

Uganda's Access to Information Regulations: Another Bump in the Road to Transparency

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On 21 April 2011, the government of Uganda signed into law new regulations for implementing Uganda's Access to Information (ATI) Act of 2005.¹ The ATI Regulations² were long awaited and widely welcomed, since many local and international advocates believed their absence had hindered full implementation of the Act, and stymied efforts to increase transparency and accountability. The Regulations support implementation of the ATI Act in a number of important ways. For example, they establish procedures for citizens to request government-held information and for government to respond to citizen requests. But the Regulations also include a number of burdensome provisions that make access unnecessarily costly and difficult and, as such, they are not in the spirit of the strong right to information provision found in Uganda's Constitution.

The 1995 Constitution of Uganda (amended in 2005) provides every citizen "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."³ Prior to the enactment of the ATI Act in 2005, advocates used the Constitution in the High Court to successfully obtain valuable information from the government. The ATI Act, however, includes a number of new exceptions. For instance, the Act permits the government to withhold information related to the operation of public bodies,⁴ as well as commercial information if release of the information could put the third party "at a disadvantage in contractual or commercial negotiations."⁵ The lower Magistrates' Courts have recently interpreted these exceptions broadly to strike down a number of citizen requests for information.⁶

The ATI Regulations continue this downward trend of limiting the right of Ugandan citizens to access government-held information. The Regulations affect three areas of particular significance: the cost of accessing information; the procedures that citizens must follow to request information; and the guidance provided for implementing public agencies.

The Cost of Accessing Information. The Regulations require individuals applying for information to pay a number of fees for each request.⁷ The ATI Act specifically states that enabling regulations should cover fees equal to "the actual cost of retrieval and reproduction."⁸ Despite this direct limitation, the ATI Regulations provide multiple fees that go beyond the specific charges for copying and preparing information. Most notably, requesters must pay a "non refundable access fee" at the time of submitting

¹ http://www.freedominfo.org/documents/uganda_ati_act_2005.pdf

² Statutory Instrument No. 17 - The Access to Information Regulations, 2011 (The Uganda Gazette, Vol. CIV No. 28, 21st April, 2011)

³ Constitution of Uganda, Article 41(1)

⁴ ATI Act, Section 33

⁵ ATI Act, Section 27(1)(c)(i)

⁶ <http://www.wri.org/publication/avoiding-the-resource-curse>

⁷ The right of access to information is guaranteed by constitutions around the world and is essential to keeping governments accountable. ATI best practice suggests that the costs of providing citizens with information should recognize the economic reality of the country in which they apply and should be kept to a minimum

(http://spaa.newark.rutgers.edu/images/stories/documents/Transparency_Research_Conference/Papers/Tilley_Alison.pdf)

⁸ ATI Act, Section 47(2)

the request. This fee is listed as 20,000 Ugandan shillings (approximately 8 USD)⁹—a significant amount of money for most citizens, and a substantial investment particularly since the applicant risks losing the entire sum if the request is not granted. In 2010, the Gross National Income (GNI) per capita in Uganda was 460 USD,¹⁰ with 35% of the population living on less than 2 USD per day.¹¹ While the “access fee” can be waived where the request is “in the public interest” or if the information “is likely to benefit a large section of the public,”¹² the ATI Regulations do not provide any guidance on when these exceptions might apply, opening the possibility that they may not come into play in most citizen requests.¹³

Further, the ATI Regulations establish a fee for receiving government help to transcribe an oral request for information into a written application that conforms to requirements (see below).¹⁴ This is a particularly troubling clause since, in 2010, the adult literacy rate in Uganda was just 76.4%.¹⁵ The Regulations also establish a potential deposit to be paid by the requester before the search for a record is undertaken.¹⁶ No further explanation is provided as to what this deposit should be based on or how much it will cost. By adding these fee requirements, the ATI Regulations threaten to make accessing information prohibitively expensive for most Ugandans.

Procedures for Requesting and Providing Information. Schedule 2 of the ATI Regulations provides 15 different forms to be used by individuals requesting information, third parties with an interest in the information, or public bodies granting or refusing an access request. The form for requesting information requires individuals to provide their name and physical home address, eliminating the option of submitting anonymous requests (a particular concern of requesters suspicious of government monitoring and targeting). While the Regulations state specifically that the requester cannot be denied information solely because s/he failed to use the right form,¹⁷ the various forms nonetheless threaten to make requesting information unnecessarily cumbersome, particularly since many Ugandans lack access to the internet or other methods for easily obtaining government-printed forms.¹⁸

The remaining 14 forms are to be used principally by government bodies for various types of responses to citizen requests for information. While these forms generally do not have the same language as the citizen request form about being non-mandatory, presumably public bodies will need to use the appropriate and correct form or risk being in violation of the law. While forms can help ensure that public officers provide people with all the necessary information, such as their right to appeal or to a timely response, cumbersome paperwork requirements risk slowing the process and making it more difficult than necessary for public officers to grant access to information. This is particularly true in situations where

⁹ ATI Regulations, Section 7(1) and Schedule 3

¹⁰ <http://www.doingbusiness.org/data/exploreeconomies/uganda>

¹¹ <http://www.indexmundi.com/uganda/>

¹² ATI Regulations, Section 7(3)

¹³ Required fees in Uganda are higher than those required in South Africa. In South Africa, the law establishes a fee of R35/US\$5 per request for information from a public body, and R50/US\$7.14 per request submitted to a private body (Government Notice R 223, 9 March 2001). The fee system in South Africa—where 25.3% of the population lives on less than US\$2 a day—was recognized by the government as having a significant, adverse impact on the use of the law by the public. In October 2005, the Minister exempted indigent persons (earning less than R14,712 net a year (US\$2,100) from paying access and certain request fees (http://spaa.newark.rutgers.edu/images/stories/documents/Transparency_Research_Conference/Papers/Tilley_Alison.pdf).

¹⁴ ATI Regulations, Section 3(7)

¹⁵ <http://hdrstats.undp.org/en/countries/profiles/UGA.html>

¹⁶ ATI Regulations, Section 9(c)

¹⁷ ATI Regulations, Section 3(8)

¹⁸ In South Africa, the Promotion of Access to Information Act (PAIA) of 2000 provides that the requester must use the form which has been printed in the Government Gazette to make a request. This has frustrated applicants and officials who cannot accept requests by letter or e-mail, and hampers illiterate and disabled requestors. The PAIA also restricts anonymous requests because of the requirement to provide a name in the form. The South Africa Human Rights Commission reported in 2010 that it has pressed the Department of Justice and Constitutional Development to consider amending the PAIA to permit such requests to address both perceived bias and actual prejudice or bias in the processing of and response to requests (http://spaa.newark.rutgers.edu/images/stories/documents/Transparency_Research_Conference/Papers/Tilley_Alison.pdf).

institutional capacity is low, resources are scarce, and internet and printing access is limited for public agencies.

Lack of Guidance for Implementing Agencies. Third, the ATI Regulations are problematic in what they do not provide. The ATI Act allows the Minister responsible for government information to give further guidance to public authorities, the key actors implementing the law. Specifically, the Act states that the regulations may provide “uniform criteria” for information officers to apply when deciding which records to make available proactively,¹⁹ as well as further directions on how to interpret exceptions in the Act.²⁰ The regulations may also cover other administrative or procedural matters as “necessary to give effect to [the] Act.”²¹ Moreover, there are several sections in the ATI Act that would benefit from further explanation, including Section 7 which requires every public agency to publish a manual on how to access information held by that agency at least once every two years.²²

Regulations can give important guidance to public officers tasked with putting the ATI Act into practice, and signal to public bodies that the Act calls for real changes toward a culture of openness. By failing to provide further details on how to interpret key provisions in the Act, however, the new ATI Regulations leave it to individual information officers to grapple with questions of interpretation and implementation.²³ Some officers may not be well versed on the purpose of the Act or its correct interpretation, leading to confusion, inconsistency across public bodies, and continued secrecy.

While the release of the ATI Regulations is a welcome development, there is concern that a number of the provisions create obstacles to public access to information. By making access to information costly and cumbersome the Regulations build barriers and protect secrecy, instead of providing transparency. If these concerns are not addressed, the Regulations in Uganda will continue the trend started by the ATI Act of shrinking the constitutional right to information.

For more information on WRI’s ongoing work on access to information and environmental governance in Africa please contact Peter Veit (pveit@wri.org) or Carole Excell (cexcell@wri.org).

¹⁹ ATI Act, Section 47(1)(e)

²⁰ ATI Act, Section 47(1)(f)

²¹ ATI Act, Section 47(1)(g)

²² ATI Act, Section 7

²³ In South Africa, the Regulations for the Promotion of Access to Information Act were passed in 2002, two years after the passage of the Act. The Regulations contain detailed provisions on the compilation of guidance manuals to require proactive publication of information by government agencies and private corporations, translation of the guide into local languages, and the location and availability of manuals to aid the public in understanding the mandate of public and private bodies and making requests (http://spaa.newark.rutgers.edu/images/stories/documents/Transparency_Research_Conference/Papers/Tilley_Alison.pdf).