

## **Freedom of Information and Nigerian Democracy: Issues and Challenges**

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### **Abstract**

*Freedom of information and Democracy are interrelated. This is because a democratic society portrays freedom for the people where government policies are brought in the open for the people to make their own input. The press as the fourth estate of the realm prosecutes transparency in government policies. The passage of FOI law in Nigeria in 2011 signaled the consolidation of our democracy. Though faced by enormous challenge ranging from official secrecy act, out of secrecy, poor record keeping and archive management, poor monitoring and evaluation of the implementations and the threat to our national security by the Boko Haram constitutes challenges to FOI law. Recommendations were made to ensure the success of FOI law in Nigeria.*

### **Introduction**

Freedom of information is the law that guarantees access by the general public to data held by its government. They establish a “right-to-know” legal process by which request may be made for government-held information, to be received freely or at minimal cost, barring standard exceptions. In developed countries like the U.S.A. freedom of information is also known as “sunshine law” where the government is typically bound as a duty to publish and promote openness in government dealings.

Ackerman and Sandoval Ballsteros (2006) sees freedom of information as that laws that give citizens, other residents and interested parties the right to access documents/Information held by the government without being obliged to demonstrate any legal interest.

Freedom of information laws are designed to guarantee government transparency where individuals or civil society group request for information or records from government bodies and government agencies are obliged to respond to the request. According to Wikipedia definition, freedom of information are the laws that guarantee access by the general public to data held by the government “the right to know” a legal process by which request may be made for government held Information, to be received freely or at minimal cost, barring standard exceptions. The government is also typically bound by a duty to publish and promote openness and transparency in their dealing. This openness is essential features of democratic culture which enhances the economic and social conditions of the people. In the present age, democracy has taken root in so many countries and those without democratic leadership are looked upon as operating like people in dark ages.

The concept of democracy can also be viewed from different perspective. The Webster encyclopedia dictionary defined democracy as “a theory of government which in its purest form, holds that the state should be controlled by all the people, each sharing equally in privileges, duties and responsibilities and each participating in person in government, as in city – state of ancient Greece. In practice, control is vested on elective officers as representatives who may be upheld or removed by the people. While Kpolo (2008) sees democracy as a form of government or political administration of an enviable practice that ensure equity, fair play and social justice in any community, state or region where it is been practiced in its strict sense. Therefore, democracy can be said to be a system of government that was propelled or determined by the majority of the people or inhabitant of a given society. Democracy and freedom of information are interrelated. This is because a democratic society portrays freedom for the people where government policies are brought in the open for the people to make their own input. In Nigeria, the agitation for freedom of information has been a recurrent issues and the Nigerian press has been in the fore-front of this agitation. The press as the fourth estate of the realm prosecutes transparency in government policies.

The historical development of the Nigeria press commenced with the printing media on 3<sup>rd</sup> December, 1859 by a Christian missionary named Reverend Henry Townsend who established the first newspaper in Nigeria called “Iwe Iroyin fun awon Egba ati Yoruba” which literally means “A newspaper for the Egba and Yoruba nations” (Aro, 2011). This was with a view to make information accessible to the people. The

establishment of the newspaper left an indelible footprint as far as political history of Nigeria is concerned. The demise of “Iwe Iroyin” later resulted to the emergence of other newspapers like: Anglo-African, Lagos time and Gold Coast Advertiser, Lagos Observers, the Nigerian Chronicle, The West African pilot and Nigerian Tribune (Abati, 1998). The era not only resulted to the emergence of newspapers in Nigeria but also gave birth to vibrant journalists in both print and electronic media who made judicious use of the information at their disposals to fight colonialist under the Nationalist struggle which gradually led to Nigeria Independence in 1960. This vibrant press has placed freedom of the press in the front role in Nigeria political arena since then. Corroborating this, Kukah (1999) argued that journalism was the major vehicle through which the anti-colonial struggle in Nigeria was carried out. Many of our nationalist leaders were newspaper publishers, journalists, commentators and or editors.

After the independence, Nigeria press at this stage of political development continued to play the roles which appeared as threats to the selfish desires of some government officials who intended to monopolize and control the public space in order to achieve their objectives. The major setback to press freedom after the independence was in 1966 under Ironsi’s administration. (Jakande, 1974). The administration enacted a law which stipulated jail sentence for any journalist that publishes any information that was against the interest of the government. This was followed by the law enacted under Gowon’s administration which empowered the Inspector General of the Police to search media houses with or without notice, arrest and detain the proprietor whose media outfit has published something against any government officials (Aro, 2011).

Several decrees and edict where promulgated by the military in subsequent regimes to prohibit freedom of information that resulted to the assassination of the editor-in-chief of Newswatch magazine Mr. Dele Giwa in October 1986 via a parcel bomb (Media Right Agenda, 2008). The clamour for freedom of information in Nigerian started during the colonial era after Herbert Marculey published some thing against the British government in Africa that lead to the arrest and detention of the Nationalist leader.( Jakande, 1974) and In 1993 the clamour for the Freedom of Information (FoI) act was intensified by three NGOs – Media Right Agenda, Civil Liberty Organization (CLO) and the Nigerian Union of Journalist (NUJ) when they started working together to campaign for the enactment of a FOI law, producing the first draft law in 1994 (Media Right Agenda 2003). Despite a series of workshops with other civil society groups and subsequent draft laws, the campaign was unable to make any progress under the Abacha military regime. The executive director of the Civil Liberty Organisation was among those jailed by the Abacha regime (Obe, 2007).

Work on the issue began again during the transition period following Abacha’s 1998 death. In March 1999, Media Rights Agenda joined with the Nigerian National human rights Commission and the International NGOs to hold a conference attended by members of domestic and international NGOs, United Nations representatives, and even some Nigerian politicians. The workshop produced a consensus document and new changes to the draft law, and this resulted in a new campaign to pressure newly-elected president Obasanjo to present the law to the National Assembly (media Rights Agenda 2003). The election of Obasanjo initially offered extremely optimistic signs for the FoI advocacy movement. Although he had previously served as military head of state in the late 1970s and had gone on to speak out against Abacha regime’s human rights abuses, and even served on the board of the international anti-corruption NGO transparency international, Obasanjo, frustrated all efforts to pass the bill during his regime.

In his May 29, 1999 inaugural address, Obasanjo pledged to make the eradication of corruption a cornerstone of his administration, calling corruption “the greatest single bane of our society today” and pledging that “all rules and regulation designed to help honesty and transparency in dealing with government will be restored and enforced” (media Rights Agenda 2003, Obe 2007). While the draft legislation was ultimately introduced by individual legislators later in 1999, it took almost five years for the law to be approved by the House of Representatives and two more years to be approved by the Senate,

during which time it was inter-militantly criticized by Obasanjo. The two versions were finally harmonized and sent to president Obasanjo for his signature in February 2007, shortly before the end of his final term in office. Obasanjo not only refused to sign the bill, citing unspecified concerns over national security, but also refused to return it to the legislature, meaning that the bill lapsed when the legislative term ended (Berliner 2012).

Obasanjo's chosen successor, Umaru Yar'Adua, was elected in April 2007 in elections that were marked by violence and widely considered fraudulent. While the FOI law was re-submitted to both houses of the National Assembly delays continued, with legislators often refusing to hear reports on the bill and frequent attempts to water down its language. This pattern of delay, legislative opposition, and absence of executive leadership on the issue persisted following Yar'Adua's May 2010 death and succession by his vice president Goodluck Jonathan. Beginning in January 2011, however, legislative action on the FOI law surprisingly resumed, and president Jonathan vowed to veto it as had Obasanjo in 2007. the law passed by the house of representatives on February 24 and the Senate on March 16 while a harmonized version was passed by both houses on May 24<sup>th</sup> 2011. The President signed the bill into law on May 28<sup>th</sup> 2011. the transformation of the act into law after so many years of delay could be attributed to numerous proximate factors such as civil society advocacy, and international pressure for the Nigerian government to pass the law.

Nigeria became the fifth African nation to adopt this crucial piece of legislation after South Africa, Uganda, Ethiopia and Liberia. According to the Open society justice initiative 2011, this marks a breakthrough in Nigerian democracy as highlighted by the reaction of the FOI community worldwide, they went further to describe it as a "Victory for democracy, justice and development" the African freedom of information center (AFIC) also reacted positively to the passage of the bill stating that FOI is not an end itself but a means to an end. Media right Agenda (2011)

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The return of democracy in Nigeria towards the end of 20<sup>th</sup> century means that the country would join the international community with democratic value in the new century. Evidently any country that really wants to practice democracy would need to address issues that are detrimental to the welfare and human rights of the citizens. That was why FOI law was very crucial at that point in time.

In line with this, Madichie (2011) acknowledged that the premises of FOI law is to promote open and democratic government in Nigeria through advocacy for public access to information, participation in governance and vocal partnership with diverse constituency, grassroots, civil society group and government institution. In another development, Sebina (2005) examined access to information and their enabling legislation and identified those FOI law present challenges, prospects and opportunities for record managers. In the opinion of Sebina "Constitutional guarantees of access to information would be fruitless where good quality records are not created, where access to them is difficult, and where procedures are lacking on records disposal". In the same vein, Hazzel, et al (2011) examined the benefits, limitations and difficulty of the FOI act brought in by the Tony Blair's Administration for Britain in 2000.

Though FoI has a lot of benefits, the challenges facing the successful implementation are great. Ajulo (2011) has pointed out that the FoI law in Nigeria faces the challenges of official secrecy. This secrecy is also strengthened by other legislations and acts that tend to hinder the freedom to obtain information when required due to state functions. Coker (2011) examined the FoI law with its effect on record keeping in public services in Nigeria. He maintained that FOI law better protects the public servant from prosecution especially with regards to dissemination of required information to the public. Ojo (2010) explored the FoI act as it affects media practitioners and information scientist the paper submitted that FoI has placed a greater responsibility on journalist and librarians especially to access and make public necessary information to the general public.

The issue of freedom of information law is to enhance in building up a corrupt free society. According to Elumoye (2012) argued that “certain clauses in the Nigeria’s statutes book that might constitute impediments to the operationalization of the act”. He further stated that in spite of the fact that “the act offers a broader window of opportunity to practice undeterred journalism. Many Nigerians are still encountering difficulties in accessing public records and information. Reason for this, he said could be attributed to the existence of the official secret act and the oath of secrecy.

Ordinarily the law (FoI Act) should make public records and information freely available, but for the official secret Act which prevents public officers from disclosing certain kinds of information. Virtually all government files in Nigeria are marked ‘classified’ or top secret. This makes it difficult to get information from any parastatal of government. Ihejirika (2012) submitted that expectations were high before the passage of the bill as to what the country stands to benefit from enacting the freedom of information Act, today almost one year down the lane, we need to ask ourselves frankly whether the FoI act has been effectively implemented in achieving the very purpose it sets out to achieve? While Ossai-Ugbah (2012) on her own opined that librarians and libraries in Nigeria has a role to play in FoI law by collecting, collating, processing and preserve certain information from the government and institutions in the libraries with a view to enable the general public have an undeterred access to such information. Since the FoI law aims to make public records and information more freely available, and to protect public records and information in accordance with the public interest and protection of personal privacy. Odigwe (2011) says that the libraries and librarians should use the FOI law to strengthen the legal deposit law in Nigeria to ensure that information from the government are published and deposited to the depository library for easy access, since Nigerians are faced with the problems of record management.

Onah (2011) x-rayed the benefit of FOI law in Nigeria in economic perspective stating that it will accord the people the right to actively participate in the decision-making process (i.e) budget monitoring and implementation as well as contract awards by the government. From this it is worthy to note that the law will give a Nigerian populace opportunity to ask questions in day to day activities of the government. FoI law if well implemented this will help in the federal government anti-corruption crusade since the provision of the law empowers civil society group, opposition political party and the general public access to official documents of the government.

According to Obe (2011) another major issue in the implementation FOI law is embedded in two other bills yet to be passed by government. They include openness in government bill as well as ethics in government bill, both of which would make the implementation of FoI law easier, especially in ensuring that government and its official complies with the law.

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Regardless of a remarkable trend towards adoption of freedom of information law worldwide. Alabi (2012) says that it does not automatically translate into the fulfillment of peoples’ right to information unless it is well implemented. Therefore, there are so many challenges facing FoI law in Nigeria as contained in section 32 of the law which states “All records, documents and information must be made available on demand to the members of the general public within seven days of such request.

However, government agencies and parastatal in Nigeria face varying degrees of challenges in the ability to provide access to information resources as demanded by FoI law due to such issues as poor record keeping, poor archive management and lack of human capacity that will keep the appropriate records from their agencies

Another major challenge facing the FoI law in Nigeria is the existence of other statute or acts that has empowered the official to maintain secrecy using one clause or the other. Ossai-Ugbah (2012) further stated that the restrictions as contained in the evidence Act, the public complaints commission Act, the statistics Act, and the criminal code Act are the major challenges facing the execution of FoI law in Nigeria as it is difficult to ensure that the ordinary people have a fair knowledge of these laws, the

procedures and conditions outlined in them, the remedies available in the event of denial of access to information and this makes government officials sit on information that will benefit millions of Nigerians.

More than a year after the enactment of FoI law, not much has changed, to date, there is no successful request for information to any significant government agency has been reported. Due to the official secret act and the oath of secrecy acts that have been in place for the past two decades (The Nigeria Guide of Editors, 2012). The daily trust has moved to test the efficacy of the FoI law in Jan 29 2012 by requesting the Nigerian National petroleum corporation (NNPC) to provide it with information about its recruitment policy, NNPC in a letter to the newspaper went as far as stating that it was not bound by the FoI law while NNPC has been facing serious allegations of corruption and bad management practices. Defending their action Madichie (2012) quoted some aspect of some official secret act and oath of secrecy and stated we are not bound by FoI law to make public our recruitment pattern.

Another major challenge facing the implementation of the freedom of information laws in Nigeria is lack of commitment to its full implementation by the Government, as they pay lip service to FoI laws. At present, no committee has been inaugurated to monitor its implementation, as well as punish defaulters of the law. Since August 2011 the attorney general of the Federation forwarded the guidelines to all ministries, agencies and parastatals for onward implementation (Obe, 2011).

The Challenges of classified information is facing FoI law as some government information are termed classified due to the security challenge facing the Nation in the recent past following the Boko Haram insurgency.

### **Conclusion**

The framework of freedom of information law in Nigeria has the capacity to strengthen Nigerians democracy and ensure active participation of the populace in governance. The law is faced by so many challenges that make it counter productive such as implementation or enforcement, the oath of secrecy or official secret act and other loopholes of the law that make its full implementation very difficult.

Over one year of its passage into law, there has been no evidence for the trial of defaulters of this FOI law in the country even when some journalist and civil society group has been denied access to government information, e.g the daily trust that requested the official information of NNPC recruitment policy that hits the brick wall earlier this year. Monitoring and evaluation of the level of implementation is not yet in process.

### **Recommendations**

Based on enormous challenges facing freedom of information law in Nigeria as averred by Coker (2011) in relation to human capital development, the following recommendations were made:

1. There should be workshop and seminars to sensitize the general public on the premises of the FOI law
2. There is need for inter-sectional collaboration between the government, non-governmental Organisation and civil society group to ensure full implementation of the law in Nigeria.
3. Librarians and libraries should be integrated in Nigeria public services to ensure proper record keeping or Archive management and ensure that the information contained are accessible.
4. The Nigerian press should ensure that the information released by the public officer not only favoured them but for the interest and good for all Nigerians.

According to Fashola (2011) it is obvious there are certain lapses in the act or law, such lapses should be corrected by the states while domesticating the act and should not be cashed in by some unscrupulous element in the society to make the law unworkable.

5. The Attorney General of the federation should set up a committee to monitor the implementation of freedom of information law as well as punish or penalize defaulter of the law.
6. The federal civil service commission should organize training and re-training of staff on record keeping and record management.
7. The Constitution of Federal Republic of Nigeria should also be amended to integrate the clauses that can guarantee access to public information and subdue the official secret act and other act hindering FOI laws.
8. Defaulters of FOI law should be prosecuted especially with the regard to dissemination of required information to the public.
9. The National Assembly should work to repeal the official secret act and the oath of secrecy to ensure a soft landing for FOI law.
10. Librarians and libraries should also make sure that both government and other publishing houses adhere strictly to the legal deposit laws that are in existence in Nigeria.

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