

Legal Framework of RTI

The Constitution, the Access to Information Act, other Legislations

Legal Framework

RTI is protected by the main human rights treaties and has developed into norm of customary international law.

RTI laws provide frameworks /processes through which the public can access information in possession of public bodies/relevant private bodies.

International Legal Framework

- **1946 UNGA Resolution, 59 (1)** "Freedom of information is a fundamental human right and is the touchstone of all freedoms to which the United Nations is consecrated,"
- **[Article 19 of 1948 UDHR]** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and *to seek, receive and impart information and ideas through any media* and regardless of frontiers 1966 ICCPR [Kenya 1st May 1972]-Article 19
- UNCAC- 2003 – Kenya first to ratify, the 1992 Rio Declaration on Environment and Development , and the UN Declaration of Human Rights Defenders.

Globally

- In the last 2 decades, there has been an explosion of the number of comprehensive ATI laws globally.
- In Africa, policies and practices to implement the right of access to information have begun to emerge only in recent years

Globally

- Globally there are 103 states with comprehensive RTI laws started by Sweden 1776
- Some 6 countries have policies but no laws
- 90 states globally guarantee RTI in their constitutions
- 16 of the 56 African states constitutional provisions
 - Burkina Faso, Ghana,
 - Cameroon, DRC, Guinea Bissau
 - Egypt, Morocco
 - Malawi, Madagascar, Mozambique, Seychelles, South Africa
 - Eritrea, Kenya(Art 33 &35), Tanzania, Uganda (Art 41),

AU bodies & RTI

- Africa Charter on Human & people's Rights [Kenya ratified in 1992]
- Africa Union Convention on Preventing & combating corruption-Art 9 [Kenya ratified in 2007]
- African Charter on values and principles of public service and administration-Art 6 [Kenya ratified in 2011]
- The African Charter on Democracy, Elections & Governance [not ratified by Kenya]
- The African Youth Charter

AU bodies & ATI

- The African Youth Charter
- The African Statistics Charter
- The Maputo protocol- The protocol to the African Charter on Human and Peoples' Rights of Women in Africa
- Declaration of principles on Freedom of expression esp Article IV (1)
- Model Law on access to Information in Africa

ATI laws in Kenya

- 20 countries have comprehensive RTI laws in Africa
- The distribution by sub-regions
 - Liberia, Nigeria, Guinea-conakry, Sierra Leone, Togo, Burkina Faso, Niger, cote d'ivoire [8]
 - DRC [1]
 - Tunisia, Morocco[2]
 - Angola, Mozambique, South Africa, Zimbabwe [4]
 - Ethiopia, South Sudan, Sudan, Rwanda, Uganda, Kenya, Tanzania [7]
- Strength of the laws-legal text
 - Liberia (124), Sierra Leone (122), South Sudan (120), Ethiopia (112), S.Africa (109), Uganda (97), Tunisia (90), Nigeria (88), Ivory Coast (76), Angola (76), Niger (74), Zimbabwe (70), Guinea (64), Mozambique (60)

Legal Framework

- Kenya – promulgation of a new constitution of Kenya in 2010 heralded a new chapter in RTI.
- Article 33 and 35 recognize ATI
- Article 33 (1) (a) *‘Every person has a right to freedom of expression , which includes the freedom to seek, receive or impart information or ideas.’*

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- Article 35 – *“Every citizen has the right of access to (a) information held by the state, and (b) information held by another person and required for the exercise or protection of any right and fundamental freedom.”*
- Article 232 (1) (f) (Values and Principles of Public Service) – *“Transparency and timely provision to the public of timely , accurate information shall be one of the principles of public service.”*

Legal Framework

- **Effect of Article 2 (6) , “Any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution.”**
- International and regional instruments now apply as law and are enforceable in courts of law.

Legal Framework

Other legislation with ATI Provisions include:

The Public Service Values (& Principles) Act –(to give effect to Article 232 of Constitution)

- Progressive on transparency, access to information and public participation provisions.
- Requires that a public officer should maintain high professional ethics by being transparent when executing functions (Sec. 5 (2) (c)

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Section 8 - Transparency and provision to the public of timely accurate information.

- (i) A public officer shall not—
 - (a) give information that the public officer knows or ought to know to be inaccurate; or
 - (b) unduly delay the provision of any information where required to provide that information.

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8 (2) The public service, a public institution or, where permitted, an authorized officer shall develop guidelines for the provision to the public of timely and accurate information, and the promotion of transparency and accountability

- Section 11 makes provision for **Public participation in promotion of values and principles of public service; and participation in policy making.**

Legal Framework

Public Finance Management Act 2015

- **Section 10** provides that the **Parliamentary Budget Office** shall subject to *Article 35* of the Constitution, ensure that all reports and other documents produced by the Parliamentary Budget Office are prepared, published and publicized not later than fourteen days after production

Legal Framework

Section 125 (2) requires the **County Executive Committee** member for finance shall ensure that there is public participation in the budget process.

Section 131 (6) requires the **County Executive Committee** member for finance to take all reasonably practicable steps to ensure that the approved budget estimates are **prepared and published in a form that is clear and easily understood by, and readily accessible to, members of the public.**

Legal Framework

- **County Government Act - Section 87 (Citizen Participation)** recognizes that timely access to information, data, documents and other information relevant to policy formulation and implementation as one of the main principles influencing citizen participation in management of the County government.

Legal Framework

- **Part IX** addresses **Public Communication and Access to Information**
- **Section 93** -*Public communication and access to information shall be based on the following principles :*
- integration of communication in all development activities; observation of access to information by county media in accordance with Article 35 of the Constitution; and observation of media ethics, standards and professionalism.

Legal Framework

- **95.(1)** Provides that a County government shall establish mechanisms to facilitate public communication and access to information in the form of media with the widest public outreach in the county,
- This includes TV, ICT centers, community radio, public meetings and traditional media

Legal Framework

- **County Government Act Section 96 (1)** – “every Kenyan citizen shall on request have access to information held by the county government, unit, department or any other state organ in accordance with Section 35 of the Constitution”. **(96 (2) & 96 (3))**

Legal Framework

- 96 (2) Every county government and its agencies shall designate an office for purposes of ensuring access to information as required by subsection (1).
- Subject to national legislation governing access to information, a county government shall enact legislation to ensure access to information.

Tips

- Emphasize the constitutionality of ATI .
- Pan africanism spirit.
- Enabling laws
- Emphasizing county government laws