



## NAMBIA

### Submission to the UN Universal Periodic Review

24th Session of the UPR working group of the Human Rights Council

NOVEMBER 2015

Submitted by:

Africa Freedom of Information Centre

**Contact:**

Gilbert Sendugwa

Coordinator & Head of Secretariat

Africa Freedom of Information Centre

Plot 5 Katago Road, P.O Box 35643, Kampala

Tel: 256 414 533554 Fax 256 414 533554

Email: [gilbert@africafoicentre.org](mailto:gilbert@africafoicentre.org)

---

Website: <http://www.africafoicentre.org> |

Twitter: <https://twitter.com/AFIC1>

## Executive summary

Access to information about government decisions, statistics, research, commissions, new laws and policies etc, are important, because it affects almost everyone in society. The more people any decision is likely to affect, the more important it is that the relevant information be shared as widely as possible. People need such information to participate in the democratic process and to influence certain outcomes to get the feeling of true ownership of government decisions, policies and programmes. Citizens need to be informed for them to be able to form an opinion and express their views on the state of affairs. And they need to be informed so that they could decide how successfully – or otherwise – they are governed. Unless they have unhindered access to information they cannot hold public officials accountable for their performance. This UPR report focuses on Article 19 of the International Covenant on Civil and Political rights in respect of measures taken by Namibia to promote the right to information and Freedom of Expression.

In this submission, the Africa Freedom of Information Centre provides for information under sections A, B, C and E, F, G as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*<sup>1</sup>. Most of the information presented in this report is issues concerning particularly the right to information and freedom of expression.

---

<sup>1</sup> See Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007

## **A. Methodology**

1. The [Africa Freedom of Information Centre \(AFIC\)](#). AFIC is a pan–African network and resource centre consisting of 35 civil society organizations in 22 African countries, promoting access to information in Africa through comparative research, coordinating regional advocacy, facilitating information-sharing and capacity building. AFIC promotes democratic rule and socio-economic justice for African citizens through fostering a culture of increased transparency, integrity and accountability among governments, both regional and international.
2. The planning, development and management of this report involved desk research, media reports and individual human rights reports, all which have helped to inform and frame Namibia’s UPR report.

## **B. Normative and Institutional Framework of the State**

### **Applicable frameworks & standards in international human rights law in Namibia.**

3. Namibia currently has no legal freedom of information framework. The Namibian constitution that provides for the Namibia’s general legal framework for the countries fundamental rights and freedoms but does not make any reference to the right to information and freedom of expression.
4. It is now widely recognized that the right to information is protected by the main human rights treaties and has developed into a norm of customary international law. Commendably, Namibia has agreed to be part of significant right to information treaties, particularly the United Nations Convention on Corruption which Namibia has ratified<sup>2</sup>; the

---

<sup>2</sup> Article 13, United Nations Convention against Corruption 31 October 2003. (Namibia ratified on the 3<sup>rd</sup> of August 2004).

International Covenant on Civil and Political Rights which Namibia accented<sup>3</sup>; the African Charter on Human and Peoples Rights which Namibia also ratified.<sup>4</sup>

### **C. Promotion and Protection of Human Rights on the Ground**

#### **Freedom of the Press**

5. Credibly, Namibia is among the world's top 20 countries in terms of press freedom. <sup>5</sup> The recently released World Press Freedom Index revealed that Namibia is among the world's top 20 countries in terms of press freedom. *The Reporters Without Borders World Press Freedom Index* ranks the performance of 180 countries according to a range of criteria that include media pluralism and independence, respect for the safety and freedom of journalists and the legislative, institutional and infrastructural environment in which the media operates. Namibia is ranked 17<sup>th</sup>.

6. Namibia has however has garnered reputations for unprogressive laws relating to freedom of the press. The current laws create a culture of intimidation and prosecution in the course of their work. Defamation is a criminal offense under common law. A case in point would be in November, a Windhoek High Court judge dismissed a US\$38,000 defamation suit filed by former Walvis Bay municipal chief executive Augustinus Katiti against the *Namibian*, the leading independent daily, for an article published in 2007.<sup>6</sup>

7. In practice public information is difficult to access by journalists and ordinary members of the public. Officially, if information is requested from a particular ministry, the enquirer must go through the Permanent Secretary to access the information, even appointed spokespersons

---

<sup>3</sup> Article 19, International Covenant on Civil and Political rights 16 December 1966. (Namibia ratified on the 16<sup>th</sup> of September 1992).

<sup>4</sup> Article 9, African Charter on Human and Peoples Rights 21 October 1986. (Namibia ratified on the 16<sup>th</sup> of September 1992) .

<sup>5</sup> The recently released World Press Freedom Index revealed that Namibia is ranked 17<sup>th</sup>. <https://index.rsf.org/> ( last accessed on the 20th of June 2015).

<sup>6</sup> [https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs\\_mqqko](https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs_mqqko) ( last accessed on the 20th of June 2015).

and liaison officers refuse to give information without the permission of the Permanent Secretary.<sup>7</sup>

8. Most government websites are outdated and not functional in terms of providing current public information. Even the website of the Ministry of Information and Communication Technology is in a very poor state.<sup>8</sup>

9. In previous years, government and party leaders issued harsh criticism and even threats against the independent press, and called for the establishment of an official council to regulate the activities and operations of the media. Fewer such incidents were reported in 2012. In January, Youth Minister Kazenambo Kazenambo hurled racial insults and threatened to assault journalist Tileni Mongudhi during an interview (Mongudhi is a member of Namibia's ethnic Owambo majority, while Kazenambo is a minority Herero). In the case of a violent attack in 2010 against Grobler, allegedly by four prominent businessmen with ties to SWAPO (including a son-in-law of former president Sam Nujoma), the charges against two of the men were dropped due to lack of evidence in March 2012, while the trial of the other two was ongoing at year's end. Some journalists and editors, especially at the state-run media, practice a degree of self-censorship.

10. The Namibia media environment has improved due to the passing of progressive laws. Self-regulation of the media sector has developed slowly, with a media ombudsman established in 2009 to hear complaints against media practitioners. This ombudsman continues to act independently of the government and resolved 10 of 14 total complaints in 2012. There are no restrictions on internet content, and many publications and organizations have websites that are critical of the government. However, the 2009 Communication Act includes a clause that allows for the interception of e-mail, text messages, internet banking transactions, and telephone calls without a warrant.

---

<sup>7</sup>[http://www.mediaombudsmannamibia.org/downloads/Access\\_to\\_information\\_WPF\\_DAY\\_Speech\\_Media%20ombudsman.pdf](http://www.mediaombudsmannamibia.org/downloads/Access_to_information_WPF_DAY_Speech_Media%20ombudsman.pdf) (last accessed on the 20th of June 2015).

<sup>8</sup>[http://www.fesmedia-africa.org/uploads/media/AMB\\_Namibia\\_2011\\_03.pdf](http://www.fesmedia-africa.org/uploads/media/AMB_Namibia_2011_03.pdf) (last accessed on the 20th of June 2015).

11. In Namibian government often attacks media house that seem not to exhibit political loyalty to the Government. In April 2012, prominent SWAPO members, including Kaapanda and party secretary general Pendukeni Iivula-Ithana, threatened to delay or halt funding for the NBC and *New Era*, claiming that the outlets were not adequately supporting the government's agenda. Community radio remains underdeveloped, and high costs for television licenses limit the expansion of that medium. Meanwhile, printing and distribution costs for print media also remain relatively high. In a positive development in 2011, the government lifted its 10-year ban on advertising in the *Namibian*, which had been put in effect because of the paper's alleged bias against the government.

### **Access to Information**

12. In 2012, an estimated 13 percent of Namibians accessed the internet.<sup>9</sup> This figure is extremely low. The challenge is mainly related to socio-economic limitations that have affected the ability of Namibians to use the internet. There are no official restrictions on internet use, and there were no reports during the year of the government monitoring online communications.

13. Low literacy rates leading to the inability to read newspapers, makes radio the primary source of information for most Namibia. Therefore the lack of capacity to decimate information is limiting access to information in Namibia. Community radio remains underdeveloped, and high costs for television licenses limit the expansion of that medium. Meanwhile, printing and distribution costs for print media also remain relatively high.

---

<sup>9</sup> [https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs\\_mqgko](https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs_mqgko) (last accessed on the 20th of June 2015).

## National Legislation Concerns

14. The Namibian constitution does not entitle citizens to access to information and currently there is still no Access to Information legislation in Namibia.

15. Instead Namibia still has the apartheid era “Protection of Information Act of 1984” still on their statutes.<sup>10</sup> Further, other laws seem to only substantially limit the public access to information. First, the Protection of Information Act of 1984 forbids disclosure of state secrets, information implicating national security and other information obtained by virtue of government employment.

### **D. Identification of achievements, best practices, challenges and constraints in relation to the implementation of accepted recommendations and the development of human rights situations in Namibia**

16. Namibia UPR 2011 review drew specific comments on freedom of expression. The committee was concerned about restrictions on freedom of expression imposed on individuals and the media. The delegation stated, with regard to media freedom, that the media in Namibia did not have a good track record and the Namibian government should take effective measures to safeguard freedom of expression for individuals and the media.<sup>11</sup>

17. The Namibia UPR 2011 review did not draw specific comments on Access to Information.

---

<sup>10</sup> <http://www.justice.gov.za/legislation/acts/1982-084.pdf> (last accessed on the 20th of June 2015).

<sup>11</sup> [http://www.upr-info.org/sites/default/files/document/namibia/session\\_10\\_-\\_january\\_2011/recommendationstonamibia2011.pdf](http://www.upr-info.org/sites/default/files/document/namibia/session_10_-_january_2011/recommendationstonamibia2011.pdf) (last accessed on the 20th of June 2015).

18. Namibia has not made any strides to fulfill the recommendations directed at it during the last 2011 review on freedom of expression.

**E. Key national priorities, initiatives and commitments that Namibia has undertaken and intends to undertake to overcome those challenges and constraints and improve human rights situations on the ground;**

**F. Expectations of Namibia in terms of capacity-building and requests, if any, for technical assistance and support received.**

**G. Recommendations for Action in Namibia**

19. Adoption of a Law Relating to Access to Information should remain a top priority of the government. In the absence of a constitutional provision on access to information, the Government should as soon as possible implement the policy framework for the enactment of legislation on access to information. The Prime Minister should also set clear guidelines to be followed by all Ministries on how information could be accessed by the public and made available by Ministries.

20. Recommendations for civil society include increased engagement and sensitization of the public. Advocacy for the right to access to information should be enhanced. Effective monitoring systems should be developed to assess efforts at increasing access to information.