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Nigeria's freedom of information act: Provisions, strengths, challenges

By Ayobami Ojebode

Abstract

It took well over ten years to pass the Freedom of Information bill into law in Nigeria. It also took the bill three journeys to the National Assembly. This article connects the reluctance of the concerned authorities to pass the bill to the age-long struggle in Nigeria (and elsewhere) between the press, citizens and civil society on the one hand and the government on the other, with the former trying to widen the circumference of government activities that should be made public and the latter trying to shrink the same. The article traces the journeys of the FOI Act, and examines its provisions, first attempts at applying it and the challenges to its full implementation.

Key words: Freedom Of Information Act (FOI), FOI coalition, Nigeria, Nigerian press, Nigerian mass media

Introduction:

The antecedents

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 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

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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; Adebawwi, 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; Adebawwi, 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.

The journeys of the Freedom of Information Act

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 (See for instance, *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, Mr David Mark, was quoted as saying that passing the bill would amount to mere surplussage 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).

This short article presents an overview of the provisions of the Freedom of Information Act, and discusses what are considered to be the potential challenges to the full implementation of the law.

The five-fold goal of the FOI Act

The explanatory memorandum that opens the Freedom of Information Act sets five objectives of the Act thus:

- i. make information more freely available;
- ii. provide for public access to public records and information;

- iii. protect public records and information to the extent consistent with public interest and protection of personal privacy;
- iv. protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization; and
- v. establish procedures for the achievement of those purposes.

The Freedom of Information Act has 32 sections. I have grouped the sections into seven thematic categories: establishing a freedom of information; procedure for requesting public information; duties of public agencies or institutions; when access to information should be denied; what to do when access to information is refused; judicial review of refusal; and protection of public officials. In some categories, I created thematic subcategories. My intent in the next section is to provide a readable overview of the provisions of the Act shorn of all the encumbering legalese.

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.

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.

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.

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).

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 (₦500, 000. 00) which is about US\$3,200. It is a criminal offence to wilfully destroy records or to falsify or doctor them before releasing them to applicants. The offence carries a minimum penalty of one year imprisonment.

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).

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.

Observations and comments

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. 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 labelled 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. 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).

A major area where the Act is expected to make an impact is in the fight against corruption (*The Guardian* Editorial, 2008b; Chukwueze, 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.

First deployments

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.

Challenges to the implementation of the Freedom of Information Act

In spite of the foregoing widespread application of the Act, it is too early to judge the effectiveness of the Nigerian Freedom of Information Act. What I discuss here as challenges are what I reasonably envisage will be the issues to grapple with 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 advise 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 as enacted by the federal government is binding on all the 36 states and the Federal Capital Territory, Abuja. (See *The Guardian*, June 22, 2011, p. 6). A court decision may be required to put this issue to rest.

Conclusion

Notwithstanding the public attention attracted by the Act, and the care taken by the proponents of the Act to ensure its contents cater for the interest of a diverse range of Nigerians, the Nigerian Freedom of Information Act remains an elitist Act. This is not a fault of the Act; it is just the nature of Nigeria. There is a chasm between law making and governance on the one hand, and the daily concerns of the average citizen on the other. It is probable that more than half of Nigerians are unaware that a bill became law which can protect their interests. Therefore, for the Act to truly serve the poor and the illiterate, those at the lowest rung of the political and economic power, there is need for massive awareness creation.

The ordinary Nigerian with little formal education and meagre means of livelihood needs to be helped to see the importance of the Freedom of Information to his/her struggles and concerns. More Nigerian adults are literate in all languages (71.6%) than are literate in English language only (57.9%) (National Bureau of Statistics, 2010). It is therefore important to

translate the Act into as many Nigerian languages as have orthography. This will give access to the Act to many more Nigerians.

Journalists also need to be educated in order to not only use the opportunities presented by the Act maximally but to also educate their audience on the provisions of the Act and their connections to the basic desires of the audience. The Act will also need to be reviewed to remove contradictions, redundancies and more specifically pin down nebulous expressions and concepts.

(Footnotes)

¹ Nduka Irabor was a famous journalist who was jailed along with Tunde Thompson by the General M. Buhari Administration, under Decree 4 of 1984 for allegedly publishing information capable of bringing disrepute to government.

² Later, Abike Dabiri-Erewa

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