

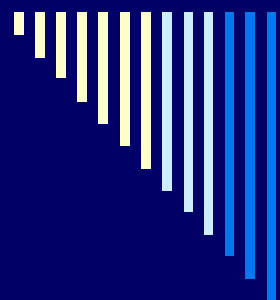
The Legal Regime on ATI in Uganda/ Exploring ATI legal Architecture

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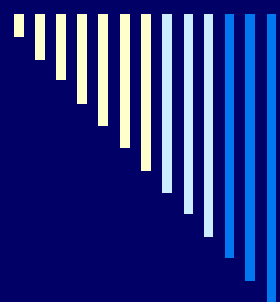
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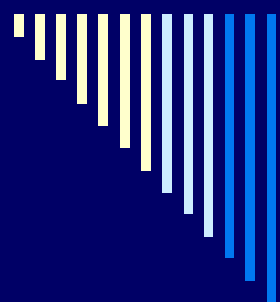
Summary

- General Introduction
- History of ATI law
- Analysis of ATI Laws
- Other laws that impact RTI
- Analysis of sector laws
- Court decisions
- Conclusion



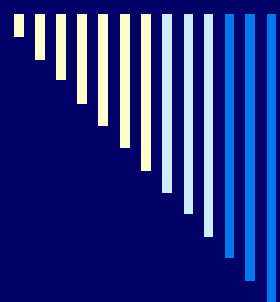
Understanding ATI

- Right to Information -1946 UN
- UDHR, ICCPR, ACHPR – right to ‘seek & receive information’
- Principle 10- Rio Declaration
- National Constitutions – Article 41
- ATI Laws- 94 Countries – 9 in Africa
- Recently- Africa Model law on ATI



Why the RTI?

- Participation – Information is power
- Accountability – hold public officials accountable
- HRs accountability- defense of other HR's
- Transparency
- Environmental protection



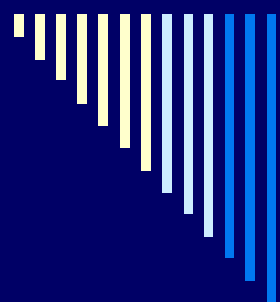
History of Uganda ATI law

- 1894 Uganda declared a British colony-colonial policy to limit participation
- 1962, 1966 & 1967 Constitutions did not have specific provision on RTI
- Odoki Commission
- Article 41
- Access to Information Act 2005
- Access to Information Regulations 2011



Constitution - Art 41

- Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.
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Constitution – Art 41

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



ATI Act 2005- Purpose

- *promotion of an efficient, effective, transparent and accountable government; giving effect to article 41 of the Constitution; protection of whistle-blowers; promotion of transparency and accountability in government by providing the public with timely, accessible and accurate information; and empowerment of the public to effectively scrutinize and participate in government decisions that affect them.*
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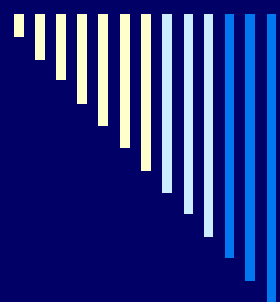
ATIA – Summary

- Right of Access/ duty to provide accurate & up-to-date information- Sec 5, Sec 7 & 8
 - Scope of Access- Sec 2 (2)
 - Act only applies to public bodies ie gov't, ministry, department– Sec 5
 - Exemptions from access – cabinet records, private info, commercial info of third party, confidential info, security sensitive info etc
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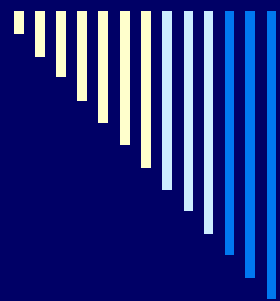
ATIA Summary cont'd

- Complaints and Appeals- Part v ie internal appeal and appeal to chief magistrates court
 - Enforcement - annual report to parliament, protections of officials releasing info under the Act , offence to destroy information
-



Golden Provision

- Section 34- Mandatory disclosure where info relates to commission of a crime or imminent danger to public safety
- Public interest in the disclosure is greater than the harm contemplated
- What amounts to public interest?



Recommendations

- ❑ Do away with restrictive provisions
- ❑ Promotional body
- ❑ Outlaw restrictive laws eg Official Secrets Act



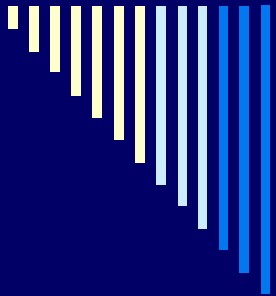
ATI Regulations 2011

- ❑ Passed in March 2011
 - ❑ ATIA- Regulations to provide for forms of access, fees, procedures, prescriptions of accessible information & admin measures necessary to Act effect
 - ❑ Regulations are inadequate in text & provision
 - ❑ Prohibitive fees- 20,000
 - ❑ Form of access- waiver & electronic
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ATI Related Legislation

- ❑ Official Secrets Act -1964- Act on state security
 - ❑ Official document includes; passport, naval, army, air force, police, official pass, permit, certificate, license or document of similar xter
 - ❑ Section 2- offence to approach, inspect a prohibited place- Ministers call
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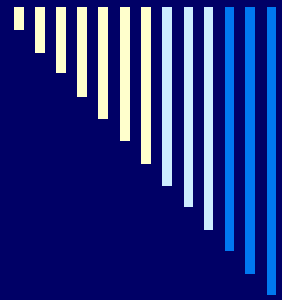
Parliament (Powers & Privileges) Act

- Purpose is to define powers & privileges of parliament, secure freedom of speech in parliament and protect persons employed in the publication of reports and other papers of parliament
 - Section 15- seek leave of the speaker to use records of parliamentary proceedings
 - Struck down in Zachary Olum case- unfettered discretion to Speaker
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Evidence Act cap 6 1909

- Applies to all judicial proceedings in or before the Supreme Court, COA, High Court & all courts under MCA
 - No one can give evidence derived from an unpublished official record without permission of HOD- Sec 122
 - Powers lies solely with HOD and may deny permission without reason
 - Official records not defined
 - Challenged in Tinyefuza case
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Transparency Provisions in Sector Laws

- National Environment Act – regulate environmental use & other related aspects
- Sustainable management of the environ, establish NEMA, principles of environmental mng't- public participation
- Every persons right to environmental info save proprietary info- Sec 85



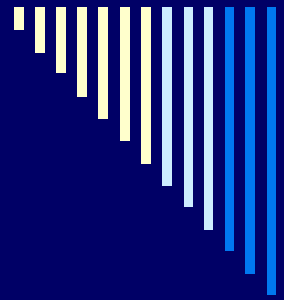
NEA Cont'd

- NEMA to gather, analyze and manage info related to the environment
 - Also to disseminate environ info, establish guidelines for info dissemination and info exchange
 - Publish a state of environ report every 2 yrs
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National Environment (EIA) Regulations

- EIA necessary for every project that may, is likely or will have significant impact on environment- NEA
 - Regulations lay out procedure for EIA – emphasize public participation
 - Reg 29- right to environmental info i.e project briefs, EI reports, EI statements, TOR, public comments
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National Forest & Tree Planting Act, 2003

- Purpose is to provide for conservation, sustainable management & dev't of forests for the benefit of the people of Uganda.
- Public participation in mngt & conservation of forests- Sec 2
- Every citizen has a right to info on implementation to the Act – Sec 91



Mining Act 2003

- Purpose of Act is to give effect to the provisions of the Constitution, vest ownership & control of minerals in gov't & provide for mineral acquisition
 - Act has no ATI specific provision but allows public access to contents of mineral info register- not prospective license
 - Commissioner instead has overwhelming powers to request info, conflict & corruption
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Mining Regulations 2004

- Regs provide for procedures and aspects such as prospecting licenses, priority for grant of mineral rights, diff types of licenses & leases
 - Just like the Mining Act, the Regs don't have an ATI specific provision
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Petroleum (EDP) Bill

- Purpose of Bill is to give effect to ART. 244, regulate petroleum exploration & dev't, provide for transparent licensing and establish a conducive environment for promotion of Uganda's petroleum potential
 - Minister enjoined to avail the public details of agreements, licenses, amendments- CI 148
 - Subject to confidentiality of data & commercial interests and in accordance with ATIA
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Petroleum (EDP) Bill Cont'd

- Petroleum Authority to manage petroleum data & publish petroleum activities.
 - Clause 145, all petroleum data is owned by the state
 - Minister to establish a National Oil and Gas Resource Data Bank.
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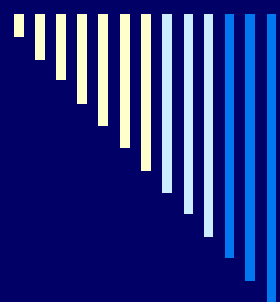
Petroleum (EDP) Bill Cont'd

- Clause 48 - Minister to make public all EIAs
 - Minister to publish notice of application of license. Clause 55
 - Only Minister may disclose info without licensees consent- Clause 150
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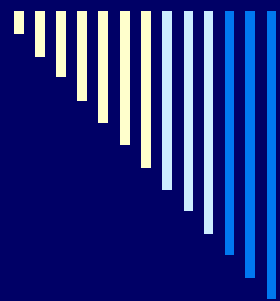
Public Finance Bill 2012

- Bill contains general finance aspects such as macro-economic policy, fiscal responsibility, multi-layer expenditures, supplementary budgets, accounting and auditing committees among others.
 - The Bill also establishes a Petroleum fund and provides for a petroleum investment reserve for management & investment of petroleum funds
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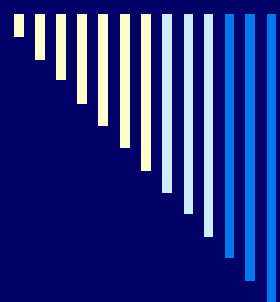
Public Finance Bill 2012 cont'd

- Minister to table before parliament financial statements & annual reports of the Petroleum fund annually – Clause 60
- Actual inflows and outflows of the petroleum fund, volumes and values of the produced petroleum and the source of the petroleum revenue.
- Report to be published in newspapers of wide circulation.



Public Finance Bill 2012 cont'd

- BOU to publicly avail reports on performance and activities of the fund
These reports are equally required to be published and made publicly available
- BOU is required to publish an annual plan and report of the Petroleum Investment Reserve Clause 69



Brief Comment on Court Decisions

- Tinyefuza
 - Zachary Olum
 - Greenwatch
 - Paul Ssemwogerere & Ors
 - AG v. Chief Editor Monitor Publications
 - Charles Mwanguhya
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Conclusion & Recommendations

- UG legal & Policy framework recognises RTI i.e Constitution, ATIA & Regulations made there under
 - ATI also found in many sector laws that enjoin relevant authorities to collect, preserve & disseminate info related to Environ & NRs
 - RTI has also been upheld by courts
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Recommendations

- ❑ ATIA and Regulations should be revised to take out restrictions on RTI
 - ❑ Promotional body should be established
 - ❑ Fees structure should be revised
 - ❑ Oil exploration & production cos should disclose their revenues
 - ❑ Public sh'd be encouraged to apply sector laws
 - ❑ Archaic, restrictive and colonial laws such as the OSA should be repealed.
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