



Position Paper:

CIPESA The State of Access to Information in Uganda

This paper is an analysis of the current state of Access to Information in Uganda, presented to the Information and Communication Technology (ICT) Committee of the Parliament of the Republic of Uganda by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) on April 7, 2017.

About CIPESA

CIPESA was established in 2004 under the Catalysing Access to Information and Communications Technologies in Africa (CATIA) initiative, which was mainly funded by the UK's Department for International Development (DfID). Since its inception, CIPESA has been a leading centre for research and the analysis of information aimed to enable policy makers in East and Southern Africa understand ICT policy issues and for various stakeholders to use ICT to improve governance and livelihoods.

Background

Access to information is a fundamental human right recognised by international human rights instruments including article 19 of the Universal Declaration of Human Rights, which provides that, "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". The right of access to information is also recognized by; article 19 of the International Covenant on Civil and Political Rights; articles 13(1) and 17 of the Declaration on the Rights of the Child; article 15 of the United Nations Declaration on the Rights of Indigenous People; and the United Nations General Assembly Resolution, 59 (1). In 2012, the United Nations also recognised access to the internet as an important tool for the promotion of the right of access to information, while 2016 was the first year that UNESCO marked September 28 as the "International Day for Universal Access to Information" (IDUAI).¹

At regional level, the right to access information is enshrined in article 9 of the African Charter on Human and Peoples' Rights (ACHPR)². Article 9 of the ACHPR states that "Every individual shall have the right to receive information and the right to express and disseminate his/her opinions within the law".

In Uganda, the right to access information is enshrined in Article 41 of the Constitution (1995) which provides that, "Every citizen has a right of access to information in the possession of the state or any other organ of the state except where the release of the information is likely to interfere with the security of the state or the right to the privacy of any other person".³

1. UNESCO, *International Day for Universal Access to Information*, <http://en.unesco.org/iduai2016/about-day>

2. ACHPR, http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

3. *Constitution of the Republic of Uganda, 1995*, <http://www.ulii.org/node/23824>

Uganda was among the first African countries to enact a right to information law, the Access to Information Act (ATIA), 2005 and later the Access to Information Regulations, 2011.⁴ The Act was enacted to promote the right to access to information, promote an efficient, effective, transparent and accountable Government and to enable the public to effectively access and participate in decisions that affect them as citizens of the country.

Since the enactment of ATIA and its enabling regulations, the Government of Uganda has taken significant steps to promote the right of access to information through a number of programmes and initiatives such as:

1. The establishment of the Ministry of ICT and National Guidance (MoICT&NG) with a mandate to formulate and implement ICT policies; sustain, manage and oversee ICT infrastructure in the country among others.⁵
2. Development of the Government Communication Strategy to establish an effective, well-coordinated and proactive communication system across Government and with the public that will meet the nation's information needs.⁶
3. Provision of Public Education Airtime on radio stations in every district across the country to sensitize the public on service delivery and development issues.⁷
4. The establishment of the Government Citizens Interaction Centre (GCIC) to enhance the monitoring of service delivery and provide a channel for feedback and suggestions from citizens.⁸

Despite all these initiatives, access to vital information by citizens remains a big challenge. The implementation of the Access to Information Law faces various challenges that include:

Noncompliance by Ministers: Section 43 of the Act requires every minister to submit an annual report to parliament on requests for records or for access to information made to public bodies under his or her ministry annually, indicating granted or rejected requests and reasons for rejection. However, there has never been such report from ministers since 2005 when the Law was passed.

4. See for instance, Right2info, "Access to Information Laws: Overview and Statutory Goals", available at <http://www.right2info.org/access-to-information-laws#section-2> (accessed April 03, 2017). This page was last modified Jan 20, 2012 01:30 PM and lists nine (9) countries in Africa with Access to Information Laws then, Uganda being part. To be more specific Uganda was the fourth (4th) country in Africa after Burkinafaso, South Africa and Angola. Details can be got at Europe, Access Info. "Access to Information: A Fundamental Right, a Universal Standard." AIE Briefing Paper (2006), <http://www.access-info.org/documents/files/access-convention-2006/06%2001%2017%20Access%20Info%20Europe%20Briefing%20Paper%201.pdf>; <http://www.access-info.org>; <http://www.access-info.org/index.php/en/laws-and-constitutions/426-constitutional-provisions-for-ati>; <http://www.unesco.org>; and <http://www.right2info.org/access-to-information-laws>; <http://www.freedominfo.org/>

5. Ministry of ICT and National Guidance, <https://www.ict.go.ug/>

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

7. See for instance, Uganda Radio Network, "Guidelines on the Provision of Free Broadcast Air-Time to Publicize Government Programs", available at <https://ugandaradionetwork.com/story/guidelines-on-the-provision-of-free-broadcast-air-time-to-publicize-government-programs> (accessed April 05, 2017).

8. <http://gcic.gou.go.ug/>

Wide exemptions to accessible information: Under article 41, the Constitution of the Republic of Uganda, 1995 provides for the right of access to information with two exceptions: where the release of the information is likely to prejudice the security or sovereignty of the State, or interfere with the right to privacy of any other person. However, the Access to Information Law, 2005 in Part III (section 23 - 34) lists exemptions which are too wide in scope and contradict the constitution. These exemptions, which include cabinet minutes and those of its committees, limit the enjoyment of the right to information by restricting access to vital records.

Ignorance of the Law and its Relevance: It is an obligation of the State to sensitise its citizens on the right to information. However, Uganda's citizens including information officers and various officials in some government ministries, departments and agencies remain ignorant about the existence of the law on access to information, its importance and its implementation.⁹ This has greatly affected the realisation of the right to information.¹⁰

Bureaucracy: According to section 3 (d) of the Act, every citizen is supposed to access information easily and in a timely manner. The Act provides for a maximum of 21 days within which a citizen's information request is responded to. However, the delayed release of information due to fear and/or bureaucracy coupled with ignorance have made the right to information impracticable in some circumstances. For instance, delays may lead to loss of usability of information especially for journalistic work as well as the enforcement of human rights and freedoms.¹¹

Tedious complaints mechanism: The law provides for appeals under sections 16 (2) (c) and 16 (3) (c), and section 38 where an appeal may be filed through courts of law or through an internal appeal to a public body. A right to remedy is fundamental in realising justice. However, appeals have usually gone to the Chief Magistrate's Court as there are no clear guidelines on internal appeals.¹² This has made access to information complex thereby denying the citizens their right to information.¹³ The appeal process is demanding and requires further time commitments in addition to the 21 days that the applicant may have to wait before the information requested is responded to.

Limited scope of bodies obligated to give information: In good practice, all information that affects citizens and exercise of their rights, whether in possession of public or private bodies should be publicly accessible. However, article 41 of the Constitution and sections 2 and 5 of the Access to Information Act limit access to information to that in possession of public bodies, thereby excluding private companies and civil society. This has a chilling effect on the full protection, enjoyment and enforcement of the right to information.

9. EdrineWanyama, "Freedom of Information in East Africa: Lessons from Uganda", (LLM. Dissertation: University of Dar es Salaam, 2015).

10. Citizens Perceptions on Using ICT to Make Rights to Information Requests in Uganda, http://cipesa.org/?wpfb_dl=124 and Ugandan Public Officials Perceptions of Using ICT to Advance the Rights to Information, http://cipesa.org/?wpfb_dl=155

11. EdrineWanyama, "Freedom of Information in East Africa: Lessons from Uganda", (LLM. Dissertation: University of Dar es Salaam, 2015).

12. See for instance, the Hub for Investigative Media vs. National Forestry Authority Misc Cause No. 73 of 2014 available at, <http://ugandajournalistsresourcecentre.com/access-information-ruling-hub-investigative-media-vs-national-forestry-authority/>; Charles MwanguhyaMpagi and Angelo Izama Vs. Attorney General (Miscellaneous Cause No. 751 of 2009), available at <http://www.right2info.org/cases/r2i-charles-mwanguhya-mpagi-and-izama-angelo-v-attorney-general> and http://www.right2info.org/MagistratesCourtruling3Feb2010.pdf/at_download/file; IsaacKimezeVs Mandela National Stadium Ltd NAK-00-CV-MC-0720-2011, available at <http://hurinet.blogspot.ug/2012/09/a-case-of-access-to-information.html>; and Edward Ronald SekyewaVsMakerere University Civil Suit No. 949 of 2014, available at http://www.him-ug.org/images/pdf/MUK_Ruling.pdf

13. As above.

Recommendations

1. Parliament should use its oversight role and compel all public bodies to comply with section 43 of the Act which compels every minister to submit an annual report to parliament on requests for records or access to information made to a public body under his or her ministry. This serves to ensure that each Ministry and the different organs or departments under it submit annual reports on the status of access to information.
2. Government ministries, departments and agencies should immediately develop manuals containing descriptions, addresses, nature of work and services, how to access information and persons to consult as stipulated in section 7 (1), (2) and (3) of the Access to Information Act.
3. The government and the citizenry should continue to embrace the use of ICT such as the Ask Your Government Portal¹⁴ and other online platforms to advance the right to information. Increased usage will promote confidence to make information requests as well as promote timely and proactive disclosure of information.
4. The government should fast-track and operationalise the Digital Repository Centre for proper storage and accessibility of government records. This will serve to ensure the digitisation of information and more efficient information record keeping, management and release.
5. The government should engage in wide sensitization of the citizenry and officials on the right to information. This will lead to increased proactive demand for information from ministries, departments and agencies by citizens and release by officials
6. The Access to Information Act should be amended. Among others, the following should be considered:
 - (a) Expand the scope of institutions obligated to give information to the citizenry to include private entities that conduct public functions, or which deal with government;
 - (b) Reduce the exemptions to accessible information, and in this line, only information that falls within the internationally acceptable limitations and the Constitution should be exempted;
 - (c) Reduce the days within which information requests should be responded to, to no more than seven (7) working days;
 - (d) Streamline the appeal processes to ensure that people have timely access to information in cases where appeals are preferred with high possibility of success. Let the first option of appeal be internal.
 - (e) Expand the scope of people entitled to access information to include non-citizens. Expanding the scope will ensure that the right to information in Uganda operates internationally.
 - (f) Define the specific types of 'national security' information to which access is limited. This would diminish the blanket excuse of national security being used by government agencies as a reason not to disclose information.

14. The AskYourGov Uganda (www.askyourgov.ug) online portal was established in 2014 as an initiative of the Government of Uganda in collaboration with Africa Freedom of Information Centre (AFIC) and the Collaboration on International ICT Policy for East and Southern Africa (CIPESA).