



UNIVERSITY OF LUSAKA

SCHOOL OF LAW

FREEDOM OF INFORMATION IN ZAMBIA: LESSONS DRAWN FROM SOUTH AFRICA

BY:

LAMECK MUNKANTA

LLB 19218180

An obligatory essay submitted to the University of Lusaka (UNILUS) in partial fulfillment of the requirements for the award of the bachelor of laws (LLB) Degree.

1.0 INTRODUCTION

Freedom of information (FOI) also known Access to Information (ATI), is the right the public has to access of information held by public bodies. This right is regarded as one of the fundamental human rights in a democratic society as it gives rise to what can be referred to as ‘a participatory democracy’. According to the report by the Commonwealth Human Rights Initiative¹, “the underlying foundation of the democratic tradition rests on the premise of an informed constituency that is able to thoughtfully choose its representative on the basis of the strength of their record and that is able to hold their government accountable for the policies and decisions it promulgates.”

According to Resolution 59 of the United Nation General Assembly, Freedom of Information is the right to gather, transmit and publish news anywhere and everywhere without fetters. FOI was then recognized as a fundamental human right and as the touchstone of all the freedoms to which the United Nations is consecrated.²

This means that every person has the right to access public information which enables them make informed decisions and free choices. Further, Article 19³ of the Universal Declaration of Human Rights (UDHR) recognises the right to access information which is part of the freedom of expression.

Similarly, the Zambian constitution pursuant to Article 20⁴ recognises the freedom of expression which is said to include freedom to receive ideas and information. However, despite the constitution providing for the said right there is no legislation in Zambia that specifically addresses Freedom of Information and how it should be regulated. This study therefore provides a discussion on the need for Zambia to enact the Freedom of Information legislation by drawing lessons from South Africa.

¹ Commonwealth Human Rights Initiative 2004

² Ana Cristina Carvalho, Freedom of Information and The Right to Environmental Protection page 65, <https://core.ac.uk/download/pdf/236409357.pdf> Accessed 03/11/2022

³ Universal Declaration of Human Rights 1948

⁴ Chapter 1 of the Laws of Zambia

1.1 BACKGROUND OF THE STUDY

Historically the right of access to information can be traced as far back as to the 18th century when Sweden became the first country in the world to enact a Freedom of Information Act.⁵ However, after the Second World War, this right gained its importance in terms of its conceptualisation in international law and in national legislative enactments. In 1946 the United Nation General Assembly during its plenary meeting stated that Freedom of Information was an important right recognised under the United Nation as it gives rise to other recognised rights under the UN.⁶ This consequently led to the right being incorporated in various international instruments, reports and many other forms.

In accordance with Article 19 of the UDHR, Freedom of Information can be said to be ‘the key that unlocks access to many other existing rights.’⁷ Therefore, the right to Access Information is presently considered to be an important right which is provided for by various international and regional human rights instruments such as conventions, declarations and constitutions as a right separate from the Freedom of Expression.

Zambia has been working towards the enactment of the Access to Information law (ATI.) However, this activity has existed without coming to fruition since 1991 when the country reverted to multi-partism.⁸ The need for the enactment of the Freedom of Information legislation was then championed by journalists through media advocate groups such as the Media Institute of Southern Africa (MISA) and many other associations that felt that in the spirit of multi-partism it would be good also to enhance transparency by enacting such a law. This therefore led to the introduction of the Freedom of Information Bill No. 22 of 2002 through recommendations which were made by the Media Reform Committee (MRC). The FOI Bill was then presented to parliament for the first reading by the then Minister of Broadcasting Services (MIBS) Newstead Zimba.⁹ During this period, the

⁵ *The World's First Freedom of Information Act*. Anders Chydenius Foundation. Available on https://www.chydenius.net/tiedostot/worlds_first_foia.pdf

⁶ Supra note (2)

⁷ *ibid*

⁸ P Matibini *The quest for freedom of information law- the Zambian experience* (2010) Available on www.ajol.info/index.php/idd/article/viewFile/54808/43296

⁹ S. Phiri “Access to Information law and the stalled wind of change in Zambia.” *South Africa Journal for Communication Theory and Research*. Communicatio Vol. 42 iss.1 (2016) pp.35-55.

Zambian government was of the view that information should be considered as 'natural resource' that can be of benefit to its citizen or the public in general through public debates and understanding.

After the presentation of the aforementioned bill in parliament, a month later, on the 18th December 2002, it was withdrawn from parliament without any clear explanation as to the reason for the withdraw. Later, the new Minister of Information and Broadcasting Services Mutale Nalumango assured the public that the FOI bill will be brought back to parliament as soon as possible and it will consequently be enacted into law.¹⁰ Despite this assurance by the Minister, nothing was seen to happen regarding the re-introduction of the bill in parliament until the then government, the Movement for Multiparty Democracy (MMD) was removed from office in 2011.

When the Patriotic Front (PF) government came into power in the 2011, it promised the public that the Access to Information law (ATI) would be enacted into law. In 2012 the government started the process of moving toward the enactment of the ATI laws by establishing various taskforces on Access to Information. This included various stakeholders such as churches, Ministry of Justice, Ministry of Information and Broadcasting Services and Civil Society Organisations. The aforementioned taskforce was formed with the view of drafting the ATI law and also to sensitise the general public so that the ATI law, once enacted, would be used effectively by the Public.¹¹

Nonetheless, this process only ended with government releasing the draft of the ATI Bill 2012 and no further steps were taken to ensure the said draft bill underwent the required stages in order for it to be enacted into law.¹² From this attempt to date, Zambia continues to exist as a country without the Freedom of Information legislation.

¹⁰ ibid

¹¹ K. Lesa *Access to Information Law in Zambia: For who and for what?* Jesuit Centre for Theological Reflection, 2018

¹² ibid

1.2 STATEMENT OF THE PROBLEM

Article 20¹³ of the Zambian Republican Constitution provides for Freedom of Expression which includes freedom to receive ideas and information without interference. However, this provision does not specifically or clearly address Freedom of Information in detail per se. Thus, Freedom of Information, also known as the right to access information which is in public interest or held by public bodies and Zambia does not have a specific piece of legislation which specifically provides for and regulate the said right as provided for in other countries like South Africa. Patrick Matibini in his article “The Quest for Freedom of Information Law: the Zambian Perspective” highlighted the need for the Freedom of Information legislation in Zambia stating that “Freedom of Information is an indispensable concomitant of modern democracy and that Freedom of Information legislation is therefore an effective tool for attaining the democratic goals of transparency, accountability and good governance.”¹⁴ The right to access information is therefore a fundamental human right as provided for under Article 19 of the UDHR. The importance of this right in a democratic society cannot be over-emphasized as it not only encourages effective participation of citizens in political, social and economic affairs of the state but also promote transparency and accountability. This amplifies the need for Zambia to facilitate the right through legal mechanisms, that is, by enacting a piece of legislation that specifically provides and regulates the said right.

It is against this background that this research seeks to address the need for Zambia to enact the Freedom of Information legislation and the mechanisms that can be put in place to foster the development of this law. Further, the research also seeks to reconcile the freedom of information with other existing laws in Zambia.

1.3 OBJECTIVES

The objectives of the study are as follows;

¹³ Chapter 1 of the Laws of Zambia

¹⁴ Supra note (8)

1. To provide an analysis of the Freedom of Information, its meaning, limitations and importance in a democratic state.
2. To assess the legislative provisions relating to Freedom of Information and how the right is regulated in South Africa and assess what lessons can be drawn by Zambia.
3. To analyse whether Freedom of Information conflicts with the current existing Zambian laws and what can be done to resolve the conflict if that exists.

1.4 RESEARCH QUESTIONS

1. What is freedom of information and its importance?
2. How is freedom of information regulated in south Africa and what lessons can be drawn for Zambia?
3. What existing Zambian laws conflicts with the freedom of information law and how can the same be reconciled?

1.5 SIGNIFICANCY OF THE STUDY

The study addresses the need for Zambia to enact legislation providing for and regulating Freedom of Information. This is so in order to give effect to the fundamental human right as recognised by the Zambian Constitution and international human rights instruments that Zambia has subscribed to, as well as to promote citizens effective participation in political, social and economic affairs of the state. The proposed legislation could also play a vital role in promoting transparency and accountability in Zambia, a country that prides itself of being a democratic state.

1.6 SCOPE OF STUDY

The study will be drawing lessons from South Africa being one of the countries that has enacted specific Freedom of Information – related legislation in Africa. As will be observed, South Africa has also instituted relevant mechanisms for the support of Freedom of Information. The researcher will also target various institutions like the

Zambian Human Rights Commission, Non-Governmental Organisations and many other institutions as well as the general citizenry in order to get their views on the need for the Freedom of Information legislation in Zambia.

1.7 LITERATURE REVIEW

On the onset, it is important to note that there exists a volume of literature on the need and importance of the right to access information. However, it should also be noted that among this literature, very few are written by Zambian scholars. This section therefore provides a review of the literature concerning the importance of the Right to Access Information or the Freedom of Information.

To begin with, Donald Rowat¹⁵ in his article, “*How much Administrative Secrecy?*” argues that, ‘the overarching purpose of Access to Information legislation is to facilitate democracy and that it does in two related ways:

- (a) it helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process; and
- (b) secondly, politicians and bureaucrats remain accountable to the citizenry.’

This therefore explains the two-fold manner in which Freedom of Information can be looked at, that is to say, promoting citizens participation in fostering democracy as well as holding the government accountable. The author of this dissertation takes note of the above necessity of the Freedom to Information which makes the discussion of the topic of this dissertation ever more crucial.

Further, Nkuuhe¹⁶, argues that ‘Freedom of Information gives opportunity to citizens to advance good governance and hold the government accountable. It also increases chances of fighting corruption and abuse of office and power. Furthermore, the right is also said to increase knowledge among the general citizenry which consequently

¹⁵ D. Rowat *How Much Administrative Secrecy?* Canadian Journal of Economics and Political Science. Vol.31 Iss.4 (1965) pp.479-498.

¹⁶ J. Nkuuhe *Guiding Principles for Access to Information Legislation in Uganda* (2004)

enhances equity in decision making. The aforementioned right also allows for democratic practices and acts as a benchmark to state power.’

The author of this dissertation could not agree with the above referred to author more. Freedom of Information enhances democracy, a concept that places the people at the helm of society – with government essentially ruling on behalf of the people. Being a democratic state, Zambia has an obligation to provide its people with their basic right to access information held by public bodies. This can only be implemented in a predictable and orderly manner where a specific piece of legislation providing for and governing the Freedom of Information is enacted.

Freedom of Expression has in many international human rights instruments usually been linked to the freedom of information. This is evidenced by the reports of United Nation (UN) Special Rapporteur on Freedom of Opinion and Freedom of Expression which has supported the recognition of a right to Freedom of Information within the framework of the right to Freedom of Expression as provided for in Article 19 of the International Covenant on Civil and Political Rights (ICCPR).¹⁷

It is therefore on the above premise that scholars like Mason A¹⁸ argue that ‘Freedom of Expression, unsupported by Freedom of Information, is unlikely to play as effective a part in sustaining modern representative government as it would where there is free access to information relating to the working of the government.’ This, therefore, entails that having Freedom of Expression being recognised in the Zambian constitution is not enough and hence there is need for the law to expressly and specifically provide for the right to access information.

According to Freeman,¹⁹ the Universal Declaration of Human Rights is considered to be the most obvious document in terms of defining human rights. Human Rights are based on the notion that humans hold certain rights to dignity and that these rights should be guaranteed by both the international community as well as at regional level. Considering

¹⁷ UN Doc. E/CN.4/1995/32 para 35

¹⁸ A. Mason “The relationship between freedom of expression and freedom of information” In Beatson J and Cripps Y (eds) *“Freedom of expression and Freedom of Information”* (2000) 233.

¹⁹ M. Freeman *Human Rights* (Cambridge Polity Press, 2002)

the above, since Freedom of Information is one of the rights guaranteed by the international community as a human right, there is need for every country - including Zambia - to provide for such a right.

Matibini P.²⁰ argues that 'the provision of adequate information leads to higher levels of public participation in the process of policy making in government and that without information citizens are unable to exercise their rights effectively.'²¹ This shows therefore that citizens will only be able to exercise their rights in a democratic state effectively where they are provided with access to information.

Additionally, it is important to note that the right to access information plays a vital role in promoting other human rights by virtue of it being a human right in itself and also by it being an indispensable means of realising other existing rights and their enjoyments. Example of these rights may be those in the category of what is referred to as civil and political rights and also those which are known as economic social and cultural rights which includes the right to vote and access public services and many other rights of the same nature.

Therefore, scholars like Jagwanth²² argue that 'the right to access public information is a component part of other rights such as freedom of expression, administrative justice the right to fair trial.' Further, he also argues that 'accessing public information guarantees other rights such as 'the right to a clean environment, rights to equality and right to privacy' among others.

The author of this dissertation is buoyed, in writing this dissertation, by the fact that the right and freedom under discussion, which plays such a cardinal role in other rights as well as in democracy, uncompromisingly requires to be adequately provided for in Zambian legislation.

²⁰ Supra note (8)

²¹ Ibid

²² S. Jagwanth 'The Right to Information as a Leverage Right', in Calland, Richard and Allison T. (Eds), *The Right to Know, The Right to Live: Access to Information and Socio-Economic Justice* (2002). Open Democracy Advice Centre.

According to the Commonwealth Human Rights Initiative²³, one tenet of liberty is that an individual must, within the limited community resources and the fairest system of distribution of the resources, be able to develop to the fullest his/her potential. The tenet can only be achieved if members of a community have knowledge and access to information concerning the available resources. Indeed, nowhere is this tenet more pronounced than in the public sector where government economic policies are formulated on the premise that the general citizenry will participate in the implementation of the policies and the overall economic development of the country.

As pointed out by Nkuuhe²⁴, freedom of information gives opportunity to citizens to advance good governance and hold governments accountable. It also increases chances of fighting corruption and abuse of office and power. It further increases knowledge among the population and enhances equity in decision making. It allows democratic practices and acts as a benchmark to state power. This research will therefore build on the premise that with the importance of right access information, there is in need for the Zambian government to give to effect to the Freedom of Information legislation.

As stated earlier above, very few Zambians have written about the Freedom to Information and this dissertation may be distinguished from even the few Zambians by the fact that this dissertation –

- (a) is premised on the latest Zambian position as it relates to Freedom of Information. This takes into account that Zambia is currently being ruled by a new government which may have its own unique stance and position on the enactment of Freedom of Information – legislation; and
- (b) goes further to consider whether or not currently existing legislation militates against the enactment of Freedom of Information legislation.

1.8 METHODOLOGY

Research Approach: The research uses qualitative research approach.

²³ Supra note (1)

²⁴ Supra note (16)

Method of data collection: data collection in this research will be both from primary and secondary sources.

Research design: the research design will be evaluative.

Research type: the research uses drawing lessons research type.

Sample size: the research will target people or entities vested with the knowledge on the subject matter as well general citizen who are likely to be affected by said subject matter.

Sampling technique: This research will use the purposive approach, that is, it will be selective on picking participants.

1.9 ETHICAL CONSIDERATIONS

The researcher will abide by and comply with the ethical guidelines provided for by the University with regard to research. This therefore entails that the researcher will acknowledge by way of referencing all the sources used in the study using OSCOLA style of referencing. Further, the researcher shall observe privacy hence seek consent from research subjects when obtaining information.

REFERENCES

STATUTE

The Constitution of Zambia, Chapter 1 of the Laws of Zambia

INTERNATIONAL INSTRUMENTS

Universal Declaration of Human Rights 1946

United Nation General Assembly. Universal Declaration of Human Rights, Resolution 59(1) 65th Plenary Meeting (1946). Available on <https://research.un.org/en/docs/ga/quick/>

BOOKS

M. Freeman *Human Rights* (Cambridge Polity Press, 2002)

REPORTS

Commonwealth Human Rights Initiative 2004

ARTICLES/ONLINE SOURCES

Carvalho A. C. *Freedom of Information and The Right to Environmental Protection* page 65, <https://core.ac.uk/download/pdf/236409357.pdf> Accessed 03/11/2022

Rowat D. *How Much Administrative Secrecy?* Canadian Journal of Economics and Political Science. Vol.31 Iss.4 (1965)

Nkuuhe J. *Guiding Principles for Access to Information Legislation in Uganda* (2004)

Lesa K. *Access to Information Law in Zambia: For who and for what?* Jesuit Centre for Theological Reflection, 2018

Phiri S. "Access to Information law and the stalled wind of change in Zambia." South Africa Journal for Communication Theory and Research. Communicatio Vol. 42 iss.1 (2016)

Matibini P. *The quest for freedom of information law- the Zambian experience* (2010) Available on www.ajol.info/index.php/idd/article/viewFile/54808/43296

Mason A. "The relationship between freedom of expression and freedom of information"
In Beatson J and Cripps Y (eds) "*Freedom of expression and Freedom of Information*"
(2000)

Jagwanth S. 'The Right to Information as a Leverage Right', in Calland, Richard and
Allison T. (Eds), *The Right to Know, The Right to Live: Access to Information and Socio-
Economic Justice* (2002). Open Democracy Advice Centre.

The World's First Freedom of Information Act. Anders Chydenius Foundation. Available
on https://www.chydenius.net/tiedostot/worlds_first_foia.pdf