

## **REPUBLIC OF UGANDA**

### **ARTICLE 19 AND COALITION FOR THE FREEDOM OF INFORMATION (COFI) SUBMISSION TO THE OFFICE OF THE HIGHER COMMISSIONER FOR HUMAN RIGHTS ON THE OCCASION OF THE UNIVERSAL PERIODIC REVIEW FOR UGANDA**

#### **Introduction**

1. The submission is a result of participatory meetings with stakeholders, Civil Society and media agencies and it focuses on Uganda's compliance with its international human rights obligations with regard to the freedom of expression and information in the period of 2007-2011.
2. ARTICLE 19 together with the Coalition on Freedom of Information (COFI) brought together organizations and individuals that promote the right of access to information and freedom of expression in Uganda in the frame work of Article 41 of the 1995 Constitution and the Access to Information Act, 2005. The Coalition currently has a membership of 87, and a working group made up of seven organizations.

#### **Freedom of Information**

3. The Access to Information Act, 2005 (herein after referred to as "ATIA") was enacted to operationalize Article 41 of the Constitution of Uganda which guarantees citizens' right to information held by state bodies on behalf of citizens. This guarantees the right of access to information to all citizens and applies to all information and records in possession of government agencies. However, a number of issues show the inherent lack of commitment by in ensuring that citizens enjoy this right.

#### **Compilation of functions and index of records of public bodies**

4. Section 7 of the Act requires information officers to compile and disseminate a manual of functions and index of records. Six years after the passing of the law only seven out of 21 government ministries have come up with the required manuals.

### **Annual Reports to Parliament**

5. 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. No minister in the country has ever reported to Parliament in compliance with this requirement of the law.

### **Regulations**

6. The Minister responsible for information is under Section 47 of the Information Act required to develop and issue statutory regulations to govern the implementation of the Access to Information Act. To date this instrument is not in place and thus has greatly retarded the implementation process.

### **Wide Scope of exemptions**

7. Besides lack of implementation, stakeholders are also concerned about the wide scope of exemptions provided for under article 41 of the Constitution. The categories of information that an officer may refuse or grant under section 27, 29, 30, 32, and 33 of the Access to Information Act are numerous and in many cases ambiguous. This kind of ambiguity causes the state to over play the state security and confidentiality card 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<sup>1</sup>

### **Lack of clear internal complaints mechanisms**

---

<sup>1</sup> Charles Mwanguhya Mpagi and Izama Angelo V Attorney General Miscellaneous Case No. 751 of 2009

8. In spite of the relevance the FOI law, the complaints and appeals mechanism under section 37, 38, and 39 of the ATIA <sup>2</sup> is tedious. An information requestor has to go through the long court procedures in case where access to information has been denied, and in the case of media practitioners' information ceases to be relevant if not provided in a timely manner. 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 as no the Government is yet to create awareness on the relevance of the Act.

### **Laws in conflict with FREEDOM OF INFORMATION**

9. The realization of the freedom of information in Uganda is frustrated by the existence of archaic laws<sup>3</sup> in the statute books that inhibit access to information. One of such laws is the Official Secrets Act<sup>4</sup> 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.

### **Limited access to information for People with Disability (PWDs)**

10. Despite the fact that section 20(6) of the Access to information Act, 2005 and other enabling laws provide for persons with a disability to request for information in an alternative format, the government has not put in place mechanisms for PWDS to the access information in the required form. For instance persons with visual impairment cannot receive information in Braille form from most public offices in the country.

---

<sup>2</sup> 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

<sup>3</sup> Official Secrets Act Cap 302, The Evidence Act Cap 6, The Oaths Act Cap 19, Parliament (Powers and Privileges) Act Cap 258

<sup>4</sup> Official secrets Act, Cap. 311

## **Freedom of expression**

### **Limits on Freedom of Expression**

11. Despite the nullification of the sedition law by the Constitutional Court on August 25th 2010, a number of journalists, human rights defenders and political activities are still facing charges under this law. The court nullified section 39 and 40 of the Penal Code, Cap 120 which defines and establish the law on sedition. However, court decisions have not been implemented. Currently, many individuals are still facing charges under the nullified law including; Andrew Mwenda, Charles Bichachi, Siraje Lubwama, John Njoroge and Musa Kigongo. In addition opposition politicians including Democratic Party (DP)'s Betty Nambooze, Uganda People's Congress (UPC)'s Robert Kanusu face similar charges.
12. Section 41 of the Penal Code Act (Cap. 120) inhibits members of the public and the media from discussing the ills in society and governance accountability issues. This section of the law has caused fear in the general public and self-censorship among individuals and journalists who attempt to unravel the truth behind the dominant tribal political class that has emerged under the National Resistance Movement (NRM) regime. Individuals including; Opposition presidential candidate under the Uganda Federal Alliance (UFA) Ms. Betty Kanya, MP Betty Nambooze, Semujju Ibrahim Nganda former Political Editor of the Observer Newspaper and James Tumusiime the Managing Editor of the Observer Newspaper have pending court cases under this law until today.
13. The Penal Code section 179 establishes charges of criminal libel for releasing defamatory stories. A number of journalists face court cases courtesy of this law. Henry Ochieng, Sunday Monitor editor and Angello Izama, a staff writer, were charged with criminal libel at the Makindye Chief Magistrates Court over an article the state claims defamed president Museveni.

### **Restrictive Legislation**

14. Uganda has a number of restrictive laws that have made it difficult for media owners, journalists, human rights activists and the public to enjoy fundamental freedoms;

Under the Electronic Media Act, Cap 104 of 1996, the Broadcasting Council enjoys unprecedented powers of regulating media content. On several occasions the institution has misused such powers to close down media houses, ban public debates and order the sacking of journalists who are critical of the government. For example, in September 2009, the Broadcasting Council excessively and arbitrarily closed down five (5) private radio stations namely; Central Broadcasting Service(CBS)88.8fm and 89.2fm, Radio 2 commonly referred to as Akaboozi fm, Catholic Church based fm station Sapientia, and Suubi fm.

15. There is concern about the narrowing space for nongovernmental organizations operations as stimulated by the NGO Amendment Act,2006 which is used by the state to limit their freedom of association contrary to article 29(1) (e) of the constitution and the enjoyment of autonomy in pursuit of their declared objectives stipulated by Principles II (IV) of the National Objectives and Directive Principles of state Policy. Regulation 12 (a) of the NGO Registration Amendment Act,2006 requires an NGO to give “seven days notice in writing” of its intention “to make any direct contact with people in any rural area of Uganda”. The Act gives powers to 10 government officials who constitute the board to monitor NGO functions and makes registration and filing of returns mandatory. Additionally, persons working in an organisation are held liable for the offenses of the organisation.
16. The Press and Journalists Amendment Bill 2010, that awaits Cabinet approval seeks to effect overzealous control on media outlets in Uganda. The law gained momentum in the wake of the September 2009 riots that saw several media houses shut down. The government moved to amend the 1995 law as a response mechanism to the growing media strength and power in the country
17. The Public Order Management Bill, 2009 poses serious challenges to enjoyment of freedom of expression, speech, and assembly which are fundamental freedoms and human rights. The proposed Bill raises grave concerns about the situation of human rights and the rule of law in Uganda insofar as it; Seeks to reintroduce the provisions of the Police Act, Cap 303 which were nullified by the Constitutional Court in the case of

Muwanga Kivumbi vs. The Attorney General of Uganda (Constitutional Petition No. 9/05); Is contrary to Article 92 of the 1995 Constitution of Uganda, which prohibits the enactment of legislation designed to defeat or overturn a judicial ruling; the Bill grants the Inspector General of Police (IGP) and the Minister of Internal Affairs wide discretionary and unjustifiable powers over the management of public meetings, and places numerous extensive and impractical obligations on the organizers of public meetings, which are impossible to satisfy, and Seeks not only to regulate the conduct of public meetings but extends to regulate the content of the discussion of issues at such meetings, in contravention of the right to freedom of speech.

Our concern is that whereas the Public Order Management Bill is not yet passed into law, the Police is already applying certain sections of the bill to clamp down demonstrators as was seen during the elections in February, 2011.

18. Government passed the Interception of Communications Act in 2010, which violates the right to privacy as enshrined in the 1995 Constitution and other internationally treaties Uganda is party to. The Act, grants overstated powers to the Minister in charge of Security who is expected to provide oversight for its enforcement and effecting penalties for any breaches as opposed to courts of law. The challenge here is that the minister is already a member of the Government and could selectively enforce the law to please the Government as opposed to its neutral application.

### **Lack of Independence and Pluralism of Media**

19. Restrictive Media regulations and other occasional repressive tendencies by government continue to affect media operations in a manner that limits media pluralism. Media practitioners operate under tension and wide spread self -censorship conditions due to draconian laws, arbitrary arrests, and detention, and police harassment especially the private media outlets
20. Opposition political party members are often denied the opportunity to participate in media debates even when such spaces are paid for. FDC leader Dr. Kiiza Besigye has faced numerous obstacles accessing the media. On 2 January 2011, he was turned away

from appearing on Radio Kitara, Spice FM and Kings Radio; all three stations are owned by ruling party sympathizers. In Nakaseke district for example, Dr. Besigye paid for space on a community radio talk show, but found the station locked and surrounded by anti-riot police. In addition, journalists writing and broadcasting stories perceived to be critical of the government or those who provide a platform for voices of opposition parties face censorship, threats and arrest. James Kasirivu was suspended in December 2010 by the Mbarara-based *Edigito* Radio for reporting on an opinion poll that suggested a clear victory for the FDC presidential candidate Dr. Kiiza Besigye. Mustapha Mugisa and Samuel Ssejjaaka, respectively the chief executive officer and editor of the "*Summit Business Review*" magazine, were arrested on 11 January 2011 by security operatives and detained by police in relation to their publication of a cartoon image of President Museveni .

### **Harassment and intimidation of Journalists**

21. The government in 2008 established the Media Offences Department within the Uganda Police Force to monitor the media on a daily basis and prefer charges against journalists or people voicing divergent views on national issues. This is another example of how the government has placed limitations on the media by regulating freedom of expression, right to opinion and conscience. The department keeps on interrogating activists, opposition political parties supporters and media practitioners in relation to stories which have continuously infringed on freedom of expression. A majority of the victims (journalists) have been perpetually kept at reporting to police for years. These include; Timothy Kalyegira who has reported to police more than 15 times, Angello Izama and Henry Ochieng both have reported more than 7 times among others within the reporting period.
22. The number of journalists facing criminal charges has significantly increased with charges that range from criminal defamation, sedition, treason, forgery and uttering false statements, promoting sectarianism, to publishing false news. Victims include; Andrew Mwenda, Richard Tumusiime, Charles Bichachi, Otim Patrick, Daniel Kalinaki, James Tumusiime and John Njoroge among others.

23. A number of cases on recurring assaults on journalists have been noted. On March 24, 2010, *Bukedde* Photo Journalist Moses Lemisa was admitted in hospital after being attacked by the Presidential Guard Brigade (PGB). He continued to receive intimidating calls from members of the suspected brigade after he took pictures of people killed by the presidential guard just before President Yoweri Museveni visited Kasubi tombs site in September 2009. Police in Lira Northern Uganda, arrested Voice of Lira presenters for hosting opposition Uganda People's Congress (UPC) president Olara Otunnu, Patrick Ronex Akena, and Joe Orech were accused of hosting Dr. Olara who claimed on air that the National Resistance Movement was solely responsible for the 20 year war in Northern Uganda. The police have occasionally interrogated journalists on orders of the Broadcasting Council that has seen two journalists summoned by the police on the 1<sup>st</sup> October, 2010. A journalist from, Radio Two (Akaboozi) Richard Mivule was summoned to the police for interrogation for over five hours for inciting violence during the September 2009 riots when he hosted Opposition Member of Parliament for Kampala Central Erias Lukwago.
24. The government banned open air talk shows commonly referred to as "*Bimeza*"-an action that infringed on people's enjoyment of the freedom of expression, opinion, conscious, and citizen participation in governance and accountability in 2009.

### **Recommendations for Freedom of Information (FOI)**

1. The Government should actively implement the existing Access to Information Act by practicing pro-active information disclosure.
2. The Government of Uganda should without delay amend the Access to Information Act, 2007 ( Section 27, 29, 30, 32, and 33) to clearly define the scope of exemptions in line with the Declaration of Principles on Freedom of Expression in Africa adopted by the African Commission on Human and Peoples' Rights as well as the Universal Declaration on Human Rights.



3. Section 37 and 38 of the Access to Information Act, 2005 should be amended to provide for an independent Information Commission which will be able to adjudicate between information requesters and public bodies.
4. All government agencies should consistently implement provisions of the Access to Information Act including those on development and dissemination of manual of index, production of regulations and reporting to Parliament.
5. Government should create public awareness about the population's constitutional right to access information held on their behalf as well as the provisions of the law on how information can be requested and received.
6. Uganda should repeal the Official Secrets Act and amend The Evidence Act (Cap 6), The Oaths Act (Cap 19), Parliament (Powers and Privileges) Act (Cap 258) as well as other legislations which contradict the Access to Information Act and the Constitution.
7. The state should implement the provisions of section 20(6) of the ATIA and put in place mechanisms to foster access to information for persons with disability

### **Recommendations for Freedom of Expression (FOE)**

1. Regulation 12 (a) of the NGO Registration Amendment Act, 2006 should be amended and the composition of the NGO board be reviewed to provide for a representative from civil society.
2. The state should not pass the Press and Journalists Amendment bill, 2010 in its current form
3. Government should refrain from enacting laws that infringe on freedom of expression, assembly, information, association and the right to demonstrate as required by international best practices. Such laws include; Public Order Management Bill, 2009 and the press and Journalist amendment Bill, 2009

4. The state should recognize and fulfill its obligation in upholding and promoting fundamental freedoms and human rights including the right to privacy and amend the Interception of Communications Act, 2010 (section (6)) to vest powers to issue warrant of interception in courts of law
5. The government should reinstate open air talk shows “*Bimeza*” in respect to article 29 of the Republic of Uganda constitution
6. All laws that criminalize freedom of speech should be repealed or amended to conform to international standards and best practice
7. Government should quickly investigate and make public the attacks on journalists and prosecute the perpetrators under relevant laws
8. Government should review the system of media regulation and repeal all provisions that interfere with media freedom, creates external regulation and move to create and maintain an environment in which the media can operate freely and independent from interference.
9. Government should implement the decision of the constitutional court and should dismiss all sedition charges against journalists and politicians.

## **Annex A**

- 1. African Freedom of Information Center**
- 2. Uganda Media Development Foundation**
- 3. PANOS- Eastern Africa**
- 4. Anti -Corruption Coalition Uganda**
- 5. Jengo Production**
- 6. African Human Rights Monitoring**
- 7. Bureau for Human Rights Journalists, Uganda**
- 8. N/A & work as an Individual Human rights defender**
- 9. Friends for Orphans Revival ministries**
- 10. Generations Human Rights Defenders**