

Chair Wila Mung'omba
Constitution Review Commission (CRC)
The Secretariat Constitution Review Commission
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London, 8 November 2005

Dear Chair,

ARTICLE 19 is deeply concerned about the Zambian government's refusal to include a clause guaranteeing access to information in the new draft constitution. It is well-established under international law that democracy requires that the public has access to a wide range of information and opinions and be able to engage in open debate. Indeed, the International Covenant on Civil and Political Rights (ICCPR) to which Zambia has been a party to since 1984 provides guarantees for freedom of expression and access to information.

In a letter to the Secretary of the Constitution Review Commission, Justice Minister George Kunda said the government was opposed to Clause 72 in the draft constitution, which provides for access to information, because it would compromise state security. However, if well drafted and implemented a freedom of information law that would complement Zambia's constitution can strike the right balance by ensuring that national security is protected while citizens are given access to information that is required for the exercise or protection of any right.

For instance, South Africa's constitution gives every person the right of access to information, held by a public or private body. South Africa's Promotion of Access to Information Act (PAIA), which gives effect to this right, contains a national security ground of refusal to access to information. The PAIA therefore clearly mentions that only information that could harm national security should be excluded from public disclosure. Moreover, article 41 of Uganda's 1995 constitution provides for the right to access for information, stating that "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." Kenya's current draft constitution also provides for access to information and guarantees for the freedom and independence of all media.

ARTICLE 19 is therefore concerned to hear that the government has also rejected provisions in the draft constitution which would have provided for freedom of all electronic and print media from interference and protected journalists from disclosing their sources. Freedom of expression and information are touchstones of all other fundamental rights. We thus urge the Constitution Review Commission (CRC) to take into consideration Zambia's international obligations under the ICCPR as the draft constitution should reflect the standards the country has adhered to.

Yours sincerely,

Agnes Callamard
Executive Director