



Status of legislation on the Right to Access Information

The right to access information is provided for under Article 35 of the constitution of Kenya. In addition various domestic legislations enacted have provisions on the right. Despite all this, the legislative framework on access to information has not yet been enacted making effective implementation of the law challenging and uncertain.

The process of enacting legislation in Kenya has been an ongoing process that has never resulted to enactment of legislation. The history surrounding the development of laws on access to information in Kenya has been a long process of over ten years with various efforts having been made by state and non state actors. One of the main causes contributing to why the legislative framework on the right has not been enacted is because the constitution failed to provide a time frame for the legislation on the right to be enacted as was done for various other provisions in the constitution, therefore the legislation has not been considered urgent or a priority.

Currently a Bill on the right has been developed known as the Access to Information Bill, 2013. The Bill in the process of enactment is in the process of being published to await parliamentary debate. The main highlights on the access to information bill, 2013 is that it contains the right provisions as a definition of what entails the right to information therefore giving it a broad approach. It also contains proactive disclosure provisions by the state of information it holds, broadly gives what entails to be exempt information as well as a resolution mechanism establishing mechanism for resolving issues which would be carried out by a Commission already formed known as the Commission on Administrative Justice. One of the challenges that is anticipated once the Bill is passed is the budgetary implications of access to information legislation. This is because the legislation would require allocation of funds to be effectively implemented such as publishing and maintenance of records in forms which the public can access.

Apart from efforts of having legislative framework developed to ensure effective realization of the right, the courts in Kenya have played a role in interpretation of the right. The courts recently made an interpretation on the right as to who may have a right to access public information. This was through the Nairobi High Court case *Nairobi Law Monthly Company Limited Vs. Kenya Electricity Generating Company, Edward Njoroge and the Attorney General*.¹ The court held that a case claiming the right has been infringed will have to be initiated in the name of a natural person as that of a legal persons are not entitled to the right to information. Further that a body corporate or a company is not a citizen for the purposes of article 35(1) and is therefore not entitled to seek enforcement of the right to information as provided under that Article 35.

¹ Constitutional and Human Rights Division High Court Petition No. 278 of 2011