**Submission to the Special Rapporteur on human rights and hazardous substances- The Right to Access to Information in the field of hazardous substances and wastes**

This submission will aim to answer questions enclosed and offer a critical analysis on the implementation of access to information in relation to hazardous and toxic substances in Uganda.

**Question 1 – Obligations of the Government – International, regional and national.**

**International and Regional Legal Instruments**

Uganda has signed all nine core international human rights treaties and has ratified eight of theses treaties[[1]](#footnote-2). Uganda thus has an obligation under international law to respect, protect and provide for the rights contained within the treaties that provide for the access to information. In addition to this, Uganda is party to the UNEP Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and their Disposal[[2]](#footnote-3), the UNEP Rotterdam Convention September 1998[[3]](#footnote-4) , theStockholm Convention on Persistent Organic Pollutants and the Rio Declaration of Environment and Development 1992[[4]](#footnote-5) . Although it is yet to be ratified, Uganda became a signatory to the Minamata Convention on Mercury in October 2013.

On the regional level, Uganda is a party to the African Charter on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa[[5]](#footnote-6), African Union Convention on Preventing and Combating Corruption and Model Law on Access to Information for Africa in 2013.

**National Legal Instruments**

Article 41 (1) of the Constitution of the Republic of Uganda guarantees the right of access to information of every citizen to records of Government Ministries and organs so as to promote transparency and accountability. Article 41 (2) also urges Parliament to make laws prescribing classes of information where access is restricted.

Uganda remains one of the only five countries in Africa with a comprehensive access to information legislation. The Access to Information Act was passed in 2005. The Act aims to promote transparency and accountability in all organs of the State by providing the public with timely, accessible and accurate information.[[6]](#footnote-7) Section 2 (a) stipulates that the act applies to all information and records of Government ministries, departments, local governments, statutory corporations and bodies, commissions and other Government organs and agencies, unless specifically exempted by the provisions in the Act. The Act is duly supplemented by the Access to Information Regulations 2011. Consequently, all government ministries, departments and agencies that specifically deal with hazardous wastes and substances such as the Ministry of Water and Environment, are subject to the provisions of this Act.0

Clause 85 of the National Environment Act 1995 Cap 153 provides for every person’s access to any information relating to the implementation of the Act. The Act is appropriately complimented by the National Environment (Waste Management) Regulations, S.I. No 52/1999.

The Act is implemented mainly through the National Environment Management Authority (NEMA) established under part III. NEMA takes the lead in development of environmental policies, laws and regulations for the supervision of environmental management in the country. NEMA carries out it functions with the assistance of District Environmental Officers responsible for the implementation of the Act in Local and Municipal levels.

**Grievance Mechanisms**

Individuals and groups in Uganda have unhindered access to justice through judicial and non judicial means. On the regional level, applications can be submitted to the African Commission on Human and Peoples Rights.

The Constitution in Article 50 guarantees the right of an individual or group to apply to a competent court for redress in the event of the infringement of rights. Article 50 (3) further states that “any person aggrieved by any decision of the court may appeal to the appropriate court.” Further, the Access to Information Act contains provisions for individuals or groups to submit grievances to the Magistrates Court and if unsatisfied, submit appeals to the High Court.[[7]](#footnote-8) To this end, groups and individuals have previously sought redress before the courts in Uganda relating to the right to access to information[[8]](#footnote-9)*.*

Article 52 (1)a of the Constitution also gives the UHRC the mandate to investigate on its own initiative or on a complaint made by any person or group against the violation of their human rights. The Complaints, Investigations and Legal Services department within the UHRC receives, examines and resolves complaints. Such complaints could be resolved by the tribunals held by UHRC.

**Question 2 – The scope and characteristics of hazardous substances and wastes – related information that is accessible or may be accessible to the public**

The National Environmental Management Authority (NEMA) regularly publishes information relating to waste management. This can most easily be obtained from their website. For instance, NEMA publishes a list of licensed environmental practitioners including information relating to their qualifications and contact details. NEMA also makes available a list, updated yearly, of qualified waste handlers in the country including those in municipal levels. This information is divided into the type of service they provide i.e. transportation or management services; type of waste they handled; license expiry date and contact details. Most importantly, NEMA produces a yearly report which is effectively the state of the environment for the year[[9]](#footnote-10) under review. Hazardous wastes have featured in this report year after year.

UHRC in addition to this established that any person is free to approach the clinical department of Ministry of Health to request for information relating to the management of hazardous waste originating from the health sector.

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**Question 3 – Explain how information on hazardous substances and wastes is made available to the public**

Information on hazardous substances and wastes is disseminated to the public through various means from a range of actors including the media, private companies, the government, and CSO organizations.

**Media:** To begin with, Uganda has a variety of print and electronic media outlets who enjoy a freedom of expression and as such have on numerous occasions published various information in respect on hazardous waste. For instance, the largest newspaper in Uganda with wide distribution nationwide recently published a story titled ‘*How Prepared is NEMA for the oil waste”* in November 2012 highlighting the challenges faced by the Environmental Authority in dealing with waste generated as a result of oil exploration activities.[[10]](#footnote-11) Similarly, the East African, a respected newspaper distributed across Eastern Africa also featured a lengthy investigative report *‘Time bomb in the Albertine as Oil Firms lack waste disposal plan”* in August 2014.[[11]](#footnote-12)It is however important to note that these newspapers are only accessible to those who can afford to buy them and those who are literate.

**UHRC:** The mandate of the UHRC also extends to conducting research, education and awareness activities on human rights issues in the country.[[12]](#footnote-13) The UHRC also publishes an annual report and various periodic and special reports focusing on emerging human rights issues.[[13]](#footnote-14) An example of this includes a report relating to the extractive industries sector in Uganda. This published report titled *‘Oil in Uganda’* highlights the lack of access to information to communities in the Albertine region to oil exploration activities including information relating to the disposal of waste.[[14]](#footnote-15) The report is available online and is widely disseminated to the media, CSO’s, development partners, NGO’s and all other stakeholders including businesses.[[15]](#footnote-16)

**Relevant Stakeholders:** As documented in the aforementioned report, UHRC noted that Total E&P and Tullow Oil (two of the three companies licensed to operate oil exploration activities) established Community Liaison Offices (CLO) in Nebbi and Hoima districts. These offices were created in an attempt to ease communication, facilitate free access to information and bridge the communication gap between oil companies and community members.[[16]](#footnote-17)

**Ministry of Information and National Guidance:** Established under the Office of the Prime Minister, the Directorate is mandated to co ordinate the dissemination of information on Government program and activities.

**NEMA:** The National Environmental Authority, through its webpage, has made available information relating to licensed environmental practitioners in the country including contact addresses; licensed waste handlers divided into the type of waste they handle

**Question 4** - **Examples of how information on hazardous substances and wastes has been used to:**

**Protect the human rights of individuals and groups from the adverse impacts of hazardous substances and waste -** UHRC has the mandate under Article 52 of the Constitution to investigate at its own initiative or on a complaint made by any person or group of persons against the violations of any human rights. If there is enough evidence proving a violation of a human right , the Commission could utilize arbitration , mediation or the tribunal as a means of compensating for the violation. This forms part of the protective function of UHRC. Currently, the Commission is investigating a complaint where there has been an allegation of the pollution of Lake Victoria with hazardous wastes by several industries located in the vicinity. In considering the investigation, UHRC has had to make reference to information relating to hazardous wastes.

An additional example is the investigation UHRC carried out in relation to the rights of workers. When carrying out this investigation, UHRC observed the use of mercury and cyanide in artisanal and small scale mining activities in Busia gold mining areas.[[17]](#footnote-18) Mercury is said to have adverse neurological and other health effects, with particular concerns expressed about its harmful effects on unborn children and infants.[[18]](#footnote-19) UHRC mentioned these challenges in its special report [[19]](#footnote-20) and made several recommendations to the government as to how to rectify these challenges. In considering their findings in relation to hazardous wastes in this respect, UHRC had to rely and refer to external information regarding hazardous substances and wastes. This is in furtherance of the protective mandate of UHRC.

**Promote other human rights –** The Ministry of Information and Guidance is mandated to regulate the media and to coordinate dissemination of information on government programmes and activities. In carry out this mandate, the Ministry shall in essence be promoting other human rights. The Ministry has disseminated information in relation to the hazardous wastes. For instance, they disseminated and explained the strategy and the national policy for Electronic Waste Management

**Hold perpetrators accountable and seek remedy –** There has been increased litigation and jurisprudence in respect to holing perpetrators accountable and indeed seek a remedy in this respect. The most prominent case in this respect is the Green Watch v Attorney General and NEMA Misc. Cause No. 5 of 2011. In this case, a court order was made to the effect that the manufacture, distribution, use, sale, sell disposal of plastic bags, plastic containers, plastic food wrappers, and all other forms of plastic commonly referred to as 'kaveera' violates the rights of citizens of Uganda to a clean and healthy environment and were considered as solid and hazardous waste. This eventually culminated into a ban being introduced by NEMA that bans the manufacture, use and sale of plastic bags.

**Question 5 - Which businesses are required to provide on harzadous substances and wastes**

Section 41 of the Occupation Safety and Health Act No. 9 2006 requires all work places, including permanent and temporary workplaces in the field, oil refineries and mobile places to be registered and issued with a certificate of registration. The registration form contains information such as the precise location of the workplace, the nature of work, whether there is intent to use hazardous and toxic substances, and if so, the chemical properties, and perceived effects including reproductive effects, method of handling waste and whether there is intent to use an industrial waste treatment plant. This information is provided during the initial workplace registration and is not restricted to any sector, operational context, and size or ownership structure. It applies to all permanent or temporary businesses of any sector. The information is submitted to the Occupational Health and Safety Department under the Ministry of Gender, Labour and Social Development. Businesses are required to provide information as stated in Schedule 3. They are obliged to provide information relating to the type, treatment and management of hazardous waste and the perceived effects it has on health and the environment. In the first instance, the information is made available to the Department and the Health and Safety inspector.

Any person who wants to access this information contained in this form must then go through the provisions of the Access To Information Act to obtain such information since the ATI Act is applicable to Government Ministries and departments.[[20]](#footnote-21)

There several challenges associated with obtaining such information. Although there are no significant legislative restrictions on access to information pertaining to hazardous substances, the challenge still remains with procedural restrictions. The process for applying to secure access is cumbersome. For instance, a fee of 20,000 UGX is imposed on requests for information from Governmental institutions in addition to record ‘reproduction’ fees once access has been granted.[[21]](#footnote-22). It can also be observed that although information is readily available, access is particularly restricted to those with access to the internet, newspapers and to those who are literate. Applicants are required to fill fifteen different forms in order to request for access. In addition to this, The Act does not accept applications of access to information anonymously. All applicants are required to submit their names and other identifying information. This however has the potential to deter seeking for access to information

**Question 6 - When does the government limit the right of access to information on hazardous substances and wastes.**

Article 41 of the Constitution clearly stipulates that access to information may be limited in instances *“where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any other person.”*

Similarly, Part III of the Access to Information Act also provides for a list on examples where access is subject to conditions. This list however excludes information relating to hazardous substances and wastes. Access to information relating to the following is restricted: cabinet and committee minutes, information relating to privacy of the person, commercial information of a third party, information relating to the protection of safety of persons and property, if access leads to a breach of a duty of confidence, documents in legal proceeding and information relating to defense security and international relations

Clause 34 however states that request for access to information “shall be granted” where disclosure of the record would reveal evidence of a substantial contravention of the law or an imminent or serious public safety, public, health or environmental risk. Clause 34 (b) goes on to say that access shall be granted if the public interest in the disclosure of the record is greater than the harm anticipated in breach of the aforementioned instances. It is estimated that a significant proportion of waste generated in the health sector is considered hazardous. Thus, an unsafe waste management poses serious health and environmental risks and has the potential to cause harm to health workers, patients and the community at large. Therefore, under clause 34 access to information relating to hazardous substances shall be granted because a) an improper handling of hazardous substances can have serious public health and environmental consequences b) because of the gravity of the risk, the interests of the public will always be far greater.

**Question 7 – How does the Government ensure the right of access to this information is fulfilled while also respecting the confidentiality of business information.**

The Government has put in place a strong legal framework that protects the right to privacy of individuals and confidentiality of business information. Under the Constitution access to information is restricted if the release of information will *i*nterfere with the right to privacy of any other person.[[22]](#footnote-23) The Access to Information Act also puts conditions on access to information relating to the privacy of a person, commercial information of a third party and if access leads to a breach of a duty of confidence.[[23]](#footnote-24)

The Courts have interpreted this in the literal sense and have upheld that access should be restricted in order to protect confidentiality of business information . This was seen in the case of *Charles Mwanguhya Mpagi and Izama Angelo v. Attorney General.* In the aforementioned case, two journalists requested access to the production sharing agreement between the Ugandan Government and Total regarding the exploration of oil in the Albertine region. The Nakawa Chief Magistrates Court held that the release of this agreement would violate confidentiality clauses as contained in the agreements and that third party consent is required before the release of any information. The judge also stated that the burden of proof had been transferred to the two journalists, to prove that the release on the information requested would outweigh the breach. The case is currently on appeal at the High Cour

1. Uganda has ratified ICCPR, ICESCR, CEDAW, CRC, CERD, CAT, CRPD, ICRMW, [↑](#footnote-ref-2)
2. Article 13 has provisions in relation to information [↑](#footnote-ref-3)
3. This convention promotes open exchange of information and calls on exporters of hazardous chemicals to use proper labeling, include directions on safe handling, and inform purchasers of any known restrictions or bans. [↑](#footnote-ref-4)
4. Principle 10 is a provision in relation to access to information [↑](#footnote-ref-5)
5. October 2002 [↑](#footnote-ref-6)
6. Article 3 (d) [↑](#footnote-ref-7)
7. Part V (Articles 37 – 40) [↑](#footnote-ref-8)
8. Charles Mwanguhya Mpagi and Izama Angelo v. Attorney General; Greenwatch (U) Ltd v. Attorney General of Uganda and Uganda Electricity Transmission Co. Ltd [↑](#footnote-ref-9)
9. State for the Environment Report For Uganda [↑](#footnote-ref-10)
10. Available at <http://www.newvision.co.ug/news/637395-how-prepared-is-nema-for-the-oil-waste.html> [↑](#footnote-ref-11)
11. Available at <http://www.theeastafrican.co.ke/news/Time-bomb-in-Albertine-as-oil-firms-lack-waste-disposal-plan/-/2558/2435622/-/23qnxcz/-/index.html> [↑](#footnote-ref-12)
12. Article 52 (1) c Constitution of the Republic of Uganda, 1995 [↑](#footnote-ref-13)
13. Ibid, Article 52 (2) [↑](#footnote-ref-14)
14. Oil in Uganda: emerging human rights issues, Uganda Human Rights Commission, December 2013, Pg. 21 [↑](#footnote-ref-15)
15. The said report is available on <http://csco.ug/files/downloads/UHRC%20Oil%20report%202014%20UHRC%20REPORT.pdf> [↑](#footnote-ref-16)
16. Ibid, Pg. 23 [↑](#footnote-ref-17)
17. Uganda Human Rights Commission, 16th Annual Report, 2013, Pg. 198 [↑](#footnote-ref-18)
18. Minamata Convention on Mercury, available at <http://www.mercuryconvention.org/Portals/11/documents/Booklets/Minamata%20Convention%20on%20Mercury_booklet_English.pdf> pg. 3 [↑](#footnote-ref-19)
19. [↑](#footnote-ref-20)
20. Clause 2 (1) [↑](#footnote-ref-21)
21. Schedule 3, ATI Act [↑](#footnote-ref-22)
22. Article 41 [↑](#footnote-ref-23)
23. Part III [↑](#footnote-ref-24)