



NAMBIA

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Submitted by:

Africa Freedom of Information Centre

Contact:

Gilbert Sendugwa
Coordinator & Head of Secretariat
Africa Freedom of Information Centre
Plot 5 Katago Road, P.O Box 35643, Kampala
Tel: 256 414 533554 Fax 256 414 533554
Email: gilbert@africafoicentre.org

Website: <http://www.africafoicentre.org> | Twitter: <https://twitter.com/AFIC1>

Executive summary

Citizens' access to information in possession of government ministries, departments and agencies is important, because it affects almost everyone in society. People need information to participate in the democratic process and to influence decision-making by Government. Citizens need to be informed for them to be able to form an opinion and express their views on the state of affairs. And they need to be informed so that they could decide how well– or otherwise – they are governed. Unless they have unhindered access to information they cannot hold public officials accountable for their performance. This UPR report focuses on developments related the right to information and Freedom of Expression associated measures taken by Namibia

In this submission, the Africa Freedom of Information Centre provides for information under sections A, B, C and E, F, G as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*¹. Most of the information presented in this report is issues concerning particularly the right to information and freedom of expression.

A. Methodology

1. The [Africa Freedom of Information Centre \(AFIC\)](#). AFIC is a pan–African network and resource centre consisting of 35 civil society organizations in 22 African countries, promoting access to information in Africa through comparative research, coordinating regional advocacy, facilitating information-sharing and capacity building. AFIC promotes democratic rule and socio-economic justice for African citizens through fostering a culture of increased transparency, integrity and accountability among governments, both regional and international.
2. The planning, development and management of this report involved desk research, media reports and individual human rights reports, all which have helped to inform and frame Namibia's UPR report.

B. Normative and Institutional Framework of the State

Applicable frameworks & standards in international human rights law in Namibia.

¹ See Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007

3. Namibia currently has no legal freedom of information legislation. The Namibian constitution that provides for the Namibia's general legal framework for the countries fundamental rights and freedoms but does not make any reference to the right to information and freedom of expression.

4. Namibia is State Party to the International Covenant on Civil and Political Rights which in Article 19 (2) states 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”*². Namibia is also State Party to the African Charter on Human and Peoples' Rights which in Article 9 states that, *“1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law”*³ In elaboration of Article 9 of the Charter, the African Commission on Human and Peoples' Rights stated in Article IV of the Declaration of Principles of Freedom of Expression in Africa, *The right to information shall be guaranteed by law in accordance with the following principles*⁴

5. Other applicable treaties that recognised citizens' right to freedom of information and expression that Namibia has ratified include the United Nations Convention on Corruption⁵; African Union Convention on Preventing and Combating Corruption⁶; African Youth Charter⁷ and the African Charter on the Values and Principles of Public Service and Administration⁸

C. Promotion and Protection of Human Rights on the Ground

Freedom of the Press

6. Namibia has unprogressive laws that may affect freedom of the press. Article 66(1) of the Constitution provides that – “[b]oth the customary law and the common law of Namibia in force on the date of Independence shall remain valid...” Defamation is still a criminal offense under the common law in Namibia and Namibia has yet to repeal defamation as a criminal offence in its laws. Therefore the

² Article 19 United Nations Covenant on Civil and Political Rights <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³ African Charter on Human and Peoples' Rights http://www.au.int/en/sites/default/files/banjul_charter.pdf (last accessed on the 20th of June 2015).

⁴ Article IV, Declaration of Principles of Freedom of Expression in Africa <http://www1.umn.edu/humanrts/achpr/expressionfreedomdec.html>

⁵ Article 13, United Nations Convention against Corruption 31 October 2003. (Namibia ratified on the 3rd of August 2004).

⁶ Articles 9 and 12 (4) of the African Union Convention Against Corruption http://www.au.int/en/sites/default/files/Corruption_0.pdf

⁷ Article 1 (2i) of the African Youth Charter http://www.au.int/en/sites/default/files/AFRICAN_YOUTH_CHARTER.pdf

⁸ Article 6 of the African Charter on Values and Principles of Public Service and administration http://www.au.int/en/sites/default/files/Public%20Services_0.pdf

current laws have the ability to create a culture of intimidation and prosecution for media practitioners in the course of their work if not struck out.

7. Most government websites are outdated and not functional in terms of providing current public information. Even the website of the Ministry of Information and Communication Technology is in a very poor state.⁹

8. The government and party leaders have issued harsh criticism and even threats against the independent press. In January 2013, Youth Minister Kazenambo Kazenambo hurled racial insults and threatened to assault journalist Tileni Mongudhi during an interview (Mongudhi is a member of Namibia's ethnic Owambo majority, while Kazenambo is a minority Herero). In the case of a violent attack in 2010 against John Grobler, allegedly by four prominent businessmen with ties to SWAPO (including a son-in-law of former president Sam Nujoma), the charges against two of the men were dropped due to lack of evidence in March 2012.

9. Some journalists and editors, especially at the state-run media, practice a degree of self-censorship. This is because the Namibian government often attacks media house that seem not to exhibit political loyalty to the Government. In April 2012, prominent SWAPO members, including Kaapanda and party secretary general Pendukeni Iivula-Ithana, threatened to delay or halt funding for the NBC and *New Era*, claiming that the outlets were not adequately supporting the government's agenda.

Access to Information

10. In practice public information is difficult to access by journalists and ordinary members of the public. The lack of enabling legislation has hindered citizens' ability to request and receive information held by public bodies as no procedures are established to guide the process¹⁰

11. In 2012, an estimated 13 percent of Namibians accessed the internet.¹¹ This figure is extremely low. The challenge is mainly related to socio-economic limitations that have affected the ability of Namibians to use the internet.

12. Low literacy rates leading to the inability to read newspapers, makes radio the primary source of information for most Namibia. Therefore the lack of capacity to decimate information is limiting access to

⁹ http://www.fesmedia-africa.org/uploads/media/AMB_Namibia_2011_03.pdf (last accessed on the 20th of June 2015).

¹⁰ http://www.mediaombudsmannamibia.org/downloads/Access_to_information_WPF_DAY_Speech_Media%20Ombudsman.pdf (last accessed on the 20th of June 2015).

¹¹ https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs_mqqko (last accessed on the 20th of June 2015).

information in Namibia. Community radio remains underdeveloped, and high costs for television licenses limit the expansion of that medium. Meanwhile, printing and distribution costs for print media also remain relatively high.¹²

13. Namibia still has the apartheid era “Protection of Information Act of 1984” still on their statutes;¹³ it seems to only substantially limit the public access to information.

D. Identification of achievements, best practices, challenges and constraints in relation to the implementation of accepted recommendations and the development of human rights situations in Namibia

14. The situation of freedom of expression, freedom of press and information was of concern during the previous Universal Periodic Review carried out in 2011. Consequently, Sweden recommended and the Republic of Namibia accepted that it would take effective measures to safeguard freedom of expression for individuals and the media¹⁴.

15. The right of access to information is integral to freedom of expression and press. Unfortunately, Namibia has not taken practical measures to meet its obligations under the treaties mentioned above as well as honouring its own acceptance to implement measures to effectively safeguard and promote freedom of expression and media.

16. The Namibian constitution under Article 21 (1a) guarantees that freedom of speech and expression, which shall include freedom of the press and other media. The constitution further holds that these and other freedoms shall be exercised subject to the law of Namibia¹⁵ Unfortunately, Namibians’ the right of freedom of expression, press and information continue to be undermined by the lack of adoption and effective implementation of a national freedom of information legislation¹⁶.

¹² https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs_mqqko (last accessed on the 20th of June 2015).

¹³ <http://www.justice.gov.za/legislation/acts/1982-084.pdf> (last accessed on the 20th of June 2015).

¹⁴ Sweden UPR Recommendation to Namibia http://www.upr-info.org/database/index.php?limit=0&f_SUR=120&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

¹⁵ Constitution of Namibia <http://www.orusovo.com/namcon/> (last accessed on the 20th of June 2015).

¹⁶ Access to Information in Namibia <http://www.africafoicentre.org/index.php/reports-publications/139-state-of-right-to-information-in-africa-report-2014?path=> (last accessed on the 20th of June 2015).

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¹⁷ AU Model Law on Access to Information http://www.achpr.org/files/news/2013/04/d84/model_law.pdf (last accessed on the 20th of June 2015).

Recommendations for Action in Namibia

17. Namibia should urgently adopt and effectively implement a comprehensive national right of access to information law on the basis of the Model Law on Access to Information adopted by the African Commission on Human and Peoples' Rights in 2013¹⁷.
18. The Prime Minister should also set clear guidelines to be followed by all Ministries and agencies regarding realization of the right to information provisions in treaties ratified by the Republic of Namibia
19. In the absence of a constitutional provision on access to information, the Government should as soon as possible implement the policy framework for the enactment of legislation on access to information. The Prime Minister should also set clear guidelines to be followed by all Ministries on how information could be accessed by the public and made available by Ministries.
20. The Government of Namibia should urgently consider joining the Open Government Partnership which provides a framework for constructive engagements between citizens and governments on advancing transparency and citizen participation¹⁸
21. Recommendations for civil society include increased engagement and sensitization of the public. Advocacy for the right to access to information should be enhanced. Effective monitoring systems should be developed to assess efforts at increasing access to information.

¹⁷ AU Model Law on Access to Information http://www.achpr.org/files/news/2013/04/d84/model_law.pdf (last accessed on the 20th of June 2015).

¹⁸ Open Government Partnership <http://www.opengovpartnership.org/> (last accessed on the 20th of June 2015).