

# Access to Information in Africa Project An Executive Summary.

## The Case of Uganda



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## **Purpose**

This study arose out of the need to close gaps on the shortage of knowledge and literature on access to information in Africa; be it academic, policy and development in regard to transparency issues and the correlation of such with experiences from the rest of the world. Secondly, the initiative arose out of the need for research on transparency models and ATI best practices, on literature on sectoral approaches to creating transparency and accountability, and on the most effective mechanisms to achieving positive outcomes without which, it is difficult to develop measures and strategies as well as design interventions to advance ATI in Africa.

Greenwatch implemented a two year national research on access to information in Uganda, as part of the Access to Information in Africa Project, in collaboration with the World Resources Institute. The research was premised on the notion that access to information is one of the most important fundamental rights and freedoms and is essential for good governance, participatory democracy and sound development. Specific laws and regulations have been enacted in regard to access to information, notably the Access to Information Act No. 6 of 2005 which was enacted to operationalise and give effect to article 41 of the Constitution. Advocates for the development of the ATI law in Uganda contend that the law in its current format is inconsistent with the spirit of the Constitutional provision and instead restricts access to information that was available before it was passed. Access to information provisions exist in Uganda's natural resource laws which provide for the right to access environmental information. Access to environmental information provisions not only complement mainstream access to information laws but also provide a rare opportunity for broadening access to public records generally and experiences generated from the sector can be replicated in other sectors outside natural resources.

This research aimed at assisting citizen groups, the public, policy makers and private institutions, legal and policy frameworks as well as other institutions and agencies charged with ensuring that ATI is made available, better understand transparency models and ATI best practices in Africa so that decision making processes are accountable and responsive to the public

## **Methodology**

The methods used in this study were consistent with those used by the researchers in Ghana and South Africa to allow for comparative analysis of the findings from the three African countries. During the methods meeting in March 2011, the lead researchers were trained in the research methodology to be used during the study.

Four sub-sectors were reviewed in Uganda namely: Petroleum/oil and gas, Environment, Forestry, Minerals. The findings were fed into templates that were populated with the data collected. Requests for information were made to the various government institutions using the ATI Act and the provisions in the sectoral laws. Four categories of people were selected to request for information: a student, NGO representative, journalist, ordinary /poor person. A template was used to monitor and track the requests made. Individual experiences of requestors were also documented. A total of forty eight requests were made for each sub sector. Interviews were conducted by the researchers with different stakeholders who had worked on ATI issues.

Literature review of peer reviews, research publications, papers and grey literature, academic research, and studies conducted by organizations and institutions was undertaken. The analyzed data was selected from the health, environment, education sectors, for as long as it correlates and is relevant to transparency and compiled into an annotated bibliography. Legal review of the ATI Act, Constitution and other key legislation including the transparency provisions in the natural resource/sectoral laws was undertaken

Case study analysis was used and four case studies from the period before and after the enactment of the ATI Act were selected. Review and analysis was undertaken of court cases with relevance to ATI.

A modified Golden key methodology adopted from ODAC, South Africa was used in the assessment of selected government institutions. This particular methodology allows for assessment of the institutional arrangements under the Constitution, ATI law and sectoral laws. It allowed for data collection on the internal systems that are in place for public agencies to be able to meet their obligations in terms of the ATI law and any sectoral provisions that allow the public to access environmental information.

Documentation of key events, laws, cases and decisions that have set precedent in relation to Access to information and its implementation in Uganda was undertaken and fed into a timeline. The timeline highlights the impact political actions such as regime change, have had on access to information in Uganda as well as precedent setting cases that have been filed by members of the public.

An analysis was undertaken to ascertain whether information is released pro-actively by the government and if so, the avenues through which the particular type of information is released.

Mainly qualitative data was collected during this study. The data was organized and grouped into different content categories for analysis. Data was closely examined and compared for similarities and differences. The information was presented in a narrative form citing examples from the field research to review trends. Pie charts were used to show percentages relating to the types of information granted or refused across requestors.

## **Findings**

### **Enabling environment for transparency**

#### **a) The Constitution and Access to Information Act.**

Article 41 of the Constitution forms the basis of the right to information in Uganda. It spells out the kind of information the public may access and that which may be denied. Further, Article 41 (2) enjoins Parliament to make a law prescribing the information referred to in subsection 1 and the procedure for accessing that information. Most court cases on the right of access to information were brought and decided largely on the basis of Article 41. Article 41 states

- (1) 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.*
- (2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.*

The major limitation with Article 41 however remains the fact that it restricts enjoyment of the right to Ugandan citizens. This has proved limitative especially when faced with corporations and/or non- profits seeking information. Greenwatch a body corporate registered in Uganda was denied access to details of a Power Purchase Agreement between the government of Uganda and AES power for failure to prove that it was a corporate citizen (HCCS 139 of 2001, High Court of Uganda). The right of access to information is limited to citizens, yet under Article 50 of the same Constitution any person may petition for enforcement of a right that has been infringed or threatened irrespective of the fact that the person is personally aggrieved.

The purpose of the Access to Information Act is set out in Section 3 to include; *promotion of an efficient, effective, transparent and accountable government; giving effect to Article 41 of the Constitution; protection of whistle-blowers; promotion of transparency and accountability in government by providing the public with timely, accessible and accurate information; and empowerment of the public to effectively scrutinize and participate in government decisions that affect them.*

The stated purpose is laudable in as far as it promotes an efficient, effective and transparent government through encouraging citizen participation.

The Act provides for a right of access and a duty to provide information. The Act applies strictly to information in possession of the state or public body. Section 5 of the Act restates the right of access to information in almost similar terms as Article 41 of the Constitution. It obligates information officers to supply only *accurate and up to date* information. This is extremely important in the protection of rights and freedoms on one hand and in the natural resources arena on the other hand, where often timely access to accurate information is necessary to protect the environment from irreversible damage.

The Act contains a number of provisions that encourage proactive disclosure of information on the part of duty holders. Section 8 enjoins officers to publish a description of records automatically available to the public. Section 7 also has a few provisions for proactive disclosure in as far as it encourages publication of manuals of functions and index of records of public bodies. Some of the anticipated records under this provision include those relating to procedures for access to information in possession of those bodies and subject of records that those bodies hold. However, this is yet to translate into reality in practice. Most public bodies are far from complying with these provisions to provide for proactive information.

Beyond a duty to disclose and proactive disclosure, Section 22 of the Act provides for record keeping. Information officers are required to preserve records sought to be accessed under the Act until the request is met or where an appeal is sought until all appeal procedures have been exhausted. The Act falls short of establishing a comprehensive records keeping and management system. Government bodies possess a wide array of information which should be managed in the most efficient way.

The Act contains various exemptions to the right to information including Cabinet records and those of its committees as well as information relating to privacy of another person, commercial information of a third party confidential information, and information prejudicial to safety of persons and property. Other exemptions include records privileged from production in legal proceedings (Section 30), records pertaining to operation of public bodies (Section 33) and security sensitive information (Section 32). Cabinet records and those of its committees are expressly excluded from the scope of information that can be accessed under the Act (Section 2 (2) (a)) effectively closing off the executive arm of government to

which cabinet belongs from public scrutiny. Under the Constitution there are only two exceptions to the right of access to information in possession of the State. These include; information prejudicial to state security or sovereignty or that which interferes with the privacy of another person. Further under the Article 43 (2) (c) of the Constitution, any limitation on rights and freedoms enunciated under the constitution must be demonstrably justifiable in a free and democratic society.

The exemptions in the Act are rather too broad and ambiguous that they vest so much discretion in the officer in deciding whether to grant the sought information or not.

The Act does not describe public interest but instead imposes a huge burden on information seekers to prove that the sought information is in the public interest. In a court case involving two Ugandan journalists seeking to access details of the Production Sharing Agreements (PSA) the court denied a request for information on grounds that the petitioners did not prove sufficiently that there was a public interest in disclosing details of the PSA (*Charles Mwanguhya Mpagi & Izama Angelo vs. Attorney General (Misc Cause No.751 of 2009)*).

Part V of the Act puts in place a complaint and appeals system. This is in addition to the internal appeal mechanism established under Section 16 (3) (c) whereby any person aggrieved by the decision of an information officer may pursuant to Section 37, lodge a complaint with the Chief Magistrate. Such a complaint may be made in respect to information denial or against the form in which the sought record is granted. The internal appeal mechanism is not fully developed under the Act. In effect, aggrieved information seekers are left confused on the most appropriate recourse.

One of the most laudable practices put in place by the Act is the requirement of every Minister to submit an annual report to Parliament indicating the number of requests made to public bodies under his/her Ministry (Section 43). This provides some form of accountability and would be a good measure of commitment and response of public bodies to citizen's requests. Unfortunately, to date no Minister has presented an annual report as required by the law. Sections 44 and 45 for example protect persons and public officers releasing information from prosecution. Also it is an offence under the Act for any person to destroy, conceal or falsify a sought record with intent to deny a right of access under the Act (Section 46). These provisions collectively encourage access to public records by among others reassuring officers of immunity for honest acts and providing an enforcement tool for provisions under the Act in the form of criminal sanctions.

The Access to Information Regulations were passed in March 2011 six years after the Act was enacted. At the moment the practical effect of the Regulations is yet to be felt. Even when researchers making requests used the access to information regulations, they were not availed with the information they sought. The Access to Information Regulations are narrow in text and provision. Further, the fees payable for every information request made under the Regulations are very prohibitive. Under Regulation 7, the cost for accessing information is fixed at one currency point which is an equivalent of Uganda Shs. 20,000. While this fee appears modest, it is by far unaffordable to majority of Ugandans who still live below one dollar a day. The set fee of Ushs. 20,000 contradict the spirit of the Act which is to the effect that fees payable must be reflective of the actual cost incurred to retrieve and reproduce the sought record.

The Regulations put in place a form of access under Regulation 3 and Schedule 2. All information seekers are required to fill in that form although this may be waived under certain circumstances. This flexibility allows even more citizen access to information without being bogged down by burdensome formalities. Further under Regulation 4, citizens may make electronic information requests. This is cheaper and in many instances saves on travel cost to the relevant body as well as printing and copying costs. Nonetheless this presupposes an efficient and functioning electronic access system which is not well developed at the moment.

The Regulations are shallow and omit to provide for most procedural matters contemplated under the Access to Information Act.

#### **b) ATI related legislation**

Archaic laws in Uganda such as the Official Secrets Act greatly inhibit citizen's access to public records and are often cited by public official in denying access to the requested information. This law came into force on 30<sup>th</sup> December 1964 and is concerned with state security. It seeks to among others regulate the interaction between agents of foreign powers and prohibited premises on the one hand and access to official documents on the other. Under Section 2 of the Act, it is an offence to approach, inspect, enter upon or pass within the neighbourhood of a *prohibited place* (Section 2 (1) (a), Official Secrets Act). Section 4 of the Act has the most impact on access to public records under the Act. Pursuant to that section, it is an offence for any person in possession of a password, sketch, plan, article, document or other information access to which is prohibited by the act, to communicate such information to any unauthorized person (Section 4 (1)(a), Official Secrets Act). It is also an offence under the provision for any person to receive such information. This provision has a chilling effect on both the information seeker and information holder and therefore limits free flow of information.

Other laws such as the Parliament (Powers and Privileges) Act which came into force on the 24<sup>th</sup> February 1955 also impact on access to information. Section 14 of the Act expressly prohibits any member or officer employed to take minutes of records of parliament or any parliamentary committee from disclosing any contents of information laid before parliament or any of its committees without the leave of Parliament. This provision came into question in the early constitutional case of *Zachary Olum & Another v. Attorney General (Constitutional Petition No. 6 of 1999 (unreported))*. The petitioners in this case sought to challenge the Referendum Act 2000 on grounds that it had been passed without the requisite parliamentary quorum. In support of the petition, they sought to rely on a Hansard and on a record of parliamentary proceedings in evidence. This was objected to by the respondents on grounds that they had not sought leave of the Assembly under Section 15 of the then National Assembly (Powers and Privileges) Act. The Court reasoned that to deny the petition on these grounds would defeat the spirit and intent of Article 41 of the Constitution which guaranteed citizens the right to information in possession of the state or its agencies. In the circumstances the petitioners could rightly rely on the Hansard and recordings without the leave of Parliament to prove their case. The Section is therefore subject to abuse and constitutes an unjustifiable limitation on exercise of the right to information in possession of the state or its agencies such as Parliament.

The Press and Journalist Act of 1995 provides for freedom of the press and puts in place a council for the regulation of mass media as well as an institute for journalists. The Act contains a right to publish and print which cannot be derogated upon except in accordance with the Act (Section 2). This Act may overall be said to be pro access on the most part.

The Evidence Act, a colonial law inherited from the British colonialists at independence applies to all judicial proceedings in or before the Supreme Court, Court of Appeal, High Court and all courts established under the Magistrates Court Act. Although the Act is mainly concerned with proof of matters of law and fact before courts of law, it has wide implications on the right of access to information. Section 122 of the Act in particular contains the most significant effect on the right to information. The effect of Section 122 of the Evidence Act was considered in the Constitutional case of *Major General Tinyefuza v. Attorney General (Const. Petition No.1 of 1997)*. The petitioner in this case sought to adduce radio messages in court to support his case. This was highly contested by the respondents on the basis that the petitioner did not obtain the approval of the head of department as required under Section 122 of the Evidence Act. In its ruling, the Constitutional court found that section 122 constituted an unjustifiable limitation to the constitutionally guaranteed right to information. The Court also stated prominently that the right to information included the right to use such information in defense of oneself before the courts of law. The radio messages were thus found to be admissible in this case notwithstanding that the fact that the required approval had not obtained. Section 122 of the Evidence Act just like the Official Secrets Act is a conservative provision maintained to cloak public authorities from public scrutiny.

The Trade Secrets Protection Act of 2009 establishes a protection regime for undisclosed information related to commercial transactions. Section 3 of the Act puts in place a right to prevent disclosure, acquisition or use of trade secret. To claim the right above, one should establish that; the information sought to be protected is a secret which is not generally known and is not readily accessible to persons that normally deal with that kind of information. It may be said that the spirit and intent of the Trade Secrets Act does not limit the right to information per se but rather seeks to protect owners of trade secrets and guarantees them the opportunity to benefit from their innovations.

### **c) Transparency provisions in sector laws**

Uganda's natural resource laws provide for the right to access environmental information within the confines of government. The National Environment Act (NEA) lays down various principles of environmental management which include maximum public participation in development of policies, plans and processes for environmental management. The National Forest and Tree Planting provides for the right to information in specific terms under Section 91. Under the Act, all information related to implementation of the Act and in possession of the state, local council, authority or responsible body can be accessed by any citizen. Only proprietary information is exempted from free access to the public under the Act. It is also observed that unlike the NEA, the Act limits the right of access to citizens just like the Constitution and the Access to Information Act. Nonetheless the National Forestry and Tree Planting Act is one of the few laws with a specific provision on the right to information outside mainstream access to information laws.

The Mining Act, made under Article 244 of the Constitution concerns itself with the issuance of mining licenses and leases, inspection of mining operations, trade in minerals, mineral and surface rights as well as environmental protection. The Mining Act retains the spirit of secrecy in the repealed Mining Act notwithstanding that it was passed after the Constitution which guarantees the right of Access to Information.

Two petroleum Bills were tabled by the government before parliament in early 2012. The proposed Petroleum (Exploration, Development and Production) Bill 2012 makes specific provision for the right of access to information unlike the Petroleum (Exploration and Production) Act cap 149 that it seeks to repeal. The Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill 2012 aims at giving effect to Article 244 of the Constitution, regulating and promoting policy on petroleum refining, gas processing and conversion, transportation and storage. Part XI of the Bill is solely dedicated to information and documentation. Clause 76 provides for public access to information related to petroleum refining, gas processing and conversion, transportation and storage. The provision enjoins the Minister to make available to the public, details of all agreements, licenses, all amendments and assignments. This is subject to confidentiality of data, commercial interests and provisions of the Access to Information Act 2005. On one hand the provision seems progressive in as far as it facilitates public access to information regarding petroleum refining, conversion, transportation and storage but on the other hand, it is riddled with several claw back clauses that make it very difficult for citizens to access the desired information.

The proposed Petroleum Bills promote information access and public participation in some instances but are riddled with far too many exemptions and overly restrictive clauses that make it extremely difficult for citizens to obtain information related to petroleum activities. The right to information under these Bills is subject to confidentiality of data, commercial interests and the Access to Information Act.

### **Institutional Assessment**

An institutional assessment was conducted to allow us to collect data on the internal systems that need to be in place for the public agencies to be able to meet their obligations in terms of the ATI law and any sectoral provisions that provide that the public should have access to environmental information. We assessed 5 institutions linked to Uganda's natural resources. The institutions assessed include NEMA (Environment Sector), NFA (Forestry sector), UWA (Oil Sector), Wetlands management Department (Environment), Department of Geological survey and mines (mineral sector)

We assessed how the institutions assist persons who make requests under the ATI law and sectoral laws, their record management system, internal mechanisms – including tracking of requests, training of personnel on the law. The human and financial resources utilized for administration of the ATI law and sectoral law, the mechanism in the agencies that track the agencies performance to yearly plans as well as the ability of the organization to address complaints and its responsiveness in general to complaints from the public was also assessed. \

**a) National Environment Management Authority (NEMA)**

Environmental Agency <b>NEMA</b>	Information officer	Budget	Records Management Policies	Fees	Complaint system	Comprehensive website	Information on How to Make a Request (Manuals)	Internal Mechanisms
Rating	Good	Good	Good	Good	Good	Good	Good	Good

**b) Uganda Wildlife Authority (UWA)**

Efforts were made to secure appointments with officials from UWA but these did not come to fruition. The researchers made several visits to UWA, seeking an appointment for an interview to get the requested information. The researchers were then told to write to the Executive Director of UWA including the questionnaire of the information requested for, who would the delegate and appropriate officer to respond to the questions. Although the researcher followed the instructions to the later, they never received any response. Several follow ups were made on this to no avail.

The UWA website basically contains information relating to Wildlife and National Parks.

Environmental Agency <b>UWA</b>	Information officer	Budget	Records Management Policies	Fees	Complaint system	Comprehensive website	Information on How to Make a Request (Manuals)	Internal Mechanisms
Rating	Poor	Poor	Poor		Poor	Good	Poor	Poor

**c) Wetlands Management Department**

Environmental Agency <b>WMD</b>	Information officer	Budget	Records Management Policies	Fees	Complaint system	Comprehensive website	Information on How to Make a Request (Manuals)	Internal Mechanisms
Rating	Poor	Poor	Good	Good	Poor	Poor	Poor	Poor

#### d) National Forestry Authority (NFA)

Environmental Agency <b>NFA</b>	Information officer	Budget	Records Management Policies	Fees	Complaint system	Comprehensive website	Information on How to Make a Request (Manuals)	Internal Mechanisms
Rating	Poor	Poor	Poor	Good	Poor	Good	Poor	Poor

#### Department of Geological Survey and mines

Environmental Agency <b>Department of Geological survey and mines</b>	Information officer	Budget	Records Management Policies	Fees	Complaint system	Comprehensive website	Information on How to Make a Request (Manuals)	Internal Mechanisms
Rating	Good	Good	Excellent	Good	Good	Excellent	Poor	Good

The institutional Assessment revealed that:

- Not all government agencies have policies in place for ATI. Each agency has its own internal procedure that should be used by a member of the public to access information. This usually entails writing a letter to the Executive Director of the agency and following up on the written request.
- The list of the categories of information held by most of the institutions is not always categorised into that which is available routinely, that for which a request is a requirement and information that cannot be disclosed to the public.
- The storage of records in the institutions is done manually, which is a challenge as certain requests or even records can be misplaced.
- None of the institutions has a manual on procedures to be followed when requesting for information. Each organisation has its own internal procedures that should be followed. But this does not guarantee that one will be availed with the information sought.
- What is consistent in the institutions assessed is that none of them charge a fee for accessing the information. A requestor would be required to pay for photocopying of the information.

- Not much information is available on the appeals that have been made to the institutions or even complaints that have been received. There is also no guarantee whatsoever that the person making the complaint will not be victimised.

### Proactive Disclosure of Information

Information released pro-actively by Government includes information deposited at government depositories or public libraries and that posted on websites for government agencies and statutory bodies, Ministries. Most government departments have websites and lately, social media platforms like Face Book and twitter have been utilised as a medium through which information is made available to the public. Specifically, institutions such as National Forestry Authority, National Environment Management Authority, Petroleum Exploration and Production Department, Ministry of Finance, Planning and Economic Development, Ministry of Energy and UWA now avail some information to the public through facebook. The information posted on government websites may include but is not limited to information about the respective government agencies and their operations; Ministerial Policies, recruitment brochures, bulletins directives and newsletters; Strategic action plans, annual reports, sector performance reports, budget performance reports, audits, census reports etc. Information is also released in the gazette, however, for this particular type of information, this is a requirement by law.

Most of the information that is made public is released is in English and also in written form. NEMA in particular releases most of the information relating to environmental issues.

Certain information is placed at specific information at designated depositories. These depositories include public libraries, institutional and organisational libraries. This information is freely accessible by any member of the public as it is proactively released. It includes Environmental Impact Assessments, annual and performance reports among others. However, costs for copying may be paid for. This information is in English and is mainly technical.

### Pro-Active Release Template: Environment

#### Means of sharing information

	Gazette	Register	Website	News paper	Gov't report in library	Other	Comments
<b>Pro-active release template: Environment.</b>							
Govt agency staff, departments, objectives, functions	Y	Y	Y	Y	Y		Under the Government Public Standing Orders, there is a provision for the gazetteing of all public servants and their various roles
Laws, regulations and bills	Y	Y	Y	?	Y		A number of laws are in place.
Policies, strategic plans, action plans	Y	Y	Y	Y	Y		Sector Strategic Investment Plans and Client Charter available on website.
EIAs and mitigation plans	N	Y	Y	Y	Y		EIA's are deposited at designated depositories and summaries published in newspapers for the

							public to comment.
Monitoring results and penalties levied, inspection reports, PRTR	N	Y	Y	Y	Y		A summary of findings of monitoring and inspection results are published in news papers and detailed reports available upon request.
SOER, annual reports, sector performance reports	N	Y	Y	Y	Y		Sector performance and SOE reports are produced annually and available both in hard and soft copy. At the time of publication, news about their availability is reported in media
Performance audits of government offices	N	Y	Y	Y	Y		Auditor general conducts audits on all government agencies.
Financial audits of government offices	N	Y	Y	Y	Y		The office of the Auditor General releases Audit Reports on Central Government Ministries, Departments and Agencies.
International Agreements signed and ratified	?	?	Y	Y	Y		Treaties which the country has signed and ratified are mentioned on websites and in government related reports.
Names of accredited EIA consultants and selection criteria	Y	Y	N	N	?		Selection criteria for EIA practitioners available at NEMA registry, and names of consultants gazetted once the Committee is satisfied with credentials.
Environmental standards and procedures for establishing them	Y	Y	Y	?	Y		Environmental standards usually gazetted; not clear if procedures for their establishment are gazetted.
Citizen comments on EIAs and other matters	N	?	N	N	?		The cost of publishing comments on EIAs in newspapers is made by the concerned party submitting the comments.
Permits issued to companies (EIAs, pollution, sand mining permits, etc)	N	Y	N	Y	Y		Issued permits are usually published in news papers; public views are sought on activity for which permit is applied in newspapers.
Revenues from 2 major payment categories (e.g., fines, permits)	N	?	N	N	?		

### Scale

Y stands for Yes

N stands for No

? stands for unclear/uncertain.

## Pro active release template for Forestry

### Means of Sharing Information

	Gazette	Register	Website	Newspaper	Govt report in library	Other	Comments
<b>Natural Resource Pro-Active Release Template (Forests)</b>							
Govt agency staff, departments, objectives, functions	Y	Y	Y	Y	Y		Under the Government Public Standing Orders, there is a provision for the gazettelement of all public servants and their various roles.
Laws, regulations and bills	Y	Y	Y	?	Y		Laws available
Policies, strategic plans, action plans	Y	Y	Y	Y	Y		
Reserves and stocks of the natural resource	N	Y	Y	Y	Y		
Production of the natural resource - raw and processed	N	Y	Y	Y	Y		Volume of timber sales available on website. However, information not regularly updated.
Concession allocation process and decision criteria	N	Y	Y	N	N		Bids and tenders for concessions published in newspapers are done in accordance with the Public Procurement and Disposal Act of 2003,available on website.
Licenses (exploration and production licenses only)	N	?	N	?	?		Concession guidelines and incentives available on website, no information on process of allocation.
Concession Agreements	N	N	N	N	N		
Revenues from 2 major payment categories (e.g., income tax and royalties)	N	?	Y	?	?		Revenue collected from sale and harvesting of timber and non timber products available on NFA website. This however is not updated regularly, no royalties.
Map and coordinates of blocks and concession areas	N	Y	Y	?	?		Maps of coordinates of concession areas available in Registry and at Department of mapping and Surveys.
EIAs and mitigation plans	N	Y	N	Y	Y		EIAs available at designated depositories, costs may be paid for photocopying.
Government monitoring/inspection results and penalties levied	N	?	Y	Y	?		Findings of inspection works including land encroached upon in CFRs; developments undertaken thereon are available on website. Volume of confiscated illegal timber is auctioned and date and place of auction printed in newspapers and available at registry
Performance audits of government offices	N	Y	Y	Y	Y		Environmental audit reports to assess the performance of the key players in forestry management are conducted

							and the information made available.
Financial audits of government offices	N	Y	Y	?	Y		Environment audit reports on forest activities are produced and posted on websites. NFA also releases information on its business plans.
Impacts on local communities (displaced, relocated, compensation)	N	?	N	?	?		

**Note:**

N means No

Y means Yes

? means Uncertain/Unclear.

**Natural Resource Pro-Active Release Template (Minerals)**

**Means of Sharing Information**

	Gazette	register	website	News paper	Gov't report in library	Other	Comments
<b>Natural Resource Pro-Active Release Template (Minerals)</b>							
Govt agency staff, departments, objectives, functions	Y	Y	Y	Y	Y		Under the Government Public Standing Orders, there is a provision for the gazettelement of all public servants and their various roles.
Laws, regulations and bills	Y	Y	Y	?	Y		
Policies, strategic plans, action plans	N	Y	Y	?	Y		
Reserves and stocks of the natural resource	N	Y	Y	?	Y		Statistics of mineral deposits are available on the website.
Production of the natural resource - raw and processed	N	Y	Y	?	Y		
Concession allocation process and decision criteria	Y	N	N	N	N		
Licenses (exploration and production licenses only)	Y	Y	Y	Y	Y		Mineral licenses have to be gazetted, this is mandatory. General information is available on the website on licensing, and concession procedures
Concession Agreements	N	N	N	N	N		
Revenues from 2 major payment categories (e.g., income tax and royalties)	N	?	N	?	?		
Map and coordinates of blocks and concessions areas	N	Y	Y	?	Y		
EIAs and mitigation plans	N	Y	N	Y	Y		EIA available at the different

							depositories.
Government monitoring/inspection results and penalties levied	N	N	N	N	N		
Performance audits of government offices	N	Y	Y	?	Y		These are released in the Sector Performance reports that are published by the Ministry of Energy. and Mineral Development
Financial audits of government offices	N	Y	Y	?	Y		Financial audits have been conducted and released with regard to mineral development procurements.
Impacts on local communities (displaced, relocated, compensation)	N	Y	N	Y	Y		

## Proactive release of Information – Oil

### Means of Sharing Information

	Gazette	Register	Website	News paper	Gov't report in Library	Other	Comments
<b>Natural Resource Pro-Active Release Template (Oil)</b>							
Govt agency staff, departments, objectives, functions	Y	Y	Y	Y	Y		
Laws, regulations and bills	Y	Y	Y	Y	Y		The 1985 Petroleum (Exploration & Prod'n) Act is still being used. New oil bills were drafted, gazetted and yet to be tabled before Parliament.
Policies, strategic plans, action plans	Y	Y	Y	Y	Y		National Oil and Gas Policy,2008 and a communication strategy on oil and gas in place. A monitoring plan for oil and gas activities has also been developed recently, all are available on website.
Reserves and stocks of the natural resource	N	?	Y	N	N		Some information is released on the website but this information is not always up to date
Production of the natural resource - raw and processed	N	?	?	N	?		
Concession allocation process and decision criteria	N	N	N	N	N		The process and criterion upon which decisions are made is not always revealed to the public.
Licenses (exploration and production licenses only)	N	?	Y	N	Y		Status of licences available on websites but not the actual licences.
Concession agreements	N	N	N	N	N		

Revenues from 2 major payment categories (e.g. income tax and royalties)	N	?	N	N	N		
Map and coordinates of blocks and concession areas	N	Y	Y	Y	Y		The maps are available on the websites and also in the government libraries
EIAs and mitigation plans	N	?	Y	Y	Y		EIAs are available at the various repositories however; the documents are only available in the English language.
Government monitoring/inspection results and penalties levied	N	N	N	Y	?	TV	There has been some TV and newspaper coverage on findings of NEMA inspection works on Tullow Oil's improper waste management practices.
Performance audits of government offices	N	N	N	N	?		
Financial audits of government offices	N	?	N	N	?		
Impacts on local communities (displaced, relocated, compensation)	N	N	Y	Y	Y		Some information is available on website.

### Procedures for requesting for information

Although the procedures for requesting for information are documented both in the ATI law and in the various sectoral laws, the procedures at each institution varied. The process the researchers were told to follow was neither in the ATI law nor even in the various sectoral laws. Each organisation or government institution has its own internal procedures that it follows. Even when the researchers followed the internal procedures that they were required to follow at some of the government agencies, they did not always get the information requested for. Different researchers got different responses for various reasons.

Some of the institutions were consistent in the procedures that they require a member of the public to follow when requesting for the information. Although there is no structured approach, most of the institutions required the requestor to present a form of identification (an identity card) and also to write a letter to the head of the institution requesting for the information. The requestor would be required to follow up on this. The preferred form of requesting at the institutions is in written form

**General results of the requests made:**

Scale:

*Mute refusal:* the researcher did not get any reply at all, he/she was ignored.

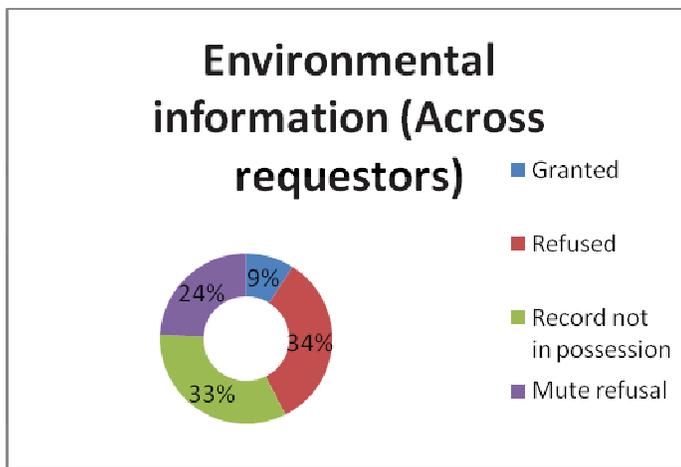
*Refused:* the researcher was denied the information

*Granted:* the researcher was given the information he/she was requesting for

*Record not in possession or under control of agency:* the officials at the institution stated they did not have the information requested for.

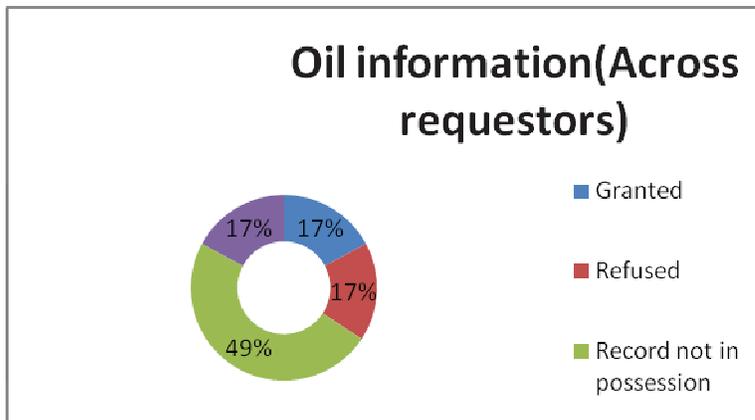
**Chart 1**

**Access to Environmental information (By NGO rep, student and Journalist requestors). The Information was sought from the Ministry of Energy, NEMA and the Wetlands Management Department.**

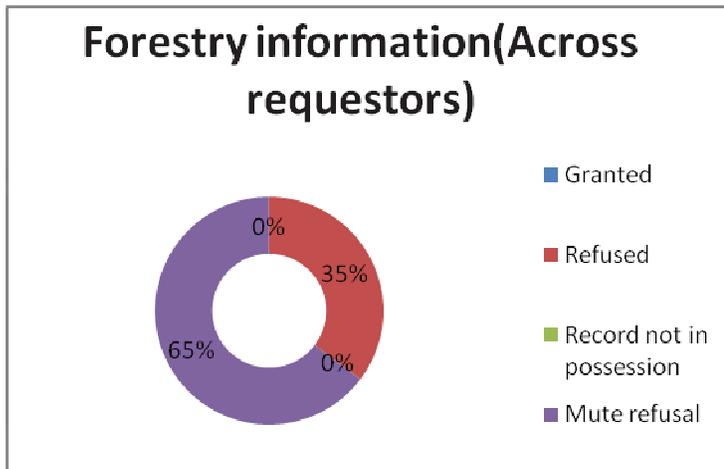


**Chart 2**

**Access to information on oil/Petroleum (NGO rep, Student and journalist) Information was sought from Ministry of Finance, Planning and Economic Development, Petroleum Exploration and Production Department (PEPD), Uganda Wildlife Authority (UWA).**

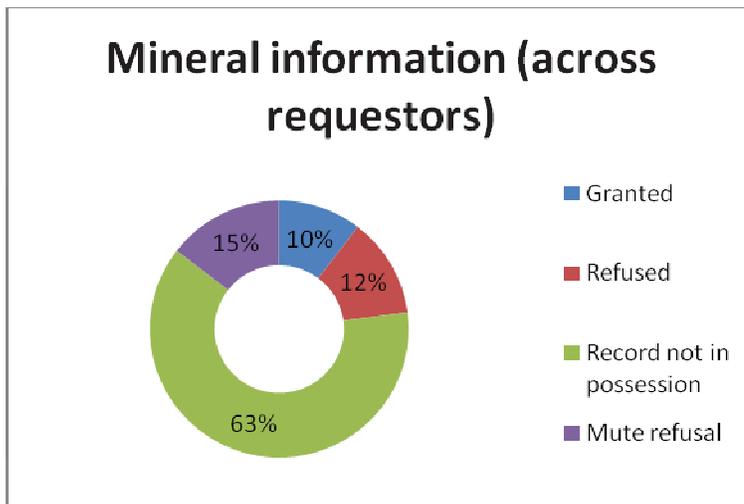


**Chart 3: Access to information on forestry (Information was sought from National Forestry Authority, Uganda Wildlife Authority).**



**Access to information on Minerals.**

Information on Minerals was sought from Ministry of Energy and Mineral Development, Department of Geological Survey and Mines, Department of Energy Resources, National Planning Authority.



**The laws Vs the Procedure at the institutions**

Regardless of the provisions in either the sectoral or the ATI law, there is no particular formula in as far as granting access to information in these agencies is concerned. The problem seems to be with the system in the various institutions but not really whether an institution wants to release the information or not.

- There is a complexity of issues involved and the criteria used seem subjective at best. It depends on:
  - the approach that the requestor uses,



- The disposition of the of the person in charge of the information and their perceptions,
  - where the requestor is based or from,
  - who the requestor is for instance, the student requestor was able to acquire the information because she explained that she required the information for purely academic purposes and identified herself using a student identification card. The NGO requestor, on the other hand was told that, “NGO’s *are always looking for ways to agitate the public and the government*” and denied any information he sought apart from information at the Department of Geological Survey and Mines. Although, the NGO requestor followed what was required of him to the later, i.e. wrote letters to the Executive Director, followed up on his requests and sought appointments, he was continuously denied access to any information that he sought.
- Not all officials in the various institutions are aware of the information provisions in the sectoral law or even of the Access to information Act. Many officials felt threatened when the requestors made reference to the provisions in the ATI law. They felt that rather than making reference to the law, the requestor should have used the institutional procedure of making a written request to the Executive Directors or institutional heads.
  - The findings reveal that the worst performing agency is the NFA. The experience of the poor person seems to back this up. He was manhandled and almost arrested at NFA when he requested for information on licensing in forest reserves. He was only saved when he revealed that he was sent by Greenwatch to obtain information on their behalf and had to be brought to Greenwatch to be vouched for. The NFA officials were not willing to be helpful at all. They were hostile from the onset. One researcher stated that sometimes, an individual in NFA will deliberately refer you to an officer who is not even responsible for information in that organisation for instance a human resource manager, who adamantly refuses to speak to you at all which was frustrating. Their procedures are inconsistent for instance, the student requestor was told to refer her request to the office of the human resource manager while the NGO requestor was on his third visit referred to the office of Executive Director. Still none of them availed any of the information at all.
  - The Department of Geological Survey and Mines performed well with regard to granting requests. The officers at this department are very helpful, willing to talk to and even provide information like maps to the people who ask for them.
  - In institutions where no proper records are kept regarding formal requests for information, it presents a challenge when following up on any requests made. When the student requestor visited the Ministry of Finance, she was advised to write a formal letter to the Permanent Secretary and attach this to the access to information forms that she had. However, when she made a follow up visit, she was informed that there was no record of the request she had made and was advised to re-submit her request for information.
  - Submitting a form of identification, when making the request for information does not guarantee that one will be availed with information. It allows a requestor the opportunity to see an official in that particular institution.

- The requestors at times went to various lengths to try and access the information. First making a phone call to the public relations and/or information officers, then sending requests via email, writing a formal request letter and finally going to the institution in person. One journalist followed all these steps and was granted the information at the Petroleum Exploration and Production Department by the information officer. The only information he was denied was the copy of the concession agreements on oil which he was told was confidential. He was also granted an opportunity to interview a senior official at the institution once he revealed that he was a journalist. The information that he got was received via email from the information officer.
- When requests were made in written format, the responses to these requests were, more often than not, in verbal form. This was consistent in the different institutions visited, more so if the responses were to deny the requestor access to the information. No denial of information was made in writing.
- Where a requestor used the ATI law to seek information, the requests were not granted. Information was granted basing on the institutional procedures followed.
- The information availed to the requestors was mainly maps of areas where the licenses were granted- at the Department of Geological survey and mines, Ministry of Energy, PEPD; a government enforcement notice from NEMA.

### **Gender is not a determinant**

There was no evidence to show that denial to access information is based or influenced by the gender of the requestor. Two female journalists were denied information, however, the student who was female managed to get access to some of the information she requested. Various variables such as the personality of the requestor, the approach used when requesting for the information, as well as the mood of the official at the government institution seem to affect the outcome of whether one will be granted the information or not.

### **Type of requestor is a determinant**

The type of the requestor affects the outcome. For instance, the NGO requestor who requested for the information under the ATI law and using the regulations was told that NGO's "*misuse the information*" they are given. In most of the institutions visited, the response to his request was negative once he stated he was from civil society and asked for the information using existing regulations. It is safe to assume that there is bias about civil society. The journalists on the other hand requested for the information under the various sectoral laws. They had mixed responses not because of the sectoral provisions under which they proceeded but because in some instances they changed their approaches while asking for the information.

### **Conclusions**

- The Ugandan legal and policy framework recognises the right of citizens to information. The Constitution which is the supreme law of the land strongly guarantees the right of citizens to information in the hands of the government and its agencies.
- The right to information is also recognized under the Access to Information Act 2005.

- Compared to the Constitution, the Act is highly limitative and has a broad exemption regime that strays far beyond the exemptions set by the Constitution.
- The continued presence of archaic, restrictive and colonial situated laws such as the Official Secrets Act on the country's statute books has further limited the free flow of information. These laws still co-exist with freedom of information legislation and have on many occasions been evoked by duty holders to deny citizens' requests for information.
- Information provisions can be found in the various sector laws in the natural resource and environment sectors. These laws enjoin the relevant sectors to collect, preserve and disseminate information related to the environment and natural resources.
- Knowledge about the law by any public officials is limited. Those who have some knowledge do not understand its provisions or their roles in availing the public with information. Because of this, they regard it more as a hindrance to their work and are not receptive to those seeking for information under the provisions of the ATI law. This explains why the process the researchers were told to follow while requesting for information was neither in the ATI law nor even in the various sectoral laws, rather, these were the procedures at the respective government institutions.
- Using the ATI law is not sufficient for one to access information held by public institutions. A combination of both the ATI and sectoral laws would suffice. But this also depends on whether the public authorities are made aware of the provisions in the ATI law. Consequently, the access to environmental information regime set out in natural resources legislation may be concluded to be much more successful than main stream laws as far as it is more practical and less stringent.

The right to information has been recognized by the courts on many occasions. The right to information was affirmed in the first ever case to be brought under the new 1995 Constitution. A litany of court decisions advancing the right to information has since followed and so far only one case involving enforcement of the right to information has been dismissed without the sought remedy.

## **Recommendations**

**Based on the findings, the study makes the following recommendations:**

- The Access to Information Act and Regulations made thereunder should be reviewed to promote full disclosure of information by public bodies since as it is now it contains much wider restrictions than those contained in the Constitution under which it is made.
- The government should ensure that every institution has a designated information officer as provided for in the law to act as the focal person to whom requests for information should be addressed.
- Institutions should classify the type of information that is readily available as well as that which cannot be accessed by the public.
- A special body should be established to promote the Access to Information Act through public education and sensitization.

- Proactive disclosure should be promoted as this not only facilitates full disclosure but also reduces on the costs of information requests. Information can be proactively disclosed by public bodies on their official websites, manuals, reports, newspapers and other media channels.
- Archaic, restrictive and colonial oriented laws which have the unreasonable effect of hampering the right of citizens to information such as the Official Secrets Act should be repealed and taken off the country's statute books. The other unprogressive laws include; some provisions of the Evidence Act, Parliament (Powers and Privileges) Act and the proposed Press and Journalism Bill.
- Litigation on the constitutional right to information should be strengthened especially where the Access to Information Act is restrictive.
- Finally, responsible bodies to whom court decisions are directed should take such decisions seriously and implement them to the letter otherwise they should be found in contempt of court and individuals in those bodies held accountable.
- The provisions of the Uganda Act should be revisited to provide for a strong record keeping and management system.
- A comprehensive internal appeal mechanism be developed given the protracted and costly nature of court proceedings in Uganda. Presently, courts are experiencing a huge case backlog and litigation is unduly prolonged while an internal mechanism would be cheaper and faster.

# About Greenwatch.

Greenwatch is an environmental rights advocacy organization established in 1995 with the aim of enhancing public participation in the sustainable use, management and protection of the environment and natural resources and in the enforcement of the right to a clean and healthy environment.

At Greenwatch, we advocate for the enforcement of and compliance with environmental laws and principles through training which results in increased environmental awareness. We review and analyze Environment Impact Assessments (EIAs) of development projects with a likelihood of impacting on the environment negatively; a process which aims at influencing policy making for improved environmental governance in Uganda.

We support community initiatives through dissemination of information on environmental rights and laws for effective participation in decision making; conduct research and training for the public as well as government enforcement officers on access rights: access to information, access to justice and public participation in the governance of natural resources.



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