

INTRODUCTION

a) About the Submitting Organization

This report is a culmination of joint efforts and data contributions of the Finance and Accountability cluster under the CSO National Stakeholders' Forum on the UPR- a loose network of over 300 NGOs dedicated to following upon on UPR mechanism coordinated by the National Coalition of Human Rights Defenders Uganda. All these organisations, with varying experience and expertise are key actors in the advocacy on Finance and Accountability in Uganda and the attendant rights.

Africa Freedom of Information Centre (AFIC) is a pan-African, membership-based civil society network and resource centre promoting the right of access to information, transparency and accountability across Africa through supporting national advocacy with comparative research, capacity strengthening, and technical support; monitoring treaty compliance and implementation; and by leading continental and global advocacy. AFIC is comprised of 43 civil society organisations and think tanks across 24 African countries including Botswana, Cameroon, DR Congo, Egypt, Ghana, Guinea, Kenya, Liberia, Malawi, Morocco, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, South Africa, Zambia, The Gambia, South Sudan, Tanzania, Uganda and Zimbabwe.

b) About this Report

With this report, AFIC seeks to make a constructive contribution to the upcoming 3rd Cycle of UPR for the Republic of Uganda. This submission focuses on developments around Uganda's compliance with its international human rights obligations in respect of the right of access to information for the past 5 years since the 2nd cycle review in 2016. In particular, the report has three sections, the first section detailing the legal framework governing the right of access to information and the progress that has been registered in implementation of the right; the second section examines the emerging challenges/violations of the right of access to information. The report ends with recommendations in Section III. It should be noted though that from the 2nd Cycle of UPR for Uganda, there were no recommendations on the right to access of information.

SECTION I:

LEGAL AND POLICY FRAMEWORK OF THE RIGHT OF ACCESS TO INFORMATION & PROGRESS OF IMPLEMENTATION

Uganda has taken various political, legal and programmatic measures to accentuate the enjoyment of the right of access to its citizens in the past years as discussed below.

1.1 Progressive ratification of relevant international human rights law instruments

The Republic of Uganda has ratified five essential international and regional treaties that recognize the right of access to information. These include (the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (African Charter), the African Union Convention on Prevention and Combating Corruption, and the African Youth Charter. Uganda is yet to ratify the African Charter on Democracy, Elections, and Governance. The African Charter establishes the right to information by holding in Article 9 (2) that, *“Every individual shall have the right to express and disseminate his opinions within the law”*.

1.2 Domestication of International Human Rights law and SDGs on access to information

At the domestic level, **Uganda's 1995 Constitution under Article 41** guarantees citizens the right of access to information in possession of the state or any other organ or agency of the state except where the release of information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any other person.¹ This is in tandem with the Sustainable Development Goal 16 which enjoins all countries to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” Of the indicators/targets of this Goal is improving public participation, and public access to information. Indeed there is convergence of thought that access to information is central to the implementation of the other rights and freedoms and SDGs.

1.3 Further progress is manifest in Uganda's enactment of the **Access to Information Act, 2005 (ATIA)** pursuant to the aforementioned Article 41 of the 1995 Constitution. It among others aims to: promote an efficient, effective, transparent and accountable government; empower the public to effectively scrutinize and participate in government decisions that affect them. Indeed, Uganda was among the countries on the African Continent to enact a right to information law. In 2011, Uganda also enacted attendant **Access to Information Regulations, 2011** in an effort to further operationalize some sections of the main Act.

Other Progressive Programmatic Initiatives

1.4 **The Government of Uganda has also established the Ministry of Information, Communication, Technology and National Guidance (MoICT);** to formulate and implement ICT policies; sustain, manage and oversee ICT infrastructure². This is important in the quest for open governance and meeting the public demands on information on various aspects

1.5 **Development of the government Communication Strategy;** to establish effective and well-coordinated and proactive communication systems across Government such as websites, social media links, open government portals, Citizens Interaction Centre (GCIC), Government Procurement Portal (GPP) and other electronic platforms and community meetings such as Barazas³. All these combined initiatives have been fundamental in providing the public a platform not only to get information from the government but also allow critic of government programmes which is key feedback information in the governance chain.

SECTION II:

BOTTLENECKS TO IMPLEMENTATION OF THE RIGHT OF ACCESS TO INFORMATION

2.1 Despite the enactment of enabling legislation on access to information, the implementation of the right to information is still challenged. Studies have found that the few requests being made for information from citizens, the majority of them are unsuccessful. In its 2019 Study, AFIC found that out of the 4,059 known information requests, less than one out of ten (9%) were partially successful. Most (81%) were awaiting a response, well past the official statutory guaranteed 21-day time limit for State bodies to respond to an information requester.

2.2 The report also found other important aspects of the law were not being adhered to. Most particularly, no government body had met the requirement (in Section 43 of the ATI Act) to submit an annual report to parliament detailing ATI requests received and responses given. The following concerns therefore affect the effective implementation of the right to information in Uganda:

a. Lack of compliance with Reporting to Parliament.

Section 43 of the Act requires each Minister to report to Parliament on the implementation of the Act and where information requests are denied, to explain circumstances for such denial. Information requests to both Parliament and the Office of the Prime Minister by AFIC in 2011 confirmed lack of compliance by all ministers and the situation has not changed since then.

b. Wide exemptions on ATIA.

The ATIA provides for wide scope of exemptions provided beyond those imposed by the Constitution under Article 41. The categories of information that an officer may refuse or grant under Sections 27, 29, 30, 32, and 33 of the ATIA are numerous and in many cases ambiguous. This kind of ambiguity causes the State to over invoke the State security and confidentiality narrative thus denying the citizens information. A case in reference is that of the two Daily Monitor journalists who were denied access to oil production sharing agreements between the government and the oil production companies arguing that the contracts contained confidentiality clauses.⁴ This trend has continued to-date.

c. Bureaucracy in the Government Ministries, Departments and Agencies (MDAs).

It is vital to note that just having ATI is not enough but this information should be accessed in a timely manner so as to help its seekers determine the next course of action before it is too late for the information to become obsolete. Section 3 (d) of the Act provides for citizens to get quick responses to their requests for information (a maximum of 21 days). Due to bureaucracy, this has been made impracticable in some circumstances leading to loss of usability of information especially

for journalistic work as well as the enforcement of human rights and freedoms⁵. Whereas the 21 days response period looks like a short time, it may be so much and government officials have used it to deny the requesters information that could even be granted within a day.

d. Lack of effective compliance with most provisions of the ATI Law.

There are negative attitudes by civil servants towards citizen's requests to access public information. It is common that there will be deliberate refusal to deny free access to public information. Whereas the law does not require information seekers to provide explanations as to why they are seeking information, most officers still insist that requesters have with them a cover letter outlining the reasons for access and many information officers intimidate information seekers. AFIC's most recent study on Access to Information and Elections⁶ revealed that there is limited disclosure of electoral information contrary to the African Union Guidelines on Access to Information and Elections in Africa. We strongly believe that the failure of relevant electoral stakeholders such as the Electoral Commission to comply with proactive disclosure of information has significantly weakened the implementation of the right to information which has in turn affected the realization of other rights such as the right to vote.

e. Tedious complaints and appeals mechanism under section 37, 38, and 39 of ATIA⁷.

An information requestor has to go through the long court procedures in cases where access to information has been denied. The existing provisions on appeal that provide for courts of law to intervene have not been effective due to the citizen's lack of access to courts, cost of lodging appeals in courts and the many information gaps that exist. Government has failed to develop a uniform, accessible, simple and transparent complaints and appeals mechanism under the Act⁸.

f. Conflicting legislations;

The realization of access to information in Uganda is frustrated by the existence of archaic laws in the statute books that inhibit access to information. One of such laws is the Official Secrets Act⁹ that makes it an offense to "obtain, collect, record, publish or communicate in whatever manner to any person" what is deemed to be an official secret as vaguely interpreted by the Government. The Public Servants Standing Orders also constitute a strong contradiction in the legal framework. Most instruments designed for internal government agency operations therefore have confidentiality clauses which motivates their staff to deny citizens access to information.

g. Limited funding for ATIA activities including training of Information officers.

A study by the Carter Center conducted in 2016 on selected government agencies indicates that none of the sampled government ministries had specific budgets for ATI activities nor did they have sufficient mechanisms for monitoring ATIA implementation and operationalization efforts.

Findings from the AFIC survey of 2018 also revealed the need to intensify training for data owners on ATI Act issues: The Ministry of ICT does not have a specific budget to oversee implementation of ATI in government institutions.

h. Limited scope of bodies obliged to disclose information.

In good practice, all information that affects citizens' rights, whether in possession of public or private bodies should be publicly accessible, article 41 of the Constitution and the ATI Act limits access to only that in possession of public bodies. In East Africa, it is only Uganda whose laws on information do not apply to private entities¹⁰ which affects full protection, enjoyment and enforcement of the right to information. Even if the ministers and the other public officials were willing to ensure the citizens have access to all information, they have no control over the private sector meaning the public would remain with no access to information in the hands of the private sector.

i. Refusal of information requests;

Uganda has consistently continued to violate Article 9 of the ACHPR and Article 41 of the Ugandan Constitution regarding the citizens' access to information. Studies of the state of access to information show that 2 in every 3 information requests on rights protected by ACHPR and ICCPR are denied.¹¹

SECTION III: RECOMMENDATIONS

1. Government of Uganda using the Parliamentary oversight mandate should all Ministers to comply with Section 43 of the Act (requiring them to present a report to Parliament on the implementation of the Act in their ministries) and stringent sanctions for non-compliance should be applied. If necessary, sector budget approval should be based on compliance with this important Section of the ATI law.
2. Government should progressively increase funding for Information, Communication and Technology Ministry and its Departments to enhance the implementation of the right to information.
3. Government should increase public awareness on the ATI law by engaging in wide sensitization of the citizenry and public officials on the law to increase proactive demand and disclosure through cheap citizen preferred dissemination platforms such as radios, televisions and community meetings.
4. The Government should review the ATI Act to include access to information held by the private sector. Government of Uganda should consider reviewing the exemptions in all the national policies on disclosure and amend laws that restrict access to information including the Official Secrets Act.

5. Government should establish an independent Information Commission to promote effective implementation of the Act, especially the appeals mechanisms.
6. Government should amend the Access to Information Act to align it with the Model Law on Access to Information, Principles of Freedom of Expression in Africa as well as other regional standards and international best practice.
7. Government should undertake comprehensive and periodical training of all appointed Information Officers in Ministries, Departments and Agencies on establishing and running an effective access to information frame work for the respective ministries

¹ Article 41 of the 1995 Constitution of Uganda.

² Ministry of ICT and National Guidance. Accessible at <https://www.ict.go.ug>

³ National Communication Strategy, September, 2011, available at <http://www.jlos.go.ug/index.php/document-centre/informaton-educaton-and-communicaton-iec/348-government-of-uganda-national-communication-strategy/file>

⁴ Charles Mwanguhya Mpagi and Izama Angelo V Attorney General Miscellaneous Case No. 751 of 2009

⁵ Edrine Wanyama, “*Freedom of Information in East Africa: Lessons from Uganda*”, (LL.M. Dissertation: University of Dar es Salaam, 2015)

⁶ <https://africafoicentre.org/download/the-state-of-access-to-information-and-elections-in-uganda/>

⁷ Section 38 of the ATIA, 2005: The chief Magistrate’s decision may also be appealed to the high court within 21 days in case of dissatisfaction

⁸ 57th Ordinary Session 04-18 November 2015, Banjul, The Gambia; Concluding observations and Recommendations on the 5th Periodic State Report of the Republic of Uganda (2010-2012)

⁹ Official secrets Act, Cap. 311

¹⁰ Position Paper; *Comparative Analysis of Access to Information Legislation in East Africa*; June 2017.

¹¹ Africa Freedom of Information Centre (2012), ‘*The Struggle for Access to Information.*’