



## **A SHADOW REPORT ON FREEDOM OF INFORMATION AND EXPRESSION IN NAMIBIA**

*This Shadow Report was prepared by The Africa Freedom of Information Centre  
and the Media Institute of Southern Africa*

Africa Freedom of Information Centre: ACHPR observer reference number 434

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## Executive Summary

The Africa Freedom of Information Centre (AFIC) and the Media Institute of Southern Africa (MISA) present this shadow report on the right to information and freedom of expression on Namibia to the African Commission of Human and Peoples Rights. To ensure the progress of the right to information, AFIC, a pan-African network and resource centre consisting of 35 civil society organizations in 22 African countries, promotes the right to information in Africa. AFIC promotes democratic rule and socio-economic justice for African citizens through fostering a culture of increased transparency, integrity and accountability among governments, regional and international bodies.

Similarly MISA, a network of free expression advocacy organisations operating in 11 countries in southern Africa, works to realize the ideals and principles espoused in the Windhoek Declaration on Promoting Independent and Pluralistic Media in Africa. MISA intends to realize a Southern African region in which the media enjoys freedom of expression, independent from political, economic and commercial interests, pluralism of views and option.

This shadow report evaluates the current state of the right to information and freedom of expression in Namibia, while emphasizing the perceptions of AFIC and MISA expert organizations on the right to information. This shadow report also explores the progress of Namibia in its implementation of the right to information and freedom of expression.

In authoring this shadow report, AFIC and MISA, along with their network of members, intend to constructively contribute to the realisation of the right of to information protected by Article 9 of the African Charter on Human and Peoples' Rights.

## 1. Country Context

The Republic of Namibia is a secular, democratic and unitary state which is founded upon the principles of democracy, the rule of law and justice for all.<sup>1</sup> These principles make possible the exercise and realization of fundamental human rights and freedoms as embedded in Chapter 3 of the Constitution of the Republic of Namibia. However Namibia does not have a freedom of information law and Article 21 of the Constitution which provides for fundamental freedoms, does not include the right to freedom of information.

Credibly, Namibia is among the world's top 20 countries in terms of press freedom, ranking 17<sup>th</sup> globally and number one (1) in Africa.<sup>2</sup> However, constitutional provisions relating to the protection of national security, public order, and public morality provide legal mechanisms for restricting media freedom and freedom of expression<sup>3</sup>.

Namibia's Constitution, whilst guaranteeing the right to freedom of expression, does not expressly provide for the right to access to information. In addition, Namibia's legal environment is predominantly skewed in favour of promoting secrecy, with apartheid legislation, such as the Protection of Information Act 1982, the Key Points Act of 1980, the 2004 Criminal Procedures Act, and the 2002 Defense Act,<sup>4</sup> still awaiting repeal<sup>5</sup>. Furthermore, in absence of a communication policy that guides public service information officers on how and when to communicate with the public further hinders the ability of citizens to access government-held information.

At the opening of parliament this year the President noted that a Freedom of Information draft bill will be debated during this session. However, based on the Namibian government's track record there is no guarantee that this will indeed take place or, if it does, that it would end positively.

Namibia has ratified important international instruments that provide for freedom to information (FOI) and freedom of expression (FOE); as well as combat corruption such as

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<sup>1</sup> The Constitution of Namibia, Article 1 (1)).

<sup>2</sup> The recently released World Press Freedom Index revealed that Namibia is ranked 17<sup>th</sup>. <https://index.rsf.org/> (accessed 1<sup>st</sup> March 2016).

<sup>3</sup> MISA African Media Barometer report, 2015 (Namibia). <http://www.misa.org/component/k2/item/3148-misa-namibia-launches-5th-african-media-barometer-for-namibia?Itemid=101> (accessed March 15, 2016)

<sup>4</sup> MISA African Media Barometer report, 2015 (Namibia). <http://www.misa.org/component/k2/item/3148-misa-namibia-launches-5th-african-media-barometer-for-namibia?Itemid=101> (accessed March 15, 2016)

<sup>5</sup> Sunlight is the best disinfectant: Why Namibia needs access to information. IPPR Report .

<http://www.ippr.org.na/sites/default/files/ATI-paper11.pdf> (accessed March 15, 2016)

the International Covenant on Civil and Political Rights;<sup>6</sup> and the African Charter on Human and Peoples' Rights.<sup>7</sup> Namibia has also ratified four of the six African treaties recognizing the right to information, among them the African Union Convention on Preventing and Combating Corruption,<sup>8</sup> African Charter on the Values and Principles of Public Service and Administration<sup>9</sup> and the African Union Youth Charter<sup>10</sup>, as well as the SADC Protocol on Culture, Information and Sport.<sup>11</sup> Other soft instruments are the African Charter on Broadcasting,<sup>12</sup> and Guidelines and Principles for Broadcasting Coverage of Elections in the SADC Region adopted in 2005.

Namibia is yet to ratify and domesticate the African Charter on Democracy Elections and Governance and the African Statistics Charter.

## 2. Namibia Sixth Report

This shadow report is based on Namibia's sixth report, submitted to the African Commission for Human and Peoples Rights.<sup>13</sup>

Article 62 of the African Charter on Human and Peoples Rights, obliges Namibia

*"...to submit every two years...a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognized and guaranteed by the...Charter."*

It is disappointing that Namibia has not constantly adhered to Article 62 of the Charter by reporting to the ACHPR as required.<sup>14</sup> Regardless, Namibia in its current State

<sup>6</sup> Article 19 International Covenant on Civil and Political Rights; <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed 1<sup>st</sup> March 2016).

<sup>7</sup> African Charter on Human and Peoples Rights <http://www.achpr.org/instruments/achpr/> (accessed 19 August 2015).

<sup>8</sup> Article 9 of the African Union Convention on Preventing and Combating Corruption.

[http://www.au.int/en/sites/default/files/AFRICAN\\_UNION\\_CONVENTION\\_PREVENTING\\_COMBATING\\_CORRUPTION.pdf](http://www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf) (accessed 1<sup>st</sup> March 2016).

<sup>9</sup> Article 6 African Charter on the Values and Principles of Public Service and Administration. <http://www.au.int/en/content/african-charter-values-and-principles-public-service-and-administration> (accessed 1<sup>st</sup> March 2016).

<sup>10</sup> Article 4 of African Union Youth Charter. [http://www.au.int/en/sites/default/files/AFRICAN\\_YOUTH\\_CHARTER.pdf](http://www.au.int/en/sites/default/files/AFRICAN_YOUTH_CHARTER.pdf) (accessed 1<sup>st</sup> March 2016).

<sup>11</sup> Article 17 SADC Protocol on Culture, Information and Sport

[http://www.sadc.int/files/3213/5292/8362/Protocol\\_on\\_Culture\\_Information\\_and\\_Sport2001.pdf](http://www.sadc.int/files/3213/5292/8362/Protocol_on_Culture_Information_and_Sport2001.pdf) (accessed 1<sup>st</sup> March 2016).

<sup>12</sup> [http://portal.unesco.org/ci/en/files/5628/10343523830african\\_charter.pdf/african%2Bcharter.pdf](http://portal.unesco.org/ci/en/files/5628/10343523830african_charter.pdf/african%2Bcharter.pdf) (accessed 1<sup>st</sup> March 2016).

<sup>13</sup> [http://www.achpr.org/files/sessions/58th/state-reports/6th-2011-2014/namibia\\_state\\_6th\\_periodic\\_report.pdf](http://www.achpr.org/files/sessions/58th/state-reports/6th-2011-2014/namibia_state_6th_periodic_report.pdf) (accessed 1<sup>st</sup> of March 2015).

<sup>14</sup> AFIC State of Right to Information in Africa Report. Namibia is in violation of its reporting obligations to the African Commission on Human and Peoples' Rights under Article 62 of the Charter and is late by two reports.

Report notes that there have been no new developments with regard to the right to information. It nevertheless affirms that the country boasts a robust and free media sector.

### 3. Applicable Framework and Standards

The applicable framework and standards for the shadow report is grounded in several regional instruments and declarations. Article 9 of the African Charter on Human and Peoples Rights,<sup>15</sup> the African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression in Africa<sup>16</sup> and the African Commission on Human and Peoples Rights Model Law on Access to Information. Furthermore, the shadow reports acknowledges the African Platform on Access to Information (APAI) Declaration which prompted the ACHPR Resolution 222 authorising the ACHPR Special Rapporteur on Freedom of Expression and Access to Information to initiate the process of expanding Article IV of the Declaration of Principles on Freedom of Expression in Africa to include access to information.

**Figure 1**

<b>Applicable Framework and Standards</b>	
<b>Framework</b>	<b>Questions to be answered</b>
Article 9 of The African Charter on Human and Peoples Rights	Does every individual in Namibia have the right to receive information?
African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression in Africa	Does Namibia adhere to Principles of freedom of expression in Africa? Has it passed law on freedom of information in line with Article IV of the Declaration?
The African Commission on Human and Peoples Rights Model Law on Access to Information	Does Namibia draft FOI bill reflect the spirit of the Model law?

<sup>15</sup> African Charter on Human and Peoples Rights <http://www.achpr.org/instruments/achpr/>(accessed 1<sup>st</sup> March 2016).

<sup>16</sup> Declaration of Principles on Freedom of Expression in Africa <http://www.achpr.org/sessions/32nd/resolutions/62/> (accessed 1<sup>st</sup> March 2016).

Article 9 of the African Charter comprises of the right to receive information and to express one's opinion. Therefore the public has a right to information and a guarantee of the right to free expression within the confines of the law.<sup>17</sup>

The African Commission on Human and Peoples' Rights in 2002 adopted Declaration of Principles on Freedom of Expression in Africa.<sup>18</sup> The Declaration states that freedom of expression and information is a fundamental and inalienable human right. The Declaration addresses in a holistic and comprehensive manner the major threats to freedom of expression and information on the in Africa and serves as a benchmark to evaluate states compliance with Article 9 of the 'African Charter on Human and Peoples' Rights'.

The African Commission on Human and People's Rights adopted the Model Law on access to information in February 2013.<sup>19</sup> The Model law gives specific guidelines in terms of form and content of the legislation be passed at the domestic level.<sup>20</sup>

This report will also consider the African Platform on Access on to Information (APAI) Declaration.<sup>21</sup> The Declaration concerns itself with the promotion of freedom of information legislation in Africa. The Declaration lists fourteen key principles that advance access to information. It was adopted at the first Pan African Conference on Access to Information held in Cape Town South Africa in September 2011<sup>22</sup>, with the full support of the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples Rights.

The requirements of these standards will determine the extent to which the Namibian authorities have implemented the right to information and freedom of expression in accordance with the applicable standards.

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<sup>17</sup> Article 9 of the Charter states that: " *Every individual shall have the right to receive information 2. Every individual shall have the right to express and disseminate his opinions within the law.*

<sup>18</sup> [http://www.achpr.org/files/sessions/32nd/resolutions/62/achpr32\\_freedom\\_of\\_expression\\_eng.pdf](http://www.achpr.org/files/sessions/32nd/resolutions/62/achpr32_freedom_of_expression_eng.pdf) (accessed 1<sup>st</sup> March 2016).

<sup>19</sup> The ACHPR on 12 April 2013 officially launched its Model Law on Access to Information at a ceremony held during the ACHPR's 53rd Ordinary Session in Banjul, The Gambia. <http://www.achpr.org/instruments/access-information/> (accessed 20 December 2015).

<sup>20</sup> The objectives of this Model Law are to: (a) give effect to the right of access to information as guaranteed by the African Charter on Human and Peoples' Rights, to (i) any information held by a public body or relevant private body; and(ii) any information held by a private body that may assist in the exercise or protection of any right; (b) establish voluntary and mandatory mechanisms or procedures to give effect to the right of access to information in a manner which enables persons to obtain access to accurate information of information= holders as swiftly, inexpensively and effortlessly as is reasonably possible; (c) ensure that in keeping with the duty to promote access to information, information holders create, keep, organise and maintain information in a form and manner that facilitates the right of access to information; (d) promote transparency, accountability, good governance and development by educating people about their rights under this Act. [http://www.achpr.org/files/instruments/access-information/achpr\\_instr\\_model\\_law\\_access\\_to\\_information\\_2012\\_eng.pdf](http://www.achpr.org/files/instruments/access-information/achpr_instr_model_law_access_to_information_2012_eng.pdf). (accessed 20 December 2014).

<sup>21</sup> <http://www.africanplatform.org/campaign/apai-declaration/> (accessed 1<sup>st</sup> March 2016).

<sup>22</sup> Adopted in Cape Town, South Africa, on the 19th Day of September 2011.

## 4. Contravention of the Right to Information in Namibia

Figure 2

State of Right to Information in Namibia	
Principle or Law Contravened	Core Issue
The model law on access to information in Africa and the principle IV of establishing a domestic law on FOI	Lack of Freedom of Information Legislation
The principle of maximum disclosure	Laws that Prohibit Disclosure of information
Article 9 of the African Charter: Freedom of Expression and Opinion	Criminal Defamation Media Violence and Intimidation Media Independence
The principle of the obligation to publish key information and the principle to promote an open government	i. Poor Proactive Disclosure ii. Open Data Limitations
Obligation to ensure “legislative or other measures..., with a view to giving effect to the rights and freedoms recognized and guaranteed by the Charter” Article 62 of the African Charter on Human and Peoples Rights –	i. Ratifying all African Union Treaties related to the Right to Information
Obligation to adhere to recommendations from the African Commission for Human and Peoples Rights.	i. Adherence to ACHPR recommendations

### Model Law on Access to Information in Africa and the Principle IV of Establishing a Domestic Law.

The Model Law intends to guide African States in their adoption or review of access to information laws, and provide uniform benchmarks for evaluating their effective implementation.



### a) Lack of Freedom of Information Legislation

Currently there is no right to information law in Namibia and no proper framework exists which the public can use to access information. Proposals have been made for Freedom of Information legislation.<sup>23</sup> The lack of law on the right of access to official information has resulted in communications officials rarely disclosing information on government affairs.

## 4.2 The Principle of Maximum Disclosure

The principle of maximum disclosure establishes a presumption that all information is accessible and subject only to a narrow system of exceptions. The principle holds that all information held by public bodies should presumptively be accessible, and that this presumption may be overcome only in very limited circumstances

### a) Domestic Laws that Prohibit Disclosure

#### *Secrecy Laws*

Namibia still has secrecy laws. These include the Protection of Information Act (1982), the Defence Act (2002), the National Security Act (1997) and the Public Service Act (1997), which makes the disclosure of information without the permission of the permanent secretary a disciplinary offence. These laws seem to only substantially limit the public access to information as they unreasonably forbid the disclosure of state secrets, information implicating national security and other information obtained by virtue of government employment.

#### *Communication Act*

Clauses 70-77 of the Communication Act permit the interception of e-mail, text messages, internet banking transactions, and telephone calls without a warrant.<sup>24</sup> This threatens the independence of the media. Media independence principles require that governments may not maintain authority over services which provide information to the public.

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<sup>23</sup> <http://www.freedominfo.org/2012/08/prospects-brighten-for-ati-legislation-in-namibia/> (accessed 1<sup>st</sup> March 2016).

<sup>24</sup> The Communication Act ( Act No 8 of 2009).

### *Research Act of 2004*

The introduction of new regulations to the Research Act of 2004 could potentially restrict freedom of thought, expression and academic freedom and the right to practice a trade or profession. Arguing that the regulations are unconstitutional, the Legal Assistance Centre (LAC), alongside the Institute for Public Policy Research (IPPR) and *The Namibian* newspaper, launched a High Court application to have this law tested for constitutionality after failed consultations with the Ministry of Education.<sup>25</sup>

## **4.3 Article 9 of the African Charter: Freedom of Expression and Opinion**

Article 9, the African Charter guarantees every individual the right to receive information and express and disseminate his/her opinions within the law. According to the African Commissions Special Rapporteur on Freedom of Expression and Access to Information this freedom is considered as the corner stone of development and should be adhered to absolutely.<sup>26</sup>

### **a) Criminal Defamation**

The current laws create a culture of intimidation and prosecution in the course of their work. Defamation is a criminal offense under Namibia's common law. A case in point would be in November, a Windhoek High Court judge dismissed a US\$38,000 defamation suit filed by former Walvis Bay municipal chief executive Augustinus Katiti against *The Namibian*, the leading independent daily, for an article published in 2007.<sup>27</sup>

### **b) Media Violence and Intimidation**

Namibia is not renowned for media violence but journalists occasionally suffer physical attacks or harassment in the course of their work.<sup>28</sup>

The Namibian government often attacks media houses that seem not to exhibit political loyalty to the Government. In April 2012, prominent SWAPO members, including Kaapanda and party secretary general Pendukeni Iivula-Ithana, threatened to delay or

<sup>25</sup> MISA African Media Barometer report, 2015 (Namibia). <http://www.misa.org/component/k2/item/3148-misa-namibia-launches-5th-african-media-barometer-for-namibia?Itemid=101> (accessed March 15, 2016)

<sup>26</sup> Activity Report presented at the 51st Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia 18 April – 2 May 2012, <http://www.achpr.org/sessions/51st/intersession-activity-reports/freedom-of-expression/> (accessed 20 February 2016).

<sup>27</sup> [https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs\\_mqqko](https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs_mqqko) (accessed 1<sup>st</sup> March 2016).

<sup>28</sup> <http://www.freedominfo.org/2011/05/namibians-denied-right-to-information-by-government/> (accessed 1<sup>st</sup> March 2016).

halt funding for the NBC and *New Era*, claiming that the outlets were not adequately supporting the government's agenda.

### c) Media Independence

Media independence stands threatened as Government leaders issued threats against the independent press, and called for the establishment of an official council to regulate the activities and operations of the media.<sup>29</sup>

In January 2012, Youth Minister Kazenambo Kazenambo hurled racial insults and threatened to assault journalist Tileni Mongudhi during an interview.

Also of concern is that some journalists and editors, especially at the state-run media, practice a degree of self-censorship.<sup>30</sup>

## 4.4 The Principle of the Obligation to Publish Key Information and the Principle to Promote an Open Government

### a) Poor Proactive Disclosure

Freedom of information implies not only that public bodies should accede to requests for information, but also that they should publish and disseminate widely documents of significant public interest.

In practice public information is difficult to access by journalists and ordinary members of the public. Officially, if information is requested from a particular ministry, the enquirer must go through the Permanent Secretary to access the information, even appointed spokespersons and liaison officers refuse to give information without the permission of the Permanent Secretary.<sup>31</sup>

### b) Open Data

Most government websites are outdated and not functional in terms of providing current public information. Even the website of the Ministry of Information and Communication Technology is in a very poor state.<sup>32</sup>

<sup>29</sup> [https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs\\_mqqko](https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs_mqqko) (accessed 1<sup>st</sup> March 2016).

<sup>30</sup> [https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs\\_mqqko](https://freedomhouse.org/report/freedom-press/2013/namibia#.VYfAs_mqqko) (accessed 1<sup>st</sup> March 2016).

<sup>31</sup> [http://www.mediaombudsmannamibia.org/downloads/Access\\_to\\_information\\_WPF\\_DAY\\_Speech\\_Media%20Ombudsman.pdf](http://www.mediaombudsmannamibia.org/downloads/Access_to_information_WPF_DAY_Speech_Media%20Ombudsman.pdf) (accessed 1<sup>st</sup> March 2016).

<sup>32</sup> [http://www.fesmedia-africa.org/uploads/media/AMB\\_Namibia\\_2011\\_03.pdf](http://www.fesmedia-africa.org/uploads/media/AMB_Namibia_2011_03.pdf) (accessed 1<sup>st</sup> March 2016).

#### **4.5 Obligation take measures..” with a view to giving effect to the rights and freedoms recognized and guaranteed by the African Charter”<sup>33</sup>**

##### **a) Ratifying all African Union Treaties related to the Right to Information**

The African Union (‘AU’) seeks to achieve its policy goals through the adoption of treaties. The realization of these goals requires that the treaties be signed, ratified and implemented by the member states. As an institution, the AU lacks powers to compel member states to ratify its treaties and comply with their provisions.

Namibia is yet to ratify important AU treaties related to the right to information. Article 19 of the African Charter on Democracy, Elections and Good Governance<sup>34</sup> and Article 2 African Statistics Charter<sup>35</sup> all provide explicit provisions related to the right to information and freedom of expression. By not focusing on the basic ratification–signature correlations of these treaties, Namibia has demonstrated little treaty commitment to taking measures to ensure the right to information is fully recognized.

#### **4.6 Duty to undertake recommendations from the African Commission for Human and Peoples Rights.**

While already noted above, it is important to reiterate that the African Commission for Human and Peoples Rights, during its promotion mission to Namibia recommended that Namibia ratifies the Charter on Democracy, Elections and Governance which have connotations of the right to information and freedom of expression.<sup>36</sup>

Further on 11 October 2009, the Special Rapporteur forwarded a letter of Appeal to the Republic of Namibia, in respect of an advertising ban imposed by Government on *The Namibian* newspaper. This Resolution compelled Government ministries, offices and agencies to refrain from advertising in The Namibian newspaper, because it was allegedly reporting on government leadership and the ruling party negatively. the Special Rapporteur urged the Government of Namibia to immediately lift the ban. While

<sup>33</sup> Article 62 of the African Charter on Human and Peoples Rights –

<sup>34</sup> African Charter on Democracy, Elections and Good Governance

[http://www.au.int/en/sites/default/files/AFRICAN\\_CHARTER\\_ON\\_DEMOCRACY\\_ELECTIONS\\_AND\\_GOVERNANCE.pdf](http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_DEMOCRACY_ELECTIONS_AND_GOVERNANCE.pdf)

/(accessed 19 August 2015).

<sup>35</sup> African Statistics Charter, [http://www.au.int/en/sites/default/files/AFRICAN\\_CHARTER\\_ON\\_STATISTICS.pdf](http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_STATISTICS.pdf) (accessed 19

August 2015).

<sup>36</sup> <http://www.achpr.org/states/namibia/missions/promo-2009/> -(accessed 18 March 2016).

the ban was eventually lifted,<sup>37</sup> it was only lifted 3 years after the Special Rapporteur's call and more importantly only after the 2010 Namibian elections. This unjustly affected the independence of the media. An independent media is ensured through adhering to freedom of expression and opinion which also form the basis of free and fair elections.

## **5. Positive Developments of Freedom of Information and Freedom of Expression in Namibia**

Namibia is home to the formative and celebrated Windhoek Declaration on Promoting Independent and Pluralistic Media of 3 May 1991. Among its many resolutions, the Windhoek Declaration reaffirmed 'the trend towards democracy and freedom of information and expression' as fundamental 'to the fulfillment of human aspirations'.

Self-regulation of the media sector has developed slowly, with a Media Ombudsman established in 2009 to hear complaints against media practitioners. This ombudsman continues to act independently of the government and resolved 10 of 14 total complaints in 2012. There are no restrictions on internet content, and many publications and organizations have websites that are critical of the government. However, the 2009 Communication Act includes a clause that allows for the interception of electronic communication including e-mail, text messages, internet banking transactions, and telephone calls without a warrant.

Over the past three years there have been a number of important positive developments in the media environment; these include, but are not limited to:

- Greater diversity in the sector as evidenced by an increasing number of print publications, as well as commercial and community radio stations.
- The Namibian Editors' Forum is better organized than before and more inclusive.
- The transmission network of the Namibia Broadcasting Corporation (NBC) has been expanded.
- The digitalization of equipment is coming to the NBC.

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<sup>37</sup> [https://www.ifex.org/namibia/2011/09/12/namibian\\_ban\\_lifted/](https://www.ifex.org/namibia/2011/09/12/namibian_ban_lifted/)-(accessed 18 March 2016).

- Civil society is starting to see the importance of the media, and this is evident in the way that members of the public have been uploading and protecting the SMS pages in a number of local newspapers, notably The Namibian.
- The Government rescinded its media ban on The Namibian in 2012.

Under the aegis of the Namibian Chapter of the Media Institute of Southern Africa (MISA), the Institute for Public Policy Research (IPPR) and Insight Magazine there is an active public campaign driven by civil society agencies for freedom of information legislation.

## 6. Recommendations

Figure 3

Recommendations to improve the right to information and freedom of expression in Namibia	
i.	Pass a Freedom of Information Law in tune with the Model Law on Access to Information
ii.	Amend or repeal laws that affect maximum disclosure
iii.	Improve proactive disclosure and open data
iv.	Repeal provisions affecting freedom of expression
v.	Protection of journalists against violence
vi.	Ensure independence of the media
vii.	Open government partnership

### a) Pass Freedom of Information Law in line with the Model Law on Access to Information

A Freedom of Information Law aims at promoting transparency and accountability, as factors contributing to human rights, democracy and development. As the product of an organ of the African Union, the Model Law on Access to Information is intended to represent the views of Member States which includes Namibia.

Adoption of a Law Relating to Access to Information should remain a top priority of the government. In the absence of a constitutional provision on access to information, the Government should as soon as possible implement the policy framework for the enactment of legislation on access to information. The Prime Minister should also set

clear guidelines to be followed by all Ministries on how information could be accessed by the public and made available by Ministries.

Recommendations for civil society include increased engagement and sensitization of the public. Advocacy for the right to access to information should be enhanced. Effective monitoring systems should be developed to assess efforts at increasing access to information.

**b) Amend/Repeal Laws that Affect Principle of Maximum Disclosure**

Namibia should amend or repeal laws that narrow down the exemptions of disclosure of information. Some of the provisions in Namibia's Protection of Information Act (1982), the Defence Act (2002), the National Security Act (1997) and the Public Service Act (1997), prohibit disclosure and this is not in tune with the twin principles of maximum disclosure and minimum exemptions that should be incorporated in a good media regulation law. Although some restrictions on access are legitimate, these should be narrowly construed and subject to review by an independent authority. In general, access to government-held information should be facilitated by an independent administrative authority, with which the public may lodge complaints in case of a refusal to disclose.

**c) Improve Disclosure and Open data**

Proactive disclosure is a very important obligation. The degree of transparency necessary to maintain public trust and confidence can only be achieved by regular and proactive publication of a summary of actions taken by the Namibian Government. That requires the mandatory quarterly publication of budgets, expenses and developments of high-ranking Government officers within the public service.

**d) Repeal Provisions Affecting Freedom of Expression such as Criminal Defamation**

Namibia should repeal all criminal defamation provisions. These laws fundamentally affect freedom of expression. Criminal defamation laws still cast a long shadow; the possibility of being arrested by the police, held in detention and subjected to a criminal trial will be in the back of the mind of a journalist when he or she is deciding whether to expose, for example, a case of high-level corruption. International bodies such as the UN have recognized the threat posed by criminal defamation laws and have recommended that they should be abolished.

**e) Open Government Partnership**

The Open Government Partnership is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In the spirit of multi-stakeholder collaboration, OGP is overseen by a Steering Committee including representatives of governments and civil society organizations. To become a member of OGP, Namibia must endorse a high-level Open Government Declaration; deliver a country action plan developed with public consultation, and commit to independent reporting on their progress going forward.

**f) Ratify Important African Right to Information Treaties**

For all treaties to become binding in law, they must be signed and ratified by state parties. Namibia is yet to ratify important African Union treaties that have fundamental provisions related to the right to information. These are the African Statistics Charter<sup>38</sup> and the African Charter on Democracy, Elections and Good Governance.<sup>39</sup> If the Namibian Government considers the right to information important then it must ratify the African Union Covenants that form the core of the right to information in Africa. AFIC and MISA therefore recommend that Namibia ratify these two treaties.

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<sup>38</sup> African Statistics Charter, [http://www.au.int/en/sites/default/files/AFRICAN\\_CHARTER\\_ON\\_STATISTICS.pdf](http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_STATISTICS.pdf) (accessed 1<sup>st</sup> March 2016).

<sup>39</sup> African Charter on Democracy, Elections and Good Governance [http://www.au.int/en/sites/default/files/AFRICAN\\_CHARTER\\_ON\\_DEMOCRACY\\_ELECTIONS\\_AND\\_GOVERNANCE.pdf](http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_DEMOCRACY_ELECTIONS_AND_GOVERNANCE.pdf) (accessed 1<sup>st</sup> March 2016).





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