MAKERERE UNIVERSITY

OIL CONTRACTS AND THE RIGHT OF ACCESS TO INFORMATION: CHALLENGES ENCOUNTERED BY THE FOURTH ESTATE

BY

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2020/HD09/17783U

A DISSERTATION SUBMITTED TO THE DIRECTORATE OF RESEARCH AND GRADUATE TRAINING IN PARTIAL FULFILMENT FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS OF MAKERERE UNIVERSITY

DECEMBER, 2025

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DEDICATION

This research work is dedicated to my dearest wife, Mrs. Faith Mukuru for the love and care she bestows unto me and our son – Ayebale Emerald. This work is also dedicated to my brother, Mihingo Caleb and my parents, Mr. Mihingo Godfrey and Mrs. Consolate Mihingo whose encouragement provided the much-needed psychosocial support during this academic journey. Finally, this work is dedicated to all journalists who toil each day to seek, obtain and disseminate news through various media fora in bid to keep Ugandans informed.

ACKNOWLEDGEMENT

I fall short of words in expressing my sincere gratitude to Dr Zahara Nampewo for the support, availability and motherly inspiration she rendered during supervision of this research work. Her tireless effort, shared knowledge and expertise have contributed tremendously to make this work successful. I am greatly indebted to her.

I am very grateful to my parents – Mr and Mrs Mihingo, together with Ms. Namugoji Esther Sandy who supported me financially in pursuing this course. I am greatly thankful to the institutions who opened their gates for me and permitted me to interview their staff. I would like to particularly acknowledge the cooperation of the Attorney General's Chambers, the Petroleum Authority of Uganda, Total Energies Uganda, Nation Media Group, and the China National Offshore Oil Corporation.

I acknowledge my brother, Mihingo Caleb's efforts in delivering my request for extension of time to complete the course when I overran the normal period and picking the response in my absence. Special thanks to my pastor, Nagaya Patrick who made it a personal initiative to pray for my academic success to doctorate level. I pray he lives to see me attain that milestone.

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACom HPR	African Commission on Human and Peoples' Rights
CIPESA	Collaboration on International ICT Policy for East and Southern Africa
ICCPR	International Covenant on Civil and Political Rights
JCC	Justice of the Constitutional Court
MEMD	Ministry of Energy and Mineral Development
NGO	Non-Governmental Organisation
PAU	Petroleum Authority of Uganda
UDHR	Universal Declaration of Human Rights
UNCHR	United Nations Commission on Human Rights
UNHRC	United Nations Human Rights Committee

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ABSTRACT

The right of access to State-held information is provided as a derogable right by Article 41 of the Constitution of Uganda 1995. The right stretches its roots from the medieval period in Europe, but has undergone various reform over the years and has been inculcated into several continental and international protocols because numerous municipal regimes globally which globally influenced Uganda's Article 41.

Relatedly, the press is the pivotal conveyer belt for flow of information from the government to the public. This research is hinged on a hypothesis that if the fourth estate do not access State-held information, then the general public will remain aloof of the same. Thereby, this study examines the applicability and realization of the right of access to information in light of oil resources in the Albertine Graben, as measured from the perspective of the fourth estate.

The study scrutinizes the applicability of the right in foreign jurisdictions by reviewing international and continental conventions in addition to national legislation from select jurisdictions. Tribunal and Court decisions are also reviewed. A similar review is conducted in the Ugandan perspective and comparisons made.

The study adopted the purposive and snowball sampling techniques in selecting respondents on the basis of knowledge of oil contracts and undertaking efforts to formally seek for access to those contracts under the auspices of Article 41. The research makes key findings like; oil is a geo-political aspect which the Ugandan State treats as confidential as security-related matters in addition to individual interests of government officials to the oil sector, the media and the public do not make effort to exercise their right by formally requesting for oil contracts under Article 41 procedures, oil companies push for inclusion of non-disclosure provisions in the contract to protect their intellectual property, and the fact that the legal regime gives too much liberty to oil companies to determine whether disclosure can be made or not.

The study concludes that Uganda's legal regime provides too many exceptions to the right which gives State officials an excuse to deny disclosure of oil contract. The study advocates for amendment of Petroleum laws to make them pro-disclosure and align it with current international trends which promote disclosure and accessibility of oil contracts.

CHAPTER ONE

1.0 INTRODUCTION

Professor Noam Chomsky while delivering the Lewis Burke Frunkes lecture at New York University in 2004 is quoted to have stated;

> "The duty of journalists is to tell the truth. Journalism means you go back to the actual facts, you look at the documents, you discover what the record is, and you report it that way."[1]

Relatedly, Oscar Auliq-Ice is quoted to have stated that;

> "Independence of the media, freedom of the press, freedom of expression and the right of access to information are vital if the media are to be able to perform their watchdog function in a democratic society governed by the rule of law."[2]

Information is the key to sound decision-making, to accountability and development; it underpins democracy and assists in combatting poverty, oppression, corruption, prejudice and inefficiency.[3] Administrators, judges, arbitrators, and persons conducting inquiries and investigations depend upon it; likewise the press, NGOs and individuals concerned to report on issues of public interest.[4] Thereby access to information is a fundamental pillar of democratic governance and accountability, particularly in the management of natural resources such as oil and gas. While Uganda's legal regime provides for the right of access to information, its implementation - particularly concerning oil contracts remains limited. Journalists are fundamental in informing citizens and fostering transparency. However, they encounter structural, legal, and institutional barriers when seeking information related to oil contracts rendering the right of access to information unrealistic in that realm. These challenges are compounded by state secrecy, pro-non-disclosure legislations, overwhelming influence of oil multinationals and the need for commercial confidentiality among others. This dissertation examines the challenges faced by Ugandan journalists in accessing information

[1] Joy Wang, "Lecture: Noam Chomsky," (Speech at the Lewis Burke Frunkes lecture, 2004) https://nyujournalismprojects.org/bullpen/noam_chomsky/lecture/ (accessed September 2, 2025).
[2] Goodreads, "Free Press Quotes," *goodreads*, https://www.goodreads.com/quotes/tag/free-press (accessed September 2, 2025).
[3] Kennedy vs The Charity Commission [2014] UKSC 20 at 2.
[4] Ibid.

relating to oil contracts, with a focus on developments between 2007 and 2022. It explores the legal and institutional make-up of the right of access to information both in Uganda and from select foreign jurisdictions for comparison purposes. The study employs a qualitative methodology, relying on semi-structured interviews, as well as textual analysis of legal instruments, court decisions and media reports among others.

1.1 BACKGROUND TO THE STUDY

The discovery of large quantities of recoverable oil reserves in 2006 sparked immense hope over Uganda's future among both the citizenry and the government. Little known was that the State would "hide" details of contracts for extraction of the lucrative resource away from not only the eager public eye's view, but even the Legislature which could not scrutinize some of the contracts.[5] This is albeit the Constitution's dictate in Article 41(1) which gives every Ugandan a right to access information in possession of the State or any of its organs except where the release of such information is likely to prejudice the security of the State, or interfere with another person's privacy. Clause (2) empowers Parliament to make laws operationalising the right. This study focuses on the notion of access to oil-related information exclusively in possession of the State.

Ugandans contribute to the State's treasury through paying direct and indirect taxes, Court fees and local government dues among other government-levied charges. Therefore, Ugandans deserve and usually request for accountability of the said taxation. On the other hand, the State uses tax-gained funds to undertake various programs including but not limited to; funding infrastructure projects, funding public-private partnerships in the mining sector and providing social sector services like health and education, to the citizenry. These projects are popularly termed "development programs."

However, many details pertaining to these development programs are hidden or kept out of reach for the common tax payer. For example, most Ugandan tax payers are aloof of terms and conditions their government bargained and signed for in contracts with multinational corporations in regard to oil resources in the Albertine Region. Information regarding

[5] Thomas Lewton, "Total's Oil Pipeline Gets Go-Ahead From Ugandan MPs Despite Secret Terms," *Conservation News*, January 14, 2022, https://news.mongabay.com/2022/01/totals-oil-pipeline-gets-go-ahead-from-ugandan-mps-despite-secret-terms/ (accessed September 2, 2025).

acquisition of firearms by the armed forces is very scanty, if not confusing.[6] Similarly, data regarding contracts signed with Chinese companies for road construction, expansion of Entebbe International Airport,[7] construction of Kabale International Airport and Isimba hydro-electric dam, among other infrastructural development-projects is completely unknown to Ugandans – however much they wish and yearn to know.

By virtue of their profession, journalists are expected (at least by the common populace) to access the above, or any other information in the hands of the State, and feed the same to the masses through television and radio news broadcasts, investigative journalism reports, online media outlets and newspaper reports, among others. Surprisingly, the Fourth Estate too seems aloof on certain critical information which one would expect them to have knowledge of in a free and democratic society – which Uganda professes to be.[8] For that reason, many State dealings with foreign governments or Multinationals go uncovered and unscrutinised by the Ugandan press. It is factually trite to assert that for the right of access to information to be realised, freedom of the press should be strictly observed and exercised.

In May 2007, journalists Charles Mwanguhya Mpagi (of Daily Monitor Newspaper) and Izama Angelo (then free-lance journalist) requested the Attorney General and the Permanent Secretary - Ministry of Energy and Mineral Resources, for certified copies of the Production Sharing Agreements signed between the government of Uganda and several Multi-national companies to explore, exploit and sell the country's oil resources premised in the Albertine graben. The Permanent Secretary requested for time to "consult" and never reported back, while the Solicitor General acting on behalf of the Attorney General declined to disclose the information citing a confidentiality clause which required the multi-nationals' prior consent before disclosure could be made to any third party.[9]

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[6] Independent Team, "Inside UPDF Purchase of Russian Fighter Jets and Missiles," *The Independent,* May 30, 2010, https://www.independent.co.ug/big-deal/ (accessed September 2, 2025).

[7] URN, "Works Minister Admits Blunders in Entebbe Airport Expansion Contract," *The Observer*, February 21, 2022, https://observer.ug/news/headlines/72819-works-minister-admits-blunders-in-entebbe-airport-expansion-contract-award (accessed September 2, 2025).

[8] CIPESA, "Advancing the Right to Information Amongst Ugandan Journalists," *CIPESA*, February 24, 2015, https://cipesa.org/2015/02/advancing-the-right-to-information-amongst-ugandan-journalists/ (accessed September 2, 2025).

[9] Columbia University, "Charles Mwanguhya Mpagi and Izama Angelo v. Attorney General, Miscellaneous Cause No.751 of 200," *Global Freedom of Expression*, https://globalfreedomofexpression.columbia.edu/cases/charles-mwanguhya-mpagi-izama-angelo-v-attorney-general-miscellaneous-cause-no-751-200/ (accessed September 5, 2025).

Dissatisfied, the journalists applied to Nakawa Chief Magistrates Court[10] under Articles 41 and 244 of the Constitution and Sections 34(b), 37, 41 and 42 of the Access to Information Act, seeking orders compelling the State to release the information. They argued that the public interest in the sought disclosure outweighed any third-party harms. Court determined that they did not meet the required legal standard to prove that public interest outweighs the harm such disclosure would cause in light of the confidentiality clauses. Secondly, that the applicants (journalists) did not state how they would use the information to cause government to be more efficient and accountable in the management of oil resources.

The Chief Magistrate's decision has been criticised for two major reasons; first, it is incumbent upon the public authority to prove that any disclosure of the information in its possession would be more harmful to the public interest than its disclosure, but not the persons requesting for information to do so. Secondly, there is no provision in the law which requires persons requesting for information to justify how they are going to use it.[11]

This study seeks to not only unearth the legal construction and reasoning for the Ugandan State's disinclination to disclose information regarding contractual undertakings it entered into with foreign multi-nationals to journalists and subsequently the general public; but also interrogate the legal avenues through which access to information is guaranteed in different legal regimes and how they can be adopted into Uganda's situation. This study is meant to advocate for a more pro-accountable approach by the State when contemplating disclosure of information touching the oil-sector, as Article 41 of the Constitution would require.

1.2 STATEMENT OF THE PROBLEM

To have a semblance of a modern democratic state that values human rights, Uganda has not only woven the right of access to information into its municipal law fabric, but also ratified the African Charter on Human and Peoples' Rights which upholds the same right under Article

[10] Miscellaneous Cause No. 751 of 2009.

[11] Oloka-Onyango J., "Political Question Doctrine in Uganda: An Analysis of the Technicalities on the Realization of the Freedoms of Expression, Association and Assembly in Uganda," *Chapter Four Uganda*, 2017, https://www.researchgate.net/publication/341776619_Political_Question_Doctrine_in_UgandaAn_analysis_of_the_technicalities_on_the_realization_of_the_freedoms_of_expression_association_and_Assembly_in_Uganda (accessed September 2, 2025).

9.[12] Article 41 of the 1995 Constitution guarantees every citizen a right of access to information in possession of the State; and the same is operationalised through the Access to Information Act Cap 95 together with supporting Regulations.

However, despite foresight from the framers of the Constitution, the right of access to information is still a delusion to Ugandans. Details of the contracts signed by the Ugandan government with various foreign multinationals for the discovery, extraction, refining, and exportation of oil resources in the Albertine sub-region, are only a subject of rumour among the general public. Some contracts entered into include; Concession Agreement (license agreements) where the Ugandan government granted Heritage Oil and Gas Company a license to explore presence of oil reserves in the Albert Basin of Western Uganda (original Block 3) in 1997.[13] The government also signed three Production Sharing Agreements in September and October 2017, where it granted one license for petroleum exploration, development and production over the Kanywataba Contract Area to Armour Energy Limited (AEL) from Australia, and two licenses for Petroleum Exploration, Development and Production over the Ngassa Shallow and Ngassa Deep Contract Areas to Oranto Petroleum Limited (OPL) from Nigeria.[14] It is a fact that much of the population relies on information disseminated by journalists through numerous media outlets. And since the press is aloof of contents of the oil agreements, so is the general public.

It is thus a subject of contention on whether the constitutional right of access to information is indeed enjoyed by Ugandans or merely left in the law books. This research explores the challenges journalists face in accessing state-held information concerning oil resources and the

[12] Uganda ratified the Charter on May 27, 1986 and it can be argued that it influenced Article 41 of the 1995 Constitution. African Commission on Human and People's Rights, "Concluding Observations on the Combined 6th – 8th Periodic Report of the Republic of Uganda, 2013-2022," *African Union*, April 15, 2024, https://achpr.au.int/en/state-reports/concluding-observations-combined-6th-8th-periodic-uganda (accessed September 2, 2025).

[13] IDE-JETRO, "Heritage Oil Plc - AGE (African Growing Enterprises) File," *Institute of Developing Economies - Japan External Trade Organization*, fiscal year 2008-2009, https://www.ide.go.jp/English/Data/Africa_file/Company/uganda01.html (accessed August 25, 2025). And Africa Intelligence, "Uganda New Takeoff in Exploration," *Africa Intelligence*, January 22, 1997, https://www.africaintelligence.com/eastern-africa-and-the-horn/1997/01/22/new-takeoff-in-exploration,41376-art (accessed August 25, 2025).

[14] Petroleum Authority of Uganda, "Petroleum Exploration in Uganda," *Petroleum Authority of Uganda*, https://www.pau.go.ug/petroleum-exploration-in-uganda/ (accessed August 25, 2025).

implications of their inaccessibility on the realisation of the right of access to information, as well as examining the role of the law in ensuring effective realisation of the right.

1.3 OBJECTIVES OF THE STUDY

1.3.1 Overall Objective

To examine whether the right to access of information is effectively realised by the Ugandan media particularly through information regarding oil contracts.

1.3.2 Specific Objectives

i. To examine the legal and institutional framework that impacts the right of access to information in Uganda.
ii. To compare Uganda's legal regime on the right of access to information with foreign jurisdictions' legal regimes.
iii. To understand why State officials are reluctant to disclose contents of oil-related contracts.

1.4 RESEARCH QUESTIONS

i. What is the legal and normative content of the right of access to information in Uganda?
ii. How is the right of access to information provided for and implemented in foreign territories?
iii. Why are State officials reluctant to disclose contents of oil contracts to Ugandan journalists?

1.5 SIGNIFICANCE OF THE STUDY

The rationale of the framers of the 1995 Constitution was to create an accountable State to the masses – hence the institution of laws that entitle the citizenry to access, scrutinise and deliberate on State activities which are hitherto, hidden from the public eye. State accountability has been viewed more especially along monetary terms, where citizens quest to know how, and on which activities, their taxes are spent. However, information regarding the procedures and practical day-to-day government undertakings through which tax money is spent, have not been considered as a way through which the State can account to its masses.

In particular, the government is the custodian of all contracts it signed with foreign multilateral corporations concerning oil resources in the Albertine Graben, right from exploration to delivery onto the international market. Notable is that contents of these agreements are

expected to expound on fundamental aspects like; which party shall meet investment expenditures associated with hiring expert labour and drilling machinery; which party shall remedy liabilities like oil spills; how will local content be promoted - in terms of safe guarding local investment in the oil industry; how will sale revenues be shared between the host government and foreign multinationals when market production commences, among others.

This study thereby strives to fill the void within past studies conducted on the right of access to information whereby State-controlled information ought to be considered as one of the forms of accountability by the State to its citizens.

In addition, the press considers itself as the "fourth arm of a State," and to implement that, it must be in position to access information in the hands of the other arms of the State, so as to disseminate the same to the masses. This study provokes analysis on whether the Ugandan media has enabled the citizenry to realise their constitutional right of access to information. Similarly, findings of this research will be palatable to further studies on press freedom in Uganda.

1.6 JUSTIFICATION OF THE STUDY

The Constitutional Bill of Rights largely gives the State three duties in ensuring the enjoyment of human rights contained therein by the citizenry; to protect, promote and respect the stated rights.[15] For the right of access to information to be realised by anyone, the State must not only respect it, but further promote it by providing any information requested for by a citizen – more so where such information affects a huge population or the whole country.[16] Contrastingly, the

[15] Article 2 of the United Nations General Assembly Resolution 53/144, (adopted December 9, 1998). Available at - "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," *Office of the High Commissioner United Nations Human Rights*, https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and#:~:text=Each%20State%20has%20a%20prime,legal%20guarantees%20required%20to%20ensure (accessed September 5, 2025).

[16] When Mexico adopted an Access to Information legislation in June 2003 which among others required certain information including detailed budgets to be published automatically by all bodies covered by the law, the Director of publicly funded - National Polytechnic Institute used the law to expose corruption at the institution. The publicised information portrayed how university officials inflated their compensation dues and paid themselves illegal allowances from the public purse. Following public uproar, the new Director took action including dismissals which culminated in the saving of $40 million. Available at - Sandra Coliver, "The Importance of The Right of Access to Information Held By Public Authorities, And The Need For The United Nations to Take Steps to Further Elaborate, Codify, Protect and Promote this Right," *Office of the High Commissioner United Nations Human Rights,* (accessed September 5, 2025).

public is unaware of many activities the State is pursuing either under its name or seemingly for its benefit.

Parliament, an arm of government, is on record for having tasked the Executive to disclose to it details of the agreement signed with British firm – Tullow Oil Plc in 2012, and the Executive has to date declined.[17] This study therefore comes at the point in time when there is need to question why the State is uncomfortable disclosing information pertaining to issues every tax payer is interested in.

On the other hand, it has often been voiced that the Ugandan media majorly feeds viewers on political news, neglecting other critical areas of concern to the public. But can it be concluded that they never strive to acquire information regarding subjects like management of natural resources? It is henceforth worth finding out the impediments to achieving an astute, stout and reliable "fourth estate" in Uganda.

1.7 THEORETICAL FRAMEWORK

Herman Tavani[18] expounded on different theories to "informational privacy" as an exception to the right of access to information. He argued that there are numerous theories of informational privacy which may broadly be classified under four main categories: the non-intrusion, seclusion, limitation, and control theory.[19] For purposes of this particular study, emphasis shall be laid on the "restricted access" theory and the "limitation" theory. The limitation theory dictates that one has informational privacy when they are able to limit or restrict others from accessing information about them.[20] In so doing, zones or contexts of privacy are established to limit others from accessing one's personal information.

The Restricted Access/Limited Control theory[21] on the other hand provides that, an individual has privacy in a situation in regard to others if in that situation the individual is protected from intrusion, interference, and information access by others. The notion of a "situation," is left

[17] Douglas Mpuga, "Uganda Parliament Pushes for Public Disclosure of Oil Contracts," *VOA*, May 24, 2012, https://www.voanews.com/a/disclose-oil-contracts/940358.html (accessed September 5, 2025).
[18] Herman T. Tavani, "Philosophical Theories of Privacy: Implications for an Adequate Online Privacy Policy," *Metaphilosophy* 38, no. 1 (2007): 1-22, https://www.jstor.org/stable/24439672 (September 5, 2025).
[19] Ibid., Abstract, p. 1.
[20] Ibid., p. 9.
[21] Ibid., p. 9.

deliberately unspecified so that it can "range over states of affairs" that are normally regarded as private.[22] A situation can be; an activity in a location, a relationship, or the storage and access of information, such as that stored in a computer.[23] The concept of privacy is defined in terms of protection from intrusion and information access by others in the context of a situation. And that one has normative privacy in a situation where there are explicit norms, policies, or laws that have been established to protect individuals in that situation.[24]

While commending Tavani's theory, Scott Confer notes that the merit with the Restricted access theory is its ability to separate the right to privacy from the condition of privacy. That it provides the best framework for improving privacy for those who need it most, but it also maintains that the right to privacy is not necessarily a constant, and as context changes, so must the distribution of privacy.[25] Simply put, if the government relies on excuses like state security and privacy of certain individuals (protection of oil companies' secrets) in limiting disclosure of oil contracts, such excuses are not available in every situation.

Ulrike Hugl adds that the Restricted access theory differentiates the concept of privacy from both, the management of privacy and the justification.[26] In the context of a situation, privacy is defined with respect to a protection from intrusion and information access by others and a person has normative privacy in a situation where they are protected by explicit norms, policies, or laws that have been established to protect individuals in that situation. Therefore, privacy focuses on restricted access and protection - the notion of control and adequate privacy policies should provide individuals with the limited controls which are needed to manage their privacy.

In regard to this study, the researcher finds Tavani's Restricted Access/Limited Control theory as most befitting the situation of the fourth estate's access of information in the hands of the state in Uganda today. This is because the Ugandan State has legal capability to limit or totally restrict access of information within its hands under the whims of Part III of the Access to

[22] Ibid., p. 10.
[23] Ibid., p. 10.
[24] Ibid., p. 12.
[25] Scott Confer, "A Socialist Theory of Privacy in the Internet Age: An Interdisciplinary Analysis," *Philologia Volume: IX*, https://scispace.com/pdf/a-socialist-theory-of-privacy-in-the-internet-age-an-uhgi1n15b5.pdf (accessed November 30, 2025).
[26] Ulrike Hugl, "Approaching the Value of Privacy: Review of Theoretical Privacy Concepts and Aspects of Privacy Management," University of Innsbruck, August, 2010, https://files.core.ac.uk/download/pdf/301344789.pdf (accessed November 30, 2025).

Information Act Cap 95 among other statutes. And similarly, other the said legislation and others provide for instances where the state is duty bound to disclose information irrespective of "its privacy."

1.8 SCOPE OF THE STUDY

1.8.1 Content Scope

This study examined the applicability of the right of access to information in light of the media's access to contracts signed by the Ugandan government with foreign multinational companies regarding oil resources in the Albertine Graben. The subject contracts are those concerning different stages of oil production; from discovery, to exploitation, to refining and finally exportation.

1.8.2 Geographical Scope

The study was conducted from Kampala City, Uganda's capital. This area was chosen because it harbours Uganda's biggest media houses – making it easy to access journalists as interviewees. Secondly, government ministries and agencies under the docket of minerals and oil exploration are situate in Kampala thereby creating an advantage of easily accessing concerned state officials. And lastly, some of the multinationals involved in exploration, mining and perceived refining and exportation of Uganda's oil are headquartered in Kampala City which provided the researcher with the advantage of approaching them for research purposes.

The study also reviewed international and continental conventions, as well as municipal legislation and Court decisions centred on the right of access to information and media freedom from select foreign jurisdictions like Sweden, the United States of America, the United Kingdom, Kyrgyzstan and Hungary. The said conventions and jurisdictions were purposely selected because they embraced the right of access to information before Uganda and thus provided reliable case studies.

1.8.3 Time Scope

This study focused on the period from May 2007 when the first journalists sought disclosure of the oil contracts' contents, to the signing of the Final Investment Decision on February 2, 2022.

1.8.4 Methodological Scope

This study was be undertaken under a qualitative research design.

1.9 LITERATURE REVIEW

1.9.1 Introduction

The researcher is aware of previous studies on the realisation of the right of access to information, and press freedom in Uganda. However, there has not been significant and conclusive research conducted to assess the right's realisation from the 'fourth estate's' perspective. The literature is split into sections in light of this study's objectives.

1.9.2 Status of the implementation of the right of access to information in Uganda

The State of Access to Information in Uganda Position Paper[27] as compiled by CIPESA cites numerous factors that impede implementation of the right of access to information. Such impediments include; noncompliance by ministers in making annual reports to Parliament on requests made for access to records in their respective dockets as dictated by Section 43 of the Access to Information Act;[28] ignorance of the Law where a vast majority of Ugandans including government officers are ignorant of the existence of laws guaranteeing access to information,[29] and excessive bureaucracy in state agencies, among others. The report further found that the list of information exempted from operation of the Access to Information Act is too wide in scope and contradicts the Constitution.

The take home from the CIPESA Report is that derailment to realisation of the right of access to information is blamed majorly on State officials, and to a lesser extent, the common citizens have contributed to this folly too. For State officials, they are unwilling to follow legal obligations requiring them to divulge information and some are ignorant of such obligations, or hide under official red-tape to escape such responsibility; while for the masses, they seem ignorant of the fact that the Constitution grants them such freedom.

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[27] Presented to the Information and Communication Technology (ICT) Committee of the Parliament of the Republic of Uganda by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) on April 7, 2017. https://cipesa.org/wp-content/files/briefs/report/Position-Paper-The-State-of-Access-to-Information-in-Uganda.pdf (accessed September 5, 2025).

[28] Ibid., p. 2.

[29] Ibid., p. 3.

From the CIPESA Report, a gap remains in understanding why State officials are reluctant in performing their legal obligations and even not minding to know what the law requires of them concerning disclosure.

Julius Kiiza[30] argues that the obstacles blocking realisation of the right to information are fundamentally socio-political, not just legalistic – more so in semi-authoritarian countries like Uganda.[31] That it is in the socio-political realm – whether the governance systems are democratic or repressive, and whether the configuration of societal norms prioritizes citizen-led demands for accountable government – that the enjoyment of the right to information can effectively be assessed. Julius Kiiza calls the enactment of enabling legislation "a baby-step" in the uphill struggle for the right to information enjoyment.[32] On how the right came to be recognised and codified, Kiiza argues it has been a result of tensions between citizens and their governments; where citizens demand for open and accountable rule on the one hand, and government elites supply opaque, unaccountable and non-transparent rule, on the other.

Kiiza criticises the existing legal scholarship narrative on freedom of information (or the lack thereof), for primarily focusing on the supply-side, the restrictive legal framework embedded in the Official Secrets Act Cap 302 (now Cap 323) and the Oaths Act Cap 19 (now Cap 21); and missing out on the demand-side, wherein citizens demand for information. He adds that what is worthy emphasizing is that today's legalistic lamentations on the limited supply of 'good' laws typically miss out on the underlying socio-political variables that contextualize access to information which explains why the demand-side of the right to information is wanting.[33] That for instance the passing of the Access to Information Act in 2005 (ten years after the constitutional provision), was a product of a spirited campaign by civil society organizations termed the 'Coalition on Freedom of Information', not state favours.[34] And six years after the Act, is when the enabling Regulations were passed. And it is only in July 2016 that then Information Minister announced that government would organize 'monthly day–long "barazas" for ministers to explain government programs to Ugandans.

[30] Julius Kiiza, "Unlocking the Right to Information in Uganda: On the Primacy of Socio-Political Factors," *East African Journal of Human Rights* 23, no.1 (2017): 41 – 57, https://www.researchgate.net/publication/336742023_Unlocking_the_Right_to_Information_in_Uganda_on_the_Primacy_of_Socio-political_Factors (accessed September 5, 2025).
[31] Ibid., p. 42.
[32] Ibid., p. 42.
[33] Ibid., p. 47.
[34] Ibid., p. 49.

Similar to the CIPESA Report, Julius Kiiza notes that a key challenge to enjoyment of the right to information in Uganda is the "incredibly long list of exemptions legalized under the Act"[35] which could be exploited by Uganda's semi-authoritarian state elites to breach citizens' rights. The other obstacle noted is the continued existence of draconian neo-colonial laws in Uganda's law for example the Official Secrets Act of 1964, which entrenches a culture of secrecy in the conduct of public affairs. In his recommendations, Julius Kiiza agitates for the harmonization of the 'draconian' laws with the Constitution, the Access to Information Act, and the global discourse on information access as a fundamental human right.[36]

The other challenge noted by Kiiza is – given that 80% of Uganda's population are rural-based peasants; they are largely uninformed – or even unbothered, about what happens in the wider political economy. The other obstacle is low internet usage and accessibility despite it being the major source of State information. Kiiza assertively concludes that the widespread claim that citizens in Uganda demand for information, while government elites withhold it is only partially true; and that government secrecy is a deeply entrenched culture of public service in Uganda.

Julius Kiiza presents the why side in answering the aspects hampering realisation of the right to access to information. The restrictive laws can be blamed, but the "demand side" is weak too.

Thereby a further study need be conducted to ascertain why the few Ugandan elites who demand for State-held information do not receive it, even in the circumstances where the law backs their demands.

Mayambala Kakungulu[37] has studied realisation of the right of access to information through Information and Communication Technology platforms and reports that though they are the fastest mechanisms through which access to information can be driven, there are restrictions to accessing print and electronic dissemination through ICTs mainly due to the old colonial laws

[35] Ibid., p. 50.
[36] Ibid., p. 53.
[37] Dr. Ronald Kakungulu Mayambala is a professor of Law and Senior Lecturer attached to the Human Rights and Peace Centre (HURIPEC) at Makerere University School of Law. https://law.mak.ac.ug/ronald-kakungulu-mayambala2/ (accessed December 12, 2024).

on both the print and electronic media.[38] He adds that draconian penal provisions coupled with constant threats by the government to 'sort out the media and its errant journalists' leave little room for a free media that can actively and meaningfully inform the public henceforth denying the masses vital and empowering information.[39] He further observes that the lack of transparency with which public affairs are conducted has led to a culture of 'officialdom' and 'secrecy' which makes it extremely hard to access information and cites an instance where the Solicitor General had initially refused to hand over the Production Sharing Agreements signed by the government with foreign multinationals regarding exploitation of oil resources in western Uganda to Members of Parliament on the Parliamentary Committee on Natural Resources citing national security and confidentiality clauses contained in the agreements.

Mayambala argues that the Ugandan state is supported in its lack of transparency and accountability by legislation like the Official Secrets Act Cap 323, which makes it criminal for a public officer to wrongfully communicate official government secrets likely to prejudice state security. Even though there are avenues like securing a court order directing a public officer to surrender such information as may be necessary, such processes are very costly to the ordinary Ugandan and added to the fact that access to information however vital, is not automatic since it involves making a special application to the government agency holding such information is a hindrance in itself.[40] He cites the case of *Jim Muhwezi Katugugu vs Patrick Kiggundu, Julius Muhurizi and Attorney General*[41] where the Attorney General raised a preliminary objection to the petitions for relying on Parliamentary documents[42] as evidence without prior leave of Parliament in violation of the National Assembly (Powers and Privileges) Act and the Evidence Act. The petitioners argued that Article 41 of the Constitution gives the citizen the right of access to information in possession of the State and that the documents in question are information in possession of the State. Court held that the documents annexed as evidence to

[38] Ronald Kakungulu Mayambala, "Examining the Nexus Between ICTs and Human Rights in Uganda: A Survey of the Key Issues," *Human Rights and Peace Centre*, (2009):12, https://idl-bnc-idrc.dspacedirect.org/items/7385af1e-985e-425c-940e-74b479297b50 (accessed December 12, 2024).
[39] Ibid, p. 12.
[40] Ibid., p.13.
[41] Consolidated Constitutional Petitions No.4 and No.6 of 1998. https://media.ulii.org/media/judgment/102370/source_file/in-the-matter-of-muhwezi-katunguka-and-2-others-v-attorney-general-1998-ugcc-1-15-may-1998.pdf (accessed August 12, 2025).
[42] The documents included; the Report of the Parliamentary Standing Committee on Rules, Privileges and Discipline, Petitions for censure against the first Petitioner, the affidavit of Hon. Kiggundu Patrick and the Hansard report of Parliamentary Proceedings of 17th and 18th February, 1998.

the petitions were inadmissible because they were not certified by Parliament and therefore the petitioners could not rely on them, hence dismissing the case.

Mayambala further notes that the reports of numerous Commissions of Inquiry set up by government and funded using public funds on various matters of public interest many have never been made public ten or twenty years after the Commissions' work ended.[43] He observes that awareness of processes of access to information is lacking among the general populace and recommends the ending of the culture of 'officialdom' and 'secrecy' so as to facilitate the role of ICTs in the enjoyment of the right of access to information.[44]

The gap arising from Mayambala's writings is the need for an understanding of why the state culture of secrecy has persisted despite existence of the Access to Information Act Cap 95. Research ought to be conducted to understand whether the said law also aids secrecy or there are other contributing factors.

Aaron Olaniyi[45] examines the methodologies adopted by the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights to supplement and entrench a substantive right of access to information compatible with international standards as provided for by Article 9 of the African Charter on Human and Peoples' Rights.[46] The article finds that the right of access to information is the hallmark of an effective constitutional democracy. Olaniyi concurs with Bovens that access to information on democratic governance enhances public control of government, which is likely to abuse public power when such access is lacking, as well as strengthening the quality of democracy.[47] He adds that access to information is vital in combating corruption by making government activities more transparent

[43] Kakungulu Mayambala, "Examining the Nexus Between ICTs and Human Rights in Uganda: A Survey of the Key Issues," 15.
[44] Ibid.
[45] Aaron Olaniyi Salau, "The Right of Access to Information and National Security in the African Regional Human Rights System," *African Human Rights Law Journal* 17, (2017): 367 – 389, *Scielo South Africa*, https://www.researchgate.net/publication/323852707_The_right_of_access_to_information_and_national_security_in_the_African_regional_human_rights_system/link/6419f2f0a1b72772e41783f1/download?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19 (accessed September 5, 2025).
[46] Ibid., p. 367.
[47] Ibid., p. 370.

and concealment of illegalities more difficult, which is predicated on the fact that official information actually belongs to the people.[48]

Olaniyi notes that despite adopting right to information laws, many African states still have Official Secrets Acts and other security statutes which criminalise the unauthorised disclosure of government information regardless of national security implications.[49] Thereby in assessing the scope of employment of the "national security" exemption to the right of access to information, Olaniyi employs the "harm test." He submits that information may only be withheld where the public interest in maintaining the information's secrecy clearly outweighs the public interest' in its disclosure.[50] He argues that where the public interest in disclosure outweighs the risk of harm, the information sought must be supplied. Olaniyi proposes that State parties to the African Charter should align their constitutional frameworks with the fundamental principles of access to information.

The gap left by Aaron Olaniyi Salau's paper is the answer to the "why" question. After discovering that many African States (including Uganda) hide under the notion of "national security" as exemption, to deny citizens their right to access of information; it inevitable and compelling to establish why the State is reluctant to disclose. Besides, national security is meant to benefit the citizens, then why should security information be kept out of their reach.

The Shadow Report on the Status of Access to Information Act[51] report examined the progress in implementation of the Access to Information Act 2005 (now Cap 95) and the impediments for its successful operation after more than a decade of its passing in Uganda.[52] It found that the single most constraining factor for full implementation of the Act is Parliament's failure to compel government Ministries, Departments and Agencies to comply with Section 43 (now Section 41) which requires them to submit annual reports to Parliament on requests for access to records made to their respective entities, and also indicate whether access was given or not,

[48] Ibid., p. 371.
[49] Ibid., p. 378.
[50] Ibid., p. 379.
[51] Africa Freedom of Information Centre, "Shadow Report: The Status of Access to Information Act 2005 Implementation in Uganda," *Africa Freedom of Information Centre website*, December 12, 2019, https://www.africafoicentre.org/wpdmpro/shadow-report-on-the-status-of-implementation-of-the-access-to-information-act-2005-in-uganda/ (accessed September 5, 2025).
[52] As of August, 2019.

and if not, reasons for the denial.[53] The report noted a high denial rate for requests for information by Civil Society Organisations. The Africa Freedom of Information Centre submitted 159 information requests between 2016 and 2019 to various ministries, Agencies and Local Governments; only 12 (7.55%) were granted while 147 (92.45%) were denied. The Hub for Investigative Media submitted 54 information requests between 2013 and 2019; only one was granted, while 52 (96%) were denied and one request was rejected by the Financial Intelligence Authority.[54]

On the progressive part, the report notes strides government made to implement the Act[55] including; establishment of the Ministry of Information, Communication, Technology and National Guidance to formulate and implement ICT policies; development of a government Communication Strategy to establish proactive communication systems such as websites, social media links, open government portals, Citizens Interaction Centre, Government Procurement Portal and community meetings such as Barazas; passing of the Whistleblowers Protection Act Cap 34 in 2010 to protect persons or entities who in public interest, disclose information that relates to illegal or corrupt practices even if such information is confidential; amendment of rules of procedures of Parliament to allow live televised coverage of parliamentary sessions; and opening a website for receiving access to information requests by the public.[56]

The report further found that proactive disclosure of information was still poorly implemented in all government agencies with most of the documents proactively disclosed online being rather general and not providing the wide range of data necessary for the citizenry to make informed decisions on government operations.[57] It is further reported that whereas the law does not require information seekers to provide explanations as to why they are seeking information, most Sate officers insist that requesters present a cover letter outlining the reasons for access, an aspect that keeps people away for fear of retaliation.[58] The other impediments cited are ignorance of the law among the public, the overwhelming bureaucracy in State departments,

[53] Africa Freedom of Information Centre, op. cit., p. vi.
[54] Ibid., p. vi.
[55] Ibid., p. 6-7.
[56] Africa freedom of Information Centre, "Uganda Launches Portal to Support Citizens' Right to Information," *Africa freedom of Information Centre*, August 26, 2014, https://www.africafoicentre.org/uganda-launches-portal-to-support-citizens-right-to-information/ (accessed February 23, 2024).
[57] Africa Freedom of Information Centre, op. cit., p. 12.
[58] Ibid., p. 17.

limited funding for access to information activities, limited scope of bodies obligated to give information and a tedious complaints mechanism.[59]

Be that as it may, the report does not determine which type of information was not disclosed; was it concerning contracts signed by government with local and foreign policies or was it politically-associated information? The answer to this question will help find the rationale for hiding a certain type of information from the public regardless of the law.

Gaia Larsen, Carole Excell and Peter Veit analyse the effect of the Access to Information Regulations, 2011 in realisation of the right of access to information.[60] They greatly criticise the Regulations for hinderingly charging requesters of information a hefty "non-refundable fee" prior to receipt of the desired information. This is regardless of Ugandans' economic hardships. The second criticism concerns the procedures for requesting and providing desired information, where the requester's form requires them to provide their name and home address, eliminating the option of anonymous requests. And given that many Ugandans cannot access the internet from which to access the requisition forms, they miss out the opportunity.

Peter Veit, Carole Excell, and Alisa Zomer's working paper[61] analyses Uganda's legal and institutional efforts aimed at preventing a "resource curse" that other oil-producing countries have faced. The paper urges for an accountable government for the full and common benefit of natural resources and it gives the example of the US Dodd-Frank Wall Street Reform and Consumer Protection Act[62] which requires companies filing annual reports with the U.S. Securities and Exchange Commission to disclose the payments they make to host governments for the extraction of oil, natural gas and minerals. By requiring the disclosure of payments to governments, the Act makes it possible for individuals and institutions to track public revenues from extractive resources more accurately. Such transparency can help citizens and civil society hold governments accountable, promote good governance and development, and in

[59] Ibid., p. 17 – 20.
[60] Gaia Larsen et al., "Uganda's Access to Information Regulations: Another Bump in the Road to Transparency," *World Resources Institute*, June 30, 2011, http://pdf.wri.org/uganda_access_to_information_regulations_2011-06-30.pdf (accessed September 5, 2025).
[61] Peter G. Veit et al., "Avoiding the Resource Curse: Spotlight on Oil in Uganda," *World Resources Institute*, January 2011, https://files.wri.org/d8/s3fs-public/avoiding_the_resource_curse.pdf (accessed September 5, 2025).
[62] Informally known as "The Wall Street Reform Act," signed on July 21, 2010 by president Barack Obama.

doing so, help avoid the "resource curse."[63] The paper hails Uganda for having pro-disclosure legislation in the Constitution, the supporting Act and the National Oil and Gas Policy.

However, the paper notes that with militarisation of oil fields; merely visiting oil sites requires government permission, NGOs can hardly interview local people or take photographs which makes monitoring of the sector difficult.[64] The paper further worries that since the Access to Information Act 2005 did not repeal the Official Secrets Act 1964, citizens will be denied a wide range of government-held information on grounds of "security of the state." Additionally, the paper criticises the Petroleum (Exploration, Development, Production, and Value Addition) Bill[65] for lacking sufficient checks and balances on the government's authority over oil, which will lead to corruption and abuse of office.[66] It contained several provisions that would allow the government to classify important oil sector information as confidential and withhold it from the public domain. That the Bill did not delineate the scope of "confidentiality of the data and commercial interests," leaving it subject to interpretation by government officials who could prevent disclosure in many cases, for instance – it is unclear if information regarding production levels, revenue generated by the industry, and company payments to government would be released to the public.[67]

Similar to the CIPESA Report and Julius Kiiza's paper, the legal framework is again fronted by this working paper as an impediment to access of information, particularly in the nascent oil sector. This then creates need to study why the law is fashioned to hide crucial information from the public over a resource the State owns on behalf of all Ugandans.

Harriet Bibangambah, Dan Ngabirano and Irene Ssekyana conducted a study aiming at closing gaps on the shortage of knowledge and literature on access to information in Africa[68] and produced a report entitled "Access to Information in Africa Project; an Executive Summary." The report found that the major limitation with Article 41 is the fact that it restricts enjoyment

[63] Veit et al., op. cit., p. 2.
[64] Ibid., p. 4.
[65] Now the Petroleum (Exploration, Development and Production) Act Cap 161.
[66] Veit et al., op. cit., p. 5.
[67] Ibid., p. 6.
[68] Harriet Bibangambah, Dan Ngabirano and Irene Ssekyana, "Access to Information in Africa Project; an Executive Summary," *Greenwatch*, https://greenwatch.or.ug/sites/default/files/documents-uploads/Access%20to%20Information%20In%20Africa%20Project%20Summary.pdf (accessed November 19, 2025).

of the right to Ugandan citizens[69] and that the exemptions in the Access to Information Act are too broad and ambiguous that they vest so much discretion in the officer in deciding whether to grant the sought information or not.[70] The report further noted that The Access to Information Regulations are narrow in text and provision and the fees payable for every information request made under the Regulations are very prohibitive contradicting the spirit of the Act which presupposed that the fees are meant to cover costs for retrieving and reproducing the sought information. The report advocated for review of the Act and its Regulations to promote full disclosure and recommended for the creation of a special body to promote the Act through public education and sensitisation.

This report assessed the right from a general point of view; the gap remains in examining applicability of the right of access to information in the fourth estate's perspective.

1.9.3 Access to information in regard to press freedom

Meghan Sobel and Karen McIntyre[71] note that Uganda's press freedom is contradictory in that on one hand, Uganda is said to have one of the most free and active media landscapes in East and Central Africa, and that courts regularly rule in favour of journalists' rights, while on the other – an array of legal and extra-legal mechanisms limit free expression.[72] The paper found that Uganda's governments have for long suppressed free expression largely due to "bad colonial and postcolonial policies on the media and language, poverty, low levels of education, and lack of basic access to the means of participation."[73] That some commercial media owners take it upon themselves to self-censor so as not to offend the government while the Constitutional exemption to a free press of not "prejudicing the public interest" has precipitated unlawful restrictions in the name of public interest.

The other critical finding was that journalists too, adversely affect press freedom. From the fact that those who advise policy makers on how to tighten the noose on journalists are journalists,

[69] Ibid., p. 4.
[70] Ibid., p. 5.
[71] Meghan Sobel Cohen and Karen McIntyre, "The State of Press Freedom in Uganda," *International Journal of Communication*. University of Southern California, January 28, 2019, https://ijoc.org/index.php/ijoc/article/view/11456 (accessed September 10, 2025).
[72] Ibid., p. 1.
[73] Ibid., p. 3.

to self-censoring stories concerning advertisers, to being financially challenged at individual level.

From this research paper, one may conclude that a State which curtails press freedom will certainly find it hard to be pro-disclosure as the right of access to information would require. This makes it plausible to analyse the nexus between press freedom and the right of access to information.

Greg Treadwell[74] in his thesis' abstract notes that public-interest journalism is widely acknowledged as critical in any attempt at sustaining actually-existing democracy and is reliant on access to State-held information for its effectiveness.[75] He analyses and investigates whether the liberal and pro-disclosure Aotearoa New Zealand's Official Information Act 1982 had indeed made making freedom of information a reality for public-interest journalists, or whether it was overwhelmed by "an impenetrable wall of officialdom."

One of his findings was that the mere existence of a law such as the Aotearoa New Zealand Official Information Act 1982 would "remove the last vestiges of a regime of secrecy" established in response to the perceived threats of communism in the two decades after World War II.[76] That public-interest journalism embraced its new levels of access and, for the most part, there was consensus across both news media and officialdom that the law was functional, flexible and, while imperfect, was the foundation of a strong freedom of information regime. This came at a historical backdrop in New Zealand where politicians were no longer trusted and transparency was needed to ensure their accountability to the electorate. Further recalling the fact that by the early 80s New Zealand was embroiled in the Cold War, wherein it was an ardent Western Democracy, with immense zeal of fighting off any pro-communism upsurge in its territory; the said legislation was an enabler of the electoral accountability fundamental to the freedom rhetoric of the West. And more profoundly for New Zealand's strategic purposes for alliances with other nations, legislating for access to state-held information strengthened a

[74] Greg Treadwell, a thesis submitted to Auckland University of Technology (School of Communication Studies) in fulfilment of the requirements for the degree of Doctor of Philosophy, 2018, https://openrepository.aut.ac.nz/items/e47e9a84-6111-4fd7-9116-806cea53382f (September 10, 2025).
[75] Ibid., p. ii.
[76] Ibid., p. 178.

national narrative of freedom as well as underscoring the values associated with personal freedom and self-government.[77]

Similarly, Prof. Rodney Chiboh writes that media play key roles in investigating allegations of impropriety in public affairs and exposing corruption and corrupt practices, and that these roles become more important when existing political institutions are weak and inefficient in ensuring accountability of public servants.[78] He adds that credible media exercise strong influence over the public and play an important part in revealing improper and unfair administrative actions, and that the media is not only the main forum for expression of public opinion, but it also has social and constitutional responsibilities in monitoring government, exposing its excesses and ensuring that governments are accountable to the governed.[79] Anton Harber while commenting on the new work environment for the media ushered in by the Africa National Congress in the Republic of South Africa refers to an order which required the balancing of different media functions; being "the basic democratic need for information exchanges between government and citizens to enable informed decision-making, the empowerment of communities through local, more participative media, and the watchdog function of ensuring transparency in government."[80]

Similarly, there are many media houses in Uganda which not only inform the public, but also hold the state accountable. However, journalists from the said media houses have in some instances been denied access to state-held information. Thus, a study ought to be conducted to understand why a state which acknowledges the usefulness of an affluent media, denies it access to some vital information.

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[77] Ibid., p. 178.

[78] Rodney Ciboh, "Newspapers' Constitutional Responsibility of Holding Government Accountable to the People in Nigeria: Some Seemingly Unassailable Challenges?," *New Media and Mass Communication*, 2014, https://d1wqtxts1xzle7.cloudfront.net/34348391/Newspapers_Constitutional_Responsibility_of_Holding_Government_Accountable_to_the_People_in_Nigeria-libre.pdf?1407047564=&response-content-disposition=inline%3B+filename%3DNewspapers_Constitutional_Responsibility.pdf&Expires=1756372036&Signature=FeqIHzaSml8RlUO9C2SFtb32sllYR9dte4xBiGT1yyPhAu7OYq9X9lxyhvLVN8fSYqbSpcdxiNhpjxGTN07ra5I8obV8oxhpw4pFf9rTXRW8Ubi5XpRECRcdCRogMGfQl6LoGsY1b0~5CUUb-h2Nr4oUCKNuWfam0MIaOPnICBlJT8xqIh-AuJI6eDDT5uAc~vRClOwErBVR~S0JrOsOsOWJK5BKdhI5B-J-S1u2sLcbksSs0ujKrsiEmywYvYQBU1ifXfdUW2xrmBFJL9PTAQwCkHbCyp8TFXGuy94RgfefnUEoPumThMbJcEaKQdgo4i7z0QwLVVwC~83C4Wumqw__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA (accessed August 25, 2025).

[79] Ibid., 60.

[80] Anton Harber, "Accountability and the Media," *The ANNALS of the American Academy of Political and Social Sciences* 652, no.1 (2014):207. Available at https://journals.sagepub.com/doi/epub/10.1177/0002716213515154 (accessed August 25, 2025).

1.9.4 Oil and Gas developments in Uganda regarding disclosure

Pamela Mbabazi and Martin Muhangi noted that there was undisclosed information regarding management of the oil and gas industry in Uganda which undermined the credibility and quality of governance institutions and practices, a case in point being PSAs which were inaccessible to the public.[81] This was blamed on the restrictive legislations regulating the sector coupled with inadequate funding to the Directorate of Petroleum under the Ministry of Energy and government's slow pace in training human resource in the sector. The authors recommend that Uganda must strengthen its oil governance institutions and become more transparent and accountable in the way it manages its emerging oil industry as well as reviewing the powers of the Minister of Energy to prevent abuse.[82] Joe Oloka-Onyango warns that without access to information, the public will be blindsided as to the government's actual activities, thereby providing a cloak for the same embezzlement and misappropriation of oil revenues that befell countries like Nigeria, Gabon, Angola and Equatorial Guinea.[83]

Though the above-mentioned authors studied Uganda's oil industry in regard to the right of access to information, they did not consider the media's quest to access the oil contracts. However, while focusing on the media, this study shall also determine whether the recommendations made by the authors were implemented by the Ugandan government.

Regarding transparency of activities in Uganda's oil industry, Paul Bagabo, Onesmus Mugyenyi, Siragi Magara and Paul Twebaze undertook a study[84] with the main objective being to assess the level of contract transparency in the extractives sector in Uganda.[85] The study found no single disclosure of any contract for oil exploration and exploitation in all project areas, it found very limited information regarding negotiation of oil contracts and information on project level reserves and revenue. The study also found that some information is available but need thorough searching regarding publication of project-level data on commercial, social and environmental outcomes against project-level rules to track compliance, as well as

[81] Arnim Langer, Ukoha Ukiwo, and Pamela Mbabazi, *Oil Wealth and Development in Uganda and Beyond: Prospects, Opportunities and Challenges*, eds, (Leuven: Leuven University Press, 2020), 43.
[82] Ibid., p. 44.
[83] Ibid., J. Oloka-Onyango, *Courting the Oil Curse or Playing by the Rules? An Analysis of the Legal and Regulatory Framework Governing Oil in Uganda*, 54.
[84] Paul Bagabo et al., "Contract Transparency in Uganda's Petroleum and Mining Sectors," *ACODE*, 2019, https://wgei.org/wp-content/uploads/2025/01/Contract-Transparency-in-Ugandas-Petroleum-and-Mining-Sectors-ACODE.pdf (accessed November 30, 2025).
[85] Ibid., p. 4.

information about names of companies bidding including the bidding outcome for each stage and the details of their ownership.[86] The study concluded that despite Uganda being a member of the EITI, the level of transparency and disclosure of extractives contracts was still lower than would be expected for member countries.[87] This study presents a gap for a further study on why the state does not publicly disclose oil contracts well knowing its duty under Article 41 of the Constitution.

Relatedly, the Uganda Extractive Industries Transparency Initiative Report for the fiscal year 2019-2020[88] revealed that there was no comprehensive register of data on beneficial owners of all companies operating in the oil and gas sector and the production sharing agreements signed with oil and gas companies were not publicly available.[89] The report further noted that EITI Standards encourage implementing countries to publicly disclose contracts and licenses that provide the terms attached to the exploitation of oil and gas but instead Article 33 of Uganda's Model Production Sharing Agreement and Petroleum laws contain confidentiality clauses.[90] The report recommended that government agencies should set up an open EITI database in their systems to record data on revenues collected and budget allocations in addition to setting out a clear roadmap for the publication of all agreements in the extractive sector and putting in place a roadmap relating to the disclosure of information on beneficial ownership.[91] It further recommended for creation of a publicly available register detailing the names of licence holders, coordinated of licenced areas, date of application, award and duration of a licence and the commodity being produced.[92]

This report presents a basis for studying realisation of Article 41 in light of oil contracts and journalists' right. The study shall also determine whether the EITI recommendations have been implemented by the state and consequently benefited the media.

[86] Ibid., p. 18.
[87] Ibid., p. 33.
[88] DT Global, "UGEITI Report for Fiscal Year 2019-20," *EITI*, May, 2022, https://eiti.org/sites/default/files/2022-06/2020%20Uganda%20EITI%20Report.pdf (accessed November 30, 2025).
[89] Ibid., p. 12.
[90] Ibid., p. 71 – 72.
[91] Ibid., p. 16 – 17.
[92] Ibid., p. 144.

1.10 METHODOLOGY

1.10.1 Research Design

The study was conducted under the Phenomenological/Descriptive study design of qualitative research. This design is best suited to answer the "why" questions such as why State officials are reluctant to disclose details of oil contracts they signed with multinational corporations, or why the latter make 'non-disclosure to third party' provisions, a condition precedent to signing such contracts and why the access to information legal regime is structured the way it is today.

1.10.2 Study population

The researcher split up the study population into three categories; journalists who have covered oil-related stories, State officials serving in dockets that superintend over oil-resources particularly - the Chambers of the Attorney General and the Petroleum Authority of Uganda, and officials from legal departments of oil multinationals operating in Uganda. The researcher interacted with two knowledgeable and experienced people from each of the three categories as primary respondents and thus came up with a study population of six people.

1.11 DATA COLLECTION METHODS

The researcher employed two data collection methods, being;

1.11.1 Semi Structured Interviews

The semi structured interviews were conducted on a one-on-one interaction between the researcher and a respondent. The respondents were highly knowledgeable and experienced persons in the three categories of the study population. These were; a Commissioner in the Attorney General's Chambers, who have reviewed contracts signed with multinationals and rendered advice to Government on disclosure of their contents, the head Legal and Corporate Affairs at the Petroleum Authority of Uganda, two lawyers manning the legal departments of two oil multinationals operating in Uganda, and two journalists who have reported on oil matters, and sought disclosure of oil contracts' contents. The instrument employed was an interview guide specifically designed to elicit information from the respondents in relation to the research questions and general objective of the study.

1.11.2 Textual Review

Textual review was employed to review the State's response in the instances where it has been requested to disclose contents of oil-related agreements. The researcher also reviewed instances

regarding requests for access to information and how States responded across Africa and Western jurisdictions. The textual review produced the secondary data.

1.12 SAMPLING

1.12.1 Sampling Type

The snowball type of sampling was employed where by the researcher first discerned and chose the most experienced respondents to conduct a semi structured interview with. Considering the crucial information some respondents did not have, they directed the researcher to other respondents who were more knowledgeable or had experienced a particular event or aspect. The researcher also employed purposive sampling when choosing journalist respondents.

1.12.2 Sampling Size

In order to reach saturation point, the researcher purposely chose two persons from each of the three categories namely; State officials (a Commissioner in the Attorney General's chambers and the head legal and corporate affairs at the Petroleum Authority of Uganda), two lawyers serving with the legal departments of two oil multinationals, and two journalists of long standing in Kampala based media networks (television and newspapers). Thereby, the sample size was of six subjects.

1.12.3 Data Collection Technique

The researcher audio-recorded some of the semi-structured interviews and recorded others online (recording of zoom meeting) after obtaining consent from each respondent. The researcher then transcribed the recordings into written documents after conclusion of each interview.

1.13 DATA PROCESSING AND ANALYSIS

All recorded data was transcribed into written format to simplify analysis. The data was analysed using the coding method.

1.13.1 Open Coding

The researcher thoroughly read and revised the transcribed scripts of all interviews and summaries made from textual review. In so doing, the researcher identified notable features which directly spoke to the research questions and specific objectives; these features were

distinctively highlighted using different colours. The matching information was then categorised into codes.

1.13.2 Axial Coding

Patterns of similarity, contradictions and contest among others, will appear in the data from the open coding. The notable patterns which shared connectivity were further categorised into more broad and specific codes.

1.13.3 Selective Coding

This is where theories were formed from the broad codded-categories formed at axil coding. The theories are stated as the research's findings. The formulated theories represent a logical conclusion drawn from the relativeness of the codes formed at axial coding, and which answers the overall objective of the research.

1.14 RESEARCHER POSITIONALITY

The researcher is a keen follower of government programs and firmly believes in the American War of independence ideology of - "no taxation without representation.[93]" In the Ugandan realm, it can be termed as "no taxes without accountability." The researcher sees no harm in the State openly declaring how it spent citizens' taxes, on which projects and how they will benefit from the same. But where the State paradoxically acts in the name of the 'people' to for instance, enter into legally-binding agreements with foreign States and Institutions, presumably for the benefit of the people, but without the knowledge and involvement of the people, Article 1 of the 1995 Constitution will be left in tatters.

The researcher believes that while negotiating oil-related contracts or any other agreements, Ugandan State officials should expressly alert their foreign counterparts that the Ugandan masses will scrutinize details of such 'deals' through their elected representatives in Parliament, or individually after formally seeking to access the documentations, or even on public platforms including but not limited to, social media, radio and television debates.

[93] NCC Staff, "On This Day: "No Taxation Without Representation!"", *National Constitution Center,* October 7, 2022, https://constitutioncenter.org/amp/blog/no-taxation-without-representation accessed (September 5, 2025).

Otherwise, it is of no legal or moral value for framers of the constitution to provide for a right, which the State is not only unwilling to respect, but conspires with aliens to defy.

1.15 ETHICAL CONSIDERATIONS

This study was conducted against a backdrop of anxiety and dilemma surrounding the oil sector. Given the sensitivity of the research topic, some respondents treated the researcher with suspicion (especially lawyers serving with Multinationals), and worried whether our interaction would not endanger their employment. This problem was dealt with by informing the respondents about the purpose of the research and their consent was obtained first before proceeding with interviews, and recordings.

The respondents' right of confidentiality was observed so as to ensure quality of the research. The respondents were assured that the data will be held in strict confidence to protect anonymity. It is for these reasons that the researcher adopted pseudo names for all respondents, except one.

1.16 SUMMARY OF THE CHAPTERS

This study is organized into five chapters. Chapter one covers the introduction, background, statement of the problem, significance of the study, objectives, research questions, scope of the study and literature review. It also includes; the methodology (which highlights the research design), study population, data collection methods, sampling, data analysis, researcher positionality and ethical considerations. Chapter two gives an insight to the legal and normative content of the right of access to information as embedded in international law together with purposely selected European and American jurisdictions. Chapter three analyses the legal, institutional and normative content of the right of access to information and its application in Uganda. The fourth Chapter presents findings from data collection, presented and analysed through themes. The findings answer the research questions. Chapter five presents the conclusion reached by the researcher and also contains recommendations proposed by the researcher in bid to better realise the right of access to information.

CHAPTER TWO

THE LEGAL AND INSTITUTIONAL FABRIC OF THE RIGHT OF ACCESS TO INFORMATION IN FOREIGN JURISDICTIONS

2.0 INTRODUCTION

Before Uganda domesticated the right of access to information, the right had earlier been enunciated and widely respected as a profound principle of good governance both under international law, as well as municipal laws of most western states[94]. The right was initially adopted majorly through Protocols of continental and regional groupings, before individual States followed suit. Sweden was the first country to adopt an access to information law[95] - His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press 1766[96] which not only established press freedom,[97] but also authorised the printing and dissemination of materials about the government, Courts, and Parliament.[98] The Ordinance provided for free access to all government, Courts, and Parliament archives, for the purpose of copying such documents or obtaining certified copies of the same.[99] However, the law still reserved strong punishment for writing and publishing negatively against the King.[100]

Next was the United Nations General Assembly Resolution 59(1) of 1946 which adopted the right in more specific terms by characterising freedom of information as a "fundamental right and the touchstone of all freedoms to which the United Nations is consecrated."[101] The Resolution defined freedom of information as the right to gather, transmit and publish news anywhere and everywhere without fetters.[102] However, the Resolution fell short of expressly providing for the right to request for and receive information from public authorities.

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[94] The terminology "the West/Western States" is employed to refer to the geographical regions of Europe, North America and the Oceania on the world map.

[95] Peter Hogg et al., "The World's First Freedom of Information Act," (Kokkola: Anders Chydenius Foundation, 2006) 8-17. Accessed at - *access info*, January 17, 2006, https://www.access-info.org/2009-07-25/history-of-right-of-access-to-information/ (accessed September 5, 2025).

[96] Issued in Stockholm, in the Council Chamber, on December 2, 1766. Available at https://www.access-info.org/wp-content/uploads/worlds_first_foia.pdf (accessed September 6, 2025)

[97] Ibid., preamble.

[98] Ibid., Articles 6, 9, 10 and 11.

[99] Ibid., Article 10.

[100] Ibid., Article 2.

[101] Access Info Europe, "History of Right of Access to Information," *access info*, January 17, 2006, https://www.access-info.org/2009-07-25/history-of-right-of-access-to-information/ (accessed September 6, 2025).

[102] Ibid.

Thereafter, several more countries adopted the right into their domestic legislations by according the citizenry entitlement to request for, obtain and publish information primarily vested with State agencies to the extent that by 2019, the United Nations Educational, Scientific and Cultural Organization identified through a global survey that 125 countries had enacted right to information laws.[103] Some of such notable legislations and international Protocols are reviewed below.

This chapter details the principles of the right of access to information, and the necessity for its inclusion into the fabric of international human rights law. Relevance shall also be had to various legislations governing the fourth estate with a connotation to realisation of the right of access to information by the latter, as well as reviewing notable Court decisions from purposively selected jurisdictions.

2.1 TENETS AND APPLICATION OF THE RIGHT OF ACCESS TO INFORMATION IN THE WEST

Toby Mendel[104] presents nine principles upon which the right of access to information is premised. The first being maximum disclosure which implies that the scope of the right to information should be broad as concerns the range of information and bodies covered, as well as the individuals who may claim the right. The second principle is the obligation to publish where after public bodies accede to requests for information, both the institution and requester ought to publish the information for public consumption if the information attracts public interest. Principle 3 is promotion of an open government which advocates for dumping of the culture of secrecy within public bodies in favour of openness. Principle 4 is limited scope of exceptions which stipulates that exceptions to the right must conform to the standards under international law for restricting freedom of expression – namely the three-part test; the information must relate to a legitimate aim listed in the law, disclosure must threaten to cause substantial harm to that aim, and the harm to the aim must be greater than the public interest in having the information.[105] The fifth principle calls for processes to facilitate access while principle 6 is against deterring individuals from making requests for information by excessive

[103] Worth Kiara, "UNESCO Finds 125 Countries Provide for Access to Information," *IISD*, July 25, 2019, https://sdg.iisd.org/news/unesco-finds-125-countries-provide-for-access-to-information/ (accessed September 9, 2025).
[104] Toby Mendel, *Freedom of Information: A Comparative Legal Survey*, 2nd ed., (Paris: UNESCO, 2007), 31 – 40.
[105] Ibid., 35.

costs. Principle 7 calls for open meetings of public agencies, while principle 8 calls for repeal of laws which contravene maximum disclosure. principle seeks to protect whistleblowers.

A review of select international protocols which provide for the right of access to information is undertaken below.

2.1.1 International Covenant on Civil and Political Rights 1967[106]

This Covenant was adopted and opened for ratification by the United Nations General Assembly Resolution 2200A (XXI) of December 16, 1966, though it did not come into force until March 23, 1976.[107] The Covenant uses the terminologies "freedom of expression" and "freedom of information" inter-relatedly to refer to the same aspect. The reports of the UN Special Rapporteur on Freedom of Opinion and Freedom of Expression[108] have supported the recognition of a right to freedom of information within the framework of the right to freedom of expression in the Covenant. Prof. Maeve McDonagh notes that the 1998 report referred to the right to seek, receive and impart information in Article 19 as imposing '*a positive obligation on states to ensure access to information, particularly with regard to information held by governments'* and that subsequent reports of the Special Rapporteur have endorsed the view that Article 19 encompasses a right of access to information.[109]

Under Article 19(2), the Covenant augments and broadens the right to freedom of expression to include the "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 the applicant's choice." While this provision did not expressly state the right to access information held by the government, it is arguable that the right to seek and receive information implies a broader understanding of access to information. Clause (3) introduced limitations to enjoyment of the right particularly being protection of others' reputation, national

[106] Uganda acceded to the Covenant on June 21, 1995 without making any reservations. https://www.hrw.org/reports/1999/uganda/Uganweb-05.htm#:~:text=Uganda%20acceded%20to%20the%20ICCPR,recognized%20human%20rights%20contained%20therein (accessed September 9, 2025).

[107] Human Rights Committee, "Background to the International Covenant on Civil and Political Rights and Optional Protocols," *The Office of the High Commissioner for Human Rights – United Nations website*, https://www.ohchr.org/en/treaty-bodies/ccpr/background-international-covenant-civil-and-political-rights-and-optional-protocols#:~:text=The%20ICCPR%20aims%20to%20ensure,Right%20to%20life (accessed September 9, 2025).

[108] As studied in depth under 2.1.6.

[109] Maeve McDonagh, "The Right to Information in International Human Rights Law," *Human Rights Law Review* 13, no. 1 (2013):29.

security, health, morals and public order. The spirit of the Covenant also aimed at enhancing the right of access to information into the fourth estate's operations by urging signatories to "take particular care to encourage an independent and diverse media, but ensure access to the media for minority groups."[110]

Given that Article 19(2) entitles a person to request and receive "all kinds" of information, that provision has been interpreted to refer to "every communicable type of subjective idea and opinion."[111] That reasoning was upheld by the United Nations Human Rights Committee in Ballantyne, Davidson and McIntyre vs Canada[112] where the Canadian government had sanctioned the complainants against advertising their respective enterprises in the English language, claiming the only permitted language for marketing purposes was French. The complainants contended among others that the municipal legislation upon which the State relied to sanction them, violated Canada's obligations under the Covenant. The Committee held as follows;

> Under article 19 of the Covenant, everyone shall have the right to freedom of expression; this right may be subjected to restrictions, conditions for which are set out in article 19, paragraph 3. The Government of Quebec has asserted that commercial activity such as outdoor advertising does not fall within the ambit of article 19. The Committee does not share this opinion. Article 19, paragraph 2, must be interpreted as encompassing every form of subjective ideas and opinions capable of transmission to others, which are compatible with article 20 of the Covenant, of news and information, of commercial expression and advertising, of works of art, etc.; it should not be confined to means of political, cultural or artistic expression. In the Committee's opinion, the commercial element in an expression taking the form of outdoor advertising cannot have the effect of removing this expression from the scope of protected freedom. The Committee does not agree either that any of the

[110] Article 19, "Draft General Comment No. 34 on Freedom of Opinion and Expression," *refworld*, January 31, 2011, https://www.refworld.org/topic,50ffbce51b1,50ffbce51e7,4d4f9b852,0,ART19,,.html (accessed September 9, 2025).
[111] Micheal O'Flaherty, "Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No. 34," *Human Rights Law Review* 12, no. 4 (2012): 636.
[112] Communications Nos. 359/1989 and 385/1989, U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993). Accessed at http://hrlibrary.umn.edu/undocs/html/v359385.htm (accessed September 9, 2025).

> above forms of expression can be subjected to varying degrees of limitation, with the result that some forms of expression may suffer broader restrictions than others.[113]

Micheal O'Flaherty[114] further notes that the United Nations Human Rights Committee's jurisprudence has frequently affirmed the application of Article 19 for journalistic expression and that it further condemns direct attacks on journalists and State efforts aimed at limiting journalistic space. It can be argued that Uganda's Article 41 was fashioned along the above-cited enactments of this Covenant as can be seen in its provision for the right, and the corresponding limitations.

The Covenant has influenced and precipitated initiatives to safeguard the fourth estate globally as can be envisaged in the preamble of the International Declaration on the Protection of Journalists[115] – a compilation of international principles related to the protection of journalists operating in dangerous environments by the International Press Institute. The Declaration draws credence from the Covenant to acknowledge that the right to freedom of opinion and expression is a human right guaranteed to all, and that the safety of journalists is essential to the civil, political, economic, social and cultural rights of all individuals, as well as to the right to development.[116]

To cement the provisions of Article 19 of the Covenant, the United Nations Human Rights Committee regularly adopts General Comments as a guide to State parties in implementation of the rights therein. General Comment No. 31[117] obliges State parties to expressly protect the rights of freedom of expression and opinion in their domestic law, ensure that individuals have effective remedies if their rights and freedoms are violated and, to provide the Committee with

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[113] Ibid., para. 11.3.
[114] Micheal O'Flaherty, "Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No 34," *Human Rights Law Review* 12.4, (2012):636
[115] International Press Institute, "The International Declaration on the Protection of Journalists," *Aljazeera Media Network*, March 19, 2016, https://network.aljazeera.net/en/events/international-declaration-protection-journalists (accessed September 9, 2025).
[116] Ibid.
[117] Adopted at the 80th session of the United Nations Human Rights Committee on March 29, 2004.

relevant information on domestic legal rules, administrative practices, judicial decisions and other practices relating to rights protected by Article 19.[118]

General Comment No. 34[119] obliges State parties to permit no exception or restriction to the freedom of opinion as provided for in Article 19(1) of the Covenant, to ensure that freedom of expression includes receipt of communications of every form of idea and opinion capable of transmission to others as stated by Article 19(3) like political discourse, commentary on public affairs, discussion of human rights, journalism, cultural and artistic expression, and religious discourse.[120] State parties should also protect all forms of expression and means of their dissemination including spoken, written, sign language and non-verbal expression like images and objects of art.[121]

The Comment further calls for a free, uncensored and unhindered press whereby the media may receive information on the basis of which it can carry out its function. That a free press should be able to comment on public issues without censorship or restraint and to inform public opinion, and the public also has a corresponding right to receive media output. [122] States parties are called upon to encourage an independent and diverse media and to foster the independence of new media platforms like internet and mobile based electronic information dissemination systems, and to ensure access of citizens to the same.

The aforementioned recommendation was based on several cases highlighting State-controlled harassment of journalists, a case in point being *Rafael Marques de Morais vs the Republic of Angola*[123] where the victim (a journalist with the Agora newspaper) was held *incommunicado* and had his civil and political rights violated for publishing an article critical of president Dos Santos' government. The provincial Court convicted him for abuse of the press and defamation,

[118] Human Rights Library, "Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13(2004)," *University of Minnesota*, March 29, 2004, http://hrlibrary.umn.edu/gencomm/hrcom31.html (accessed December, 13, 2024).
[119] Adopted at the 102nd session of the United Nations Human Rights Committee at Geneva, July 11-29, 2011.
[120] Office of the High Commissioner, "General Comment No. 34 on Article 19: Freedoms of Opinion and Expression," *United Nations Human Rights*, July 29, 2011, https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and (accessed December, 13, 2024).
[121] Ibid., p.3.
[122] Ibid., para.18, p.4.
[123] Human Rights Committee, "Communication No. 1128/2002," *United Nations*, September 5, 2002, https://juris.ohchr.org/casedetails/1160/en-US (accessed December 13, 2024).

and sentenced him to six months' imprisonment and a fine. The Supreme Court upheld the conviction of abuse of the press which prompted the journalist to complain to the Human Rights Committee on grounds of violation of his rights under Article 9 of the Covenant. The Committee opined that remand in custody must not only be lawful but reasonable and necessary in all circumstances and that the right to freedom of expression in Article 19(2) includes the right of individuals to criticize or publicly evaluate their governments without fear of interference or punishment. The Committee found a violation of Article 19 and ordered for compensation to the victim. The Committee importantly observed that in a democratic society, a free and uncensored press is of 'paramount importance.'[124]

Regarding the right of access to information, General Comment No.34 enlists public bodies that have custody of public information to include "all branches of the State (executive, legislative and judicial) and other public or governmental authorities, at national, regional or local level, in a position to engage the responsibility of the State party."[125] That the right of access to information involves a right whereby the media has access to information on public affairs and the right of the general public to receive media output, and State parties should proactively put in the public domain government information of public interest in addition to ensuring easy, prompt, effective and practical access to such information.[126] States parties are urged to enact legislations through which one may gain access to information, clearly providing for the timely processing of requests for information and requiring reasonable fees for requests. Authorities must provide reasons for refusal to provide access to information and arrangements should be put in place for appeals from refusals as well as in cases of failure to respond to requests.

The above recommendations came on a backdrop of complaints from journalist for example *Robert Gauthier vs Canada*[127] where the victim was a journalist and author with the National Capital Newspaper applied for membership to the Parliamentary Press Gallery so as to access precincts of Parliament. He was only given a temporary pass with limited privileges and requests for equal access with other journalists were denied. The journalists exhausted all local remedies including petitioning the Speaker of the House in vain, prompting him to complain

[124] Ibid., para 6.8, p.14.
[125] Op. cit., General Comment No.34, para.7, p.2.
[126] Ibid., para.19, p.5.
[127] Human Rights Committee, "Communication No.633/1995," *United Nations*, December 5, 1994, https://juris.ohchr.org/casedetails/768/en-US (accessed September 9, 2025).

to the Human Rights Committee for a violation of his rights under Article 19 of the Covenant. The Committee communicated thus that the media should have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members.[128] The Committee also recognized that such access should not interfere with the functioning of elected bodies, and that a State party may limit access given that the restrictions imposed are compatible with provisions of the Covenant. The Committee found Canada to have violated the journalist's rights under Article 19 and ordered for an independent review of his application to have access to press facilities in Parliament.[129]

Regarding exceptions to the right of freedom of expression, the Committee permits only two limitative areas; respect of the rights or reputation of others, and protection of national security or public order, or public health. The Committee recommends that when a State party imposes the said restrictions, they should not put in jeopardy the right itself[130] and must conform to the strict tests of necessity and proportionality.[131] In the matter *of Rakhim Mavlonov and Shansiy Sa'di vs the Republic of Uzbekistan,*[132] the victims were editor and reader respectively of Oina Newspaper which published in the Tajik language which kept applying for re-registration whenever one of its founding members pulled out. Its application for re-registration in 2001 was declined by authorities on grounds of publishing articles inciting inter-ethic hostility. All the victims' suits in the local Courts were dismissed on technicalities. They complained to the Human Rights Committee on grounds that the State's refusal to re-register their newspaper violated their rights under Article 19 of the Covenant.

The Committee found that the right to freedom of expression under Article 19 of the Covenant, for Mavlonov's ability to publish "Oina" and to impart information, and for Sa'di's right to receive information and ideas in print, were violated. The Committee noted that ''the public has a right to receive information as a corollary of the specific function of a journalist and/or editor to impart information."[133] That Sa'di's right to receive information as an "Oina" reader

[128] Ibid., para. 13.4, p.13.
[129] Ibid., para. 15, p.14.
[130] Op. cit., General Comment No.34, para.21, p.5.
[131] Ibid., para.22, p.6.
[132] Human Rights Committee, "Communication No.1334/2004," *United Nations*, November 18, 2004, https://juris.ohchr.org/casedetails/1486/en-US (accessed September 7, 2025).
[133] Ibid., para.8.4, p.10.

was violated by its non-registration. As a remedy, the Committee recommended for the re-registration of the Oina newspaper and compensation to the victims.[134]

2.1.2 American Convention on Human Rights 1969[135]

This Convention was enacted by member states of the Organization of American States[136] to among others provide international justification and protection of the rights of man and woman provided by domestic law of American States.[137] This Convention is so pragmatic and progressive in the promotion of human rights to the extent that under Article 2, it compels member states who have not yet domesticated the rights it provides – to do so in accordance with their constitutional processes. This literally ensures that a citizen is assured of the same human rights across all member states.

With regard to the right of access to information, Article 13(1) provides for a right of freedom thought and expression which is described to include, "freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." This provision infuses and holistically provides for both access to information in the state's custody as well as protecting press freedom. In so doing, Clause 2 provides that the right shall "not be subject to prior censorship" but may attract "subsequent liability" in case it is used to abuse the reputation of other people, or its curtail is necessary for protection of national security, public order, health or morals; while Clause 3 prohibits the limitation of freedom of expression through indirect methods like; abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

[134] Ibid., para.10, p.11.
[135] Came into force on July 18, 1978. https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf (accessed September 7, 2025).
[136] A regional grouping for North and South American countries established on April 14, 1890 to purposely strengthen peace and security in the hemisphere; promote representative democracy; ensure the peaceful settlement of disputes among members; provide for common action in the event of aggression; and promote economic, social, and cultural development.
[137] Second paragraph of the Preamble of the Convention.

2.1.3 African Charter on Human and Peoples' Rights 1981

The Charter was adopted in 1981 by the then Organisation of African Unity, and is still in force under the current regime of the African Union.[138] The Charter can be called the African-version of the United Nations Universal Declaration of Human Rights, and was enunciated on the background that fundamental human rights stem from the attributes of human beings, which justifies there international protection, and that civil and political rights cannot be disassociated from economic, social and cultural rights.[139]

Article 9 of the Charter endows every individual with the right to receive information as well as express and disseminate their opinions under the law. The interpretation of this provision is that an individual is entitled to seek information from the State, and the latter should respond positively. Secondly, if the citizen decides to publicise such information, whether with their analytical opinion or not, the State should refrain from restricting them. However, the Charter can be criticised for not unequivocally expressing that the right can be enjoyed at a horizontal citizen to citizen level, and a vertical citizen to State level.

Article 9 was tested in the matter of *XYZ vs the Republic of Benin*[140] where the applicant challenged Law No.2019-40 of November 1, 2019 revising Law No.90-032 of December 11, 1990 on the Constitution of the Republic of Benin claiming it violated his fundamental rights including freedom of access to information under Article 9(1) of the African Charter on Human and Peoples' Rights among others. That parliament of Benin passed the said law in violation of constitutional procedures including the need for national consensus and the requirement that the State guarantees to everyone access to sources of information and further provide any information, communicate any document and to ensure that a press kit is compiled and made available to professionals on any subject of legitimate public interest.[141] That in contrast, parliament did not disclose documents regarding the amendment before its adoption, neither was it uploaded onto the official government website after its promulgation which prevented people from appealing against the law to the Constitutional Court.

[138] Regional grouping for African countries which replaced the Organisation of African Unity with effect from July 9, 2002.
[139] Sixth and eighth paragraphs of the Preamble to the Charter.
[140] Application No. 010/2020. Judgment delivered on November 27, 2020. Available at https://ulii.org/akn/aa-au/judgment/afchpr/2020/3/eng@2020-11-27 (accessed August 25, 2025).
[141] Ibid., p. 23.

The African Court on Human and Peoples' Rights observed that the respondent state did not disseminate the draft revision of the said law to enable the population form an opinion and participate in the debate on the proposed amendments, in addition to not publishing the debates in the official gazette. The Court concluded that the respondent state violated the applicant's right to information guaranteed under Article 9 of the Charter[142] and ordered the state of Benin to repeal the impugned amendment and to comply with the principle of national consensus in all other constitutional revisions.[143]

This judgement goes a long way in compelling Member States like Uganda to not only account to their citizens, but to respect and adhere to national laws which create human rights. It strengthens the quest for realisation of the right of access to information in a way that citizens have recourse to a continental tribunal where local authorities have failed to guarantee their rights.

The African Commission on Human and Peoples' Rights adopted the Declaration of Principles on Freedom of Expression and Access to Information in Africa[144] whose purpose is to affirm the principles for anchoring the rights to freedom of expression and access to information in conformance with Article 9 of the Charter.[145] Principle 1 of the Declaration acknowledges that freedom of expression and access to information is "indispensable for the free development of the human person, the creation and nurturing of democratic societies and for enabling the exercise of other rights" and it further tasks member states to "create an enabling environment for the exercise of the right, including by ensuring protection against acts of non-State actors that curtail the right."

Principle 4 of the Declaration creates an exceptional protection of the right by stipulating that where a conflict arises between any domestic and international human rights law, the most favourable provision for the full exercise of the right to freedom of expression or access to information shall prevail, while Principle 9 provides for justifiable limitations to be lawful, legitimate and proportionate means acceptable in a democratic society and that such limitation

[142] Ibid., p. 25.
[143] Ibid., p. 33.
[144] Adopted at the 65th Ordinary session of the African Commission on Human and Peoples' Rights held from October 21, 2019 to November 10, 2019 in Banjul, The Gambia. Accessed at https://achpr.au.int/en/sessions/65th-ordinary (accessed September 9, 2025).
[145] Second paragraph of the Introduction to the Declaration.

should be overseen by an independent body. Principle 10 defines freedom of expression as a fundamental and inalienable right to include "the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art or through any other form of communication, including across frontiers, while Principle 11(1) prohibits state or private monopoly of print, broadcast or online media. Principle 20 makes it incumbent upon states to ensure the safety of journalists and all media practitioners, in addition to being liable for violation of media practitioners' safety by State agencies.

Principle 22 calls upon States to; review all criminal restrictions of content to ensure that they are justifiable under international human rights law and standards, repeal laws that criminalise sedition, insult and publication of false news, and that freedom of expression shall not be restricted on grounds of public order or national security unless there is real risk of harm to a legitimate interest. Principle 24 obliges States to promote a conducive economic environment for the flourishing of media outlets by among other providing advertising opportunities equitably while Principles 25 provides for the protection of confidential sources of information and materials relied upon by journalists.

The foregoing provisions were tested in the case of *Scanlen and Holderness (2009) vs the Republic of Zimbabwe*[146] where several media advocacy groups in Zimbabwe challenged the country's Access to Information and Protection of Privacy Act which required all journalists to register with the Media and Information Commission and imposed two years' imprisonment for the offences of abusing journalistic privilege and publication of false news. They argued that the law infringed their right to freedom of expression. the Zimbabwean Supreme Court dismissed their application which prompted them to petition the African Commission on Human and Peoples' Rights. The Commission found that the registration requirements were not a violation of the right to freedom of expression but that the imposition of onerous conditions and the control of journalists by a non-independent body with the aim of controlling rather than regulating the journalism profession infringed the rights to freedom of expression and to receive information.[147]

[146] Communication 297 of 2005 before the African Commission on Human and Peoples Rights, [2009] ACHPR 96, judgment delivered on April 3, 2009. Accessed at https://africanlii.org/akn/aa-au/judgment/achpr/2009/96/eng@2009-04-03 (accessed February 20, 2025).

[147] Global Freedom of Expression, "Scanlen & Holderness v. Zimbabwe," *Columbia University*, https://globalfreedomofexpression.columbia.edu/cases/scanlen-holderness-v-zimbabwe/ (accessed September 7, 2025).

The other case in point is *Agnes Uwimana-Nkusi vs the Republic of Rwanda* (2021)[148] where journalists Agnes Uwimana-Nkusi and Saidati Mukakibibi were convicted on grounds of defamation and threatening national security following publication of three articles criticising the government for corruption and the country's poor human rights record among other shortcomings. The government argued that the articles intended to incite violence and strife against the State by using defamatory statements devoid of evidence. The journalists petitioned the African Commission on Human and Peoples' Rights on grounds that their conviction violated their right to freedom of expression. The Commission noted that democratic governance principles should be considered by a government in evaluating public order protection and incitement definitions, and freedom of expression is vital in fostering political discourse and holding government officials accountable. The Commission held that Rwanda's actions violated Article 9 of the Charter by unjustly restricting journalists' freedom of expression. The Commission further criticised Rwanda's defamation law for imposing 'disproportionate' restrictions on journalism.

Principle 26(1)(a) profoundly elaborates on the right of access to information to mean that "every person has the right to access information held by public bodies and relevant private bodies expeditiously and inexpensively" and Principle 27 seals the protection by providing that access to information laws shall take precedence over any other laws that prohibit or restrict the disclosure of information. Principles 28 and 30 cement the right further by providing that the right to information shall be guided by the principle of "maximum disclosure" wherein limitations to the right shall be allowed under narrowly defined exemptions which are acceptable under international human rights standards. Principle 29 requires State agencies to be proactive by releasing information regarding activities where public funds are utilised into the public domain even in the absence of any request for disclosure.

Principle 31 details the procedure for accessing information wherein States are obliged to grant requests expeditiously, the applicant need not express a legal or personal reason for requesting, no fees should be charged and any refusal to be timely communicated basing on limitations acceptable under international law standards; and any such refusal shall be subject to an appeal

[148] Communication 426/12 before the African Commission on Human and Peoples Rights, [2021] ACHPR 526, judgment delivered on April 16, 2021. Accessed at https://africanlii.org/akn/aa-au/judgment/achpr/2021/526/eng@2021-04-16 (accessed February 20, 2025).

as provided for by Principle 32. Principle 33(1) provides for acceptable exemptions to the right to be instances where "the harm to the interested protected under the exemption demonstrably outweighs the public interest in disclosure of the information." Where a certain piece of information is restricted from disclosure, Principle 33(2) obliges States to disclose the rest of the non-limited information while paragraph (3) requires State agencies to stipulate the period for which certain information will be exempted from disclosure but never to restrict disclosure indefinitely.

Principle 34 requires States to put in place an independent and impartial mechanism to promote and protect the right of access to information and resolve disputes on access to information. Principle 35 prohibits prosecution of individuals who disclose information which may breach safety honestly believing it to be true. Principle 37 implores States to facilitate the rights of freedom of expression and access to information over the internet and provide means necessary to exercise the rights.

2.1.4 Council of Europe Convention on Access to Official Documents 2009[149]

This Convention was inspired by Article 19 of the Universal Declaration of Human Rights among other protocols which protect the right to freedom of opinion and expression.[150] The Convention enlists three underlying factors for the provision of a right of access to official documents as; the provision of information to the public, a basis upon which the public forms opinions on state authorities, and fostering the integrity and accountability of public authorities.[151] In a strikingly unique manner, the seventh paragraph of the preamble declares all official documents, to be 'public documents,' which can only be withheld to protect other rights and legitimate interests.

Article 2(1) of the Convention calls upon Member States to 'guarantee' the right of everyone to request for, and access official documents held by public authorities in their domestic laws. Article 3(1) enlists possible limitations to access to official documents but requires Member States to precisely set down such limitations in domestic legislation and that such limitations

[149] Signed by Member States of the Council of Europe on June 18, 2009 at Tromso – Norway. Accessed at https://www.access-info.org/wp-content/uploads/Council_of_Europe_Convention_on_Access_to_Official_Documents.pdf (accessed September 7, 2025).
[150] Third paragraph of the Preamble to the Convention.
[151] Sixth paragraph of the Preamble to the Convention.

must be necessary in a democratic society. The limitations include; national security, public safety, prevention and prosecution of criminal activities, disciplinary investigations, protection of the environment and commercial interests among others.

Article 4 gives seekers of official documents the right to remain anonymous in addition to not disclosing the reason behind their quest for the documents. Article 5 then makes it incumbent upon the public authority in question to disclose the documents, or get them from the authority holding them in a prompt and equal manner, and they are to be denied, a written explanation ought be given to the applicant. Article 6(1) goes a notch higher by entitling the applicant to access an original copy of the document and make copies of it in any suited format, while Article 7 dictates that inspection of public documents should be free, and if any charge were to be levied, it ought not exceed the cost of reproducing the document.

The exceptional aspects about this Convention are that; it declares all official documents public; the public is entitle to view the original copy of a document in question, and the requirement of a written response detailing while disclosure of a certain document was declined. Noteworthy too, is that political will is required in realisation and implementation of the provisions of the Convention. For example – the French Judiciary (the French Republic is a Member State to the Convention) denied a one Antoine Dusséaux, upon application, access to minutes of court hearings in civil cases heard before the Paris Tribunal de Grande Instance, and to the public archive documents of the same Court. Antoine intended to publish the information on the "Doctrine.fr" website; in bid to make it accessible to legal professionals under a subscription payment.[152] After the refusal by the Judiciary administration to avail the information, Antione commenced action against the French government before the European Court of Human Rights[153] to enforce among others, his freedom of expression under Article 10 of the European Convention on Human Rights.[154]

2.1.5 Freedom of Information Act 2000 of the United Kingdom[155]

[152] Article 19, "European Court: Right to Access Court Documents Must Be Upheld," *Article 19*, December 9, 2022, https://www.article19.org/resources/european-court-right-to-access-court-documents-must-be-upheld/ (accessed September 6, 2025).
[153] Dusseaux C. France, Application No. 55390/21, filed June 7, 2022. Accessed at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-218214%22]} (September 6, 2025).
[154] Matter was still before the European Court of Human Rights by the time this research was conducted.
[155] Chapter 36, it came into force in January, 2005. Accessed at https://www.legislation.gov.uk/ukpga/2000/36/pdfs/ukpga_20000036_en.pdf (accessed September 7, 2025).

This Act was promulgated purposely to make provision for the disclosure of information held by public authorities or by persons providing services for them.[156] The final text of the Act was the product of proposals contained in a 1997 white paper entitled "Your Right to Know."[157] In its introduction, the paper noted that "unnecessary secrecy in in government leads to arrogance in governance and defective decision making" and thus creating need for a legislation "to encourage more open and accountable government by establishing a general statutory right of access to official records and information."[158]

Section 1(1) of the Act entitles citizens to request for information from a public authority and to be informed in writing by the latter first, whether it holds the information in question, and second, to pass it on within twenty working days.[159] Section 9(1) permits public entities to levy some charges onto applicants of certain information, while Section 17 allows public authorities to decline given requests only if they are exemplified under the law and after ascertaining that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.[160] Just like the other select jurisdictions' legislations, this law too permits exemptions from disclosure of state information under circumstances stipulated under Sections 30 and 31 including; where the authority asked to disclose information is using the same information to prosecute a criminal trial or conducting criminal investigations, where the information would prejudice - detection of crime, apprehension of offender, maintenance of security and good order in prisons and the administration of justice among others.

This law was tested in the case of *Carolyne Willow vs The Information Commissioner and the Ministry of Justice*[161] where the appellant (a social worker) requested for full disclosure (without any reductions) of the Physical Control in Care restraint manual which was used in Secure Training Centres for child offenders (convicts) below the age of 18. She wanted to discern whether physical restraints contained in the manual could result in physical harm of juvenile convicts. The Youth Justice Board denied disclosure under the auspices of an exemption embedded in section 31 which limits disclosure which is likely to prejudice the

[156] Long title of the Act.
[157] Available at https://assets.publishing.service.gov.uk/media/5a7c5fcced915d6969f446d6/3818.pdf (accessed January 10, 2023).
[158] Para 1.1 and 1.2 of the Introduction, pg. 1.
[159] Section 10(1) of the Act.
[160] Section 17(3)(a) and (b) of the Act.
[161] [2017] EWCA Civ 1876. Also available at https://www.casemine.com/judgement/uk/5b2897d92c94e06b9e19c4ec (accessed September 7, 2025).

maintenance of security and good order in prisons or institutions where persons are lawfully detained. On its part, the Ministry of Justice partly disclosed the manual intentionally redacting over 65 pages which contained aspects like – how prisons staff would hold and control juvenile's arms, hands and thumbs without applying undue pressure, or pain when employing the wrist hold. The Ministry's reason for withholding the gist of the sought-for information was that disclosure of the techniques in the manual could lead juveniles to develop countermeasures against objectives of the Training Centres.

In rejecting the appeal, Judge Kate Markus held that full disclosure in the circumstances would end up not only being made to Ms Willow – the applicant, but to "any other requester including actual or potential offenders and their associates"[162] which may augment the creation of super veiling measures against the techniques. Court added that it suffices in the circumstances where the end point of the technique is revealed, other than the method of implementing that technique.[163] In that decision, Court seemed to seemed to suggest, like in the Ugandan matter of Charles Mwanguhya and Izama Angelo against Attorney General (supra),[164] that the public interest in the disclosure does not outweigh the implications of such disclosure.

This legislation was further tested in the case of *Minister for Communications, Energy and Natural Resources vs the Information Commissioner and 2 Others*[165] where journalist Gavin Sheridan sought disclosure of a contract through which the Department for Communications, Energy and Natural Resources tendered a private firm - E-Nasc Éireann Teoranta to manage the State's fibre-optic broadband network. The Department declined the request on grounds that the disclosure would affect third party interests given that it had a duty of confidence to the private interests of E-Nasc Éireann Teoranta, and that releasing the contract would undermine the company's ability to act on behalf of the State in a competitive environment. When presented with a request, the firm also declined it arguing that the contract was commercially sensitive and disclosure could result into material loss.[166]

[162] Para. 36 of the judgment.
[163] Para. 29 of the judgment.
[164] Idem., p.4.
[165] [2020] IESC 57. Available at https://www.casemine.com/judgement/uk/5f7168bc4653d06aee2be1d9 (accessed September 7, 2025).
[166] Ibid., para.58, 59, 50, p.12.

Among the grounds of appeal that Sheridan raised was that in justifying a refusal, the public body must show that exceptional circumstances exist to displace the public interest in disclosure.[167] The Supreme Court held that in instances where the public body refuses to make desired disclosures, it must "form a reasoned view as to whether the exemption applies to a particular document for a reason relevant to that document"[168] and that the exemptions relied upon for refusal, are not general, but should be considered in light of the contents of each requested document and the impact of its disclosure.[169] Court further held that information could be excluded if its disclosure would amount to a breach of a duty of confidence, as created by contract or statute, provided that the public interest override did not apply to such information and that "a decision to refuse is not justified unless justifying reasons are provided."[170] The Court held further that the onus is upon public bodies to justify refusal.[171]

2.1.6 The United Nations' Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression Annual Reports

The United Nations Commission on Human Rights established a Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in 1993 purposely to protect and promote freedom of opinion and expression, offline and online, in light of international human rights law and standards.[172] The Rapporteur is mandated to among others; gather all relevant information globally relating to violations of the right to freedom of opinion and expression and persecution directed at persons seeking to exercise it including journalists; and to provide suggestions on ways and means to better promote and protect the right to freedom of opinion and expression in all its manifestations.[173] The Rapporteur makes annual reports highlighting progress made globally in safeguarding the right to freedom of expression (which invariably entails the right of access to information) and for purposes of this study, a few shall be reviewed in as far as they concern operations of the fourth estate.

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[167] Ibid., para.124, p.29.
[168] Ibid., para.149, p.34.
[169] Ibid.
[170] Ibid., para.154, p.35.
[171] Ibid., para.156, p.35.
[172] United Nations, "Special Rapporteur on Freedom of Opinion and Expression," *United Nations Human Rights Office of the High Commissioner*, https://www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression#:~:text=Purpose%20of%20the%20mandate&text=The%20mandate%20of%20the%20Special,human%20rights%20law%20and%20standards (accessed September 7, 2025).
[173] Ibid.

The 2022 report ran on the theme "Reinforcing media freedom and the safety of journalists in the digital age," and acknowledged that the right to freedom of opinion and expression provides the international legal basis for uncensored and unhindered news media, and the right of journalists to work safely and without fear. [174] The report widens the definition of a journalist from the orthodox "professional full-time reporters and analysts" to include "bloggers and others engaged in forms of self-publication in print, over the internet or elsewhere."[175] It was noted that many Governments use laws protecting national security, public order and morals to clamp down on reporting that is critical of their policies[176] and thus the Special Rapporteur considers the weaponization of the law against journalists as a major threat to media freedom.[177] The report recommended that States should, in consultation with civil society and journalists' organisations, develop and implement national action plans based on human rights obligations tailored to online and offline issues, to advance the freedom, independence and pluralism of the media, as well as set up prevention and protection mechanisms for the safety of journalists.[178]

Relatedly, the Special Rapporteur's 2022 report indirectly mirrored the state of media freedom in Uganda as the grounds for condemnations of States were found exuberant in Uganda by the 2022 Reporters Without Borders press freedom report.[179] The report placed Uganda in the 133rd position out of 180 countries noting that the government had continued its 'hostile' stance towards journalists deemed critical thereby creating a toxic environment for press freedom.[180]

The 2011 report largely focused on the general principles of the right to freedom of opinion and expression and the internet in reliance on Article 19 of the Universal Declaration of Human

[174] Irene Khan, "Reinforcing Media Freedom and the Safety of Journalists in the Digital Age," *United Nations Human Rights Office of the High Commissioner*, April 20, 2022, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/323/44/PDF/G2232344.pdf?OpenElement (accessed September 7, 2025).
[175] Ibid., 5.
[176] Ibid., 6.
[177] Ibid., 6.
[178] Ibid., 19.
[179] Franklin Draku, "Uganda Slips Further in Press Freedom Ranking," *Daily Monitor*, May 4, 2023, https://www.monitor.co.ug/uganda/news/national/uganda-slips-further-in-press-freedom-ranking-4222872 (accessed September 7, 2025).
[180] HRNJ, "Press Freedom Index – 2022 Uncertain Future for the Media," *Human Rights Network for Journalists*, May 24, 2023, https://hrnjuganda.org/?wpdmpro=press-freedom-index-2022-uncertain-future-for-the-media (accessed September 7, 2025).

Rights and the International Covenant on Civil and Political Rights.[181] The Special Rapporteur was concerned that many States were arbitrarily blocking certain content from reaching an end user by blocking access to certain websites, Internet Protocol addresses, and fully taking down some websites.[182] The Report also revealed that several States were directly targeting persons who seek, receive and impart politically sensitive information via the internet (arguably including journalists) through arbitrary arrests, disappearance and intimidation, [183] as well as disconnecting users from internet access under the guise of violation of intellectual property rights law.[184]

The Special Rapporteur therefore recommended that for a restriction to be imposed on internet access, it must pass a three-part cumulative test; : "(1) it must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency); (2) it must pursue one of the purposes set out in article 19(3) of the International Covenant on Civil and Political Rights, namely: (i) to protect the rights or reputations of others; (ii) to protect national security or public order, or public health or morals (principle of legitimacy); and (3) it must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality)."[185] The Special Rapporteur urged that all States to ensure that internet access is maintained at all times, and to repeal or amend existing intellectual copyright laws which permit users to be disconnected from internet access, in addition to refrain from adopting such laws.[186]

In the supporting document to the 2011 Report was the "Summary of cases transmitted to Governments and replies received"[187] wherein the Special Rapporteur expressed unease at the Uganda government's intended amendments to the 1995 Ugandan Press and Journalist Act through the Press and Journalist (Amendment) Bill 2010. In the Bill, it was proposed that newspapers would be required to submit an annual application to the Media Council to obtain

[181] Frank La Rue, "Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression," *Human Rights Council*, May 16, 2011, https://docs.un.org/en/A/HRC/17/27 (accessed September 7, 2025).
[182] Ibid., 9.
[183] Ibid., 10.
[184] Ibid., 14.
[185] Ibid., 19.
[186] Ibid., 21.
[187] Frank La Rue, "Summary of Cases Transmitted to Governments and Replies Received," *United Nations General Assembly*, May 27, 2011, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/135/41/PDF/G1113541.pdf?OpenElement (accessed September 7, 2025).

operating licenses, the Media Council could revoke an outlet's licence if it published material deemed to be "prejudicial to national security, stability and unity", or is "injurious to Ugandan relations with neighbours or friendly countries", or causes "economic sabotage."[188] To add, the chairperson of the Media Council was proposed to be appointed by the Minister of Information. The Rapporteur worried that if passed into law, the amendments would restrict the right to freedom of expression and the freedom of the press in Uganda, create a partial and biased Media Council, and would violate the Government's obligations under Article 19 of the International Covenant on Civil and Political Rights.[189] The Rapporteur's communication to the Ugandan Government was not responded to by the time the 2011 report was presented to the General Assembly.[190]

The 2009 report ran on the theme "promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development"[191] wherein it was realised that "that the media can play an important role by ensuring the dissemination of information and raising awareness of poverty as well as of a community's role in eliminating poverty and improving living standards."[192] The Rapporteur thereby urged governments to deregulate the communications and media environment to allow free and fair information to flow more effectively to civil society, and recommended that Governments consider community broadcasting as a vital tool for the voiceless, which would enable them to exercise their right to freedom of expression and access to information as a way of overcoming poverty.[193]

However, the above recommendations by the Special Rapporteur were not heeded to by the Ugandan State as the 2021 HRNJ Press Freedom Index[194] report indicated that the Uganda Communications Communication unjustly ordered for closure of radio stations over allegations

[188] Ibid., 309.
[189] Ibid., 310.
[190] Ibid., 312.
[191] Frank La Rue, "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development," *United Nations Human Rights Office of the High Commissioner*, April 30, 2009, https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F11%2F4&Language=E&DeviceType=Desktop&LangRequested=False (accessed September 7, 2025).
[192] Ibid., 14.
[193] Ibid., 15 – 16.
[194] HRNJ, "Press Freedom Index Report – 2021: Media Shutouts & Shutdowns," *Human Rights Network for Journalists – Uganda*, https://hrnjuganda.org/?wpdmpro=press-freedom-index-report-2021-media-shutouts-shutdowns (accessed September 7, 2025).

of spreading false news. The report also revealed at least 7.60% of female journalists were physically harassed by security agencies, journalists were harmed on instructions of Resident District Commissioners and that the army and Police were the major violators of journalists' rights.[195]

2.2 REVIEW OF NOTABLE COURT DECISIONS FROM THE WEST

2.2.1 Denial of disclosure on grounds of State security

In the matter of *Nurbek Toktakunov vs Kyrgyzstan*,[196] Nurbek Toktakunov - a Kyrgyz national, claimed to be a victim of violations by the Kyrgyzstan State of his rights under Article 2 (read together with Article 14(1)) and Article 19(2) of the International Covenant on Civil and Political Rights, which Kyrgyzstan ratified in 1995. He worked with the Youth Human Rights Group which in March 2004, requested the Central Directorate of Corrections (CDC) for information on the number of individuals sentenced to death in Kyrgyzstan as of December 31, 2003, as well as the number of individuals detained in the penitentiary system. This request was made under Article 17.8 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, according to which participating States agreed to make available to the public information regarding the death penalty. In April 2004, the CDC refused to provide the information, owing to its classification as 'confidential' and 'top secret' by the by-laws of the Kyrgyzstan.[197]

Toktakunov thereafter complained to the Ministry of Justice against the CDC's decision arguing that information on individuals sentenced to death regarded human rights and fundamental freedoms and that its disclosure could not have had any negative impact on the defence, economic and political interests of the State. The Ministry declined to act as requested stating that information on the number of individuals sentenced to capital punishment was classified as 'top secret' under statuses governing the Ministry of Interior.[198] Toktakunov thereafter lodged an appeal to the United Nations Human Rights Committee.

The Committee found that the Kyrgyzstan State violated Article 19(3) of the International Covenant on Civil and Political Rights and could not meet the criteria of restrictions to the right

[195] Ibid., p.51.
[196] United Nations International Covenant on Civil and Political Rights, "Communication No. 1470/2006," *Harvard Law School*, April 21, 2011, http://hrp.law.harvard.edu/wp-content/uploads/2013/02/Toktakunov-v-Kyrgyzstan-2011.pdf (accessed September 7, 2025).
[197] Ibid., 4.
[198] Ibid., 6.

to access to information; respect of the rights of others, the protection of national security or public order, and of public health or morals. The Committee urged the Kyrgyzstan State to prevent further violations of the right as well as guaranteeing accessibility of information regarding the death penalty.[199]

2.2.2 Denial of disclosure on grounds of requester not being a public body.

In the matter of *Magyar Helsinki Bizottsag vs Hungary*,[200] the applicant was a Hungarian Non-Governmental Organisation charged with monitoring the implementation of international human rights standards in the country. It was investigating into the lack of transparency in the Police's appointment of public defence counsel in 2008 and in so doing, requested police departments countrywide to provide names of the public defenders duly selected in 2008 and the number of assignments given to each. The requests were made pursuant to Section 19(4) of the Data Act which permitted disclosure of personal data of 'persons performing public duties' that was of public interest.

In response, 2 police departments refused to comply, arguing that the names of appointed public defenders did not have to be disclosed because the information was not of public interest and the public defenders were not members of a body performing State duties. The NGO filed a complaint with the District Court which ruled in its favour and ordered the Police departments to provide the information. The Regional Court overturned that decision holding that *ex officio* public defenders did not exercise public functions regardless of whether they were financed by the State, a position that was affirmed by the Supreme Court prompting the NGO to lodge an application at the European Court of Human Rights. The NGO's application was premised on Article 10 of the European Convention on Human Rights which provides for freedom of expression including the freedom to receive and impart information and ideas without interference by public authorities, regardless of frontiers.

The European Court found a violation of Article 10 of the European Convention on Human Rights and held that even though the said provision did not entitle individuals to a right of access to information held by public authorities, there can be exceptions in three circumstances;

[199] Ibid., 10.
[200] Global Freedom of Expression, "Magyar Helsinki Bizottsag v. Hungary," *Columbia University*, November 8, 2016, https://globalfreedomofexpression.columbia.edu/cases/magyar-helsinki-bizottsag-v-hungary/ (accessed September 7, 2025).

where disclosure of the information has been imposed by a judicial order which has gained legal force, and in circumstances where access to the information is instrumental for the individual's exercise of their right to freedom of expression, particularly "the freedom to receive and impart information," and where its denial constitutes an interference with that right.

The aforementioned decisions reveal one similarity with the Ugandan situation – public authorities are reluctant to disclose information within their custody and local Courts rarely interfere with such reluctance. It seems self-defeating for States which 'purport' to be pro-democracy, to have Statutes aimed curtailing access to State-held information even if its disclosure is necessary in planning for their citizenry and a fundamental aspect of accountability, which are great tenets of democracy.

2.3 SELECT INSTANCES FOR REQUEST OF DISCLOSURE OF OIL CONTRACTS

2.3.1 Confidentiality clauses restrict disclosure of contracts to the media and the public

Requests for disclosure of contracts regarding oil contracts between foreign governments and oil companies have often not been successive with officials citing 'confidentiality clauses' and the need to follow international investment standards. A case in point is the Production Sharing Agreements signed by the United Republic of Tanzania and several multinationals including Shell Exploration and Production Tanzania Ltd,[201] Dodsal Hydrocarbons and Power Pvt Limited,[202] and Ndovu Resources Ltd[203] which the Tanzanian Minister for Energy and Minerals deemed "confidential" that not even the Parliamentary Accounts Committee could access them.[204] In Guyana, the government made only part disclosure of the contracts it signed with oil multinational - ExxonMobil in 2016 and when requested to make full public disclosure, the Minister of Natural Resources cited "extenuating and external issues" which prohibit full

[201] PSA signed on October 29, 2005 for exploration purposes regarding Offshore Block 1. Available at https://www.pura.go.tz/pages/block-1 (accessed August 25, 2025).
[202] PSA signed on October 24, 2007 for exploration license over Ruvu Onshore Block. Available at https://www.pura.go.tz/pages/ruvu (accessed August 25, 2025).
[203] PSA signed on October 27, 2011 regarding Nyuni Area Onshore Block. Available at https://www.pura.go.tz/pages/nyuni-area (accessed August 25, 2025).
[204] Nuhu Mkumbwa, "Confidentiality Clause in Tanzania's Oil and Gas Contracts," *Jamii Forums*, December 1, 2014, https://www.jamiiforums.com/threads/confidentiality-clause-in-tanzanias-oil-and-gas-contracts.767619/ (accessed August 25, 2025).

disclosure including "foreign affairs implications, sovereignty implications and national security implications."[205]

2.3.2 Denial of disclosure owing to influence from investing multinationals

An r example is the Risk Services Agreement entered into between the Republic of Angola as represented by the national oil company – Sociedade Nacional de Combustiveis de Angola E.P. (Sonangol, E.P.), and oil companies - Vaalco Angola (Kwanza) Inc, Sonangol Pesquisa e Producao, SA and Interoil Exploration and Production ASA, in regard to oil extraction Area of Block 5/06[206] where Article 40 treats the whole contracts confidential as reproduced below;

> Article 40
>
> (Confidentiality of the Agreement)
>
> 1. Sonangol and Contractor Group agree to maintain the confidentiality of this Agreement; provided, however, either Party may, without the approval of the other Party, disclose this Agreement:
>
> (a) to any Affiliate or potential assignee of such Party upon such Affiliate or potential assignee giving a similar undertaking of confidentiality;
>
> (b) in connection with the arranging of financing or of a corporate reorganization upon obtaining a similar undertaking of confidentiality;
>
> (c) to the extent required by any applicable Law, Decree or regulation (including, without limitation, any requirement or rule of any regulatory agency, securities commission or securities exchange on which the securities of such Party may be listed);
>
> (d) to employees, contractors, consultants and other third parties as necessary in connection with the execution of Petroleum Operations upon obtaining a similar undertaking of confidentiality.

[205] Oil Now, "No Sinister Motive Behind Non-Disclosure of Contract, Several Details in Public Domain – Trotman," *OIL NOW*, November 9, 2017, https://oilnow.gy/featured/no-sinister-motive-behind-non-disclosure-of-contract-several-details-in-public-domain-trotman/ (accessed August 26, 2025).

[206] PSA signed in 2006. Available at https://resourcecontracts.org/contract/ocds-591adf-3664745125/view#/pdf (accessed August 25, 2025).

Such legal frameworks prioritise the protection of investor interests at the expense of transparency and even where they permit disclosure, it is meant to benefit subsidiaries and successors in business title, but not for access by the media or the general public.

2.3.3 International financial institutions also promote denials for disclosure

International financial institutions like the International Finance Corporation which provide funding for oil and gas projects, and often times impose their own confidentiality requirements which causes a trickle-down effect of confidentiality clauses. German Non-Government Organisation Urgewald reported an instance where the World Bank gave Guyana a US$20 million loan to develop its capacity to manage the oil sector and as a condition, Guyana was to authorise two ExxonMobil affiliate companies to invest in its oil sector in addition to hiring a law firm to draft petroleum laws for Guyana (the chosen firm were ExxonMobil's lawyers in other jurisdictions).[207] However, the Bank did not publish on its website the successful and unsuccessful bidders, and drafts of the final agreements as its procurements regulations require. The Guyana government and Exxon Mobil also refused to disclose the investment agreements which Urgewald argued greatly contributed to governance problems and decreasing transparency.

2.4 Conclusion

A quick review of select regional and international jurisprudence (both legislation and Court decisions) regarding the right of access to information reveals that the right is fundamental and pivotal to any society that deems itself free and democratic. And the journalism profession is jealously protected under the cited legal regimes for its importance in the realisation of not only the right of access to information, but freedom of expression as well. It can arguably be stated that Uganda's legislation on the right of access to information was to a greater extent, informed by and modelled on the international jurisprudence summarised above. However, a review of select requests for disclosure of oil contracts in particular indicates that States are unwilling to fully comply under the excuse of confidentiality clauses implying that the right is not enjoyed wholly. The proceeding chapter will analyse the institutional and normative content of the right in the Ugandan context.

[207] Kaieteur News, "Contracts granted to Exxon's associates: World Bank also breached its public disclosure rules – German NGO," Kaieteur News, April 20, 2020, https://kaieteurnewsonline.com/2020/04/20/contracts-granted-to-exxons-associates-world-bank-also-breached-its-public-disclosure-rules-german-ngo/ (accessed August 26, 2025).

CHAPTER THREE

THE LEGAL, INSTITUTIONAL AND NORMATIVE CONTENT OF THE RIGHT OF ACCESS TO INFORMATION AND ITS APPLICATION IN UGANDA

3.0 INTRODUCTION

Uganda being part of the global village and having adopted the western model of a democratic State with checks and balances to prevent autocracy, found herself incorporating globally-recognised ideologies of good governance. Notable among such values is the freedom for citizens to know in detail what, and how their State is acting for their good. This saw the inculcation of the right of access to information into Uganda's grand norm under Article 41. And further given that the Constitution permits creation of other laws underneath it, *vide* Articles 2(2) and 79; various Acts of Parliament and Statutory Instruments have been passed to safeguard and regulate the right of access to information. This Chapter will analyse the content of such laws, as well as study the institutions required to respect, uphold and guarantee the said right.

3.1 HISTORICAL AND CONSTITUTITONAL BACKGROUND OF THE RIGHT OF ACCESS TO INFORMATION IN UGANDA'S MUNICIPAL LAW

Unlike the 1995 Constitution, Uganda's former Constitutions did not have specific and express provisions enunciating the right of access to information. Instead, the right had to be inferred from provisions fostering other rights. Particularly, Section 26(1) of the 1962 Constitution,[208] provided for freedom of expression and described the right to include "freedom to receive information without interference." It can thus be argued that the right of access to information was "indirectly" provided for. Similarly, the right of access to information could be inferred from the wording of Article 17 of the 1967 Constitution[209] which entitled people to receive information without interference.

Regarding media freedom, Oloka Onyango observed that the 1970s and 1980s were not bright days for journalists or media freedoms as Uganda saw the almost total disappearance of independent media, journalists in both the print and broadcast spheres were subjected to the same forms of suppression and violation as other actors in political and civil society. That Court cases involving journalists and media freedoms were few and far between, having been

[208] Accessed at https://www.worldstatesmen.org/Uganda-const-1962.pdf (accessed September 5, 2025).
[209] Accessed at https://www.jstor.org/stable/2934118 (accessed September 5, 2025).

substituted by violent harassment, disappearance, murder and exile.[210] Oloka adds that the emergence to power of the National Resistance Movement in 1986 changed the situation as efforts were made to both protect freedom of expression and to revive media freedoms; but nevertheless, the rights were not fully enjoyed as numerous laws inherited from its predecessors were not immediately reformed, and the use of the Penal Code to charge journalists with offences like sedition and incitement, coupled with threats of de-registration and criminal libel continued.[211]

Arguably, the right of access to information was strange to Uganda's municipal law prior to the enactment of the 1995 Constitution. Under the current constitutional dispensation, the right of access to information is prescribed as follows;

3.1.1 Constitution of the Republic of Uganda, 1995

The first semblance and connotation to the right of access to information can be found in several provisions of the National Objectives and Directive Principles of State Policy. Though these Objectives and Principles are not legally enforceable *per se*, they provide guidelines upon which all State agencies, citizens and organisations should interpret the Constitution[212] and arguably, they form the foundation of the broader Constitutional provisions. Objective II(i) cements State authority to be exercised basing on democratic principles which empower the active participation of all citizens at all levels in their own governance. In this realm, it can be said that this Objective envisions citizens seeking knowledge of information within the State's hands as a form of participating in their own governance.

Objective V(i) takes it a notch higher by compelling the State to not only guarantee, but also respect institutions charged with protecting and promoting human rights by providing them with adequate resources to function effectively. In effect, the State is required to formulate patterns through which its agencies should disclose information so required by the citizenry as a form of promoting human rights. And the fact that Objective X mandates the State to undertake necessary steps to involve the people in the formulation and implementation of

[210] Oloka-Onyango J., "Political Question Doctrine in Uganda: An Analysis of the Technicalities on the Realization of the Freedoms of Expression, Association and Assembly in Uganda," *Chapter Four Uganda*, 2017, https://chapterfouruganda.org/wp-content/uploads/2025/05/Political-Question-Doctrine-in-Uganda-Issue-Paper.pdf (accessed September 7, 2025).
[211] Ibid., p.18.
[212] Objective I (i) and (ii).

development plans which affect them, speaks to law's willingness for the Ugandan media and citizenry to know information in the State's hands.

Uganda's supreme law under Article 41(1) expressly guarantees every citizen a right of access to information in the possession of the State or any other organ or agency of the State. The provision is quick to add an exception curtailing the right if the release of any information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person. It is worth noting that the right of access to information is not non-derogable such as those expressly enshrined in Article 44 of the Constitution, but can lawfully be curtailed under the "protection of others' rights" circumstances prescribed by Article 43, which partly explains the exceptions Article 41 enumerates.

Given this study's objectives, Article 29(1)(a) of the Constitution is fundamental as it enshrines every Ugandan with freedom of speech and expression, which includes freedom of the press and other media. The Fourth Estate's operations are wholly hinged on this provision.

3.1.2 Interpretation of Article 41 of the Constitution by Courts of Judicature

Article 41 has been interpreted in a number of cases by Courts of judicature and for purposes of this study, a few have been reviewed. The first instance where Ugandan Courts were required to interpret Article 41 was in the case of *Major General Tinyefuza vs the Attorney General*[213] where the petitioner, a Senior Military officer prayed for the Constitutional Court to *inter alia* declare that the Minister of State for Defence's rejection of his resignation from the Uganda People's Defence Forces and its High Command was unconstitutional as the same would enslave him into giving forced labour to the Forces.

The connotation to Article 41 came when the petitioner sought to rely on a certain document as evidence (exhibit p.2) whose contents were expressly addressed to members of the UPDF High Command (including the petitioner), but the Attorney General opposed such evidence as disclosure of the same in a public Court being filmed by the press would not only prejudice the security and sovereignty of the State, but would violate Section 121 of the Evidence Act which prohibited any person from giving evidence derived from unpublished official records relating

[213] Major General Tinyefuza v Attorney General Constitutional Petition No. 1 of 1996, accessed at https://ulii.org/akn/ug/judgment/ugcc/1997/3/eng@1997-04-25 (accessed September 7, 2025).

to affairs of the State without the express permission of the officer heading the concerned department, who had liberty to give or with hold such permission as they thought fit. Court therefore had to determine whether Section 121 of the Evidence Act was in consonance with the right enunciated by Article 41, before deciding whether to admit the impugned document or not. In its ruling, Court partly held as follows;

> We now turn to the construction of Article 41 of the Constitution. This provision confers on all citizens the 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. A citizen, including the applicant, is given a right of access to information in the possession of the state or any of its organs. This right is restricted only in cases where release of the information is likely to prejudice, as claimed in this case, the security of the state. If the state objects to release of the information it must show that the release of the information is likely to prejudice the Security of the state. This can only be established by evidence to show the prejudice the security of the state would suffer. No evidence has been adduced to support such a claim. Secondly, it would appear the mischief is in the release of information to the citizen, probably with the consequence that such information may be made public prejudicing the security of the state. If the release is in a limited context, ie. if it is denied to the public and the press but made available to the court and the parties for the determination of issues between the state and such party, then, prejudice to the security of the state is averted. This is possible by holding a hearing in Camera as authorised by Article 28(2) of the Constitution. …
>
> ... The exception in Article 41 cannot be said to be consistent with Section 121 of the Evidence Act as argued by Mr. Kabatsi. In our opinion, Section 121 gives unquestioned power to the head of Department to give or withhold permission as he thinks fit to a person who desires to produce such a document. He is the sole judge of this matter. He does not have to give a reason or be accountable to anybody for the exercise of this power. If applied together with Article 41 of the Constitution, it would override a Citizen's

> right of access to information in Government hands which is a fundamental right enshrined in Chapter 4 of the Constitution. The head of Department could deny a citizen the right of access to information which is not excepted by Article 41; for affairs of state as a term of art is much wider than security of the state or Sovereignty or interference with right to privacy.
>
> … In our view Article 41 overrides Section 121 of the Evidence Act which section could unreasonably be used to deny vital information to the Citizens by Government and or its officers. As stated in Field's Law of Evidence, at page 5290 there is along catena or chain of decisions in which warnings have been given by the Courts of the menace which the supposed privilege implies to individual liberty and private rights and to the potency of its abuse. It is this menace, in our view, that Article 41 sets out to correct. The right of access to information must include the right to use such information in a court of law in support of a Citizen's case. We find that Section 121 of the Evidence Act is inconsistent with Article 41 of the Constitution. And therefore, it cannot bar the admissibility of the document in question.[214]

The Constitutional Court went on to order that proceedings involving the impugned document be conducted in Camera where members of the public and the press were denied entry into the Court room.[215]

The Attorney General appealed to the Supreme Court[216] but the latter Court concurred with the Constitutional Court's holding in regard to application of Article 41 to the contested piece of evidence (exhibit p.2). Particularly Tsekooko JSC held that Section 121 of the Evidence Act should be construed with such modifications, adaptations, and exceptions as may be necessary to bring it into conformity with Article 41 of the Constitution, and thereby the Petitioner's evidence could not be excluded.[217]

[214] Ibid., p. 12 – 13.
[215] Ibid., p. 16.
[216] Attorney General vs Major General David Tinyefuza, Constitutional Appeal No.1 of 1997, accessed at https://ulii.org/judgments/UGCC/1997/ (accessed August 6, 2025).
[217] Ibid., p. 28.

This decision from the two highest Courts of record in instructive in safeguarding the right to access of information. The Courts empowered private citizens to request for information in the State's hands; distinguished when the State officials can and cannot withhold information, and further permitted citizens to use the acquired information as evidence in a suit against the State. The decision succinctly did away with the State's overreliance on exceptions to deny exercise of a constitutional right, by balancing both State security and enjoyment of a right by a private citizen.

Related to the Tinyefuza (supra) case is the matter of *Hon. Zachary Olum and Hon. Rainer Kafiire vs Attorney General*.[218] Here, two Members of Parliament petitioned the Constitutional Court seeking *inter alia* a declaration that Section 15 of the National Assembly (Powers and Privileges) Act Cap 249 which prohibited Members of Parliament and its employees from using evidence of proceedings in the Assembly or its Committees elsewhere without the special leave of the Assembly being obtained first, was unconstitutional and violated Article 41 among other provisions. Hon. Zachary Olum and Hon. Paulo Kawanga Ssemogerere had earlier on filed a petition before the Constitutional Court challenging the validity of an Act of Parliament. Their Counsel sought leave from the Speaker of Parliament under Section 15 of Cap 249, for the petitioners to use a copy of the Parliamentary Hansard as evidence. The evidence would be in connection with the challenged Act of Parliament. Leave was refused by the Speaker prompting the petitioners to challenge the validity of Section 15 of Cap 249 when Article 41 of the Constitution had guaranteed people the right of access to information in possession of the State.

Court adjudged the impugned provision as unconstitutional with a narrow margin of 3 to 2. From the reasoning adduced by members of the bench in favour of dismissing the petition, the Deputy Chief Justice Hon. Manyindo reasoned in a rather positivist mind-set that the import of Articles 41 and 43 of the Constitution is that the fundamental rights and freedoms conferred on individuals in Chapter 4 of the Constitution have to be enjoyed subject to the law, in so far as it imposes reasonable restrictions.[219] He further held that;

> The doctrine of access to information or "the right to know" as it is sometimes called, has of necessity constitutional and other limitations especially where

[218] Hon. Zachary Olum and Another vs Attorney General, Constitutional Petition No. 6 of 1999, accessed at https://www.studocu.com/row/document/uganda-martyrs-university/bachelors-of-law/zachary-olum-attorney-general/10265643 (accessed September 6, 2025).
[219] Ibid., p. 7.

> it touches the question of national sovereignty and the protection of sensitive defence and classified information, among other things. This is exactly what Article 41 does. It carries with it the necessary restrictions. There are very few absolute rights, that is rights whose enjoyment can never be restricted. For example, the European Convention for the Protection of Human Rights and Fundamental Freedoms recognise only two such rights, the right not to be tortured (Article 3) and the right not to be held in slavery (Article 4)
>
> In Uganda Article 44 seems to provide for such rights. In my view Section 15 of Cap 249 does not contain a bar to access and use of information. It only imposes a restriction, that is, the requirement of leave of Parliament by specified persons to use certain information emanating from Parliament. Both under Article 41 of the constitution and Section 15 of cap 249 the burden is on the state to show that the information is classified and thus restricted in the public and other interests. Individual rights are honourable but they can never override the public interest, state security and sovereignty in my view. I think it is generally accepted that laws may restrict actions, including actions which involve the exercise of constitutionally protected rights, which harm others.[220]

Manyindo DCJ's decision can be criticised for not having investigated how the evidence sought for by the petitioners would threaten the State's sovereignty, besides Parliament discusses State issues within full view of the public's eye. So, it would be self-defeating to deny a citizen (a representative of the people at that) parliamentary Hansards whose content was debated publicly and for the benefit of the masses, which were being sought to prove their case before a Court of Judicature which exercises its authority by, and for the masses.[221]

In concurrence with Manyindo DCJ's reasoning, was Hon. Justice J.P. Berko who held that the restriction imposed by Section 15 has a legitimate role to play in the democratic governance of the country and that its legitimacy ought be tested on a case by case basis.[222] He added that where the result is refusal, the applicant would be at liberty to petition any competent Court

[220] Ibid., p.8.
[221] Article 126(1) of the Constitution
[222] Hon. Zachary Olum and Another v Attorney General, op. cit., p. 14.

challenging the refusal, and thereby, the onus would be upon the Attorney General or Parliament to show that the information to be excluded came within the preview of the exceptions listed in Article 41(1).[223] The problem with giving the giver of information sweeping powers to determine whether to disclose or not, is that such authority will be abused and disclosure will be denied even where the exceptions in Article 41(1) do not arise.

On the other hand, majority of the bench who granted the petitioner's plea including Hon. Amos Twinomujuni JCC, reasoned that;

> In my judgment, I do not see any difference between S.15 and S.121 of the Evidence Act. In both provisions, it is intended to restrict the right of a citizen from access and use of information in the hands of the state I do not think that is of any consequence that S.121 affects every citizen whereas S.15 only restricts members of Parliament and officers and employees of the National Assembly, for they are equally entitled to enjoy the rights enjoyed by other citizens. Both provisions do not seem to have any problem with anyone who wants access to the information for any other purpose as long as it is not going to be used as evidence. If the information is to be used in evidence, then in both cases clearance is required. In both cases the section grants unfettered power to give permission to use the information or to refuse it. In both cases there is no right of appeal if the clearance is not given and the refusing authority does not have to give any reason at all. In my judgment section 15 must suffer the same fate when interpreted against Article: 41. The following powerful holding of this Court in the *Tinyefuza* case (supra) applies with equal force to section 15 of the National Assembly (Powers and Privileges) Act.
>
> > "the Constitution has determined that a citizen shall have a right of access to information in state hands. It has determined the exceptions in a manner that is inconsistent with the application of section 121 of the Evidence Act. It is no longer for the Head of Department to decide as he thinks fit. That unfettered discretion, has been overturned by Article 41 of the Constitution. And now it is for the Courts to determine whether a matter falls in the exceptions in

[223] Ibid., p.14.

> Article 41 or not. To do this, the state must produce evidence upon which the court can act." …
>
> … In my judgment section 15 read together with Art. 41 becomes a dead letter.[224]

Related to the *Tinyefuza* case, the majority decision in this petition also helps to strengthen cognisance and realisation of the right of access to information by narrowing the State's reliance on unproved exceptions in bid to deny citizen's requests for information. The two cases show that State officials quickly cite exceptions in Article 41(1) without paying heed to the right itself, even where there is no sufficient cause for the denial of information.

The third instance where Article 41 was a subject of contention was *Kamba Saleh vs Attorney General*[225] where the petitioner was named as a Minister-appointee subject to Parliamentary approval. The petitioner appeared before Parliament's Appointments Committee and was vetted. The Committee declined to approve the petitioner's appointment which aggrieved him and saw him petition the Constitutional Court seeking *inter alia* to annul Parliament's decision. He further faulted Parliament for not availing him with a report detailing the Committee's decision as Article 41 would entitle him. Court held that the petitioner should have applied to obtain the Committee's report as information in the hands of the State under the auspices of the Access to Information Act and the Access to Information Regulations, 2011. And that if he had been denied the information after undertaking that procedure, then his right under Article 41 would have been violated.[226]

In this instance, Court rightly dismissed the applicant's case because he had not undertaken the formal processes for request of information under the Access to Information Regulations 2011. That take home is that for the right of access to information to be protected by Court, a citizen ought to have tried to exercise it, and a denial by the State is what may constitute a violation which can then be successfully challenged in Court.

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[224] Ibid., p.28 – 29.
[225] Hon. Lt. (Rtd) Kamba Saleh Moses Wilson v The Attorney General of Uganda, Constitutional Petition No. 38 of 2012, accessed at https://ulii.org/ug/judgment/constitutional-court-uganda/2015/3 (accessed September 7, 2025)
[226] Ibid., p.21.

The other instance is the case of *Green watch (U) Limited vs Attorney General and Uganda Electricity Transmission Company Ltd*[227] where the government of Uganda, through its parastatal – Uganda Electricity Board, entered into a series of agreements with AES Nile Power Limited for the building, operation and transfer of a hydro-electric power complex at Dumbbell Island on the River Nile. The applicant NGO which advocates for environmental protection sought to obtain copies of the Power Purchase and Implementation Agreements from government in vain with the permanent secretary Ministry of Energy arguing that the said agreement contained clauses on confidentiality and protection of intellectual property, which would not permit government to make it available to the entire public. The NGO then applied to the High Court under Article 41 of the Constitution seeking disclosure and a declaration that the government's refusal to disclose was a violation of Article 41(1) of the Constitution. Hon. Justice Egonda Ntende (as he then was) held that the Agreements were public documents over which Article 41 of the Constitution applied and rejected the claim that disclosure would affect the security or sovereignty of the State. Court further held a corporate body could qualify as a citizen under Article 41 of the Constitution to have access to information in the possession of the state[228] but declined to order for disclosure because the applicant NGO did not adduce evidence to qualify it as a corporate citizen, wherein its membership was not proved.

This ruling can be criticised for upholding technicalities at the expense of granting a constitutional right. In an instance where a duly incorporated NGO whose objectives are well known, seeks to access State-held information in vain from state officials, Court is its last resort. And given that the NGO would publish its report to the general public, disclosure would benefit the whole public thereby reinforcing the realisation of the right of access to information. Mere technicalities like absence of the NGO list of members and directors, can be fulfilled by Court requiring such information to be filed through supplementary affidavits. Otherwise limiting a constitutional right over mere technicalities defeats the purpose of the right.

Additionally, the Court's decision affirms the dictates of the Restricted Access theory in the sense that where there are laws permitting the state to limit access to its information, however unjust they can be, they will be employed to protect its 'privacy.'

[227] Miscellaneous Cause No.139 of 2001. Available at https://ulii.org/akn/ug/judgment/ughccd/2002/28/eng@2002-11-12 (accessed August 25, 2025).
[228] Ibid., p. 8.

Ugandan courts have also determined the application of Article 41 of the Constitution to information requests regarding the oil sector, where they have upheld the confidentiality of oil contracts, citing the need to protect the integrity of agreements between the government and foreign investors. The first case in point is the action commenced by two journalists[229] regarding disclosure of Production Sharing Agreements under Article 41 of the Constitution where the Nakawa Chief Magistrate's Court held in favour of limiting access to the agreements. The learned Chief Magistrate – His Worship Deo Ssejjemba partly held as follows;

> I would like to think that government business is not in its entirety supposed to be in the public domain. There are cases where the keeping of certain class of documents secret is necessary for proper functioning of public service.[230]

Court further held that "the public is required to have confidence that what government is doing is in the best interest of the people."[231]

This ruling falls short of the guidance laid out by the Superior Courts in the *Tinyefuza* (supra) and *Hon. Zachary Olum* (supra) cases, by burdening the applicant for information to prove the utility of disclosure, as against the State proving how disclosure will adversely affect its security. In a situation where journalists are denied information, it is likely that the general public will remain aloof over that subject matter, more so where the State is acting on their behalf and for their benefit. It is obvious that a journalist seeks information to report the same to the public, and by upholding the denial of disclosure to journalists, the Court is simply denying the right of access to information to whole general public by blocking the chain of information.

The above-mentioned ruling also furthers the Restricted Access theory in that a judicial decision is tailored on the laws and policies that protect the informational privacy of the state, be it at the expense of the denying fundamental rights to the citizenry. Great importance is attached to the state's privacy to the extent of ignoring its responsibility of accountability.

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[229] Background, op. cit., p. 4.
[230] Isaac Kasamani, "Court Says Oil Pact Can Remain Secret," *Monitor*, February 4, 2010 (updated on January 24, 2021), https://www.monitor.co.ug/uganda/news/national/court-says-oil-pact-can-remain-secret-1468938 (accessed August 25, 2025)
[231] Ibid.

The other case is *Green watch vs Attorney General*[232] where the applicant NGO sought orders; to be availed with copies of agreements concluded between Tullow Oil Company, Heritage oil and gas company, Dominion oil company, Neptune petroleum Uganda and any other oil companies, and the government of Uganda in respect of oil exploration, production and revenue sharing agreements; and a declaration that the said oil agreements are public documents which the public is entitled to access under Article 41(1) of the Constitution of Uganda. The applicant argued that they needed the agreements for research purposes so as to make findings, observations and recommendations to the government regarding oil exploration and production. That attempts to access the agreements through concerned public officer were futile.[233]

In an affidavit in reply, the permanent secretary of Ministry of Energy and Mineral Development averred that the commissioner of petroleum exploration and production department had availed the applicant with a copy of the 'model' production sharing agreement which would aid in the applicant's research. He added that access to oil and gas exploration areas is restricted for one's safety and security, and that in the agreements that were signed between the oil companies and the government of Uganda, both parties agreed to include a confidentiality clause which could only be breached upon consent of either party, which had not been obtained. That confidentiality clauses were included in the contracts to protect commercially sensitive information like technical data and information which would disadvantage the parties contractually and commercially if they were availed to the applicant.[234]

In her ruling, Hon. Lady Justice Lydia Mugambe held that oil agreements are public documents under the auspices of Section 73 of the Evidence Act, and that the right to access information in Article 41 is caveated with exceptions where release of such information is likely to prejudice the security or sovereignty of the state or interfere with the privacy of any other person. Thereby the respondent was required to demonstrate that disclosure of these agreements to the applicant or the public, is likely to prejudice the security or sovereignty of Uganda or interfere with the right of privacy of any other person. Court further held that;

[232] Miscellaneous Cause No.232 of 2009 at the Civil Division of the High Court. Available at https://greenwatch.or.ug/judicial-decisions/greenwatch-vs-attorney-general-rights-access-information (accessed August 20, 2025).
[233] Ibid., summary of affidavits in support of the application on p. 2 of the ruling.
[234] Ibid., p. 3.

> A confidentiality clause between contracting parties cannot on its own vitiate a constitutional right. All terms between parties have to be in conformity with constitutional and other relevant legal regimes in the land. The Constitution is the supreme law that binds all contracting parties in the country. The rights in the Constitution must therefore be guarded jealously. To use a confidentiality clause in a contract without qualifying it within the exception in article 41 and section 5(1) above to deny access to information would make such a confidentiality clause arbitrary, unfair, prejudicial and illegal.[235]

Court further held that the respondent failed to demonstrate that making the oil agreements accessible to the applicant and the wider public violates the exceptions clause in Article 41 of the Constitution, and ordered that the applicant be availed with all the sought oil agreements. This decision is instructive in protection of the public's right of access to information in regard to agreements and transaction the government enters into in their name. This commendable decision fosters accountability on the part of the state, transparency on the part of foreign investors, and places the constitutional right above commercial interests.

3.2 LEGISLATION ON THE RIGHT OF ACCESS TO INFORMATION IN UGANDA

3.2.1 The Access to Information Act Cap 95

This Statute was enacted under the auspices of Article 41(2) of the Constitution to operationalise the right of access to information by particularly prescribing classes of information to be accessed and the procedure for obtaining such information among others.[236] Section 2 prescribes that this law applies to all information and records of Government Ministries, Departments, Local Governments, Statutory Agencies and other State organs; with the express exception of Cabinet records and records for Court proceedings regarding ongoing cases. The restriction on disclosure of ongoing Court proceedings is understandably meant to uphold the "sub judice rule" whose purpose is to prohibit the publication of statements which may prejudice Court proceedings.[237]

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[235] Ibid., p. 5.
[236] Long title of the Act and Section 3(b).
[237] Sossin Lorne and Crystal Valerie, "A Comment on "No Comment": The Sub Judice Rule and the Accountability of Public Officials in the 21st Century," Dalhousie Law Journal 36, no.2 (2013): 539, accessed at https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1430&context=scholarly_works (accessed September 6, 2025).

The reason for exemption of Cabinet records is not stated in the Act but could be presumed to be under the guise of safeguarding state sovereignty under the whims of Section 5(1). Notable is that the Parliament Committee on Presidential and Foreign Affairs that was charged with consulting and making recommendations to the Access to Information Bill 2004 recommended that Cabinet records should be accessed by the public under three categories; short-term, mid-term and long term.[238] Short term records were recommended to be viewed after seven years, the midterm after fourteen years, and the long term after twenty-one years. While Section 6 of the Act entitles seekers of information to obtain the same regardless of the reason for the quest, the Parliamentary report found that most citizens fear to approach government offices to seek information owing to the many questions asked, implying that this provision is breached by State officials.[239]

Section 8 requires every information officer[240] to publish a description of the categories of records of their respective public body that are available for public access and the procedure for attaining such. However as noted in the CIPESA Report,[241] many public officials are ignorant of such legal requisitions upon them, its thus natural compliance to this provision is minimal. Section 11 prescribes the format of a request for information to include; particulars of the record sought for as well as particulars and address of the requester. Since a requester need not give a purpose for seeking information, the requisition for their address indirectly influences the information officer to withhold information. For instance, if one states their address as of a reputable daily, the information giver may withhold it fearing the requester will publish it more so if their public agency acted unlawfully or irregularly as per the sought records.

The first restriction on accessing information is embedded in Section 15 which authorises information officers not to disclose information if the same will be disclosed within ninety days as a particular legislation demands. However, this does not augur well for the Fourth Estate where reporting stories at the earliest is a critical principle.[242] Section 16 prescribe a twenty-

[238] Report of the Committee on Presidential and Foreign Affairs on the Access to Information Bill, 2004, p.6.
[239]Africa Freedom of Information Centre, op. cit., p. 17 – 18.
[240] The Chief Executive of a public body – as defined by Section 4 of the Act.
[241] CIPESA, op. cit., p.3.
[242] Bergstrom Guy, "Understanding the Newspaper News Cycle," *live about dotcom*, August 20, 2019, https://www.liveabout.com/understanding-the-news-cycle-2295933 (accessed September 7, 2025).

one-day period within which an information officer should disclose to an applicant and the latter may be required to pay for the information under certain circumstances. This excessive red-tape was criticised in the CIPESA report since such delays may lead to loss of usability of information especially for journalistic work as well as the enforcement of human rights and freedoms.[243] Section 18 indirectly permits an information officer to decline disclosing information by simply ignoring the request to do so for more than forty-two days.

The second restriction on access of information is found in Section 25 which bars disclosure of Cabinet records except to an undescribed "public officer." Regulations meant to spell out the categories of Cabinet records that can be accessed after seven, fourteen and twenty-one years have never been passed. Thereby cabinet resolutions regarding the oil sector cannot be accessed by any Ugandan other than Cabinet members themselves. Section 27 further entrenches restrictions by shielding from disclosure, information regarding a third party which would disadvantage the latter contractual and commercial competition while Section 28 takes it a notch higher to bar disclosure of information which would breach a duty of confidence owed to a third party in an agreement. It is this provision that the Solicitor General relied on to decline revealing crucial oil-related information as requested for by journalists – Charles Mwanguhya and Angelo Izama.[244] The unanswered question under Section 28 is how will a requester of information prove that indeed the information they seek is not encumbered by a confidentiality clause without reviewing the text?

Some of the above provisions were tested in Courts of law in the matter of *Patrick Moni Omony T/A Omony Consulting Co. Ltd vs Uganda Revenue Authority*[245] where the applicant, a research-based consulting firm offering management accounting, strategic and corporate advisory services, wrote to the respondent requesting for economic data on accounting firms registered in Uganda. The data was requested to be provided in grouped gross total revenues classified as top, middle and small accounting firms for three years. In reply, the respondent sent some information to the applicant via email but the latter was dissatisfied as the information provided did not meet the format and criterion of what was requested for. The applicant re-applied in more specified and detailed terms under the auspices of the Access to

[243] CIPESA, op. cit., p.12.
[244] See Background to study, p.4.
[245] Patrick Moni Omony T/A Omony Consulting Co. Ltd v Uganda Revenue Authority, High Court (Civil Division) Miscellaneous Cause No. 234 of 2020, accessed at https://ulii.org/ug/judgment/hc-civil-division-uganda/2022/70 (accessed August 30, 2025).

Information Act. The respondent wrote back (after four months) totally rejecting the applicant's request citing a confidentiality clause in the Tax Procedural Code Act 2014, and recommending the applicant to seek for the information from the particular accounting firms they wished to study.

Hon. Justice Boniface Wamala declined to adjudge the matter basing on the Access to Information Act because the applicant's initial request was not premised on the said law.[246] While interpreting Article 41(1) of the Constitution, Court noted that the right of access to information is not absolute and laid strict emphasis on the exception of individuals' privacy. In reliance on Section 47 of the Tax Procedure Code Act 2014 which prohibits tax officers from disclosing any tax information in their possession, Court held that the URA was right in declining to disclose the information sought for by the applicant.[247] In effect, Court denied the applicant's quest basing on a technicality that he had not commenced the initial application for information under the Access to Information Act, a fact the Court ought to have overlooked under the whims of Article 126(2)(e).

In this case, the applicant was a layman without a legal background and was not represented by an attorney before Court. A court of judicature ought to prioritise enjoyment of a constitutional right by a tax payer, and not focus on strong adherence to legal procedures. Such a ruling makes the right in Article 41 a far reach for Ugandans who are not knowledgeable of legal procedures.

Additionally, this law requires funding from the state to be operationalised. However, a study by the Carter Center 2016[248] on selected government ministries revealed that none of them had specific budget for access to information activities. Such a revelation may imply that government officials tasked with operationalising the law may not know their duties.

[246] Ibid., para. 46, pp. 17 – 18.
[247] Ibid., pp. 20 – 21.
[248] Anti Corruption Coalition Uganda, "Assessment of the Status of the Implementation of the Access to Information Act 2005 & the Access to Information Regulations 2011," *Anti Corruption Coalition Uganda*, September 2023, https://accu.or.ug/wp-content/uploads/2025/05/Assessment-Report-on-Access-to-Information-Act-and-Regulations-1.pdf (accessed November 19, 2025).

3.2.2 The Press and Journalist Act Cap 100

Section 4 entitles a person to access official information subject to any law in force relating to national security, secrecy or confidentiality of information. Though this provision does not explicitly provide for access to information in custody of government agencies, since it applies in consonance with other laws in force, journalists may rely on it in conjunction with the Access to Information Act to request for State-held information. Section 3(b) prohibits publication which improperly infringes on the privacy of an individual. These provisions were tested in the matter of *Monitor Publications Ltd vs Attorney General*[249] where the Uganda Police Force shutdown the Plaintiff's newspaper press and radio stations on allegations that the latter had published information which violated someone's privacy and wrongful communication under the Official Secrets Act. However, no evidence was adduced to prove the Defendant's allegations and the matter was determined in the Plaintiff's favour.

Another case in point is *Editors Guild Uganda Limited and Another vs Attorney General*[250] where the Media Council of Uganda issued directives dubbed "Guidelines for media Council of Uganda Accreditation of Journalists for Coverage of 2021 Elections and other State Events" requiring all journalists (local and foreign) to register and be accredited by the Council as a condition precedent to covering the 2021 elections. The Applicants argued that the directives were ultra vires the Press and Journalist Act, would have the effect of fuelling the brutality of security forces and malicious prosecution of journalists in addition to being illegal, procedurally improper and irregular. Court held that the Press and Journalist Act does not mandate the Council to accredit journalists more so where the National Institute of Journalists of Uganda was dysfunctional and consequently it was illegal for the Council to embark on the process of registering and accrediting journalists. Court found for the Applicants and issued an order of certiorari quashing directives of the Media Council and an order prohibiting the Council from illegally curtailing the press from covering elections and other State events.

3.2.3 The Petroleum (Exploration, Development and Production) Act Cap 161

Section 10(2)(n) enumerates one of the functions of the Petroleum Authority of Uganda as, "to ensure the establishment of a central database of persons involved in petroleum activities,

[249] Monitor Publications Ltd v Attorney General High Court (Commercial Division) Civil Suit No. 747 of 2013, accessed at https://ulii.org/ug/judgment/commercial-court-uganda/2018/28 (accessed September 7, 2025).
[250] Miscellaneous Cause No. 400 of 2020, Civil Division of the High Court. Ruling delivered on January 18, 2021 by Hon. Lady Justice Esta Nambayo (as she then was).

manage petroleum data and provide periodic updates and publication of the status of petroleum activities." This position is cemented under Part XIII of the Act where Section 148(1) exclusively puts all petroleum data generated under the Act in the State's custody, particularly the said Authority,[251] while Sections 149 and 150 spell out the specifics of the information that licensees[252] must pass on to the Authority. Section 11 (1) requires the Authority to perform its function in a manner that is open and objective, fair and reasonable, non-discriminatory and promote fair competition. Furthermore, Section 151(1) of the Act stipulates that the Minister[253] responsible for petroleum activities may in accordance with the Access to Information Act, make available to the public details of all licenses and agreements, including exemptions and other approved arrangements. However, any applicant for such information must pay a prescribed fee as stipulated by Sub-Section (2).

The Act provides for exemptions to disclosure on grounds of confidentiality. Section 152(1) provides that subject to the Access to Information Act, all data submitted to the Minister responsible for petroleum activities shall be kept confidential and shall not be reproduced or disclosed to third parties except with the Minister's or licensee's prior written consent. Subsection (3) excludes the public and the press from the list of persons and agencies who may access the agreements with the Minister's or licensee's authority; but even if the press were to granted access, Subsection (4) would prohibit them from reporting to the public because a recipient of information is required to keep it confidential. Section 153(1) of the Act cements prohibition to disclosure by providing that information furnished to the Minister through a licensee's report shall not be disclosed to any other person without the licensee's consent, while the exceptions contained in Subsection (2) make no option for the press or the public.

3.2.4 The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act Cap 162

Section 74 provides that the Minister responsible for petroleum activities may in accordance with the Access to Information Act, make available to the public details of agreements and licenses, at a prescribed fee. This law also limits disclosure on grounds of confidentiality. Section 75 of the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act

[251] Section 148(2), (6) and (7) of the Petroleum (Exploration, Development and Production Act) Cap 161.
[252] Section 2 of the Act defines "llicensee" as a person to whom a license is granted under the Act. For example, licenses for opening up areas for petroleum activities under Section 47 and reconnaissance permits under Section 48.
[253] The Minster is the signatory to such agreements on behalf of the government of Uganda as per Section 8(e).

Cap 162 requires all information submitted to the Minister by a licensee to be kept confidential and Subsection (4) requires any recipient of the information received under exceptional circumstances enlisted in Subsection (3), to keep the same confidential. This stems from the fact that the said Minister is the signatory to oil-related contracts with multinationals representing the government of Uganda, as empowered by Section 4(e). Section 76 criminalises disclosure of information to any other source other than the Minister.

3.2.5 The Computer Misuse Act Cap 96

Though not directly connected to journalism and oil resources, this law directly affects journalists' access to State-held information. Section 11(1) criminalises the access, interception, voice or video recording of another person and sharing the same. Section 17(1) forbids any person with access to electronic data from disclosing the same other than for the purpose of access. Section 27(1) forbids sharing unsolicited information to another person through a computer except when acting in public interest. Public interest is not defined. These provisions imply that even if a journalist has accessed the oil contracts, they cannot disclose the same to the public through online platforms.

3.3 Conclusion

From the foregoing discussion, it is eminent that Ugandan legislation confirms the Restricted Access theory to informational privacy by providing for a broad realm of information the state can consider 'private' and the citizenry cannot access it even if they were to sue government. This is proved in that as much as the Constitution and supporting legislation provide for the right of access to information, its practical realisation is greatly hindered. First by the fact that it is not an absolute right, and secondly that Courts of law seem to accord its exceptions more efficacy than the right itself. Needless to say, the supporting legislation largely fails its realisation by providing for a wide spectrum of exceptions which in effect, makes cabinet minutes, oil contracts and other state information, nearly impossible to be seen by the fourth estate and the general populace. This is worsened by the fact that there no Regional or Continental Courts with jurisdiction to overturn orders of Ugandan Courts. The proceeding chapter shall enumerate in detail, findings as collected by the researcher from semi structured interviews and wider textual reviews – which shall be pivotal in proposing recommendations.

CHAPTER FOUR

PRESENTATION, ANALYSIS AND INTERPRETATION OF FINDINGS

4.0 INTRODUCTION

This chapter presents the findings as gathered from semi structured interviews and reviewed literature, as well as analysis and interpretation of the collected data, in relation to this study's research questions. The researcher conducted semi structured interviews with; two journalists, a Commissioner in the Attorney General's chambers, a Senior Legal Officer with the Petroleum Authority of Uganda, and two lawyers working with legal departments of Multinationals engaged in the exploitation of resources in the Albertine region. The findings and analysis shall be presented under designated themes in regard to the categories of the respondents.

4.1 THE FOURTH ESTATE'S PERSPECTIVE

The researcher conducted semi structured interviews with two journalists who have in the course of their work, requested for information regarding oil contracts from government agencies. The findings from the data collected and corresponding interpretation shall be reported under designated themes as framed by the researcher.

4.1.1 Oil is a geo-political aspect which comes with vested interests of the State

Right from Uganda's colonisers – the British, oil carried with it a sense of secrecy. A key informant stated as follows;

> The two sectors of defence and oil and gas are linked. If you look at the 1937 British Law that reserved hydrocarbons for the crown, which is the root of a lot of protections around oil and gas. That law was pursued in England by Sir Winston Churchill as Chief of the admiralty in modernisation of the British fleet ahead of the world war and the British navy fleet was moving from the steam to the combustible engine … there was a dispute between the colonial authorities who had then passed the law preserving hydrocarbons for the crown and the government of Buganda which under the 1900 Agreement had equal status … but because oil became a big product in global geopolitics essentially as a result of [the second world] war, it became a defence matter

> and carried with it the DNA of secrecy. One because it is essential for warfare, but also because it carries with it security interests of the state.[254]

The British law the informant referred to is the Petroleum (Production) Act of 1934[255] where Section 1(1) exclusively vested the right of exploring, bearing, and owning petroleum (and its numerous products) in the Crown. Section 2 of the said law established the Board of Trade which acted for the Crown, in licensing persons as it 'thought fit' to search, bear and get petroleum. The British maintained this policy of secrecy over hydrocarbons given that information regarding discovery of hydrocarbons in the Uganda Protectorate from as early as 1925[256] was not publicised, at least not for the natives' knowledge, and no legislation was passed in that regard until 1957 with the passing of the Petroleum Act,[257] at a time when Uganda's self-rule was eminent.

The policy of secrecy was adopted by post-independent governments to the extent that even if journalists were to make formal requests of information, they would be declined. The State has always intentionally kept such details out of reach of journalists and the entire public mainly because of vested interests. One informant stated as follows;

> Even now a request for information can be frustrated by the bureaucracy, by vesting interests. The role of journalism is to assess the field, look at what is possible and the public interest embedded in there.[258]

He added that;

> The entire purpose of that enterprise (court action before Nakawa Chief Magistrates Court) was to use the court as a platform to raise the question –

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[254] Interview with Izama Angelo, February 25, 2025.

[255] Cap 36. The Act came into force on July 12, 1934. https://www.legislation.gov.uk/ukpga/1934/36/pdfs/ukpga19340036en.pdf (accessed May 12, 2025).

[256] Petroleum deposits in the Albertine region on both the Ugandan and Democratic Republic of Congo's shores were discovered by British geologist – Edward J. Wayland and published in a 1925 report to the Protectorate Government entitled "Petroleum in Uganda." Wayland had been contracted by the Protectorate Government to survey the Ugandan protectorate in bid to find out whether hydro carbons existed.
Edward J. Wayland, "Petroleum in Uganda: Geological Survey of Uganda. Memoir No.1," *Geological Magazine* 63, no.9:431 – 432. https://www.cambridge.org/core/journals/geological-magazine/article/abs/petroleum-in-uganda-geological-survey-of-uganda-memoir-no-1-by-e-j-wayland-pp-60-4-maps-22-illustrations-entebbe-1925/5934C7DFE51801760D8FA57E14078083 and The Early Efforts (Pre-1980) https://www.pau.go.ug/history/ (accessed May 12, 2025).

[257] Then Cap 149.

[258] Phone call interview with Peter, March 1, 2025.

> 'why the secrecy?' I could have written an article, but that does not have the legal protection of a Court. … I actually got copies of the PSA signed with … through under cover means as a journalist, but that is not the legal process of access, you needed to guarantee that process through the Access to Information Act and the Constitution so that any public official would be held accountable at any point.[259]

He further added;

> When the judgment (ruling) was being read, a quarter of the Court were uniformed security officers. I imagine if the Chief Magistrate had actually allowed our application, we would have been in trouble … maybe they would detain us or something would happen. It a state security matter.

It then becomes clear that government leaders have undisclosed vested interest in oil resources and will thereby do whatever it takes to maintain secrecy over not only the contracts, but the whole sector. Hence the freedom of access to information is impeded deliberately by State officials who have political and economic interests in the sector.

4.1.2 Legal provisions are not an end

Some government officials who are authorised by law to disclose information decline to do so for political reasons, or in an effort to safeguard their offices in disregard of the law. An informant stated as follows;

> I think Article 41 provides the right to information not as an end, it is a means to an end. The PS Kabagambe did not respond to our request, instead it was the Solicitor General, who are both presidential assistants. … they are acutely aware of the interests of the state and they are much more vulnerable as agents of the State if they do something contrary to directions given to them.[260]

[259] Ibid.
[260] Interview with Angelo Izama, February 25, 2025, Caramel Café and Lounge, Ntinda – Kampala.

The take home is State officials are reluctant to disclose any information which their superiors label confidential. In so doing even if journalists were to follow the due process for access to information, it will be denied.

4.1.3 Lack of a discerning public

A people interested in knowing about contents of oil contracts for economic and social reasons may impact on the need for disclosure. However, if the masses are disinterested, the State feels no obligation to disclose. A respondent stated as follows;

> The idea is that informed citizens may make better citizens, and contribute to society. …
> I do not know how many Ugandans are paying attention to developments in the oil sector. …
> The limits to the Access to Information Act and to freedom of access to information are set by the curiosity, interest and involvement of citizens.[261]

This implies that the public is partly responsible and determines the extent to which the right of access to information can be realised. If they show interest in the contracts, journalists will be compelled to seek for that information and report on the same, and pubic disinterest will aid complacency by holders of information.

4.1.4 Technical hazards impede journalists from reporting where they have access.

One responded disclosed as follows;

> PSAs are complex documents in that even if you read them, you will need help analysing them. I was lucky because l had spent some time with the PSAs and I had spent some time educating myself with the help of government officials who I had access to, but it's one thing to talk to a journalist and another to talk to an MP about the formal details of the contracts.[262]

[261] Phone call interview with Peter, March 1, 2025.
[262] Interview with Angelo Izama, February 25, 2025, Caramel Café and Lounge, Ntinda – Kampala.

In effect, Production Sharing Agreements, Final Investment Decisions among other documentation involved in oil sector transaction are very huge, technical documents which require technical knowledge to interpret, hence requiring journalists to have advanced legal knowledge to interpret the documents and report to the masses, a possibility rarely achievable. This hinders the flow of the information as would be envisaged under Article 41 as the public cannot be informed by journalists who cannot interpret the subject matter of the information.

4.1.5 The overwhelming influence multinationals have over developing countries.

As big-sum investors in a developing economy, foreign oil multinationals always dictate certain conditions which the host countries are obliged to follow. A respondent explained as follows;

> When they are dealing with third world countries, multinationals use non-disclosure to avoid accountability in jurisdictions where they come from, which is why cases against TotalEnergies are filed in a French Court, and even some of the disclosures in the PSAs were first discovered by the public when they were required under French law. Because foreign multinationals are more powerful than African governments, they insist on non-disclosure to protect the legal advantage they have been able to procure. …but how will you know they are bad agreements if you do not disclose them.[263]

This implies that even if government officials were willing to disclose the agreements to the media, their hands are tied by the contractual obligations put onto them by the investing multinationals. In effect the media and public cannot enjoy the freedom in Article 41 owing to pressure exerted on the government by the contracting multinationals.

4.2 THE STATE'S PERSPECTIVE

4.2.1 Article 41 does not create an absolute right

The right of access to information is not categorised a s non-derogable under the 1995 Constitution and is therefore subject to limitations. An informant stated that;

[263] Interview with Angelo Izama, February 25, 2025, Caramel Café and Lounge, Ntinda – Kampala.

> Article 41 is not an absolute right, so when you are enjoying that right it is subject to limitation. There are things like trademarks and patents …
> … though people have made attempts to obtain the PSAs, our argument is that PSAs are public documents currently housed in Parliament and if you want to access them you have to go through the Access to Information Act procedures. So, the agreements can be accessed but there must be certain qualifications met.[264]

The import from that response is that the State will consider other factors like interests of the contracting oil companies before complying to requests for interests. And if the State deems the multinationals' interests more compelling to oblige, it will most likely not honour the requests for information given the exemptions stated in the Access to Information Act. Therefore, the law grants the State a lot of discretion to either honour or decline requests for information.

4.2.2 The need to maintain Uganda as a good investment venue.

Agreements signed by the Ugandan government with foreign multinationals (for exploration, development, and exploitation) contain provisions limiting disclosure of information thereunder to third parties, including the media and the Ugandan public, to protect trade secrets of the multinationals. An informant disclosed as follows;

> The multinationals and government at times agree to certain provisions in the agreement which are not supposed to be for the public eye, so as a result you will find that there are certain parts of the contract that cannot be provided.
> …
>
> We must also weigh the damage we are going to cause by disclosure. If we reveal trade secrets (of multinationals) to the general public, then we are not making us (Uganda) an attractive country for investment and it has a cascading effect.[265]

[264] Interview with Commissioner AG, April 21, 2025.
[265] Interview with Commissioner AG, April 21, 2025.

This still shows the underlying influence multinationals have over the drafting of oil contracts. The contracts are framed in a manner that protects what oil companies consider to be their trade secrets and Uganda as the host country is obliged to adhere owing to its immense need for foreign-direct investment.

4.2.3 The government endeavours to account whenever required

Notwithstanding the limitations in the law, the Petroleum Authority of Uganda endeavours to inform the media and the general public of happening in the oil sector and thereby being accountable. An informant stated that;

> There are processes for obtaining information (regarding oil contracts), you apply to the Minister of Energy, pay any prescribed fee though I am not aware of any fee. And the Minister may render the information.[266]

Another informant stated as follows;

> We provide quarterly reports to the Minister on all activities of the Authority including correspondences with the public, and the Minister takes them to Parliament. And if there were any requests to information it would be mentioned in the report and how we responded. …
>
> We also organise conferences with civil society organisations where accountability is given to the public, we also have national content conferences…
>
> PAU regularly holds press conferences at the government media centre where journalists ask any questions regarding the oil sector. We also take officials from other government agencies to the Albertine graben to show them how the work over there is taking shape.[267]

It is eminent that the PAU and other State authorities attached to the oil sector strives to be accountable to the population as a regulator of the oil industry in Uganda. However, none of

[266] Ibid.
[267] Interview with Dan, May 14, 2025.

the accounting modes explained by the respondent beats access to contracts in the quest for realisation of the right of access to information. Press conferences and reports to parliament among others do not reveal provisions of oil contracts that the media and the public are interested in knowing about.

4.2.4 A disengaged fourth estate and unconcerned public

For the right of access to information to be realised, individuals must take steps to implement it by formally requesting for information. However, the researcher's respondents, both from the Attorney General's chamber and PAU expressed having received no such requests from journalists. One respondent stated that;

> I am not privy to any information as to any journalist who has sought information relating to agreements executed by government …[268]

Relatedly, the other respondent stated as follows;

> We have not had a request for information from a journalist through the lawful process. We have not received any advisory as the legal department at PAU regarding access to information.[269]

This revelation is testament to the fact that journalists seem to be disengaged from trying to access the oil contracts. Journalists are also complacent in failing effective realisation of the right of access to information. A case would be made where they sought disclosure and it were denied, but where no efforts re made to request for information makes the media blameworthy too.

4.2.5 The risk of being sued in international tribunals

Since oil contracts are part and parcel of foreign-direct investment, obligation agreed to thereunder can cause liability onto a defaulting party. And given that oil contracts contain confidentiality clauses, the government risks being sued in case the contracts are disclosed to the media and the general public. A respondent described the notion as follows;

[268] Interview with Commissioner AG, April 21, 2025.
[269] Interview with Dan, May 14, 2025.

> First of all, we consult with the investor and request them that we are going to make information (oil contracts) available and ask whether they have any problem with that. The reason is that these agreements are entered into under bilateral understandings and if we breach these agreements the country can be sued in arbitration – investment arbitration under ICSD. A PSA creates a cause of action for an investor to sue the country under a bilateral investment agreement or UN Convention.
>
> …
>
> In refusing to disclose these contracts to the public, we are guarding the public against potential suits. It is a question of risk assessment within the contract.[270]

This connotes to the assumption that most oil contracts internationally contain confidentiality clauses which bar disclosure of the contents. Hence, international standards also contribute to restriction limiting realisation of the right of access to information.

4.3 THE FOREIGN MULTINATIONALS' PERSPECTIVE

4.3.1 Protection of trade secrets and other commercial interests

To oil companies, contracts consist of intellectual property and other trade secrets which should not be disclosed to third parties.

> An oil agreement is also known as an investment agreement. The nature of an investment agreement (and in this case we use Production Sharing Agreements), PSAs normally have information which is regarded as intellectual property to the investor. In those agreements, the investor is reluctant to have that information available to the public because competitors in the same industry are going to access that information and will use it to easily compete against us …

[270] Ibid.

> The character of a PSA is that the oil company comes into a country, use their own money to prospect for oil and other things, and they only get paid when the natural resource has been extracted and sold.[271]

Trade secrets are obviously pivotal to any business and their protection is a vital concern. However, this should not come at the expense of denying citizens a constitutional right of access to information. Contractual provisions ought not be a basis for denying a constitutional right more so over a resource owned by the government in trust for the masses.

4.3.2 Some oil companies prefer limited disclosure to protect business interests

Some oil companies are open to disclosure of contracts provided their intellectual property is not exposed – hence selective disclosure.

> Information [oil contracts] are actually shared to some organisations, not particularly journalists but for example to Parliament, but what we normally do is to purge that information considered private and confidential and we only avail the part not containing trade secrets.[272]

Selective disclosure balances the interest of the right of access to information and protection of an investor's trade secrets. However, in this case, disclosure is only done to Parliament and not to the media, which implies that the general public does not benefit from the disclosure. That still leaves the right of access to information out of reach of the citizens.

4.4 Conclusion

The findings as presented through themes above reveals that Ugandan authorities are aware of their accountability obligations to the masses and are willing to comply to formal requests for information. However, they are under immense influence from multinationals who prefer confidentiality or at most – selective disclosure to protect their trade secrets and intellectual property. Journalists share the blame too for not actively making formal requests for information. Above all, the State's vested interests are the major factor derailing disclosure of oil contracts, given that there has been secrecy of developments in the sector right from the

[271] Interview with Counsel LF, May 3, 2025.
[272] Interview with Counsel NF, June 15, 2025.

discovery process under the colonialists to hiding contents of agreements on exploration, exploitation and production.

The general public is complacent too in the sense that they have not sought to vigorously demand for the information, let alone consider such information as a "must know" so as to compel journalist to seek for the same. It is upon that background that the researcher shall propose plausible recommendations in the next chapter.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 INTRODUCTION

A constitutional right can only be realised when the State and the public take steps to implement it, respect and promote its usefulness. This study majorly aimed at finding out why the State is reluctant to disclose pertinent information embedded in contracts signed with foreign multinationals regarding the oil sector; having been inspired by a case where two journalists were denied access to PSAs by both state officials and a court of law. Findings in the previous chapter reveal that citizens and journalists are to a certain extent, responsible for the non-disclosure given their attitude of not seeking that information. This chapter presents the conclusion and recommendations made by the researcher.

5.1 CONCLUSION

Effective realisation of the right of access to information is still a far dream given that the law on access to information and state policy are pro-investment interests as compared to enjoyment of the right. The circumstances under which oil contracts may be disclosed under the Petroleum (Exploration, Development and Production) Act Cap 161 and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act Cap 162, is for the benefit of succeeding oil companies who are also required to keep the information confidential.[273] The only government signatory to the contracts – the Minister of Energy and Mineral Development, is by law instructed to keep the contents confidential. Hence the particular oil laws are pro-secrecy. That coupled with the fact that investing companies have to first consent to any disclosure cements the non-disclosure further.

The Ugandan State in its bid to attract foreign-direct investment has done so at the extent of denying its citizens to a constitutional freedom. As found in the preceding chapter, some multinationals are willing to permit selective disclosure where trade secrets are withheld and the rest of the contract is availed to the public. But the State would rather not disclose a thing owing to unknown vested interests in the sector. Given that oil is a resource managed by the State in trust for the citizens, it should only be probable that the State should account to former by particularly making the contracts available to universal appreciation or positive criticism.

[273] Full discussion on p. 68 and 69.

But hiding the contract from the public's view in order to protect the investor's interests is to fall short of the duties of a trustee.

The Judiciary as an arm of government has also failed efforts to safeguard the right of access to information. From the judicial decisions reviewed in Chapter three above, there are only two instances where judicial officers ordered for full disclosure of information. The rest were too quick to rely on exceptions to the right of access to information and upheld the Executive's denial of disclosure or relying on failure to follow mere technicalities by information seekers. This was despite the Supreme Court's precedent guiding that the State is duty bound to prove the exceptions if it seeks to rely on them to deny disclosure.[274] In an instance where Courts of Judicature cannot safeguard a constitutional, there is no check and balance left to limit the Executive's actions.

The attitude of the media and the public towards seeking information on oil contracts has also immensely contributed to failure of application of freedom of access to information. As noted in the preceding chapter, the responsible State agencies have not received any formal requests for information for information under the new petroleum laws. This gives the State an excuse. It would be a cause of debate and condemnation of the State if journalists lawfully applied for information and were denied – probably Court action would be eminent. But where journalists do not seek for that information and the consumers of their reporting – the public, also do not show any interest in knowing about the same, both are complacent in failing realisation of the right of access to information.

5.2 RECOMMENDATIONS

5.2.1 Judicial activism to overcome the State's over reliance on limitations to the right

Judges should uphold Article 41 of the Constitution because it is only the judiciary that can promote and protect a right where the executive and parliament are reluctant to do so. Courts should not allow contractual confidentiality clauses to override the efficacy of Article 41 unless they fit within constitutional exceptions. Judicial officers should also require state agencies to vividly prove how disclosure of oil contracts threatens state security or hurts anyone's privacy. Judicial Officers should adopt a strict emphasis of constitutional provisions as an approach when determining the extent to which restrictions raised by the State can be considered to limit

[274] Full discussion on p. 55 – 57.

disclosure. In order to implement judicial activism, there ought to be intentional judicial training aimed at strengthening awareness among judicial officers on the importance of transparency in oil governance, and for appreciation of the fact that where the other arms of government are reluctant to promote a right, the only avenue left for the public to seek and obtain a remedy, are Courts of judicature.

5.2.2 Amendment of petroleum laws to reduce limitations on disclosure

There is need for amendment of the Access to Information Act and supporting Regulations by narrowing the broad exemptions under national security and economic interests which are often abused to block access. As earlier noted, even in circumstances where disclosure is permitted by the Petroleum (Exploration, Development and Production) Act and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, it is for the benefit of a licensee's successor in title and the Minister of Energy, who are also bound by the same law to keep the information confidential. Besides, the licensee is given too much authority in consenting to what can be disclosed, to what extent and when. These impediments make it impossible for a journalist or a member of the public to make a successful request for oil-related information.

The provisions on disclosure in the Petroleum (Exploration, Development and Production) Act and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act should abide by the standards of transparency advocated for by the Extractive Industries Transparency Initiative (EITI) to which Uganda is an implementing country.[275] The EITI contract transparency standards require that implementing states publicly disclose the full text of any contract, license, concession or other agreement governing the exploitation of oil, gas and mineral resources.[276] This standard cannot be met within the current legal framework which seems to better protect the licensee.

In so doing, the amended law can require all signed PSAs and related contracts to be published within a fixed timeframe, so that the general public can know how much revenue their government is to earn, the burden for meeting risks involved, extent of profit sharing and ownership structures among other vital information. The amended laws should be pro-disclosure as the case with western laws like the American Convention on Human Rights, the

[275] Uganda was admitted as an EITI implementing country in August, 2020. Available at https://eiti.org/countries/uganda (accessed August 26, 2025).
[276] Available at https://eiti.org/contract-transparency (accessed August 26, 2025).

Council of European Convention on Access to Official Documents and the UK Freedom of Information Act among others as presented in chapter two above.

Additionally, having a pro-disclosure legal regime will uphold the Human Rights Based Approach to development. This approach hinges on the principles of accountability, rule of law, transparency and access to information, and makes state institutions duty bearers over the same.[277]

5.2.3 Community sensitisation and media empowerment regarding Article 41

Article 1(1) of the Constitution puts all power in the people who exercise it in accordance with the Constitution, while Article 4 requires government to promote public awareness of the Constitution by translating it into local dialects in addition to teaching about it in different training centres as well as publishing programs through the media. Upon thorough implementation of the said provisions, capacity of the public and media organisations to understand and utilise the official channels for request of information and exercise of Article 41 will be realised. When knowledgeable of the fact that the State is duty-bound to inform them of the purpose of contracts signed with multinationals and any risks involved therein, the residents of the Albertine graben Hoima, Buliisa, Kibaale and Kagadi among others, shall hold the State accountable and agitate for more information regarding how they stand to benefit. Similarly, an empowered media will exploit this constitutional right to aggressively seek oil-related information from the State. An informed and empowered press and public will even petition courts of law to challenge denials of disclosure they consider baseless.

5.2.4 Recourse to international courts by Journalists regarding denied disclosures

Where local Courts seem reluctant to uphold the right of access to information and are easily swayed by the State's excuses of binding confidentiality clauses and state security, recourse can be had from continental and international courts and tribunals. The tribunals recommended here in this situation are the ones set up by Covenants and Protocols to which Uganda is a Member State. Uganda is a signatory to the African Charter on Human and People's Rights which creates the African Court on Human and Peoples' Rights. Similarly, Uganda is a

[277] European Commission, "Human Rights Based Approach," European Commission, October 17, 2025, https://wikis.ec.europa.eu/spaces/ExactExternalWiki/pages/50108948/Human+Rights+Based+Approach#:~:text=HRBA%20is%20a%20method%20that,claim%2C%20and%20enjoy%20their%20rights. (accessed November 19, 2025).

signatory to the United Nations Covenant on Civil and Political Rights which created the UN Human Rights Committee. Journalists from other countries have successfully challenged municipal laws of their countries which restrict the right of access to information as provided for in those Covenants, and the respective tribunals have overturned municipal Courts' decisions in addition to ordering for disclosure and awarding other remedies to journalists. Examples like the *Nurbek Toktakunov vs Kyrgyzstan* and *XYZ vs Benin* among other cases have been discussed in chapter two above.

Taking such a step can be productive the Ugandan State will be compelled to comply with orders of disclosure from international tribunals so as not be seen as a 'pariah State' at global level. And secondly, decisions from international tribunals can also influence a shift towards pro-disclosure by Ugandan Courts.

5.2.5 Forming a Media-Civil Society action drive for disclosure of information

NGOs and Civil Society can cover the gap left by the fourth estate in demanding for accountability in the oil sector. They can also work in consonance with the media in requesting for information. Since NGOs conduct research into state accountability to citizens, transparency in extractives and other topics, they should exploit that avenue to request for hither to hidden information by the State. This view is strengthened by the decision in *Green watch vs Attorney General*[278] where Court depended on the need for the NGO's objective of conducting research to order for disclosure. NGOs and civil society can also fund public interest litigation to challenge unreasonable and irrational refusals for disclosure. Such a possibility would have helped in the *Izama-Mwanguhya* case by referring it to a continental or international tribunal given that some NGOs have funding capabilities which can afford such limits. Successful litigation can set a precedent upon which subsequent requests can be honoured by the State. Collective action by the press and Civil Society can not only achieve disclosure of information but also pressurise the Ugandan State to accord due respect and dignity to the fourth estate as a major contributor to dissemination of information in a democratic society.

[278] Op. cit., p. 79.

5.2.6 Developing Cross-Border investigative partnerships to increase accessibility

Given that oil companies dealing in the Ugandan oil industry are all multinationals operating in different jurisdictions globally, it would be clever and plausible for Ugandan media houses to form collaborations with colleagues in countries where the same companies operate. These partnerships will help Ugandan journalists access leaked documents, financial records and contract details from other countries where the multinationals operate. This can be of great importance in a situation where the multinational operates in a country whose laws are pro-full disclosure and the disclosed information has a semblance on its dealings in Uganda, journalists there can pass on that information to their Ugandan collaborators who disseminate the same to the wider population.

5.2.7 Acquire secret sources inside government agencies and oil companies to overcome refusal of disclosure

Journalists can silently befriend attorneys in the Attorney General's chambers, officials in the Ministry of Energy and Minerals, the Petroleum Authority of Uganda and the Uganda National Oil Company among others, who have access to oil contracts and are willing to allow journalists review them. On top of that, journalists can also secretly befriend officials working with oil multinationals with the same objective of secretly accessing the contracts. Thereafter, journalists can report the acquired information citing anonymous sources, which is permitted in journalism ethics.

Suggestions for further research

1. Uganda's Attorney General expressed willingness to disclose all oil contracts to the public on July 2, 2024.[279] Further studies should be taken on whether the disclosure shall be whole as envisaged by Article 41 or will be restricted disclosure, and the underlying factors.

[279] Uganda Radio Network, "Uganda: Gov't Okays Disclosure of Oil Agreements Amidst International Pressure," *Business and Human Rights Resource Centre*, August 24, 2024, https://www.business-humanrights.org/en/latest-news/uganda-govt-okays-disclosure-of-oil-agreements-amidst-international-pressure/ (accessed September 11, 2025).

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APPENDICES

APPENDIX 1: INTERVIEW GUIDE FOR JOURNALIST RESPONDENTS

1. Which media company do you work with and what is your designation there?
2. What inspired you to become a journalist?
3. Do you happen to know about the law which compels government to avail you with any information you want?
4. Tell me about the moment you sought for information from government officials regarding any story you were covering?
5. Have you ever sought for information regarding oil contracts signed by our government with foreign multinationals? If so, kindly narrate circumstances under which you were given the information or the request was declined.
6. In your personal opinion, why do you think State officials are reluctant to disclose information regarding the oil sector at large?
7. Did State agents harass you when you reported the few details you got concerning one of the agreements to your viewers/listeners/readers?
8. Would you consider suing the State in Courts of law so as to compel it disclose any information you want to report concerning oil?

APPENDIX 2: INTERVIEW GUIDE FOR ATTORNEYS IN THE ATTORNEY GENERAL'S CHAMBERS AND PETROLEUM AUTHORITY OF UGANDA

1. In your individual opinion, is the law on access to information unfair to state concerns?
2. Has a formal request by a journalist for information regarding oil contracts ever reached your office? If so, how did you respond?
3. Do you think that by refusing disclosure, the State through your office would be breaching its duty of accountability to citizens?
4. Do you report to Parliament on the number of requests to access to information made to your office?
5. In a situation where the State breaches one of the provisions of the Final Investment Decision agreement, or risks like oil spills happening, would you report the same to Parliament asking for allocation of money to pay for compensation?
6. In your opinion, how can the State be accountable to its people in regard to oil resources?

APPENDIX 3: INTERVIEW GUIDE FOR ATTORNEYS SERVING WITH MULTINATIONAL COMPANIES

1. For how long have you worked with this company and what is your designation?
2. In your opinion, why do you think your company always puts confidentiality clauses in agreements signed with the Ugandan governments concerning oil?
3. Does your company emphasize confidentiality of agreements it signs with other African or Asian Countries?
4. Has a formal request by a journalist for information regarding oil contracts ever reached your office? If so, how did you respond?
5. In your opinion, do you think your company has a legal duty to inform Ugandans about the agreements you entered with their government?