

STRENGTHENING JUDICIAL REFORMS SERIES XIV

JUSTICE AT CITY HALL

Caleb Atemi
(Editor)

*A Joint Report by
ICJ Kenya and TI Kenya
on Municipal and City Courts*



Published by:

**The Kenyan Section of the International
Commission of Jurists (ICJ Kenya)**

Vihiga Road, Kileleshwa

P. O. Box 59743-00200 | Nairobi-Kenya

Office Tel: 020 208 4836/8 | Office Mobile: 0720 491 549

Fax: 020 387 5982

Email: info@icj-kenya.org | Website: www.icj-kenya.org

Facebook: <https://www.facebook.com/ICJ.Kenya>

Twitter: twitter.com/#!/icjkenya

ISBN No. 9966-958-93-2

Design & Layout:

LinoTypesetters (K) Ltd

P. O. Box 44876 Nairobi-Kenya

© *Copyright* of this publication is vested in the
Kenyan Section of the International Commission of Jurists (ICJ Kenya), 2013.

ICJ Kenya permits free reproduction of extracts from any of its publications, provided that due acknowledgment is given and a copy of the publication carrying the extract is sent to its offices at the address provided above.

TABLE OF CONTENTS

1. Foreword.....	i
2. Acknowledgement.....	iii
3. Executive Summary.....	v
4. Background	1
5. Access to Justice	2
6. International Standards	4
7. Universal Declaration of Human Rights (UDHR).....	5
8. International Convention on Civil and Political Rights (ICCPR)	5
9. African Charter on Human and Peoples Rights (ACHPR)	7
10. Fair Trial and Legal assistance	8
11. Provisions for Access to Justice	10
12. Taming Corruption	13
13. Enabling legislation	13
14. County Government Act.....	15
15. Review of By-Laws	16
16. Analysis of Survey Reports.....	18
17. Research Data Analysis	23
18. Africa and the Informal Trade.....	30
19. Lessons for Kenya.....	39
20. Recommendations for Reforms.....	40
21. Conclusion	47
22. Appendix 1	48

FOREWORD

Following the promulgation of the Constitution of Kenya 2010, the Kenyan judiciary embarked on an ambitious reform process. Among other initiatives, vetting of judicial officers was commenced, manpower has been expanded and physical infrastructure enhanced. The judiciary is also engaged in review of service delivery systems and processes.

These reforms are expected to go a long way in rebuilding public trust and confidence that had been markedly lacking due to decades of external political interference and internal institutional failures. Further the reforms should serve as a benchmark to other public institutions on what needs to be done to realize the spirit of the revamped public service delivery as envisaged under the constitution.

In pursuit of sustainability of reforms to address the inadequacies and failures that characterised the judiciary in the past, it is imperative that institutions involved in dispensing justice should execute similar reform initiatives.

The reform and streamlining of the operations of Municipal Council Courts constitute one such area of concern. These courts have been the adjudicatory arm of Municipal and City Councils. The court handles offenders on cases touching on City Council bylaws with the Clerk deriving prosecution power under Section 260 of the Local Government Act, CAP 265 Laws of Kenya.

Since the courts are an integral part of the judicial system, it follows that the gains made elsewhere in the Judiciary may not be felt by some of those seeking services in the system. The report traces areas where the judiciary and policymakers need to focus on to respond to the situation.

It remains imperative that the judiciary engages the management of city and county governments to ensure that the prevalent malpractices in the current law enforcement system do not negatively impact on the reform process and are addressed strategically.

County governments should rid their statutes of laws and regulations that are outdated and likely to stretch law enforcement and justice system without adding notable value to service delivery. Lastly, the judiciary should make a determination whether there is justification for the continued existence of municipal courts in light of the ambitious plan of making ordinary courts accessible to the people of Kenya geographically and fiscally.

Samuel Kimeu



ACKNOWLEDGEMENT

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) and the Transparency International Kenya wishes to thank all those who have contributed towards the publication of this report. First our heartfelt gratitude goes out to the team led by Michael Nderitu for conducting the research and collating information whose findings informed this report. We also appreciate the respondents who volunteered the information that made this report possible.

We in no less measure appreciate the work of Caleb Atemi for his meticulous editorial work that shaped the publication into its current form.

We would also like to appreciate the efforts of ICJ Kenya's Access to Justice team of Elsy Sainna, Anita Nyanjong, Clea Amundsen and the Transparency International Kenya team of Mwangi Kibathi and Harriet Wachira for coordinating and ensuring the completion of the project

Finally ICJ Kenya and Transparency International are grateful to DANIDA and the Embassy of the Kingdom of Netherlands in Nairobi respectively for their partnership, generous financial support provided under this project which forms part of the broader work on judicial transformation.

We trust that you will find this a useful resource.

Thank you all

George Kegoro
Executive Director
ICJ Kenya

Samuel Kimeu
Executive Director
Transparency International Kenya

The Administration of Justice

Monitoring City and Municipal Courts.

EXECUTIVE SUMMARY

This report summarises findings of the monitoring and observation of the administration of justice system. It focuses on the city and municipal courts in Nairobi, Mombasa and Eldoret. The report analyses the impact of the on-going judicial reforms. It looks at the effects that the international best practices have on the standards of these courts.

The report is informed by detailed research and observation. Its authors applied; observation of court operations and face to face interviews with court users. They also administered questionnaires completed by both advocates and court users. The report reveals that most of the persons arraigned in the city and municipal courts are informal traders. Although the city and municipal courts are part and parcel of the national judiciary, they are structured to serve the cities and municipalities. They conduct criminal trials relating to violation of council by-laws. The presiding magistrates are seconded to the courts by the judiciary.

The report also analyses the licensing, control and regulation of informal trade in other parts of Africa. It makes recommendations on how to improve and reform the administration of justice and the enforcement of by-laws. It argues that the enforcement should be effective while preserving the respect and rights of all arrested persons.

The Kenyan Judiciary is undertaking major reforms to align its operations with the Constitution 2010, while incorporating the international human rights law. These reforms must promote the right to a fair trial. The reforms agenda includes; an increase in personnel, monitoring, ensuring integrity of officers serving in the judiciary, and expansion of the court infrastructure. Gradually the judiciary has enhanced public participation and engagement in its operations. This has improved public perception towards its commitment to transform. To ensure the rule of law and delivery of justice, the judiciary must collaborate with other institutions such as; the office of the Director of Public Prosecutions (DPP), the Kenya Police Service (KPS) and the municipal and city councils. For optimal service to the public, these support institutions must equally transform.

The city and municipal authorities have the mandate to investigate violations of city and municipal by-laws and present evidence in court. The courts have a department that prosecutes violations of the by-laws under a delegated authority of the DPP. During hearings, the city and municipal authorities second essential staff, including court orderlies and court clerks. The bylaws are meant to maintain law and order within the jurisdiction of the city or municipality. Offences will range from minor violations of the law to petty crimes. They attract penalties under the Local Government Act¹. These penalties carry a fine of Kshs. 2, 000/- for first offenders or a six month imprisonment term; or a fine of Kshs. 3, 000/- or a nine month imprisonment for a second or subsequent offence.

The report evaluates the structures and process of enforcing council by-laws. It makes recommendations on necessary improvements. It documents and audits the experiences of court users. It captures experiences in regard to; efficiency, integrity, transparency, and quality of service within the courts. It peers into the by-law enforcement process.

The city and municipal courts are supervised by the Chief Magistrates Court. Referrals of other cases to the courts sometimes impede the operational efficiency and planning by the city and municipal courts. The judiciary has been implementing radical reforms. These reforms will cement the judiciary's role in the fulfilment and implementation of the Constitution. However, these reforms are not replicated in the operations of the city and municipal courts. Despite the fact that the Bill of Rights has been expanded and the right to a fair trial clarified, suspects arraigned in these courts rarely enjoy their constitutional guarantees. This report interrogates the operations of the city and municipal courts. It looks into how they can imbibe global judicial reforms.

The Constitution has reformed two entities critical to court functions; the Kenya Police Service and the office of the DPP. With reforms, the city and municipal courts, council enforcement officers and court orderlies, will handle suspects with civility and respect. The city and municipal councils also provide the physical facilities where the courts conduct their hearings. However, they serve the purpose of enforcing the council by-laws. They also deal with the mainstream criminal and civil cases. These courts are established in most major cities and towns in Kenya.

¹ Chapter 265 of the Laws of Kenya. These penalties are the maximum penalties that may be prescribed in the council by laws. With the coming into force of the County Governments Act, this Act shall stand repealed after the first General Election under the Constitution.

Therefore, the objectives of the report are to:-

- a) Audit and document the law enforcement procedures and systems in cities and local authorities. To ensure that they comply with the Constitution and international human rights law.
- b) Advise local authorities on the gaps identified in the law enforcement procedures and ensure the procedures comply with the law while supplementing judicial reforms.
- c) Make recommendations to ensure that concepts of integrity, openness and transparency are weaved into the law enforcement processes.
- d) Educate the public on by-laws and enforcement procedures.

The report was prepared using a combination of the following methodologies:-

- a. Analysis of questionnaires completed by court users. The court users included accused persons with pending cases and persons whose cases had already been determined by the courts.
- b. Observations of the court proceedings. Each court was observed for 10 days by researchers sitting through the courtroom hearings.
- c. Interviews with court users and relatives of accused persons with pending cases in court.
- d. Interviews with randomly selected members of the public. Such interviewees focussed on persons engaged in formal and informal business within various Central Business Districts (CBDs) of the city and municipalities. These were persons likely to have been charged in the city or municipal courts.
- e. Interviews with persons who had been convicted of offences under the by-laws and who had been sentenced to serve prison terms.
- f. Interviews with advocates who have represented accused persons or who practise in the city and municipal courts.
- g. An audit of the court processes and procedures through observation.
- h. Perusal of court files relating to city and municipal cases.
- i. Interviews with the prosecutors.
- j. Analysis of the Local Government Act, County Government Act and the by-laws of the city and municipalities.
- k. Desk top review of available literature. This included literature on; access to justice, international human rights law, the Constitution, operations of city and municipality courts and regulation of informal trade.

The three towns were selected on the basis of size, regional consideration and volume of cases handled by the municipal courts. In sampling, the researchers used a mix of simple random sampling, purposive sampling and convenience sampling. Where the respondents were readily available, simple random sampling was used. The purposive sampling was employed where unique cases were sought as part of the sample. In actual monitoring in court, convenience sampling was used to pick respondents available in court and who were willing to participate in the survey.

The report has made several recommendations on enhancing the process of administration of justice. Some of the recommendations affect the wide judicial reforms. Some challenges relating to payment of fines and the retrieval of bond from the courts affect the whole judiciary. The development of a sentencing policy and a case management system also affect judicial reforms. The establishment of the courts of petty sessions will assist in hearing and determination of all minor criminal offences, including the city and municipal court cases. These measures are already proposed in the Judicial Transformation Framework and are due to be implemented.

Other recommended measures such as appropriate licensing regime for the informal traders, can be carried out through a regulatory framework designed by the County governments. However, some target the enforcement and policy making mechanisms at the county authorities. The report urges the County governments to implement an ethics and anti-corruption policy and a training programme for its prosecutors and enforcement officers. The county governments have since assumed the roles of the local authorities after the General Election in March 2013. These recommendations will inform the design on the policies of these devolved governments in undertaking law enforcement at the county level. _

Background

Justice can be defined as ‘the exercise of authority in the maintenance of right’² and the ‘judgement of persons or causes by judicial process’³. Justice has also been defined as ‘vindication of state-determined legal rights through an adjudicative institution that administers and enforces them’⁴. The opportunity for judicial determination of a claim is an integral element of access to justice⁵. Access to justice is defined as the extent to which citizens are able to use courts for dispute resolution.

Access to justice may be restricted due to geographical factors, institutional limitations, demographic biases, cultural differences and economic factors. Other factors that may hinder access to justice are the mode of delivery of legal services and the nature of court proceedings, including procedural requirements and language used in court⁶. Access to justice means improving the functioning of the justice institutions and it requires broadening their accessibility and legitimacy while simultaneously making them more cost and time effective⁷.

The law performs different functions in different contexts including serving as an object of preserving order and delivering justice. The efficacy of the law is a function of multiple factors such as knowledge of the law, capacity to seek legal redress, availability of a forum to adjudicate disputes in the implementation and interpretation of the law and the access to such forum by aggrieved parties⁸. The lack of knowledge of the law by the citizenry, as well as lack of independent and impartial judiciary, undermines access to justice.

² The Oxford Reference Dictionary, 1989, p. 448.

³ The Macquarie Dictionary, 1981, p. 961.

⁴ Mc Quire, S.C., and Mac Donald, R.A., Small Courts Cant, 1997, Osgood Hall Law Journal, Vol. 34 No. 3, page 510.

⁵ Above cited, page 510.

⁶ Mary Anne Noone, Paralegals – In Community Interest? La Trobe University.

⁷ Open Justice Society Initiative, Legal Empowerment: An Integrated Approach to Justice And Development, Draft Working Paper, 21st March 2012.

⁸ Dr Patricia Kameri-Mbote, Towards Greater Access to Justice in Environmental Disputes in Kenya: Opportunities for Intervention, IELRC Working Paper, 2005-1(www.ielrc.org)

Accessibility to justice includes; general awareness of available remedies, availability and affordability of legal advice and absence of excessive and unreasonable fees, procedural hurdles and other barriers to access to formal dispute resolution system.

Essential elements which facilitate access to justice include⁹:-

- a) Citizen's legal literacy.
- b) Protection and easy affirmation of rights through law and dispute resolution processes.
- c) Existence of fair laws in content and outcome.
- d) Accessibility of laws to citizens, in terms of language and form.
- e) Availability of a variety of dispute resolution mechanisms.
- f) Cheap, simple, affordable and understandable legal procedures.

Access to Justice

Reforms which will enhance access to justice in Kenya are:-

1. Democratic laws to ensure protection of the rights of the citizens. Such laws must under the Constitution be made through a participatory process. Parliament must operate in an open and transparent manner¹⁰.
2. Simplification of the language of the law.
3. Legal education and awareness.
4. Training of judicial personnel and provision of judicial education. In Kenya, the judiciary has established the Judicial Training Institute (JTI) as the training institution for judicial officers.
5. Ease of bureaucracy and reduction of corruption in the administration of justice. The public must remain constantly vigilant to judicial reforms.
6. Expansion and institutionalisation of government funded legal aid scheme.

⁹ Okech Owiti, *Access to Justice and Small Claims Courts*, Paper Presented at a Workshop organized by the Legal Resources Foundation in February, 2004.

¹⁰ Sessions of the National Assembly and the Senate shall be open to the public (Article 118 of the Constitution).

The criminal justice system in a democratic society adhering to the rule of law has to be balanced against conflicting interests¹¹. These interests are:-

- a) Legitimate interest of the state to enact national laws, fight against crime and maintain internal security;
- b) Interest of the victims of crime and abuse; and
- c) Rights of the accused or the convicted and sentenced offender.

The States should develop a criminal justice policy that is directed at reformation, rehabilitation and social integration of the offenders¹². The prevention of crime and rehabilitation of offenders should be the objectives of punishment in the criminal justice system. The legal regulations of the use of force by police officers should be in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials¹³. The States should improve physical facilities of police custody and remand detention facilities in line with international minimum standards¹⁴ and eliminate use of pre-trial detention of petty crimes¹⁵.

Judicial independence, including the institutional independence of the judiciary and the independence of individual judges¹⁶ should be secured and protected. Institutional independence includes the allocation of cases, respect for decisions, and enforcement of judgements while individual independence includes the ability to decide cases on the basis of the law and facts without improper influence, pressure or threats from any person or authority.

The transparency of trial proceedings through public access and the public issuance of judgments are critical in protecting the rights to a fair trial. It facilitates democratic control of judicial proceedings. Although the public can be excluded in the interest of the parties, such closure of trials should be initiated only if strictly necessary¹⁷.

¹¹ D.P. Kumaraswamy and Manfred Nowak, Human Rights In Criminal Justice Systems; Strasbourg, France – 18th to 20th February 2009, Page 2

¹² Ibid, Page 3

¹³ Ibid, Page 10

¹⁴ Ibid, Page 11

¹⁵ Ibid, Page 12. Most offences for which suspects are arraigned in the City and Municipal Courts can be termed as petty crimes, attracting fines and minimal jail sentences and infolding minor infractions of the law.

¹⁶ Ibid, Page 13

Ibid, Page 13

Delay in conclusion of cases denies accused persons the right to a fair trial. It reduces public faith in the judiciary. This has implications for other aspects of the criminal justice system, including pre-trial detention and increased prison populations¹⁸. Delays in concluding trials can be caused by:-

- a. Complex legal procedures.
- b. Lack of adequate courtrooms, insufficient number of judges, and poor case management; and
- c. Inadequate financial resources to courts.

Public funding should be allocated to crime prevention rather than attributive measures¹⁹. States should promote non-custodial of criminal sanctions and implement the guidelines provided in the 1990 UN Standard Minimum Rules for Non-Custodial Measures. Courts should exercise greater flexibility in sentencing consistent with the nature and gravity of the offence, personality, background of the offender and the ultimate aim of the protection of society²⁰.

States should take measures to eliminate torture and cruel treatment by taking proactive steps to identify and investigate conditions and activities in prisons and custody²¹. These steps must include criminalization of torture and prosecution of offenders.

INTERNATIONAL STANDARDS

International and regional human rights treaties establish the right to a fair hearing in civil and criminal proceedings before an independent and impartial court or tribunal²². This review concentrates on standards relating to criminal trials. The challenges that hinder the application of international human rights standards in national courts include limited or non-existent legal training on international human rights for professionals including prosecutors, lawyers and judicial officers. They also include a poor human rights culture in the legal profession and the public. The legal profession must recognise that every lawyer is a potential defender of human rights. States must

¹⁸ Ibid, Page 15

¹⁹ Ibid, Page 16

²⁰ Ibid, Page 17

²¹ Ibid, Page 19.

²² General rules of international law and the treaties and covenants that Kenya has ratified are now part of the laws of Kenya (See Article 2(5) and (6) of the Constitution)

domesticate the treaties into their local law. International human rights instruments and general rules of international law are incorporated as part of the laws of Kenya.

i. Universal Declaration of Human Rights (UDHR) ²³

Article 10 of the Declaration states that everyone is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his or her rights and obligations. This right also applies to a trial for any criminal charge against him or her. Article 11(1) provides that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he or she has had all the guarantees necessary for his or her defence. Article 11(2) states that no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. A court shall not impose a heavier penalty than the one that was applicable when the offence was committed.

Originally, the UDHR was an aspirational and non-binding document. Its provisions have however become binding and accepted norms of customary international law²⁴.

International Convention Civil and Political Rights (ICCPR) ²⁵

Article 14 (1) of the Covenant provides that all persons shall be equal before courts and tribunals. In the determination of any criminal charge, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The media and the public may be excluded from all or part of a trial. The exclusion could be due to reasons of

²³ Adopted by the General Assembly through Resolution 217 A (III) of 10th December, 1948.

²⁴ H.J Steiner & P. Alston, *International Human Rights in Context: Law, Politics and Morals* (New York Oxford University Press, 1996).

²⁵ Adopted and opened for signature, ratification and accession by the General Assembly Resolution 2200A (XXI) of 16th December 1966, Entry into force 23 March, 1976, in accordance with article 49.

morals, public order or national security. It could also be due to the interest of the private lives in the trial or where publicity would prejudice the interests of justice. Such exclusion however, must be justifiable in a democratic society. Nevertheless, all criminal trials must be conducted in public.

Any judgement rendered in a criminal case or in a suit shall be made public. However, proceedings can be heard in camera to protect the interests of children.

Accused persons in any criminal case, shall be entitled to the following minimum guarantees:²⁶

- a) To be informed promptly, in detail and in a language they understand, the nature and cause of the charge against them,
- b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their choice,
- c) To be tried without undue delay,
- d) To be tried in person and to defend themselves in person or through legal counsel of their choice. To be informed of their right to free legal assistance especially when they are financially challenged,
- e) To examine, or to have examined, witnesses against them and to obtain attendance of witnesses on the same conditions as witnesses against them,
- f) To have free assistance of an interpreter,
- g) Not to be compelled to testify against the self or to confess guilt.

Where the persons charged are juveniles, the procedure shall take account of their age and the desirability of promoting their rehabilitation²⁷. A person convicted of a crime shall have the right to the review of his or her conviction and sentence by a higher tribunal²⁸. Where a person has been convicted of a criminal offence and subsequently, the conviction has been reversed or has been pardoned on the ground that new or newly discovered facts show conclusively that there has been miscarriage of justice, such person shall be compensated in accordance with the law, unless the non-disclosure of the unknown facts is wholly or partly attributable to him²⁹. A person shall not be liable for an offence for which he or she has been finally convicted or

²⁶ ICCPR, Article 14(3).

²⁷ ICCPR, Article 14(4).

²⁸ ICCPR, Article 14(5).

²⁹ ICCPR, Article 14(6).

acquitted in accordance with the law³⁰. The Human Rights Committee has held that the right to be tried by an independent tribunal is an absolute right that may suffer no exception³¹.

i. African Charter on Human and Peoples Rights (ACHPR)³²

Article 7(1) of the African Charter provides that every individual shall have the right to have his or her cause heard. This comprises the right to an appeal to competent national organs against acts of violating his or her fundamental rights as guaranteed and recognised in conventions, laws, regulations, and customs in force; the right to be presumed innocent until proven guilty by a competent court or tribunal; the right to defence, including the right to be defended by counsel of his or her choice; and the right to be tried within a reasonable time by an impartial court or tribunal.

Article 7(2) of the Charter states that no one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender. The African Commission on Human and Peoples Rights has stated that article 7 of the Charter should be considered non-derogable since it provides protection to citizens³³.

³⁰ ICCPR, Article 14(7).

³¹ Communication No. 263/1987 M. Gonzalez del Rio v. Peru (Views adopted on 28 October 1992) in U.N. doc. GAOR, A/48/ 40(vol. II), p. 20, para 5.2.

³² Adopted by the eighteenth Assembly of Heads of State and Government, June 2 1981, Nairobi, Kenya, OAU Doc.CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21 1986.

³³ ACHPR, Civil Liberties Organization, Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria, Communication No. 218 /98, decision adopted during the 29th Ordinary Session, 23rd April -7th May, 2001 p.3.

Fair Trial and Legal Assistance ³⁴

The African Commission on Human and Peoples Rights has promulgated principles and guidelines to assist member states to the African Charter on Human and Peoples Rights to implement and enact international best standards in their legal systems. The principles provide that in the determination of any criminal charge against a person or of his or her rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted, competent, independent and impartial judicial body.³⁵ All sittings of judicial bodies shall be publicised³⁶ and no limitations shall be placed by the judicial body on the category of people allowed to attend its hearings³⁷. The public and the media shall not be excluded from hearings except if it is in the interest for the protection of children, witnesses or the identity of victims of sexual violence or for reasons of public order or national security³⁸.

Judicial bodies shall have adjudicative functions to determine matters within their competence on the basis of rule of law³⁹ and shall be independent from the executive⁴⁰. A judicial body shall render its decision based on objective evidence, arguments and facts presented before it. Judicial officers shall decide matters before them without restrictions, improper influence, inducements, pressure, threats or interference⁴¹. States shall ensure that judicial officers have appropriate education and training and shall establish specialised institutions for the education and training of judicial officers⁴².

Everyone has a right to an effective remedy that includes access to justice, reparation for harm suffered and access to information relating to the violation⁴³. States shall ensure that efficient procedures and mechanisms for effective and equal access to lawyers are provided to all persons without

³⁴ Adopted by the African Commission on Human and Peoples Rights in May, 2003 and thereafter by the AU Summit in Maputo in July, 2003 (www.achpr.org/english/declarations/Guidelines_trial_en.html).

³⁵ Principle 1.

³⁶ Principle 3 (a).

³⁷ Principle 3(d).

³⁸ Principle 3(f).

³⁹ Principle 4(b).

⁴⁰ Principle 4(g).

⁴¹ Principle 5(a).

⁴² Principle B (a) and (b).

⁴³ Principle C (a) and (b).

discrimination.⁴⁴ The accused or a party to a civil case has a right to have free legal assistance. Interest of justice should be determined based on the seriousness of the offence and severity of sentence in criminal matters and complexity of the case, the ability of the party to represent himself or herself, the rights that are affected and the likely impact of the outcome of the case in the community in civil cases.⁴⁵ The interests of justice require legal assistance for an accused in any criminal case attracting a capital sentence upon conviction⁴⁶.

States shall ensure that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference. That they are able to consult their clients freely without suffering threats with prosecution or other sanctions for action taken ethically and professionally⁴⁷.

States shall respect the confidentiality of correspondence between advocates and their clients.

States shall ensure judicial services are accessible to everyone without discrimination. They shall specifically ensure that women and rural communities access judicial services. Law enforcement and judicial officers shall be adequately trained to deal sensitively and professionally within the special needs of women⁴⁸. States shall ensure that access to judicial services is not impeded by distance to the judicial institutions, lack of information, imposition of excessive and unaffordable court fees and lack of assistance to understand court procedures⁴⁹. The right to fair trial shall not be curtailed under any circumstances⁵⁰.

The principle of an independent and impartial tribunal is considered to form part of international customary law and a general principle of law accepted internationally.

⁴⁴ Principle G (a).

⁴⁵ Principle H (a) and (b).

⁴⁶ Principle H (c).

⁴⁷ Principle I (b).

⁴⁸ Principle K (a) and (b).

⁴⁹ Principle K (d).

⁵⁰ Principle R.

Provisions for Access to Justice

A new Constitution was promulgated in Kenya on 27th August 2010. Article 10 of the Constitution provides for the national values. These include; the rule of law, peoples' participation, human dignity, human rights, equality, good governance, integrity, transparency, accountability and protection of the marginalised. Accountable government implies limited government powers and absence of corruption. The concept of the rule of law is defined to comprise the following ingredients⁵¹:-

- a) The government and its officials are accountable under the law.
- b) The laws are clear, publicised, stable and fair and protect fundamental rights, including the security of persons and property.
- c) The process by which laws are enacted, administered and enforced is accessible, fair and efficient.
- d) Access to justice is provided by competent, independent and ethical adjudicators. These are sufficient attorneys, representatives or judicial officers with adequate resources. They should reflect the make-up of the communities they serve.

The Constitution has an expanded Bill of Rights that enhances access to justice by the citizenry. Article 19(2) of the Constitution provides that the purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of the individual and communities and to promote social justice and the realisation of potential for human beings. Article 20(2) provides that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom. In interpreting the Bill of Rights, the court shall promote the values that underlie an open and democratic society based on human dignity, equality, equity and freedom and the spirit, purpose and objects of the Bill of Rights. The freedom from torture and cruel, inhuman or degrading treatment or punishment and the right to a fair trial shall not be subject to limitation under any law⁵².

Article 48 of the Constitution provides that the State shall ensure access to justice for all persons. Where fee is required, it shall be reasonable enough not to impede access to justice. Article 49 of the Constitution details the rights of

⁵¹ World Justice Report, 2011 – Rule Of Law Report

⁵² Article 25 of the Constitution.

arrested persons. They include; the right to be informed, in a language the person understands of the reason for the arrest; the right to remain silent and the consequences of doing so; the right to an advocate and other persons whose assistance is necessary; the right not to be compelled to make any confession or admission that could be used in evidence against the person; the right to be held separately from persons who are serving a sentence; the right to be brought before a court as reasonably as practicable but not later than 24 hours after being arrested or if the 24 hours end outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day; the right to be informed of the reason for continued detention or to be released at the first court appearance; and the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons for the accused person not to be released⁵³. A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment of not more than 6 months⁵⁴.

Article 50(2) of the Constitution is the cornerstone of the right to a fair trial. It provides that the right to a fair trial includes the right:-

- a. to be presumed innocent until the contrary is proved;
- b. to be informed of the charge with sufficient detail to answer it;
- c. to have adequate time and facilities to prepare a defence;
- d. to have a public trial in a court established under the Constitution;
- e. to have the trial begin and conclude without unreasonable delay;
- f. to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;
- g. to choose and be represented by an advocate, and to be informed of this right promptly;
- h. to have an advocate assigned to an accused person by the State and at the State's expense, and to be promptly informed of this right;
- i. to remain silent, and not to testify during the proceedings;
- j. to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;
- k. to adduce and challenge evidence;
- l. to refuse to give self-incriminating evidence;

⁵³ Article 49(1) of the Constitution.

⁵⁴ Article 49(2) of the Constitution. Most of the offences created under the Council By-Laws provide for a fine or a sentence of less than 6 months. Such persons should be released by the court on personal bonds without restricting them to remand pending payment of cash bail.

- m. to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial ;
- n. not to be convicted for an act or omission which was not an offence at the time it was committed in Kenya or a crime under international law;
- o. not to be tried for an offence in respect of an act or omission for which the accused person has previously been convicted or acquitted; and
- p. if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.

Any evidence obtained in violation of rights or fundamental freedoms in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice⁵⁵.

The Constitution of Kenya incorporates economic, social and cultural rights in the Bill of Rights. These rights are spelled out in article 43. They include; the right to the highest attainable standard of health; the right to accessible and adequate housing; and to reasonable standards of sanitation; the right to be free from hunger and to have adequate food of acceptable quality; the right to clean and safe water in adequate quantities; the right to social security; and the right to education. These rights are subject to legislative, policy and other measures that will be taken by the State to achieve progressive realisation. The rights presuppose that Kenyans will be at liberty to engage in trade or employment of their choice without discrimination so that they have an income to access the rights. However, unlike the South African Constitution, the Kenyan Constitution does not expressly provide for the right to work.

JUDICIAL REFORMS

The Judicial reform measures and strategies have been compiled into the Judicial Transformation Framework (JTF). The new Constitution overhauled the functioning of the judiciary. It is keen in turning the State into an entity that respects the rule of law and human rights. The mission of the Judiciary as stated in the JTF is to; deliver justice fairly, impartially and expeditiously promote equal access to justice and uphold the rule of law.

The JTF emphasizes the important role that the judiciary plays in advancing and stabilising modern democracies. The rule of law is an important

⁵⁵ Article 50(4) of the Constitution.

determinant of socio- economic development. Kenya's judiciary, which is emerging from decades of chronic neglect and ineffective delivery, must steadily remain conscious of its constitutional responsibilities. It has a crucial role in superintending the new yet fragile social, political and economic transition engendered in the Constitution.

The objectives of transformation of the judiciary include:-

- a. To reset the relationship between the judiciary and other arms of the government. Premised on the principle of robust independence and constructive interdependence, the judiciary will position itself as a strong, effective, equal and independent arm of government.
- b. The judiciary must realign its organisational culture with social realities. Its leadership must reflect the management style of the 21st Century.
- c. It must operate as a people friendly entity and endeavour to win back public confidence. It must restore its authority and integrity in the public eye.

This report analyses the extent to which judicial reforms have informed operations at the city and municipal courts. The reform agenda should be fully implemented including in the city and municipal courts.

TAMING CORRUPTION

Transparency International (TI) defines corruption as misuse of entrusted power for private gain. Officials holding positions of authority may at times be tempted to use such avenues to draw benefits or evade negative costs by the virtue of their positions.

Within the judiciary, corruption may manifest itself in form of bribery, extortion, manipulation of evidence, abuse of the court process, deliberate weakening of evidence to earn an acquittal among other practices. Corruption may occur anywhere in the justice system.

a. ENABLING LEGISLATION

Local Government Act, Chapter 265 of the Laws of Kenya

The Act establishes and regulates the operations of local authorities in Kenya. Local authorities include city councils, municipal councils, county councils,

and town councils. They have limited jurisdiction within their designated jurisdictions. A local authority may from time to time make by-laws. These laws govern the maintenance of health, safety and wellbeing of inhabitants. It may also make by-laws for the prevention and suppression of nuisances⁵⁶. A local authority may prescribe all or any of the penalties imposed for breach of any by-law made by or under the Act. The fine cannot exceed two thousand shillings (Kshs. 2, 000) for a first offence and (Ksh. 3,000) in respect of a second or subsequent offence. In addition to the penalty prescribed, the local authority may impose a fine of Kshs. 20/- for every day for which the offence continues⁵⁷. This means that no by-law can provide a stiffer sentence than that provided under the Act, since by-laws are subsidiary to the provisions of the legislation and must conform to the provisions of the Act. The by-laws form part of the Act and are interpreted with due regard to the provisions of the Act.

The local authority is required to publish a notice in a newspaper circulating in the area of its intention to make by-laws. For at least 14 days before the making of any by -laws, copies of the proposed by-laws shall be deposited at the offices of the local authority. They shall be open for inspection without payment by any interested person. The local authority shall also provide copies to any interested person on payment of a regulated charge⁵⁸.

Upon sanction by the local authority, the by-laws shall be submitted to the Minister in charge of local government for approval⁵⁹. Thereafter they shall be published in the Gazette. A copy of every approved by-law shall be deposited in the offices of the local authority. They shall be available for inspection without payment by an interested person.⁶⁰

All offences that violate the provisions of any by-law shall be deemed to be offences under the Act. It shall be sufficient for the prosecution to state that the accused person is guilty of contravening a by-law, the number and title of which shall be stated, of the local authority concerned and to allege the act or omission constituting contravention of the by-law.⁶¹

The local authorities operated under the Local Government Act but they were not entrenched in the Repeal Constitution. The New Constitution has established a devolved government system in which counties will be the

⁵⁶ Section 201(1) of the Act.

⁵⁷ Section 201(2) of the Act.

⁵⁸ Section 203(1) and (2) of the Act.

⁵⁹ Section 204 of the Act.

⁶⁰ Section 205 of the Act.

⁶¹ Section 208 of the Act.

units of devolution. The functions of the local authorities will be transferred to the county governments upon implementation of devolution under the Constitution. The roles and responsibilities of the counties are elaborated in the County Governments Act and other related laws. These laws will overhaul and replace the local government system after the first General Election under the New Constitution. The local laws, which will be equivalent of the by-laws, will be enforced by the county governments.

County Governments Act

The County Government Act number 17 of 2012 is part of a number of laws that will implement and actualise the constitutional provisions on devolution. It will do so through the establishment of county governments. The county is the unit of devolution established under the Constitution. Kenya is divided into 47 counties. After the announcement of the results of the first elections under the Constitution of Kenya, 2010, the Local Government Act will be repealed⁶². The Act provides that the county assembly shall perform the roles set out in Article 185 of the Constitution. Article 185(1) provides that the legislative authority of a county shall be exercised through the county assembly. A county assembly may make any laws that are necessary or incidental to the effective performance of the functions and exercise of the powers of a county government⁶³. The quorum of county assembly shall be one third of the members of the assembly⁶⁴. The county assembly shall exercise its powers through Bills enacted by the assembly and assented to by the Governor⁶⁵. In assenting to Bills passed by the county assembly, the Governor will play a role similar to that of the President in relation to Bills passed by the National Assembly and the Senate. A member or a committee of the assembly may introduce Bills to the assembly⁶⁶. However, a money Bill can only be introduced by a committee of the assembly. A money Bill relates to levying of taxes, imposition of charges on a public fund or variation or repeal of the charges, the appropriation, receipt custody, issue or investment of public money or guaranteeing of any loan or its repayment⁶⁷. A Bill shall be published both in the county Gazette and the Kenya Gazette⁶⁸. After

⁶² Section 134(1) of the County Governments Act, 2012.

⁶³ Article 185(2) of the Constitution.

⁶⁴ Section 19 of the County Governments Act, 2012.

⁶⁵ Section 21(1) of the County Governments Act, 2012.

⁶⁶ Section 21(1) of the County Governments Act, 2012.

⁶⁷ Section 21(2) of the County Governments Act, 2012.

⁶⁸ Section 23 of the County Governments Act, 2012.

enactment, the Speaker of the County Assembly shall forward the Bill to the Governor for his or her assent.

The county shall facilitate civic education. The purpose of having an informed citizenry is to enable active participation of the population in governance affairs. The citizens should enhance their knowledge, understanding and ownership of the Constitution⁶⁹. Each county shall implement an appropriate civic education programme and establish a civic education unit for the purpose⁷⁰. County legislation shall provide an appropriate framework for the purpose of facilitating and implementing civic education programmes⁷¹.

The Act benefits from the openness and participatory provisions of the Constitution. The repeal of the Local Government Act, and the enactment of new laws, will ensure there is no vacuum due to the absence of by-laws. The laws enacted by the county government will reflect the wishes of the county residents. Residents will participate in law making through the election of county representatives. There will also be public scrutiny in the enactment process.

Review of By-Laws

Municipalities and cities use by-laws to regulate activities. Councils have the right to enact by-laws to regulate, control and licence activities carried out within their jurisdictions. The by-laws are supposed to be enacted in a participatory manner involving residents. However, it was established that the by-laws are developed in a non-participatory manner and are inaccessible to the public. Most of the residents have never accessed the by-laws. Most are unaware of their contents. They do not provide the by-laws on the Internet. Instead they sell copies of by-laws at exorbitant prices. The City Council of Nairobi for instance sells its by-laws at Kshs. 100 per page. Since most of the by-laws are more than ten pages long, such a price locks out many residents.

The National Council for Law Reporting has begun digitising the by-laws to enable the public access them on the internet. Nevertheless, the council still holds its sessions behind closed doors. Local authorities still view public participation in policy formulation as a mere procedural requirement. Yet

⁶⁹ Section 99 of the County Governments Act, 2012.

⁷⁰ Section 100 of the County Governments Act, 2012.

⁷¹ Section 101 of the County Government Act.

without public participation, it remains difficult to change the *status quo* of the local authority judicial system. It should be a mandatory practice by the councils to avail the by-laws to the public. This is critical especially to the vulnerable groups whose activities are regulated by the by-laws. These groups include; hawkers, *matatu* touts and drivers, motor cycle riders, taxi drivers, hotel and restaurant owners and employees.

Most of the by-laws of Nairobi, Mombasa and Eldoret, a review established, are aimed at regulating businesses. The targeted business include the commercial motor cycle riders, *matatu* business, traders at the city and municipal markets, hotel and restaurant operators of hospitals and entities that require the annual single business permit. Most of the suspects that were arraigned in court were informal traders. The by-laws of the various councils were strikingly similar.

The by-laws that were reviewed relate to:-

- a. control, licensing and regulation of hawking business;
- b. licensing the operations of commercial colleges;
- c. regulation and licensing of operations of medical facilities;
- d. licensing and regulation of taxi cabs;
- e. licensing and regulation of *matatu* business and designation of *matatu* termini;
- f. designation of markets and control and regulation of trade within the markets;
- g. control of general nuisance;
- h. control and licensing of advertisements within the jurisdiction of the councils;
- i. control on use of polythene carry bags;
- j. establishment of the fire brigade service of the councils;
- k. control of environmental pollution;
- l. designation of parking places;
- m. control and licensing of commercial cycles;
- n. licensing the sale of second hand goods; and
- o. licensing and control of businesses.

Due to lack of public input into the by-laws, their structure makes compliance very difficult. For example, although it is illegal to carry out hawking within the CBD in the City of Nairobi, there are no designated hawkers markets. Where such markets exist, they are too small for the numerous traders. The

market for the hawkers is within the CBD, shortening travel distance for their customers. Without any licensing mechanisms, hawkers violate by-laws in their effort to earn a living.

Parking spaces are inadequate for all motorists driving into the CBD. Motorists double park thus offending the by-laws. The council's garbage collection departments have not been operational for a long time. The business is carried out by private companies who charge for the services. The council does not provide sanitary facilities in the city. However, the private sector has facilitated the renovation of a few sanitary facilities within the city. It therefore seems that the by-laws are designed in a manner that makes compliance very difficult.

ANALYSIS OF SURVEY RESULTS

The Practice in City and Municipal Courts:

A team of researchers observed the system of administration of justice and the operations of the city and municipal courts in Nairobi, Mombasa and Eldoret. They recorded their observations which inform this part of the report. They interviewed selected court users and advocates who deal with cases in the city and municipal courts. The following observations were made in regard to the courts:-

1. **Knowledge of the Law.** Copies of the city and municipal by-laws are not accessible to the public. The by-laws are not uploaded on the websites of the Councils. The low levels of legal literacy among Kenyans compounded the lack of access to the by-laws. The by-laws are expensive and unaffordable. A single copy, costs between Kshs. 700/- and Kshs. 1000/-. Each city or municipal council has about 30 by-laws. The inaccessibility of these laws has led to inadequate knowledge on people's rights. Suspects rarely understand charges read against them due to their dismal knowledge of criminal procedures. Knowledge of the law is a key ingredient in access to justice. However, the research indicated a generalised knowledge by the public of the common offences such as littering and hawking created by the by-laws.
2. **Plea Taking.** The right to be presumed innocent and to a fair trial demands that each suspect should individually plead to his or her charge. Nevertheless, in some instances, suspects facing similar charges are

required to plead at the same time. This mass plea system undermines the rights of suspects. It makes majority of suspects to plead guilty. Most suspects, who are engaged in petty trade, pleaded guilty to hasten their resumption of business. In few instances, the accused persons pleaded not guilty. Their cases were scheduled for full trial. Others pleaded guilty to avoid lengthy court processes and high bond terms. They preferred to pay the fines and conclude the matter.

3. **Physical Infrastructure of the Courts.** The City and Municipal Courts in Nairobi, Mombasa and Eldoret have physical facilities that are distinct from the normal courts. The court in Eldoret is relatively new, having been established in 2010. The municipal cases were earlier heard in mainstream courts. In the three research stations, separate courts dealing with municipal matters were located near the City Hall. Some of the courts have inadequate sitting space for the suspects and members of the public. In Nairobi, one of the courts permanently sat in the magistrate's chambers due to lack of a courtroom. The city and municipal courts were assigned ordinary criminal and civil cases for hearing and determination.
4. **Fair Trial Guarantees of Accused Persons.** The city and municipal courts deliberately excluded the public from the sessions dealing with municipal matters. Notably, in Nairobi, the public, including relatives and advocates for the accused persons, were excluded from the afternoon court sessions. This was essentially a plea taking session for those arrested in the morning. Most mentions and pleas were carried out in chambers away from the public. The right to an open trial is a fundamental right. It ensures that the trial is fair and open to scrutiny. There was no basis for exclusion of the public in cases involving petty crimes. Such exclusion is only permitted in cases involving children and where there is need to protect the privacy of the accused person or the complainant. In Mombasa, the municipal cases were heard in chambers, where members of the public have limited or no access. The courts in Mombasa and Eldoret heard municipal cases in an *ad hoc* court sitting programme, which meant that the accused persons spent the whole day in court awaiting hearing. In Eldoret, the court did not sit on Friday afternoons during the observation period even though there were some suspects in custody. The suspects are usually released by the council officials without any charges being preferred, perhaps on payment of a bribe.

A majority of the accused persons pleaded guilty to the charges. After the plea of guilty or conviction, the courts rarely advised the accused on

their right to appeal to the High Court if they were dissatisfied with the verdict. Most of the accused persons were not represented by advocates. Legal representation was deemed expensive and unnecessary for matters relating to contravention of council by-laws. The court language used was Kiswahili. However, the charges were read very fast and inaudibly with little time for the accused person to form an opinion on the appropriate plea. In very few cases was the charge translated into a language the accused could understand, where he or she did not understand Kiswahili.

Different standards were apparent in the public perception of how matters relating to violation of city and municipal by-laws were handled in court as compared to ordinary criminal matters. Majority of persons accused of ordinary criminal cases in the city and municipal courts were represented by advocates unlike cases relating to violation of city and municipal by-laws. In Mombasa, the researchers were able to access lawyers handling matters in the court and the city prosecutors. However, it was noted that magistrates were diligent in their work to ensure that justice is done. They took time to explain the charges to the accused. In Nairobi, the council officials and court orderlies were keen to keep out the public from the courtrooms during hearings.

The council enforcement officers often assaulted, mistreated and insulted suspects during arrests. The accused persons noted inconsistencies between the charges a person is arrested for and the charges read in court. The majority of the arrested persons were able to call friends and relatives and inform them of their predicament after arrest and before confinement. Accused persons were not given adequate opportunity to defend themselves in the court. Based on the non-verbal language on the part of the prosecutors and court clerks, our observers could tell that the officers favoured a plea of guilty rather than the trial of an accused. This was clearer in cases where the suspects were rushed to respond to charges even as the next lot was being called out.

5. **Prosecution and Investigation of Cases.** Where accused persons pleaded not guilty, the prosecution was not ready with files, exhibits and witnesses. This means that the prosecutors were not able to adequately prepare for trial. There was evidence of poor investigation by the council officers. The municipal and city matters were assigned a different prosecutor and court clerk from the officers handling ordinary criminal cases. In Mombasa, the prosecutor was professional and ensured that witnesses were present. Mombasa had better case management. In

Nairobi, the courts are understaffed. Two prosecutors serve four courts. This results in adjournment of cases, increased case backlog and overworking of prosecutors. There were also co-ordination failures by different departments of the council. For instance a municipal case would be filed in court by the enforcement department alleging that a development project had not been approved by the physical planning department when the developer was in possession of the building plans.

6. **Sentencing Policy of the Courts.** The courts imposed unpredictable fine levels for similar offences. The fines would be imposed in a spontaneous and inconsistent manner. In Nairobi, it was noted that the length of the community service imposed on a convicted person was at the discretion of the council officers and was not stipulated by the courts. Most fines ranged from Kshs. 500/- to Kshs. 3, 000/-. In a few cases, the fines went up to Kshs. 20,000/-. The goods confiscated by council enforcement officers were lost in the custody of the council. They were rarely returned to the accused after conclusion of the case. In Eldoret, the release of such goods required a further order from the court. Most persons chose to forfeit the goods rather than make a further application in court. Traders were impoverished by the tedious process. Some were required to pay the council before retrieval of confiscated goods. In Mombasa, a convicted person who was not able to raise the fine was sentenced to imprisonment at the minimum security prison. The maximum jail sentence was 60 days. The average fine was Kshs. 1, 000/- or in default 30 days in prison. Some young offenders below age of 18 years were discharged unconditionally. Other underage offenders were sentenced to community service for one day. Such community service was at the discretion of the municipal officials and was not specified by the court.

In only very few cases were the convicted persons required to mitigate before sentence was passed. The process of payment of fines was simple and fast. However, as a flipside to this apparent efficiency, the city courts were deemed by the accused persons as fine collection centres. Most respondents said the fines were too high and created an incentive to bribe the enforcement officers. The prison sentences for offences against city and municipal by-laws are not appropriate

7. **Corruption.** There was evidence of corruption by court orderlies, council officials and council enforcement officers. However, there was no evidence against the magistrates, court clerks and prosecutors. The court orderlies and officials released some of the suspects who had been

arraigned in court after paying a bribe to council officials. The offenders would only be taken to court once they failed to pay the bribe demanded. Most bribes were demanded by the council officials at the time of arrest.

8. **Criminalisation of informal trade.** The councils target informal traders for arrests. Although there are adequate spaces for traders in the designated markets, councils rarely marked any designated trading spaces or streets for petty traders. There is a correlation between poverty and increased numbers of petty traders. There was an exponential increase in petty trade, commercial sex workers and commercial motor cycle riders in Eldoret after the post-election violence in 2007/ 2008. The municipal and city authorities have not adequately designated parking areas, stages for picking and stopping of *matatus* and buses, hawking zones and markets. The cities and municipalities do not have an appropriate licensing framework for petty traders and designated hawking areas that take into account the underlying factors that inform informal trade and street hawking. The total ban on hawking in the CBD keeps the hawkers away from potential customers. In Nairobi, the hawkers' market in Muthurwa Market is a commendable effort. However, it cannot accommodate all the street traders. A majority of the cases in municipal and city courts involve the poor and the marginalised. These individuals are employed in the informal and petty trade. They include hawkers, porters, touts, conductors and hand cart pushers. The businesses which are in formal trade are treated differently and are rarely involved in criminal cases at the city and municipal courts.
9. **Arrest and Arraignment.** Suspects were harassed and assaulted by municipal and city enforcement officers during the arrest. In Eldoret, the arrests were carried out in the estates unlike Nairobi and Mombasa where most arrest were in the CBD. In Mombasa, the enforcement officers arrested persons for specific charges on specific days.
10. **Ages of the Suspects.** A majority of the accused persons are aged between 20 to 45 years.
11. **Bail and Bond.** Most municipal authorities have cumbersome procedures for bail payment and refund. In Eldoret, it was reported that the Town Clerk had not signed cheques for refunds of cash bail for a period of six months preceding the survey. Any refund must be approved by the Town Treasurer. In some instances, the respondents reported delays of up to three years for the processing of bail refund. Due to this lengthy process, accused persons who are acquitted often give up on refund of the bail.

The provisions of article 49(2) of the Constitution are not adhered to. It states that persons charged with offences where the maximum sentence is less than 6 months or punishable by a fine only should not be incarcerated in custody.

- 12. Case Management.** There is poor case management at the court registry. The municipal and city courts prioritised criminal and civil matters over city and municipal matters.
- 13. Common Charges.** The common charges at the courts were soliciting for the purpose of prostitution, homosexuality, traffic offences involving *tuk tuk* and *boda boda* riders, hawking, littering, and traffic offences by hand cart pullers.

Research Data Analysis

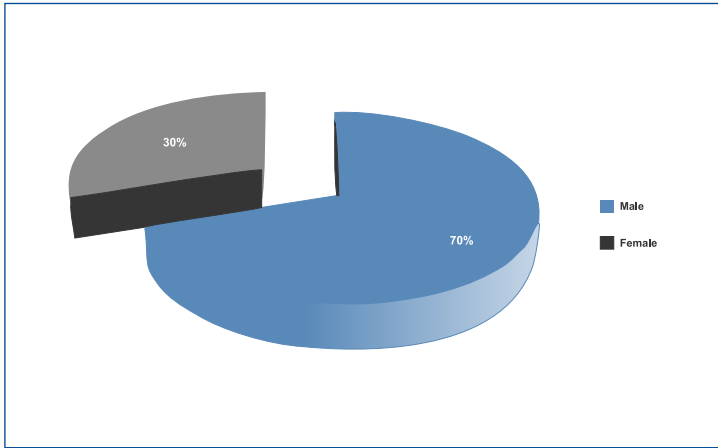
The research survey was conducted in Nairobi, Mombasa and Eldoret. Ten days were spent in each town. Nairobi recorded the highest number of respondents. This high score could be attributed to the fact that-

- a) **The City of Nairobi has a higher population.** Nairobi being the Capital City of the Republic of Kenya forms the yardstick upon which other cities measure their operations. In August 2009, the population of Nairobi stood at 3, 133, 518 persons. Mombasa and Eldoret had 938, 131 and 289, 380 persons respectively⁷².
- b) **More efficient enforcement of the by-laws by the City Council of Nairobi.** The City of Nairobi has a better established enforcement unit compared to Eldoret and Mombasa.
- c) **Larger number of courts handling municipal matters.** Nairobi has four operational city courts as compared to one court in other towns.
- d) **High numbers of informal sector workers in Nairobi.** These include hawkers, touts, vendors, trolley and hand cart pullers, mechanics and *jua kali* artisans. A majority of the cases submitted to city and municipal courts mostly relate to informal workers and business people.

⁷² Kenya National Bureau of Statistics, National Census Results, August 2009.

Gender Analysis

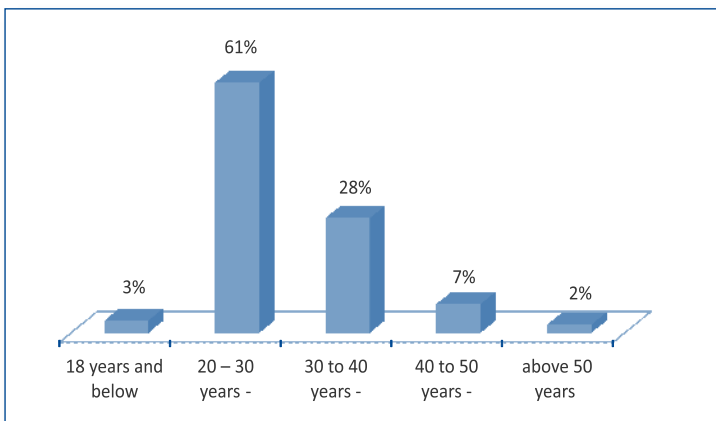
Seventy percent of the respondents were men. 30% were women. Though the survey purposed to get parity across gender, this was compromised by unwillingness by targeted female respondents.



Gender Analysis

Age Analysis

The majority of the respondents were aged between 20-45 years. The ages of the persons arraigned in the city and municipal courts can be segregated as:-



Age Analysis

Accused Persons Economic Status

Most of the respondents were in the 'informal sector'. Most were charged with offences relating to informal employment and petty trade (16.9%) and traffic offences (30.6%). Most of the cases related to violation of the city by-laws (98.3%) as compared to violation of other laws. These include petty traders, hawkers, fruit vendors, hand cart pushers, mechanics, *jua kali* artisans and shoe shiners. Very few accused persons were in formal employment or in formal businesses. A majority of the respondents reported having been arrested once or thrice. This comprised 86.7% of all the respondents.

Most of the respondents were arraigned in court after the arrest (82.7%). Out of the 17.4% that were not arraigned in court, 99.1% were released after payment of a bribe. A paltry 0.9% was discharged by the enforcement officers upon informal mitigation.

Legal Representation

A majority of the respondents (95.6%) arraigned in court were not represented by advocates. The reasons given for the failure to engage legal representation included:-

Reason	Percentage
Lack of money to hire a legal representative	77%
It was a petty offence that did not require the service of an advocate	7%
Did not have time to hire one	7%
Waste of time and money since one will still pay the fine	5%
Did not go to court	2%
No charges were preferred against me	1%
Pleaded guilty	1%
	100%

The Accused; Understanding of Charges

A majority of the respondents (81.8%) understood the charges as read to them in court. However, a significant number (18.2%) did not. This represents about one in five respondents. The reasons given by the respondents who did not understand the charges were:-

Reasons`	Percentage
What they charged me with is not what they arrested me for	38%
The clerk was too fast in reading the charges	28%
Because it was communicated using English language	16%
They did not explain	5%
There were no charges	4%
Other	9%
	100%

Appearance in Court

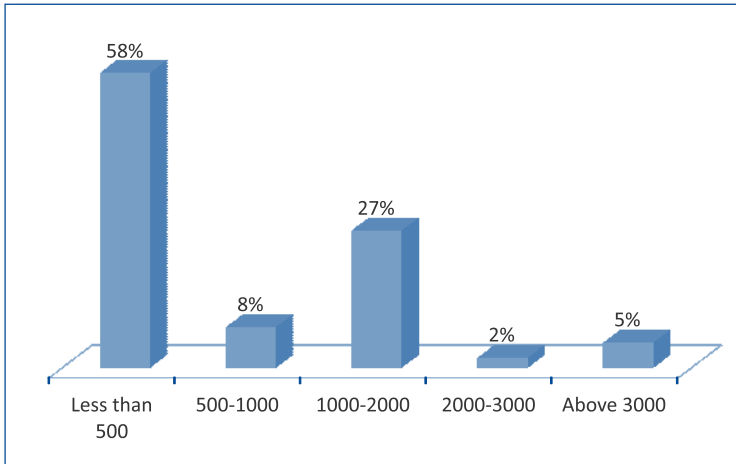
Majority of the accused persons appeared in court within one to six hours of arrest (79.4%). For those held in custody, majority (85.3%) were arraigned in court within 1 to 2 days. Very few respondents were held for more than one week

Bribery and Enforcement

76.2 % of the respondents were asked to pay bribes to the city enforcement officers. 21% of the respondents were requested to pay a bribe to other city and municipal officers. Very few of the respondents were asked for a bribe by the court clerks, court orderlies or the magistrate (0.2%, 0.3% and 3.8% of the respondents respectively.

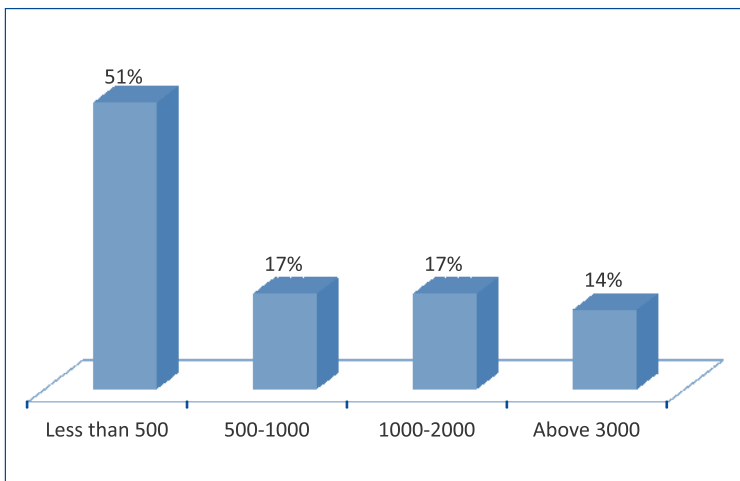
The main reason for the bribe demand was, to enable the respondent avoid court proceedings (94.8%). Only a few respondents were asked to give a bribe so that they could be given time to obtain a trading licence without being arraigned in court (0.6%).

23% of respondents admitted having paid a bribe to city council enforcement officers (*Askaris*). Most bribes ranged from Kshs. 20/- to 1,500/- (88.2%).



Bribery amounts to council *Askaris*

Very few respondents paid a bribe to other municipal council officers (5.5%). The majority of the bribes paid to municipal council officers ranged from 100/- to Kshs. 1, 600/- (83%).



Bribery measure

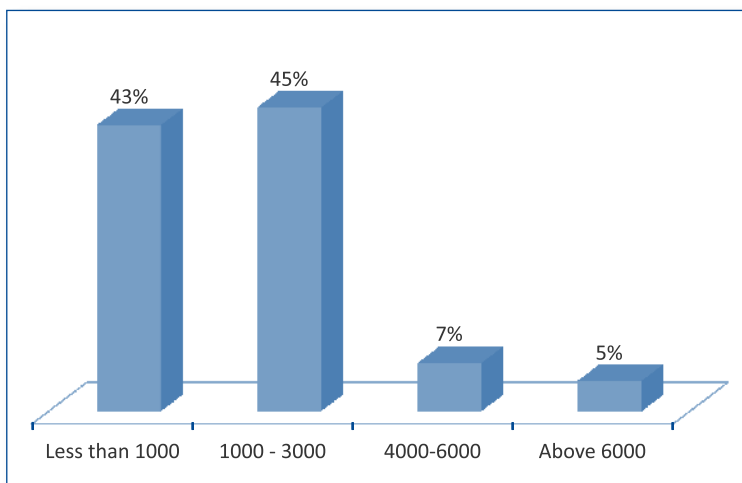
No respondents reported paying a bribe to a court clerk or a magistrate. Only 0.3% of the respondents reported paying a bribe to the court orderlies. The bribes paid ranged from Kshs. 1000/- to Kshs. 2, 000/-. 75.1% of the respondents witnessed those arrested with them being requested for a bribe. A majority (87.2%) of these persons arrested alongside the respondents paid a bribe. The majority of the requests for the bribe were made by council enforcement officers (65.5%). After paying the bribe, 65.5% of them were released without being charged.

Penalty on Conviction

The penalty most often imposed at the conclusion of the cases involving the respondents was the imposition of a fine (71.0%). This is shown in the table below:

Reason	%
Imposition of a fine	71.0%
Release by the council enforcement officers after paying the bribe	6.7%
Community service (6.5%)	6.5%
Unconditional discharge (5.8%)	5.8%
Bail/ Bond (4.1%)	4.1%
Jail sentence (3.8%)	3.8%
Conditional discharge (1.0%)	1.0%
Others	1.1%

Majority amounts of fines imposed by the court ranged from Kshs. 500/- to Kshs. 2, 000/-(75.3%). The highest fine reported was Kshs. 50, 000/- by 0.2% of the respondents.



The majority of the respondents who were sentenced to a jail term were to serve one month - (68% of the respondents). The longest period a respondent was committed to jail was three months (9.1% of the respondents).

Cash Bail

The cash bail granted to the accused ranged from Kshs. 500/- to Kshs. 100, 000/-. A quarter (25%) of the respondents were granted a cash bail of Kshs. 10, 000/- with 12.5% of the respondents being granted bail of Kshs. 12, 500/-. A majority of the respondent's cash bail was below 10, 000/- . (79.1%).

Ksh	%
500	4.2
1,000	8.3
1,500	8.3
2,000	16.7
3,000	8.3
5,000	8.3
10,000	25.0
15,000	12.5
20,000	4.2
100,000	4.2

It is notable that while most of the respondents were issued with a receipt after paying the cash bail (88.2%), about a third (29.4) of the respondents whose cases had been closed were still awaiting their refunds. Most (66.7%) of the respondents who were refunded the cash bail had to wait for two months for the refund to be processed. Most of the respondents were dissatisfied with the procedures for posting bail (58.8%), with 24.5% of the respondents reporting being satisfied with the procedures.

AFRICA AND THE INFORMAL TRADE ⁷³

In Africa, informal and petty trade is associated with people with a low level of education. This perception has affected the operations of local authorities. Despite collecting substantial revenue from petty traders, authorities fail to maintain records of the numbers and contribution of the sector to the economy. Without representative data, both the local authorities and governments are unable to adequately plan for the sector⁷⁴.

Many factors have contributed to women dominating street vending. Among them is; limited economic opportunities for women in rural and urban areas, gender bias in education and the need to supplement the husband's income. Street trade has special appeal to women due to flexibility, low entry barriers, and the ability to combine household responsibilities with street vending.

Here are the general characteristics of street trade in Africa:-

- a) majority of the street traders are women,
- b) majority of street vendors are own account workers,
- c) most traders are married and support large families,
- d) high percentage of women are sole bread winners,
- e) most street traders live close to their workplace and walk to work,
- f) most traders have primary school and below level of education, and
- g) most traders undertake vending due to unemployment and lack of other sources of income.

⁷³ Material from this part is informed by the findings in a Research Report titled General Overview of Informal Trade Characteristics in Africa: Street Vending In African Cities: A Synthesis Of Empirical Findings From Kenya, Cote D'ivoire, Ghana, Zimbabwe, Uganda And South Africa – Winnie Mitullah.

⁷⁴ Ibid Page.....

Some street traders locate themselves at strategic points with heavy traffic. Others walk from place to place. They operate mainly on roads, streets, shopping centres and street corners. The traders settle spontaneously without official allocation. The knowledge of the volume of sales is generally lacking since most traders do not keep written records of income and expenditure. The market for street vendors is largely the pedestrians.

Policies are defined as tools for setting standards in the provision of public goods and services. The by-laws set controls that ensure that urban areas are safe and clean. They enable the local authorities to collect revenue to facilitate carrying out of essential services. Local authorities are a major obstacle to the development of the informal sector activities. They use outdated restrictive policies and by-laws originally intended to control and regulate the growth of indigenous enterprises. The restrictions make vending principally illegal. They view vendors as a public nuisance, responsible for making cities dirty and obstructing traffic. The policies do not appreciate the role of street vending in an urban economy.

Most by-laws used by local authorities are outdated and require review. Most cities have placed the responsibility for street trading in wrong departments such as traffic and enforcement departments. Vendors are thus viewed as a problem rather than productive unit of the urban economy.

The regulations and policies adopted in most countries and by most local authorities are not appropriate for street vendors. The process of developing the policies and regulation is opaque and it does not incorporate the views of the street traders. The vendors have no influence on any policies developed for managing their operations. Urban authorities hardly provide services. Neither are they accountable to vendors. The regulation of street trade by urban authorities is arbitrary. The authorities are unable to formulate clear, consistent policies and regulations.

Street vendors are unaware of the existence of the by-laws and have no access to them. They lack associations to lobby and fight for their rights and needs. They need lobbying of review of policies and by-laws and integration of vending activities in urban development. Inappropriate policies lead to expensive daily charges, poor and insecure working locations, unstable hours of business, constant harassment, confiscation and loss of goods. There is poor communication between street vendors and urban authorities. There is hardly any dialogue and relationships are determined by favouritism, nepotism and corrupt practices.

The transportation of goods poses a problem for vendors. The vendors rely on porters, wheel barrows, trolleys, and hand carts. These transportation services are equally designated as part of the informal trade and regulated by the local authorities. The vendors also lack storage facilities. This compounds their plight.

Conflicts between local authorities and traders are frequent. They result from disputes in sites of operation and the consequent arrest of street and informal traders and confiscation of goods. Violent confrontation is common. Insecurity on the streets is used as an excuse to evict street traders.

Progressive legal measures recognise the informal economy as a constitutive element of local economic development. This recognition commits local authorities to support and protect informal traders by creating an enabling environment in which the urban poor are able to earn a living while contributing to the financial health of the municipality.

The informal economy is a contributor to development and job creation. To strengthen it further, local authorities should issue trade permits to small enterprises and provide access to basic social and support services. They should also offer them training and business information. Authorities should discard resistive management styles that undermine the livelihoods of informal trading sector.

Informal sector workers must be allowed to exercise their right to freedom of association. This will help shape regulatory frameworks and institutional environments thus easing the informal sector into the formal economy. The sector also needs organizational strategies which will help:-

- i. Reduce vulnerability of informal economic actors by enhancing access to resources, facilities and public institutions;
- ii. Empower members to channel their concerns and aspirations to policy circles and influence decisions in their favour;
- iii. Address women's gender specific needs and secure their voice; and
- iv. Build strong and sustainable organizations at local and national levels.⁷⁵

⁷⁵ Shinin Motala, Organizing in the informal Economy: A Case Study of Street Trading in South Africa.

The informal sector incorporates; employees, employers, and the self-employed. It also includes family businesses or private enterprises with 20 or less employees. Many of these enterprises are not registered or incorporated and do not keep a set of accounts separate from the household budget. The informal sector accounts for up to 60% of the economy in Sub-Saharan Africa. Though informal trading provides income to support personal and family needs, it is also able to operate on profit basis. The extra income is applied to lifestyle choices or invested in business opportunities. The formal trading is carried out in a fixed location and using formal business principles⁷⁶.

GHANA

Street vendors in Ghana are a vulnerable lot. Lack of an organised vendors association has greatly weakened their bargaining power. They cannot organise successful strikes or demonstrations. Since they depend on every penny they earn on the streets, a day of strike means loss of income. Without associations, street vendors cannot effectively participate in policy reviews and in enactment of by-laws. The local authorities use the fact that the traders are not licensed to deny them services.

SOUTH AFRICA

In South Africa, the government hopes to see the gradual disappearance of the informal sector. The government believes that as the formal economy grows, the informal will be swallowed. The government has set up regulations to address the economic inequalities between men and women.

Intervention will enhance growth of the informal economy and its productivity. However, despite the South African Government's views, it is evident that the informal economy will last for long. The legal framework represents the government stance towards the informal economy and shapes the environment in which the traders operate. Punitive and restrictive legal measures that encourage eviction and containment criminalise and inhibit the growth and sustainability of informal economy.⁷⁷

The Business Act of 1991 provides that the local government will make by-laws that regulate informal trade. The Act acknowledged street traders as business people who contribute to the economy. It provides that the local authorities may regulate but not prevent street traders from trading⁷⁸. Key impediments to working in the informal economy in South Africa include:-

⁷⁶ *Informal Trading Policy and Management Framework – Cape Town*

⁷⁷ *Legal context of Informal Trade in South Africa*

⁷⁸ *Ibid*, Mitulla.

- a. Cumbersome and costly licensing procedures;
- b. Negative perception of people working in the informal economy;
- c. Relations between formal and informal business; and
- d. Infighting among informal traders.

In Johannesburg, urban renewal came with mass evictions of the poor. Informal traders were evicted for 'bad buildings' and relocated far away from their customers. The by-laws place restrictions on the type of goods that can be sold and the locations where traders operate from. The Metro Police evict traders upon mere suspicion of wrong doing. Women traders, who are the sole bread winners of their families, suffer losses during evictions. Their goods are confiscated and they slide deeper into poverty. Unlike men, they lack the physical strength to defend themselves.

The policy commits local authorities to ease the informal traders into the formal economy. Small enterprises can barely compete with bigger enterprises on unequal economic and social terrain. At the same time, inclusion must include deliberate interventions into the structural causes of exclusion. In Johannesburg, 89% of informal traders did not know about the city by-laws. The response to informal trading sector is a desire to create an orderly city free from congestion. The policy aims at protecting the economic interests of formal traders who are regarded as the main contributors to capital accumulation. There is total disregard of the policies impact street traders who constitute the largest complement of informal trade globally.

Street trading encompasses a wide range of entrepreneurial activities. These include; production, sales and buying a wide range of products. Street trading sector⁷⁹ is defined by the:-

1. Predominance of women. Street trading has low incomes, the traders are low skilled and carry out scattered trading activities. The traders have weaker bargaining positions. They are unable to organize and act collectively.
2. Street trading provides an important source of survival and escape from poverty for women.
3. The local government, being the main regulator, is a key party with which street trade organizations must negotiate.

⁷⁹ Shinn Motala, Organizing in the Informal Economy: A Case Study of Street Trading In South Africa, Page 1.

Most street traders engage in survivalist trading activities⁸⁰. Many traders were aged between 25 and 49 years. The 62.5% of the informal traders are women. Men traders tend to be younger than women traders.⁸¹ ¾ are the family bread winners. ½ of the traders are married. 1/3 of the traders are sole earners at their homes. The survivalist of the street trading sector is predominantly African. The reasons for engagement in street trading are economic pressure and retrenchment, lack of skills and poverty⁸¹.

The primary tools for regulation at the local level are the local authority by-laws⁸². The common clauses in the by-laws include:- ⁸³

- a) Traders must not obstruct movement of traffic and pedestrians.
- b) Safety and service vehicles must be free to move.
- c) Protect the public from danger such as cooking fires.
- d) Street trading must not obstruct fire hydrants, road signs and other structures.
- e) Traders must keep trading sites clean, and
- f) Limitation of areas where trade is restricted.

In practice, the by-laws often restrict rather than facilitate street trading. The Johannesburg Metropolitan Council (JMC) has attempted to remove all street traders from Johannesburg CBD following lobbying by the private sector. The council claims that the vendors; clog up pavements, obstruct pedestrians and vehicles, and increase city crime and grime. Street vendors will be relocated to specially built markets⁸⁴. The dedicated markets have insufficient 'passing feet'. The street traders offer shoppers goods that the shoppers would otherwise not go out of their way to look for. Their businesses are directly linked to volume of traffic⁸⁵. Despite the government's perception of the informal sector, it remains committed to creating conducive environment for the informal economic activities including street trading.

ZAMBIA

In Zambia, the informal economy plays a critical role in the development of low income countries through the provision of livelihood for the majority of

⁸⁰ Ibid, Page 2.

⁸¹ Ibid, Page 3.

⁸² Ibid, Page 10.

⁸³ Ibid, Page 11.

⁸⁴ Ibid, Page 37.

⁸⁵ Ibid, Page 37.

the population⁸⁶. The problems of street vending include⁸⁷:-

- a) Poaching customers from the formal economy.
- b) Non-payment of taxes to the government or local authorities.
- c) Blocking roads and causing road traffic congestion.
- d) Sanitation related diseases.
- e) Increased crime.

The informal economy is a sector of the economy which the government neither recognises nor supports or appreciates⁸⁸. In 2002, Africa's informal sector contributed to over 60% of all urban jobs and over 90% of all new jobs. Though estimates differ, street vending has been estimated to account for the largest share of jobs after housework⁸⁹. Three theories have been developed to explain the informal economy:-

- a. Dualist theory states that the persistence of informal activities is due to the fact that few jobs are created due to slow economic growth and rapid urbanization⁹⁰.
- b. The structuralist theory states that the majority of workers have been pushed out of the formal sector where they enjoyed job security into the insecure informal sector. The push is driven by the capitalist desire to cut down input and labour costs, increase flexibility, competitiveness and protect profits⁹¹.
- c. The legalist theory states that informality is a consequence of bureaucratic barriers. The inflexible rules, regulations, terms and conditions for operating a business in the formal sector are tedious. People are forced to circumvent the formal rules and regulations by operating in the informal sector⁹².

The Lusaka City Council (LCC) views street vending as an illegal activity; where people sell their merchandise in non-designated areas⁹³. Street vending can be defined as the production and exchange of legal goods and

⁸⁶ Pity R. Ndhlovu, *Street Vending in Zambia: A Case of Lusaka District* – ISS – Graduate School Of Development Studies –Hague, Netherlands Nov. 2011, Page (vii).

⁸⁷ Ibid, Page 1.

⁸⁸ Ibid, Page 1.

⁸⁹ Ibid, Page 3.

⁹⁰ Ibid, Page 4.

⁹¹ Ibid, Page 6.

⁹² Ibid, Page 7.

⁹³ Ibid, Page 8.

services that involve the lack of appropriate business permits. It operates in violation of zoning codes; failure to report tax liability; non-compliance with labour regulations governing contracts, work conditions or legal guarantees in relation with supplies and clients⁹⁴. Street vendors have been defined as self-employed workers in the informal economy who are either stationery or mobile. A street vendor is a person trading from the street who offers goods for sale to the public.⁹⁵

Street vendors can be categorized as survivalist entrepreneurs with very few traders being growth oriented⁹⁶. The survivalist entrepreneurs do not start their businesses by choice but because they cannot find wage employment, they attempt to increase security by consuming the profits rather than maximizing profits. For this purpose, they diversify their activities. The traders consider profits as part of the household income⁹⁷. In Lusaka, the street traders acknowledged that street vending is illegal. Local authorities do not give licences to street traders. However, the street traders would prefer to be issued with hawkers licence so that they can sell goods freely in the streets without harassment. Some street traders reported loss of goods once they were arrested and arraigned in court.⁹⁸

Local governance refers to the activities the public carries out at different levels.⁹⁹ Local governance can also be defined as structures and processes of societal decision making at the local level. Many local governments do not consider the informal sector as a key component of the economy. Work within the informal economy is usually not legally recognized or protected. Informal activities in many countries are on the fringes of the law and therefore authorities often confuse them with criminal activities. They subject them to oppression¹⁰⁰. Actions of most local government are a major hindrance to the development of a secure environment for street trading. The roles of local governments and their relations with traders depend on the

⁹⁴ Ibid, Page 8, Cross, J.C. (1998) *Informal Sector in P. O'Hara (Ed.) Encyclopedia of Political Economy*. London: Routledge: 580–582.

⁹⁵ Ibid, Page 8, Bhowmik, S.K. (2005) 'Street Vendors in Asia: A Review', *Economic and Political Weekly*: 2256-2264.

⁹⁶ Ibid, Page 9.

⁹⁷ Ibid, Page 9, Berner, E., G. Gomez and P. Knoringa (2008) '*The Logic of Survival Entrepreneurs and the Moral Economy of the Slum*', Paper Presented at the UNU – WIDER Workshop 'Entrepreneurship and Economic Development', Helenski, 21 – 23 August, 2008.

⁹⁸ Ibid, Page 21.

⁹⁹ Ibid, Page 10.

¹⁰⁰ Ibid, Page 11(ILO, 2003).

structure and responsibilities the urban financial system and the regulatory environment they enforce. Street vendors never participate in decisions that local governments make concerning them. Their involvement in policy making would result in appropriate and acceptable policy implementation and success¹⁰¹. The local government sets rules and regulations to guide traders and they collect revenue from traders through taxes¹⁰². For example, the Market and Bus Station Act of 2007 – Laws of Zambia¹⁰³ provides that all markets shall be under the control of a local authority having jurisdiction in the area in which they are situated.

The profile of traders in the sample was as follows:-¹⁰⁴

- a) The average age of the traders was 26 years;
- b) 45% of the traders were aged between 20-29 years;
- c) 55% of the traders were female and 45% were male;
- d) 63% of the traders had obtained secondary education while 35% of the traders had obtained primary education; and
- e) 72.5% of the traders engaged in informal trading due to difficulties in securing salaried employment.

The local government is concerned about law enforcement and ignores the needs of the vendors. This approach makes the vendors vulnerable to arrests and confiscation of goods¹⁰⁵. The traders operate on the look and buy phenomenon, which drives the sales in the streets¹⁰⁶. However, the local authority wants to restore order by managing and controlling street vending through providing formal infrastructure and setting out trading zones. This is achieved through regulation of working hours, registering traders and charging taxes and licences by the local authority.¹⁰⁷ The local government sees the informal economy as the opposite of the formal sector since it is unregulated, unregistered and untaxed¹⁰⁸.

UNITED KINGDOM

The Street Trading Policy of the London Borough of Hounslow defines street trading as the selling or exposing for sale any article (including a living thing)

¹⁰¹ Ibid, Page 11.

¹⁰² Ibid, Page 13.

¹⁰³ Ibid, Page 18.

¹⁰⁴ Ibid, Page 18.

¹⁰⁵ Ibid, Page 22.

¹⁰⁶ Ibid, Page 26.

¹⁰⁷ Ibid, Page 30.

¹⁰⁸ Ibid, Page 30.

or the supplying or offering to supply any service in a street for gain or reward. Street trading without the required licence is an offence. The Sunderland City Council has developed a General Policy on Street Trading in the City Centre. The Council has designated a number of streets as consent streets or prohibited streets for street trading purposes. In a consent street, street trading takes place if the consent of the City Council is obtained.

KENYA

In Kenya, the street vendors population is estimated to stand at 416, 294 persons. This comprises 5.2% of the non-agricultural labour force, with women comprising 3.9%. Street vending attracts persons who have limited opportunities for obtaining formal employment and minimises chances of social exclusion and marginalisation. In neighbouring Uganda, informal sector is the largest employer accounting for 13% of the labour force as compared to 5.3% in the formal sector.

Kenyan urban authorities engage in violent confrontation with street traders. Few street vendors have a licence to trade. The city by-laws ban street trading in the CBD where most customers are likely to be found. The local authorities have a generally negative attitude towards vending. The law enforcement methods are inhuman, gender insensitive and largely exploitative. Vendors respond by resorting to corruption. Many enforcement officers openly demand for bribes, an act that perpetuates the poverty of street vendors. In Nairobi, the government allocated back lanes outside CBD in 2003-4 in an effort to designate specific areas for street traders. There were no essential services in the lanes including sanitary services for the large number of street traders. This designation was later shelved due to rising crimes in the back lanes¹⁰⁹.

LESSONS FOR KENYA:

- a. The government should enact an appropriate legislation or policy framework to regulate informal trade. The policy will provide for the establishment of markets at clear locations. It will spell out the designation of specific streets for vending within the city or municipality, the licensing of informal traders and taxation of informal traders. It will incorporate participation of the informal traders in formulation of the regulatory framework while spelling out public education on the agreed rules. It will also provide for transport and storage facilities to informal traders.

¹⁰⁹ Mitulla.

The policy will align the growth of the informal trade in a structured manner. It will restore and recognise the critical role of informal trade to the national economic growth.

- b. Specific policies should be developed to protect vulnerable groups. These include women, persons with disabilities and the youth. These groups contribute the bulk of the informal traders.
- c. Law enforcement can be effectively carried out without rampant corruption or gross violation of the rights of informal traders. Loss of goods through confiscation leads to loss of livelihood for the informal traders.
- d. The government should formulate programmes for skills improvement for informal traders. This will enable them to manage their businesses better and transit to formal economy. The skills will enhance their capacity for growth and ensure that the traders do not solely engage in survivalist business but are profit oriented.
- e. Lack of employment is a major cause of proliferation of informal businesses. The government should address the structural causes of exclusion of informal traders from the formal economy.
- f. The informal traders should be encouraged to form associations. Clear communication frameworks should be established between the informal traders' associations and the local government.

RECOMMENDATIONS FOR REFORM

The research makes several recommendations on how to reform the system of administration of justice in the city and municipal courts. These include:-

1. **Fair Hearing Guarantees.** The courts should ensure scrupulous compliance with the guarantees for fair hearing as stipulated in the Bill of Rights. This includes trial in open court, right to individual pleas and the right to interpretation services. The hearings, mention and pleas for municipal and city cases should be conducted in open court. Open court proceedings will be the norm and chamber hearings the exception¹¹⁰. The courts, prosecution and the enforcement officers should adhere to international and constitutional standards on fair trial during the arrest, arraignment, trial and sentencing of suspects. The accused persons must be accorded an opportunity to defend themselves. The magistrates presiding over these courts should be sensitized on the rights of the suspects to a fair hearing

¹¹⁰ Ibid.

so that these rights are safeguarded during the trial process. The council enforcement officers should be trained on international best practices on law enforcement to ensure that the rights of arrested persons are respected at all times. Personnel in the enforcement units of the councils should be professionally trained and monitored in execution of their work. The councils should establish independent oversight units where members of the public who are assaulted by the enforcement officers can seek redress. This will minimise incidents of assault and possible torture of arrested persons by the officers. The Constitution guarantees equal protection of the law for everyone and it demands that justice must be done to all irrespective of status. All state organs must ensure access to justice for all persons. The judiciary should take steps to reduce the obstacles that hinder public access to information and ensure proximity and physical access to courts¹¹¹. Juvenile offenders should be tried in the Children's Court.

2. **Professional Investigation and Prosecution Services.** The city and municipal authorities should hire professional prosecution services to undertake prosecution in the courts. This will ensure that the process of investigation, arraignment, and prosecution of the suspects is efficient. It will ensure justice is served. To support the prosecutors, the city enforcement officers should be trained in the proper investigation of cases on collection and preservation of the necessary evidence. The prosecutors should undergo professional training. The city or municipal council should ensure better coordination between the prosecution and investigation departments. The constitutional oversight role of the DPP in overseeing the council prosecution services should be enhanced to ensure better prosecutorial standards¹¹².
3. **Civic Education on By-Laws.** The public should be educated through civic education on the city and municipal by-laws. The by-laws should be available to the public at a minimal fee and the city and municipal authorities should facilitate the publication of the by-laws on the internet. The National Council of Law Reporting should publish the by-laws of major towns and upload them online

¹¹¹ The Judiciary, Judicial Transformation Framework (2012-2016)

¹¹² Under the Constitution, the Director of Public Prosecution is empowered to exercise State powers of prosecution. Such powers may be exercised by the DPP in person or by subordinate officers acting in accordance with general or specific instructions. The prosecutors in the city and municipal courts carry out prosecution under delegated powers by the DPP.

to promote accessibility. At present, the by-laws are too expensive for the public. Citizens lack basic knowledge of their rights and obligations of the state. Access to knowledge of rights is part and parcel of the ability of the citizenry to question the violation of rights. Access to justice presupposes knowledge by citizens of their rights and obligations. The official mechanisms for publishing legislation through the Kenya Gazette are inefficient since many people lack the financial resources to purchase the laws. Some are illiterate. The state has failed to increase the capacity of disadvantaged groups to understand and exercise their rights. The council by-laws should be published and made readily available to ensure that the public is aware of their provisions.

4. **Sentencing Policy.** The city and municipal courts will benefit from a sentencing policy. This has been proposed in the Judicial Transformation Framework. The policy will guide the courts to ensure that the sentencing of convicts is consistent and not viewed as punitive by the arrested persons. The policy will ensure consideration of the personal circumstances of the convicts while sentencing them. It will ensure and that the sentences imposed on similar offences are harmonised across the courts. Further, very few of the cases under the by-laws warrant a custodial sentence. The court should resort to custodial sentence for very serious offences and in very limited cases. The Judicial Transformation Framework proposes the development of the policy that will provide a coherent sentencing structure based on principles of fairness, justice, proportionality and commitment to public safety. It will remove arbitrariness in sentencing and enhance public confidence in our criminal justice system. The policy will harmonise the fines levied by the courts and ensure that they are affordable. The fine payment systems should be technology based and efficient. The courts should impose community service in cases where the convicts cannot afford the fines imposed.
5. **Use of Technology for Fine and Cash Bail Collection.** The city and municipal courts should use appropriate technology to ensure easier payment of fines and bail/bond. This may include use of mobile money transfers and bank agencies near the city or municipal courts. The Chief Justice has launched the payment of court files through MPESA in the Milimani and Kibera Chief Magistrates Court. Branches and agencies of Kenya Commercial Bank (KCB) have been opened near or within the court premises (Milimani Law Courts and KCB Mtaani in Makadara). Similar initiatives should be established

near the city and municipal courts. Since the fines are property of councils, it behoves the councils to ease their payments. Such mechanisms will minimize corruption and eliminate loss of city and municipal council revenue. The bail payment and retrieval systems should also be through Mpesa to ensure it is processed real time and efficiently.

6. **Regulation of Informal Trade by Local Authorities.** The local authorities should evaluate the best methods and mechanisms of regulating informal trade. The solution to the informal economy must relate to the country's social, economic and political status. The informal economy contributes to the municipal finances. Most informal traders engage in trade for survival due to lack of opportunities in the formal economy. The link between exclusion, poverty and abuse of human rights is inevitable. Poverty contributes to the weak knowledge of rights thereby limiting economic capacity or access to courts. On the other hand, failure to access the courts could perpetuate poverty and lead to violation of the rights of the poor. This breeds impunity. Access to justice is the foundation of the rule of law¹¹³. Poor people are rarely able to use formal legal systems to pursue their rights. The cost of engaging an advocate, the opportunity cost of time spent in court and the level of skill and education required to litigate serves as deterrents. Poor people may prefer to use traditional and customary systems. These structures while closer to the poor may be based on authority, structures, practices and values which do not comply with human rights norms.¹¹⁴ A policy to accommodate petty traders and informal sector workers within the city should be developed and adopted across the councils. This will include the designation of specific areas for trading, establishment of markets, establishment of specified *jua kali* sheds and training and capacity building initiatives for the petty traders. The approach of the councils to accommodate the informal sector has been *ad hoc*, non-participatory and ineffective, leading to constant conflicts between the council enforcement officers and the informal traders. Informal traders should be issued with temporary licences to avoid harassment by enforcement officers. An instant fine system should be created for issuance of direct ticket to offenders by council enforcement officials.

¹¹³ Paulo Comoane, *Access to Justice and Rule of Law*, Maputo, September, 2007.

¹¹⁴ DFID, *Realizing Human Rights for the Poor*, October, 2000.

7. **Case Management and Establishment of Courts of Petty Sessions.** City and municipal courts primarily deal with violations of city and municipal by-laws. However, the magistrates presiding over the courts are still allocated ordinary criminal and civil cases. The high number of cases referred to the courts require, that the city and municipal courts engage in creative case management strategies. A case management system results in increased productivity, improved case processing, and reduced costs or cost control. The city and municipal courts should implement a case management system that will assist in tracking cases to avoid delays caused by lack of proper follow-up. This will speed up the hearing and determination of cases.

The city and municipal courts can be redesigned into courts of petty sessions. Such courts are designed to hear and determine high numbers of minor criminal offences. They are criminal courts equivalent of the small claims courts. The investigation, prosecution and clerical services will be redesigned to service the high number of cases presented in the courts. Effectiveness of the criminal justice system is gauged by the expeditious disposal of cases. Some delay is inevitable since the prosecution and the defence must be given reasonable time to gather evidence, organise attendance of witnesses and prepare for trial. In cases where the accused persons are in custody, the cases should proceed as soon as the parties are ready. One of the contributing factors to prison congestion in Kenya has been noted to be accused persons who are held in remand custody pending the hearing of their cases for long periods. In Norfolk Island in Australia, the Court of Petty Sessions deals with criminal cases of summary or regulatory nature. The jurisdiction of the court includes minor civil claims up to AD \$ 10, 000, criminal matters of a summary or regulatory nature and minor family law applications¹¹⁵. The court can be modelled on the Court of Petty Sessions and be built into the existing magistrates' courts with shortened procedures and flexible sitting schedules and venues. The simplified procedures will ensure the court deals with the numbers of suspects arraigned in court.
8. **Physical facilities.** The judicial officers presiding over municipal and city courts should be provided with adequate physical facilities and resources to ensure efficient operation of the courts. Such facilities include computers, internet, stocked libraries, vehicles and security personnel. The officers must also be provided with adequate

¹¹⁵ Set up under the Australian Court of Petty Sessions Act, 1960.

courtrooms to enhance efficiency. Where the officers are visiting crime sites, they should be provided with transport and security. The judiciary should develop a policy to guide the use and allocation of amenities that are available to judicial officers. The judiciary should therefore liaise with the local authorities to expand the available physical infrastructure to ensure that the public and the accused persons are adequately accommodated.

9. **Corruption.** In city and municipal courts, the most corrupt officials are the enforcement officers. The councils should develop and enforce an anti-corruption policy for these officers. The enforcement officers should be closely monitored to ensure that corruption does not thrive. The policy should be implemented across municipal and city councils. Any officer who is proved to have been involved in corruption should be disciplined and prosecution. Mechanisms should be set up to detect and punish offenders at the earliest opportunity. Eradication of corruption will restore public faith in the judiciary and in the justice system. A clear and confidential procedure for filing and vetting complaints of misconduct should be established¹¹⁶. The councils should implement mechanisms to ensure that the enforcement officers are adequately monitored to ensure that corruption is eliminated in enforcement of by-laws. The enforcement officers should be uniformed to ease identification. They should be trained on integrity and customer relations. The council enforcement officers should be reshuffled periodically.
10. **Public Evaluation.** The judiciary should establish a feed back or client response mechanism through which litigants and the public may give views on the performance of the institution and propose areas of improvement. There is need for more courtrooms for the conduct of court proceedings to ensure the public are able to attend and thereby expose the proceedings to public scrutiny and for democratic control. At present, courtrooms are not sufficient for all magistrates presiding over municipal and city court cases. These matters are conducted in chambers.
11. **Shortage of Judicial Officers.** The judiciary should hire adequate number of judicial officers. Serving judicial officers in municipal and city courts are overwhelmed by work leading to case backlog. The courts should only handle matters related to the municipal and city

¹¹⁶ Monica Tusiime The Independence and Accountability of the Judiciary in Uganda: Opportunities and Challenges; (www.kituochakatiba.co.ug) accessed on 18.04.2006

court and not ordinary civil and criminal matters. This will ensure that city and municipal cases are prioritised.

12. **Technical Legal Support for County Assemblies.** The Cabinet Secretary in charge of devolved government should establish a technical legal secretariat to support County Assemblies in development of county laws. The unit will work closely with the Speakers of the County Assemblies. This will ensure harmonisation of the by-laws and compliance with the Constitution, legislation and international human rights standards. The by-laws will incorporate the local needs and appropriate regulation and licensing framework for informal business operating in the counties.

CONCLUSION

This report analyses the process of administration of justice in the city and municipal courts. There are many interlinked factors that affect the effective administration of justice. These range from; corruption, weak investigation and prosecution capacity at the city and municipal councils, improper diagnosis of the appropriate framework for informal economy, to lack of awareness of city and municipal by-laws. The report has made several recommendations on enhancing the process of administration of justice.

Some of the recommendations affect the wide judicial reforms. Some challenges relating to payment of fines and the retrieval of bond from the courts affect the whole judiciary. The development of a sentencing policy and a case management system also affect judicial reforms. The establishment of the courts of petty sessions will assist in hearing and determination of all minor criminal offences, including the city and municipal court cases. These measures are already proposed in the Judicial Transformation Framework and are due to be implemented.

Other measures such as; appropriate licensing regime for the informal traders, can be carried out through a regulatory framework designed by the councils in a participatory manner. However, some target the enforcement and policy making mechanisms at the local authorities. The councils should implement an ethics and anti-corruption policy and a training programme for its prosecutors and enforcement officers.

The county governments will assume the roles of the local authorities after the General Election in March 2013. These recommendations will inform the design on the policies of these devolved governments in undertaking law enforcement at the county level.

APPENDIX 1

The By Laws of the City Council of Nairobi

City Council of Nairobi (General Nuisance) By-Laws, 2007

The By- Law provides for the control acts of nuisance within the City by the City Council of Nairobi. It prohibits the playing of an instrument in the street, making loud noise or speeches. Any person who in any street or in connection with any shop, business premises or other place which adjoins a street and to which the public is admitted makes loud noise or wailings is guilty of an offence. Any person who upon any premises, by playing, operating or causing or suffering to be played or operated any musical instrument, wireless, loud speaker, gramophone, amplifier or similar instrument, make or cause to suffer to be made any noise which is so loud and so continuous or repeated as to cause annoyance to occupants or inmates of any premises in the neighbourhood or to passersby on the street shall be guilty of an offence. Any person who makes loud noises, speeches or wailings causes annoyance to the occupants irritates or persons passing by a street or an open space shall be guilty of an offence¹¹⁷. Prosecution shall not be instituted against any person unless the annoyance remains unabated after the expiry of 7 days from the date of service on such person of a notice signed by the Town Clerk alleging such annoyance and calling for a stop to it.

Any person causes loud, continuous and repeated noise connection with any building demolition or road construction work, cause or suffers to be caused any unnecessary noise so loud or so continuous or repeated as to cause annoyance to occupants of any premises in the neighbourhood shall be guilty of an offence¹¹⁸. Any person who in any part of the City other than the industrial or light industrial zones, in connection with any trade or industrial processes cause or suffer or cause any noise so loud or so continuous or so repeated as to cause annoyance to the occupants of any premises in the neighbourhood shall be guilty of an offence. Any person who without lawful authority deposits or causes or permits to be deposited any soil, vegetation, refuse or debris on any land in the city shall be guilty of an offence. Any person who keeps within the City any animal or poultry which causes a nuisance to any of the residents in the neighbourhood shall be guilty of an offence.

¹¹⁷ Section 3(a), (b) and (c) of the By Laws.

¹¹⁸ Section 4 of the By Laws.

Any hedge tree or other growth that is , in the opinion of the Council, so placed as to be a danger to any person or vehicle using the street or to interfere with the view along the street or from one street to another or the use of the street by pedestrian or vehicular traffic, the Council may serve a notice in the owner of occupier of the land on which such hedge or tree or other growth is situated requiring him, within the specified time of not less than 14 days to cause the hedge, tree of other growth to be removed, chopped or trimmed. Any expenses incurred as a resulting of removing the growth or tree shall be recoverable from the owner or occupier as a civil debt.

Any person who erects a structure in such position that it is sited in or protrudes to the street, without the authority of the Town Clerk shall be guilty of an offence. Any person who wilfully obstructs the free passage of any street, wilfully or negligently damages or destroys the surface of any public street, pulls down, destroys, obliterates, defaces, displaces or removes any property of the Council on or near a street; pulls down, destroys any tree shrub, flower, plant or grass on land forming part of any public street; disturbs, damages or destroys any barrier, fence or other erection or any trestle, lamp, or stone or other material placed o a street or by fitting attached thereto; wilfully or negligently pulls down, damages or destroys any lamp, standard, bollard in a street or damages or removes any bulb or fitting attached thereto; or digs, ploughs, tills or cultivates any public street without the written permission of the Town Clerk shall be guilty of an offence¹¹⁹.

The defacing of any building by writings, signs or other marks by any person without lawful authority constitutes an offence. Every building in the City must be painted at least once in two years or as the Council may from time to time direct. Every owner of a building shall be responsible in cleaning repairing and generally keeping in good condition the pavement, veranda, frontage of his or her building. Every owner or a building must install a security light inform of his or her building and the security light must be switched on from 7 pm to 6 am daily.

Breaking up the surface of a public street, without permission or lawful authority of the City Engineer, shall constitute an offence. Any person who places, settles, allows, causes to be placed or leaves any vehicle or article

¹¹⁹ Section 14 of the By Laws.

or material in a street in such manner that it causes or likely to cause an obstructions to persons or vehicles using the street shall guilty of an offence. The Council may remove any vehicle, article or material which has been placed or left in a street in contravention of the by-law and impound the same.

Any person who in any street who ignites any firework; without the permission of the Town Clerk in writing and for the purpose of hawking, selling, distributing or advertising any article or event, shouts or uses any bell, gong, or other noisy instrument or loud speaker shall be guilty of an offence. Any person who without the permission of the Town Clerk in writing, draws, wheels or drives any vehicle or carries any board or placard used solely or chiefly for the purpose of exhibiting advertisement; without the permission of the Town Clerk in writing and for the purpose of advertising distributes any bill or other papers shall be guilty of an offence. Any person who commits any act contrary to public decency; without statutory authority defaces the foot way or roadway by writing or other marks; places or deposits and leaves any glass china, earth ware, tin, carton, paper, saw dust or other rubbish so as to create or tend to create litter; throws down or leaves any orange peel, banana skin, or any other substance likely to cause a person to fall down; to the inconvenience or danger of any person shall be guilty of an offence.

Any person who carries or conveys any bag of lime, charcoal or other offensive material, timber or any pointed or edged tools or implements not properly guarded; plays any game in such manner as to cause the likelihood of damage to property or danger to any person; rides, drives or propels a vehicle on a foot path; spits on any path way or blows his nose otherwise than into a suitable tissue or cloth; loiters or importunes for the purpose of prostitution; procures or attempts to procure a female or a male for the purpose of prostitution, shall be guilty of an offence. Any person who while being in charge of a dog allows such of to foul any foot path; washes any vehicle or, except in the case of an emergency, repairs or dismantles any vehicle; except in case of an emergency, sounds any motor horn, cycle bell or other similar warning instrument; without the consent of the Town Clerk, lights or maintains or suffers to be lit or maintained any fire or brazier shall be guilty of an offence. Any person who in the central area as defined in any by laws of the Council for the time being in force, drives or rides any animal on a foot path; defecates or urinates in any street or any open space; smokes cigarettes in public places; or touts

for passengers; or fails to observe traffic lights or the zebra crossing or any other directional signs, shall be guilty of an offence¹²⁰.

Any person who discharges a missile in or near a street in a manner likely to cause damage to property without a permit issued by the Council, shall be guilty of offence. Any person found loitering on any Council property other than a street or residential property, without lawful authority shall be guilty of an offence¹²¹. Any person who, in connection with any trade or business on a street, conveys in or on a vehicle or in any manner, or who permits to be conveyed, any food in a manner liable to involve the risk of contamination shall be guilty of an offence¹²². A person who is engaged in handling, storage or conveyance of open food in connection with any trade or business shall while so engaged ensure he or she maintains personal cleanliness of all parts of his or her person that may come into contact with the food, his or her clothing, refrain from spitting or blowing his or her nose, refrain from smoking where the food is made, and shall wear a white garment of a pattern approved by the Medical Officer of Health¹²³. Failure to comply with the standards of cleanliness constitutes an offence¹²⁴. Any person who has in his possession or under his or her control for the purpose of sale any meat or poultry which has not been inspected at a designated place as defined by any by-laws or by the Medical Officer of Health or a health inspector and marked as having been inspected, shall be guilty of an offence¹²⁵. A person found guilty of an offence under the by-Law shall be liable to a fine of Kshs. 2, 000/- for the first offence or a jail term of six months and Kshs. 3,000/- for the second and subsequent offence or a jail term of nine months; or to both such fine and imprisonment¹²⁶.

City Council of Nairobi (Licensing of Premises and Trade) By-Laws, 2007

Section 3(1) of the by-laws provides that no person shall engage in or carry on any trade or occupation, business or profession, at any premises within the jurisdiction of the Council unless such premises are permitted for the purpose of carrying on such trade, occupation, business or

¹²⁰ Section 19 of the By Laws.

¹²¹ Section 24 of the By Laws.

¹²² Section 26(1) of the By Laws.

¹²³ Section 27(1) of the By Laws.

¹²⁴ Section 27(3) of the By Laws.

¹²⁵ Section 28(1) of the By Laws.

¹²⁶ Section 30 of the By Laws.

profession. Any person who fails to comply with the by-law shall be guilty of an offence¹²⁷. Every person to whom a permit has been issued under the by-laws shall on demand by a police officer, medical officer of health, enforcement officer or any other person authorised by the Town Clerk produce such permit for inspection by such officer¹²⁸. A person found guilty of an offence under the by-law shall be liable to a fine of Kshs. 2, 000/- for the first offence or a jail term of six months and Kshs. 3,000/- for the second and subsequent offence or a jail term of nine months; or to both such fine and imprisonment. A person convicted of an offence for the third time shall be liable to imprisonment for term of six months without the option of a fine. Any person carrying on business within the jurisdiction of the council who fails to obtain the permit by 31st March of the current trading year shall be guilty of an offence under the by-laws¹²⁹.

City Council of Nairobi (Hawkers) By Laws, 2007

The by-law defines the term 'hawk' to mean whether as principal agent or employee for the purpose of carrying on trade by the sale or exchange of goods wares merchandise or refreshment, to place oneself in any street or public place or unenclosed land (other than shop premises approved as such by the Council) or to go about the streets or public places or from premises to premises; or by any of the means aforesaid, to carry on trade by the sale or exchange or the offer or exposing for sale or exchange, of any goods, wares, merchandise, or refreshment, but does not include seeking or taking of orders for subsequent delivery or the delivery of good, wares, merchandise or refreshment to premises for the purpose of resale¹³⁰. Designated area means the area within the jurisdiction or determined by the Council to be the area within which hawkers may operate¹³¹.

Any person who hawks in the city without a permit or being a holder of a permit hawks in the city otherwise than in accordance with the terms and conditions thereof shall be guilty of an offence¹³². Every application for a permit shall be made to the Town Clerk and the applicant shall furnish particulars of the place of abode and of the commodity and other places at which he intends to engage in hawking¹³³. Every person granted a

¹²⁷ Section 3(2) of the By Laws.

¹²⁸ Section 10 of the By Laws.

¹²⁹ Section 12 of the By Laws.

¹³⁰ Section 2 of the By Laws.

¹³¹ Section 2 of the By Laws.

¹³² Section 3 of the By Laws.

¹³³ Section 4 of the By Laws.

permit under the by-laws shall carry the permit while engaged in hawking and produce it on demand to a police officer, city inspector or council enforcement officer in uniform or to a duly authorised licensing officer of the council and shall wear in a conspicuous place the badge relating to his permit¹³⁴. Any person who obstructs or hinders an authorised officer in execution of his or her duties under the by-laws or who fails to comply with any of the provisions shall be guilty of an offence¹³⁵. A hawker may on authorisation by the Town Clerk employ an assistant where the hawker sells refreshments or is physically disabled¹³⁶. Any person without a valid permit and who engages in hawking or any permit holder engaging in hawking in a non -designated area shall have his or her goods impounded and the Council shall sell the goods through a public auction¹³⁷. Any person who engages in hawking with or without a permit within the Central Business District Area as defined by the Council shall be guilty of an offence¹³⁸. A person, who solicits, bargains, induces or negotiates with any hawker with a view to buy, purchase or sell any goods in a non designated area shall be guilty of an offence¹³⁹.

Any person who is found guilty of an offence under the by-law shall be liable on conviction to a fine not exceeding Kshs. 2, 000/- in respect of a first offence or three months imprisonment and a fine of Kshs,. 3, 000/- or a jail term of 9 months in respect of a second and subsequent offence, or to both such fine and imprisonment¹⁴⁰.

City Council of Nairobi (Matatu Termini) By-Laws, 2007

Every owner of a matatu shall apply for a parking permit from the Town Clerk and shall pay a prescribed fee. The parking permit shall expire on 31st December of the year in which it was issued¹⁴¹. The permit shall be displayed in a conspicuous place in the matatu and shall not be transferable¹⁴². The Council may declare any area in the city to be matatu terminus. Any person, who parks a matatu in an area other than in a matatu terminus,

¹³⁴ Section 6 of the By Laws.

¹³⁵ Section 6(3) of the By Laws.

¹³⁶ Section 7 of the By Laws.

¹³⁷ Section 10 of the By Laws.

¹³⁸ Section 11 of the By Laws.

¹³⁹ Section 12 of the By Laws.

¹⁴⁰ Section 13 of the By Laws.

¹⁴¹ Section 3 and 4 of the By Laws.

¹⁴² Section 7 and 8 of the By Laws.

commits an offence¹⁴³. No person shall establish a private matatu terminus without authority of the Town Clerk. No matatu driver, conductor or any other person when plying for hire or reward within any street or matatu terminus shall importune any person to enter his or her matatu by calling out, or otherwise employ any other person for that purpose¹⁴⁴. Any person who has not obtained a ticket but who drives a matatu into any terminus for the purpose of dropping or picking passengers or who leaves a matatu in a terminus otherwise than as provided in the by-laws shall be guilty of an offence. A police officer or council enforcement officer may remove the matatu and keep it in custody¹⁴⁵. The owner of a matatu that is impounded under the by-laws shall pay to the Council a fee determined by the Council for each 24 hours or part thereof that the matatu remains in safe custody together with other charges incurred in removing and keeping the matatu in safe custody¹⁴⁶.

If the owner fails to pay the fee and other expenses, the Council may sell or otherwise dispose of such matatu and the proceeds of the sale and disposal shall be defrayed against the outstanding fees and expenses and the balance shall be paid to the account of the owner of the matatu¹⁴⁷. No person shall use or cause to be used any matatu within the matatu terminus for the purpose of hawking, trading, sale or exchange of goods of whatever kind. Every person in a matatu terminus shall comply with and obey all lawful instructions, directions and orders given by a police officer or an enforcement officer for the purpose of controlling or supervising such terminus¹⁴⁸. Any person, who obstructs, hinders, interferes, aids or encourages any other person to obstruct, hinder or interfere with any police or enforcement officer in exercise of any of the duties under the bylaw shall be guilty of an offence¹⁴⁹. No person in a matatu terminus shall wilfully interfere with, hinder or obstruct any other person alighting from a matatu or entering or intending to enter a matatu; enter or attempt to enter a matatu otherwise than through the doors provided for that purpose; wilfully obstruct any driver or conductor of a matatu acting in the performance of his duty; or behave in a disorderly manner¹⁵⁰.

¹⁴³ Section 9 of the By Laws.

¹⁴⁴ Section 15 of the By Laws.

¹⁴⁵ Section 16 (1) of the By Laws.

¹⁴⁶ Section 16(2) of the By Laws.

¹⁴⁷ Section 16(30) of the By Laws.

¹⁴⁸ Section 20 of the By Laws.

¹⁴⁹ Section 21 of the By Laws.

¹⁵⁰ Section 22 of the By Laws.

A person found guilty of an offence under the by-law shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on conviction of a second and subsequent convictions; or to both such fine and imprisonment¹⁵¹.

City Council of Nairobi (Conservancy) (Amendment) By-Laws, 2007

These by-laws amend the City of Nairobi (Conservancy) By Laws, 1961. A person found guilty of an offence under the bylaw shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2,000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on conviction of a second and subsequent convictions; or to both such fine and imprisonment¹⁵².

City Council of Nairobi (Designated Parking Places) (Amendment) By Laws, 2007

The areas on the roads and off roads described in the schedule are designated parking places for vehicles.¹⁵³ The limits of each parking place shall be marked on the road by line, studs or other indication in such manner as the Council may determine¹⁵⁴. No vehicle shall park in a designated parking place for a duration exceeding that paid for¹⁵⁵. No person shall park in or drive into or drive out of a designated parking in such manner that the vehicle stands in or passes over part of one parking space and part of another or any line, stud or other indication marking the limits of a parking space¹⁵⁶. A vehicle which is parked without prior payment of the parking fee shall be clamped and thereafter towed by an enforcement or police officer.¹⁵⁷ The parking permit shall be displayed at the front windscreen showing the amount paid, the date and the time of the vehicle entered into the parking space¹⁵⁸.

¹⁵¹ Section 24 of the By Laws.

¹⁵² Section 15M of the By Laws.

¹⁵³ Section 3 of the By Laws.

¹⁵⁴ Section 5 of the By Laws.

¹⁵⁵ Section 6 of the By Laws.

¹⁵⁶ Section 8 of the By Laws.

¹⁵⁷ Section 10(1) of the By Laws.

¹⁵⁸ Section 11(1) of the By Laws.

No charges shall be payable after 2 pm on Saturdays, the whole day on Sundays and public holidays¹⁵⁹. The revenue officers responsible for collection of parking fees shall at all times be in uniform and have with them a proper identification badge bearing the authority of the Council¹⁶⁰.

A person carry on the business of commercial parking shall obtain a permit from the Council to carry on such business¹⁶¹. Any person who, with intent to defraud, interferes with the writings or marks on a parking permit already issued; without authority of the Council, uses a parking space for the purpose of advertisement; wilfully damages a vehicle clamp or any of its parts; wilfully uses the parked vehicle to carry out business on a Council designated parking space; or without the authority of the Council removes or attempts to remove a clamp from a clamped vehicle shall be guilty of an offence¹⁶².

Any person who wilfully obstructs, hinders or otherwise interferes with any officer of the council in the execution of his or her duties shall be guilty of an offence.¹⁶³ It is an offence to park a vehicle on a pavement or an area that is not designated as a parking area¹⁶⁴. The Council shall not be held liable if the vehicle is clamped or is removed pursuant to the by-laws, for any damage that occurs in the process of clamping or removal of the vehicle¹⁶⁵.

A person found guilty of an offence under the bylaw shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on conviction of a second and subsequent convictions, or to both such fine and imprisonment¹⁶⁶.

City Council of Nairobi (Fire Brigade) By Laws, 2007

The by-law establishes a fire brigade for the city which shall be under the control of the Council¹⁶⁷. Where the fire brigade is in attendance to

¹⁵⁹ Section 12(1) of the By Laws.

¹⁶⁰ Section 13 of the By Laws.

¹⁶¹ Section 15 of the By Laws.

¹⁶² Section 19 of the By Laws.

¹⁶³ Section 20 of the By Laws.

¹⁶⁴ Section 22 (1) of the By Laws.

¹⁶⁵ Section 23 of the By Laws.

¹⁶⁶ Section 24 of the By Laws.

¹⁶⁷ Section 3 of the By Laws.

any premises which are on fire, any person who breaks into or enters the premises without the express permission of a senior fire officer present except for the purpose of saving the life of any person shall be guilty of an offence¹⁶⁸.

The water company in consultation with the Council shall have power to fix to any building, post or structure which is near a fire hydrant and to maintain thereon a plate indicating the proximity of the fire hydrant¹⁶⁹. Any person, who wilfully obstructs, molests or interferes with any member of the fire brigade in the execution of his or her duty or who wilfully interferes with or damages any vehicle, appliance or equipment being used or brought into use by the fire brigade for fire fighting shall be guilty of an offence¹⁷⁰. Any person who makes or causes a fire to be made as defined in the by-laws shall be guilty of an offence¹⁷¹. A person found guilty of an offence under the bylaw shall unless a different penalty is provided for be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on conviction of a second and subsequent convictions; or to both such fine and imprisonment¹⁷².

City Council of Nairobi (Food Shops and Stores) By Laws, 2007

The by-law provides for the proper management of places where food is sold within the city to ensure appropriate hygienic conditions are maintained. The Council shall issue licences and permits for grocers, butchers, fishmongers, green grocers, food store, and supermarket and milk traders¹⁷³. Any person suffering from or knows himself or himself to be a carrier of any infectious or contagious or venereal disease shall not work in any shop or store¹⁷⁴. A person working in a shop or store must have a valid medical certificate¹⁷⁵. A person found guilty of an offence under the by-law shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on

¹⁶⁸ Section 12 of the By Laws.

¹⁶⁹ Section 13 of the By Laws.

¹⁷⁰ Section 14 of the By Laws.

¹⁷¹ Section 15 of the By Laws.

¹⁷² Section 20 of the By Laws.

¹⁷³ Section 4(1) of the By Laws.

¹⁷⁴ Section 13(1) of the By Laws.

¹⁷⁵ Section 13 (3) of the By Laws.

conviction of a second and subsequent convictions; or to both such fine and imprisonment¹⁷⁶.

City Council of Nairobi (Control of Hamali Carts and Handcarts in Public Streets) By Laws, 2007

Where the Council is satisfied that it is expedient for facilitating the passage of traffic, it may make an order as regards any public street in the city prohibiting the use of the street by hamali carts or handcarts, either generally or subject to exceptions specified in the order and either at all times or days or during periods so specified¹⁷⁷. A person authorised to propel a hamali cart or handcart shall observe all the traffic rules and the by-laws¹⁷⁸. The orders made under the by-law shall be published in the Kenya Gazette. Any person who uses a hamali cart or handcart in contravention of the order made by the council shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment, or to both such fine and imprisonment¹⁷⁹.

City Council of Nairobi (Medical Facilities) By Laws

No person shall operate a nursing home, maternity home, or other medical facility unless he is in possession of a valid permit granted by the Council¹⁸⁰. The application for the permit shall be in the prescribed form¹⁸¹. The Medical Officer of Health or any other authorised officer may at all reasonable times enter and inspect the premises for which a permit has been issued under the by-laws and may also inspect records required to be kept in respect of such premises¹⁸². Each medical facility shall make provision for mortuaries and incinerators¹⁸³. The permit shall be affixed and displayed in a conspicuous position in the premises¹⁸⁴. A person found guilty of an offence under the by-law shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on conviction of a second and subsequent convictions; or to both such fine and imprisonment.¹⁸⁵

¹⁷⁶ Section 37 (1) of the By Laws.

¹⁷⁷ Section 3 of the By Laws.

¹⁷⁸ Section 4 of the By Laws.

¹⁷⁹ Section 5 of the By Laws.

¹⁸⁰ Section 3 of the By Laws.

¹⁸¹ Section 4 and 5 of the By Laws.

¹⁸² Section 7 and 8 of the By Laws.

¹⁸³ Section 11 of the By Laws.

¹⁸⁴ Section 16 of the By Laws.

¹⁸⁵ Section 18 of the By Laws.

City Council of Nairobi (Ban on Polythene Carry Bags) By Laws, 2007

The by-law regulates the use of polythene bags within the City of Nairobi. The by-laws prohibit the importation, sale, manufacturing, production or storage of non biodegradable polythene bags of less than the recommended thickness within the jurisdiction of the council by any person. A vendor is prohibited from using a polythene bag to store, carry, dispense or package any articles or commodities or litter any public place with polythene carry bags¹⁸⁶. Any person found guilty of an offence under the bylaw shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on conviction of a second and subsequent convictions; or to both such fine and imprisonment.¹⁸⁷

City Council of Nairobi (Private Schools) By Laws, 2007

Schools within the City Council of Nairobi shall be operated in permitted premises¹⁸⁸. The application for a permit shall be made in the prescribed form and shall be granted for a period not longer than one year and expire on 31st day of December of the year in which it was granted¹⁸⁹. A school permit shall not be transferable without prior consent of the Council¹⁹⁰. School premises shall be maintained in good order and condition to the satisfaction of the Council¹⁹¹. Employees of a school shall not be persons who are infected with an infectious, contagious or venereal disease. Any person working in a school shall have a valid medical certificate from a recognised medical officer¹⁹² and the Medical officer of Health may at all reasonable times enter upon and inspect the school premises¹⁹³. The penalty for any person found guilty of an offence under the bylaw shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on conviction of a second and subsequent convictions; or to both such fine and imprisonment¹⁹⁴.

¹⁸⁶ Section 3 of the By Laws.

¹⁸⁷ Section 4 of the By Laws.

¹⁸⁸ Section 3 of the By Laws.

¹⁸⁹ Section 6 of the By Laws.

¹⁹⁰ Section 7 of the By Laws.

¹⁹¹ Section 9 of the By Laws.

¹⁹² Section 12 of the By Laws.

¹⁹³ Section 14 of the By Laws.

¹⁹⁴ Section 17 of the By Laws.

City Council of Nairobi (Restaurant, Eating House and Snack Bar) By Laws, 2007

The By Law defines a restaurant to include an eating house, a snack bar; a hotel in which food is sold to any other person other than a resident or guest; premises used as proprietary clubs that sell food; café, canteen; fish and chips shop; and mobile food kiosk. Any restaurant operating within the city must seek and obtain a permit in the prescribed form. A restaurant permit shall authorise the permit holder at premises, the address of which shall be specified therein, to prepare or cook for sale and sell food for human consumption¹⁹⁵. The restaurant shall provide adequate refrigerated store space; sufficient number of refuse receptacles with properly fitting lids; a changing room for employees, access to a yard for the servicing of the premises; a storage room for food that shall be adequately lighted, ventilated and rendered rodent proof; dust proof ceilings in all rooms where food is prepared or stored; constant supply of pure and wholesome water; and secondary means of access to the premises shall be provided and maintained.

An eating house permit may be issued to prepare and cook for sale and sell food for human consumption. The eating house shall have a dining area, kitchen, yard space, sculleries, sanitary conveniences of such specifications as the Council may determine. A snack bar permit shall permit the holder to prepare and sell for human consumption hot or cold drinks; boiled or poached eggs; tinned stuff prepared for consumption solely by the immersion of the tin in hot water; cold pies and cooked meats including hot dogs; bread including toast; biscuits, cakes and pastries; and any other food which is consumed uncooked. A snack bar permit holder shall comply with the set guidelines by the Council.

A person who knowing himself to be suffering or to be a carrier of an infectious or contagious disease, who works in a restaurant, eating house or snack bar, shall be guilty of an offence. Every permit shall be exhibited in a conspicuous place in the premises. Any person engaged in handling of food or any utensils used in connection with the preparation, cooking, serving or consumption of food shall while so engaged keep as clean as may be reasonable practicable all parts of the person that may come into contact with the food; wear a clean garment and head covering of an appropriate pattern, which shall in case of a person involved in

¹⁹⁵ Section 13(1) of the By Law.

preparation of food shall be white; refrain from spitting and smoking; and keep any abrasion on any exposed part covered with a suitable and clean waterproof dressing¹⁹⁶. Any act or omission of an employee of a permit holder shall be deemed to be an act or omission of the permit holder and any proceedings taken for an offence under the by-law may be taken against both the employee and the permit holder.

Every open air eating place shall be required to be in a structure that is approved by the Council; all persons handling the food must have valid medical certificates; must have adequate receptacles for disposal of litter, the owner shall have the responsibility of disposing of the solid and liquid waste generated; and the permit holder shall provide adequate fire fighting facilities located strategically within the structure¹⁹⁷. A person found guilty of an offence under the bylaw shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on conviction of a second and subsequent convictions; or to both such fine and imprisonment.¹⁹⁸

City Council of Nairobi (Sale of Ice Cream) By Laws, 2007

No person shall sell or offer for sale or cause to be sold or offered for sale within the city any ice cream which is not manufactured in accordance with the bylaws. The ice cream shall be protected from dirt, dust or other contamination during distribution, sale and storage. The ice cream shall be kept at a temperature not exceeding 28F since it was frozen¹⁹⁹. No person shall use any premises for sale and distribution of ice cream unless he or she is in lawful possession of a permit issued by the Council²⁰⁰. The permit shall expire on the 31st day of December following its issue²⁰¹. The application for the permit shall be in the prescribed form. The permit shall not be transferrable without the permission of the Town Clerk²⁰². Every permit holder shall ensure appropriate cleanliness is maintained in the permitted premises²⁰³. A person found guilty of an offence under the

¹⁹⁶ Section 20 of the By Laws.

¹⁹⁷ Section 32 of the By Laws.

¹⁹⁸ Section 33 of the By Laws.

¹⁹⁹ Section 3 of the By Laws.

²⁰⁰ Section 4 of the By Laws.

²⁰¹ Section 7 of the By Laws.

²⁰² Section 8(1) of the By Laws.

²⁰³ Section 10 of the By Laws.

bylaw shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on conviction of a second and subsequent convictions; or to both such fine and imprisonment²⁰⁴.

City Council of Nairobi (Solid Waste Management) By Laws, 2007

The Council has the primary duty to regulate waste and its management within its area of jurisdiction. The Council shall prepare a waste management plan. The plan shall provide for kinds and quantities of waste likely to be present within an area, method of waste; and the sites and equipment for treatment and disposal of waste²⁰⁵. The Council shall permit waste operators who satisfy the set technical and financial requirements. The Council shall licence transporters of solid waste²⁰⁶. The Council shall maintain a register of all waste operators permits and registration of transporters which are in force from time to time²⁰⁷. The register shall be open for inspection by members of the public. It shall be the duty of the Council to arrange for collection, treatment and disposal of all domestic waste and other litter generated within its area of jurisdiction. The Council may enter into agreements with third parties to carry out its obligations on waste management. A person who generates waste has a duty to ensure that the waste is not released to the environment so as to cause pollution. Every occupier and owner of premises has a duty to make suitable arrangements for the proper management of waste and to comply with directions of the Council²⁰⁸. No person shall dispose of waste other than in the permitted disposal areas or facilities²⁰⁹. The Council shall establish and implement a system of monitoring, inspections and enforcement of waste management activities and shall regularly inform the public of the steps taken to implement and improve waste management within the City. Any waste management charges that will be due and owing to the Council shall be a debt due and owing to the Council and may be recovered as a civil debt at the instance of the Council. A person found guilty of an offence under the by-law shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or

²⁰⁴ Section 14 of the By Laws.

²⁰⁵ Section 4 of the By Laws.

²⁰⁶ Section 150 of the By Laws.

²⁰⁷ Section 7 of the By Laws.

²⁰⁸ Section 8 of the By Laws.

²⁰⁹ Section 9 of the By Laws.

six months imprisonment in respect of a first offence; or to both such fine and imprisonment²¹⁰.

City Council of Nairobi (Taxi Cab) By Laws, 2007

The permits issued under the by-laws are the taxi- cab permit and taxi drivers permit²¹¹. The permit shall be applied for in the prescribed form and shall be issued by the Town Clerk²¹². The Council may by resolution limit the number of taxicabs that may operate within the City and the Town Clerk shall not issue permits exceeding the number authorised by the Council²¹³. An owner of a taxicab shall produce the vehicle for inspection on written request by the Town Clerk²¹⁴. The Town Clerk may suspend the permit of a taxi cab if the vehicle, in the opinion of the City Engineer, is not fit for use²¹⁵. The owner of a taxi cab shall report in writing to the Town Clerk within 24 hours any accident in which damage is caused to the taxi cab. An owner of the taxi cab shall ensure that there are sufficient means by which any passenger may communicate with the driver; cause the roof or covering of the vehicle to be kept water tight; provide and maintain the necessary windows and means of closing and opening not less than one window on each side; cause seats to be properly cushioned and covered; cause the floor to be provided with a proper carpet, or other suitable covering; cause the fittings and furniture to be kept in a clean condition, well maintained and fit for public service; provide adequate means of securing luggage carried in the vehicle; provide and maintain adequate internal lighting with at least one light switch so fitted that the passenger can be able to operate it; and to provide and maintain easily accessible means for a passenger to open at least one door on each side of the vehicle from inside²¹⁶.

Every taxi shall be provided with a taxi meter of a type approved by the City Engineer which shall be maintained in proper working order and shall be set to indicate no greater fares than those prescribed in the by-laws²¹⁷. The taxi cabs shall be painted with details in a plainly visible manner, the

²¹⁰ Section 12 of the By Laws.

²¹¹ Section 4 of the By Laws.

²¹² Section 5 and 6 of the By Laws.

²¹³ Section 13 of the By Laws.

²¹⁴ Section 14 of the By Laws.

²¹⁵ Section 14(2) of the By Laws.

²¹⁶ Section 16 of the By Laws.

²¹⁷ Section 17 of the By Laws.

name and address of the owner, the number of the permit issued by the Council; and the number of passengers it is permitted to carry²¹⁸. Any driver who, when playing for hire, importunes any person to hire the vehicle by calling out or otherwise attracting their attention or makes use of the services of any other person for that purpose commits an offence²¹⁹. The driver of a taxi can shall proceed with reasonable speed to a taxi rank and move to another taxi rank if at the time of his or her arrival the full number of vehicles authorised to occupy the taxi rank, proceed to another taxi rank. ²²⁰A driver of a taxi cab shall not refuse to accept any person as his or her passenger unless he or she believes on reasonable grounds that such person is suffering from an infectious or contagious disease or he believes on reasonable grounds that acceptance of such person shall result in damage to the vehicle or danger to himself or herself and other passengers²²¹. Any taxi driver who accepts any other passengers without the consent of the original hirer shall be guilty of an offence²²². A person found guilty of an offence under the bylaw shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- or nine months imprisonment on conviction of a second and subsequent offence; or to both such fine and imprisonment²²³. A person who is within 2 years twice convicted of an offence or offences under the by-law shall be liable in addition to any other penalty which the court may impose, to have his or her permit cancelled by the court from such date as the court may think fit and the court may order any such person to be barred from obtaining such permit for a period not exceeding one year²²⁴.

City Council of Nairobi (Waste Water (Conservancy)) By Laws

The owner of premises connected to the Company's sewerage system shall pay to the company a regulated charge²²⁵. Any occupier or owner of premises from which waste passes into a water pit or conservancy tank shall pay to the Company a regulated charge in respect of each attendance at the premises of the Company's exhaustor vehicle for the purpose of

²¹⁸ Section 18 of the By Laws.

²¹⁹ Section 21 of the By Laws.

²²⁰ Section 22 of the By Laws.

²²¹ Section 23 of the By Laws.

²²² Section 24 of the By Laws.

²²³ Section 31(1) of the By Laws.

²²⁴ Section 31(2) of the By Laws.

²²⁵ Section 3 of the By Laws.

emptying such pit²²⁶. The Council may licence private exhaustor services. Any person who is guilty of an offence under the bylaws shall be liable to a fine of Kshs. 3, 000/- or in default a term of imprisonment of 6 months²²⁷.

The By-Laws of the Municipal Council of Mombasa

Municipal Council of Mombasa Designated Parking Places By laws, 2010

The by-law stipulates the designated areas for parking vehicles in the Schedule²²⁸. The number and situation of such parking spaces shall be determined by the Council²²⁹. The Council shall prescribe the payable fees and charges for parking at the designated parking places for the stated duration²³⁰. Where a vehicle is removed or clamped, the owner shall pay the applicable parking charge as well as a specified charge for clamping or removal of the vehicle²³¹. The owner or driver of the vehicle shall display the parking ticket at the front windscreen of his or her vehicle showing the amount paid, time and date when the vehicle entered the parking²³². The revenue officers responsible for collection of parking fees shall at all times put on a uniform and carry proper identification badges bearing the authority of the Council.²³³ The parking permit shall not be transferable²³⁴. Any person who wilfully obstructs an officer of the council from carrying out his or her duties under the bylaws shall be guilty of an offence²³⁵. Any vehicle parked at a pavement shall be towed and the owner shall be liable to pay the towing charges and charges for illegal parking which shall be prescribed by the Council in its fees and charges²³⁶. Any vehicle which knocks down any electricity pole shall be towed and detained by the Council and shall be held until the owner of the vehicle pays for the restoration of the pole, including the towing and storage charges specified by the Council. Any person found guilty of an offence under the by-laws shall be liable on conviction to a fine not exceeding Kshs. 2, 000/- or a

²²⁶ Section 4 of the By Laws.

²²⁷ Section 13 of the By Laws.

²²⁸ Section 3 of the By Laws.

²²⁹ Section 4 of the By Laws.

²³⁰ Section 9 of the By Laws.

²³¹ Section 10 of the By Law.

²³² Section 11 of the By Laws.

²³³ Section 13 of the By Laws.

²³⁴ Section 18 of the By Law.

²³⁵ Section 20 of the By Laws.

²³⁶ Section 22 of the By Laws.

term of imprisonment of three months or a fine not exceeding Kshs. 3, 000/- or a term not exceeding six months for a second and subsequent offence²³⁷.

Municipal Council of Mombasa (Whole Sale Markets Places) By laws, 2010

No wholesale market shall be established within the jurisdiction of the Council except by the Council and no person shall sell goods at the wholesale market except with the consent of the Council given by the Market Master upon payment of the authorised fees. The Council may appoint such other officers to assist the Market Master as are necessary to secure the effective control of the market. The market shall be opened on such days and times as the Council may from time to time determine. No fire or cooking shall be allowed in the market without authority of the Council. No person shall be allowed to take an animal to the market. All persons employed in the market shall maintain cleanliness. No person suffering from a contagious or infectious disease shall be engaged in the market. No person within the market shall commit any nuisance; hawk any goods; interfere with or molest any other person or tout, shout or call out for customers; cause disturbances or use any obscene, offensive injurious or unbecoming language; damage, foul, misuse, interfere with any equipment or fittings; deposit or throw on the floor or ground any refuse, fruit peel or vegetable remains so as to litter any area in the market; expectorate; play games or loiter within the market; or attempt to procure customers except by means of display²³⁸. No person shall sell or offer for sale any food that is unwholesome or otherwise unfit for human consumption in the market. The Council shall determine from time to time the charges payable to it for the use of the market²³⁹. All persons entering the market for the purposes of selling items shall enter only through the designated entrance²⁴⁰. A person found guilty of an offence under the by-law shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on a second and subsequent conviction; or to both such fine and imprisonment.²⁴¹

²³⁷ Section 24 of the By Laws.

²³⁸ Section 14 of the By Law.

²³⁹ Section 21 (a) and (d) of the By Laws.

²⁴⁰ Section 22 of the By Laws.

²⁴¹ Section 24 of the By Law.

Municipal Council of Mombasa (Commercial Cycles) By laws, 2010

Organised groups for cycle operators shall be registered by Director of Social Services and Housing and shall have duly elected officers being the Chairman, Treasurer and Secretary²⁴². The officials of the organisations shall be elected by the operators. No person shall commence operation without proof of registration by the Director of Social Services and Housing. The Director of Social Services and Housing shall vet candidates every year for suitability, ability to comply with the requirements of operations prior to being licensed, and certification by the District Social Development Officer. The operators shall have specified uniforms and carry such identification documents as prescribed. The minimum age of operating a commercial cycle in the municipality shall be 18 years. The Director of Social Services and Housing shall satisfy himself or herself that the cycle is well maintained prior to issuing the licence to the applicant. The operator will be duty bound to keep his or her cycle in a serviceable condition and the licensing authority shall inspect the cycle on monthly basis.

The operator shall park his or her cycle in designated parking areas²⁴³. The hours of operation shall be between 5 am and 10 pm within the designated route²⁴⁴. Operators operating before dawn and after dusk shall wear bright reflective clothing to make them easily visible to other road users. Failure to wear the prescribed apparel shall be offence which shall attract a fine of Kshs. 1, 000 or a term of imprisonment of one month, on the first conviction²⁴⁵. The penalty will double on subsequent convictions. The operators shall be bound to adhere to the Highway Code as applicable from time to time²⁴⁶. Any operator who causes obstruction on the road, or any veranda, pavement, walkway or any other area ordinarily used by other traffic shall be guilty of an offence and shall be liable to a fine not exceeding Kshs. 2, 000/- only or imprisonment for a term of 6 months on the first offence, or to a fine not exceeding Kshs. 3, 000/- or a term of imprisonment of 9 months for a second and subsequent offence²⁴⁷. Any operator who permits the use of his or her cycle, knowing it to be unroadworthy; or uses it without an inspection sticker or a licence; or in a manner that poses a danger to his or her passengers or other road users;

²⁴² Section 4 of the By Laws.

²⁴³ Section 5 of the By Laws.

²⁴⁴ Section 6 of the By Laws.

²⁴⁵ Section 6 of the By Laws.

²⁴⁶ Section 7 of the By Laws.

²⁴⁷ Section 7(iii) of the By Laws.

or uses the cycle under the influence of an intoxicant shall be guilty of an offence²⁴⁸. Any operator who obstructs an inspector while he or she is carrying out his or her duties or who resists arrest or detention of a cycle shall be guilty of an offence and liable to pay a fine of Kshs. 2000/- only or to serve a term of imprisonment of 6 months or to both such fine and imprisonment²⁴⁹. Any operator guilty of an offence for which the fine is not specifically provided for shall be liable to a fine of Kshs. 500/- or to imprisonment for a term not exceeding 9 months or to both such fine and imprisonment²⁵⁰.

Municipal Council of Mombasa Taxi Cab By laws, 2010

The Council shall issue a taxi cab permit and a taxi cab drivers permit²⁵¹. The application for a permit shall be made to the Town Clerk in the prescribed form. The Town Clerk may refuse to issue or cancel a permit²⁵². The permit may be transferred with the consent of the Town Clerk and upon payment of the prescribed fees. The Council may limit the number of taxis that may operate within the town during the next ensuing year and the Town Clerk shall not issue permits that exceed the designated number of taxi cabs. An owner shall when required produced his or her taxi cab for inspection, but such inspection shall not be carried out within three months after certification that a cab is suitable for use²⁵³. The permit may be suspended by the Town Clerk if the Municipal Engineer is of the opinion that the vehicle is not fit for use as a taxi cab. The owner shall report to the Town Clerk within 48 hours any incident that causes damages to the taxi cab. The permit plate issued to the owner shall be attached to the vehicle and maintained in the manner and type directed by the Municipal Engineer²⁵⁴. An owner of a taxi cab shall fit and maintain sufficient means through which the passengers may communicate with the driver. The roof of the taxi cab shall be kept water tight and the necessary windows shall be maintained with an appropriate means of opening and closing. Each taxi cab shall have adequate means of securing luggage, have the seats properly cushioned; provide and maintain adequate lighting with at least one switch fitted in a manner that facilitates its operation by the passenger;

²⁴⁸ Section 7(iv) of the By Laws.

²⁴⁹ Section 10 of the By Laws.

²⁵⁰ Section 11 of the By Laws.

²⁵¹ Section 4(1) of the By Laws.

²⁵² Section 5 and 6 of the By Laws.

²⁵³ Section 14 of the By Laws.

²⁵⁴ Section 15(1) of the By Laws.

and shall provide and maintain easily accessible means for a passenger to open at least one door on each side of the vehicle from inside²⁵⁵.

Every taxicab shall be provided with a taxi meter of a type approved by the Municipal Engineer which shall be maintained in a proper working order. The meter shall be set to indicate no greater fares than the approved rates. The details of the name of the owner, the business address of the owner, the number of permit and the number of passengers the taxi is permitted to carry shall be indicated on the outside of both front doors of the vehicle. Any driver who while playing for hire, importunes any person to hire the vehicle or calls out or otherwise attracts the attention of customers or makes use of any other person for that purpose shall be guilty of an offence. Every taxi cab shall be parked in the designated taxi ranks within the municipality. Unless already on hire, a driver of a taxi can shall not decline to accept a person as a passenger unless he believes that such person is suffering from an infections or contagious disease; or he believes that carrying such person may result in damage to the vehicle or danger to himself or herself. Any driver of a taxi cab who when on hire accepts any other passengers without the consent of the original passenger shall be guilty of an offence. The Council shall designate certain areas as taxi ranks within the municipality²⁵⁶. Use of unlicensed vehicles or drivers in taxi cab business shall be an offence²⁵⁷.

A person found guilty of an offence under the bylaw shall unless a different penalty is provided for be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on a second and subsequent conviction; or to both such fine and imprisonment²⁵⁸. A person who is within 2 years is twice convicted of an offence or offences under the by-law shall be liable in addition to any other penalty which the court may impose, to have his permit cancelled by the court from such date as the court may think fit and the court may order any such person to be barred from obtaining such permit for a period not exceeding one year²⁵⁹.

²⁵⁵ Section 16 of the By Laws.

²⁵⁶ Section 27 of the By Laws.

²⁵⁷ Section 28 and 29 of the By Law.

²⁵⁸ Suction 31 of the By Laws.

²⁵⁹ Section 31 of the By Law.

Municipal Council of Mombasa (Ban on Polythene Carry Bags) By laws, 2010.

No person shall sell, import, manufacture, produce or store non biodegradable polythene carry bags of less than the recommended thickness within the jurisdiction of the Council or litter any public place with polythene carry bags. The recommended thickness shall be a thickness of not less than 30 microns²⁶⁰. A vendor shall not use a polythene carry bag for carrying storing dispensing or packaging any articles or commodities. Any person who contravenes the provisions of the by-law shall be guilty of an offence and shall be liable on conviction of a fine of Kshs. 2, 000/- or a term of imprisonment of 6 months or a fine of Kshs. 3, 000 or as term of imprisonment of 9 months for a second or subsequent conviction²⁶¹.

Municipal Council of Mombasa (Fire Brigade) By laws, 2010

Where the fire brigade is in attendance to any premises which are on fire, any person who breaks into or enters the premises without the express permission of a senior fire officer present, except for the purpose of saving the life of any person, shall be guilty of an offence²⁶².

The water company, in consultation with the Council, shall have the power to fix to any building, post or structure which is near a fire hydrant and to maintain a plate thereon indicating the proximity of the fire hydrant. Any person, who wilfully obstructs, molests or interferes with any member of the fire brigade in the execution of his or her duty or who wilfully interferes with or damages any vehicle, appliance or equipment being used or brought into use by the fire brigade for fire fighting shall be guilty of an offence²⁶³. Any person who makes or causes a fire to be made as defined in the bylaws shall be guilty of an offence. A person found guilty of an offence under the by-law shall unless a different penalty is provided be liable on conviction to a fine not exceeding Kshs. 2, 000/- or six months imprisonment in respect of a first offence and Kshs. 3, 000/- and nine months imprisonment on a second and subsequent conviction; or to both such fine and imprisonment²⁶⁴.

²⁶⁰ Section 2 and 3 of the By Laws.

²⁶¹ Section 4 of the By Laws.

²⁶² Section 12 of the By Laws.

²⁶³ Section 13 of the By Laws.

²⁶⁴ Section 20 of the By Laws.

Municipal Council of Mombasa (General Nuisance) By laws, 2010

Any person who in any street or in connection with any shop, business premises or other place which adjoins a street and to which the public is admitted; or upon any premises, by playing, operating or causing or suffering to be played or operated any musical instrument, wireless, loud speaker, gramophone, amplifier or similar instrument, make or cause to suffer to be made any noise which is so loud and so continuous or repeated as to cause annoyance to occupants or inmates of any premises in the neighbourhood or to passers-by on the street shall be guilty of an offence; or by making loud noises, speeches or wailings causes annoyance to the occupants or irritates any persons passing by a street or an open space shall be guilty of an offence²⁶⁵. Prosecution shall not be instituted against any person unless the annoyance remains unabated after the expiry of 7 days from the date of service on such person of a notice signed by the Town Clerk alleging such annoyance and calling for a stop to it.

Any person who, shall in connection with any building demolition or road construction work, causes or suffers to be caused any unnecessary noise so loud or so continuous or repeated as to cause annoyance to occupants of any premises in the neighbourhood shall be guilty of an offence²⁶⁶. Any person who in any part of the town other than the industrial or light industrial zones as specified in the by-laws, in connection with any trade or industrial processes, causes or suffers any noise so loud or so continuous or so repeated as to cause annoyance to the occupants of any premises in the neighbourhood shall be guilty of an offence²⁶⁷. Any person who without lawful authority deposits or causes or permits to be deposited any soil, vegetation, refuse or debris on any land in the city shall be guilty of an offence. Any person who keeps within the City any animal or poultry which causes a nuisance to any of the residents in the neighbourhood shall be guilty of an offence²⁶⁸.

Where in the opinion of the Council, any hedge tree or other growth is so placed as to be a danger to any person or vehicle using the street or to interfere with the view along the street or from one street to another or the use of the street by pedestrian or vehicular traffic, the Council may serve

²⁶⁵ Section 3(a), (b) and (c) of the By Laws.

²⁶⁶ Section 4 of the By Law.

²⁶⁷ Section 6 of the By Laws.

²⁶⁸ Section 7 of the By Laws.

a notice on the owner or occupier of the land on which such hedge or tree or other growth is situated requiring him, within the specified time of not less than 14 days to cause the hedge, tree or other growth to be removed, chopped or trimmed. Any expenses incurred as a resulting of removing the growth or tree shall be recoverable from the owner or occupier as a civil debt²⁶⁹. Any person who erects a structure in such position that it is sited in or protrudes to the street, without the authority of the Town Clerk shall be guilty of an offence²⁷⁰. Any person who wilfully obstructs the free passage of any street, wilfully or negligently damages or destroys the surface of any public street, pulls down, destroys, obliterates, defaces, displaces or removes any property of the Council on or near a street; pulls down, destroys any tree shrub, flower, plant or grass on land forming part of any public street; disturbs, damages or destroys any barrier, fence or other erection or any trestle, lamp, or stone or other material placed on a street or the fittings attached thereto; wilfully or negligently pulls down, damages or destroys any lamp, standard, bollard in a street or damages or removes any bulb or fitting attached thereto; or digs, ploughs, tills or cultivates any public street without the written permission of the Town Clerk shall be guilty of an offence²⁷¹. Any person who without lawful authority defaces any building by writings, signs or other marks shall be guilty of an offence. Every building in the City must be painted at least once in two years or from time to time as the Council may direct. Every owner of a building shall be responsible in cleaning repairing and generally keeping in good condition the pavement, veranda, or frontage of his or her building. Every owner or a building must install a security light in front of his building and the security light must be switched on from 7 pm to 6 am daily²⁷².

Any person who, without statutory authority, breaks up surface of a public street, without permission of the Municipal Engineer, shall be guilty of an offence²⁷³. Any person who places or settles or allows or causes to be placed or left any vehicle or article or material in a street in such manner that it causes or likely to cause an obstruction to persons or vehicles using the street shall be guilty of an offence. The Council may remove any vehicle, article or material which has been placed or left in a street in contravention

²⁶⁹ Section 10 of the By Laws.

²⁷⁰ Section 11 of the By Laws.

²⁷¹ Section 14 of the By Laws.

²⁷² Section 15 of the By Laws.

²⁷³ Section 16 of the By Laws.

of the by-law and impound the same²⁷⁴. Any person who in any street who ignites any firework; without the permission of the Town Clerk in writing and for the purpose of hawking, selling, distributing or advertising any article or event, shouts or uses any bell, gong, or other noisy instrument or loud speaker; without the permission of the Town Clerk in writing, draws, wheels or drives any vehicle or carries any board or placard used solely or chiefly for the purpose of exhibiting advertisement; without the permission of the Town Clerk in writing and for the purpose of advertising distributes any bill or other papers; commits any act contrary to public decency; without statutory authority defaces the foot way or roadway by writing or other marks; places or deposits and leaves any glass, china earthen ware, tin, carton, paper, saw dust or other rubbish so as to create or tend to create litter; throws down or leaves any orange peel, banana skin, or any other substance likely to cause a person to fall down; to the inconvenience or danger of any person carries or conveys any bag of lime, charcoal or other offensive material, timber or any pointed or edged tools or implements not properly guarded; plays any game in such manner as to cause the likelihood of damage to property or danger to any person; rides, drives or propels a vehicle on a foot path; spits on any path way or blows his or her nose otherwise than into a suitable tissue or cloth; loiters or importunes for the purpose of prostitution; procures or attempts to procure a female or a male for the purpose of prostitution; while being in charge of a dog allows such dog to foul any foot path; washes any vehicle or, except in the case of an emergency, repairs or dismantles any vehicle; except in case of an emergency, sounds any motor horn, cycle bell or other similar warning instrument; without the consent of the Town Clerk, lights or maintains or suffers to be lit or maintained any fire or brazier; in the central area as defined in any by laws of the Council for the time being in force, drives or rides any animal on a foot path; defecates or urinates in any street or any open space; smokes cigarettes in public places; or touts for passengers; or fails to observe traffic lights or the zebra crossing or any other directional signs, shall be guilty of an offence²⁷⁵.

Any person who discharges a missile in or near a street in a manner likely to cause damage to property where (private or public) without a permit issued by the Council shall be guilty of offence. Any person found loitering on any Council property other than a street or residential property,

²⁷⁴ Section 18 of the By Laws.

²⁷⁵ Section 19 of the By Law.

without lawful authority shall be guilty of an offence²⁷⁶. Any person who, in connection with any trade or business on a street, conveys in or on a vehicle or in any manner, or who permits to be conveyed, any food in a manner liable to involve the risk of contamination shall be guilty of an offence²⁷⁷. A person who is engaged in handling, storage or conveyance of open food in connection with any trade or business shall while so engaged ensure he or she maintains personal cleanliness of all parts of his or her person that may come into contact with the food, the clothing, refrain from spitting or blowing the nose, refrain from smoking and if the food is meat, wear a white garment of a pattern approved by the Medical Officer of Health²⁷⁸. Failure to comply with the standards of cleanliness constitutes an offence²⁷⁹. Any person who has in his possession or under his control for the purpose of sale any meat or poultry which has not been inspected at a designated place as defined by any by-laws or by the Medical Officer of Health or a health inspector and marked as having been inspected, shall be guilty of an offence²⁸⁰. A person found guilty of an offence under the by-Law shall be liable to a fine of Kshs. 2, 000/- for the first offence or a jail term of six months and a fine of Kshs. 3,000/- for the second and subsequent offence or a jail term of nine months; or to both such fine and imprisonment²⁸¹.

Municipal Council of Mombasa (Hawkers) By laws, 2010

Hawking is defined as ‘whether as a principal agent or employee, for the purposes of carrying on trade by the sale or exchange of goods wares, merchandise or refreshment to place oneself any street or public place or unenclosed land (other than shop premises approved as such by the Council) or to go about in the streets or in public places or from premises to premises; or by any means aforesaid, to carry on trade by the sale or exchange or exposing for sale or exchange or offer of any goods, wares, merchandise or refreshments, but does not include the seeking or taking of orders for subsequent delivery or the delivery of goods, wares, merchandise or refreshment to premises for the purpose of resale²⁸².

²⁷⁶ Section 24 of the By Law.

²⁷⁷ Section 26(1) of the By Law.

²⁷⁸ Section 27(1) of the By Law.

²⁷⁹ Section 27(3) of the By Law.

²⁸⁰ Section 28(1) of the By Law.

²⁸¹ Section 30 of the By Laws.

²⁸² Section 2 of the By Laws.

Any person who hawks within the municipality without a permit; or being a holder of a permit hawks in the municipality otherwise than in compliance with the terms and conditions thereof shall be guilty of an offence²⁸³. The application for a permit shall be addressed to the Town Clerk and shall be in the prescribed form. Every person licensed under the by-law shall be required to carry his or her permit and to produce such permit on demand by a police officer, city inspector or a city enforcement officer and shall wear in a conspicuous place a badge relating to his or her permit²⁸⁴. The Town Clerk or authorised licensing officer may permit a person to be employed as a hawker's assistant for a person who hawks refreshment or is physically disabled by reason of loss of limb²⁸⁵.

The permit holder may not transfer the permit without permission of the Town Clerk²⁸⁶. Any person who without a valid licence engages in hawking or who engages in hawking at a non designated area shall have his or her goods impounded and sold by public auction by the Council²⁸⁷. Any person who engages in hawking within the Central Business District as defined by the Council from time to time shall be guilty of an offence²⁸⁸. A person who solicits, bargains, induces or negotiates with any hawker with a view to buy, purchaser sell any goods in a non designated area shall be guilty of an offence²⁸⁹. Any person who contravenes the provisions of the by-law shall be guilty of an offence and shall be liable on conviction of a fine of Kshs. 2, 000/- or a term of imprisonment of 6 months or a fine of Kshs. 3, 000/- or a term of imprisonment of 9 months for a second or subsequent conviction²⁹⁰.

Municipal Council of Mombasa (Matatu Termini) By laws, 2010

The application for a parking permit to use a matatu terminus shall be made to the Town Clerk²⁹¹. The permit shall expire on 31st December of the year in which it was issued²⁹². The Council shall prescribe the fees payable

²⁸³ Section 3 of the By Laws

²⁸⁴ Section 6 of the By Laws.

²⁸⁵ Section 7 of the By Laws.

²⁸⁶ Section 8 of the By Laws.

²⁸⁷ Section 10 of the By Law.

²⁸⁸ Section 11 of the By Laws.

²⁸⁹ Section 12 of the By Laws.

²⁹⁰ Section 13 of the By Laws.

²⁹¹ Section 3 of the By Laws.

²⁹² Section 4(2) of the By Laws.

for the permit. The parking permit shall be displayed in a prominent place in the matatu²⁹³. The Council may from time to time designate a specific place as a matatu terminus. The driver of a matatu shall return to the terminus only after completion of the scheduled journey when carrying passengers for reward or hire. The driver of the matatu shall only stop at a designated matatu terminus²⁹⁴. The driver of a matatu shall proceed with speed of not more than 10 kph into the matatu terminus, shall park his vehicle immediately behind the last vehicle in the terminus, shall move the vehicle forward to occupy the space immediately after a vehicle is driven off or forward; and when in front position shall remain in the matatu ready for departure²⁹⁵. No driver, conductor or any person when plying for hire or reward within any street or matatu terminus shall importune any person to enter his matatu by calling out or otherwise employ any other person for that purpose²⁹⁶.

No person within a matatu terminus shall urinate other than in a lavatory; interfere with or molest any person; cause disturbance or use obscene, offensive, scandalous or unbecoming language; throw down or deposit any refuse or garbage otherwise than in the bins provided for that purpose; damage, deface, foul, misuse or interfere with any part of the terminus or any equipment fixtures or fittings provided therein; spit; play games or loiter therein or thereabouts; or operate of cause or suffer to be operated a horn or any musical instrument fitted in a matatu in such manner as to be so loud as to cause annoyance and to be a nuisance to the passengers or to members of the public²⁹⁷. Any person who contravenes the provisions of the by-law shall be guilty of an offence and shall be liable on conviction of a fine of Kshs. 2, 000/- or a term of imprisonment of 6 months or a fine of Kshs. 3, 000/- or as term of imprisonment of 9 months for a second or subsequent conviction²⁹⁸.

Municipal Council of Mombasa(Medical Facilities Places) By laws, 2010

No person shall operate a maternity home, nursing home or other medical facility unless he or she is in possession of a valid permit issued

²⁹³ Section 7 of the By Laws.

²⁹⁴ Section 9 of the By Laws.

²⁹⁵ Section 14 of the By Laws.

²⁹⁶ Section 15 of the By Laws.

²⁹⁷ Section 17 of the By Laws.

²⁹⁸ Section 18 of the By Laws.

by the Council²⁹⁹. The application for the permit shall be in writing and addressed to the Town Clerk³⁰⁰. The Medical Officer of Health or other authorised person may enter and inspect premises for which a permit has been issued and may also inspect the records required to be kept in respect of the premises³⁰¹. The Medical Officer of Health may inspect any premises within town which he has reasonable cause to believe are being used for the purposes of a nursing home or maternity home. Every medical facility shall provide for mortuary and incinerators within the premises but located at places that are authorised by the Council³⁰². The by-law makes guidelines for the construction of operating theatre within a medical facility³⁰³. Any person who contravenes the provisions of the by-law shall be guilty of an offence and shall be liable on conviction of a fine of Kshs. 2, 000/- or a term of imprisonment of 6 months or a fine of Kshs. 3, 000/- or as term of imprisonment of 9 months for a second or subsequent conviction³⁰⁴.

Municipal Council of Mombasa (Second Hand Goods) By laws, 2010

A person who sells second hand clothes in the municipal area or being the holder of a permit sells in the municipality otherwise than in accordance with the terms of the permit shall be guilty of an offence³⁰⁵. The application shall be in writing and in the prescribed form and addressed to the Town Clerk³⁰⁶. The Council may licence an assistant to assist the permit holder to carry out his business. Such licences shall be issued to an assistant or employee of the permit holder or where the permit holder is disabled by reason of loss of limb³⁰⁷. A permit issued under the bylaw shall not be transferable without the consent of the Town Clerk³⁰⁸. Any person who contravenes the provisions of the by-law shall be guilty of an offence and shall be liable on conviction to a fine of Kshs. 2, 000/- or a term of imprisonment of 6 months or to a fine of Kshs. 3, 000 /- or a term of imprisonment of 9 months for a second or subsequent conviction³⁰⁹.

²⁹⁹ Section 3 of the By Laws.

³⁰⁰ Section 5 and 6 of the By Laws.

³⁰¹ Section 7 and 87 of the By Laws.

³⁰² Section 11(1) of the By Laws.

³⁰³ Section 11(3) of the By Laws.

³⁰⁴ Section 18 of the By Laws.

³⁰⁵ Section 3 of the By Laws.

³⁰⁶ Section 4 of the By Laws.

³⁰⁷ Section 7 of the By Laws.

³⁰⁸ Section 8 of the By Laws.

³⁰⁹ Section 10 of the By Laws.

Municipal Council of Mombasa (Commercial College) By laws, 2010

No person shall operate a commercial college, private primary school and nursery school or any other institution within the municipality without a permit³¹⁰. The application for a permit shall be in the prescribed form³¹¹. The permit shall contain the name and address of the permit holder; the description of the licensed premises; the number of students accommodated; the number of persons employed to care for the students; the date which the permit expires; and such other conditions that the Council may deem fit to impose³¹². The permit shall not be granted for a period longer than one year and shall expire on 31st December of the year in which it was granted³¹³. The permit shall not be transferred without the written consent of the Town Clerk³¹⁴. The permit holder shall maintain the premises in good order and condition to the satisfaction of the Council. In the event of failure to do so, the Council may issue a notice requiring the permit holder to carry out such works as may in the opinion of the Council be necessary to put the premises in good order and condition³¹⁵. Failure to comply with such notice shall be an offence. The permit holder shall ensure that no person suffering from a contagious or infectious disease is engaged or employed in the permitted premises³¹⁶. The Medical Officer of Health and any authorised officer may inspect the premises at all reasonable times and may inspect any premises which he or she has reasonable cause to believe it is being used for the purposes of a school or college.³¹⁷ Any person who fails to comply with the by-law shall be guilty of an offence and liable to pay a fine of Kshs. 2000/- or to imprisonment for a term of 6 months or to both such fine and imprisonment³¹⁸.

Municipal Council of Mombasa Advertisement By laws, 2010

Any person who in or in the view of any street or public place, erects, fixes, places, maintains, displays or uses or permits to be erected, fixed, placed, maintained, displayed or used any advertisements devise without first obtaining a permit or otherwise than in accordance with the terms and

³¹⁰ Section 4 of the By Laws.

³¹¹ Section 5 of the By Laws.

³¹² Section 6 of the By Laws.

³¹³ Section 7 of the By Laws.

³¹⁴ Section 8 of the By Laws.

³¹⁵ Section 9 of the By Laws.

³¹⁶ Section 12 of the By Laws.

³¹⁷ Section 13 of the By Laws.

³¹⁸ Section 15 of the By Laws.

conditions of the permit shall be guilty of an offence³¹⁹. The application for the permit shall be in the prescribed form and addressed to the Town Clerk³²⁰. The permit may be declined if the display of the advertisement or use of an advertisement device would be likely to affect or injure the amenities thereof, or to disfigure any neighbourhood or for any other reason the Council may think proper or it may grant the permit subject to such conditions relating to construction, nature and erection of advertising device as it prescribe³²¹. The permit holder shall pay the prescribed fees³²².

The permit shall expire on 31st day of December of the year in which it was issued. A permit may be cancelled if the permit holder does not abide with the terms and conditions thereof or where the advertisement in the opinion of the Council will injure the amenities or disfigure any neighbourhood or for other reasons that it deems fit³²³. Any advertisement placed or fixed without complying with the bylaws shall be removed without notice³²⁴. The by-laws do not apply to public notices exhibited at places of worship; advertisements within the windows of premises, the name and business of the person occupying such premises; name boards of reasonable dimensions relating to private residential premises and advertisements in or on motor vehicles³²⁵. Any person who contravenes the provisions of the by-laws shall be guilty of an offence and shall be liable on conviction of a fine of Kshs. 2, 000/- or a term of imprisonment of 6 months or a fine of Kshs. 3, 000 /- or a term of imprisonment of 9 months for a second or subsequent conviction³²⁶.

Municipal Council of Mombasa Business Permit By laws, 2010

No person shall engage in or carry out any trade occupation or business unless such has applied for registration and obtained a permit for carrying out such business, trade, occupation or profession³²⁷. Any person who contravenes or fails to comply with the provision of the by-law shall

³¹⁹ Section 3 of the By Laws.

³²⁰ Section 4 (1) of the By Laws.

³²¹ Section 4(2) of the By Laws.

³²² Section 5 of the By Laws.

³²³ Section 7 of the By Laws.

³²⁴ Section 10 of the By Laws.

³²⁵ Section 11 of the By Laws.

³²⁶ Section 12 of the By Laws.

³²⁷ Section 3 of the By Laws.

guilty of offence³²⁸. An authorised officer of the Council may impound goods from a person who is carrying out trade or business within the municipality without a permit³²⁹. The application for the permit shall be in the prescribed form. The Council shall charge a penalty for late application of the licence. The permit shall not be transferable without the authority of the Town Clerk³³⁰. The permit shall be valid for one year and shall expire on 31st December of the year in which it was issued³³¹. The enforcement officers of the Council may inspect any premises whether having the business permit or not and make enquiries and conduct inspections. The permit shall be exhibited in a conspicuous place within the business premises³³². Any person who obstructs, interferes or hinders a Council officer in his or her official duties shall be guilty of an offence³³³. Any person who contravenes the provisions of the by-law shall be guilty of an offence and shall be liable on conviction of a fine of Kshs. 2, 000/- or a term of imprisonment of 6 months or a fine of Kshs. 3, 000/- or a term of imprisonment of 9 months for a second or subsequent conviction³³⁴.

³²⁸ Section 4 of the By Laws.

³²⁹ Section 5 of the By Laws.

³³⁰ Section 14 of the By Laws.

³³¹ Section 16 of the By Laws.

³³² Section 19 of the By Laws.

³³³ Section 21 of the By Laws.

³³⁴ Section 22 of the By Laws.