

## **COMMUNIQUE ON DISCLOSURE OF INFORMATION AND OPEN CONTRACTING FROM THE NATIONAL CONFERENCE HELD ON 14TH OCTOBER 2022 AT THE SAROVA STANLEY HOTEL, NAIROBI**

### **INTRODUCTION**

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) convened a one-day national conference on 14th October 2022 to discuss the proactive disclosure of information by public entities, open contracting, and e-governance platforms such as the Public Procurement Information Portal (PPIP) and their compliance with Open Contracting Data Standards (OCDS).
2. The experts, panelist, and participants were drawn from diverse fields representing civil society, county, and national governments, community organisations, academia, and the general public.
3. Guided by the conference theme, “Towards Advancing Transparency and Accountability in Public Contracting Through Open Contracting and Proactive Disclosure of Information,” the discussions took stock of what has and has not worked.
4. The deliberations would guide plans and interventions intended to mainstream open contracting and access to information in public service delivery.

The panelists and participants acknowledged and noted THAT:

5. Proactive disclosure of information and facilitating access give individuals the data and knowledge they require to participate effectively in the democratic process in any politicised society.
6. Before promulgating the 2010 Constitution, Kenya struggled with a culture of secrecy and lack of transparency due to inadequate legal and policy frameworks on access to information.
7. The situation was further riddled with diminished value for money in public projects, poor service delivery, misappropriation of funds, and lack of an environment that promotes fair business practices leading to fraud, collusion, and corruption in public contracting.



8. The 2010 Constitution of Kenya has shed light on the national values and principles of governance and public service. It conferred the state with the positive obligation to ensure that public contracting is done by a fair, equitable, transparent, competitive, and cost-effective system.

9. While Kenya is celebrated for having a robust constitutional framework with requisite normative frameworks, including open contracting and access to information, the country is still deep-rooted in the culture of secrecy.

10. There are still gaps in access to information, especially in making procurement information available to the public.

11. The Access to Government Procurement Opportunities (AGPO) program aims to facilitate the youth, women, and persons with disability-owned enterprises to participate in government procurement. However, studies show less engagement by the youth, women, and persons with disability.

12. There is a need to involve Special Interest Groups – Women, PWDs, and youth in e-governance opportunities to access information and use it to push for accountability.

13. While there may be less political goodwill in the proactive disclosure of information, relying on political goodwill is not feasible. There is a need to move from advocating for proactive disclosure of information to demanding disclosure proactively. This needs to be citizen-centered.

14. There is a need for continuous citizen empowerment to use the available information in e-governance portals and budgets to enable them to push for government transparency.

15. Reinforce gains by public institutions on open contracting and access to information; there is a need for collaboration between CSOs and government agencies like the intergovernmental agency and Council of Governors (COG) so that national policies on open contracting are cascaded to counties.

16. The full implementation of the Access to Information Act is yet to be achieved – the Access to Information Regulations are yet to be promulgated



17. Civil society organisations (CSOs) have made great efforts to create awareness of the Access to Information Act by engaging the public and training the media and community-based organisations.

18. Changing the mindset and attitudes of public officials to disclose information proactively and allow citizens to access information has been a challenge.

Therefore, in view of the foregoing, ICJ Keya calls upon the following:

**A. The National Government to:**

- i. Through the ministry of Information Communication and Technology (ICT), fast-track the enactment of the Access to Information Regulations under the Access to Information Act, 2016.
- ii. Mainstream policies on open contracting, open data, and proactive disclosure of information within government departments and public service delivery processes.
- iii. Track and ensure that AGPO benefits the intended youth, women, and PWDs to enhance their participation in government procurement.

**B. The County Governments to:**

- i. Embrace access to information by enacting County Access to Information laws and policies to encourage citizens' demand for information from public entities;
- ii. Apply for OGP membership that will advance the adoption of Open Contracting Data Standards (OCDS), implementation of the Access to Information Act, and the promotion of meaningful participation in county government processes to improve service delivery.

**C. Public Procurement Regulatory Authority (PPRA) to:**

- i. Accelerate the integration and interoperability of the county procurement information portals and the PPRA platform to avoid duplicity.
- ii. Centralize the national system to have information from the counties.



#### **D. The Commission on Administrative Justice (CAJ) to:**

- i. Take stern action on defaulters of information requests by the public.

#### **E. The Civil Society Organisations to:**

- i. Engage in more citizen empowerment initiatives to enable them to build a culture of demanding information and using the information to hold the government accountable. This also includes creating awareness of the channels to seek information through information requests.
- ii. Engage the public and relevant stakeholders on the need for proactive disclosure of information.
- iii. Amplify the citizens' voices through movements of civil society organisations to advocate for transparency and accountability in public contracting.
- iv. Conduct a study on comparative jurisprudence before and after the enactment of the Access to Information Act.
- v. Continue to advocate for enacting the Access to Information Regulations to operationalize the Access to Information Act.
- vi. Continue advocating for county governments to enact the County Access to Information Act.

#### **ICJ Kenya commits and undertakes to:**

- i. Advance discourse on open contracting and the need for proactive disclosure of information while advocating for the respect of human rights, the rule of law, and good governance;
- ii. Collaborate with government institutions, other civil society organisations, and like-minded institutions to push for compliance with open contracting data standards and access to information.

Signed



Protas Saende

ICJ Kenya Chairperson