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Implementation of Freedom of Information in Nigeria: A Retrospective and Prospective View

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Abstract: Nigeria had the Freedom of Information Act signed into law in 2011 after several years of campaigns, since 1993. The passage of the Act signified an important step for Nigeria in actualizing the principles of transparency in public affairs. It was a victory for the many civil society organisations, mainly human rights and media based non-governmental organisations that keep the faith and continued to push the passage of the act after years of setback. Since the return to civil rule in 1999 several civil society organisations operating under the umbrella of the Freedom of Information (FOI) Coalition, coordinated by Media Rights Agenda (MRA), had sustained the campaign until President Goodluck Jonathan assented to it in 2011, shortly upon coming to power after the elections of that year. With the passage of the Freedom of Information Act, there was expectation that the secrecy that surrounds government activities, in particular, would be made open – the culture of transparency and openness would prevail. But it requires more than the passage of the bill into law to meet the expectations that many people had. It is important to recount some of the actions that were taken to actualize the FOI and to discuss the prospects that this holds for Nigeria. It is one way by which the effects of the implementation of the FOI can be examined and suggestions for greater effect made. The Freedom of Information Act is a piece of legislation that allows access to public information held by government or private organisations that operate in the public domain.
Keywords: organisations, Media Rights Agenda (MRA), FOI.

INTRODUCTION

The idea of Freedom of Information has a long history. Indeed, the year 2016 marks the 250th anniversary of the first Freedom of the Press Act in the world. Carlson [1] observes that: "society changes, but certain democratic principles hold true. Among these are freedom to think, speak, listen and write – to express oneself and communicate with others – as proclaimed in Article 19 of the UN Universal Declaration of Human Rights." She goes on to argue that there are obstacles to overcome as not every citizen is in a position to exercise this right including the right to access information and knowledge. The obstacles include inability to exercise one's rights because of poverty, social injustice, poor education, gender discrimination, ethnic and religious discrimination, unemployment or poor health and lack of access to healthcare. "Access to information for all – which requires Internet access for all – is an essential issue on the 2030 Agenda adopted by the UN in September 2015" [1].

Ronning [2] reminds us that "freedom of expression and the right of access to information are both citizens' rights…. Constitutional freedom of expression pertains to expressions regardless their source, be it individual or mediated. "

Castells (2010: xxvii) recognizes the opportunities for flow of communication and sharing of information in diverse ways which makes the keeping of information secret rather a difficult undertaking. He observes that:

> As people have appropriated new forms of communication, they have built their own system of mass communication, via SMS, blogs, vlogs, podcasts, wikis, and the like. File sharing and peer-to-peer (p2p) networks make the circulation, mixing, and reformatting of any digitized content possible. New forms of mass self-communication have originated from the ingenuity of young users-turned producers. One example is You Tube, a video-sharing website where individual users, organisations, companies and governments can upload their own video content.

Brief on the Campaign for FOI in Nigeria

Nigerians have fought a long battle to institutionalize transparency and accountability as

pillars of governance in Nigeria. The FOI bill was first submitted to Nigeria's 4th National Assembly in 1999 when the country returned to democracy but it did not make much progress. The Bill was first passed by the House of Representatives on 25th August, 2004. It was later passed by the Senate on 15th November 2006. The joint committee of the two chambers of the NASS passed a harmonised version of the bill on 14th February 2007 and was adopted by the House of Representatives unanimously on 27th February, 2007. The Bill was sent to the President for his assent on 16th March, 2007. However President Olusegun Obasanjo raised objections about the power to citizens to access information. But he also said that the Bill was not transmitted to the President and for almost a year, the whereabouts of the bill was unknown. When Yar'adua came to office as the President, he returned the bill to the NASS in a letter dated 23rd June, 2008.

When CSOs visited President Obasanjo in April 2007, he gave reasons why he would not assent to the bill: he opposed the proposed title of Freedom of Information Act. He wanted the title to read Right to Information Act. He was opposed to the exemption injurious to national defense as being inadequate and never protected national security information. He was also opposed to the powers given to the courts go override or review a refusal by a head of government or public institution to disclose the information requested.

Even in the house, some of the legislators were unconcerned and never supported reading of the bill in the house. They were creating diversions to ensure that the bill was sidelined and not read. Their mood was strongly against the desire of CSOs to bring such a law into existence. They argued that: CSOs were too aggressive with the campaign for the FOI; members were not sufficiently lobbied; the media would be too powerful with such a law in place; why should a northern President sign the law when a southern President did not.

The advantages to the legislature: FOI would enhance oversight functions on the Executive and agencies of government; formulating or amending legislation; conduct of confirmation hearings;

The Senate came up with a watered down version of the bill. Instead of an official giving reason(s) for not releasing information, the Senate introduced a clause that the person requesting for information must present a reason before a judge why the information is needed. It deleted Section 2(2) which read that: "an applicant need not demonstrate any specific interest in the information or record being applied for." It introduced a provision that anyone that requires any information need to (a) prove that the information will not compromise national security and (b) satisfy a high court on the need for such information (c) have a period of thirty days for granting access to information in the first instance (against the 10 days earlier provided in the bill), with additional proviso of discretionary of the official to make a further 90-day extension, if the head of the public information or official felt a reason to make the extension. The Senate deleted the provisions on public interest and protection for whistle blowers.

The Bill was presented to the 6th National Assembly in 2007 and was finally passed on May 28, 2011.

The Nigerian FOI Act

The Explanatory Framework of the Freedom of Information Act 2011 states that:

> This Act makes public records and information more freely available, provide for public access to public information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protecting serving public officers from adverse consequences for disclosing certain kinds of information without authorization and establish procedures for the achievement of those purposes.

The FOI Act has 32 sections with 10 sections being exemptions. These are Sections 7, 11, 12, 14, 15, 16, 17, 18, 19 and 26. These relate to matters of privacy, defence and intelligence information; foreign policy interests of the nation; scientific and technical matters; etc.

It is important to note that every Nigerian can apply for access to information and the applicant need not demonstrate any specific interest in the information being applied for. An applicant can sue the agency that refuses to release information.

Section 2 of the Act demands of public institutions to provide information for public scrutiny a detailed description of their corporate profiles, programmes and functions of each division, lists of all classes of records under their control and related manuals used in administering the institutions programmes.

According to Open Society Initiative the Nigerian Freedom of Information Act [4]:

- Guarantees the right of access to information held by public institutions, irrespective of the form in which it is kept and is applicable to private

institutions where they utilize public funds, perform public functions or provide public services.

- Requires all institutions to proactively disclose basic information about their structure and processes and mandates them to build the capacity of their staff to effectively implement and comply with the provisions of the Act.
- Provides protection for whistleblowers.
- Makes adequate provision for the information needs of illiterate and disabled applicants. Section 3(3)
- Recognizes a range of legitimate exemptions and limitations to the public's right to know, but it makes these exemptions subject to a public interest test that, in deserving cases, may override such exemptions [5].
- Creates reporting obligations on compliance with the law for all institutions affected by it. These reports are to be provided annually to the Federal Attorney General's office, which will in turn make them available to both the National Assembly and the public.
- Requires the Federal Attorney General to oversee the effective implementation of the Act and report on execution of this duty to Parliament annually.

It is important to note that Nigeria is the 97th country in the world to enact FOI, it is 16th in the Commonwealth and Ninth in Africa. The African countries that enacted this legislation are: Sierra Leone, Niger, Angola Cote d'Ivoire, Ethiopia, Guinea Liberia, Rwanda, South Africa, Uganda and Zimbabwe.

Usefulness of Freedom of Information Act

1. FOI is a vital tool for democracy and good governance as it will curb executive, legislative and judicial acts that could be inimical to public interest. It will enhance transparency in the activities of government and officials. It will also help in exposing corruption
2. It will enable the media to get accurate information and reduce the culture of speculative journalism and help the public to get accurate information
3. It will help institutions such as the National Human Rights Commission (NHRC), Independent Corrupt Practices and Other Offences Commission (ICPC), Economic and Financial Crimes Commission (EFCC), Code of Conduct Bureau (CCB) to access relevant information to aid their work
4. It will enhance and speed up the process of justice by providing protection for whistle blowers by helping security agencies to get ready witnesses to testify in corruption cases, for example
5. Researchers will gain access to vital information and data from public institutions to enhance their quest for, generation and production of knowledge
6. Businesses will also be rest assured that they will be treated equally and fairly in dealing with government ministries, agencies and departments because they can have access to certain information and decisions that concerns them

Concerns About FOI

The passage of the Act also raises some concerns on the issue of implementation. The Act has 32 Sections, out of which ten deal with exemptions: Sections 7, 11, 12, 14. 15, 16, 17, 18, 19 and 26. Apart from these exemptions which are in line with what obtains in many parts of the world, there are other concerns.

There is a poor culture of record keeping in ministries, agencies and departments including issues of storage and retrieval. It is not impossible for records to be misplaced or even missing from official files. Some records may have perished because of the form of their storage and lack of preservation. At times it is not just an issue of keep records some of the records may be in perishable media.

There is capacity challenge in many public institutions. A recent study of seven institutions of government by Media Rights Agenda in collaboration with the Carter Centre brings into sharp focus this challenge. Media Rights Agenda [3] presented the findings of a research that assessed seven government institutions – the Ministry of Finance, Ministry of Justice, Ministry of Water Resources, Ministry of Health, Ministry of Education, National Bureau of Statistics and National Electricity Regulatory Commission – on their preparedness to implement the Freedom of Information Act. The study was conducted in collaboration with the Carter Centre of the United States. The findings indicated that the "processes and procedures that ought to be put in place to ensure the effectiveness of FOI Act implementation and the desired outcomes were mostly lacking in the institutions assessed."

The ministries and agencies studied were selected based on their holding information relating to the implementation of the Millennium Development Goals (MDGs) which was important for fundamental human and Socio-economic rights.

The findings of the research showed that:

- None of the institutions complied with the FOI obligation to proactively publish specific information required of them. Their websites contain neither relevant nor current information
- Some of the institutions have FOI Units or Committees, the membership of which are selected from different departments of the institutions and

not necessarily to address specific issues or special areas in the implementation of the FOI

- Only the Ministry of Justice FOI Unit reported receiving national and international training, other institutions received basic training on the FOI and its implementation; training remains a major factor
- Of the seven institutions studied, only the Federal Ministry of Justice designated and marked offices for FOI implementation; the other institutions were treating FOI implementation as an adjunct activity to other official responsibilities either in the Media/Press Unit, Legal Department or Planning, Research and Statistics Department
- There were no funds specifically allocated for the implementation of FOI. In cases where the institutions observed the implementation of the FOI, they had to source for funds from within their approved budgets for other assignments or tasks

The bureaucratic culture in Nigeria is time consuming and could mar the timely release of information to those that approach institutions of government. The period of

Domestication of the FOI Act

Ekiti and Lagos States have adopted the FOI Act with a modification of time for response from one week to two weeks. However from pronouncement by the courts, it appears that states do not have to bother themselves with domestication of laws made by the National Assembly as the law would have effect across all strata of governments in Nigeria. This was decided in a case in Oyo State where a legal practitioner requested the Speaker of the Oyo State House of Assembly for information, but was denied on the claim that the FOI request was based on a Federal law which had no application in Oyo State. The legal practitioner decided to sue the Speaker and three others. The case was between Yomi Ogunlola and One (1) Other versus the Speaker of Oyo State House of Assembly and Three (3) Others, brought before Justice S. A. Akinteye in Suit No. M/332/12.

The presiding judge ruled on Thursday, 31st October, 2013 that:

> The National Assembly has the legislative competence to make laws for the peace, order and good government of Nigeria that is applicable to all states of Nigeria without infringing on the autonomy of the states if such legislation is designed to correct a malaise plaguing the country.

The judge further states that:

> The FOI Act is not the first law enacted by the National Assembly that covers the whole Federation of Nigeria. There is also the Economic and Financial Crimes Commission (EFCC) Act as well as Independent Corrupt Practices Commission Act (ICPC) which covers the whole country. Officials of States, Local Governments and Federal Government are being arraigned in court or investigated for various offences under these laws passed by the national Assembly and without State Governments having adopted the EFCC and ICPC Acts in their various states. I wish to state that there is no section in the 1999 Constitution (as amended) which prescribes that a law enacted by the national Assembly has to be adopted by the State House of Assembly to make that law applicable to the state.

In relation to upholding the right to freedom of expression, the judged ruled that the enactment of the Freedom of Information Act was done by the National Assembly pursuant to Section 4(4)(b) of the 1999 Constitution (as amended) in order to bring into effect the provision of Section 39(1) which guarantees the fundamental right to "receive and impart ideas and information without interference." The judge further pointed out that the issue of domestication of law belongs to the realm of international law.

Implementation of the FOI Act

The Freedom of Information Act needs to be implemented in order to exact the gains expected from its passage in Nigeria. It is not enough to have the law as the citizens of Nigeria must make the effort to make it work. So citizens have to make demands on the public institutions that may hold information that they find relevant. It is in this context that some civil society organisations took the challenge and decided to test the implementation of the FOI and in the process exposed the practical challenges of implementing the law.

Some Requests for Information

The non-governmental organization, Right to Protect (R2K), made requests for information in June 2012 on the air crash investigative reports undertaken by the Accidents Investigation Bureau. R2K discovered that the reports of the investigation into air crashes were not on the web site of the Bureau. So it made a request for that information.

R2K also made a request to ministries, agencies and departments of government for copies of their FOI reports to the Attorney General of the Federation as demanded of them in Section 29 of the Freedom of Information Act. They are by that law required to submit their reports to the Attorney General before the 1st February of every year. The Attorney General of the Federation is also required to file his report on the implementation of the FOI to the National

Assembly. The information was provided almost a month the request was made – a case of delayed response beyond the legally defined period.

The *Daily Trust* newspaper also made a request for information from the Nigerian National Petroleum Corporation (NNPC). Instead of responding to the request, the newspaper reported that NNPC based on the wisdom of its lawyers informed the paper that NNPC was not a statutory body and was therefore not bound by the FOI Act. This drew the ire of the public and pressure was exerted on the NNPC. Sensing that it could not get away with its legal argument, the Corporation pledged that it would respect the provisions of the Act.

Getting the Courts to Enforce the FOI Act

Civil Society Organisations again led the way in getting the judiciary to interpret the law and order public institutions to respond the requests made under the Freedom of Information Act 2011 in cases where they was refusal to respond. The Committee for the Defence of Human Rights (CDHR) instituted a law suit against the Economic and Financial Crimes Commission (EFCC) in August 2011 for its refusal to respond to a request on allegation made against it. CDHR sought for an order of court to compel EFCC to provide information the requested information.

The Socio-Economic Rights and Accountability Project (SERAP) and Women Advocates Research and Documentation Centre (WARDC) decided to sue the Governor of the Central Bank of Nigeria (CBN) when their request on information regarding the payment of oil subsidy was denied. The two organizations went to court to seek for an order to compel the CBN to provide information on the payment of N 1.26 trillion as oil subsidy.

Courts Order Release of Information

The Legal Defence and Assistance Project (LEDAP) had approached the National Assembly (NASS) for information on the details of the salaries and allowances of the members of the legislature. The Clerk of the NASS refused to respond to the request. So LEDAP decided to take the matter to court to a Federal High Court. The court after entertaining the case delivered judgment on June 25, 2012 in which it ordered the NASS to provide the information requested by LEDAP. This was the first victory recorded in the courts on the implementation of the FOI ACT.

Following the reforms in the banking sector, the Progressive Shareholders Association instituted a case in the court against the Central Bank of Nigeria (CBN) because of refusal to disclose information on the recovery of the assets of banks and the forfeiture of assets by a former bank's Managing Director. This followed the sacking of five bank Managing Directors for alleged fraudulent acts and mismanagement of the resources of their banks. The Association requested the court ot compel the CBN to publish the processes that led to the forfeiture of the assets by the former Managing Director. The court ordered the CBN to comply with the request. But the court also did not grant one of the requests of the Association that is the disclosure of information on payments to professionals and professional bodies. The court maintained that fell under the provisions of Section 16 which preserved client-attorney privilege.

It is important to note that some institutions of government have been forthcoming in terms of disclosing information when requested. However, it has been observed that most of the institutions have not been able to respond within the stated time frame in the law. But the situation where citizens have to resort to the courts for public institutions to be compelled to grant requests is not healthy to the process of deepening the culture of transparency in government.

CONCLUSION

The Freedom of Information Act is a healthy development as it will help in enhancing democracy and good governance in Nigeria. There may be challenges with the law in its infancy, but some of the practical challenges that attend its interpretation and implementation would serve as useful learning curves that can improve with time. There are certain concerns about the FOI Act. There is lack of awareness about the existence of the law among the larger public which necessitates sensitization across the country among various groups that could utilize it. There is a wrong impression that the Act is only for the media which is not really the case. The law is very clear that it is for the use of all citizens. Many government institutions are apparently not in a position to respond quickly and appreciate the disclosure of information as recent reports indicate. There is the need to provide training to officials of the government to understand the law and respond to requests for disclosure for information quickly. It is important to also educate members of the public to understand the processes by which they can make requests for information. It is important to amend laws such the Official Secrets Act that makes public officers liable for releasing information without authorization when, by contrast, the FOI shields them from punishment.

REFERENCES

1. Ulla C. Freedom of Expression and the Media in a Time of Uncertainty: A Brief Introduction in (Ulla Carlsson (ed.)) Freedom of Expression and Media in Transition Sweden: UNESCO and Nordicom. 2016;9-16.

2. Holge R. On Press Freedom and Other Media Freedoms in a Time of Uncertainty in (Ulla Carlsson (ed.) Freedom of Expression and Media in Transition Sweden: UNESCO and Nordicom. 2016;43-51.
3. Media Rights Agenda. Research Findings on FOI Implementation Show Dismal Preparation of Nigerian Institutions for FOI Implementation. 2016. http://mediarightsagenda.net/web/research-findings-on-foi-implementation-shows--dismal-preparations-of-nigerian-institutions-for-foi-implementation posted May 30, 2016 [accessed:10/6/2016]
4. Open Society Foundations https://www.opensocietyfoundations.org/press-releases/frredom-of-information-act-signals-consolidation-of-Nigeria's-democracy, May 31, 2011 (accessed: June 8, 2016)
5. Right to Know (R2K) Nigeria. Nigeria Celebrates International Right to Know Day, Assessment Report on Implementation of the Freedom of Information act 2011 (FOIA) 18 Months after. 2012. http://www.r2knigeria.org September 28