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FREEDOM OF INFORMATION ACT IN NIGERIA: PROVISIONS, STRENGTH AND CHALLENGES

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ABSTRACT

This paper examines the Freedom of Information Act in Nigeria with a view to pointing out its strength and the challenges for its effective implementation. Libertarian and social responsibility media theories were the theories used in for the work. It was found that the journey to the freedom of information act started far but has reached the destination in 2011 under the leadership of President Goodluck Jonathan. The Act is a legal extension of the constitutional provisions on freedom of expression designed partly to give practical expression to that provision. It is an act for accessing public information to service the people's right to know. The act is relevant for the following reasons: Bring to the public arena the activities, documents, policies and other decisions of public officials; promoting public access to certain kinds of information, to keep people abreast of what public officials, governmental institutions, firms and other organizations are doing; Create conditions for people to use that information to make important contributions to the democratic process on the basis of understanding of how democratic institutions (and private organisations) work; Engender a culture of probity and transparency for enhanced societal development on democratic principles and practice; Eliminate dictatorial tendencies and unnecessary secrecy in running a democratic government, by holding public officials to their oaths of office; Strengthen the institutions and agencies for ensuring and promoting probity, transparency and accountability. The study recommends that to achieve the desired objectives of the act, the media must really work independent of the government control and political officials as advocated by the act. In doing so the media must be objective in reporting activities of the government and holding it accountable to the people for public scrutiny.

1.1. INTRODUCTION

Freedom of information has the ability to generate more controversy and heated debate than virtually any other aspect of contemporary government and administration. Press and media make daily references to public interest immunity certificates; the perpetuation of official secrecy despite the 'reform' of S.2 of the Official Secrets Acts and the introduction of the Code of Practice on Access to Government Information, 'cover ups' by government, the confidentiality of State secrets, access to files, and protection of information collected by public or private bodies. 'Freedom of Information' has become a rallying cry of libertarians, if not quite the contemporary equivalent of 'Wilkes and Liberty', its eighteenth century London or 'Reform' in nineteenth Century England (Patrick Birkinshaw, 1996 in Popoola, 2003, p.27).

Ayobami (2011, p.267) observed that accounts of government-citizen relations in Nigeria are filled with reports of a struggle over what activities of government and public institutions are to be seen and known by the citizens. This struggle as Ayobami (2011) rightly provided is often pitches citizens and groups such as journalists against government with journalists attempting to widen the circumference of what should be seen and known, and government trying to shrink the same. In Nigeria's recent past, that struggle did turn bloody, resulting in blackmails, detention and even deaths of citizens, especially journalists. Scholars (Omu, 1996; Oduntan, 2005) have implied that citizen access to information on government activities is an old struggle dating back to the emergence of modern journalism in Nigeria. According to these scholars, the first newspaper in Nigeria, the Iwe Irohin fun Awon Egba ati Yoruba, which made its debut in 1859, attracted opposition from the British colonial government over its inquiry into government activities and revealing this to citizens. The struggle to make government accountable has never ceased.

More recent Nigerian political history shows desperate attempts by government, especially the military, to conceal its acts, and the ruthless punishment inflicted on those who pried into the activities of government or of its officials. For instance, in 1992, the military government of General Ibrahim Babangida proscribed all the thirteen titles of the stable of Concord Newspapers Limited and promulgated five decrees all aimed at punishing those who investigated or commented about government activities. Notable among these were Decree 29 which set a penalty of death for anyone who spoke or wrote anything capable of disrupting the

society, and Decree 48 which proscribed 17 publications owned by five newspaper organizations perceived to be anti-military. Others were Decree 23 which proscribed The Reporter; Decree 35 which conferred on the president the power to confiscate or ban any publication, and Decree 43 which set up stringent regulations for registration of newspapers (Olukotun, 2005; Adebanwi, 2008). In those years and during the government of General Sani Abacha, these and other decrees were rigidly enforced. Several editors were arrested, detained and tortured; some for up to two years. In 1997 alone, 94 journalists were attacked. Where offending journalists could not be found, their children, spouses and/or parents were arrested and incarcerated. In these circumstances, at least two journalists (Bagauda Kaltho of The News and Tunde Oladepo of The Guardian) were killed (Malaolu, 2005; Olukotun, 2005; Adebanwi, 2008).

It was not surprising, therefore, that when Nigeria returned to democracy in 1999, one of the first moves by civil society was to lobby for a law that would enable Nigerians to demand information about government and public institutions and would protect government officials that did disclose such information. The unwavering public interest in the bill as well as the euphoria that greeted its passage was also not surprising. What was surprising, however, was that it took well over ten years for the bill to be passed and signed into law. This paper examines the freedom of information act (FOIA) with a view to evaluating its strength and weaknesses as relate to the practice of journalism in Nigeria. The paper is divided into the following: introduction, review of concepts, research objectives, research questions, review of related literature, theoretical framework, conclusion and recommendations.

2.0. CONCEPTUAL CLARIFICATION

2.1. Freedom of Information

For most of those who employ the phrase, 'freedom of information' means having access to files, or to information in any form, in order to know what government is up to. In some jurisdictions it may mean not only allowing access to government documents in whatever form they happen to exist, but also opening up the meetings of governments, their advisory bodies and client groups to public scrutiny - the 'open government' dimension. Or it may involve access by individuals to files containing information about themselves and an assurance that the information is not being used for improper or unauthorized purposes (Popoola, 2003, p.29).

The popular phrase 'Information Society' has come to describe the essence of the advanced computerized world. From financial markets to government, from national security to

education, from multinational corporations to small employers, from people to social welfare, medical treatment and social services, we are confronted by information repositories and retrieval systems whose capacity to store and transmit information is simply staggering. To be sure, we have always been in a general sense, an information society. What is novel in our present context is the heightened awareness of the use, collection, dissemination or withholding of information. Such functions are now facilitated by artificial intelligence systems, advanced information technology and the opportunities which exist to influence public opinion through ever more sophisticated broadcasting telecommmication and information technology networks (Birkinshaw, 1996).

2.2. Freedom of Information Act (FOIA)

The Freedom of Information Act is a legal extension of the constitutional provisions on freedom of expression designed partly to give practical expression to that provision. It is an act for accessing public information to service the people's right to know. Among its many functions, it is designed to:

a. Bring to the public arena the activities, documents, policies and other decisions of public officials; promoting public access to certain kinds of information, to keep people abreast of what public officials, governmental institutions, firms and other organisations are doing.
b. Create conditions for people to use that information to make important contributions to the democratic process on the basis of understanding of how democratic institutions (and private organisations) work.
c. Engender a culture of probity and transparency for enhanced societal development on democratic principles and practice
d. Eliminate dictatorial tendencies and unnecessary secrecy in running a democratic government, by holding public officials to their oaths of office.
e. Strengthen the institutions and agencies for ensuring and promoting probity, transparency and accountability (such as the press, the security services and the Code of Conduct Bureau - a needed complementarity to their statutory duties and powers) (Nimi, 2003).

From the foregoing, there is an impression that the FOIA is beneficial to every person. Indeed the FOIA, contrary to the narrow view of it, is not designed to benefit the media alone or to strengthen the media to witch-hunt officials in both the public and private sectors. No doubt

the media stand to benefit from the act in two ways: access to meetings of governmental and organisational bodies, and classified public official files. Whatever information the media receive and process is selectively disseminated to the public on the basis of professional criteria or considerations.

3.1. RESEARCH OBJECTIVES

This study is aimed at achieving the following objectives:

a. To trace the journey of the Freedom of Information Act (FOIA) in Nigeria.
b. To examine the Relevance of the Freedom of Information Act.
c. To identify the challenges for the implementation of the Freedom of Information Act
d. To determine the way forward for effective implantation of the FOIA in Nigeria.

4.1. RESEARCH QUESTIONS

The following research questions are to guide the conduct of this study:

a. What is the historical antecedent of the Freedom of Information Act (FOIA) in Nigeria?
b. What is the Relevance of the Freedom of Information Act?
c. What are the challenges for the implementation of the Freedom of Information Act?
d. What is the way forward for effective implantation of the FOIA in Nigeria?

5.1. Theoretical Framework

This work is simply anchored on the theories of libertarian and social responsibility. The reason behind the use of these two theories of the media is that as Fourth Estate of the Realm, the media must be given the freedom to operate without inference. Freedom to have access to public information will help the media in checking the excesses of public office holders that depend sole on diverting public funds to their private pockets. Anaeto, Onabajo and Osifeso (2008, p.56) commenting about the free press theory observed that the libertarian media theory exists to check on governments and that means that they should be free from governmental control. This as Anaeto, Onabajo and Osifeso (2008, p.56) maintain does not means freedom to defame or commit sedition or immunity to the rule of law and canons of civilized social conduct.

Rather than used as a tool in the hands of the government to promote social ills in the society, the media should partner with the government in search of the truth. This can lead to rapid development in the society.

In as much as the media have freedom to hold government accountable by the social responsibility warns that they should socially responsible in the exercise of their duties. That

means abiding by the laws of the land as well as the ethics of the profession-journalism. These two theories are indeed relevant to this work.

6.0. REVIEW OF RELATED WORKS

6.1. Historical Antecedent of Nigeria's FOIA

What finally culminated in the Freedom of Information Act began as independent campaigns by three major civil society groups: the Nigeria Union of Journalists, the Media Rights Agenda and the Civil Liberties Organisation. After working independently for the establishment of the legal principles for the right of access to documents and information in government custody, the groups met in 1993 and began collaborating. In 1994, the Media Rights Agenda produced a document titled "Draft Access to Public Records and Official Information Act" which became the basis for consultations among the three groups. In March 1995, the coalition met to revise and refine the document. At the end of the two-day meeting, participants came to the conclusion that the "Draft" document must get real legal backing and become law. The totalitarian style of leadership adopted by General Sani Abacha made it impossible to achieve any progress on the project for several years until 1999 when Nigeria returned to democracy (FOI Coalition, 2003).

In March 1999, Media Rights Agenda held another workshop, supported by some international organizations including ARTICLE 19 (formerly known as the International Centre against Censorship). The workshop was devoted to further refinement of the 1995 document which by 1999 had been published by the coalition of the Nigeria Union of Journalists, Media Rights Agenda and Civil Liberties Organisation (FOI Coalition, 2003).

The first journey of the FOI Bill to the National Assembly was in 2000. Presented by Media Rights Agenda, the Bill was sponsored by Hon. Tony Anyanwu and Hon. Nduka Irabor1. The Assembly did not pass the Bill, and the Assembly finished its term in 2003 without action. This attracted sharp criticisms from the public especially journalists (The Guardian, 2008).

The second journey of the Bill began later in 2003 when another National Assembly was convened. This time, because the original sponsors did not get re-election, they could not sponsor the Bill. It was then sponsored by Ms Abike Dabiri1, eminent journalist and a member of the House of Representatives. The House of Representatives passed the bill in 2004 and the Senate passed it in 2006. However, the president, Chief Olusegun Obasanjo, refused to sign the bill into law despite entreaties from Nigerians. His refusal was based on the grounds that,

according to him, the bill provided too little space for the president to refuse information. It was only in matters of defence that the president could deny information, whereas, in his view, matters of state security should also have been exempted. He also disagreed with the title of the legislation. He would have been more pleased with a 'Right of Information' bill than with a 'Freedom of Information' bill (FOI Coalition, 2003). Chief Obasanjo also refused to return the bill to the National Assembly so that if it wanted, it could amend it or veto the president's stand on the issue. The bill was re-presented to Chief Obasanjo's successor, Alhaji Umaru Yar'Adua, who doubted if it was legal to sign a bill carried-over from a previous administration (FOI Coalition, 2003).

The bill's third journey began in 2007, and the National Assembly commenced fresh work on it in that year. Then came allegations that the National Assembly doctored the bill, introducing clauses that would make it completely powerless. For instance, it was said that a Section 2 was introduced that required those requesting information to first seek "judicial clearance or approval" from the Court before approaching a public institution with their request. This was not part of the original bill (The Guardian Editorial, 2008a). The loud public outcry against these "amendments" led to the elimination of the "oppressive provisions" (The Guardian Editorial, 2008a) and to a re-reading of the bill.

For over two years, the bill suffered one setback after another including deliberate filibuster with some legislators describing it as a trap set by the media. Senate President, Senator David Mark, was quoted as saying that passing the bill would amount to mere surplus sage because the constitution had made sufficient provision for public access to information. But the supporters of the bill kept up their lobbying and the public maintained pressure (Idonor, 2011; Josiah, 2011). The House of Representatives passed the bill again in February, 2011 and the Senate in March 2011. The harmonized version of the bill was passed on May 24, 2011. The President, Dr Goodluck Jonathan, signed the bill into law on May 28, 2011 (Idonor, 2011; Josiah, 2011; Punch, 2011; Punch Editorial, 2011; This Day, 2011).

The Freedom of Information Act has 32 sections. Ayobami (2011:269) grouped the sections into seven thematic categories: (a) establishing a freedom of information; (b) procedure for requesting public information; (c) duties of public agencies or institutions; (d) when access to information should be denied; (e) what to do when access to information is refused; (f) judicial review of refusal; and (g) protection of public officials.

a. Establishing a freedom of information

Section 1 and Section 2 (6) establish the freedom of information rights for Nigerians. Every Nigerian has the right to request information in the custody or possession of any public official, agency or institution no matter whether the information is written or not. The applicant for information does not need to demonstrate any specific interest in the information being applied for. Sections 1 (3) and 2 (6) state further that, if refused information, an applicant has the right to institute legal actions to compel the public official, agency or institution to supply the requested information.

a. Procedure for requesting public information

Sections 3, 4, 5, 6, 8 and 18 specify the procedure for applying for information from a public agency or institution. Section 3 (2) states that even if a piece of information is not available but can be produced from a machine normally used by the institution, it is deemed to be information under the institution's control. Illiterate or disabled persons can make applications by employing a third party. According to Section 2 (4), an authorized public official of the institution to whom application is made shall reduce the application to writing and provide the applicant with a copy. Section 4 states that when an application is made for information, the institution to which application is made has seven days to make the information available. If, however, the institution decides that the information should be denied, it should within seven days give written notice to the applicant that access to that piece of information cannot be granted, stating reasons for denial with reference to specific sections of the Act.

If the information being sought was originally produced in or for another institution other than the institution to which application is made, the institution to which application is made shall transfer the application to that which originally owns the information and shall do so within three to seven days. The application is deemed to have been submitted to the institution to which it was transferred on the day such institution receives the application (Section 5, 1-3). Where the information sought is in the form of large records or where consultations have to be made before the information is released, the concerned institutions can extend the deadline for releasing information beyond seven days. However, the institution shall give a notice to that effect stating also that the applicant has the right to have the deadline extension reviewed by court (Section 6). Section 8 describes the fees payable for application for information. The fees should not exceed what it normally costs to duplicate documents, or transcribe them where necessary.

Section 18 gives permission for provision of only sections of a piece of information. This is allowed if some sections of the information are exempted by the Act. The public institution is permitted, under such circumstances, to release only the sections that are not exempted.

b. Duties of Public Agencies or Institutions

The Nigerian Freedom of Information Act places extensive duties on public agencies or institutions. These duties can be summed up in four categories: keeping, maintaining and making information available; updating information regularly; training officials on the Freedom of Information Act, and submission of an annual report to the Attorney-General of the Federation. The various sections of the Act outlining these duties are Sections 2, 9, 13 and 29.

Keeping, Maintaining and Making Information Available: Section 2 (1) and (2) as well as Section 9 (1) and (2) require the public institution to record and keep information about its activities, operations and businesses, and to organize and maintain such information in a manner that facilitates public access. Subsection 4 of the same Section 2 requires the public institution to ensure wide dissemination and availability of such information through various electronic and print means.

Updating Information Regularly: In addition to keeping and making information available, a public institution must also update its information periodically and whenever changes occur (Section 2,5). The categories of information which should be maintained and regularly published are listed in Section 2: 3, a-f. They are a description of the organization and its responsibilities including details of its programs and functions of each division; an index of records under its control as well as manuals used by employees. They also include a description of documents containing final opinions including concurring and dissenting opinions and orders made in adjudicating cases.

Also included are documents containing substantive rules of the institution, statements of the institution's policy, final planning policies and recommendations, all kinds of reports including reports of studies by or for the institution. The list also includes information relating to receipt or expenditure of public funds; names, salaries and date of employment of employees; rights of the state, public institutions or of any private persons, and names of every official and final records of voting in all proceedings. Also included are files containing contract applications, permits, grants, licenses or agreements; reports, title and addresses of the

appropriate officer of the institution to whom an application for information under the FOI Act should be made.

Training of Public Officials: According to Section 13 of the Act, public agencies and institutions are expected to train their personnel on the provisions of the Freedom of Information Act. This is to facilitate the effective implementation of the Act. Such training should also include creating awareness of the public's right of access to information and the role of the institution.

Submission of Annual Reports to the Attorney-General of the Federation: Section 29 requires that on or before February 1 every year, each public institution shall submit an annual report to the Attorney-General. The report must include records of all applications for information that were made to the institution as well as records of applications granted or refused; the number of appeals made by persons under the Act; a description of the decisions of the courts regarding appeals made when the institutions refused applications. The report must also state the number of pending applications, the amount of fees collected as payment for applications and the number of full-time staff of the institution devoted to providing application for information (Ayobami, 2011).

c. When access to information should be denied

Sections 11, 12, 14, 15, 16, 17, 19 and 26 state circumstances under which access to information can be denied. A public institution may deny an application for information if the disclosure of such information may be injurious to the conduct of international affairs and the defence of the country (Section 11) or if the information is personal (Section 14). Personal information includes such information as pertaining to clients, patients, residents, personnel files and information revealing identity of persons who file complaints with or provide information to administrative, investigative, law enforcement and penal agencies on the commission of any crime.

Information can also be denied if it contains records being compiled by any public institution for law enforcement and investigation (Section 12). If the disclosure of certain records can interfere with enforcement proceedings or obstruct an ongoing criminal investigation, or is injurious to the security of penal institutions, such information should not be disclosed.

According to Section 15, trade secrets, financial or commercial information obtained from a person or business, proposals and bids for any contract, grants, or agreement whose

disclosure can give undue advantage to a party in the agreement or bid, and certain other third party information may not be disclosed by a public institution. Major conditions that apply here include the likelihood that the disclosure might cause harm to the interests of the third party; or might interfere with contractual or other negotiations of a third party; or may frustrate procurement or give advantage to any person.

Exempted information also includes professional or other privileges conferred by law such as health worker-patient privilege, journalism confidentiality privileges, legal practitioner-client privileges (Section 16), as well as course or research materials prepared by faculty members of an academic institution (Section 17).

Application may also be denied if made for the disclosure of tests questions, scoring keys and other examination data, architects' and engineers' plans for buildings (if such disclosure is likely to compromise security) and library circulation and other records capable of linking library users with specific materials (Section 19). Materials ready for publishing or made available for purchase by the public, library or museum materials acquired solely for reference or exhibition, materials placed in the national library or museum by persons or organizations other than the government or public institution are all exempted from being disclosed or handed over to an applicant (Section 26). However, if the public interest in disclosing the information outweighs whatever injury the disclosure is likely to cause, the information should be disclosed. This condition applies to all kinds of exempted information (Section 12: 2).

d. When access to information is refused

Section 7 of the Act states that where access to information is refused, the public institution refusing the access shall give notice of the refusal in writing. The notice should contain grounds for refusal and cite relevant sections of the Act. The notice is also to state the names and designation, and carry the signature of the official(s) responsible for the denial. Where the case of wrongful denial is established, the defaulting officer(s) or institution is deemed to have committed an offence and is, on conviction, liable to a fine of five hundred thousand naira (N500, 000. 00) which is about US$3,200. It is a criminal offence to willfully destroy records or to falsify or doctor them before releasing them to applicants. The offence carries a minimum penalty of one year imprisonment.

e. Judicial review of refusal

Sections 20-25 discuss judicial review of denial of access to information. Within thirty days after a public institution has (or is deemed to have) refused access to information, an applicant may apply to the Court for a review of the matter (Section 20) and the Court shall hear and determine the case summarily (Section 21).In the course of the proceeding, the Court itself may ask for and examine any information to which the Act applies that is under the control of a public institution (Section 22).

However, the court should take precaution to avoid the disclosure of any information on the basis of which the public institution will be authorized to disclose the information being applied for (Section 23). The burden of proof that the public institution is authorized to deny access to the particular information sought lies with the public institution. This applies to any proceeding arising from an application (Section 24).

The Court shall order a public institution to disclose the information or part of it if the Court finds out that the institution is not authorized to deny access to such information or, even when so authorized, the institution does not have reasonable grounds on which to deny access. The Court shall do the same if it determines that the public interest in disclosing the information is more important and more vital than the interest being served if the application is denied (Section 25).

f. Protection of public officials

According to Section 27, public officials who disclose information in accordance with this Act are not to be prosecuted, much less punished, for doing so. In this Section, the Freedom of Information Act clearly ousts the powers of the Official Secrets Act and the Criminal Code (operational in the southern states) and the Penal Code (operational in northern states). In its Section 27, 1, the FOI Act states: Notwithstanding anything contained in the Criminal Code, Penal Code, the Official of Secrets Act, or any other enactment, no civil or criminal proceedings shall lie against an officer of any public institution, or against any person acting on behalf of a public institution, and no proceedings shall lie against such persons thereof, for the disclosure in good faith of any information, or any part thereof pursuant to this Bill, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Bill, if care is taken to give the required notice. As if to make “assurance doubly sure”, subsection 2 of the same Section 27 repeats: Nothing contained in the Criminal Code or the Official Secrets Act

shall prejudicially affect any public officer who, without authorization discloses to any person, any information which he reasonably believes to show –

(a) A violation of any law, rule or regulation;

(b) Mismanagement, gross waste of funds, fraud, and abuse of authority; or,

(c) A substantial and specific danger to public health or safety notwithstanding that such information was not disclosed pursuant to the provision of this Bill.

It does not matter what the consequences of that disclosure happen to be. Anyone receiving the information or further disclosing it shall also not be liable to prosecution. Section 30 of the Act declares the status of the Act in relation to existing procedures for making public records and information available to citizens. It describes such status as complementary rather than supplantive. Section 31 is interpretation while 32 is citation.

6.2. The Strengths of the Act

The Nigerian Freedom of Information Act is a comprehensive Act. Right from the start, it makes it clear that it is not a media law meant to empower only journalists, but a law meant for all Nigerians. All through the years that it took to pass the bill into law, the misconception that the law was meant to benefit journalists was strong and accounted for opposition from many legislators, some of whom were already displeased by their image in the media. Section 1, 1 establishes "the right of any person to access or request information" whether they be journalists or schoolchildren.

The law also opens up access for information and yet protects certain kinds of information. The circumference of what should be known by citizens is much wider under this law but also the circumference of what should not be known by the public is clearly marked. Information that has to do with the conduct of international affairs and defence of the country may not be made available to an applicant. Matters of security and some kinds of proceedings are also exempted from disclosure. The Act also protects personal information thereby guaranteeing citizens' privacy. Contrary to fears expressed by many (Ameh, 2010), the Act is not a no-holds-barred Act. This no-holds-barred allegation was the major reason cited by Chief Olusegun Obasanjo for not signing the bill into law in 2007. It appears now that his allegation was largely unfounded.

The Act empowers officials to disclose information and protects them from being punished for doing that. The Official Secrets Act, the Criminal Code and the Penal Code

prescribe heavy penalty for officials who disclose official secrets. The Freedom of Information Act spreads a thick protection over such officials who disclose in "good faith" official information even "without authorisation" (Section 27, 1), and Explanatory Memorandum of the Freedom of Information Act). By doing this, the proponents of the bill showed a deep understanding of the civil service culture in Nigeria (Ayobami, 2011).

Civil servants in Nigeria have been described as the most secretive and fearful of all categories of workers cringing under fear of sanctions that accompany disclosure of official information. Many, it has been alleged, have also found a hiding place in provisions of such legislations that forbid disclosure and have labeled even apparently innocuous files as "Secret" or "Classified" (Idowu, 2011). A proper application of the Freedom of Information law holds the possibility of ending this practice.

The Act also protects professionals whose professions forbid disclosure of certain kinds of information. These include legal practitioners, health workers and journalists. Fear had been expressed that the Act would be used to compel journalists to disclose their sources of information. If the Act allowed that to happen, it would have done more harm to journalism than good. The Nigerian Freedom of Information Act has all the signs of a law that will serve everyone including the disadvantaged. A demonstration of this is the low fee that has to be paid for obtaining information. The fee is just whatever it costs to make photocopies of the required document (Ayobami, 2011).

Photocopying is quite cheap in Nigeria. On most Nigerian campuses, it costs about N3.00 to photocopy a page. Elsewhere in the country, it costs about N20.00 to do the same. The least paid employee of the Federal Government earns about N18,000 monthly (about US$120). It appears reasonable to conclude that paying for the photocopy of, say, a ten-page document (at most N200, about US$15) should be affordable to the average Nigerian. Again, the proponents of the bill showed their understanding of livelihood in Nigeria. If the cost were fixed or made higher, it would be a good reason for most people not to demand information, or for corrupt officials to demand a bribe and release the information at a lower rate.

Another demonstration of the bill's consideration of everyone is its special provision for illiterate and disabled Nigerians. These categories of people also deserve access to public information. They can demand information through a third party, and the public official in charge is to reduce their request to writing (Section 3, 3). Given the level of literacy in Nigeria

which has been put at as low as 57.9% for adults or 76.3% for youth (National Bureau of Statistics, 2010), not including a provision like this in the Act would have excluded many citizens from benefiting from the Act.

The Act is also capable of making information available even before it is solicited, so that requesting information becomes unnecessary. Annually, public institutions are expected to declare a wide range of information, including information on income and expenditure of public funds. This is to be submitted to the Attorney-General who then makes it available to the public in print and electronic forms (Section 29) (Ayobami, 2011).

A major area where the Act is expected to make an impact is in the fight against corruption (The Guardian Editorial, 2008b; Chukwuezam, 2011). The Act compels public institutions to disclose details of their expenditures including contracts executed, salaries and emoluments of employees. The Act also protects whistleblowers who want to call public attention to corrupt practices by public officials in their places of work. Investigative journalists bent on fighting corruption will have more ready allies in these whistleblowers.

6.3. Evidence of the Deployment of the Provisions of the Act

Widespread deployment of the provisions of the Act followed its passage into law. In June, 2011, an organization known as the Social and Economic Rights Accountability Project (SERAP), citing the relevant sections of the Act, approached the governors of Enugu, Kaduna, Rivers and Oyo States demanding details of budget allocation and expenditure of their Universal Basic Education Commissions (UBEC), since 2005. When, two months after, the information was not supplied, the organization approached the courts citing the appropriate sections of the FOI law (Abdulah, 2011).

On August 17, 2011, the Legal Defence and Assistance Project (LEDAP), citing the FOI Act, dragged to court the accountants general of the 36 states of the federation, as well as the Auditor General of Kwara State, for refusing to make available to it details of security votes allocated and released to the states from 2007 to 2011 (Maduabuchi, 2011). This was after the organization had allowed the waiting time to lapse.

In August, 2011, another organization, the Nigeria Association for the Care and Resettlement of Offenders (NACRO), citing the FOI Act, approached the Ogun State government for information on the concessioning of government-owned Gateway Hotels

(Gyamfi, 2011). The Hotels were said to have been concessioned by the immediate past governor of the state.

On August 19, 2011, Eddie Williams, editor of The Envoy, a weekly newspaper in Port Harcourt, Rivers State, approached the Deputy Governor of Rivers State asking for all the relevant files on the activities of the Media and Publicity Sub-Committee of the National Sports Festival which had just concluded the year's national sports festival (AkanimoReports, 2011). The Deputy Governor was the chairman of the Local Organizing Committee of the event. Eddie Williams said his request was "by virtue of the provision of Section 2 of the Freedom of Information (FOI) Act, 2011".

On September 26, 2011, SERAP, "under the Freedom of Information Act," approached the Accountant-General of the Federation, asking for details of how money recovered from former military leaders and their allies was spent from 1999 to 2011. It asked him to "provide within 14 days information on the spending of recovered stolen public assets since the return of civil rule in 1999, and to publish widely the information on a dedicated website" (Omoniyi, 2011, online).

It is noteworthy that, judging by the events following the passage of the FOI Act, journalists are not at the forefront of the application of the Act. Rather, it is non-governmental organizations that are deploying the Act. A recent report shows that journalists are [still] getting "set to test the Act" (Next, 2011). It is also noteworthy that all the deployments have to do with resource allocations and suspected acts of corruption. There is no instance of the law being applied to human rights and other aspects of governance where the law has potentials.

Other related issues that led to the deployment of the act include: the Stella Uduah Gate, Subsidy funds scandal, NNPC case with CBN, etc.

6.4. Challenges for the implementation of the Freedom of Information Act

In spite of the foregoing widespread application of the Act, Ayobami (2011) observes that it is too early to judge the effectiveness of the Nigerian Freedom of Information Act. The following challenges are therefore envisage in the implementation of the Act.

First of these is the challenge of consensual interpretation of the slimy but important concepts that appear in the Act. One of such concepts is "public interest". In the Act, nearly everything depends on or revolves around "public interest". For example, even defence information as well as information on the conduct of government affairs can be divulged if the

"public interest outweighs whatever injury that disclosure would cause" (Section 11 (2)). Similar weight is given to "public interest" in Sections 12 (2); 14 (3); 15 (4) and 19 (2). Yet this is a concept that is difficult, if not impossible, to define. What is public interest? Whose definition of public interest is the definition? How do we weigh public interest in a case in order to compare it with "injury that disclosure would cause"? These and other questions are matters for the Court.

The second envisaged inhibition to the full deployment of the Freedom of Information is the lack of a supervisory body to coordinate the implementation of the legislation. Unlike other pieces of legislation such as the anti-corruption law that established the Economic and Financial Crimes Commission (EFCC), the Freedom of Information Act does not make provision for the establishment of a coordinating body. The implication of this is that civil society has to remain vigilant and active in ensuring that the law remains effective.

Connected to the absence of a supervisory body is the need for litigation support for Nigerians. Many Nigerians will simply walk away if their information requests are turned down rather than call a lawyer. Cost of litigation is, in the views of many, high and better avoided. Human rights lawyers and citizens' rights organizations must plan to offer free or subsidized legal services for Nigerians who are too poor to pay for them.

The Act places tremendous responsibilities on public institutions. It seems that each institution must create an FOI desk or office with officials designated to handle FOI matters. Funds will also have to be set aside for processing FOI-related reports, and hiring legal experts to advice about applications for information and represent the institution in the Court where proceedings ensue. This has budget implications for government agencies and ministries, some of which already complain of underfunding.

Finally, some legal tussle may need to occur for the jurisdiction of the Act to be firmly established. It is unclear whether the FOI law, a federal instrument, is binding on other tiers of government without separate domestications of the law by those tiers. Opinions are divided between those who argue that the states (second-tier of government) must domesticate the law (i.e. enact it into their own statutes) before its provisions can apply to them, and those who insist that the law covers all public institutions in all tiers of government. Ogun state government (south-west Nigeria) belongs in the former group. In responding to the request for information by NACRO, the Commissioner for Justice of Ogun State claimed that the organization could not invoke the FOI law because it was yet to be domesticated in the state (Gyamfi, 2011). A key

voice in the latter group is Richard Akinjide, a senior lawyer and former Justice Minister, who argued that under the "doctrine of covering the field"; the FOI law was enacted by the federal government is binding on all the 36 states and the Federal Capital Territory, Abuja (The Guardian, June 22, 2011, p. 6). A court decision may be required to put this issue to rest.

7.1. REVIEW OF EMPIRICAL WORKS

Adum and Ekwenchi (2011) conducted research on "The Nigerian Media in the Context of Constitutionality and Democracy: A case of Freedom of Information Act". The methodology used was survey design. Finding from the study reveal that individual and collective rights are usually guaranteed in a democracy, albeit within the ambit of the constitution. Democracy allows for freedom of speech. But this does not include freedom to slander. There is always the limit between privilege and abuse. There is therefore a maze of legality and constitutionality that must be delicately navigated as the Nigerian media face up to their avowed obligation of monitoring governance and letting the people know. The study concludes that though the Nigerian media has had varying degrees of freedom occasioned by the enthronement of democratic principles since 1999, it still appears hamstrung by constitutionality which doesn't give it the leeway to effectively exercise its watchdog role in the society.

Matumaini (2011) conducted a research on the state of media freedom in Tanzania. Both survey research and content analysis were used in carrying out the study. Findings reveal that although the constitution of Tanzania provides a foundation for the protection of freedom of expression in the media, in fact, Tanzania has a series of laws that are continually invoked to punish critics of the fifty-year-old hegemony of the CCM government. The courts and parliament are fundamentally hostile to journalistic freedom. Although institutions such as the Media Institute of Southern Africa in Tanzania are monitoring the violations of media freedom and making some efforts to enable journalists and media houses to defend themselves against the corruption spreading out of governmental circles, what is needed is a coordinated, consistent, long-term effort to monitor the *deeper causes* of the violations of media freedom. The study recommended that there must be a coherent, agreed-upon set of concepts and concrete guidelines for improving media freedom, involving the legal profession and institutions doing research on the development of democratic governmental institutions.

In their study, Mhagama and Kanyang'wa (2011) assessed the state of media freedom in Malawi by drawing on concrete examples of violations that have undermined the commitment to the universal declaration of human rights, the very principles to which the country is a signatory. Their study also analyses the violations of the set of principles found in the constitution and other government declarations. Both survey and content analysis were used as research designs. The study shows that Malawi has developed and adopted some key policy and legislative instruments for the promotion of media freedom. However, colonial and post-colonial legal instruments, especially laws enacted during the

one-party system of government, continue to be damaging negative limitations on media freedom. This has prompted an outcry from various media organizations, religious groups, civil society organizations and international human rights bodies. The study calls for a removal of such provisions in the constitution that impede on media freedom in the country.

8.1. Conclusion and Recommendation

The journey for the freedom of information act started far but has reached to its destination after much struggle and efforts by different civil society groups including the media. The Freedom of Information Act is a legal extension of the constitutional provisions on freedom of expression designed partly to give practical expression to that provision. It is an act for accessing public information to service the people's right to know. The act is very crucial with the following reasons: (A) Bring to the public arena the activities, documents, policies and other decisions of public officials; promoting public access to certain kinds of information, to keep people abreast of what public officials, governmental institutions, firms and other organisations are doing. (B) Create conditions for people to use that information to make important contributions to the democratic process on the basis of understanding of how democratic institutions (and private organisations) work. (C) Engender a culture of probity and transparency for enhanced societal development on democratic principles and practice. (D) Eliminate dictatorial tendencies and unnecessary secrecy in running a democratic government, by holding public officials to their oaths of office. (E) Strengthen the institutions and agencies for ensuring and promoting probity, transparency and accountability.

To achieve the desired objectives of the act, the media must really work independent of the government control as the advocated by the act. In doing so the media must be truthful in reporting activities of the government to the people for public scrutiny.

The government in her part must create an enabling environment for journalists to practice as the act advocated. Public office holders must grant journalist access to public documents to help the public member know what is happening in the government.

A strong regulatory body should be set aside to help ensure the effective implementation of the act, and ensure that offenders of the act have not gone unpunished.

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