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THE NIGERIA FREEDOM OF INFORMATION LAW: PROGRESS, IMPLEMENTATION CHALLENGES AND PROSPECTS

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Abstract

Freedom of Information (FoI) refers to the right which citizens in a society are expected to have to access information held by government institutions and officials. This paper reviews the Nigeria Freedom of Information Act, 2011 and discusses the progress that has been made so far with the enactment of the law. Challenges that are confronting the implementation of the Act are highlighted while solutions are proffered to overcome these challenges. The paper also looks at the practicability of the law in relation to the current Nigerian context in terms of the understandings and attitudes of citizens and public officials to government information, and the resources available for the effective implementation of the Act.

Keywords: Freedom, information, law, Progress, Implementation, Challenges, Nigeria

Introduction

Information is the stimulus of all the thoughts and actions of living creatures. Information, in its various forms is the prerequisite for the functioning of modern society because success in every area of industry is attributed to the intelligent use of information of the appropriate types. McCreddie and Rice (1999) express that, the vacuum that is ignorance and prejudice needs to be filled with reliable information, insofar as it is possible to provide it. Moreover, information is clearly a commodity that can be generated and manipulated to produce more information and high quality information resource is a prerequisite in the drive for decision making. Hence, countries are implementing strategies and policies that enable them take advantage of the opportunities that are offered by the use of information. Among the strategies are: creating information and communication infrastructure that enables information to flow efficiently and cheaply among their citizens and organizations; developing education and training so that there is a ready supply of appropriately skilled people; supporting the development of the ICT and information content products and services sector to meet the growing demand for information.

Efficient flow, access to, and the use of information have become crucial factors in determining the economic strength of nations. Davis and Davidson (1991) state that nations would prosper or falter depending on their investment in building an information infrastructure and since human knowledge improvement presupposes information flow and sharing, the collective intellectual abilities of a nation, its human capital, will also depend on access to information (Crawford, 1991). Kuunifaa (2011) state that access to information and transparency of governance is essential to ensuring accountability and prevents corruption. Access to information and participation in a democratic society are also mutually dependent. According to Glenn (1990), information can be construed to be the "blood and oxygen" of a democratic society. Whether formalised in a constitution or understood tacitly in the minds of citizens, democracy assumes a basic consensus about its purpose and the nature of its citizenry. In a democratic society, the public is expected to have access to information not only on how they are governed, but also on anything that is of interest to the individual or group. Democracy can only function effectively only when the citizens are fully informed as to how it operates and on what principles.

Democracy is a two-way flow of information between the government and the governed and even though in theory the people govern, in practice, representatives of the governed make decisions. Birkinshaw (2010) point one characteristic of democracy which is the participatory nature of the political process, where the citizen has a right to know and access relevant information and also have their privacy protected.

The provision of information is a key element in citizenship. Citizens need detailed and accurate data and information on the activities of the government to help them contribute meaningfully to the debate on appropriate strategies for socio-economic planning, growth and development. People cannot play their full part in society without access to information. They cannot exercise their rights and claim their entitlements without information, nor can they participate fully in democratic processes. It is in this context that Doctor (1992) opines that improved access to information fuels some of the changes the society is experiencing from information-economy to “information democracy”, which he defined as a socio-political system in which all people are guaranteed the right to benefit from access to information resources.

Right to information, and particularly the right of access to information held by public authorities, has attracted a great deal of attention all over the world. The right of citizens to have access to information acquired by public agencies is founded in the ideal political principle that government should be of the people, by the people, and for the people.

Access to information, also referred to as Freedom of Information (FoI), refers to a citizen's right to access information that is held by the state. It is the ability of citizens of a country to have free access to information enabled by legislation. In many countries, this freedom is supported as a constitutional right. FoI obliges government to disclose as much as is possible about its workings. The argument behind this is that if a democracy is to function effectively, its citizens must be fully informed as to how it operates. FoI legislation is not new – Sweden enacted the law as early as 1766 and Finland in 1919. In the past decades, a record number of countries from around the world have also taken steps to enact the legislation giving effect to access right. In doing so, they join those countries that had enacted such laws some time ago, such as Sweden, United States, Finland, the Netherlands, Australia and Canada. The spread of laws providing rights to access information reflects the prevailing belief that access to information is one essential pillar in a strategy to improve governance, reduce corruption, strengthen democracy through enhanced participation and increase development (Darch and Underwood, 2010).

In this regard, there are two opposing principles or approaches to disclosure of government information. The first is that government decides both what it shall release to the public and when. This is the official secrecy tradition, where all government information is secret unless the government chooses to release it. The opposing principle is Freedom of Information (FoI), where all government information is available to the public except in those cases where the government must justify why it wishes to restrict access.

The remaining sections of this paper review literature on FoI in Nigeria. It also reviews the FoI Act in Nigeria. It highlights some of the flaws of the Act, the implementation challenges and makes suggestions on strategies that can be put in place to ensure effective and efficient implementation of the Act.

Literature Review

Traditionally, FoI has been regarded as “the touchstone of all the freedoms” (Tomasevaki 1987,

p.1), and this belief, *prima facie*, appears to be the main driving force behind the exceptional recognition that it has received. In its very first session in 1946, the UN General Assembly adopted Resolution 59 (1), stating, “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated” (United Nations Document E/CN.4/1995/32 para. 35).

The concept of FoI came forth from the basic right to Freedom of Opinion and Expression enshrined in the Universal Declaration of Human Rights (1948). The right is an important aspect of the universal guarantee of freedom of information which includes the right to seek and to receive as well as to impart information. The right is proclaimed in Article 19 of the Universal Declaration of Human Rights and protected in international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human Rights (UDHR, 1948). Article 19 of the Declaration states that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In essence, FoI is a human right guaranteed by Article 19 of the Universal Declaration of Human Rights, Article 19 (2) of the International Covenant on Civil and Political Rights, Article 9 of the African Charter on Human and Peoples’ Rights, and Article 4 of the Declaration of Principles on Freedom of Expression in Africa. In Africa, a number of regional developments and successful advocacy campaigns have encouraged the enactment of FoI (Mendel 2001a, 2001b, 2008).

FoI guarantees the right of an unhindered access to public information including information held by all federal government branches and agencies, as well as those of private institutions in which any Federal, State or Local government has controlling interest and those private institutions performing public functions. FoI means having access to government data, information, records, files, documents in any form. 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. It may also 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 (Robert, 2000; Popoola, 2003).

Sebina (2005) examines access to information and their enabling legislation and identified that FoI Acts present challenges, prospects and opportunities for records 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, some scholars, Clark (1986); Guida (1989); Hazell (1989); Frost (1999); Arogundade (2003); Wyatt (2003); Hazell & Worthy (2010). Ossai-Ugbah (2012); Anyanwu, Akanwa and Ossai-Onah (2013) have pointed out the benefits, limitations and difficulties of the FoI Act. They are of the opinion that the benefits far outweigh the costs. A major benefit of FoI law identified by them is that it facilitates open government.

Literature on the origins and implementation of FoI in Nigeria is scarce because the law is relatively new in Nigeria, passed only in 2011. However, some researchers have contributed meaningfully on the law. FoI in Nigeria was regarded as a luxury for many years. This was because a culture of secrecy had become entrenched in Nigerian government and the public was always denied access to official information. This lack of access to public information means that citizens were unable to participate in governance, make informed choices about who should

govern them, and demand for accountability from the government. Government officials also could not benefit from public input which could ease or improve their work and decision making. Inability of the people to have access to accurate and reliable information on matters of public interest results to people relying on rumours and unconfirmed reports with the obvious danger this presents for accurate and objective reporting by the media. And when citizens are denied access to salient or important information that directly relates to their daily lives, they always, through the use of rumour, create their own information. This information or these stories may be totally wrong or partially true, but in either case, they always have detrimental effects on social structures and the lives of all people. Riots, demonstrations, terrorism and killings have often arisen when official sources of information are controlled or undisclosed.

Ajulo (2011) identifies official secrecy as a challenge being faced by the FoI Act in Nigeria. This secrecy is strengthened by other legislations and Acts that tend to hinder the freedom to obtain required information. Coker (2011) contribute that the FoI Act faces enormous challenges in relation to human capital development. Odigwe (2011) examines the FoI Act with its effect on record keeping in public service in Nigeria, and maintains that FoI protects the public servant from prosecution especially with regard to dissemination of required information to the public. Ojo (2010) explores the FoI Act as it affects media practitioners and highlights the greater responsibility the Act places on the media organisations to use the FoI law to access information and publish it to the general populace.

The definition of FoI laws differs across Africa. Some countries include private organisations while some exclude them. The inclusion of private bodies within FoI law constitutes a recognition that public functions carried out by private bodies, such as the provision of electricity, water, telecommunication, etc. are connected to the functions of government and are directly paid for by taxpayers. Most FoI laws exclude the private sector from their jurisdictional purview, and apply only to information and records held by the state, subject to exemptions. One of the reasons attributed to this exclusion is that the laws have evolved in the conventional human rights framework, which has long imposed obligations for human rights on the public institutions only. But with the realisation that private sector now carry out some public functions, there is a shift from this convention. Siraj (2010) note that exclusion of the private sector from FoI laws has harmful effects on transparency and integrity in public sector policy as well as on capability of the citizens to exercise their human rights. Therefore, the case for extending FoI laws to the private sector became necessary because the private sector is now performing many public functions that were conventionally performed by the government and so substantial amount of information held previously by government is now available in the private sectors too as a result of privatization, de-regulation, and economic globalization. The Nigeria FoI Act partly covers private organizations/bodies utilizing public funds, providing public services or performing public functions. This is stated in Section 2 (7) of the FoI Act 2011.

Nigeria's Freedom of Information Act, 2011

In Nigeria, it was a long walk before the FOI Bill was passed into law. The struggle for a FoI law actually began in 1993 when three organizations, Media Rights Agenda (MRA), Civil Liberties Organization (CLO), and the Nigeria Union of Journalists (NUJ) started a campaign for the enactment of a FoI Act. President Goodluck Jonathan signed the Nigeria FoI bill into law on 28th May 2011. In essence, the FoI bill became a law almost 12 years after it was presented to the legislature. Nigeria is the ninety seventh country in the world, the ninth nation out of ten in Africa, the sixteenth member of the Commonwealth, to sign the FoI legislation into law. As stated by Oboh (2012), the FoI Act was enacted 100 years after the Official Secrets Act (OSA)

1911 was introduced into Nigeria as a colonial order-in-council.

For a country like Nigeria that had witnessed decades of military rule during which press freedom was restricted, it came as a relief when the FoI bill was signed into law. This is because there has become entrenched in the conduct of government in Nigeria, a culture of secrecy about government information. Virtually all government information in Nigeria was classified as top secret and this veil of secrecy made it difficult to obtain information from any public/government institution because government information is tagged “classified”, “confidential”, “restricted”, “not to be disclosed”, “official secret”, and so on. Public servants have also been hiding under the plethora of laws that prevent them from divulging official facts and figures to the public. Notable is the Official Secrets Act, which makes it an offence, not only for public servants to give out government information, but also for anyone to receive or reproduce such information, as well as other laws in the statute books that inhibit freedom of expression and freedom of speech. Other restrictions are contained in the Criminal Code, the Public Complaints Commission Act, the Penal Code, among others. Public servants are made to swear to oath of secrecy when employed and the general consequence of these is an entrenched culture of secrecy and arbitrariness in government institutions.

Adeleke (2011) says the idea behind these “anti-access” laws is to protect vital government information, but the level of secrecy is so ridiculous that some classified government files contain ordinary information like newspaper cuttings which are already in the public domain. So impenetrable is the veil of secrecy that government departments withhold information from each other under the guise of official secrets legislation. Journalists are denied access to information that is critical for accurate reporting and unraveling the web of corruption in Nigeria. Students also find themselves bared from reading documents necessary for their research. In fact conducting research on government institutions was always met with difficulties because the necessary documents that could help in the research would not be made available under the guise of official secrecy.

Nigeria is the ninth nation in Africa to enact FoI law. Some of the other African countries that have adopted various forms of FoI include Sierra Leone, Niger, Tunisia, Angola, Côte d’Ivoire, Ethiopia, Guinea, Liberia, Rwanda, South Africa, Uganda, Zimbabwe [Angola (2002, 2006), Ethiopia (2008), Guinea Conakry (2010), Liberia (2010), Nigeria (2011), South Africa (2000), Uganda (2005), and Zimbabwe (2002, 2007)]; while two have actionable Access To Information (ATI) regulations [Niger (2011) and Tunisia (2011)]. It is reported that Zimbabwe's Access to Information and Privacy Act has been used more to suppress information in the name of privacy than to make information available (Mohan (n.d); Right to Information (RTI) 2012; Justice Initiative, 2014; SADC News).

The Nigeria FoI law combines the features of equivalent legislation in the other countries that have the law. It has 32 sections. The explanatory memorandum state “This Act makes public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes”(FOIA, 2011).

Major highlights of the FoI Act 2011 include the fact that any Nigerian can apply for access to public records and information and the applicant need not demonstrate any specific interest in the

information being applied for, and an applicant can sue the agency that refuses to release information. Premised on the need for more transparency in public affairs, Section 2, for instance, directs public institutions to provide for public scrutiny a detailed description of their corporate profiles, programmes and functions of each division, lists of all classes of records under their control, and related manuals used in administering the institution's programmes. The Act also makes adequate provision for the information needs of illiterate and disabled applicants (Section 3 subsection 3). Although Sections 11, 12, 14, 15, 16, 17, and 26 provides for various exemptions, no application for information shall be denied where the public interest in disclosing the information outweighs whatever injury that disclosure would cause, that is, the exemptions are subject to public interest test (Section 11 subsection 2) that, in deserving cases, may override such exemptions. Public institutions may refuse to disclose any record requested under the Act, which falls under the exemption clauses. As safety value, it seeks to protect serving public officers from the adverse consequences for disclosing certain kinds of official information without authorisation (Section 27) and establish procedures for the achievement of those purposes thus emphasizing the fact that the Act supersedes the Official Secret Act (Section 28). Enonche (2012) remarks that the Act gives Nigerians the vital tool to hold public institutions accountable.

As more African countries are working towards passing FoI laws of their own, the task has been made easier by the passing by the African Commission on Human and Peoples' Rights in April 2013 by passing a new "model law" on access to information in Africa, which is essentially a template that any country can adapt to create a law, rather than having to start from scratch each time. The model law, which has also been endorsed by the African Union, appears to have accelerated efforts to adopt access to information laws in some countries such as Malawi, Mozambique, Ghana, Kenya, Sierra Leone, Cote D'Ivoire, Rwanda, Tanzania, and Namibia (Mohan, n.d).

Benefits of FoI Law in Nigeria

The denial of access to information and the attendant widespread ignorance in the society does more harm to the society than any harm that could possibly arise from granting access to members of the public. Some works have been focused on costs and benefits associated with the introduction of FoI legislation. Guida (1989) looked at the FoI law in USA, Hazell (1989) looked at FoI Act in Australia, Canada and New Zealand, and Clark (1986) studied the position in France. They all concluded that the benefits far exceeded the costs. They found that the benefits were perceived to be significant by all parties affected by the legislation: ministries, civil servants, pressure groups and individual members of the public.

Analysts have also identified that the FoI Act is a vital tool to ensure democracy and responsible governance in Nigeria. This is because it will curb executive, judicial and legislative recklessness. The effective implementation of FoI in Nigeria brings openness, transparency and good governance thereby complementing government's avowed commitment to stamping out corruption in Nigeria. The Nigeria FoI law would assist in stamping out corruption which is described as the bane of the nation. Enonche (2012) opine that the law would assist various government agencies such as the National Human Rights Commission (NHRC), the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the Economic and Financial Crimes Commission (EFCC), and other law enforcement agencies in the performance of their duties. The FoI law facilitates open government because even if some information in a document qualifies for an exemption to FoI law, the rest must be disclosed. The law also makes electorates become less reliant on political propaganda and rumors since they would have better access to

information concerning the records of government, thus, being able to make informed decisions. As stated by Ossai-Ugba (2012), when citizens are given the legal guarantee to access public information, it helps in strengthening democracy since governments would become directly accountable to the governed. The law would also promote more objective and informed decision making as traditionally closed governments and reluctant bureaucrats will have to fundamentally change their ways of working. Bringing this change about is the greatest challenge before the nation. The implementation of the FoI law is therefore a litmus test of Nigeria democracy.

Progress on FoI Implementation

Some successes have been recorded with regard to the implementation of the law. There has been an encouraging increase in the number of individuals and organisations demanding for information pursuant to the provisions of the Act. There have also been varied reactions by public institutions to requests for access to information that range from outright and unsubstantiated refusal, to delays in granting requests. Reported instances of testing the law, have come mainly from civil society organisations. Some civil society organizations such as National Human Rights Commission (NHRC), Legal Defence and Assistance Project (LEDAP), Progressive Shareholders Association (PSA), Socio-Economic Rights and Accountability Project (SERAP), Civil Society Network Against Corruption (CSNAC), Media Rights Agenda (MRA), Socio-Economic Rights and Accountability Project (SERAP), Citizen Assistance Centre, Right to Know (R2K), among others have been using the FoI Act to demand for information, accountability and good governance in Nigeria. However, majority of these request end in lawsuits (Right to Know [R2K] Nigeria, 2012).

R2K reported that it had made several requests to public institutions for information pursuant to the Act. In June 2012, R2K made a request for a copy of air crash investigation reports not currently available on the Accident Investigation Bureau Official Website. Also, in seeking to test and evaluate the implementation of the Act, R2K made requests to Ministries, Departments and Agencies (MDAs) of government for copies of their statutory FoI reports as mandated by the FoI Act 2011 in section 29 (1) which provides that on or before February 1 each year, every public institution must submit to the Attorney-General of the Federation a report on the Institutions implementation of and compliance with the FoI Act covering the preceding fiscal year. There were also requests made to the Attorney General for copies of all the annual FoI compliance reports that have been submitted to that office and a copy of the annual report submitted by the Attorney General to the National Assembly pursuant to the sections 29 (7) and (8) of the FoI Act 2011.

The cases that have been taken to court in which a request for information was denied or simply ignored, have recorded positive responses from the judiciary. The very first reported lawsuit being the case instituted by the Committee for the Defence of Human Rights (CDHR) against the Economic and Financial Crimes Commission (EFCC) in August 2011 in Abuja, seeking an order to compel EFCC to provide information substantiating an allegation made against it (Right to Know [R2K] Nigeria, n.d.). Daily Trust Newspapers on July 31, 2012 reported that Nigerian National Petroleum Corporation (NNPC) denied a request made by Daily Trust Newspapers. The Corporation wrote back to the newspaper that it was not bound by the FoI Act, as it was not a statutory corporation. However after media scrutiny and pressures from civil society organizations, the NNPC eventually pledged its commitment to abide by the provisions of the FoI Act. Other refusals have led to the institution of legal proceedings to compel public institutions to grant requests for access to information. In January 2012, two civil society groups, Socio-Economic Rights and Accountability Project (SERAP) and Women Advocates Research and

Documentation Center (WARDC) sued the governor of the Central Bank of Nigeria (CBN) over a failure to release information and documents on the authorization by the CBN of over N1.26 trillion as subsidy for 2011 after the statutory period for granting requests.

The FoI law recorded its first reported victory through a judgment delivered by the Federal High Court in Abuja on June 25, 2012 when the Judge ordered the National Assembly to disclose information on the detailed earnings of members of the National Assembly. A non-governmental organisation, Legal Defence and Assistance Project, whose application was initially turned down by the Clerk of the National Assembly, had specifically requested the details of the salary, emolument and allowances paid to all members of the House of Representatives and Senators, from June 2007 to May 2011 (Adesomoju, 2012).

Likewise, the Central Bank of Nigeria was ordered by a Judge to release information about asset forfeited by a former Managing Director of a defunct bank in Nigeria. The Central Bank, exercising its powers under the Central Bank of Nigeria Act, had fired the executive directors of five Nigerian banks for borderline fraudulent acts and mismanagement of bank resources. The affected bankers were also prosecuted by the EFCC, which, in collaboration with the Central Bank, sought to recover some of the assets that they had allegedly stolen. However, there were questions about the manner in which the recovery of the assets was being handled, particularly the apparent lack of consideration for the rights of the affected banks' shareholders. The Progressive Shareholders Association of Nigeria wrote to the Central Bank requesting information relating to the recovery of the defunct bank's assets. The association requested the court to compel the bank to publish its handling of assets forfeited by the Managing Director. When the Central Bank refused to disclose the information requested by the association, a suit was instituted against it under the FoI Act. The basis for the request was that taxpayers' money was being used for the prosecution of the banks' chiefs and the reform process. However, the Judge refused the prayers of the applicant seeking the court to compel the CBN to also release information on how much was paid to professionals and professional bodies which the apex bank had been using in prosecuting its bank reform policies representing it on the grounds that such information enjoyed client-attorney privilege and was protected under Section 16 of the FoI Act 2011(International Law Office [ILO], 2013).

The rulings of the courts on the need for the public institutions to comply with requests for information are commendable, and are in the spirit of transparency and accountability. These cases represent a bold step in the entrenchment of good governance in Nigeria. However, the cumbersome and time consuming process of dragging requests for information through the Courts has a potentially negative effect on the utility of the information requested because of the time value of information.

While ignoring requests for access to information seems pervasive, R2K Nigeria note that some public institutions respond to requests, albeit many times beyond the statutory 7-day limit for responding to requests. R2K's request to the Attorney-General of the Federation referred to earlier was responded to and granted even though it took over a month to receive the response. Some other public institutions have granted either partial or full access to requests for information made by R2K, although not within the statutory period. However, it remains to be seen how much court decisions in favour of granting access to information will affect the general attitude of public institutions toward complying with this aspect of the Act. While the testing of the FoI Act in Courts may be good for precedence and interpretation of the Act, it seems to make more sense for public institutions to have the will to comply with the clear provisions of the FoI

Act. Open and transparent governance is not enhanced when citizens feel that they need to resort to the long and tedious process of litigation before they are able to obtain information from public institutions. Apart from the length of time it would take for litigations and appeals, there is also the considerable expense of the entire legal process, from the High Courts to the Court of Appeal and Supreme Court, the monetary implication which may be far beyond the reach of many ordinary Nigerians. This will discourage citizens from making requests under the FoI Act. The easier and more beneficial option, for government and citizens, would be for public institutions and government to have the will to comply with the provisions of the FoI Act without being forced to do so by the courts.

Challenges for FoI Implementation

The celebration that followed the enactment of FoI Act in Nigeria gave way to the real business of implementing the legislation that is expected to bring about openness, transparency and accountability in governance. The Nigeria FoI Act 2011 is 3-year-old, but there is little credible evidence that all the agencies of the Federal government, which the law clearly binds are complying with its dictates. Furthermore, the people to whom the law gives access right have not being proactive in the usage of the law to demand for information. Even though there have been sporadic FoI requests filed by a number of advocacy groups, but there is little yet to celebrate about the law.

Some of the challenges that are facing the implementation of FoI law in Nigeria are highlighted as follows:

(1) **Entrenched Culture of Secrecy:**

The culture of secrecy of government information has become entrenched among both public servants and the citizens in Nigeria. Thus, a major challenge that is confronting the implementation of the FoI Act is the difficulty in socially engineering an accelerated shift from a culture of secrecy to one of transparency and accountability in government institutions. Many countries especially those that were colonized by Britain, of which Nigeria is one of them, have official secrets laws which have guided the operations of public servants for years and therefore public servants have grown used to not being asked questions. Changing the mindset of public officers and even private sector managers from the culture of secrecy to openness is therefore a great challenge to the implementation of the FoI Act.

(2) **Low level of implementation and public awareness of the FoI Act**

A lot still needs to be done with regards to creating more awareness about the Act. For instance most public institutions have not established the mandatory FoI units as stated by the law to deal with requests. These institutions may not be aware or are only trying to feign ignorance of an Act that demand greater openness and accountability of them. There is also low level of awareness within the general population about the existence of FoI law and how to use it to obtain access to public information. Even though the media is trying its best to publicise and create awareness about the law, most members of the public do not see the link between FoI and the different aspects of their lives. The public therefore do not pay a lot of attention to the issue. This researcher recently conducted a research in November 2013 (not yet published) to find out the level of awareness of the public servants as well as some citizens about the FoI law. It was amazing to find out that only 159 (about 39%) respondents out of a sample of 410 were aware that Nigeria has a FoI law and just about 71 (about 17%) respondents had read and had knowledge about the law. Even among the well-educated and enlightened members of the society, there was only a very low awareness and knowledge of the law (31%). A law can only be tested by citizens who are aware of their rights under the law.

(3) Poor record keeping practices and infrastructure

Record keeping in most Nigerian government Ministries, Departments and Agencies (MDAs) is still manual-based. Sebina (2005) highlights that legal provisions for 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. A visit to some of the MDAs in Nigeria reveals a picture of how difficult it will be to obtain basic information. Information and records in many public institutions are still paper based and tied up in bundles of stacks of files. Majority of the documents containing the information have been torn and eaten by insects and rodents. Few MDAs have computerized all these documents. Therefore, some of the information that might be requested by the public might not be easily available within seven days, as stipulated by the Act as some public records are not in proper shape and so retrieval of some information may take more days. The time limit within which decisions must be made on requests for access to records and information is an important means of ensuring that public authorities process requests efficiently and that applicants are satisfied and received their information within a reasonable time.

(4) Inadequate public knowledge of the FoI Act.

Another challenge to FoI implementation in Nigeria is how to ensure that ordinary people have a fair knowledge of the law, the procedures and conditions outlined in them, the remedies available in the event of denial of access to information, and most importantly, the potential impact of the law on people's lives. This clearly presents a problem, as unsuspecting persons have fallen prey to profiteers and street vendors who print wrong versions of the FoI Act for sale. There is a wide belief, unfortunately encouraged by legal practitioners, that ordinary people will not be able to understand the FoI Act like all other laws of the country that are legal text. Most ordinary people do not read legal texts, and since FoI law is essentially legal text, it is unlikely that many ordinary people will read the original text. Even among mainstream advocates of the FoI Act, very few who are not in the legal profession actually read texts of laws or draft laws which will make the provisions of the Act ineffectual if not read and understood by the public. The issue of literacy level of Nigerians is actually accounting for this challenge. Nigeria literacy level is very low. Making the general populace to have an understanding of the law is not an easy task. The way that the law handles questions of language was a challenge because the law was originally only in English language. This has however been overcome by the translation of the Act into the three major Nigerian languages – Hausa, Igbo and Yoruba by the National Orientation Agency (NOA) (Ihejirika, 2013).

(5) Lack of Provision for Federal Information Commissioner.

Another identified challenge in the Nigeria FoI Act is lack of provision for Information Access Commissioner, who would serve as an ombudsman to ensure that individuals who complain receive all the access and other rights to which the law entitles them. The information access commissioner role, among others, is to investigate and seek rectification of complaints by an applicant whose request for information had been denied. The Nigeria FoI law bestowed this responsibility upon the Court, as contained in Section 20 of the FoI Act 2011. The law requires someone who has been refused information to go to High Court or the Federal Court. Court process in Nigeria is expensive, time-consuming and by no means possible for the majority of people while the Courts also have other roles and responsibilities to carry out, and so may not be too suitable to carry out this responsibility.

Strategies to achieve Effective Implementation of FoI Law in Nigeria

The above challenges illustrate that it is not enough to adopt a FoI law to guarantee the right to know, if the law is not implemented and used by the public. There is therefore the need to build capacity of state institutions, implement effective information management systems, create adequate enforcement and monitoring mechanisms, as well as the allocation of necessary financial and well-trained human resources. According to Neuman and Calland (2007), FoI implementation is not an event; it is a process which demands long term commitment.

The following recommendations are made to entrench an effective and workable FoI law in Nigeria.

(1) Culture of openness.

First and foremost, there is the need to ensure a fundamental change in the mindsets of politicians, bureaucrats and the public servants who are the custodian of government information, as well as building public awareness among the public servants to encourage active exercise of the right to know. The public sector needs to reorient public officers to appreciate the new regime of according information its pride of place as a developmental tool, and facilitate the administrative machinery to bridge the gulf between policy formulation and implementation. Regular workshops and seminars should be organized for public servants to enlighten them about the FoI law as well as other laws and statutes of the country and those that relate to their jobs for effective and efficient job performance. This is very imperative because in the study carried out by this researcher in 2005, it was found out that about one third of the public servants sampled had read the Constitution of Nigeria and had an awareness of the FoI bill (Ogunesan 2005). Copies of the FoI law as well as other laws should be made available in all MDAs for the public servants, and their knowledge of these should be tested as part of their promotional interviews. Private organizations should also not be left out. Public institutions should step up the training of their officials to sensitize them about the law and equip them with the skills and knowledge to process requests for information so as to improve the overall implementation of the Act and make it more effective. This is in line with the provision in Section 13 of the FoI Act 2011 which requires every government or public institution to ensure the provision of appropriate training for its officials on the public's right to access information or records held by government or public institution

(2) Public understanding of FoI law.

Multimedia approach should be adopted to publicise the FoI law, not only in the urban areas, but also in the rural communities, to enlighten the public on the need for, and the benefits of, FoI law, as well as their rights and responsibilities. Some methods by which information can reach people easily should be devised. Making certain types of information accessible at some outlets such as the public libraries, newspaper vendors stands, post offices, town halls, churches and mosques can be deployed. Gazette and other government publications which are usually unavailable are of no use to the people, given the low literacy rate. The media and civil society groups have a key role to play in enlightening Nigerians about the Act.

(3) Provision of explanatory memorandum of the law.

Another major step to achieve effective implementation would be to device ways to make people actually read the text of the law or find some mechanisms which will enable the citizens to have an in-depth understanding of the provisions of the law even without reading it. Some strategies to achieve this would include producing simplified or abridged versions of

the laws, guidelines, Frequently Asked questions (FAQs), etc. which distills the key issues in the laws and are easy to digest and understand. The effort of the NOA to translate the law into the three major Nigerian languages - Hausa, Igbo and Yoruba is commendable. This will promote the understanding of the law by majority of Nigerians. The local language versions will enable majority of Nigerians understand and give effect to the provisions of the law by putting the law into use.

(4) Proper record keeping.

Public officials must ensure that information on their activities are properly compiled and documented, so as to ease dissemination. Government MDAs, as well as private institutions should adopt the use of ICT to assist in record keeping, retrieval and dissemination. Social media tools such as Twitter, Facebook, mobile phone apps, blogs, should be used to provide information about MDAs. Record keeping is crucial to institutional memory and to continuity in governance as citizens can only evaluate government and its policies when records exist. Even where a requester is successful in court, a court order cannot produce a record that does not exist. Public institutions should create or strengthen their internal structures for managing information and responding to information requests within the stipulated time limit.

Proper record keeping helps to ensure that applicants receive the information requested within a reasonable time as information may lose its value or interest over time. Therefore, time limit needs to strike a balance between the reasonable needs and interests of the applicant with the practical capacity of public authorities or institutions to process requests. The proper keeping of records is the basis of FoI Act. It is on this basis that public institutions can provide information requested of them or proactively publish information as statutorily mandated. Section 9 of the FoI Act 2011 makes it mandatory for every government or public institution to keep proper records or information about their operations, personnel, activities and other relevant and related information/records in a manner that facilitates public access to such information or record. Section 9 also mandates government or public institutions to not only keep records but to ensure proper organization and maintenance of all information and records in its custody, in a manner that facilitates access to such records. Public institutions have a long way to go in complying with this section. When one considers the state of public records and documents, the IT on ground, IT skills and the present attitude of public servants towards disclosure of government information, seven days may be too short for the public servants to comply with this directive even though there is provision for an extension of time limit that must not exceed 7 days, with conditions attached to this. Even the developed countries, such as Canada, Australia, the UK and South Africa made provision for between 20-30 working days. This has actually manifested in some instances where request made for public information by some NGO's were not provided within the stipulated 7 days. The versatility of an information management system is a critical requirement. There is therefore, the need to have an information system versatile enough to cope with information that changes character and sensitivity over time and between contexts (Snell and Sebina 2006, 2007).

(5) Appointment of Federal Information Commissioner.

The central role of the leadership to achieve effective implementation of the FoI Act cannot be over emphasized. The need for a Federal Information Commissioner or Ombudsman cannot be overstated. Nominating a lead implementer with sufficient seniority, respect and power will provide the fundamental leadership that will champion the implementation of the law. The Information Commissioner could be a retired Justice, whose rank should not be

lower than a Supreme Court Justice and has the power of a Minister. Bestowing this responsibility upon the Ministry of Justice is ill-equipped because the Ministry is one of the busiest departments of the government. The cold attitude of the some government institutions towards the implementation of the FoI Act and the frustration of the few who dared to approach the courts for enforcement have exposed the need to have an FoI Commissioner. The duties of the FoI commissioner include but not limited to ensuring that individuals who complain receive all the access and other rights to which the law entitles them. He is to investigate and seek rectification of complaints by an applicant whose request for information had been denied. “Good policies need champions if they are to be effectively implemented” (Puddephatt, 2009). The Information Commissioner would monitor the implementation of the law, and judicial independence must be guaranteed for effective implementation in order to prevent foreseeable obstacles to the implementation.

(6) Repeal of all conflicting laws to FoI law.

All existing laws, such as the Official Secrets Act, the Penal Code, the Criminal Code, etc. that hampers the effective administration of the FoI law should be repealed or amended to avoid conflicts with the FoI law. Even though Sections 27 and 28 of the FoI Act 2011 also overrides the provisions of the Criminal Code, the Penal Code, the Official Secrets Acts or any other such enactment with respect to disclosure of any record, ideally, the laws ought to be repealed because they are antithetical to FoI.

Furthermore, in order to lessen the number of cases going to court as a result of information refusal/denial, and its attendant burden on information seekers, public institution defending such cases, and even the courts that have plethora of other cases to deal with, ongoing efforts to amend the Federal Public Service Rules should include administrative sanctions for unjustified denials or delays of requests for information under the FoI Act. This will provide an alternative to litigation which will be less cumbersome, less time-consuming and less costly for all parties concerned. The provision of punishment for wrong denials of information should be strictly enforced as provided in Section 7 of the FoI Act 2011. The law could be strengthened further in the future through reviews, which would address any problems that is thrown up now. The media and the civil society could be useful in periodic monitoring and assessment of the implementation of the law, drawing attention to inadequacies.

(7) Integrating FoI law into Schools curriculum.

Lastly, the Nigerian government could consider integrating knowledge of the FoI into the secondary and tertiary institutions’ curriculum. This is to ensure the understanding of the law right from the schools thereby inculcating the mindset of openness into the coming generation.

Conclusion

The FoI Act has been described by many authors as the right that enables members of the public to have access to information held by government bodies, and even private organizations. As a result of this fact, FoI is a fundamental human right to which Nigerians are entitled to. The public is entitled to the truth, and only correct information can form the basis for sound entrenchment of democracy and assurance of confidence of the public in their government. The law should be used in sourcing information from government agencies and private organizations which perform public functions. The Act would amount to a waste of efforts if the public who should use it shy away from it. It is only when the law is in use that it can get people informed, reduce corruption,

ensure transparency and improve the country. Success of the FoI Act can be achieved only when citizens re-orientate themselves by going through the document in order to be better informed and their attitudes transformed by the utilization of contained information.

There is therefore the need to initiate process of reorienting the attitude of Nigerians to shed off their garb of complacency and wear the apparel of agitation to know how they are being governed. The success of implementation of the Act is the co-responsibility of both the government and the governed. It is the duty of citizens to see to it that the Act is implemented by the government. Odinkalu (2014) opine that an underlying and mutually reinforcing system of effective governance and citizenship is needed to operate an effective FoI system, and that active citizens are needed to make the FoI Act work.

The FoI law is a very powerful tool that should be implemented effectively. The challenges to the Act demands consistency, perseverance and right attitude from advocacy groups, citizens, and public officials. Without doubt, if the consistency at which human rights advocacy are using the Act to demand for government information continues, and the sensitization at grassroots increases, the law will before long be able to achieve its aim – to promote public transparency and accountability, and deepen democracy in the country.

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