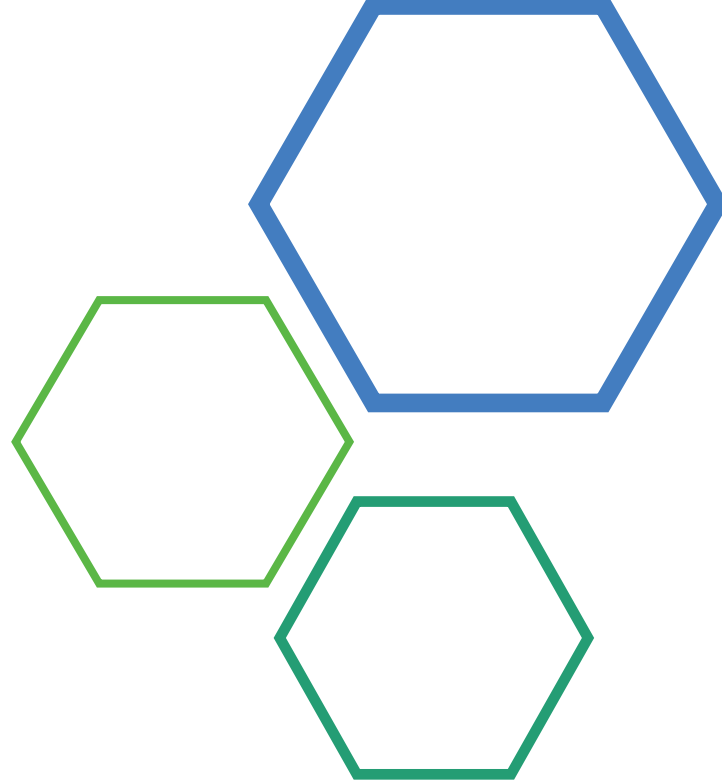
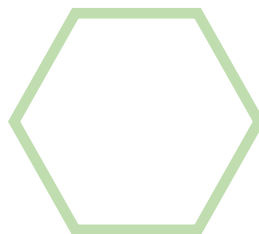
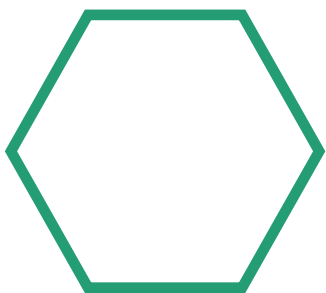




IRPA



Legislative Review on Proactive Disclosure of Information in Kenya



THE COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of The Ombudsman"



Hata Mnyonge ana Haki

About This Report

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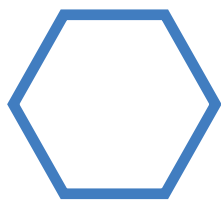
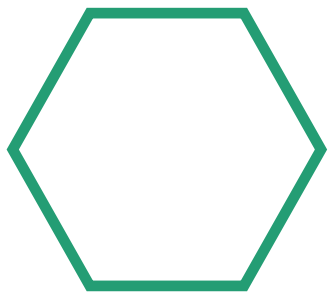
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Legislative Review on Proactive Disclosure of Information in Kenya

1. Introduction

Globally, governments are facing demands to be more transparent, accountable and proactive on public affairs. These calls seek to address the imbalance of information between citizens and the state. One way in which this disparity of information is addressed is through enactment of freedom of information legislation. An Access to Information (ATI) law plays two functions – first, it empowers citizens to access information created and held by public entities. Second, and the more pertinent reason for the purposes of this report, is that ATI obligates the state to release public information. The release of public information can either be prompted by a citizen’s request for information, or, be proactively released by a public entity without any prompting. It is this latter aspect that is essential, and at the heart of what this report focuses on – proactive disclosure.

Proactive disclosure is a critical component of an ATI regime. The foundational principles of access to information dictate that public bodies provide certain information to the general public without waiting for formal information requests. It requires public entities, particularly, to publish all relevant facts and information relating to policies formulated by it and any decisions or information which affect the public, at large. Kenya is fortunate to possess a legal regime that constitutionally mandates proactive disclosure by public entities by requiring them to publicise and broadcast information of importance to the nation. Further, the broader right of access to information is enforced by the Access to Information Act, No. 31 of 2016 (the Act), which also requires public entities and relevant private bodies to proactively disclose certain information to the public in order to promote democracy and good governance. A challenge that exists, however, is how to enforce these obligations

to proactively disclose information by public entities – a mandate that is the responsibility of the Commission on the Administration of Justice (CAJ or Ombudsman).

A potential solution that the CAJ has identified, is the development of a Monitoring Tool that shall aid it in tracking, identifying and acting upon the lack of or compliance with proactive disclosure requirements that public entities in Kenya are to abide by. The Tool's development is grounded in law, particularly Article 35 of the Constitution and the Act. Beyond these two key laws, however, exist additional legal obligations that either bind or are of significance to Kenya, and must be considered in the Tool's development. These include Kenya's obligations under international law, global and comparative laws and best practices, the African charter & relevant protocols and the East African Community (EAC), as well as proactive disclosure requirements that exist within supplementary national legislative regime of Kenya. This report assesses all the relevant proactive disclosure requirements that exist in the above legal frameworks not only to guide on the Monitoring Tool's development, but to provide the CAJ with the legal position on this vital component of its role of oversight and enforcing the proactive disclosure aspects within the right of access to information in Kenya.

2. Legislative Analysis

The primary purpose of this analysis is to provide an overview of the legislative and regulatory framework of the Republic of Kenya concerning proactive disclosure within ATI. This analysis starts with the core principles of proactive disclosure that rest within international law and within comparative best practices from around the globe. It then transitions to examine Kenya's obligations under African laws and those of the EAC. The analysis then concludes with an overview of national laws and regulations concerning proactive disclosure for public entities.

3. International Law and Comparative Best Practices

The Constitution of Kenya is clear-cut on the application of international law in the country.

It states that the 'general rules of international law' and any 'treaty or convention ratified by Kenya form part of the law of Kenya. Beyond these rules and treaties, we also examine comparative best practices, which while not binding on Kenya, may serve as an elucidative guidepost on matters of proactive disclosure.

3.1 Universal Declaration on Human Rights

Article 19 of the Universal Declaration on Human Rights (UDHR), adopted by the United Nations (UN) in 1948, states that the right of freedom of expression includes the right of everyone 'to...receive and impart information and ideas through any media and regardless of frontiers. While this provision does not expressly mention the

Figure 1: Types of Information to be Proactively Disclosed under UNCAC

- Information on Corruption
- Public Education Programmes on Corruption
- Funding of Candidates for Elective Office
- Funding of Political Parties
- Systems of Procurement
- Public Contracts
- Invitations to Tender
- Award of Contracts
- Tender Rules
- Information on Public Organisations, their functioning and decision-making, and administrative procedures.

right of access to information, the right to seek and receive information and ideas has become a generally accepted principle of international law understood to encompass the right to information, including the right to request and be given information held by public entities.

The UDHR is largely reflective of the general principles of international customary law. Thus, it forms part of Kenya's laws.

3.2 The International Covenant on Civil and Political Rights

Article 19(2) of the International Convention on Civil and Political Rights (ICCPR) provides for the right of everyone to freedom of expression which includes freedom to receive ideas of all kinds regardless of frontiers, in writing or in print or in the form of art or through any media of their choice. Though the right of access to information is not expressly cited, there is a general acceptance that the right to freedom of expression includes the right of access to information.

Kenya acceded to the ICCPR on the 23rd of March 1976. Thus, on the wording of article 2 of the constitution it forms part of Kenya's laws.

3.3 Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) guarantees the right of access to information for children. This Convention requires States to ensure that children capable of forming views have a right to receive information and ideas regardless of frontiers, in writing or in print and in the form of art or through any media of their choice.

Kenya ratified the CRC on the 30th of July 1990. Thus, it forms part of Kenya's laws.

3.4 Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (ICPRD) requires States to ensure that persons with disabilities can exercise their right of access to information by providing information intended for the public in accessible formats and technologies appropriate to different kinds of disabilities without additional costs.

Kenya ratified the ICPRD on the 18th of May 2008. Thus, it forms part of Kenya's laws.

3.5 United Nations Convention Against Corruption

The UN Convention Against Corruption (UNCAC) sets obligations for States

concerning access to information, matching the rights enshrined in the ICCPR. Article 13 of the Convention mandates States to take appropriate measures within domestic principles of law to raise public awareness on the threat posed by corruption through measures such as (i) ensuring that the public has effective access to information; (ii) undertaking public information activities on the non-tolerance of corruption; and (iii) respect, promote and protect the freedom to publish and disseminate information concerning corruption. Furthermore, UNCAC also contains clauses on proactive disclosure on election financing, procurement and the management of public finances; and reporting.

UNCAC is one of the few instruments of international law that include specific provisions on proactive disclosure and thus, is essential in understanding the legal obligations that State Parties have in relation to this element of ATI.

Kenya ratified UNCAC on December 9th 2003. Thus, it forms part of Kenya's laws.

3.6 The International Covenant on Economic, Social and Cultural Rights

The UN Covenant on Economic, Social and Cultural Rights (ICESCR) is the leading international law instrument on socioeconomic and cultural rights. The UN Committee on Economic, Social and Cultural Rights has called on states to provide 'access to information concerning the main health problems in the community, including methods of preventing and controlling them' as part of the core obligation to protect the right to health.

Some key types of information that should be released proactively during a public health crisis include information about: the progression of the disease, broken down as granularly as possible; steps governments are taking to protect individuals and how to maximise the effectiveness of those steps; decision-making around responding to the crisis; allocation of emergency funding; procurement of emergency equipment; the allocation of grants; and how to access government programmes and benefits introduced in response to the pandemic. The

disclosure of this information is particularly important from an accountability perspective, given the momentous decisions governments are likely to be making during a crisis and the fact that more formal accountability mechanisms may not be operating as effectively as in normal times.

Kenya ratified the ICESCR in 1972. Thus, it forms part of Kenyan law.

3.7 The Special Rapporteur on Freedom of Opinion and Expression

The Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression was mandated by the UN Commission on Human Rights to gather information on the right to freedom of opinion and expression, which as identified earlier in the context of the ICCPR, includes the right to access information. In the Special Rapporteur's 2000 Annual Report, it stated that "Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public."

In 2008, the Special Rapporteur encouraged governments to:

...disseminate information addressing all HIV/AIDS-related issues, its modes of transmission and the means of protection. In particular, information on topics that may be considered as taboo or private – such as safe sex or drug abuse – should be explicit and made available in formats adapted and accessible to the society.

However, the most influential report by the Special Rapporteur was presented before the General Assembly in 2013 and focused on the right of access to information. The report provides certain core principles that should guide the design and implementation of national laws on access to information. These core principles include:

- a. Maximum disclosure. National legislation on access to information should be guided by the principle of

maximum disclosure. All information held by public bodies should be subject to disclosure and this presumption may be overcome only in very limited circumstances;

- b. Obligation to publish. Freedom of information implies not only that public bodies accede to requests for information, but also that they widely publish and disseminate documents of significant public interest, subject only to reasonable limits based on resources and capacity;
- c. Promotion of open government. The full implementation of national laws on access to information requires that the public be informed about their rights and that government officials adhere to a culture of openness. Dedicated efforts are required to disseminate information to the general public on the right to access information and to raise the awareness of and train government staff to respond appropriately to public demands;
- d. Limited scope of exceptions. Non-disclosure of information must be justified on a case-by-case basis. Exceptions should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information;
- e. Processes to facilitate access. Public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information;
- f. Open meetings. In line with the notion of maximum disclosure, legislation should establish a presumption that meetings of governing bodies are open to the public; and,
- g. Disclosure takes precedence. To ensure maximum disclosure, laws which are inconsistent with this principle should be amended or repealed. The regime of exceptions provided for in the freedom of information law should be

comprehensive and other laws should not be permitted to extend it.

The report concludes by declaring that since the promotion, protection and guarantee of the right to access to information is the ultimate responsibility of the State, there is also a greater responsibility in the disclosure of information held by public bodies concerning human rights violations, as identified in the jurisprudence relating to the right to truth.

Most recently in 2020, particularly in light of the COVID-19 pandemic that continues to sweep across the globe at the time of writing this report, the Special Rapporteur noted that States have a duty to ensure that proactively disclosed information is reliable and true, highlighting that:

State actors should, in accordance with their domestic and international legal obligations and their public duties, take care to ensure that they disseminate reliable and trustworthy information, including about matters of public interest, such as the economy, public health, security and the environment.

Special Rapporteurs reports are not binding according to international law. It is up to the UN bodies and Member States, such as Kenya, to decide whether they will act on their advice. However, their reports add color and aid in better understanding various rights and obligations under international law. Hence, they are a crucial resource for ensuring that Kenya aligns itself to the highest global legal standards on the topic of proactive disclosure.

3.8 Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters

The Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention) identifies certain classes of information which ratifying states should proactively disclose.

This Convention regulates the conduct of 44 European countries, thus, is not binding on

Kenya. Furthermore, due to its limited scope geographically, it has not attained 'general principle' or 'international customary law' status.

Nevertheless, it's a great example of proactive disclosure as it regulates the mechanisms by which members of the public can access information about the environment, particularly when that information is needed for participation in decision-making or to defend environmental rights. The main elements of the Aarhus proactive disclosure requirements consist of four features that make it a useful model for national regimes on proactive disclosure of information:

- Detailed definition of the information which must be collected by public authorities;
- Requirement that registers of information held be kept and made available to the public, thereby facilitating the search for information;
- Detailed list of core classes of information to be made available proactively; and
- Granted the public direct access to databases containing environmental information.

As stated earlier, this Treaty does not bind Kenya but is provided for comparative and illustrative purposes. Thus, it does not form part of Kenya's laws.

3.9 Comparative European Law

The Council of Europe Convention on Access to Official Documents, particularly Principle XI of its Recommendation to the Committee of Ministers to Member States (COE Recommendation) calls on every public authority "at its own initiative and where appropriate", to disseminate information with a view to promoting transparency of public administration, administrative efficiency and informed public participation. The COE Recommendation also calls on public authorities to, "as far as possible, make available information on the matters or activities for which they are responsible, for

example by drawing up lists or registers of the documents they hold.”

Further, the European Court on Human Rights (ECHR) has consistently recognised that the public has a right to receive information of general interest. The Court’s interpretation of ‘freedom to receive information’ has been broadly interpreted towards the right of access to information and, one could argue, its proactive disclosure obligations. The Court has also held that there is a right of access to information in a case where public authorities had not published relevant information of considerable public interest in an electronic data base or in any other form.

In a departure from its broad interpretation of the right of access to information, however, the Court held a conservative view on proactive disclosure obligations, particularly in *Guerra v. Italy* where it held that the right to receive information cannot be construed as imposing positive obligations on a State to collect and disseminate information of its own motion. Thus, one could argue that the ECHR’s jurisprudence does not provide for specific proactive disclosure obligations on States, but in broader and more general instances, it could exist as part of the right of access to information.

3.10 Comparative Law from the Americas

Article 4 of the Inter-American Democratic Charter establishes that one of the fundamental components of democracy is ‘the transparency of government activities, probity, the responsibility of governments in public administration, respect for social rights and freedom of expression and press’. Article 13(1) of the American Convention on Human Rights states that everyone has the right to receive information and ideas of all kinds, similarly to the global treaties on this topic, further cementing aspects of proactive disclosure in its legal frameworks.

During its Fourth Plenary Session, the General Assembly of the Organization of American States (OAS) adopted a Model Inter-American Law on Access to Public Information. Part II of the Model Law suggests that public authorities should disseminate information about their function on a routine and

proactive basis, in a manner such that the information is accessible and understandable. Public authorities are required to disseminate information widely on a proactive basis to minimize the need for individuals to make requests for information. Further, certain key classes of information must be disclosed proactively, including:

- h. A description of its organizational structure, functions, duties, locations of its departments and agencies, operating hours, and names its officials;
- i. The qualifications and salaries of senior officials;
- j. The internal and external oversight, reporting and monitoring mechanisms relevant to the public authority including its strategic plans, corporate governance codes and key performance indicators, including any audit reports;
- k. Its budget and its expenditure plans for the current fiscal year, and past years, and any annual reports on the manner in which the budget is executed;
- l. Its procurement procedures, guidelines and policies, contracts granted, and contract execution and performance monitoring data;
- m. The salary scales, including all components and sub-components of actual salary, relevant to all employee and consultant categories within the public authority (including all data related to current reclassification of posts);
- n. Relevant details concerning any services it provides directly to members of the public, including customer service standards, charters and protocols;
- o. Any direct request or complaints mechanisms available to members of the public regarding acts, or a failure to act, by that public authority;

- p. A description of the powers and duties of its senior officers, and the procedure they follow to make decisions;
- q. Any statutes, policies, decisions, rules, guidelines, manuals or other records containing interpretations, practices or precedents regarding the discharge by that public authority of its functions, that affect the general public;
- r. Any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that public authority;
- s. A simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information and an internal appeal;
- t. Its Disclosure Log, in accordance with Article 18, containing a list of requests received and records released under this Law, which shall be automatically available, and its Information Asset Register, in accordance with Article 17;
- u. A complete list of subsidies provided by the public authority;
- v. Frequently requested information; and
- w. Any additional information deemed appropriate by the public authority.

Public authorities must also release public information which affects a specific population in a manner and form that is accessible to that population.

The Model Law concludes by citing the following valuable insights on proactive disclosure:

If the law requires specific information to be proactively disclosed, policies should be memorialized to address the scope of

the information to be disclosed and the schedule for doing so. In addition, proactive disclosure policies should define the person or department responsible for maintaining and updating the information. The policies should also specify where the information will be disclosed (i.e. a public website), and how (in html format, Pdf, etc.). The public authority may want to publish the policies in this location as well, as this will further aid the efforts at transparent information sharing. When information is proactively disclosed, the public authority should make every effort to organize it in such a way as to facilitate public access. Automated technology may help this process, as information can be identified for proactive disclosure based on its metadata (e.g. author, recipient, subject, etc.). In order to successfully leverage these technologies, a public authority will need to identify the metadata fields most closely associated with the requests for information the organization typically receives.

3.11 Global Instruments and Standards

There are a number of global instruments and standards that are influential on matters of proactive disclosure, which are briefly cited below:

Tshwane Principles on the Right to Information and National Security

These Principles were developed in order to provide guidance to those engaged in drafting, revising, or implementing laws or provisions relating to the State's authority to withhold information on national security grounds or to punish such disclosure of such information. They contain various provisions and obligations on proactive disclosure within the national security context and are a useful guide.

Commonwealth Freedom of Information Principles

The Second Commonwealth Freedom of Information Principle states that there should be a presumption in favour of disclosure and governments should promote a culture of openness.

The Open Contracting Data Standard

The Open Contracting Data Standard (OCDS) is a free non-proprietary open data standard for public contracting implemented by 30 governments around the world – including Kenya.

4. Regional Laws

The right of access to information is guaranteed by Article 9 of the African Charter and acknowledged in a number of extant treaties of the African Union, including the African Charter on Democracy, Elections and Governance, the African Charter on the Values and Principles of Public Service and Administration, the African Union Convention on Preventing and Combating Corruption, the African Youth Charter, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.

Below we examine various instruments within the African legal regime and what they state on proactive disclosure.

4.1 African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (ACHPR) at Article 9(1) guarantees the right of every individual to receive information. The importance of the right of access to information is underpinned by the fact that it is a cross-cutting right. It is a right that is necessary for the realisation of other human rights, including the right to participate in government directly or through freely chosen representatives, as guaranteed by Article 13 of the African Charter.

4.2 African Union Convention on Preventing and Combating Corruption

The African Union Convention on Preventing and Combating Corruption (CPC) states that each State Party shall adopt such legislative and other measures to give effect to the right of access to information that is required to assist in the fight against corruption and related offences. Arguably, this

obligation, if read with the CPC's principle of transparency and accountability in the management of public affairs, could imply a positive obligation to disclose information.

4.3 Declaration of Principles on Freedom of Expression in Africa

The Declaration of Principles on Freedom of Expression in Africa state that public bodies shall be required, even in the absence of a request, to actively publish important information of significant public interest.

4.4 Model Law on Access to Information for Africa

The Model Law on Access to Information for Africa (Model Law) was developed by the African Commission on Human and Peoples' Rights (ACHPR) provides detailed and practical content to the legislative obligations of State Parties within the African Union on the best global standards on access to information.

The Model Law provides a provision requiring every public body and relevant private body to publish the following information within 30 days of it being generated or received:

- a. Manuals, policies, procedures or rules or similar instruments which have been prepared for, or are used by, officers of the body in discharging that body's functions, exercising powers and handling complaints, making decisions or recommendations or providing advice to persons outside the body with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons may be entitled;
- b. The names, designations and other particulars of the information officer and deputy information officer of the public body or relevant private body, including their physical contact details and electronic addresses where persons may submit requests for information;
- c. Any prescribed forms, procedures, processes and rules for engagement by

- members of the public with the public body or relevant private body;
- d. The particulars of any arrangement, statutory or otherwise, that exists for consultation with, or representation by, members of the public in relation to the formulation or implementation of its policies or similar documents;
- e. Whether meetings of the public body or relevant private body, including its boards, councils, committees or similar other bodies, are open to members of the public and, if so, the process for direct or indirect engagement; but where a meeting is not open to the public, the body must proactively make public the contents of submissions received, the process for decision making and decisions reached;
- f. Detailed information on the design and execution of any subsidy programmes implemented with public funds, including the amounts allocated and expended, the criteria for accessing the subsidy, and the beneficiaries;
- g. All contracts, licences, permits, authorisations and public-private partnerships granted by the public body or relevant private body; and,
- h. Reports containing the results of surveys, studies or tests, including scientific or technical reports and environmental impact assessment reports, prepared by the public body or relevant private body.
- d. A list of all the categories of information held by it or under its control;
- e. A directory of its employees including their powers, duties and title, indicating the permanent staff, the temporary staff and the outsourced staff, recruitment procedures and vacancies;
- f. The yearly band of remuneration for each public employee and officer, including the system of compensation as provided in its laws, the procedures followed in its decision-making process, including channels of supervision and accountability;
- g. Detailed travel and hospitality expenses for each employee and officer, and gifts, hospitality, sponsorships or any other benefit received by each employee and officer;
- h. A description of the composition, functions, and appointment procedures of the boards, councils, committees, and other bodies consisting of two or more persons, constituted as its part or for the purpose of advice to or managing the public body or relevant private body;
- i. The detailed actual budget, revenue, expenditure and indebtedness for the current financial year, including all related estimates, plans, projections and reports, including audit reports, and for any previous financial years from the date of the commencement of this Act; and,

Further, the Model Law requires the annual publishing of the following information produced by or in relation to the public body:

- a. The particulars of its organisation, functions and duties;
- b. Information containing interpretations or particulars of Acts or policies administered by the body;
- c. Details of its processes and procedures for creating, keeping, organising and maintaining information;

- j. The annual report submitted to the oversight mechanism.

5. National Legislation

The Tool's development has been predominantly informed by the proactive disclosure obligations that rest within the national laws of the Republic of Kenya. Below, we examine these obligations in the Constitution of Kenya, 2010, the Access to Information Act, and a number of statutes which address ATI.

Succeeding the Constitution and the Access to Information Act, the rest of the legislation shall be analysed on an alphabetical basis, the reader should note that the order of the laws listed and analysed below does not indicate a hierarchy or preference.

Below is a table providing a high-level outline of the national laws we shall examine in this section, the public entities with duties to proactively disclose, and the information to be published and publicised:

5.1 Constitution

The right of access to information is protected under Article 35 of the Constitution of Kenya, 2010. The obligation to proactive disclosure of information arises from Article 35(3), which creates a duty for the State to publish and publicise any important information affecting the nation. This obligation is one of active transparency which imposes on the State a mandatory duty to proactively publish and publicise this information. This obligation is further

No.	Public Entity	Relevant Law	Information to Proactively Disclose
1.	Anti Doping Agency	Anti Doping Act	Information to athletes and athlete support personnel on the collection and testing of samples.
2.	National Cancer Institute of Kenya	Cancer Prevention and Control Act No 15 of 2012	Reports on the prevention, diagnosis and treatment of cancer.
3.	Central Bank of Kenya	Central Bank of Kenya Act CAP 491	Monetary Policy Statements
4.	Controller of Budget	Controller of Budget Act No. 26 of 2016	Budget Implementation Reports for National and County Governments
			Expenditure, Withdrawals and Release Reports
			Comparison Reports (between revenue allocated vs withdrawals)
			Report on Receipts of Consolidated Fund and County Revenue Fund
5.	County Governments	HIV and AIDS Prevention and Control Act No. 14 of 2006	Information Campaigns on HIV/AIDS
		Tobacco Control Act No 4 of 2007	Information Campaigns on Tobacco and Impact on Health
6..	Rural Electrification and Renewable Energy Corporation	Energy Act No 1 of 2019	Reports on Renewable Energy Technologies
7.	Kenya Forest Service	Forest Conservation and Management Act No. 34 of 2016	Forest Geographic Information System Database
			Research Findings
8.	Ministry of Health		Information on HIV/AIDS
		HIV and AIDS Prevention and Control Act No. 14 of 2006	Guidelines on Post Exposure Prophylaxis

No.	Public Entity	Relevant Law	Information to Proactively Disclose
9.	National and County Health System Public Entities	Health Act No. 21 of 2017	Information on their Health Functions
			Reports and Statistical Information on Public Health
			Information on Epidemic Diseases
12.	Independent Policing Oversight Authority	Independent Policing Oversight Authority Act No. 35 of 2011	Reports on Investigations, Monitoring, Reviews and Audits
13.	Kenya Agricultural and Livestock Research Organisation	Kenya Agricultural and Livestock Research Act No 17 of 2013	Research Reports on Agriculture and Technologies
			Agricultural Production Mechanisms and Technology
14.	Communications Authority of Kenya	Kenya Information and Communications Act No. 2 1998	Emergency, Public Payphone and Directory Information Services
15.	Kenya Institute of Curriculum Development	Kenya Institute of Curriculum Development Act No. 4 of 2013	Data Bank, Reports and Information on Curricula
16.	Chief Lands Registrar	Land Registration Act No. 3 of 2012	Land Register
17.	Ministry of Mining	Mining Act No. 12 of 2016	National Repository of Geo-Science Information
18.	Ministry of Mining and National Land Commission		Mining Register and Cadastre
19.	National Authority for the Campaign Against Alcohol and Drug Abuse	National Authority for the Campaign Against Alcohol and Drug Abuse Act No. 14 of 2012	Research Reports on Alcoholic Statistics
			Reports on Drugs and Psychotropic Substances of Abuse
20.	National Construction Authority	National Construction Authority Act No. 41 of 2011	Construction Industry Information System
21.	National Crime Research Centre	National Crime Research Center Act No 4 of 1997	Reports on Research Findings

No.	Public Entity	Relevant Law	Information to Proactively Disclose
22.	National Drought Management Authority	National Drought Management Authority Act No. 4 of 2016	Research Reports on Drought Management
23.	National Employment Authority	National Employment Authority Act No. 3 of 2016	Job Vacancies in the Public and Private Sector
24.	Director of Occupational Safety and Health / Ministry of Labour	Occupational Safety and Health Act NO. 15 of 2007	Information on Occupational Safety and Health
25.	National Council for Persons with Disabilities	Persons with Disabilities Act No. 14 of 2003	Information on Persons with Disabilities
26.	Pharmacy and Poisons Board	Pharmacy and Poisons Act CAP 244	Information on Medical Products
27.	Private Security Regulatory Authority	Private Security Regulation Act No. 13 of 2016	Information on the Compliance of Private Security Service Providers
			Authority Register
28.	Kenya National Archives and Documentation Service	Public Archives and Documentation Service Act CAP 19	List of Reports and Documents Acquired from Public Entities
			Public Archives Older than 30 Years
29.	Parliament, County Assemblies and Auditor General	Public Audit Act No. 24 of 2015	Audit Reports
30.	Parliamentary Budget Office	Public Finance Management Act No. 18 of 2012	Annual Reports
31.	National Treasury		Deviation Report
			Budget Policy Statement
			Budget Review and Outlook Paper
			National Government Debt Management Strategy
			Securities Issued By National Government
			Annual Financial Statements
32.	Public Debt Management Office		Medium Term Debt Management Strategy
			Government Borrowing Plan for Approved Budget
			Statistical and Analytical Reports on Debt and Borrowing
			Annual Performance Reports

No.	Public Entity	Relevant Law	Information to Proactively Disclose
33.	County Treasury		Report on Funds and Usage of Money
			County Fiscal Strategy Paper
			County Budget Review and Outlook Paper
			Debt Management Strategy
			Development Plan
			Budget Estimates
			Consolidated Budget Estimates
			Quarterly Financial Reports
34.	City and Urban Areas Management Boards		Strategic Plan
			Annual Budget Statements
			Database and Information System of the Administration
35.	Accounting Standards Board		Accounting and Financial Standards
36.	Public Procurement Regulatory Authority	Public Procurement and Asset Disposal Act No. 33 of 2015	Standard Public Procurement and Asset Disposal Documents and Formats
			Central Repository on Complaints, Tender Records, Market Prices, Non-Compliant State Entities, Statistics, and Other Information.
37.	Kenya National Bureau of Statistics	Statistics Act No 4 of 2008	Statistical Information
38.	Ministry of Health	Tobacco Control Act No 4 of 2007	Information on Health Consequences of Tobacco
39.	Tourism Research Institute	Tourism Act No 28 of 2011	Tourism Database
40.	Kenya Universities and Colleges Central Placement Service	Universities Act No 42 of 2012	Information on Available Programmes, Costs and Areas of Study Prioritized by Government
41.	Commission for University Education		Standards on the Quality of University Education
42.	Water Resources Authority	Water Act No. 43 of 2016	National Monitoring and Georeferenced Information System
43.	Water Services Regulatory Board		National Database and Georeferenced Information System on Water Services
44.	Water Sector Trust Fund		Information on Projects Financed and their Impact
45.	Wildlife Research and Training Institute	Wildlife Conservation and Management Act No 47 of 2013	Wildlife Database

concretised in the Access to Information Act, which is examined below.

A final constitutional obligation to proactively disclose information is created under Article 254, which requires that independent commission's or office holders – a specific class of public entities – submit reports to the President and Parliament and ensure their publishing and publicisation.

5.2 Access to Information Act

The Access to Information Act is the primary legislation on access to information in Kenya. One of its objectives and purposes is to 'provide a framework for public entities and private bodies to proactively disclose information that they hold...in line with the constitutional principles.' An additional relevant objective of the Act is to 'promote routine and systematic information disclosure by public entities' in line with the constitutional principles of accountability, transparency, public participation and access to information. The Act's interpretation provision states that it shall be interpreted and applied on the basis of a duty to disclose, with non-disclosure only being permitted under certain circumstances exempted explicitly in Section 6 of the Act.

Section 5 of the Act is the most crucial provision on the proactive disclosure obligations placed on public entities in Kenya. It states that public entities need to provide the following information:

1. Particulars of the organisation, its functions and duties.
2. Powers and duties of its officers and employees.
3. Procedure to be followed in decision making, including channels of supervision and accountability.
4. Salary scales of its officers by grade.
5. Norms set by it for the discharge of its functions.

6. Guidelines used in its dealings with public or corporate bodies.
7. Rules, regulations, instructions, manuals and records used or held by it or its employees.
8. A guide to enable persons the ability to access information which identifies classes of information held by it, the subjects to which they relate and the location of any indexes to be inspected.
9. Publishing of all relevant facts when formulating policies, schemes, programmes or laws or announcing decisions, and before initiating any project, to the public or persons likely to be affected by them.
10. All contracts which state the public works, goods acquired, service provided entered into, as well as any sketches, scopes of service and terms of references, the contract sum, the names of the service provider, and the periods within which the contract shall be completed.

The information outlined in section 5 of the Act must be updated every year. The dissemination of this information must take into consideration the need to reach persons with disabilities, the cost, local language and the most effective communication mode in that local area, ensuring easy accessibility. The material cited in Section 5 must be, at a minimum, made available for inspection free of charge, or by supplying a copy on request at reasonable cost, and on the internet if held in electronic form.

The requirement on proactive disclosure took effect on the 21st of September 2017.

The CAJ has the power, by its own initiative or upon request by any person, to review a decision by a public entity refusing to publish information that it is required to be made public. The Commission has the responsibility of monitoring State compliance with international treaty obligations (i.e. see section 2.1 and 2.2 above) relating to the freedom of and right of access to information – which include any international obligations

on proactive disclosure that are legally binding on the Republic of Kenya. Finally, by the 30th of June each year, every public entity is required to submit a report outlining its access to information activities, entailing the:

- Number of requests for information received by the entity;
- Number of requests processed;
- Number of determinations not to comply for requests for information and the main grounds for such determination;
- Average number of days taken by the entity to process different types of requests;
- Total amount of fees collected by the public entity while processing requests;
- Number of full-time staff of the public entity devoted to processing requests for information; and,
- Total amount expended by the entity for processing such requests.

5.3 Anti-Doping Act

The Anti-Doping Agency is required to provide information to athletes and athlete support personnel on any developments concerning the collection and testing of samples.

5.4 Cancer Prevention and Control Act

The National Cancer Institute of Kenya is required to disseminate all data that is useful in the prevention, diagnosis and treatment of cancer.

5.5 Central Bank of Kenya Act

The Central Bank of Kenya is required to disseminate Monetary Policy Statements, which include key financial data and information on Kenya's monetary policy, to the public.

5.6 Controller of Budget Act

The Controller of Budget, an independent constitutional office, must submit quarterly budget implementation reports for the national and county government within thirty days after each quarter. These reports must provide information on the approved budget, total funds released by programmes, the absorptive capacity of funds by projects, and the reasons of declining the provision of funds, if they exist. These reports should comprise of approved expenditures, authorised withdrawals, actual releases, actual expenditures, comparisons between amounts provided for the County Allocation of Revenue Act, the economic development and outlook, and include a report on the receipts into the Consolidated Fund and the County Revenue Funds. Fourteen days after the reports are submitted to Parliament, they must be publicized and published.

5.7 County Governments Act

County Governments are required to facilitate the establishment of structures for citizen participation including ICT platforms, notice boards with information of a public interest and citizen fora at the county and decentralized unit level. Further, County Governments must establish mechanisms to facilitate public communication and access to information in a form of media with the widest public outreach within the county. Further, County Governments must designate an office for purposes of ensuring access to information is achieved.

5.8 Energy Act

The Rural Electrification and Renewable Energy Corporation has, as one of its functions, the obligation to disseminate research on appropriate renewable energy technologies.

5.9 Forest Conservation and Management Act

The Kenya Forest Service is required to develop, maintain and regularly update a geographic information system database of all forests in Kenya. Further, the Kenya Forest Research Institute (KEFRI) has an obligation

to disseminate research findings to support forestry development in the country and within the counties. KEFRI must also publish and disseminate to the public declarations of the protection of any tree species or family that must be protected in the entire country or within specific areas.

5.10 HIV and AIDS Prevention and Control Act

The Government has a duty to promote public awareness about the causes, modes of transmission, consequences, means of prevention and control of HIV and AIDS through a comprehensive nationwide educational and information campaign. HIV and AIDS information dissemination is also required as part of the delivery of healthcare services by healthcare providers. Moreover, the Cabinet Secretary of Health is required to publish guidelines for post exposure prophylaxis, with Government also ensuring that at all its employees are provided with the basic information on HIV and AIDS prevention and control. All County Governments are also required to conduct information campaigns on HIV and AIDS within their areas of jurisdiction.

5.11 Health Act

All National and County Government Health System Public Entities are required to ensure that appropriate, adequate and comprehensive information is disseminated on the health functions for which they are responsible. This information must include information on:

- The types, availability and cost of health services;
- The organisation of health services;
- Operating schedules and timetables of visits;
- Procedures for laying complaints;
- The rights and duties of users and healthcare providers as provided for in the applicable service charters; and,

- Management of environmental risk factors to safeguard public health.

The Director General of Health is also required to prepare and publish reports and statistical information on public health, as well as periodically publish information on infectious and epidemic diseases within or in territories adjacent to Kenya.

5.12 Independent Policing Oversight Authority Act

The Independent Policing Oversight Authority has, as one of its functions, a duty to publish findings of its investigations, monitoring, reviews and audits through electronic or printed media.

5.13 Kenya Agricultural and Livestock Research Act

The Kenya Agricultural Livestock Research Organisation (KALRO) has, as one of its objects, the duty to expedite equitable access to research information and promote the dissemination of research findings in the field of agriculture and the establishment of a Science Park. KALRO's Secretariat also has a responsibility to disseminate information, including data on research programmes undertaken under the Act. KALRO and its affiliated research institutes must also disseminate research results and technologies, in partnership with relevant actors.

5.14 Kenya Information and Communications Act

The Communications Authority of Kenya is required to, as far as is reasonably practicable, ensure that throughout the country, there are telecommunication services, particularly emergency, public payphone and director information services, as is necessary to satisfy the public demand.

5.15 Kenya Institute of Curriculum Development Act

The Kenya Institute for Curriculum Development (KICD) has a mandate to disseminate information on curricula, curriculum support materials and innovation,

as well as create a data bank, that would then be accessible by educational institutions, learners and other relevant organisations. Additional functions include the duty to publish and disseminate information on the curricula for basic and tertiary education and training, as well as programmes and curriculum support materials.

5.16 Land Registration Act

The Chief Lands Registrar must ensure that all information in the Lands Register is accessible to the public by electronic means or any other means that the Registrar may reasonably prescribe.

5.17 Mining Act

The Director of Geology is responsible for developing a national repository of geoscience information through the publication and dissemination of information and data concerning the geology and mineral resources of Kenya and he or she must facilitate access to this information by the public. The Ministry of Mining must also establish and maintain an up to date Mining Cadastre and Registry System, which includes a Register of Mineral Rights – which is a public document that may be inspected.

5.18 National Authority for the Campaign Against Alcohol and Drug Abuse Act

The National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) has a duty to disseminate all research and statistics on alcohol consumption, as well as disclose any information on drugs and psychotropic substances of abuse for public information purposes.

5.19 National Construction Authority Act

The National Construction Authority has, as one of its functions, a responsibility to initiate and maintain a construction industry information system.

5.20 National Crime Research Center Act

The National Crime Research Centre must disseminate its research findings through

publications, workshops, seminars, mass media and other appropriate dissemination means.

5.21 National Drought Management Authority Act

The National Drought Management Authority must consolidate and disseminate drought management information.

5.22 National Employment Authority Act

The National Employment Authority Act has, as one of its functions, to maintain an integrated and up to date database of all persons seeking employment and circulate job vacancies in a timely manner to job seekers in Kenya using various mediums. The Authority also has a responsibility to upload information on private sector job vacancies on its website and convey this information to qualifying job seekers.

5.23 Occupational Safety and Health Act

The Director of Occupational Health and Safety within the Ministry responsible for labour, has a duty to collect and disseminate information on occupational health and safety.

5.24 Persons with Disabilities Act

The National Council for Persons with Disabilities has the responsibility of providing to the maximum extent possible access to available information to all institutions, associations and organisations concerned with the welfare of persons with disabilities, including those controlled and managed by the Government. It also must carry out measures for public information on the rights of persons with disabilities.

5.25 Pharmacy and Poisons Act

The Pharmacy and Poisons Board has, as one of its functions, a duty to disseminate information on medical products to health professionals and to the public in order to promote their rational use.

5.26 Private Security Regulation Act

The Private Security Regulatory Authority has a duty to provide information to the users, prospective users or representatives of users of security services regarding the compliance of private security service providers with the Act. The Authority must also keep a Register of all persons licensed and registered under the Act with details about their names and addresses, categories of licenses or permits and the terms and conditions of this license, which will need to be on an up to date website that is accessible to the public.

5.27 Public Archives and Documentation Service Act

The Kenya National Archives and Documentation Service is required to publish and circulate to all of Kenya's major libraries an accession lists of reports and documents acquired by various public entities. Further, any public records that have been in existence for more than 30 years may be made available for inspection by members of the public at a fee.

5.28 Public Audit Act

Parliament, County Assemblies and the Auditor General must publicise all audit reports submitted to it on their websites or other public spaces.

5.29 Public Finance Management Act

The Parliamentary Budget Office must publicise any of its documents no later than fourteen days after production. The National Treasury has the obligation to publish and publicise the Deviation Report, Annual Budget Policy Statement, the National Government Debt Management Strategy, Budget Estimates, Securities issued by or on behalf of National Government, and any Financial Statement and Summaries. The Public Debt Management Office also has a duty to publish and publicise reports on the Medium Term Debt Management Strategy, the Government Borrowing Plan, Statistical and Analytical Reports on Debt and Borrowing, and its Annual Performance Reports. Further, all National Government entities must publish and publicise their

Financial Statements, which after being consolidated by the National Treasury, shall need to be published, once more.

The County Treasury has an obligation to publish and publicise its County Fiscal Strategy, Budget Review and Outlook Paper, Debt Management Strategy, Development Plan, Budget Estimates, Consolidated Estimates, and its Quarterly Reports. Urban Areas and Cities must also publish and publicise their Strategic Plans and Annual Budget Statements. The Accounting Standards Board must also publish and publicise the Accounting and Financial Standards and any directives and guidelines required by the Board.

5.30 Public Procurement and Asset Disposal Act

The Public Procurement Regulatory Authority (PPRA) has a mandate to issue and publicise standard public procurement and asset disposal documents and formats to be used by public entities and other stakeholders.

The PPRA must also create a Central Repository Database that includes:

- Complaints made on procuring entities;
- A record of those prohibited or debarred from participating in tenders;
- Market prices of goods, services and works;
- Benchmarked prices;
- State organs and public entities that are non-compliant with procurement laws;
- Statistics related to public procurement and asset disposal;
- Price comparisons for goods, services and works; and,
- Any other information related to procurement that may be necessary for the public.

5.31 Public Service (Values and Principles) Act

Every public entity, whether in national or county government, or the public service, shall develop Guidelines on the Provision of Timely and Accurate Information. Each public institution is also required to develop a system for the provision of relevant information that promotes fairness and merit in appointments and promotions.

5.32 Statistics Act

The Kenya National Bureau of Statistics (KNBS) has as one of its objectives the duty to disseminate statistical information across the National Statistical System.

5.33 Tobacco Control Act

The Government has a duty to promote public awareness about the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke through a comprehensive nationwide educational and information campaign. All County Governments are also required to conduct information campaigns on tobacco control within their areas of jurisdiction. Tobacco control education and information dissemination is also required as part of the delivery of healthcare services by healthcare providers.

5.34 Tourism Act

The Tourism Research Institute has a mandate to establish a Tourism Database that shall include data on tourism in Kenya and shall make it progressively available and accessible to the general public.

5.35 Universities Act

The Kenya Universities and Colleges Central Placement Service has a duty to disseminate information on available programmes, their costs and the areas of study prioritised by the Government. The Commission for University Education also has a duty to publicise standards relevant to the quality of education, including the promotion and support of educational standards, as well as disseminate data on university education.

5.36 Urban Areas and Cities Act

Every City or Municipality Board must maintain a comprehensive database and information system of the administration and provide public access to it upon payment of a fee.

5.37 Water Act

The Water Resources Authority must ensure that there is a National Monitoring and Georeferenced Information System on water resources, which should be accessible by members of the public. Furthermore, the Water Services Regulatory Board has a duty to maintain a National Database and Information System, as well as a National Monitoring and Georeferenced Information System on water services that should be accessible to the public. The Water Sector Fund, as well, must maintain and make public any information on projects it has financed and the impact of such projects.

5.38 Wildlife Management and Conservation Act

The Wildlife Research and Training Institute has the obligation to establish a Wildlife Database, which shall include relevant data produced by relevant authorities and this database shall be available and accessible to the general public.

6. Case Law

Kenyan courts have examined Article 35(3), the constitutional provision mandating proactive disclosure by the State, in varying ways. The courts have found that the right of access to information creates two duties: the first is an obligation on the State to proactively publish and publicise any information which is important to the nation, the other being a duty to provide open access to such specific information as people may require from the state.

The most express mention of this dual obligation, which creates the duty to proactively disclose information by public entities, is the court's finding in the Nairobi Law Monthly case, where the judge stated:

“The... consideration to bear in mind is that the right to information implies the entitlement by the citizen to information, but it also imposes a duty on the State with regard to provision of information. Thus, the State has a duty not only to proactively publish information in the public interest –this, I believe, is the important of Article 35(3) of the Constitution of Kenya which imposes an obligation on the state to ‘publish and publicise any important information affecting the nation’, but also to provide open access to such specific information as people may require from the State.....”

In *Trusted Society of Human Rights Alliance v Judicial Service Commission*, the court held that:

“...the principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances and that public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. Further, the exercise of this right should not require individuals to demonstrate a specific interest in the information.”

More specifically, Section 5 of the Access to Information Act has also been subject to interpretation by the High Court. In *Boniface Ongera Mangaa v Governor, Kisii County*, Justice David Majanja examined the obligation to proactively disclose information on contracts by the counties and ruled as follows:

...in so far as the information sought by the petitioners concerns construction works by the County, it is the kind of information the County is required to provide to the public. Under section 5(e) of the [Act], the public entity is required to publish particulars of contracts for public works entered into by the entity...Such information concerning each and every tender for public works and particulars thereof should readily be available as part of the public information the County is required to publish from time to time. This provision is a logical application of Article 35(3) of the Constitution which provides that,

“The State shall publish and publicise any important information affecting the nation.”

As I have shown, it is the County government’s duty not only to publish and publicise information regarding contracts it has entered into but also facilitate the provision of such information to the petitioners and any other citizens who seek it.

The manner in which public entities are to proactively publish and publicise this information, which is important to the nation, has also been touched on by the Courts. In *International Centre for Policy and Conflict v Attorney General* the Court stated that ‘the nature, content and mode of dissemination of such information is left to the discretion of the State through its various organs and entities.’ However, this decision was delivered in 2012, four years before the passing of the Access to Information Act, which outlines the exact nature of how Article 35(3) is to be achieved.

There are also instances where Courts have held a narrow interpretation of what information merits disclosure, particularly qualifying it by finding that the information need not be publicised because it is not ‘any important information’ and does not ‘affect the nation’ – as is required under Article 35(3). In *Apollo Mboya v Attorney General* the question of whether the Kenya Government Delivery Portal (www.delivery.go.ke) could be used to advertise government achievements during an electioneering period in the lead up to the 2017 General Elections was before the Court. The Petitioner held the view that the portal served as an advertising and campaign tool at a period when campaigning was prohibited. The Respondents countered this argument by stating that the disclosure was a way of proactively providing information in line with Article 35 of the Constitution.

The Court held a different view, finding that the nature of information in the portal was not what was contemplated in Article 35(3) as it’s not important information affecting the nation. Justice Mwita stated:

“The respondent and 3rd Interested Parties have also relied on Article 35(3) which provides that the State shall publish and

publicize important information affecting the Nation. In my view, that does not mean the kind of information published in the portal. What is in the portal is information on projects initiated, those completed and the ones pending. It is really about government performance than anything else. However, the information contemplated to be publicized under Article 35(3) must be information that is important to the nation and its people. Such information may be on draught, floods, outbreak of diseases, environmental and natural disasters, security issues among others. That, in my view, would be the important information affecting the nation that may be publicized for the benefit of the nation and her people.

“However, because the portal contains information on projects which in essence show the performance of government, including projects it has initiated and those completed, this is a government assessment report on its performance and does not affect the nation and is not the information contemplated under Article 35(3) of the Constitution.”

An alternative interpretation to what is “important” or deemed to “affect the nation” was seen in *Andre Ireri Njeru v County Assembly of Embu*. Here, the Court distinguished between two categories of what information affects the nation as a whole and thus must be proactively disclosed:

From Article 35(3) it is clear that the obligation to publish relates to information “affecting the nation,” that is, information of a national character that affects the welfare of the nation as a whole. In my view the kind of information that would attract the sanction of this right could be classified into at least two general categories. Information of a nature that directly and substantially affects any of the Bill of Rights or their enforcement as contained in Chapter Four of the Constitution; and secondly, information which a provision of the Constitution itself requires to be published—such as statues [sic] and gazettes and also reports required to be published by independent offices or commissions. This list is, of course, not exhaustive.

This is another decision on this matter that

was made in 2013, a number of years before the Access to Information Act was enacted, and thus should be interpreted with that in mind.

From the above analysis, it is evident that Article 35(3) is the foundational basis of proactive disclosure in Kenyan law, with the Courts treating this provision as such. The leading authority on this topic, remains the *Nairobi Law Monthly* case, which uses the term ‘proactively’ when speaking about the State’s obligations to disclose certain information. It must be noted that not too many decisions have involved an analysis or determination on the provisions of the Access to Information Act, per se. Perhaps because litigators may not be relying upon the Act, but grounding a lot of their arguments on Article 35(3).

Another observation of note is that the wording of ‘affect the nation’ and ‘important’ have been used as limiting provisions to the full extent of this sub-right to proactively disclose certain information by publishing and publicising it. As seen in the *Apollo Mboya* case, the Court was unafraid to state that a portal sharing information on the status of Government projects is not as important or deemed not to affect the nation enough, and thus does not meet the threshold or muster anticipated in Article 35(3), and thus, need not be proactively disclosed. Though this was obiter dicta, the effect of such a ruling may have chilling effects on certain limitations to proactive disclosure requirements if litigators or public entities rely on it.

7. Conclusion

From the foregoing analysis, it is manifestly evident that there are numerous obligations on Kenyan public entities to proactively disclose information at the international, regional and national levels. Proactive disclosure is not explicit in most laws, but where a duty to impart, publicise, or disseminate information exists in law, an obligation to proactive disclosure is established.

Our analysis reveals that nationally, beyond Article 35(3) and the relevant provisions of the Access to Information Act, there exist

numerous statutes that create bespoke obligations for public entities across a wide range of Ministries, departments, authorities, agencies, programmes and even individual officials, to proactively disclose certain information. These range from reports, to research, to guidelines, to databases, to information campaigns, to information centres, and so much more – the list is quite wide. This report finds that, indeed, there are numerous legal pedestals for justifying a robust proactive disclosure practice among public entities, however, there are certain factors that must be kept in mind that may limit the full extent of achieving ideal levels of proactive disclosure.

We urge to CAJ to find out why Kenya has not ratified the Aarhus Convention, which is the leading proactive disclosure treaty under international law, albeit for environmental information. Its ratification would further elevate our legal system's adherence to global standards for proactive disclosure, particularly in the environmental sector, and result in greater transparency and openness if domesticated and implemented.

An Additional observation to make, as well, is that a number of laws explicitly repeat the provisions of Article 35(3) within the statute, as well as make reference to the broader requirements of the right. These laws include some that were enacted after the Access to Information Act was passed, and provide details on how the relevant regime shall handle access to information affairs, but also outline clear limitations to the right within the statute as required under the limitations clause in Article 24. It may be helpful to visit amendments to these statutes to align them with the provisions of the Access to Information Act.

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 34. Inter-American Democratic Charter adopted by the General Assembly of the OAS on September 11, 2001, during the twenty-eighth special session held in Lima, Peru. Adopted at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22 November 1969.
 35. Model Inter-American Law on Access to Public Information, Adopted at the 4th Plenary Session of the General Assembly, June 8th 2020, AG/RES. 2607 (XL-O/10).
 36. Ibid at Preamble and p. 26.
 37. Article 9.
 38. Article 12(1).
 39. Article 14.
 40. Ibid at p. 44.
 41. Global Principles on National Security and the Right to Information (The Tshwane Principles) Finalized in Tshwane, South Africa and Issued on 12th June 2013.
 42. Commonwealth Freedom of Information Principles adopted by the Commonwealth Heads of Government at their Durban Meeting in 1999, last accessed on 26th November 2020 at https://www.oas.org/es/sla/ddi/docs/acceso_informacion_desarrollos_Commonwealth_freedom_information.pdf
 43. www.open-contracting.org/data-standard/
 44. African Charter on Human and Peoples' Rights, Adopted June 27th, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force on Oct. 21 1986.
 45. African Union Convention on Preventing and Combating Corruption, July 11, 2003, 43 I.L.M. 5, Article 9.
 46. Article 3(3).
 47. African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17-23 October 2002, Banjul, The Gambia.
 48. Model Law on Access to Information for Africa, launched by the African Commission on Human and Peoples' Rights during its 53rd Ordinary Session, 2013, Banjul, The Gambia.
 49. Article 7(1).
 50. This does not include the Access to Information Act.
 51. Article 254(3).
 52. Section 3(b).
 53. Section 3(d).

54. Section 4(4).
55. Section 5(1)(a)(i).
56. Section 5(1)(a)(ii).
57. Section 5(1)(a)(iii).
58. Section 5(1)(a)(iv).
59. Section 5(1)(a)(v).
60. Section 5(1)(a)(vi).
61. Ibid.
62. Section 5(1)(a)(vii).
63. Section 5(1)(c).
64. Section 5(1)(e).
65. Section 5(1)(b).
66. Section 5(2).
67. Section 5(3).
68. Section 5(4).
69. Section 14(3).
70. Section 21(1)(e).
71. Section 27.
72. Anti-Doping Act No. 5 of 2016, Section 7(1)(l).
73. Cancer Prevention and Control Act No. 15 of 2012, Section 5(e).
74. Central Bank Act of Kenya CAP 491, Section 4B.
75. Controller of Budget Act No. 26 of 2016, Section 9(1).
76. Section 9(2).
77. Section 9(3).
78. Section 9(6).
79. County Governments Act No. 17 of 2012, Section 91.
80. Section 95.
81. Section 96(2).
82. Energy Act No. 1 of 2019, Section 44(1)(l).
83. Forest Conservation and Management Act No. 34 of 2016, Section 9.
84. Section 22(c).
85. Section 40(1).
86. HIV and AIDS Prevention and Control Act No. 14 of 2006, Section 4(1).
87. Section 6(1).
88. Section 6(4).
89. Section 7(1)(a).
90. Section 8.
91. Health Act No. 21 of 2017, Section 10.
92. Section 17(1)(g) and (h); see also Section 10 of the Public Health Act, CAP 242.
93. Independent Policing Oversight Authority Act No. 35 of 2011, Section 6(j).
94. Kenya Agricultural and Livestock Research Act No. 17 of 2013, Section 5(1)(c) and (2)(i).
95. Section 26(j).
96. Section 32(2)(c) and (d).
97. Kenya Information and Communications Act, No. 2 of 1998, Section 23(1).
98. Kenya Institute of Curriculum Development Act NO. 4 of 2013, Section 4(f).
99. Section 4(g) and (i).
100. Land Registration Act No. 3 of 2012.
101. Mining Act No. 12 of 2016, Section 21(1)(g).
102. Sections 191 and 192(4).
103. National Authority for the Campaign Against Alcohol and Drug Abuse Act No. 14 of 2012, Section 4(a).

104. National Construction Authority Act No 41 of 2011, Section 5(2)(j).
105. National Crime Research Centre Act No. 4 of 1997, Section 5(f).
106. National Drought Management Authority Act No. 4 of 2016, Section 5(i).
107. National Employment Authority Act No. 3 of 2013, Section 8(i) and (k).
108. Section 29.
109. Occupational Safety and Health Act No. 15 of 2007, Section 23(8)(b).
110. Persons with Disabilities Act No. 14 of 2003, Section 7(1)(d)(ii).
111. Section 7(1)(i).
112. Pharmacy and Poisons Act CAP 244, Section 3B(2)(q).
113. Private Security Regulation Act No. 13 of 2016, Section 9(o) and (p).
114. Section 40.
115. Public Archives and Documentation Service Act CAP 19, Section 5A.
116. Section 6(1).
117. Public Audit Act No. 24 of 2015, Section 39.
118. Public Finance Management Act, No. 12 of 2012, Section 10(1)(f).
119. Section 16(3) and (4).
120. Section 26.
121. Section 33.
122. Section 39.
123. Section 55.
124. Section 80(4).
125. Section 64(2) and (3).
126. Section 81(4).
127. Section 83(5).
128. Section 117(8).
129. Section 118(4).
130. Section 123(3).
131. Section 126(4).
132. Section 129(6).
133. Section 131(5).
134. Section 166(4).
135. Section 175(10)(a) and (b).
136. Section 194(1)(e).
137. Public Procurement and Asset Disposal Act No. 33 of 2015, Section 9(f).
138. Public Service (Values and Principles) Act No 1A of 2015, Section 8(2).
139. Section 10(3).
140. Statistics Act No. 4 of 2006, Section 4(2)(b) and the First Schedule.
141. Tobacco Control Act No. 4 of 2007, Section 9(1).
142. Section 9(5).
143. Section 11.
144. Tourism Act No. 28 of 2011, Section 61.
145. Universities Act No. 42 of 2012, Section 56(1)(b).
146. Section 5(1)(c) and (i).
147. Urban Areas and Cities Act No. 13 of 2011, Section 20(1)(g).
148. Water Act No 43 of 2016, Section 21.
149. Section 71(1)(i) and 111.
150. Section 116(1)(f).
151. Wildlife Management and Conservation Act, No 47 of 2013, Section 60.
152. Nairobi Law Monthly v Kenya Electricity Generating Company (2013) eKLR.
153. Para. 34.

154. Trusted Society of Human Rights Alliance v Judicial Service Commission (2016) eKLR.
155. Paragraphs 12, 13 and 14.
156. International Centre for Policy and Conflict v Attorney General and Another (2012) eKLR.
157. Para 26.
158. Apollo Mboya v Attorney General and 15 Others (2017) eKLR.
159. Andrew Ireri Njeru & 34 Others v County Assembly of Embu and 3 Others (2013) eKLR.
160. Para. 33.



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