NIGERIA’S FREEDOM OF INFORMATION BILL AND NATIONAL DEVELOPMENT

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Abstract

The paper revealed the genesis of Freedom of Information (FOI) Bill in Nigeria and the organizations instrumental to its enactment. The Bill is to ensure free flow of information and to protect Public Officers for giving out information in their possession. It also mandates organizations to preserve its information in such manner that will enhance access to it. Necessary sanctions to offenders were specified as appropriate. The benefits of FOI Bill include strengthening the nascent democracy and administrative activities, exposure of knowledge of rights and entitlements. Lawlessness of lawmakers and law enforcement agents amongst others constituted major challenges. It was concluded with requisite recommendations to improve the situation.

Keywords: Freedom, Information Bill, national, development, challenges

Introduction

The Freedom of Information Bill (FOI) is an Act to make public records and information freely available, provided 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 officer from adverse consequences, for disclosing certain official information and establish procedures for the achievement of those purposes and related purpose there of (FOI ACT, 2011).

The idea of a freedom of information law for Nigeria was conceived in 1993 by three different organizations, working independently of each other. The organizations, Media Right Agenda (MRA), Civil Liberties Organization (CLO) and the Nigeria Union of Journalists (NUJ), subsequently agreed to work together on a campaign, for the enactment of a freedom of information act.

The objective of the campaign was to lay down as a legal principle the right of access to documents and information in the custody of the government or its officials and agencies as a necessary corollary to the guarantee of freedom of expression. It was also aimed at creating mechanisms for the effective exercise of this right. The consultations among the initial partner other things, towards determining the various interest groups likely to be affected by the legislation, those who should have a right or standing to request information under a freedom of information regime and under what circumstances information maybe denied those seeking them, and determining to those seeking them, and determining the agencies and arms of government to which the legislation would extend.

The “Draft access to public records and information act” produced by media right agenda in 1994 became the basis for further discussion and debates on the issue and was subsequently subjected to a series of review exercise involving various stake holders among the various interest groups represented at the workshop that the legal regime government access to government held information in Nigeria must undergo a structural transformation. Their conclusion was that since statute which permit access to official information in Nigeria were few, the overall effect is that a culture of secrecy prevails in all government institutions, nurtured and given legal effect to such laws as the official secrets and some provisions in the criminal code which make it an offence to disclose certain types of government held information.

In March 10th and 11th 1995, participants representing diverse interest groups, including the press, academic, government institutions; non-governmental organizations, the legal profession, unions, etc, met at another technical conference, at the Nigeria Institute of Advanced Legal Studies, Lagos on the freedom of information act to consider the first draft of a proposed legislation on access to public records and information. At the end of the conference, the participants agreed and resolved among other things:

- That every person whether a citizen of Nigeria or not, should have a legally enforceable right to be given, on request, access to any record under the control of any government or public institution.
- That the access to public records and information bill should be enacted into law to give effect to section 36 of the 1979 constitution of the Federal Republic of Nigeria which guarantees every person the right to hold
opinion and to receive and impact ideas and information without interference.

- That the Executive, Legislative and Judicial organs and institution should be subject to freedom of information legislation.
- That through a freedom of information culture which will engender openness, transparency and accountability in government, Nigeria can overcome the vicious circle of corruption, under development and political instability. That all laws inconsistent with the realization of the ideal of free flow of information such as the Official Secrets Act, the sedition laws, the national broadcasting commission decree, the newspapers decree, etc. should be reviewed.
- That the right to receive and impact information and ideas is a fundamental constituent of the right to freedom of expression and as such Nigerians should imbibe the culture of protesting any time they are deprive of information through the closure or proscription of media institutions.
- That the duty to be fair and just is a corollary to a right of access to public records and information.

The draft of the access to public records and information bill adopted by participations at the conference should be enacted into law without delay.

However, the enactment of this bill into law was delayed due to the prevailing military and emerging democratic governments that were opposed to the FOI Bill. The House of Representatives on August 25, 2004 passed the freedom of information bill with minor amendments. The senate on its part passed the FOI bill on November 15, 2006. After clause by clause consideration of the bill and the conclusion of the third reading at its plenary session. The national assembly constituted the conference committee on the freedom of information bill to harmonize the two versions of the bill passed by the House of Representative and Senate. Therefore the national assembly passed the bill into law and was asserted to by the President on the 28th May, 2011.

In view of the foregoing, this paper would examine the main content of the freedom of information bill, its relevance and challenges in national development and conclude with some recommendations.

Contents of the FOI Bill
Notwithstanding anything contained in any other Act, law or regulations, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution however described, is hereby established. Public institutions include executive, legislative or judicial agencies, ministries and extra – ministerial departments of the government, together with all corporations established by laws and all companies in which government has a controlling interest, and also private companies utilizing public funds, providing public services or performing public functions.

Every public institution is under an obligation to ensure that it records and keeps information about all its activities, operations and business and to ensure that proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information. An applicant herein need not demonstrate any specific interest in the information being applied for. Any person entitled to the right to information under this act, shall have the right to institute proceedings in a court with the provisions of this Act. Public institutions may deny an application for any information only on the following grounds.

a) When the disclosure may be injurious to the conduct of international affairs and the defense of the Federal Republic of Nigeria.

b) Information which contains records for administrative enforcement proceeding and by any laws enforcement or correctional agency for law enforcement purpose or for internal matters of a public institution, but only to the extent that disclosure would interfere with pending or actual reasonably contemplated law enforcement proceeding conducted by any law enforcement or correctional agency.

c) Information that would deprive a person of a fair trial or an impartial learning, unavoidably disclose the identity of a confidential source, constitute an invasion of personal privacy under section 15 of this act. (However, for this exception, where the interest of the public would be better served by having such record being made available, this exemption to disclosure shall not apply), obstruct an ongoing criminal investigation, information the disclosure of which could reasonably be expected to be injurious to the security of penal institutions unless such affected person otherwise consents or the information is otherwise publicly available.

d) Contain kind of relationship are also protected such as doctor-patient, legal practitioner – client, journalism confidentiality privileges, and person who give information to law enforcement agencies like police, etc.

e) Commercial, trade secrets are also protected.

Notwithstanding anything contained in this section, an application for information shall not be denied where the public interest in disclosing the information
outweighs whatever injury that disclosure would cause. Where a case of wrongful denial of access is established, the defaulting officer or institution shall on conviction be liable to a fine of ₦500, 000 (Five Hundred Thousand Naira). It is now a criminal offence punishable on conviction by a competent court with a minimum of 1 year imprisonment for any officer or the Head of any government or public institution to which this bill applied to willfully destroy any records kept in his/her custody or attempts to doctor or otherwise alter same before they are released to any person, entity or community applying for it.

Notwithstanding anything contained in the criminal code, penal code, the official secret Act or any other Enactment, no civil or criminal proceedings shall lie against an officer of any public institution and no proceedings shall be against such persons thereof, for the disclosure in good faith of the failure to give any notice required notice. 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 violation of any law, rule or regulation mismanagement, gross waste of funds, fraud and abuse of authority or a substantial and specific danger to public health or safety notwithstanding that such information was not disclosed pursuant to the provision of this Act. No civil or criminal proceedings shall lie against any person receiving the information in the custody of a public institution is kept by that institution under security classification or is classified document within the meaning of the official secrets Act does not prelude it from being disclosed pursuant to an application for disclosure thereof under the provisions of this Act, but in every case the public institution to which the application is made shall decide whether such information is of a type referred to in sections 12, 13, 15, 16, 17, 18, or 20 of this Act.

"Government" includes any executive department, military department, Government Corporation, government controlled corporation, or other establishment in the executive branch of the government independent or regulatory government agency or public institution.

"Information" includes all records, documents and information stored in whatever form, including written, electron, visual images, sound, audio recording etc. "Public Institution" means any legislative, executive, judicial, administrative or advisory body of Government including boards, bureau, committees or commissions of the State and any subsidiary body of those bodies including, but not limited to committees and sub committees which are supported in whole or in part by public fund or which expends public fund and private bodies providing public services, performing public functions or utilizing public funds. Indeed, Ajulo (2011) reasoned that the simple interpretation of these provisions is that any Nigerian (whether an individual, corporate body or press) is now free to apply information and records. If this application is not granted in seven days, it will amount to refusal, except the institution seeks additional seven days because of the volume or the records requested.

**FOI BILL and national development**

The Freedom of Information (FOI) Bill is no doubt a necessary instrument required to get pure and substantiated political and financial disclosures on decisions of public institutions for the benefit of the public.

Orka (2011) maintained that the very nature of democratic government implies accountability and transparency, a free press and other democratic checks. Interestingly, Nigeria as a developing nation has free and independent press. Its media have successfully exposed corruption in higher places and remained undaunted in the face of victimization, politicization and sentiment expressed in some quarters against their professional stubbornness. Nigerians are now more comfortable and believe in the information from the impartial press than from opposition politicians who are usually one-sided in their attempt to nail those in the authority. Therefore the media may be given unfettered access to information for the benefit of the citizenry. With the strong investigative journalism in Nigeria and the likelihood that the media may further be strengthened by passage of the bill expose corrupt practices, the fear and risk of discovery will ultimately reduce inordinate tendencies of institutions and officers to vices.

FOI would make records and information in the custody of any government officials more freely available to every person in Nigeria. It will facilitate the availability of public records to citizens in order to encourage more informed participation in public discourse, promote transparency and accountability by public officers as well as protect public officers from punishment for disclosing official information without authorization. Nigerians can access information on the cost of suspicious government projects, demand to know how funds earmarked for public projects are expended and obtain information on the activities of public agencies without having to demonstrated or prove any specific interest in the information being requested.
According to Olaniyan (2011) and Omegoh (2011), openness is not a threat to better government but an incentive to it. The direct application of the FOI Act to the 36 states of the federation will not burden the states but rather strengthen the legal and institutional framework for democracy, human rights, transparency and accountability within the states’ borders. The Bill also guarantees the people right to request information on the activities of government from the various ministries, offices or other sources whether or not such information is contained in any written form. This can only have a positive and direct impact on the lives of Nigerians.

By forcing problems into the open earlier, access to information cuts the risks of serious human rights violations-particularly prolonged violations. The right to access information is not merely important as an aspect of freedom of expression. It is also an important tool for bringing about the full realization of all other human rights. The Act will provide a means by which people can know about their rights and entitlements, identity when their rights and entitlements, identify when their rights are being violated and hold governments to account for fulfilling their constitutional and international human rights obligations. It also serves as a powerful tool for enabling individuals, the media and civil society to advocate successfully for a range of human rights. From the right of life, to the rights to human security and dignity and to basic economic and social rights, freedom of information can empower civil society to demand that legal and policy commitments are translated into practical realities that benefits people’s lives.

Ochai (2011) stated that the Bill is not only useful for addressing present administrative activities of the government but also the past. He insisted that the media can use the Act to unravel the intrigues surrounding the smuggling of the late president Urmaru Musa Yar’Adua in and out of Saudi Arabia under mysterious circumstances without necessary information to Nigerians. Freedom of information Bill is not only beneficial to the development of Nigeria but also valuable to other countries in the world. In the United States of America, Blanton (2009) noted that the largest single group of people who use the law to get information are senior citizens, who made millions of requests, asking for copies of their earnings record, or information on their benefits package, or about that Medicare prescription drug programme. Military veterans and their families are next, with upwards of 2 million requested mainly about their health coverage, disability benefits and service records. And commercial business files about two-thirds of the rest of the freedom of information requests. These companies wanted to know about government contracts they could bid on, or what their competitors were up to. But the real glory of the freedom of information law is how it gives ordinary people ownership over the information.

Challenges of FOI Bill
The major problem of this FOI Bill is the lawlessness of Nigerians-starting from the highest people in authority to the lowest citizen. Evidence abound on the lawlessness amongst the law makers and law enforcement agents in the society. Prior to the FOI Bill, the numerous laws in the nation’s constitution have not been judiciously implemented over the years. The continuous existence of official secret Act in the constitution is an ill wind that blows the FOI Bill no good. The government officials with its corrupt tendencies hide under this clause to conceal information from its users.

More so, openness, once denied, becomes a right. The growing resistance or lukewarm attitude by many of the 36 states federation to apply the law now casts doubt on its enforcement and the hope of reversing years of official corruption, under-development and lack of respect for internationally recognized human rights. Some state governors and senior lawyers have argued that unless states themselves pass the FOI bill it will apply to Federal Government and not the states. They cited schedules 4, 5 and 6 of the concurrent list of the 1999 constitution as the legal basis for this view point. In addition to the above, Nwosu (2011) lamented that with so many disastrous happenings everyday such as collapsed building and arson, documents are not safe. Such occurrence will render information that is automated or computerized unavailable. The availability of the information is still an issue that the government needs to face. It is not about passing the bill into law because there are still many laws in Nigeria that are moribund. It is not about the law itself, it is about implementation.

Conclusion and Recommendation
In concluding this paper the following recommendations are proffered:

- Public officials at federal, state and local government levels should be enlightened on FOI Act provisions, as the law applies to all of them.

- Media houses, journalists and other information users should be trained and retrained on how to access and use information without offending the rules.
Public and private institutions should be enlightened to know that they are not favouring anyone by giving out information but simply working towards national development.

There has to be a reconstruction of structure for storing information.

There should be a positive change in the attitude of Nigerians in the implementation of the laws, especially the FOI bill, as this would put an end to unbridled acts of abuse and corruption that have stalled the country’s meaningful developments for decades.

References

