



**COAST CIVIL SOCIETIES
REFERENCE GROUP FOR
HUMAN RIGHTS & SECURITY**

21st June 2021

**SUBMISSIONS BY THE COAST CIVIL SOCIETY NETWORK ON ACCESS TO
INFORMATION REGULATIONS 2021:**

The Coast Civil Society Network for Human Rights, herein referred to as – the Network, is a broad coalition of CSOs, religious organizations and non-state actors operating in the Coast Region with the core focus of protecting and upholding Human Rights.

The Network is organized in different thematic areas including: Land and Environment, Peace and Security, Governance, Youth, Persons With Disability, and Gender and Health thematic groups. We acknowledge the cooperation of Kenya National Commission on Human Rights, coast office in coming up with these regulations.

The network underscores the critical role of enhanced access to information to the Public as a facilitator to good governance and protection of Human Rights. It is therefore our duty to ensure we participate in putting place the Access to Information Regulations 2021.

General Concerns:

- a. The question of involvement of students in accessing information, especially where they can be intimidated. There are concerns that parents who are critical to local administrations miss out Bursaries, especially NG-CDF?
- b. The Commission should consider provisions of anonymous sharing of information.
- c. In instances where reference is made to reasonable time, what does reasonable time really refer to? There is need for specificity. Our recommendation is that in general circumstances, such information be given 21 days as required under section 9 (1) of the Act.
- d. What are the consequences of non compliance? Non compliance with timelines, proactive and reactive disclosure?
- e. How disability friendly, are the various forms in expected to be introduced?

Specific Concerns:

PART II – INFORMATION ACCESS OFFICERS

- f. **Section 3 of the regulations is repeated;**
 - One relates to objects of the regulations;
 - Another relates to period of designating an information officer to the office.

PART III – PROACTIVE DISCLOSURE

- g. **Section 8 refers to the obligation of public entity to disclose;**
 - The documents mentioned under Section 8 (3) (e) needs to be regarded on basis of the timelines indicated in Public Finance Management Act –

- failure to proactively disclose them in the indicated timelines should be considered breach of the provision.
- Section 8 (4) and (5) – is ambiguous and may give window for public officers to retain information that should be disclosed in time;

h. Section 9

- Reference to article 10 and Chapter 5 in the description of application of proactive disclosure by private body is an extension and may be considered out of the description under article 35 (1) (b) of the Constitution which only refers to chapter 4.
- i. Sections 9(5) and 9(6) should be explained. Their continued existence may give room for denial of information.
- j. We recommend that a provision be inserted clarifying that notwithstanding the fact that a private body should give information, in the instance that the same information is with Government; they are the primary player in sharing such information.
- k. Is there an offence for failure to adhere to provisions under proactive disclosure and appointment of Access to Information Officer?

PART V AND PART VI

- l. The regulations should define the term **THIRD PARTY**.
- m. The use of word, **over time** - with regards to change on content under section 26 (2) (c) – should be clarified.

PART VII – REVIEW BY THE COMMISSION

- n. What is the substantive effect of powers in the light of the recent Supreme Court decision – **Petition 42 of 2019 - Kenya Vision 2030 Board Vs CAJ and 2 others** finding that the CAJ only recommends, its decisions are not binding?
- o. We recommend that the procedure of resolving disputes should consider exhausting all internal mechanisms before finally making an appeal at the Commission. Any dispute should therefore proceed to regulatory body then to the Commission in case of delay or failure to resolve the same.
- p. Section 35(4) in instances of proactive disclosure will be a long round journey. The commission as an oversight body should be decisive and it should have timelines on dealing with cases where proactive disclosure has failed.

PART VIII ON OVERSIGHT, THE FOLLOWING REFERS:

Section 32 (3) and 33(1) – What is the proper scope in regards to private bodies? The mention of the word **size may** confuse the application of private body required to provide information.

Section 36: The specificity for the content of the report provided for private bodies should also apply for Public entities.

Schedules:

- q. The Costs related to access to information need to be very low. In fact in instances where the state needs to provide information proactively, the same should not be charged if requested. The specific one is Kshs. 2,500/;

