IMPLEMENTATION OF THE CONSTITUTIONAL RIGHT OF ACCESS TO ENVIRONMENTAL INFORMATION IN KENYA

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ABSTRACT

This study presents findings regarding the implementation of the Constitutional right of access to environmental information in Kenya. The Constitution of Kenya 2010 provides for the right of every Kenyan citizen to access information held by the State and to information held by another person and required for the exercise or protection of a right or fundamental freedom. The problem presented in the study is whether the Constitutional provisions on the right are sufficient or legislation is required to implement the right. Further to this, the study inquires whether or not a general law on access to information is sufficient or a specific law on access to environmental information is also required. In addressing the problem the study deals with the following which forms the study’s objective: examines Kenya’s existing legislation on access to information in general and access to environmental information in particular, compares how different countries have provided for access to information in their law and experience of these countries in implementing the right; examines international policies, principles, standards and best practices on access to information; and analyses local and international judicial pronouncements on the right. A survey is conducted on the state of access to information in Kenya. The current Bill on access to information is analysed and critiqued. The findings of the study as a whole are that the Constitutional provisions on access to information are not enough. There is a lack of a general law on access to information in Kenya and the existing sectoral laws on information in Kenya are not sufficient. Some of the sectoral laws hinder or prohibit access to information. Legislation is therefore required to implement the Constitutional right. This would be in the form of a general statute on access to information. The study finds further that it is not necessary to make a specific law for access to environmental information. However, regulations on access to environmental information should be made under the general statute to give greater protection and access to environmental information. It is recommended by the study that the current Bill on access to information should be amended to make provisions for regulations on access to environmental information.