

# KNOW YOUR RIGHTS ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

*A simplified guide to Freedom of Expression and the right to Access to Information in Uganda*



A publication of the Legal Aid Service Providers Network (LASPNET) with support from the International Centre for Not-for-Profit Law (ICNL)





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## **ACKNOWLEDGMENTS**

The Legal Aid Service Providers Network (LASPNET), is a national member based non-governmental organization established in 2004 to provide strategic linkages and a collaborative framework for the various non-state Legal Aid Service Providers (LASPs) in Uganda, as well as maintain a common front to interface with the Justice Law and Order Sector on issues of access to justice and rule of law. The network targets three critical aspects of coordination: bringing together different LASPs for solidarity in strategizing, sharing lessons and experiences and amplifying key issues regarding access to justice and legal aid at national and regional level. LASPNET currently has 55 members spread across 80 districts in the country in addition to 7 honorary members of good standing who include Judges, founding members and strategic partners

The right to freedom of expression and access to information is increasingly under pressure in Uganda. To be precise we continue to see threats against journalists such as arbitrary arrests, intimidation, harassment and kidnaps, among others. This simplified handbook therefore has been developed to support the protection of rights to freedom of expression and access to information for journalists.

The central role of journalists is to provide citizens with information needed to make the best possible decisions about their lives, communities, and their government.

LASPNET strives to promote the protection of human rights and advance access to justice for all through its members. The simplified pocket handbook will therefore be a useful reference guide to Freedom of Expression and the right to Access to Information in Uganda contributing to the protection of these fundamental rights and freedoms.

Finally, we acknowledge the financial and technical support of our development partners ICNL, strategic partners Chapter Four and Freedom of Expression Hub, LASPNET secretariat staff led by the Executive Director Dr. Sylvia N. Mukasa that directly and indirectly

participated in developing the pocket book. The contents of this simplified handbook are the sole responsibility of the authors and don't reflect the views or opinions of the organisation.

**Sylvia N Mukasa**

Executive Director



## **FOREWORD**

It is my pleasure to introduce to you this pocket handbook developed by LASPNET to equip Ugandan citizens particularly Journalists with knowledge on Freedom of Expression and Access to Information.

It is a simplified information kit with frequently asked questions and legal provisions covering national, regional and international laws on Freedom of Expression and Access to Information.

Journalists are increasingly faced with rights violations particularly on freedom of expression and restrictions on access to information. Many of them are intimidated by the technicalities and jargon used by justice system actors and have thus fallen prey to abuse yet they have limited knowledge on how to guard against such abuse.

As public watchdogs, they are exposed to harassment, assault, unlawful arrests and detention by state and non-state actors especially because they are unaware of the extent and depth of the laws they should invoke for their own protection.

This handbook has therefore been developed to provide them with simplified basic information on Freedom of Expression and Access to Information. It will help users understand the enjoyment of the rights and laws on Freedom of Expression and Access to Information and the limits within which such freedoms can be exercised.

We appreciate ICNL for the financial support that made the development and publication of this handbook possible. We hope the handbook will be good a reference for information on Freedom of Expression and Access to Information for all Ugandan citizens.

**SANDRA ORYEMA**

**Chairperson Board of Directors, LASPNET**

## LIST OF ABBREVIATIONS.

UDHR	Universal Declaration for Human Rights.
ICCPR	International Convention for Civil and Political Rights.
ACHPR	African Charter for Human and Peoples' Rights
CSOs	Civil Society Organizations
UHRC	Uganda Human Rights Commission
ICNL	International Center for Not For-Profit-Law
LASPNET	Legal Aid Service Providers' Network

## Interpretation Of Key Terminologies

- **Absolute Rights (non-derogable rights):** These are rights that cannot be limited, suspended or restricted for any reason, even during a declared state of emergency. In Uganda, there are only four absolute rights as provided under Article 44 of the Constitution. These are freedom from torture and cruel, inhuman or degrading treatment or punishment; freedom from slavery or servitude; the right to fair hearing; and the right to an order of habeas corpus.
- **Defamation or defamatory matter:** As provided under section 180 (1) of the Penal Code Act, a defamatory matter is anything that is likely to injure the reputation of any person, dead or alive, by exposing that person to hatred, contempt or ridicule or likely to damage any person in his or her profession by an injury to his or her reputation.

Defamation generally takes two forms – libel and slander. Libel is an untrue defamatory statement that is made in writing. Slander, on the other hand, is an untrue defamatory statement that is spoken orally.

- **Democracy:** Refers to government by the people, a form of



government in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system.

- **Freedom of Expression:** It is a right that supports the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction. The term includes any act of seeking, receiving, and imparting information or ideas, regardless of the medium used.
- **Human rights:** These are “the basic rights and freedoms to which all humans are entitled”. They are inherent and not granted by the State.
- **Limitation:** This means restrictions on rights and freedoms that are not absolute. The restrictions can only be fair when exercised within the justifiable limitations as provided by the law.





- **Sectarianism:** This is a form of bigotry, discrimination, or hatred arising from attaching relations of inferiority and superiority to differences between subdivisions within a group. Common examples are denominations of a religion, ethnic identity, class, or region for citizens of a state and factions of a political movement.
- **Sedition:** This refers to incitement of resistance to or insurrection against lawful authority. Sedition often includes subversion of a Constitution and incitement of discontent towards, or resistance against established authority. Sedition may include any commotion, though not aimed at direct and open violence against the laws
- **Information officer:** This refers to the Chief Executive of the public body. He or she shall be responsible for ensuring that records of the public body are access as provided under the law.

## **INTRODUCTION**

This booklet simplifies key issues around the right to freedom of expression and access to information in Uganda. It describes and gives a simplification of the two rights as provided in the international, regional and national human rights law . It also briefly highlights the claw backs of the rights, specifically focusing on laws that have a potential to limit the enjoyment of these rights. The purpose is to enable the a journalist or any reader to understand the rights, the process of enforcing your freedom to the two rights, and justifiable limitations.

Additionally, this simplified booklet can help the reader understand the dos and don'ts of freedoms of Expression and Access to information in Uganda and will help them in advocating for the enforcement of these rights.

The user should understand the extent of enjoyment of Freedom of Expression and Access to Information and the limits within which such freedom can be exercised. The booklet highlights the laws limiting the enjoyment of these two freedoms by either setting

some requirements to be met in enjoyment of the right or stating crimes that can be committed in the process of enjoying these rights.

The readers should note that some of the limitations go beyond what is legally expected in a free democratic society; however, the fact that these laws are still in force in Uganda, creates the importance of highlighting them for the reader to understand and avoid falling prey to these legal provisions.

## **1.0 FREEDOM OF EXPRESSION**

### **1.1. Introduction**

This section provides a general understanding of the right to freedom of expression, explains why it is important, provides the basis for the right and what the law provides, and briefly explains why people are being targeted for expressing themselves. It further provides on tips of what you need to do when you believe that your freedom of expression is being threatened or violated.

### **1.2. What is Freedom of Expression?**

Freedom of Expression (FoE) refers to the right to hold and freely share information and ideas. It is a fundamental human right and a cornerstone of all other rights and freedoms. Governments are required to take all necessary steps to facilitate the free flow of information. It is an obligation that extends beyond the scope of domestic law, as enjoyment of free expression is also protected at regional and global levels.

Article 19 of the Universal Declaration of Human Rights (1948) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) are two of the major international human rights instruments that protect the right to Freedom of Expression.

Article 19 of the UDHR (1948) 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.

Article 19 of the ICCPR further provides that;

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Expressions at public assemblies.

This includes the right to express yourself through the following ways or mediums:

- Works of art (music, poems, cartoons, paintings etc.).
- Identity (dress code, hair style, etc.).
- Published articles, books, or any material.
- Broadcasting (radios, television, live feeds on social media etc.)
- The Internet and social media.

It does not matter what medium one uses to express themselves.

The freedom can be divided into the following principles:

- **Freedom of opinion:** This includes the freedom to hold one's opinions without restriction.
- **Free speech:** This includes expression to articulate opinions or ideas through speech.
- **Free expression:** This includes expression through identity. It can be through dress code etc.
- **Press freedom:** This includes media freedoms and the activities of media workers in relation to the freedom of expression. Such as seeking information legally, and imparting the information on media platforms.

## **Six Main Features of Freedom of Expression**

1. It applies to everyone without any distinction based on race, color, sex, language, religion, political persuasion.
2. It applies regardless of frontiers, and its geographical scope is unlimited.
3. It has a broad substantive scope: it covers information and ideas of all kinds.
4. It covers the rights of both listeners and speakers, both the right to receive and to impart information and ideas.
5. It imposes a positive obligation on the state to protect the right by adopting appropriate laws, and offering appropriate remedies for violations.
6. It protects the right to impart ideas using any form of media.

The freedom of expression can be divided into three specific rights as follows;

- The right to seek information.
- The right to receive the information.
- The right to impart and to use the information.

The three rights go hand-in-hand and must be respected. Any unjustifiable restriction of one of the three rights above threatens the freedom of expression.

Access to Information as a major component of freedom of Expression.

Freedom of expression goes hand in hand with the right to access information, including information held by public bodies. Freedom of information legislation should adhere to the following guiding principles so as to avoid unjust restriction:

Principle 1: Freedom of information legislation should be guided by the principle of maximum disclosure.

Principle 2: Public bodies should be under an obligation to publish key information.

Principle 3: Public bodies must actively promote open government.

Principle 4: The grounds for exception to disclose information should be clearly and narrowly defined and subject to strict “harm” and “public interest” tests.

Principle 5: Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.

Principle 6: Individuals should not be deterred from making requests for information by excessive costs.

Principle 7: Meetings of public bodies should be open to the public.

Principle 8: Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.

Principle 9: Individuals who release information on wrongdoing (whistleblowers) must be protected.

Therefore, every individual is entitled to freedom of expression and the government must refrain from interfering with this right except under very specific circumstances. Uganda is a signatory to a number of international Covenants, Treaties and Conventions, including the ICCPR which it ratified in 1995.

### **1.3. Why is freedom of expression important?**

The right to freedom of expression (Freedom of Expression) is the oxygen of any democratic society. It allows people to hold opinions and ideas and express themselves freely. It is also crucial for public participation in governance to influence decisions, assess the performance of their government, and hold duty bearers to account.

Press freedom helps to inform the public about what is going on to facilitate the right to know. It is also important in facilitating public

participation and shading light on human rights violations..

1. There is a broad consensus that freedom of expression is key to building sustainable democratic societies;
2. Several national courts in Africa have also recognized the role that FOE plays to support **democracy, including:**
  - High Court of Johannesburg: *Holomisa v. Argus Newspapers Ltd* (1996): Cameron J held that a defamatory statement “which relates to free and fair political activity” is constitutionally protected, even false, unless the plaintiff shows that, in all the circumstances of its publication, it was reasonably made with actual malice.
  - Supreme Court of Zimbabwe: *Mark Giva Chavunduka and another v. The Minister of Home Affairs and another* (1999): in this decision , the Supreme Court of Zimbabwe held that criminal law on “false news” was unconstitutional based on the fact that it was too vague to constitute “law” as understood





under the country's constitution.

According to a recent ruling by the East African Court of Justice, "The principles of democracy must of necessity include adherence to press freedom ... [A] free press goes hand in hand with the principles of accountability and transparency." East African Court of Justice, in *Burundi Journalists' Union v. The Attorney General of the Republic of Burundi* (2015).

## 1.4 What is the legal basis for this right?

The right to freedom of expression is recognized and protected at the international, regional and national levels. At the International level, the Universal Declaration of Human Rights

(UDHR) and the International Covenant on Civil and Political Rights (ICCPR) provide under Article 19 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.

At the Regional level, the freedom is protected under the African Charter on Human and Peoples' Rights (ACHPR) which states under Article 9 that every individual has the right to receive information and the right to express and disseminate his opinion within the law.

To promote the enjoyment of the freedom, the international and regional bodies put in place special mechanisms that serve to monitor implementation of the freedom of expression and report on the general situation of observation of the right.

For example, the ACHPR established the Special Rapporteur on Freedom of Expression with the mandate to

- Analyze national media legislation.
- Policies and practice within Member States,
- Monitor their compliance with freedom of expression standards and advise accordingly.



- Undertake investigative missions and
- Make appropriate recommendations to the African Commission.
- Undertake country missions and any other promotional activity that would strengthen the full enjoyment of the right to freedom of expression in Africa.
- Make public interventions where violations of the right of freedom of expression have been brought to his/her attention.
- The Rapporteur also submits reports at each ordinary session of the African Commission on the status of the enjoyment of the right to freedom of expression in Africa.

At the **National level**, the 1995 Constitution of the Republic of Uganda which is the supreme law of the land – guarantees

freedom of expression. Article 29 (1)(a) and (b) provides that every person has a right to:

- The freedom of speech and expression which SHALL include the freedom of the press and other media.
- The freedom of thought, conscience and belief, which SHALL include academic freedom in institutions of learning.

However, various tactics are used to undermine people's right to FoE. These include censorship, restrictive press legislation, harassment of journalists, bloggers, political activists and others who voice their opinions, as well as crackdowns on religious minorities and other forms of suppression of religious freedom. Although international and national standards favor a wide enjoyment of FoE, Article 19(3) of the ICCPR permits certain restrictions. However, states that intend to impose any restriction to freedom of expression must ensure that the proposed restriction complies with the principles of legality, proportionality and legitimacy.

### **The Three-Part test used to assess the legality of restrictions to FoE**

**LEGALITY:** this prong requires that the restrictions on FoE be provided by laws or regulations that are clear and precise.

**LEGITIMACY:** this prong requires that laws or regulations interfering with FoE be narrowly tailored to achieve a limited number of legitimate aims, namely for the respect of the rights or reputations of others, or for the protection of national security or public order, or of public health or morals.

**PROPORTIONALITY:** this prong requires that limitations on FoE should apply only when it is necessary, and should meet the criterion of fairness or justice. No restriction should outweigh the interests of the people.

## **1.5. What laws regulate Freedom of expression?**

The 1995 Ugandan Constitution which contains a strong bill of rights in Chapter Four, and under Article 29 provides for the protection of fundamental freedoms, including freedom of expression, protection of freedom of conscience, expression, movement, religion, assembly and association. It provides that “Every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media”;

And over the past years, the Ugandan Parliament has enacted various laws which may have a negative impact on the enjoyment of Freedom of Expression. Below are some examples of legal challenges that these pieces of legislation pose to the enjoyment of the right to Freedom of Expression;

- The Uganda Communications Act (2013): the act establishes the Uganda Communications Commissions (UCC) to which it grants significant regulatory powers over the telecommunication industry and communications sector including broadcasting. Under the Act, UCC is responsible for setting standards, monitoring and enforcing compliance in relation to radio and television content broadcast in the country. BUT issues with the act include the excessive discretionary powers granted to the regulatory body, its lack of independence from government,

etc.

- The Computer Misuse Act, 2011. The act was drafted with the intention of regulating online communications. Its section 24 criminalizes “cyber harassment”, whereas its section 25 criminalizes “offensive communication” or “the willful and repeated use of electronic communication to disturb the peace, quiet or privacy of any person with no purpose of legitimate communication.” Since the enactment of this law, these two sections have regularly been used to stifle dissent in Uganda. Their constitutionality has often been called into question based on vagueness and overbreadth concerns, which lead to the danger of selective enforcement.
- The Press and Journalists Act, 2000. The preamble of this Act



partly establishes a presumption that this is an act intended “to ensure freedom of the press.” However, some of its content and provisions unjustifiably restrict freedom of expression and freedom of the press and pose a serious threat to the right to seek, receive and impart information.

- The Anti-Pornography Act, 2014. This Act, defines pornography in broad terms and sets up a nine-member Pornography Control Committee with wide latitude to determine what amounts to pornographic material.
- The Penal Code Act (cap 120). The Penal Code Act, Cap 120 This is the basic criminal law for Uganda introduced by the colonialists in 1950. It provides for a wider array of criminal offences. This colonial law has several provisions which undermine the enjoyment of freedom of expression. Sections 53 and 179 criminalize defamation while section 41 under the guise of preventing incitement to tribal segregation, criminalizes speech and effectively bars the media and the public from questioning the imbalance in distribution of national resources.
- The Public Order Management Act, 2013: Signed into law in October 2013, the Act seeks to regulate public meetings. However, it significantly restricts freedoms of expression and peaceful assembly particularly by setting stringent conditions for citizens wishing to hold public meetings, demonstrations or any other form of gathering in public places. Mostly affected are citizens wishing to convene and discuss matters of a political nature as well as issues related to governance and rights violations. The enforcers of the law have misinterpreted “notification” to mean “permission” and have used this to ban a number of political gatherings in an apparent effort to control the flow of political views and initiatives.
- The Anti-Terrorism Act of 2002. Under its section 9, this law provides that any person, who establishes, runs or supports any institution for publishing and disseminating news or materials that promote terrorism commits an offence and shall be liable on conviction to suffer death. The critical issues with

this provision are that the draftsmen invoked political rather than legal imperatives. Terrorism in itself is not defined leaving its parameters so elastic that the provisions can be exploited to prefer any sort of charges against individuals or groups of individuals.

Whereas some of these laws protect free expression, others are repressive and serve to narrow the freedom in contravention of the Constitution and other international human rights law referred to earlier.

Criminal sanctions are imposed under these laws for offences that include:

- The offence of criminal defamation under the Penal Code Act.
- Cyber stalking under the computer misuse Act.
- Offensive communication under the Uganda Communications Act.
- Prohibition of publication of information prejudicial to security. Under the Official Secrecy Act.
- Promotion of sectarianism under the Penal code Act.
- Defamation of foreign princes under the official secrecy Act.

While providing limitations to the right, some sections of the law referred to above exceed the boundary of what is justifiable limitation as expected under the Article 29 and 43 of the 1995 constitution and Article 19(3) of the ICCPR. As a result, some of the sections have been successfully challenged in court and declared unconstitutional: for example S.39 and 40 of the Penal code Act were declared unconstitutional.

*Andrew Mujuni Mwenda & Anor V Attorney General (Constitutional Petition No.12 of 2005) [2010] UGCC 5 (25 August 2010); Uganda Penal Code Section 39(1)(a) and 40(1)(a) were found void and inconsistent with Art 29(1)(a) (freedom of expression) and Art 43(2)(c) (justifiable in a free and democratic society) of the Uganda Constitution*

Currently, several other sections under the Penal Code Act, Cap 120 are being challenged in court as above

This act has sections that undermine freedom of expression. It provides for a range of offences in relation to respective pieces of legislation. For instance, Sections 53 and 179 criminalize defamation.

*Charles Onyango-Obbo and Another V the Attorney General (Constitutional Appeal No. 2 of 2002), the Ugandan Constitutional Court declared section 50 of the Penal Code Act void, which criminalized publication of a false statement, rumors or report, which is likely to cause fear and alarm to the public or to disturb the public peace as being inconsistent with article 29 (1) (a) of the Constitution.*

Section 41 criminalizes sectarian speech and forbids talk along tribal, religious, ethnic or other lines of differences among people.

Sections 49, 51 and 52 criminalize what authorities might interpret as inducing a boycott, incitement to violence and incitement to refuse or delay payment of tax. As such, this law restricts free debate on matters of public interest and undermines public affairs journalism.

The Electronic Media Act 2011. This is an Act for the setting up of a broadcasting council to license and regulate radio and television stations, to provide for the licensing of television sets, to amend and consolidate the law relating to electronic media and to provide for other related matters.

**NOTE: It is important to note that any laws passed by Parliament must not contravene the Constitution and other international obligations adopted by the government.**

## **1.6. Why is freedom of expression often violated?**

The right to the freedom of expression is violated because of a number of reasons. At the end, they are all based on the interest to silence free opinion and expression or as a result of limited knowledge. The continued violation can further be explained by the lack of effective efforts to bring the perpetrators to justice.



As a result, they are emboldened and enjoy impunity for the violations and know that they can get away with their actions. Accountability would go a long way to stop the assault on freedom of expression. The freedom is also sometimes violated because of limited awareness by both journalists and enforcers of the law about the right, ensuing obligations and what amounts to justifiable limitations.

## **2.0. THE RIGHT OF ACCESS TO INFORMATION**

### **2.1. Introduction**

This section addresses the right of access to information. It provides an explanation on what information means, the basis and importance of the right, the legal framework for exercise of the right, and the procedure for filing an information request. It is hoped that the section will empower journalists and other readers to be able to exercise their right of access to information as provided under the law.

### **2.2 What is information?**

Information can be generally described as facts; a collection of factual details about a specific subject. It can be written, visual, aural or electronic. Request for access means a request for access to a record of a public body.

A public body includes a government, ministry, department, statutory corporation, authority such as the Kampala City Council Authority (KCCA), and a commission such as the Uganda Human Rights Commission (UHRC).

It is important to note that under the Access to Information Act, information refers to information and records of government ministries and all other public bodies. It does not mean information received from television, radios, social media and other media platforms. So, availability of media outlets does not mean there is free access to information as it is often misunderstood.



## What is Right of Access to Information?

**Article 44** of the Constitution, states that every citizen has a right of Access to Information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

**Section 5 of the Access to Information Act** provides that; Every citizen has a right of access to information and records in the possession of the State or any public body, except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

### 2.3. Why is this right of access to information important?

Access to Information is one of the means to achieving democracy because it establishes greater transparency and can help reestablish trust between government and its citizens.

This right enables citizens to fully participate in public life, makes governments more efficient, encourages investment, and enables people to generally exercise their fundamental human rights and enforce other rights.

Since the enactment of Access to Information Act 2005 and its enabling Regulations, the Government of Uganda has taken steps to promote the right of Access to Information through a number of programs and initiatives.

- The establishment of the Ministry of ICT and National Guidance to formulate and implement ICT policies, manage and oversee ICT which includes Access to Information,
- 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.

- Provision of Public Education Airtime on radio stations in every district across the country to sensitize the public on service delivery and development issues.
- The establishment of the Government Citizens Interaction Centre to enhance the monitoring of service delivery and provide a channel for feedback and suggestions from citizens. However, enjoyment of the right of access to information remains a challenge because of a number of reasons.

#### **2.4 What is the legal basis of this right?**

The right of access to information is protected at international, regional, and national human rights law. In addition to the provisions of the UDHR, ICCPR, ACHPR on the right to seek and receive information. Uganda's legal framework provides for a strong legal framework for the right of access to information.

The Constitution provides under Article 41 that every citizen has a right of Access to Information in the possession of the State or any other organ or agency of the State except where

the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

Section 5 of the Access to Information Act further provides that; Every citizen has a right of access to information and records in the possession of the State or any public body, except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

The Access to Information Act 2005 further provides for categories of information that can be accessed, request procedure, and a



complaints and appeals process in the event of an unfair restriction on the right of access.

The law further makes it a criminal offence to destroy, damage, alter or falsify a record with the intent to deny a right of access of information.

*Uganda Court Reporters Association V AG of Uganda (2014) where, Magistrate Court of Uganda ordered in-camera proceedings, The High Court overturned decision by the Magistrate Court, ruling that in-camera proceedings equated to a limitation imposed on the media that was not objectively verified, neither justified nor necessary and public retrial with journalists present in Court was ordered.*

## 2.5. How then does one exercise the right of access to information?

In Uganda, the exercise of the right of access to information is regulated by the Access to Information Act 2005. The law prescribes the classes of information and the procedure for obtaining access to that information.

Section 6 of the law provides that a person's right of access to information cannot be affected by the reason a person gives for requesting access or the reason the information officer believes the reason for the request is. Therefore, you cannot be denied access to information simply because the information officer thinks or believes that you do not have a valid request to access it.

Under section 11 of the Access to Information Act, the law lays out the form of request for information. The request has to be in writing in the prescribed form to the information officer of the public body in control of the record or information required. The request shall provide the following details:

- Sufficient details to enable an experienced employee of the body to identify the record or information being requested.
- The identity of the person requesting the information.
- Specify the address of the person requesting the information.
- If the request is made on behalf of another person, to state the capacity in which the person requesting the information is making the request e.g. if by a lawyer, to state so.

*However, if a person is unable to make a request in writing in the manner described above because of illiteracy or disability, he or she may make that information request orally. The information officer of the public body to whom the oral request is made is required by law to reduce the verbal request to writing in the prescribed form and shall give the person requesting access a copy of the written request.*

The public body is required under section 16 of the Access to Information Act to reach a decision on the information request within 21 days from the date when the request was received. If the

request is for large number of records, for records held in a distant location, or if the person requesting for the information consents in writing to the extension, the information officer may extend the time limit for a further period of not more than more 21 days. After the lapse of the extended period, the request shall be regarded as having been rejected if no response is given.

**If access is granted,**

- The notice to the person who requested shall state the amount of the government fees to be paid if any,
- The form in which the access will be given,
- Advise that he or she may appeal to the public body or court against the fees or the form of access granted and the procedure.

**If access is refused,**

- The notice shall state adequate reasons for the refusal.
- The law applicable

Advise that the person who requested for the information may appeal to the public body internally or to court against the decision.

**2.6. According to the law, where can you make an information request?**

A person can make an information request to any public bodies which include the following:

- The central government e.g. ministries and departments.
- Any office at the local government, including the Chief Administrative Officer, Town Clerk, Sub County Chief, etc.
- Statutory corporations and bodies such as Uganda Broadcasting Corporation etc.
- Commissions such as the Uganda Human Rights Commission, Public or District Service Commission etc.

- Government agencies and authorities such as the Uganda National Roads Authority (UNRA), Uganda Revenue authority (URA) etc.

Under section 13, if the information requested is not in the possession or control of that public body requested, the Information Officer is required by law to transfer the request within no more than 21 days to the body that he or she believes has the information requested. The officer is further required to notify the person who made the request of the transfer of the request.

A person can apply to the following information officers to get information these are;

- The Chief Executive of each public body such as,
- Chief Administrative Officer,
- Sub County chief,
- Information officer or
- The permanent secretary

**TO NOTE:** A person who cannot read and write can apply orally to the information officer however, the information officer is supposed to reduce in writing the application made orally.

The information officer is also responsible for ensuring that records of the public body are accessible and he is expected to process the information and avail it to you. If the information requested is in another department, the information officer shall transmit the request to that department.

The information shall be given within a maximum of 21 days.

## **2.7. Which type of information is Restricted? Are there any exceptions?**

The law provides for circumstances under which you cannot request for or access information. These include:

- If the information is likely to prejudice the defence, security and international relations. Section 32 of the Act describes what amounts to this restriction. However, any information that came into existence more than 20 years before the request may be requested and accessed.
- Cabinet records and those of its committees.
- Records of court proceedings before the conclusion of the case. This information is usually restricted to parties in the case and can be accessed as provided under the rules governing proceedings in courts of law.
- Protection of commercial information of third party, unless publicly available. This includes propriety information, scientific or technical information etc that would prejudice that third party.
- If the information was supplied to the public body in confidence by a third party, unless such information is already publicly available or the third party has consented in writing.
- If the disclosure of the information could reasonably be expected to endanger the life or physical safety of a person and property.
- If the information contains opinions or disclosure of the record can reasonably be expected to frustrate communication or consultation process in respect to the matter.
- Health or other records that would constitute an invasion of personal privacy. It does not matter if the owner of the information requested is alive or dead.



*However, there are circumstances under which private information can be released by a public body. This includes situations where the person consents to disclosure of the information to the person requesting the record, if the information belongs to a class of information that would be made available to the public, or is already publicly available, or requested by a next-of-kin for a deceased person, or if the information relates to an official of a public body and which relates to the position or functions of that person.*

However, the information officer is required by law to grant a request for access to a record or information of a public body despite these prohibitions, if the disclosure of the record would reveal evidence of:

- A substantial contravention of, or failure to comply with the law; or
- An imminent or serious public safety, public health or environmental risk; and
- The public interest in the disclosure of the record is greater than the harm contemplated in the provision in question.

## **2.8. What happens if the information you requested is not found or does not exist?**

Section 14 of the Access to Information Act provides that where the Information Officer of the public body is not in possession or under control of the public body, he or she is required to notify the person requesting that it is not possible to give the access to the record.

However, the officer must state all the reasonable steps taken and justify why the record requested cannot be found or does not exist.

This notice amounts to a decision of refusal of a request for Access to the information.

If the information or record in question is found after the notice is given, the person requesting access shall be given access to the record.

## **2.9. What institutions are obliged to give information?**

All government departments, ministries and parastatals are obliged to give information. These include government commissions and institutions such as,

- Amnesty Commission,
- Uganda Human Rights Commission,
- Electoral Commission,
- Local governments (LC I, II, III, IV, and V).

## **2.10. Why do we file an information request?**

- The community is helped to solve certain situations
- Hold leaders accountable for their actions.

## **2.11. Are there available options when one is denied information?**

A person who is denied information by an information officer, can apply to the chief magistrate court and if the person is not satisfied by the decision of the chief Magistrates court, he/she can appeal to the high court to grant the information.

In case of private information, disclosure could be done in service of wider public interest- normally determined by court.

## **2.12. What should I do if I believe that my request for access to information has been unfairly denied?**

As discussed above, it should be noted that there are certain types of records of information that can be rejected.

- It should also be noted that there is a procedure for enforcing the right of access to information that should be followed.
- If these two aspects are not followed or observed, an information request can be legitimately rejected by a public body, within the law.

However, in circumstances where the refusal to grant access to

information are not legitimate as provided under the law, one has a right to file a complaint or appeal.

*Part V of the Access to Information Act provides that a person may lodge a complaint with the Chief Magistrate against the decision of an information officer to refuse a request for access. If you are again dissatisfied with the decision of the magistrate, you can file an appeal in the High Court against the decision of the Chief Magistrate.*

A court can make any of the following orders after hearing the application:

- Confirming, amending or setting aside the decision being challenged in court.
- Order an information officer or relevant authority to grant or deny access to a record of a public body.
- Grant any other orders, including costs to either of the parties in court.

### **2.13. Is it a criminal offence to intentionally conceal, alter or damage a record to deny a person the right of access to information?**

Yes. Under section 46 of the Access to Information Act, a person who with intent to deny a right of access as required under the law commits a criminal offence if they do any of the following:

- Destroy, damage or alter a record.
- Conceal a record.
- Falsifies a record or makes a false record.

If you have reason to believe that an information officer or any other authority has committed this offence, report the matter to the nearest police station. Police will register the case and give you a case number. If the officer who is accused is convicted by court in a criminal proceeding, they can be sentenced to pay up to UGX: 4,800,000 (240 currency points) or imprisonment not exceeding 3

years, or both.

## 2.14 The right of Access to Information in summary;

- Everyone has the right of access to all public information.
- The right is recognized in Article 41 of the Constitution of the Republic of Uganda.
- Access to any written information may be requested from the entities governed by the Law during the exercise of their activities may be requested.
- According to section 24 of the Access to information Act...no matter which information you are requesting, you do not need to state the reasons why you are requesting the information nor your interest in obtaining it.
- There are a few exceptions to the right to access information. These are explicitly mentioned in the 1995 constitution where Article 41 of the Constitution (1995) 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”.
- **Section 2 of the Official Secrecy Act** further provides that any person who, obtains, collects, records, or publishes or communicates in whatever manner to any other person any secret official code word, or password or any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power commits an offence under this Act.

### 3.0. UNDERSTANDING THE PRINCIPLE OF LIMITATIONS

The right to freedom of expression is not an absolute right. This means there are a number of situations where the right can be justifiably limited. It also means that you have a duty to behave responsibly and to respect other people's rights.

Article 19(3) of the ICCPR provides that the freedom may be subject to certain restrictions as provided in law and are necessary for the respect of the rights and reputations of others and for the protection of national security or of public order or of public health or morals.

The Constitution<sup>1</sup> of Uganda provides for general limitations on this right. However, the process of limiting it cannot be done without proper justification.

The fundamental principle that guides limitations is any control in the manner of exercising a right should not signify its denial or invalidation.<sup>2</sup>

**There is a three-part test to determine whether the right to Freedom of Expression is justifiably limited. These steps include;**

- Any restriction on a right must be prescribed by law.
- The restriction must serve one of the prescribed purposes listed in Chapter Four of the Constitution of Uganda.
- The restriction must be necessary to achieve the prescribed purpose.

On the first the step, the law must satisfy the principle of legality. This means that the actual limitation must be specified to enable a person of ordinary intelligence to know in advance that the action is restricted and that there will be consequences. An ambiguous limitation cannot be justifiable.

1 Article 43 of the 1995 constitution

2 Zimbabwe Constitutional Court. Chimakure v Attorney General of Zimbabwe, Constitutional Application No. CS 247/09 (2014)

On the second step, the limitation must serve a legitimate purpose. This means it should not affect the rights or reputations of others and not compromise national security, public order, or public health.

On the third step, the limitation must also be necessary in a democratic society. This means it must be necessary and reasonably justifiable in a democratic society. To test this, courts have adopted a proportionality test because the requirement of necessity implies an element of proportionality. So, if the limitation on Freedom of Expression is not proportional to the value which the restriction serves to protect, then it is not justifiable.<sup>3</sup>

The East African Court of Justice has also emphasized the proportionality argument thus;

*“[A] government should not determine what ideas or information should be placed in the market place [of] information and we dare add, if it restricts that right, the restriction must be proportionate and reasonable.”<sup>4</sup>*

In *Charles Onyango Obbo and Andrew Mujuni Mwenda.V. the Attorney General, Mulenga*, J.S.C noted;

*“Protection of the guaranteed rights is a primary objective of the Constitution. Limiting their enjoyment is an exception to their protection, and is therefore a secondary objective. Although the Constitution provides for both, it is obvious that the primary objective must be dominant. It can be overridden only in the exceptional circumstances that give rise to that secondary objective. In that eventuality, only minimal impairment of enjoyment of the right, strictly warranted by the exceptional circumstances is permissible.”<sup>5</sup>*

3 See the Canada Supreme Court: *R v Oakes* [1986] 1 SCR 103. // And Human Rights Committee: *Marques de Morais v Angola* Communication No 1128/2002 (2005).

4 East African Court of Justice: *Burundi Journalists Union v Attorney General of Burundi*

5 Supreme Court of Uganda: *Charles Onyango Obbo & Anor v Attorney General*, Constitutional Appeal No. 2 of 2002.



Generally, the government may restrict the right if they can show that their action is lawful, necessary and proportionate in order to:

- Prevent public disorder or crime.
- Protect national security or safety.
- Protect public health or morals.
- Protect the rights and reputations of other people.
- Prevent the disclosure of information received in confidence.

Therefore, in the exercise of your freedoms, it is encouraged that if you feel that a restriction is not justifiable, take action by petitioning the courts of law. You can also engage the Legal Aid Service Providers' Network Uganda, a Public Interest Lawyer or any other human rights agency or organization for legal advice and support.

Litigation is helpful in delivering justice, reviewing the individual case, and expanding jurisprudence and boundaries of freedoms.

## **CONCLUSION**

Democracy thrives in countries where freedoms of expression and the press are respected. This is because these freedoms enable citizens to freely hold opinion, express their views and ideas through available platforms including media platforms and to make their voices heard by the governors.

However, the restrictive nature of legislations above are often used by the government officials to prosecute journalists, restrict who can lawfully work as a journalist, and revoke broadcasting licenses without due process. The media is thus compelled to operate in an intimidating atmosphere and a principal consequence of this is self-censorship by many journalists.

This booklet aspires to serve as a practical tool that helps the reader to understand the concept of freedom of expression and access to information and the limits within which such freedoms can be exercised.

It further highlights the laws limiting the enjoyment of these two freedoms by either setting some requirements to be met in enjoyment of the right or stating crimes that can be committed in the process of enjoying these rights.



## ANNEX:

### THE REPUBLIC OF UGANDA

#### THE ACCESS TO INFORMATION REGULATIONS, 2011

#### REQUEST FORM

*(Please use a separate request form for each document requested)*

#### **Name of public body**

*(Please state the title of the institution from which you are requesting access to a record)*

Name of requester : .....

Particulars of requester: .....

.....

*(Please indicate the address to which correspondence related to your request should be sent)*

Postal Address: .....Physical address: .....

Plot No.: .....Street: .....

Town/City: .....Telephone No: .....

Fax No: ..... Email address: .....

Other: .....

Description of record .....

*(Please state all the information available to you which will assist in*

processing your request)

Name/Type of document (If known) .....

Reference/File No. (If known) .....

Contents of document.....

(Give brief description) .....

.....

other.....

*(Please state any other details that may be relevant to the processing of the request)*

I would like .....

*(Please check the relevant options)*

Inspect the record

Listen to the record

View the record

Have copies made available to me in the following format:

Photocopy

Compact disc

Diskette

USB mass drive

Transcript

Other (please specify)', and

Number of copies required: .....

Request on behalf of another person .....

Signature of requester: ..... Date:.....

**THE REPUBLIC OF UGANDA**  
**THE ACCESS TO INFORMATION ACT, 2005**  
**THE ACCESS TO INFORMATION REGULATIONS, 2011**

**ACKNOWLEDGEMENT SLIP**

TO: .....

(Please state name and address of requester)

I..... (state name of information officer and title of public body) hereby acknowledge receipt of ..... as payment of the nonrefundable access fee from

..... (state name of requester).

Date: .....

Signature of Information Officer.....

## LEGAL ORGANIZATIONS PROVIDING SERVICES

### **Legal Aid Service Providers Network. (LASPNET).**

Plot 10, Block 75, Balintuma Road, Mengo  
PO BOX 8488, Kampala  
(+256718 688402), [dop@laspnet.org](mailto:dop@laspnet.org)

### **Freedom of Expression Hub.**

P O BOX 400 Ntinda  
Plot 87, Bukoto Street Kampala, Uganda  
+256752 557073, [catherineanite@gmail.com](mailto:catherineanite@gmail.com)

### **Chapter Four Uganda.**

Plot2, Wampewo close  
Kampala, Uganda  
+256777258380, [amasake@chapterfouruganda.com](mailto:amasake@chapterfouruganda.com)

## REGIONAL LEVEL

### **East African court of Justice.**

P.O. Box 1096 Arusha, Tanzania Tel: +255 27 2506093

### **Special rapporteur on Freedom of Expression in east Africa.**

[henry@article19.org](mailto:henry@article19.org)

call +254 727 862230

## REFERENCES

### Domestic laws and regulations

1. Constitution of Uganda
2. The Electronic Media Act 1996 (Chapter 104)
3. The Press and Journalists Act, (2000)
4. Public Order Management Act, 2013
5. Access to information to Act, (2005)
6. Access to Information Regulations, (2011)
7. Official Secrecy Act, (1964)

### Regional and International legal instruments (applicable in Uganda)

1. African Charter on Peoples and Human Rights (ACPHR) (1981)
2. International Convention on Civil and Political Rights (ICCPR) 1966
3. The Declaration of the Principles of Freedom of Expression Africa (2002)
4. The Universal Declaration of Human Rights. (1948)

### Case Law-Ugandan courts.

5. Charles Onyango Obbo, Andrew Mujuni Mwenda and Anor V attorney general (Constitutional appeal No.2 of 2002) (<http://www.ulii.org/ug/judgment/supreme-court/2004/1>)



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