

President Levy Patrick Mwanawasa  
President of Republic of Zambia  
Parliament Buildings  
Parliament Road  
PO Box 31299, Lusaka

7 March 2006

Dear Mr. President,

**RE: Importance of prioritising tabling of strong Zambia Freedom of Information Bill**

I am writing from the Commonwealth Human Rights Initiative (CHRI), an international non-government organisation headquartered in New Delhi. CHRI's Right to Information (RTI) Programme works to promote the right to information, in particular by assisting governments to develop strong RTI legislation and to support implementation of new access laws (please log on to our website [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org) for more information).

I recently saw an article in the *Zambia Post* on-line edition, dated 1 February 2006, reporting that the Information Minister has said that it is unlikely that the Freedom of Information Bill (FOI Bill) will be tabled as a priority in Parliament. This is troubling, particularly considering that the Mung'omba Constitutional Review Commission specifically recommended that citizens have the right to access information held by the state. In December 2005, I wrote to Mr. Wila Mung'omba, Chairman of the Constitutional Review Commission, regarding the importance of inclusion of the right to access information in the new draft Constitution of Zambia (see a copy of the letter attached for reference), following reports that Justice Minister George Kunda had decided to exclude the right to information from the draft Constitution.

I wanted to take this opportunity to urge the Government to take concrete steps to ensure the successful passage of the FOI Bill in the National Assembly. As you would likely be aware, the right to information is a fundamental human right, which has been recognised by the United Nations for more than 50 years. It gained international legal status via Article 19 of the International Covenant on Civil and Political Rights, to which Zambia acceded on 10 April 1984.

As you are no doubt aware, recognising and implementing the right to access information is a simple, but extremely useful, step to open, effective and responsive governance. The right to information is also essential to facilitating meaningful participatory development. For a relatively small cost and investment of time, entrenchment of an effective access to information regime increases government transparency and reduces corruption, and thereby supports economic growth.

I am attaching a summary of key principles, which should underpin any effective right to information law, for your reference (see Annex 1). These principles are based upon international and regional standards, evolving State practice, and the general principles of law recognised by the community of nations.

Our RTI Team has reviewed the FOI Bill against international standards. While the FOI Bill in its current form contains some useful provisions, nonetheless there is scope for its improvement. The broad heads of our suggestions for further developing the FOI Bill are summarised below (see Annex 2 for a more detailed discussion):

- Broaden the scope of the definition of “information”
- Define the term ‘access’ and clarify that it includes taking samples and inspection of public works
- Broaden the scope of the law to cover more “public authorities”
- Reduce and narrow the exemptions provisions
  - Narrow the privacy exemption
  - Narrow the exemption for functions of public authorities
  - Do not apply exemptions to old documents
- Extend the proactive disclosure duties on public authorities
- Simplify the request and processing procedures
  - Clarify the role of Public Information Officers
  - Shorten time limits in special cases
  - Remove and/or reduce fees
- Strengthen the Public Information Commission
  - Ensure the independence of the Commission
  - Clarify the decision-making powers of the Commission
  - Clarify who carries the burden of proof in appeals
  - Permit ad hoc investigations by the Commission
- Strengthen the offences and penalties provisions
- Extend the Annual Reporting requirements
- Require public education and training on the law

I would encourage the Government to adopt a participatory approach when revising and enacting any national FOI Bill. Experience has shown that for any right to information legislation to be effective it needs to be respected and “owned” by both the government and the people. Participation in the legislative development process requires that policy-makers proactively encourage the involvement of civil society groups and the public broadly. This can be done in a variety of ways, for example, convening public meetings to discuss the content of the law, strategically and consistently using the media to raise awareness and keeping the public up to date on progress, setting up a committee of stakeholders (including officials and public representatives) to consider and provide recommendations on the development of the legislation, invite submissions from the public at all stages of the legislative drafting process, and publishing and circulating the draft FOI Bill widely for public comment and giving such comments due consideration.


For your information, CHRI has been working on RTI issues in the Commonwealth for more than eight years, during which time we have accumulated considerable best practice expertise in terms of legal drafting and implementation. This was collected in our 2003 publication, *Open Sesame: Looking for the Right to Information in the Commonwealth*. I am enclosing a copy of Open Sesame along with this letter. The Report can also be accessed at [http://www.humanrightsinitiative.org/publications/chogm/chogm\\_2003/default.htm](http://www.humanrightsinitiative.org/publications/chogm/chogm_2003/default.htm).

I would also like to offer CHRI's assistance with your legislative process, for example, we can assist with legislative research, provide drafting guidance drawing upon other Commonwealth jurisdictions and we can review any further drafts of the FOI Bill to ensure they accord with international openness standards. Notably, our RTI Team has reviewed a number of draft FOI Bills throughout the Commonwealth, including most recently India, Kenya, Guyana, Malawi, Sierra Leone, Mozambique, Fiji, and Cayman Islands (please view our website for more information).

For your information, I am also enclosing a copy of a comparative table of Commonwealth right to information laws, which summarise the key elements of the right to information laws, which are in place in the Commonwealth. These laws can also be found on our website at [www.humanrightsinitiative.org/programs/ai/rti/international/laws\\_&\\_papers.htm](http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_&_papers.htm).

If we can be of any further assistance with reviewing the FOI Bill, please do not hesitate to contact me on +91 9810 199 745 or +91 11 2685 0523 or via email at [majadhun@vsnl.com](mailto:majadhun@vsnl.com). Alternatively, please contact Ms Charmaine Rodrigues, Co-Coordinator, Right to Information Programme at [charmaine@humanrightsinitiative.org](mailto:charmaine@humanrightsinitiative.org) or Ms Tapasi Sil, Project Officer, Right to Information Programme at [tapasi@humanrightsinitiative.org](mailto:tapasi@humanrightsinitiative.org).

Yours sincerely,



Maja Daruwala  
Director

Encl: as above

- Cc:**
- 1) Information Minister, Mr Vernon Mwaanga, Ministry of Information and Broadcasting
  - 2) Justice Minister & Attorney General, George Kunda, Ministry of Legal Affairs,
  - 3) Mr. Amusaa Mwanambwa, Speaker of Parliament
  - 4) Mr. Kellys Kaunda, Chairperson, Media Institute of Southern Africa – Zambia
  - 5) Mr. Anthony Mukwita, Chairperson for Politics & Parliament, MISA – Zambia