of its own estimates, but not later than such date (if any) as the Minister may fix as the last date for the submission of estimates of any particular local authority or class of local authorities, every municipal council and county council shall submit copies of its own estimates to the Minister and, in the case of a county council, at the same time submit copies of all estimates forwarded to it under subsection (2) (a) together with its recommendations thereon.

(5) Every municipal council and county council shall submit to the Provincial Commissioner of the Province copies of any estimates submitted to the Minister under subsection (4) and the Provincial Commissioner may thereupon make any recommendations to the Minister with respect to such estimates.

(6) Where in any financial year it appears to a local authority that-

(a) expenditure for a special purpose is desirable; and

(b) no or insufficient provision has been made for it in the annual estimates for that year,

such local authority may prepare or cause to be prepared, and may approve, supplementary estimates, and subsections (2), (3) and (4) shall apply mutatis mutandis thereto and in respect thereof.

(7) All annual, revised and supplementary estimates shall be prepared in such form and contain such detailed information as the Minister may require.

(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.

(9) The clerk of every local authority shall, on application made not earlier than twenty-one days before the meeting of the local authority to consider its annual or supplementary estimates for the purpose of approval thereof, deliver to any inhabitant of the area of jurisdiction of such local authority copy of such estimates on payment of such fee, if any, as may be prescribed by resolution of such local authority.

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

Yes : A YES score is earned if there is a requirement, under law or regulation, for the city 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 is normally made available to the residents of the city since it is a legal requirement

References:

Local Government Act CAP 265 section 212 (particularly part 8)

212. (1) Not less than fourteen days before the commencement 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.

(2) As soon as may be after its approval of its estimates, but not later than such date (if any) as may be determined by the local authority to which it is hereby required to forward its estimates –

(a) the council of every county division shall forward its estimates to the council of the county in which such county division is situate;

(b), (c) and (3) – (Deleted by 11 of 1984, Sch)

(4) As soon as may be after approval of its own estimates, but not later than such date (if any) as the Minister may fix as the last date for the submission of estimates of any particular local authority or class of local authorities, every municipal council and county council shall submit copies of its own estimates to the Minister and, in the case of a county council, at the same time submit copies of all estimates forwarded to it under subsection (2) (a) together with its recommendations thereon.

(5) Every municipal council and county council shall submit to the Provincial Commissioner of the Province copies of any estimates submitted to the Minister under subsection (4) and the Provincial Commissioner may thereupon make any recommendations to the Minister with respect to such estimates.

(6) Where in any financial year it appears to a local authority that-

(a) expenditure for a special purpose is desirable; and

(b) no or insufficient provision has been made for it in the annual estimates for that year,

such local authority may prepare or cause to be prepared, and may approve, supplementary estimates, and subsections (2), (3) and (4) shall apply mutatis mutandis thereto and in respect thereof.

(7) All annual, revised and supplementary estimates shall be prepared in such form and contain such detailed information as the Minister may require.

(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.

(9) The clerk of every local authority shall, on application made not earlier than twenty-one days before the meeting of the local authority to consider its annual or supplementary estimates for the purpose of approval thereof, deliver to any inhabitant of the area of jurisdiction of such local authority copy of such estimates on payment of such fee, if any, as may be prescribed by resolution of such local authority.

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:

Chapter 12 of 2003 Public Audit Act

26. (1) If, in the course of an examination and audit, a matter comes to the attention of the Controller and Auditor-General that he feels should be brought to the attention of the National Assembly immediately, the Controller and Auditor-General shall submit a special report to the Minister responsible for finance.

(2) The Minister shall lay the special report before the National Assembly not later than seven days after the National Assembly first meets after the Minister has received the report.

(3) If the Minister fails to lay the special report before the National Assembly as required under this section, the Controller and Auditor-General shall forthwith submit a copy of the report to the Speaker of the National Assembly to be presented by him to the National Assembly.

Section on Local Authority Accounts

21. (1) For each financial year, each local authority shall prepare and submit accounts to the Controller and Auditor-General.

(2) The accounts shall include such particulars as the Minister responsible for local government may direct.

(3) The accounts shall be in such form as the Minister responsible for local government may direct.

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?

36

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:

it is a requirement that the elected representatives of the people in the council have to go through the budget to ensure the peoples interest are taken into consideration

References:

Interview with City Treasurer Mr. Ngigi on 7/6/2011 at the Council

http://www.naibocity.go.ke/index.php?option=com_content&view=article&id=82:councilsh15bnbudgettobetterresidentslife

ushahidi.internewskenya.org/reports/view/76- Erastus Wambugu – Internews Network Kenya

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 budget reports are available at a cost, but most people are not aware of its availability for the public

References:

Interview with City Treasurer Mr. Ngigi on 7/6/2011 at the Council

http://www.naibocity.go.ke/index.php?option=com_content&view=article&id=82:councilsh15bnbudgettobetterresidentslife- City council website

ushahidi.internewskenya.org/reports/view/76- Erastus Wambugu, Internews network kenya 2011

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:

Th Councilllors participate in this process to represent the interest of people who elected them or risk not being re-elected

References:

Interview with City Treasurer Mr. Ngigi on 7/6/2011 at the Council

http://www.naibocity.go.ke/index.php?option=com_content&view=article&id=82:councilsh15bnbudgettobetterresidentslife- City council website 2011

ushahidi.internewskenya.org/reports/view/76- Erastus Wambugu, Internews network kenya 2011

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:

it as legal requirement that the budget information be made available to the public

References:

Interview with City Treasurer Mr. Ngigi on 7/6/2011 at the Council

http://www.nairobicity.go.ke/index.php?option=com_content&view=article&id=82:councilsh15bnbudgettobetterresidentslife- City council website 2011

ushahidi.internewskenya.org/reports/view/76- Erustus Wambugu, Internews network kenya 2011

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

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

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

Yes | **No**

Comments:

The city Council normally presents budget Estimates to the public

References:

Interview with City Treasurer Mr. Ngigi on 7/6/2011 at the Council

http://www.nairobicity.go.ke/index.php?option=com_content&view=article&id=82:councilsh15bnbudgettobetterresidentslife- City council website 2011

ushahidi.internewskenya.org/reports/view/76- Erustus Wambugu, Internews network kenya 20116

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:

Audited reports do delay before they are made available to the public, Very few Members of public are interested or take part in the budget process

References:

Interview with City Treasurer Mr. Ngigi on 7/6/2011 at the Council

http://www.nairobicity.go.ke/index.php?option=com_content&view=article&id=82:councilsh15bnbudgettobetterresidentslife- City council website 2011

ushahidi.internewskenya.org/reports/view/76- Erustus Wambugu, Internews network kenya 2011

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:

In most cases the public participates in the budget formulation process in directly through their elected officials at the council- the Councillors

References:

Interview with City Treasurer Mr. Ngigi on 7/6/2011 at the Council

http://www.nairobicity.go.ke/index.php?option=com_content&view=article&id=82:councilsh15bnbudgettobetterresidentslife- City council website 2011

ushahidi.internewskenya.org/reports/view/76- Erustus Wambugu, Internews network kenya 2011

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

75:

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

25:

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

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

88

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

Yes | No

Comments:

The citizen have a legal right to participate in budget process

References:

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

CHAPTER TWELVE – Public Finance

Part 1 – Principles and Framework of Public Finance

201. 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;
- (b) the public finance system shall promote an equitable society, and in particular
- (i) the burden of taxation shall be shared fairly;
- (ii) revenue raised nationally shall be shared equitably among national and county governments; and
- (iii) expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;
- (c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
- (d) public money shall be used in a prudent and responsible way; and
- (e) financial management shall be responsible, and fiscal reporting shall be clear.

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

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

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

100 | 75 | 50 | 25 | 0

Comments:

The city Councillors advocate for the interest of their constituents to be included in the budget

References:

Interview with City Treasurer Mr. Ngigi on 7/6/2011 at the Council

www.nairobicity.go.ke- City council of Nairobi website

– Erustus Wambugu Interview network Kenya 2011

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

Comments:

Revenue is collected through the central Government and allocated to respective county Council

References:

Constitution of Kenya Chapter 12 on Public Finance Part 4 – Revenue Allocation
202. (1) Revenue raised nationally shall be shared equitably among the national and county governments.

(2) County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally.

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

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?

50

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

100 | 75 | 50 | 25 | 0

Comments:

The councils all get budget disbursement though sometimes it may delay in cases where the Ministry of finance needs further clarification on the requested budget estimates from the councils.

References:

7/6/2011 Interview with City Treasurer Mr. Ngugi

www.naibocity.go.ke -Nairobi city council Budget

www.allafrica.com/stories/201105091557.html

Budget allocations to council Nairobi Star article by Stephene Sangira 6/6/2011

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:

This information is available on request to the Town clerk, the Government also published the allocations to the councils on the local daily newspapers

References:

7/6/2011-Interview with City treasure Mr. Ngugi

www.communication.go.ke

www.treasury.go.ke – Ministry of Fiance website where budget transfers is posted

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 council will charge a minimal fees for a copy of the booklet that indicates the budget and the amount transferred from the treasury

References:

Interview with City treasurer Mr. Ngugi on 7/6/2011 at the City hall

www.nairobicity.go.ke -City Council of Nairobi website

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?

94

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:

CAP 265 of Local Government act- 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:

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:

7/6/2011 Interview with the city Treasurer Mr. Ngugi at the City hall

www.nairobicity.go.ke

A Study on comparative Local Government by HH werlin 1966- afraf.oxfordjournals.org/content/77/308/297.full.pdf

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

References:

CAP 265-Local Government Act -212. Annual and supplementary estimates.
212. (1) Not less than fourteen days before the commencement 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.

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

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

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

Yes | No

References:

Local Government Act CAP 265

212. (1) Not less than fourteen days before the commencement 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.

(2) As soon as may be after its approval of its estimates, but not later than such date (if any) as may be determined by the local authority to which it is hereby required to forward its estimates –

(a) the council of every county division shall forward its estimates to the council of the county in which such county division is situate;

(b), (c) and (3) – (Deleted by 11 of 1984, Sch)

(4) As soon as may be after approval of its own estimates, but not later than such date (if any) as the Minister may fix as the last date for the submission of estimates of any particular local authority or class of local authorities, every municipal council and county council shall submit copies of its own estimates to the Minister and, in the case of a county council, at the same time submit copies of all estimates forwarded to it under subsection (2) (a) together with its recommendations thereon.

(5) Every municipal council and county council shall submit to the Provincial Commissioner of the Province copies of any estimates submitted to the Minister under subsection (4) and the Provincial Commissioner may thereupon make any recommendations to the Minister with respect to such estimates.

(6) Where in any financial year it appears to a local authority that-

(a) expenditure for a special purpose is desirable; and

(b) no or insufficient provision has been made for it in the annual estimates for that year,

such local authority may prepare or cause to be prepared, and may approve, supplementary estimates, and subsections (2), (3) and (4) shall apply mutatis mutandis thereto and in respect thereof.

(7) All annual, revised and supplementary estimates shall be prepared in such form and contain such detailed information as the Minister may require.

(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.

(9) The clerk of every local authority shall, on application made not earlier than twenty-one days before the meeting of the local authority to consider its annual or supplementary estimates for the purpose of approval thereof, deliver to any inhabitant of the area of jurisdiction of such local authority copy of such estimates on payment of such fee, if any, as may be prescribed by resolution of such local authority.

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

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:

Representation of the public Mainly through the elected councilors scrutinizes the budget. The elected Councilors effectively participates in the budget deliberations to ensure the interest of the people who elected them in their respective constituents is accommodated.

References:

7/6/2011 interview with Town Treasure Mr. Ngugi at the city hall

25/5/2011 Interview with KAM Legal Affairs officer Ms. S. Kimani

www.naibocicity.go.ke

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:

Public Procurement Act CAP 3

86. If there will not be effective competition unless foreign persons participate, the following shall apply –

(a) the notice inviting expressions of interest and the request for proposals must be in English;

(b) in addition to the advertisement required under section 54(2), the procuring entity shall also advertise the notice inviting expressions of interest in one or more English-language newspapers or other publications that, together, have sufficient circulation outside Kenya to allow effective competition for the procurement;

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

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

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

Yes | No

Comments:

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

References:

Public Procurement & Disposal Act CAP 3

40. (1) No person, agent or employee shall be involved in any corrupt practice in any procurement proceeding.

(2) If a person or an employee or agent of a person contravenes subsection (1) the following shall apply –

(a) the person shall be disqualified from entering into a contract for the procurement; or

(b) if a contract has already been entered into with the person, the contract shall be voidable at the option of the procuring entity.

(3) The voiding of a contract by the procuring entity under subsection (2)(b) does not limit any other legal remedy the procuring entity may have.

(4) A person, employee or agent who contravenes subsection (1) shall be guilty of an offence.

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

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

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

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

Yes | No

Comments:

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

References:

Public Procurement and Disposal Act CAP 3-100. Right to judicial review to procurement.

100. (1) A decision made by the Review Board shall, be final and binding on the parties unless judicial review thereof commences within fourteen days from the date of the Review Board's decision.

(2) Any party to the review aggrieved by the decision of the Review Board may appeal to the High Court. and the decision of the High Court shall be final.

(3) A party to the review which disobeys the decision of the Review Board or the High Court shall be in breach of this Act and any action by such party contrary to the decision of the Review Board or the High Court shall be null and void.

(4) If judicial review is not declared by the High Court within thirty days from the date of filing, the decision of the Review Board shall take effect.

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

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

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

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

Yes | No

References:

Public Procurement Act CAP 3

92. (1) A procuring entity may use a procurement procedure specially permitted by the Authority which may include concessioning and design competition.

(2) For the purpose of this section-

(a) "concessioning" means a procurement that encourages the mobilization of private sector resources for the purpose of public financing, construction, operation and maintenance of development projects and may include build-own and operate, build-own-operate and transfer, build-operate and transfer or similar types of procurement procedures;

(b) "design competition" means a procurement procedure for obtaining competitive bids for services which are creative in nature and which require that part of the services be carried as part of the bid to facilitate evaluation of the bids and such services include architecture, landscaping, engineering, urban design projects, urban and regional planning and fine arts.

(3) The procedure for specially permitted procurement shall be as prescribed

(4) In specially permitting a procedure under subsection (1), the Authority may exempt the procedure from the application of a provision of Part IV or vary the application of such a provision.

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

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

References:

7/6/2011 Interview with Mr. Ngugi City Treasurer at the City Council

www.kenyantenders.blogspot.com/.../city-council-of-nairobi-supply-and.html-Join the multi-million procurement and tender supplies industry in Kenya.

www.ppoa.go.ke- Public Procurement Oversight Authority

www.kenao.go.ke/Reports_LA/NCC_Special.pdf

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:

Companies who flout the procurements rules are prohibited in participating in future tenders as per the law Cap 3 – Public Procurement and Disposal-40. Corrupt practice.

References:

7/6/2011 Interview with City Treasurer at the Council

www.tikenya.org/viewnews.asp?ID=1592

www.m.standardmedia.co.ke/businessM.php?id=2000033088

www.cgd.or.ke/.../Better%20Still%20-%20Public%20procurement%20&%20disposal%20bill%24.pdf

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:

The justification in many cases is not very clear and accepted by many. In particularly city projects sponsored by other Governments where they require companies outside their respective countries to do the projects

References:

7/6/2011 Interview with City Treasurer at the Council

www.tikenya.org/viewnews.asp?ID=1592

www.m.standardmedia.co.ke/businessM.php?id=2000033088

www.cgd.or.ke/.../Better%20Still%20-%20Public%20procurement%20&%20disposal%20bill%24.pdf

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?

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

Yes | No

Comments:

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

References:

Public Procurement & Disposal ACT Cap 3-9. Functions of Public Procurement Authority.

9. The Authority shall have the following functions –

(a) to ensure that the procurement procedures established under this Act are complied with;

(b) to monitor the public procurement system and report on the overall functioning of it in accordance with section 20(3)(b) and present to the Minister such other reports and recommendations for improvements as the Director-General considers advisable;

(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; and

(iv) to issue written directions to public entities with respect to procurement including the conduct of procurement proceedings and the dissemination of information on procurements; and

(v) to ensure that procuring entities engage procurement professionals in their procurement units.

(d) to initiate public procurement policy and propose amendments to this Act or to the regulations; and

(e) to perform such other functions and duties as are provided for under this Act.

www.ppoa.go.ke

The Public Procurement and Disposal Act 2005 establishes procedures for efficient Public Procurement and for the disposal of unserviceable, obsolete, or surplus stores, assets and equipment by public entities and to provide for other related matters

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

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:

Cap 3 – Public Procurement and Disposal-46. Publication of procurement contracts.

6. (1) The Authority shall publish notices of the contracts awarded by procuring entities together with such other information as may be prescribed.

(2) The Authority shall issue directions governing the publication of notices under this section, including directions specifying what must be included in a notice and how it must be published.

Public procurement Amendment Regulations 2009

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:

Public procurement & disposal Act CAP 3- 67. 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.

(3) For greater certainty, a notification under subsection (2) does not reduce the validity period for a tender or tender security.

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:

Records are available for scrutiny by the public but politically sensitive information may be delayed in order to hide the involvement of key politicians

References:

25/5/2011 Interview with city procurement officer Mr. R Ndoiti at the city council offices

www.ppoa.go.ke

publication on Assessment of Public procurement system in Kenya by PPOA-2007

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.

Comments:

The information is available at the council offices at a fees and upon request to the town clerk of the council

References:

25/5/2011 Interview with city procurement officer Mr. R Ndoiti at the city council offices

www.ppoa.go.ke- Public Procurement Oversight Authority

Publication on Assesment of Procurement System in Kenya by Public Procurement Authority – 2007 by Public procurement Oversight Authority

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?

88

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

Yes | No

References:

CHAPTER 3 of 2005 – PUBLIC PROCUREMENT AND DISPOSAL ACT

9. Functions of Authority.

Establishment of Authority. Director-General of the Authority.

Functions of Authority. 9. The Authority shall have the following functions –

(a) to ensure that the procurement procedures established under this Act are complied with;

(b) to monitor the public procurement system and report on the overall functioning of it in accordance with section 20(3)(b) and present to the Minister such other reports and recommendations for improvements as the Director-General considers advisable;

(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; and

(iv) to issue written directions to public entities with respect to procurement including the conduct of procurement proceedings and the dissemination of information on procurements; and

(v) to ensure that procuring entities engage procurement professionals in their procurement units.

(d) to initiate public procurement policy and propose amendments to this Act or to the regulations; and

(e) to perform such other functions and duties as are provided for under this Act.

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

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:

All the procurements in the city are normally advertised through the local newspapers and council notice boards

References:

7/6/2011 Interview with Dep TC-procurement Mr. Ndoiti of the City Council of Nairobi

www.mzalendo.com/.../uploads/.../Report-on-Procurement-of-cemetery-land-by-NCC-1.pdf

kenyaprocurement.blogspot.com/.../civil-and-electrical-engineering-works.html

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:

8. Establishment of Authority.

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.

(3) Without limiting the generality of subsection (2), the Authority shall have perpetual succession and a common seal and shall be capable of –

(a) suing and being sued in its corporate name; and

(b) holding and alienating moveable and immovable property.
Public Procurement & Disposal Act CAP 3

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:

Compliance with the public procurement regulations is mandatory officer who do not comply are liable for prosecution and therefore the oversight committee is effective in monitoring government agencies to ensure compliance

References:

7/6/2011 Interview with Mr. Ndoiti Deputy Townclerk-procurement

www.ppoa.go.ke

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.

78
4.3. City Auditing

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

100

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

Yes | No

References:

Public Procurement & Disposal Act CAP 3
Part VI – Controller and Auditor-general and Kenya National Audit off Ice and Commission
Audit Office.

34. The Controller and Auditor-General and his staff shall be called the Kenya National Audit Office, which office is hereby established.
Kenya National Audit office- www.kenao.go.ke

www.kenao.go.ke/Reports_LA/NCC_Special.pdf

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:

Cap 12 – Public Audit-
46. Independence.

46. In addition to the protection given by section 105 (5) of the Constitution, the Controller and Auditor-General shall not be subject to the direction or control of any other person or authority in carrying out any functions under this Act to which that section of the Constitution does not apply.

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

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

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

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

100 | 75 | 50 | 25 | 0

Comments:

The Audit institutions are free from influence since they know participating in an ethical activities on their part will also warrant prosecutions on their part

References:

7/6/2011 interview with city Treasurer Mr. Ngugi at the City council

allafrica.com/stories/200503141662.html

www.standardmedia.co.ke/news/InsidePage.php?id...cid=159&

www.kenyalaw.org/Downloads/Acts/Public%20Audit%20Act.pdf

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

References:

7/6/2011 interview with city Treasurer Mr. Ngugi at the City council

www.kenao.go.ke- Kenya National Audit office

Chapter 12 of 2003 Public Audit Act: -23. The Controller and Auditor-General shall examine and audit the accounts submitted by a local authority and shall certify the result of the examination and audit.

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 agency do conduct their own investigations in cases they feel there is a concern

References:

Interview with City Treasurer on 7/6/2011 Mr. Ngugi at the city council offices

Established Kenya National Audit office- <http://www.kenao.go.ke/about%20us.htm>
http://www.kenao.go.ke/report_la%20-tabled.html

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.

References:

7/6/2011 interview with Town Treasurer Mr. Ngugi at the City Council Offices

http://www.kenao.go.ke/Report_la.html

http://www.kenao.go.ke/report_la%20-tabled.html

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:

A formal request can be made to the Town clerk of the city council for any reports regarding the council

References:

http://www.kenao.go.ke/Report_la.html

Cap 12 of Public Audit Act

9. (1) The Controller and Auditor-General shall prepare a report on the audit conducted under section 8 and submit the report to the Minister responsible for finance and such report shall include the matters covered under section 8 and any other information he may consider appropriate including but not limited to matters concerning efficiency in the usage of resources.

(2) Without limiting what may be included in the report, the report shall indicate whether –

(a) the information and explanations that were required to perform the examination and audit were received; and

(b) the accounts have been properly maintained.

(3) Without limiting what may be included in the report, the report shall identify cases in which –

(a) money has been spent in a way that was not efficient or economical;

(b) the rules and procedures followed, or the No. 12 240 Public Audit 2003 Submitting report to National Assembly. records kept, were inadequate to safeguard property and the collection of revenue;

(c) money that should have been paid into the exchequer account was not so paid;

(d) money has been spent for purposes other than the purposes for which it was appropriated by Parliament; or

(e) satisfactory procedures have not been established to measure and report on the effectiveness of programmes.

(4) The Controller and Auditor-General shall submit the report to the Minister within six months after the end of the financial year or other period to which the accounts examined and audited relate.

(5) The National Assembly may extend, by resolution, the time limit for submitting the report.

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:

In the previous years the official secrets Act was used as an excuse to deny the public access to the Audit reports but under the new constitution there is not going to be any limitations

References:

7/6/2011 Interview with City town treasurer Mr. Ngugi at the council offices

www.estandardsforum.org/kenya/.../code-of-good-practices-on-transparency-in-fiscal-policy –

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:

The Controller and Auditor General (CAG) report is a massive, expensive technical document in several volumes that really only interests government officers and professionals. However, the print and electronic media often publish highlights from the report, enabling citizens to have an idea of the level of transparency and accountability of public resources. the reports are nowadays available online- www.knao.go.ke

References:

Interview with the City Treasurer on 7/6/2011 at the City Council Mr. Ngugi

Interview with W.Kamau Chairman procurement services and KAM on 26/6/2011

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

75:

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

25:

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

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

Comments:

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

References:

Chapter 1 of the Kenyan Constitution-Access to information.

35. (1) Every citizen has the right of access to

(a) information held by the State; and

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

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

Local Government Act CAP 265, Section 148 – set the procedure for coming up with fees and charges which must be legal.

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:

This information is available in the city council website and also publication on fees and charges for respective departments in the city council

References:

Interview with City Treasurer Mr. Ngugi on 7/6/2011 at the council

http://www.nairobicity.go.ke/index.php?option=com_content&view=article&id=56&Itemid=70- Categories of Businesses and their Fees and Charges

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

Comments:

Citizen can challenge any additional taxes imposed to them through the High court

References:

Public Collection Act CAP 106 -part 12
http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

Local Government Act CAP 265 section 148

(2) All fees or charges imposed by a local authority shall be regulated by by-law, or if not regulated by by-law, may be imposed by resolution of the local authority with the consent of the Minister and such consent may be given either in respect of specified fees or charges or may be given so as to allow a specified local authority to impose fees or charges by resolution in respect of a specified power or a particular matter.

(3) Save where the contrary is expressly or by necessary implication in any written law provided, a local authority may authorize the remission in whole or in part of any fees due to it or charges imposed by it under this Act or any other written law.

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:

Tax laws apply to all citizens of the country

References:

7/6/2011 Interview with town Treasurer Mr. Ngugi at the Cit Hall.

Taxation without Principles: a Historical analysis of the Kenyan Taxation System by Attiya Waris is an Assistant Lecturer, Department of Commercial Law, School of Law of the University of Nairobi in Kenya.-2007

Taxation and State Building in Kenya: Enhancing Revenue Capacity to Advance Human Welfare by Attiya Waris-2009

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:

There is still concern of tax exemption cases involving businesses owned by well connected politicians example payments of land rates by well connected businesses is not done in an open manner at time they pay less due to waivers offered to them.

References:

7/6/2011 Interview with town Treasurer Mr. Ngugi at the Cit Hall.

Taxation without Principles: a Historical analysis of the Kenyan Taxation System by Attiya Waris is an Assistant Lecturer, Department of Commercial Law, School of Law of the University of Nairobi in Kenya.-2007

Taxation and State Building in Kenya: Enhancing Revenue Capacity to Advance Human Welfare by Attiya Waris-2009

100: When irregularities are discovered, there is aggressive investigation and prosecution of erring city public officials. Tax collection agencies referred to here are those that collect city taxes.

75:

50: The agency starts investigations, but is limited in its effectiveness. It may be slow to act, unwilling to take on politically powerful and other offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively investigate financial irregularities. It may start investigations but not complete them, or may fail to detect offenders. Agency personnel may be partisan in its application of power.

Category 5. City Public Administration and Business Regulation

5.1. ⁷²City 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

References:

Chapter 13 of the Kenya Constitution highlights on the values & Principles of Public service
http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

Public Office Ethics Acts CAP 183

9. (1) A public officer shall –

- (a) carry out his duties in a way that maintains public confidence in the integrity of his office.
- (b) treat the public and his fellow public officers with courtesy and respect;
- (c) to the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organisation;
- (d) if a member of a professional body, observe the ethical and professional requirements of that body;
- (e) observe official working hours and not absent without proper authorisation or reasonable cause;
- (f) maintain an appropriate standard of dress and personal hygiene; and
- (g) discharge any professional responsibilities in a professional manner.

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

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?

75

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

100 | 75 | 50 | 25 | 0

Comments:

Many Appointments in most of the high ranking positions at the council have in the past been influenced by politically connected civil servants

References:

Interview with Director Legal affairs Mr. Owuor Aduma at the Council on 7/6/2011

www.capitalfm.co.ke/news/Kenyanews/Nairobi-City-Council-set-for-headcount-7432.html – Publication on Capital website indicating that Nairobi city council are conducting employee censuses to keep their records straight

100: city civil servants are generally appointed and promoted on the basis of merit. They possess competencies required for the performance of their duties.

75:

50: city civil servants are generally appointed and promoted on the basis of merit, with some exceptions. Though there is no systematic favoritism in the local civil service, basic competencies in the performance of duties is somewhat lacking.

25:

0: Appointment and promotion of city civil servants are generally made due to favoritism and patronage. Basic competencies in the performance of duties is systematically lacking.

133. In practice, city civil servants are protected by law against arbitrary dismissal or demotion.

100 | 75 | 50 | 25 | 0

Comments:

The constitution of Kenya section 236 A public officer shall not be-

- a) Victimized or discriminated against for having performed the function in accordance with this constitution or any other law; or
- b) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.

References:

Interview with Director Legal Affairs at the City Council of Nairobi Mr. Awuor Oduma on 7/6/2011

Interview with KAM Legal Officer Ms Serah Kimani on 26/6/2011 at KAM

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?

50

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

Yes | No

References:

Public Office Ethics Act CAP 183

13. (1) A public officer shall not –

(a) use his office or place of work as a venue for soliciting or collecting harambees; or

(b) either as a collector or promoter of a public collection, obtain money or other property from a person by using his official position in any way to exert pressure.

(2) In this section, “collection”, “collector” and “promoter” have the same meanings as in section 2 of the Public Collections Act.

11. (1) A public officer shall not use his office to improperly enrich himself or others.

(2) Without limiting the generality of subsection (1), a public officer shall not –

(a) except as allowed under subsection (3) or (4), accept or request gifts or favours from a person who –

(i) has an interest that may be affected by the carrying out, or not carrying out, of the public officer’s duties;

- (ii) carries on regulated activities with respect to which the public officer's organisation has a role; or
- (iii) has a contractual or similar relationship with the public officer's organisation;

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:

Public Office Ethics Act CAP 183

12. (1) A public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties.

(2) Without limiting the generality of subsection (1), a public officer shall not hold shares partnership of other body, directly or through another person, if holding those shares or having that interest would result in the public officer's personal interests conflicting with his official duties.

(3) A public officer whose personal interests conflict with his official duties shall –

(a) declare the personal interests to his superior or other appropriate body and comply with any directions to avoid the conflict; and

(b) refrain from participating in any deliberations with respect to the matter.

(4) Notwithstanding any directions to the contrary under subsection (3)(a), a public officer shall not award a contract, or influence the award of a contract , to –

(a) himself;

(b) a spouse or relative;

(c) a business associate; or

(d) a corporation, partnership or other body in which the officer has an interest.

(5) The regulations may govern when the personal interests of a public officer conflict with his official duties for the purposes of this section.

(6) In this section, "personal interest" includes the interest of a spouse, relative or business associate.

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

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

136. In practice, the regulations governing gifts and hospitality offered to civil servants at the city level are effective.

100 | 75 | 50 | 25 | 0

Comments:

The Bribery index and reports in the country indicates despite the laws put in place government officer still receive bribes

References:

7/6/2011 interview with Director Legal Affairs Mr. A. Oduma at the City Council Offices

Kenya Bribery Report by Transparency International -2008 www.tkenya.org/documents/KenyaBriberyIndex08.pdf

www.allafrica.com/stories/20020619078.html

Clean the dirty Hands article by Standard Newspaper www.standardmedia.co.ke/mag/InsidePage.php?id...cid=620&

City Council of Nairobi Loses 100Million in fake Business licenses -www.nairobicity.go.ke/index.php?option=com_content.

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:

The example we have managed to get are on the new paper publications on Claims of Relative of council officials in the payroll-www.businessdailyafrica.com/.../539550/.../index.html

References:

Doing Business in kenya 2011-www.doingbusiness.org/~media/.../doing%20business/.../db10-sub-kenya.pdf

Bribe Claims at the City Council- www.standardmedia.co.ke/m/headlines.php?id=2000036730

Claims of Relative of council officials in the payroll-
www.businessdailyafrica.com/.../539550/.../index.html

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(242)

131. (1) No person shall sell or expose for sale or import or bring into any market or have in his possession without reasonable excuse any food for man in a tainted, adulterated, diseased or unwholesome state, or which is unfit for use, or any food for any animal which is in an unwholesome state or unfit for their use, and any medical officer of health, veterinary officer, sanitary inspector, meat inspector or police officer of or above the rank of Inspector may seize any such food, and any magistrate on the recommendation of the medical officer of health, a sanitary inspector or a veterinary officer may order it to be destroyed, or to be so disposed of as to prevent it from being used as food for man or animal as the case may be.

(2) No person shall collect, prepare, manufacture, keep, transmit or expose for sale any foodstuffs without taking adequate measures to guard against or prevent any infection or contamination thereof.

Food, Drug and substance Act (Cap 254)

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

Factories and other places of work Act (Cap 514).

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

Yes : A YES score is earned if there is a legal framework that requires the city government to make public health regulatory requirements for businesses publicly available.

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

139. In practice, basic regulatory requirements for meeting public health standards covering businesses operating in the city are made available to the public.

Yes | No

References:

Interviews with Public Relation officer at the City Council Mr Marube and with Director Environment Mr. Muraya on 7/6/2011

Examination report on Systems Policies & Procedures at the Council-
www.kacc.go.ke/docs/CITY_COUNCIL_NAIROBI_FINAL.pdf

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?

75

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

100 | 75 | 50 | 25 | 0

Comments:

Sometime enforcement of the regulations turns into harassment of businesses and an avenue for seeking for bribes from business

References:

Interviews with Public Relation officer at the City Council Mr Marube and with Director Environment Mr. Muraya on 7/6/2011

Interview with Executive officer- Regulatory affairs at KAM Ms. Arnolda Chao

100: City government offices that enforce basic health standards on businesses are staffed with adequate personnel. These personnel have the necessary competencies for their tasks.

75:

50: City government offices that enforce public health standards on businesses are somewhat constrained by staffing problems.

25:

0: There are no functioning city government offices that enforce public health standards on businesses.

141. In practice, business inspections by city government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

There are still cases of bribery witnessed as per my conversation with the concerned officer incharge where businesses have complained to the council.

References:

Interviews with Public Relation officer at the City Council Mr Marube , Interview with Director City Inspectorate mr. Caleb and with Director Environment Mr. Muraya on 7/6/2011

Media report on harrasment by Council officials- www.m.standardmedia.co.ke/news.php?id=2000036405

Interview with Executive officer- Regulatory affairs at KAM Ms. Arnolda Chao

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.

Comments:

They are business who do not comply with recommendations as long as they can pay bribes to get their business going on. example not having food handling certificates for all your employees in a hotel is illegal but some business would end up just getting certificates for a few employees knowing they can compromise the health officers

References:

Interviews with Public Relation officer at the City Council Mr Marube , Interview with Director City Inspectorate mr. Caleb and with Director Environment Mr. Muraya on 7/6/2011

Interview with Executive officer- Regulatory affairs at KAM Ms. Arnolda Chao

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

References:

Environment Management & Coordination Act of 1999
2.The functions of the Complaints Committee shall be –

(a) to investigate –

(i) any allegations or complaints against any person or against any person or against the Authority in relation to condition of the environment in Kenya;

(ii) on its own motion, any suspected case of environmental degradation, and to make a report of its findings together with its recommendations thereon to the Council;

(b) to prepare and submit to the Council, periodic reports of its activities which report shall form part of the annual report on the state of the environment under section 9(3); and

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:

getting reports is still a challenge in the city

References:

Interview with Director of Environment Mr. Muraya on 7/6/2011 at the city council

Interview with KAM Regulatory affairs Executive officer Ms. Arnolda Chao

www.publichealth.go.ke

www.nema.go.ke

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:

In most cases the environmental Audits reports are available for scrutiny but getting other reports for those outside the city may be a big problem due the distances at time involved

References:

Interview with Director of Environment Mr. Muraya on 7/6/2011 at the city council

Interview with KAM Regulatory affairs Executive officer Ms. Arnolda Chao

www.environmental-auditing.org/.../Full%20Managing%20solid%20waste%20in%20Nairobi%20city.pdf

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.

5.3.1. 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:

Occupational Safety & health Act CAP 15- Part (d)

126. (1) Notwithstanding section 26 of the Government Financial Management Act, Parliament shall appropriate moneys necessary for the establishment of a fund to be known as the Occupational Safety and Health Fund.

(2) The purpose of the fund shall be to:

(a) secure the development and coordination of a sound and effective occupational safety and health system;

(b) implement an effective system for the prevention of occupational accidents and diseases, ill health and damage to property at workplaces;

(c) carry out research on occupational safety and health, including research on factors leading to occupational accidents and diseases;

(d) develop and disseminate information materials, such as safety posters and pamphlets, newsletters and guidance notes on occupational safety and health including the holding of safety exhibitions, and awareness creation opportunities among employers employees and the general public; and

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

References:

7/6/2011- Interview Public Relations Officer at the City Council Mr. Marube

7/6/2011- Interview with KAM Regulatory Affairs officer Ms Arnolda Chao

www.nema.go.ke

www.nairobicity.go.ke

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?

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

100 | 75 | 50 | 25 | 0

Comments:

They do enforce though the enforcement is characterized by request for bribes by council officials

References:

7/6/2011- Interview Public Relations Officer at the City Council Mr. Marube

7/6/2011- Interview with KAM Regulatory Affairs officer Ms Arnolda Chao

www.nema.go.ke

www.nairobicity.go.ke

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:

Many businesses have raised concern of bribes of bribes request by the council officials

References:

7/6/2011- Interview Public Relations Officer at the City Council Mr. Marube

7/6/2011- Interview with KAM Regulatory Affairs officer Ms Arnolda Chao

www.nema.go.ke

www.nairobicity.go.ke

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:

RECOMMENDATIONS are accepted businesses but the cost of compliance makes many businesses slow in compliance

References:

7/6/2011- Interview Public Relations Officer at the City Council Mr. Marube

7/6/2011- Interview with KAM Regulatory Affairs officer Ms Arnolda Chao

www.nema.go.ke

www.nairobicity.go.ke

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

Comments:

The Environment audit reports are available with respective departments at the council

References:

Health & Safety Act 2007

11. (1) The occupier of a workplace shall cause a thorough safety and health audit of his workplace to be carried out at least once in every period of twelve months by a safety and health advisor, who shall issue a report of such an audit containing the prescribed particulars to the occupier on payment of a prescribed fee and shall send a copy of the report to the Director.

(2) The audit report referred to in subsection (1) shall be preserved and be kept available for inspection by the occupational safety and health officer.

www.nairobicity.go.ke

www.nema.go.ke

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:

It is not guaranteed that one could get the information on the time requested there may be delays in getting the reports

References:

7/6/2011- Interview Public Relations Officer at the City Council Mr. Marube

7/6/2011- Interview with KAM Regulatory Affairs officer Ms Arnolda Chao

www.nema.go.ke

www.nairobicity.go.ke

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

75:

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

25:

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

153. In practice, the public can access reports on compliance of businesses with public safety standards at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The public can have access to reports on safety standards compliance from the related government departments

References:

7/6/2011- Interview Public Relations Officer at the City Council Mr. Marube

7/6/2011- Interview with KAM Regulatory Affairs officer Ms Arnolda Chao

www.nema.go.ke

www.nairobicity.go.ke

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 National Environment Management Authority (NEMA) is established under the Environmental Management and Coordination Act (EMCA) No. 8 of 1999, as the principal instrument of government in the implementation of all policies relating to the environment

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

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

References:

Interview with Director of Environment at the city Council of Nairobi Mr. Muraya on 7/6/2011

Interview with Executive officer Regulatory Affairs at KAM Mrs. Arnolda Chao on 25/5/2011

www.nema.go.ke

www.nairobicity.go.ke

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?

67

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

100 | 75 | 50 | 25 | 0

References:

Interview with Director of Environment at the city Council of Nairobi Mr. Muraya on 7/6/2011

Interview with Executive officer Regulatory Affairs at KAM Mrs. Arnolda Chao on 25/5/2011

www.nema.go.ke

www.nairobicity.go.ke

100: City government offices that enforce basic environmental protection standards on businesses are staffed with adequate personnel. These personnel have the necessary competencies for their tasks.

75:

50: City government offices that enforce environmental protection standards on businesses are somewhat constrained by staffing problems.

25:

0: There are no functioning city government offices that enforce environmental protection standards on businesses.

157. In practice, business inspections by city government officials to ensure environmental protection standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The major concern in payments of bribes by businesses

References:

Interview with Director of Environment at the city Council of Nairobi Mr. Muraya on 7/6/2011

Interview with Executive officer Regulatory Affairs at KAM Mrs. Arnolda Chao on 25/5/2011

www.nema.go.ke

www.nairobicity.go.ke

A report by Kenya Anti-corruption Commission-
www.kacc.go.ke/docs/CITY_COUNCIL_NAIROBI_FINAL.pdf

kcdnkenya.org/main/?page_id=42

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.

100 | 75 | 50 | 25 | 0

Comments:

The City Environment officials are keen to ensure that the business comply with the Environment regulation, they make recommendations on compliance those who do not act on compliance recommendations are fined

References:

Interview with Director of Environment at the city Council of Nairobi Mr. Muraya on 7/6/2011

Interview with Executive officer Regulatory Affairs at KAM Mrs. Arnolda Chao on 25/5/2011

www.nema.go.ke

www.nairobicity.go.ke

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?

67

159. In law, the public can access reports on the compliance of businesses with environmental protection standards.

Yes | No

Comments:

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

References:

www.nema.go.ke

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

123. (1) Subject to the provisions of section 122, any person may have access to any records transmitted to the Authority under this Act.

(2) A person desiring access to such records referred to in subsection (1) may on application to the Authority, be granted access to the said records on the payment of a fee prescribed by the 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.

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:

Under the new constitution dispensation, the public will be able to access many records kept by the government.

References:

Interview with the Director of Environment at the City Council Mr. Muraya on 7/6/2011

Interview with KAM Regulatory Affairs Officer M/s Arnolda Chao

www.kenyylaws.org

www.nema.go.ke

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:

Compliance report on environment protection standards are available at the respective council departments upon request. The environment standard enforcement is very effective

References:

Interview with the Director of Environment at the City Council Mr. Muraya on 7/6/2011

Interview with KAM Regulatory Affairs Officer M/s Arnolda Chao

www.kenyylaws.org

www.nema.go.ke

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.

78 5.5. City Land Record Management

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

75

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

Yes | No

References:

Physical Planning Code-286

43. It shall be lawful for the Director, an officer or a local authority to demand the production of, and make extracts from, all registers or other records or any deeds or instruments belonging to, or in the custody or possession of, any public officer or any person and in which are contained particulars of any land or property affected by any physical development plan.

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 Section 67-The National Land Commission
67. (1) There is established the National Land Commission.

(2) The functions of the National Land Commission are

(a) to manage public land on behalf of the national and county governments;

(b) to recommend a national land policy to the national government;

(c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;

- (d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- (e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- (f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;
- (g) to assess tax on land and premiums on immovable property in any area designated by law; and
- (h) to 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:

The constitutional provision under Public Service requires all government officers to under go through relevant trainings

No section of the law specifies what type of training but emphasises on qualification

References:

<http://www.uneskenya.com/rating-and-land-valuation-system>

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

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:

Cap 18 – Land Disputes Tribunal

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

The Constitution of Kenya Chapter Five Section 67-2 (e)
67. (1) There is established the National Land Commission.

(2) The functions of the National Land Commission are

- (a) to manage public land on behalf of the national and county governments;
- (b) to recommend a national land policy to the national government;
- (c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- (d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;

(e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;

(f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;

(g) to assess tax on land and premiums on immovable property in any area designated by law; and

(h) to monitor and have oversight responsibilities over land use planning throughout the country.

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?

50

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

100 | 75 | 50 | 25 | 0

Comments:

The Government has since computerized land records to ease the process of obtaining record from the lands departments

References:

7/6/2011-Interview with Director Legal Affairs at the City Council Mr. O. Aduma

<http://allafrica.com/stories/20090911125.html> Daily Nation Newspaper Article by Keneth Ogosia

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:

The formation of the Kenya Land Commission under the new constitution will minimize the irregularities experienced in the Lands department

References:

7/6/2011-Interview with Director Legal Affairs at the City Council Mr. O. Aduma

25/5/2011 Interview with KAM Legal Officer Ms Serah Kimani in KAM offices

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

References:

7/6/2011-Interview with Director Legal Affairs at the City Council Mr. O. Aduma

25/5/2011 Interview with KAM Legal Officer Ms Serah Kimani in KAM offices

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:

The cases becomes expensive for Citizen since they take a long time to resolve in a court of law

http://www.kenyalaw.org/CaseSearch/view_preview1.php?link=64562949270909717905174

References:

7/6/2011-Interview with Director Legal Affairs at the City Council Mr. O. Aduma

25/5/2011 Interview with KAM Legal Officer Ms Serah Kimani in KAM offices

100: In most cases, bringing a case to court is an affordable option to citizens or businesses seeking to resolve land record disputes.

75:

50: In some cases, bringing a dispute to court is not an affordable option to citizens or businesses seeking to resolve land record disputes.

25:

0: The prohibitive cost of utilizing the court prevents citizens or businesses from resolving land record disputes.

5.5.3. Are there transparent regulations governing land development and zoning (defined as the formal approval process to begin construction and land development projects) at the city level?

75

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

Yes | No

References:

Physical Planning Act 286
30. Development permission.

30. (1) No person shall carry out development within the area of a local authority without a development permission granted by the local authority under section 33.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment not exceeding five years or to both.

(3) Any dealing in connection with any development in respect of which an offence is committed under this section shall be null and void and such development shall be discontinued.

(4) Notwithstanding the provisions of subsection (2) –

(a) the local authority concerned shall require the developer to restore the land on which such development has taken place to its original condition within a period of not more than ninety days;

(b) if on the expiry of the ninety days notice given to the developer such restoration has not been effected the concerned local authority shall restore the site to its original condition and recover the cost incurred thereto from the developer.

(5) Subject to subsection (7) no licensing authority shall grant under any written law, a licence for commercial or industrial use or occupation of any building, or in respect of any premises or land, for which no development permission had been granted by the respective local authority

(6) For the purposes of subsection (5) –

(a) commercial use includes shops, offices, hotels restaurants, bars, kiosks, markets and similar business enterprises and trade but does not include petroleum filling stations;

(b) industrial use includes manufacturing, processing distilling and brewing, warehousing and storage workshops and garages, mining and quarrying and other similar industrial activities including petroleum filling stations.

(7) No local authority shall grant a development permission for any of the purposes mentioned in subsection (5) without a certificate of compliance issued to the applicant by the Director or an officer authorized by him in that behalf.

(8) Person who contravenes subsection (5) or (7) shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment not exceeding twelve months or to both.

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

References:

Physical Planning Act Cap 286

Part V – Control of Development

29. Subject to the provisions of this Act, each local authority shall have the power –

- (a) to prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;
- (b) to control or prohibit the subdivision of land or existing plots into smaller areas;
- (c) to consider and approve all development applications and grant all development permissions;
- (d) to ensure the proper execution and implementation of approved physical development plans;
- (e) formulate by-laws to regulate zoning in respect of use and density of development; and
- (f) to reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plan.

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:

There is no law indicating what type of training the zoning officers should go through consideration is typically based on basic University qualifications. If there are training then they are at the discretion of the concerned departments

References:

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

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:

Land Disputes Tribunal CAP 18

8. (1) Any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated.

(2) The appeal shall be registered in a register of appeals in the same manner as the register of claims under section 3 (3); and a notice thereof shall be served on the other party or parties to the dispute in the same manner as provided in subsection (4) of section 3.

(3) The appeal shall be in documentary form and shall contain a brief statement, to be divided into separate grounds of appeal, of the reasons upon which the party appealing wishes to rely.

(4) The appeal shall then be set down for hearing by the Appeals Committee at a date, time and place to be notified to the parties thereto.

(5) The appeal shall then be determined by the Appeals Committee, which shall consist of three members appointed under section 9.

(6) At the hearing of the appeal, the party bringing the appeal shall begin.

(7) After giving each party an opportunity to state his case the Appeals Committee shall determine the appeal giving reasons for its decision:

Provided that the Committee may in its discretion permit the party appealing to reply to the other party's submission if that submission contains any new matter not previously introduced at the hearing or on the appeal.

(8) The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court.

(9) Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of:

Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary law) is involved.

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

Land Title Act CAP 282 Section 6

6. There shall be a court of special jurisdiction, subordinate to the High Court, to be styled the Land Registration Court, whereof the Recorder of Titles shall be the presiding judge, and the Recorder of Titles shall have jurisdiction in all claims made under this Act relating to immovable property situated in the district, area or place to which this Act has been applied, with powers to determine any questions that may need determination in connexion with those claims, and the Recorder of Titles shall have all the powers of a judge in respect of procedure in the Land Registration Court, including the summoning of and administering oaths to witnesses, assessors, land valuers, appraisers and other persons whose advice, assistance or evidence seem to him to be necessary, the production of instruments and records and the due and proper administration of justice and order in the Court.

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

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?

56

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:

From Interviews with some few developers in Nairobi they indicated that approvals are got but there are cases where clearance is delayed

References:

7/6/2011-Interview with Director Legal Affairs at the City Council Mr. O. Aduma

25/5/2011 Interview with KAM Legal Officer Ms Serah Kimani in KAM offices

Impact of poor Governance on Land Development Applications-www.isocarp.net/Data/case_studies/1761.pdf

100: Requests for city land development and zoning approvals are available on-line, or can be obtained within two days. The process for submitting land development or zoning applications is uniformly available; there are no delays for politically sensitive projects.

75:

50: Requests for city land development and zoning approvals take around two weeks to submit. Some delays may be experienced.

25:

0: Requests for city land development and zoning approvals take more than a month to submit. There may be persistent delays for politically sensitive requests.

175. In practice, citizens and businesses can apply for city land development and zoning approvals at a reasonable cost.

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

Comments:

In the last week we have witnessed Buildings falling down due to incorrect approvals done by the council due to corruption

www.kbc.co.ke/news.asp?nid=70762 –

<http://www.standardmedia.co.ke/InsidePage.php?id=2000037440&cid=4&>

References:

7/6/2011-Interview with Director Legal Affairs at the City Council Mr. O. Aduma

25/5/2011 Interview with KAM Legal Officer Ms Serah Kimani in KAM offices

Impact of poor Governance on Land Development Applications-www.isocarp.net/Data/case_studies/1761.pdf

www.kbc.co.ke/news.asp?nid=70762 –

<http://www.standardmedia.co.ke/InsidePage.php?id=2000037440&cid=4&>

100: Applications for city land development and zoning approvals are can be obtained at little cost, such as by mail, or on-line, and/or for a small administrative fee.

75:

50: Applications for city land development and zoning regulation impose a financial burden on citizens and businesses. Applications may require a visit to a specific office, such as a regional or national capital.

25:

0: Applications for city land development and zoning approvals impose a major financial burden on citizens and businesses.

176. In practice, the agency or entity responsible for managing the city land development and zoning process has sufficient staff and resources.

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

Comments:

The number of staff has never been an issue concern is on governance in the whole process.

References:

7/6/2011-Interview with Director Legal Affairs at the City Council Mr. O. Aduma

25/5/2011 Interview with KAM Legal Officer Ms Serah Kimani in KAM offices

Impact of poor Governance on Land Development Applications-www.isocarp.net/Data/case_studies/1761.pdf

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:

Litigation process takes too long and in the end becomes costly for the citizen

References:

7/6/2011-Interview with Director Legal Affairs at the City Council Mr. O. Aduma

25/5/2011 Interview with KAM Legal Officer Ms Serah Kimani in KAM offices

Impact of poor Governance on Land Development Applications-www.isocarp.net/Data/case_studies/1761.pdf

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.
