

A SHADOW REPORT SUBMITTED TO THE

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On the occasion of Uganda's 2nd Cycle Universal Peer
Review Due October 2016

Emerging Concerns on Access to Information in Uganda
2011-2015

PREPARED AND SUBMITTED BY:

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A Note about Coalition for Freedom of Information-Uganda

- 1.1 The coalition on freedom of information was formed in 2003 by a group of Civil Society Organizations to influence the quality of legislation on Access to Information. After enactment of the 2005 Access to Information Act, the Coalition strategically engaged Government and other stakeholders to popularize, and advocate for the operationalization of the Act through various mechanisms including such as research and documentation, and public interest litigation.
- 1.2 The Coalition to-date has a membership of 130, and a working group made up of 7 organizations. The working group comprises the Anti-corruption Coalition Uganda (ACCU), the Uganda Association of Women lawyers (FIDA-Uganda), Panos Eastern Africa, National Union Disabled Persons in Uganda (NUDIPU), Uganda Media Development Foundation (UMDF), Human Rights Network for Journalists (HRNJ), and Human Rights Network-Uganda (HURINET-U) which also serves as the coordinating agency. The Coalition is hosted under the Access to Information Project at HURINET-U. A list of its member organizations is attached hereto as appendix 'A'.

A Note on the Methodology of the Present Submission

- 1.3 This report is a result of a collaborative engagement amongst actors on access to information in Uganda in the Civil Society sphere. The Coalition on Freedom of Information was selected by the members of the CSO National Stakeholders' Forum on the UPR to constitute a cluster of actors (individuals and organizations) working on aspects surrounding access to information and open governance. The cluster held numerous meetings and built consensus around the following issues worth the attention of the UPR process in advancing the quest for access to information in Uganda and transparent governance. The report recognizes the positive aspects that have been undertaken by the government of Uganda in the past 5 years to enhance access to information. It

further highlights the emerging concerns and proposes recommendations aimed at improvement.

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II. STRUCTURAL ISSUES RELATING TO THE IMPLEMENTATION OF THE RIGHT TO ACCESS TO INFORMATION

2.1 Compilation of Functions and Index of Records of Public Bodies

Compilation of a Manual of functions and index of records of public body is a requirement of every information officer of the public body under section 7 of the Access to Information Act (ATIA). By December 2014, only 7 out of 21 of all the public bodies had developed manuals. Public bodies continue to sluggishly comply with the requirements of the law, which infringes on the right of access to information from these public bodies.

2.2 Lack of Compliance with Ministerial Annual Reporting to Parliament

Under section 43 of the ATIA, every Minister is required to submit an annual report to Parliament on requests for access to records or information made to public bodies under his or her ministry in relation to the relevant year. The Minister is also required to indicate whether access was given or not and if access was not given, state the reasons for denial. To-date no Minister/Ministry, has complied with requirement despite constant calls and reminders to observe the law.¹

2.3 Wide exemptions on ATIA

The ATIA contains broad provisions attempts at implementation informs for ambiguities. For instance, an information officer has the discretion to grant or refuse to grant information concerning commercial dealings, inventions or innovations or revealing serious public safety, public health or environmental risk under section 27; information touching on protection or safety of persons and property pursuant to

¹ Francis Emorut, Kadaga tasks minister on report of access to information, *The New Vision* 22nd February 2015 http://www.newvision.co.ug/new_vision/news/1321248/kadaga-tasks-minister-report-access-information (accessed 18 March 2016).

section 29; information on law enforcement and legal proceedings, section 30; information on defence and security, section 32; and information on operations of public bodies. A midst a powerful, information release-centered provision of section 34 which spells out mandatory disclosure in public interest, the wide exemptions continue to be used by the State to indiscriminately deny the citizenry information.

Inspite of the above provisions, the State continues to hide behind the argument of public interest to wit national security and confidentiality to deny access to information. For instance, the Hub for Investigative Media (HIM) by the end of 2013, had submitted at least 26 requests. Of the 26 requests, more than half had been denied on grounds of falling within the exemptions spelt out in the ATIA.² Additionally, two local journalists were denied access to oil production sharing agreements between the Government and the oil production companies with Court upholding the State's argument that the contracts contained confidentiality clauses.³

2.4 Lack of clear internal complaints and appeals mechanisms for access to information denials

The complaints mechanism provided for in the ATIA is not friendly and vulnerable to undue frustration. Sections 37 to 40 of the ATIA lays out procedures that are tedious and not reflective of timely justice and timely need for information. In most cases using the court to access information remains limited since the case back log in the courts will often lead to delay in hearing the case of which by the time the decision is made, the value or need for the information has lapsed. Similarly, few individuals have been in a position to access the courts as a mechanism to get access to information. This is further exacerbated by the fact that majority of the population do not trust the court system to deliver justice to them.⁴

² Investigative Media (HIM), 2013. Available at <http://www.momokla.ug/downloads/Putting%20ATIA%20to%20the%20Test%20-%20Experiences%20from%20an%20Investigative%20Reporter%20by%20Edward%20Sekyewa.pdf> (accessed 18 March 2016).

³ Charles Mwanguhya Mpagi and Izama Angelo V Attorney General Miscellaneous Case No. 751 of 2009

⁴ Hilary Heuler, Uganda Fears 'Unprecedented' Rise in Mob Justice. *Voice of America* June 06, 2014. Available at <http://www.voanews.com/content/uganda-fears-unprecedented-rise-in-mob-justice/1931384.html> (accessed 18 March 2016); see also 'The Transparent Magazine-Uganda, Is mob Justice an indication that the legal system in Uganda is a failure?' Available at <https://ttmuganda.wordpress.com/2013/09/15/is-mob-justice-an-indication-the-legal-system-in-uganda-is-a-failure/> (accessed 18 March 2016).

2.5 Laws in conflict with Freedom of Information

Enjoyment of the rights to FOI and ATI continue to be frustrated by archaic legislation such the Official Secrets Act⁵ Chapter 302 of the Laws of Uganda which makes it an offence to divulge any information deemed to be an official secret. It is a law purely entrenched in secrecy that deters the progress of the ATIA. Other laws include the Evidence Act Chapter 6 which under section 122 bars giving evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold that permission as he or she thinks fit: the Oaths Act Cap 19 and the Parliament (Powers and Privileges) Act Cap 258, both of which have a negative bearing on article 41 of the Uganda Constitution.

2.6 Limited access to information for People with Disability (PWDs)

Section 20 (6) of the ATIA provides for provision of information to PWDs in an alternative and appropriate format acceptable to the applicant. Uganda in 2007 ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) which among other provides for a universal design.⁶ PWDs continue to suffer failed access to information as the Uganda government is yet to put in place measures that would make information access for PWDs easier. For instance, there is no stored braille information for visually impaired persons and neither is there any application mechanism for information for the visually impaired.

2.7 Limitation on Scope of Information Providers

Article 41 of the 1995 Constitution (as amended) and section 5 of the ATIA limit ATI to information in possession of the State or any other organ or agency of the State. Information is limited to that information that is likely to prejudice the security or sovereignty of the state. These provisions have been used to extend denial of information by private entities. In 2013 there was an attempt to get information on the expenditure by the government on hotel services from hotel Africana by the HIM. The request for information was denied on the basis that the law on ATI did not apply

⁵ Chapter 302 Laws of Uganda.

⁶ UN Enable 'Convention and Optional Protocol signatures and ratifications, <http://www.un.org/disabilities/countries.asp?id=166> (accessed 18 March 2016).

to private entities.⁷ A similar defence was raised in denying an application for a list of scholarship beneficiaries at a private university-Kampala International University.⁸

2.8 Divergence with International Minimum Standards

Though Uganda has enacted the ATIA in response to international obligations. The ATIA falls short of the international minimum standards which include: being internationally acceptable, spelling out ATI as an enforceable right against Government, creating duty holder and duty bearer obligations, clearly indicating that all information belongs to the public and not government, setting a higher standard of accountability and moving all locus of attacks against secrecy from the State to the citizens as sovereigns.⁹ The current law in Uganda is not reflective of people's information needs but instead emphasizes the upper arm of government to limit citizenry ATI.

3.0 RECOMMENDATIONS

3.1 The COFI recommends the following actions:

1. Article 41 of the 1995 Constitution (as amended) and Section 5 of the ATIA 2005 should be amended to include the private sector among the bodies or organs mandated to release information to the public.
2. Section 2 of the ATIA should be amended to include the private sector. Equally the exemptions set out under this section should be clearly defined.
 - a. Sections 27, 29, 30, 32, and 33 should be amended to provide a clear definition of the scope of information exempted from public access. Equally, the scope should be limited as opposed to the current very wide and ambiguous scope.
 - b. To reduce the tedious nature and time consuming complaints and appeal processes, section 37 and 38 should be amended to provide for an internal

⁷ Edward Ronald Sekyewa, "Putting ATIA to Test: Experiences from an Investigative Reporter", Kampala: Hub for Investigative Media (HIM), 2013. Available at <http://www.momokla.ug/downloads/Putting%20ATIA%20to%20the%20Test%20-%20Experiences%20from%20an%20Investigative%20Reporter%20by%20Edward%20Sekyewa.pdf> (accessed 18 March 2016).

⁸ Ibid.

⁹ Edrine Wanyama, "*Access to Information in East Africa: Lessons from Uganda*", LL.M. Dissertation: University of Dar es Salaam, 2015, pp. 96.

- structure that handles matters between information providers and information recipients.
- c. In the alternative, the ATIA should be repealed and replaced with a new law that meets international minimum standards as prescribed by the Declaration of Principles on Freedom of Expression in Africa adopted by the African Commission on Human and Peoples' Rights, the Universal Declaration on Human Rights and the Bill of Rights.
 - d. In the alternative, the Model Law on Access to Information for Africa, 2013 could also be adopted in entirety.
 - e. In line with section 20 (6) and the ICPD, the Government should take all measures aimed at ensuring that the universal design, aimed at fostering ATI for PWDs is put in place. This will avail PWDs an equal opportunity with the rest of the citizens.
3. All Government bodies should proactively implement the ATIA including development and dissemination of the manual of index and reporting to Parliament.
 4. The Official Secrets Acts should be repealed.
 5. Provisions with an effect of crippling citizenry enjoyment of the RTI such as those in the Evidence Act (Cap 6), The Oaths Act (Cap 19), and the Parliament (Powers and Privileges) Act (Cap 258) should be amended and replaced with progressive provisions.
 6. Awareness raising on the RATI and its value and importance in democracy and good governance should be done to empower citizenry with their rights and responsibilities.
 7. Appoint and train of all Information Officers in ministries, departments and agencies.
 8. Increase the budgetary allocation for the Ministry of Information and National Guidance to efficiently support ministries, departments and agencies to meet obligation under ATIA and the Constitution.

Appendix 'A'

List of members of the Coalition for Freedom of Information in Uganda

- 1. Anti-corruption Coalition Uganda (ACCU),**
- 2. The Uganda Association of Women lawyers (FIDA-Uganda)**
- 3. Panos Eastern Africa**
- 4. National Union of Disabled Persons in Uganda (NUDIPU)**
- 5. Uganda Media Development Foundation (UMDF)**
- 6. Human Rights Network for Journalists (HRNJ)**
- 7. Human Rights Network-Uganda (HURINET-U)**