

## FOI AND THE SOCIETY

account for the expenditure. This has made the Bill less attractive for whoever is involved in such a process and does not have regards for the rule of making democracy accountable. Many highly placed Nigerians who find fulfilment in doing business under this arbitrary system will be very uncomfortable with a law that seeks either to demand accountability or prescribe a penalty for failure to comply. Just as we canvass for the inclusion of access to information in our statute there are those equally at work to see that the Bill is prevented from being given assent.

It is very important to add that legislation alone will not automatically wipe out all the problems in Nigeria if the people are not willing to provide safeguards for the laws to be effective. Good people can make a bad law useful while bad people can make a good law irrelevant. There is a global shift towards access legislation and it is helping in giving new definition and meaning to governance in countries like Sweden (1766), which operates the oldest form, there is the United States of America (1967), Australia (1982), Canada (1982), New Zealand (1982), United Kingdom (2000), Russia (1995), Hong Kong (1995), Israel (1988) and the only continental representative, South Africa (2000). In these countries, government is not left alone to do as it desires. There is a process of engagement that civil society has in place to keep government in order.

This is where we must bond together if we truly want this new democratic experiment to succeed. To succeed must be a zero option for this generation of Nigerians who carries the burden of so many people who have been craving for a way out of the numerous afflictions of this great country. We must find a way of ensuring that this Bill becomes law. Our task is to speak with one voice and persuade our friends, business associates, colleagues, brothers and sisters who are in the National Assembly to adopt the Bill, promote it within their chambers and see that it enjoys all of their support in being speedily passed into law. There must arise a new form of alliance between civil society and the media to highlight the inherent beauty of the Bill and the good omen that it portends for this nation. We must promote it wherever we can and defend it as vigorously as we can too.

# FOIA (Freedom of Information Act) and CIVIL SOCIETY

*Edited by*

Lanre Arogundade

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mind for openness.

With openness there is popular participation. Once a window of opportunity can be opened for all stakeholders in this democratic stock exchange to find the resources to invest and an avenue to ventilate their differences much of the perennial friction and mutual suspicion would be reduced if not totally eliminated. Making the process inclusive will equally lessen the strident cry about marginalisation that has become an everyday refrain in this country. Access legislation provides citizens a better understanding of what government is doing or planning to do and this enables them to contribute to the management of the distortions that may arise in the process of governance.

Perhaps what would count more for the great stride of this country with the freedom of information in place is the successful prosecution of the war against corruption.

The Bill is not in itself the essential and major weapon for hunting corrupt officials but its availability and usage will expose persons who may have been involved in sharp practices and would ordinarily have gone unnoticed. This is one major obstacle that the Bill needs to overcome if it is to see the light of day. A lot of people in high places wrongly believe that the bill have them as the target. That is far from the truth. It is a general legislation that will specifically tackle the sub-cultures of corruption like secrecy, ignorance and arbitrariness in the handling of public affairs. It is meant to serve and guide every Nigerian. The legislation will seek to replace these sub-cultures with checks and balances that promote transparency and enlightenment.

One other hurdle that the Bill must scale if it must receive assent is the belief that it is meant to give journalists more power. Journalism would derive its power from a constitutional guarantee of freedom of the press while the freedom of information act will provide materials that the journalist would use in informing the public. Everyone like the journalist has equal access under the law.

The tendency among the Nigerian upper class is to enjoy the perks that come with democracy without the responsibilities that go with it. It is beautiful to have appropriation without the need to

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*Democracy In Nigeria Project (MFD) including Media Rights Agenda, Independent Journalism Center and Journalists for Democratic Rights at the Public Hearing on the “Access to Public Records and Information Bill” organized by the House of Representatives Committee on Information in Abuja, October 3rd and 4th, 2001)*

### **FOI Agenda And Need For A United Front (By Tive Denedo)**

The Freedom of Information Bill, which is currently before the House of Representatives, seeks to increase availability of public records and information to citizens of the country. It is a product of years of collaborative efforts by Media Rights Agenda (MRA), Civil Liberties Organization (CLO) and the Nigeria Union of Journalists (NUJ). The invaluable contribution of Article 19, the London-based International Centre Against Censorship, gave it some of its peculiar characteristics. The International Press Centre (IPC) is carrying the banner and further strengthening the campaign with this gathering of civil society groups.

Presently the Bill has gone through the public hearing, been referred back to the house and waiting for passage by the Lower House. Part of the goodness is that within seven days any person resident in the country has a legal right of access to public information or records kept by government, public institutions and consultants to government.

There is a well of optimism that is springing forth in me on the future of this country with the Freedom of Information Act. This is one mechanism that can ensure that our potential for greatness, which had eluded us in the past decades, may finally be within our grasp. The power for good governance in this statute is so immense that the right application and enforcement will ensure that we define our priorities and pursue them as vigorously as possibly be and with a

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makes laws for the society, is the one that perhaps needs the FOIA more than the others.

Generally, it has been said that the government holds the key to freedom of Information in three ways:

☞ Firstly, as the executive power, it holds an immense amount of information without which it is impossible to understand properly what is happening in a country.

☞ Secondly, as the leadership of the country, it sets the tone by which official and quasi-official bodies work. If the government fosters a climate of secrecy, that has an influence even with organisations which are not strictly under state control. The private sector for example finds it easier to act in secret if governments are not open.

☞ Thirdly, as the legislative body, the government decides on the framework under which state organisations and journalists work.

The law sets a framework for secrecy or openness. The legislature also decides the framework under which the police and judiciary respond to requests for information.

The Nigerian media community is asking the National Assembly beginning with the Federal House of Representatives to set a framework for openness, transparency, and accountability and good governance that the passage of the FOIA bill will entail.

This will be well in accordance with one of the resolutions of the May 2001 Windhoek 10th anniversary conference of the Declaration on the Development of an Independent and Pluralistic African Press:

**“States should pass laws which provide for access to information held by public bodies, and to information required for the exercise or protection of any right held by private bodies, and such laws should be based on the principle of maximum disclosure”.**

*(Lanre Arogundade, Co-ordinator, International Press Centre (IPC), made the presentation on behalf of the Media for*

Availability of and access to the above information will facilitate the input of the citizens to the process of governance while making it possible to plan for social and economic development.

For the administration of President Olusegun Obasanjo in particular, access to information should be seen as a logical part of the crusade against corruption that has already led to the establishment of an anti-corruption commission. Even the most efficient of intelligence agencies still need information from other segments of the society including the public servants. But then to be able to provide such, the veil of secrecy that currently surrounds official transactions have to be removed and this is one of the things the FOIA can do. It should be noted here that the penal code makes it an offence for any public office or civil servant to give out official information. It provides that:

**“Any person who being employed in the public service, publishes or communicates any fact which comes to his knowledge by virtue of his office and which it is his duty to keep secret, or any document which comes to his possession by virtue of his office and which it is his duty to keep secret, except to some person to whom he is bound to publish or communicate it, is guilty of a misdemeanour”**

### **WHY IS ACCESS TO INFORMATION SO IMPORTANT TO THE GOVERNMENT?**

Much as the information that the public seeks comes from the government and its institutions, same government itself will still benefit from a law permitting access to information. The executive will need it where the legislature is not forthcoming with information on some of its activities, the legislature will need it in the exercise of its oversight functions on the executive and the judiciary will need it in gathering all evidence in deciding important cases involving the other arms of government.

But the legislature, being that arm of the government that

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The content is however based essentially on the five round tables/public hearings on the Freedom of Information Act (FOIA) and the Civil Society held in Benin, Ibadan, Kaduna, Port-Harcourt and Abuja, Nigeria between December 2001 and June 2002 with the funding support of the Democracy and Governance Program of the United States Embassy in Nigeria.

The other Media-for-Democracy (MFD) partners in Nigeria: Media Rights Agenda (MRA), Independent Journalism Center (IJC) and Journalists for Democratic Rights (JODER), actively supported the round tables.

IPC is, on the basis of the foregoing, hugely indebted to the US Embassy for facilitating the round tables/public hearings, the MFD group for supporting it and the IFJ/LO/TCO, for making it possible to produce the proceedings of the round tables/pubic hearings in book form.

IPC is equally grateful to all the resource persons and participants, invited speakers, especially Bill Wyatt who came all the way from the United States of America to speak at two of the round tables and many others that contributed immensely to the success of the round tables/public hearings, which form the subject matter of this publication.

Finally, IPC cannot but thank the following for their major contributions to the success of both the round tables/public hearings and this book: Sharon Mangin-Nwankwo and Yinka Balogun of the DG program, US Embassy, Tive Denedo, Ag. Executive Director of MRA during the period of the round tables, Tunde Aremu of IPC, who also assisted with the editing of the publication and Bertrand Ginet of the IFJ.

# INTRODUCTION

Between December 2001 and June 2002, the International Press Centre (IPC) held five round tables/public hearings on the Freedom of Information Act in five Nigerian cities: Benin, Ibadan, Kaduna, Port-Harcourt and Abuja with the support of the *Democracy and Governance Program* of the US Embassy in Nigeria. The proceedings of the round tables/public hearings form the main content of this publication.

The idea of the round tables/public hearings was conceived at a time when the Freedom of Information Act (FOIA) bill was receiving the attention of the House of Representatives during the 1999-2003 legislative year. The bill had gone through the required number of readings and referred to the relevant committee while a public hearing was being organized to enable interest groups and the public at large make inputs to it.

As a principal supporter of the FOIA campaign spearheaded by the Media Rights Agenda (MRA), the IPC together with the D&G Program of the US embassy, felt there was a need to take the FOIA debate to the public arena. It was observed that despite the commendable efforts put into the campaign, awareness about the FOIA was still relatively low while Civil Society Groups, Non-Governmental Organizations (NGOs), Community Based Organizations (CBOs), etc, were yet to be actively involved in it. Yet it was observed that the support of such groups was needed in order to effectively put the FOIA campaign in the public domain and grassroots arena with a view to exerting maximum pressure on the legislators to pass it into law. It was necessary also to explain how and why the media would be the principal users of an FOI law while emphasizing that access to information is a right to be enjoyed by all citizens irrespective of professional calling.

It was equally reasoned that having the round tables/public hearings in five different geo-political zones would provide greater opportunity for the target audience to express their feelings on the FOIA and make inputs into the draft bill since the public hearing that was then being organized by the House Committee on Information

The media needs the FOIA to improve on the accuracy and credibility of its reports. The public has oftentimes blamed the media for its inability to come up with accurate figures when disasters involving many lives and property are involved. What is often not realised is that the media is handicapped by the fact that relevant authorities in such particular situations i.e. the hospitals, fire brigade or the police in the case of accidents, are forbidden by civil service rules and procedures, from speaking to the press.

## WHY IS ACCESS TO INFORMATION SO IMPORTANT TO THE SOCIETY?

Access to information is not contemplated as a right to be enjoyed by the media alone much as it may act on behalf of the society. It is a basic right that everyone should enjoy.

Article 19 of the Universal Declaration of Human Rights which provides for the right to freedom of opinion and expression, states that it includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of any frontiers.

A variety of information are needed by the public:

- ☐ Information on all the arms or levels of government (executive, judiciary, legislature) and governmental institutions including the different departments and agencies.
- ☐ Information on economic and business activities involving the government and the private sector.
- ☐ Social, cultural, political and demographic information.
- ☐ Information on the security and law enforcement agencies as well as the legal apparatus of the state.
- ☐ Information relating to health, education, infrastructure and other development indexes.
- ☐ Information on foreign political, economic and cultural relations.

## FOI AND THE SOCIETY

**“ the press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people”**

In the words of Nelson Mandela, a world acclaimed African statesman of this era:

**“A critical, independent and investigative press is the lifeblood of any democracy and the press must be free from state interference and must have sufficient independence from vested interests to be bold and inquiring without fear and favour. It is only a free press that can temper any government to amass power at the expense of the citizen and act as a vigilant watch dog of the public interest against the abuse of power by persons in government”**

### **WHY IS ACCESS TO INFORMATION SO IMPORTANT TO THE MEDIA?**

The International Federation of Journalists (IFJ) has advanced two cogent reasons, which we agree with. Namely that:

- ☞ The test of any democracy is the quality of public debate, transparency and tolerance in society. It is to the media that people look for a variety of opinion, ideas and thoughts which exist in every community and which provide the raw material for democratic debate.
- ☞ Journalism can be a catalyst for social change, but media require improved conditions to be able to make a contribution to the process: a sound legal framework, a fair allocation of public resources, improved training facilities, safer workplaces, a more tolerant society.

would normally be limited to only a few privileged participants. But the over-all consideration was to enlist the support of as many civil society groups as possible for the FOIA campaign.

The idea was not only to have general inputs to the FOIA debate but also to ensure that different aspects of how an FOI law would impact on the society were examined. Thus, the round tables/public hearings had such themes as:

Freedom of Information and Rule of Law and Accountability

Freedom of Information and Popular Participation in governance

Freedom of Information and Democratic Governance

Freedom of Information and Good Governance

Freedom of Information and Democracy

The roundtables were generally successful as it drew participants from diverse background including the media, the medical profession, the academics, the legal profession, the labour movement and trade unions, the legislative arm of government, the women, youth and students movement, the disabled group and the civil society, human rights, minorities and non-governmental bodies.

It is believed that the contributions were too invaluable to be left un-documented thus preventing the enriching experience from being shared with others.

It is hoped that the FOI bill would have been passed into law by the time this publication comes out. Otherwise, it is hoped that it would contribute to the process of its urgent passage by the National Assembly.

**Lanre Arogundade**  
**Co-ordinator, IPC**  
**August 2003**

## **The Imperatives Of FOI (By Lanre Arogundade)**

As it has been severally documented, the media played a principal role in bringing about the present civil dispensation through the many battles it waged against military dictatorship. The media has a major stake in the success of on-going efforts to institutionalise democracy in the country because of this historical fact and the fact that it is in the interest of the society, public good and good governance.

A civil dispensation necessarily presupposes the enjoyment of the fullest democratic rights by the entire citizenry. Principal among these rights is the right of access to public information by the media and the public. It is worth reiterating that one of the reasons why the media opposed military rule was because it trampled on the right to freedom of opinion, freedom of expression and freedom of thought, all of which constituted major barriers against access to information that was in public interest.

The face of information management in the country has not necessarily or fundamentally been altered for the better since the advent of civil rule on May 29, 1999. The Freedom of Information Act bill provides a great opportunity, therefore, to correct a past anomaly while opening fresh vistas for the dissemination of information to the widest segments of the populace. Through this, democracy is sure to have firm roots in our society and grow into a giant tree that cannot easily be uprooted.

It has been observed many a times that whereas section 22 of the 1999 constitution tasks the media to monitor governance and hold government accountable to the people, the same constitution does not as a necessity give the media the enabling powers to perform the task. What is being stressed is that an FOIA will be a logical tool for the media to carry out the obligations imposed on it by section 22 of the constitution which states that:

century for instance, fought against what was then in vogue: royal absolutism.

Writers, historians and philosophers held their various views of what constitutes public interest. Thomas Hobbes, an English man in his write-up, *The Leviathan* (1651), developed a political philosophy premised on the view that men are essentially selfish and to escape anarchy, they entered into a social contract by which they submitted to the sovereign. This was to him in the public interest to save us from ourselves.

Another English philosopher, John Locke, in his essay, *Concerning Human Understanding* (1690), rejects the theory of innate knowledge, basing knowledge on experience of the senses and reflections by the mind, though, allowing intuitive knowledge of the mathematical certainty of God's existence. In two treatises of civil government, he defended the English Revolution of 1688. Against Hobbes he upholds NATURAL RIGHTS (life, liberty, property and the pursuance of happiness). He based state power on a social contract with a right to revolt.

It was, however, the French poet and philosopher, Voltaire, who insisted on what could be described as the public interest defined in the sense of the good of all. His yardsticks include:

- i. Free enquiry (access to information)
- ii. Dignity of man
- iii. Equality of all before the law and
- iv. Freedom of conscience.

With all the above mentioned, following the period of Renaissance, Reformation and the time of conquest embarked upon by the West up till now, there emerged what could be called Democracy based on capitalism imposed on the rest of the world.

While the West can assume that the rights to life, liberty, property and the pursuance of happiness have been established in Western Europe and America, same cannot be said of the rest of the countries in the world. Hence, what constitutes public interest in America cannot be said to be the same in Nigeria.

We can individually or as leaders in different organizations make public declarations about the premium we place on the Bill and encourage others to make the same proclamation of support. With our voices resounding from all corners of the country, I am fully persuaded that we could help to a very large extent in shaping our policy programme for this administration.

*(Tive Denedo, Campaign Director of Media Rights Agenda, MRA, made the presentation at the Ibadan roundtable/public hearing)*

## **FOIA: Freedom For All** **(By Ray Ekpu)**

The 1999 Constitution of the Federal Republic of Nigeria grants to Nigerians the Right to Freedom of Expression and the Press.

In Section 39 (1) it states:

**“Every person shall be entitled to freedom of expression, including freedom to hold opinion and to receive and impart ideas and information without interference”.**

However, in sub-section 3, the same constitution takes away with the left hand what it had granted with the right hand in section 39. Sub section 3 states: “Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:

- (a) For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematography films or
- (b) Imposing restriction upon persons holding office under the government of the federation or of a state, members of the armed forces of the federation or members of the Nigeria Police Force or

other government security services or agencies established by law.”

In chapter 2, titled Fundamental Objectives and Directive Principles of State Policy, Section 22, the Constitution imposes some obligations on the mass media. It states “the press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people”.

But how is the press supposed to discharge these weighty responsibilities if its voice is padlocked not only by the limitations contained in sub-section 3(a) and (b) of section 39 but also by the Official Secrets Act, 1962, and other enactments? Clearly, the Official Secrets Act prevents a journalist from receiving and or imparting information that is available to a government official by the virtue of his office. Section 1 of that Act makes it an offence for a person to transmit any classified matter to a person to whom he is not authorized on behalf of the government or to reproduce, retain or obtain any classified matter. Section 2 brings down the hammer on a public officer who avails any unauthorized person of classified matter under his custody or control by pronouncing him guilty of an offence.

But secrecy in matters of public interest is a violation of the principle of the people's right to know. It is also antithetical to the principles of transparency and accountability in governance.

It was Woodrow Wilson, I believe, who said that “everybody knows that corruption thrives in secret places and avoids public places and (we believe) it is a fair presumption that secrecy means impropriety.”

### WHY FREEDOM OF INFORMATION?

There are lots of people who live under the mistaken impression that freedom of information means freedom for the press and the press only. The truth, however, is that it is freedom for all. Often times, we hear people say, the press publishes falsehood (yes but they are an insignificant minority); that they are sensational (yes, some are); that

demanding for information concerning activities of government as well as their collaborating TNCs in their environment. This is just one case. Blocked information access has fuelled the arrogance of destructive people, corporations and governments.

In this case, public interest is clearly the right of the people to information on activities in their environment as every activity carried out in their environment affects their chances to survive and live in the best way possible.

### SECTION 16 OF THE BILL

There must be a delicate balance as to what latitude is given to government to deny access to information. We are concerned that attention is not given to the rights of local communities to protect valuable information of which they may be custodians. Just as subsection [c] considers the right of prior publication of public servants, so should it consider the intellectual property rights of communities and local peoples. Although this may be deduced from subsection [d] it is clearly not transparent enough.

*(Nnimmo Bassey of the Environmental Rights Action, ERA, made the presentation at the Benin round table).*

## What Constitutes Public Interest? (By Christopher Fajemifo)

One of the sections in the bill for the enactment of the Freedom of Information Act before the House of Representatives is the ability of the bill when signed into law to defend the public interest.

Public interest could simply be explained as that which is for the good of the community in general. But there is much more to what the public interest is to the different segments of the society over time and their antecedents.

Philosophers during the period of enlightenment in the 18th

were injected into their soil. They wanted to know about the huge quantities spilled on the surface of their earth. They wanted to know if their safety had not been jeopardized. They wanted to know if it was safe for them to continue to use nearby contaminated lands and water bodies. They dreaded a repeat of the KOKO incident in their own backyard (See ERA Field Report # 32 of 28th July 1999 titled Toxic Waste in Ozoro.)

**RESPONSE?**

“Shell does not want to give out any information, rather they've been trying to bluff it out”, according to a youth leader. While they were pressing their demands for information, they found that “the high powered injector and compressor used to inject the chemicals into the well were dismantled and taken out of the site by Shell.”

While Shell maintained that the chemicals were harmless, a government agency took samples for tests. The agency later claimed that the tests showed that the chemicals were not toxic.

Independent tests conducted by scientists from the University of Benin, University of Nigeria, Nsukka and the Delta State Government all showed that the chemicals were toxic and harmful. (See ERA Field Report # 77 of 21st February 2001).

**OUTCOME**

Over time, strange illnesses have become the order of the day in the neighbourhood. Some had their feet burnt by stepping on the spilled substances. The productivity of plants and economic trees has been grossly affected. Many people had to relocate from the area for their own safety. Communal strife through seeds of discord engulfed the people. Insecurity became rife.

**IMPLICATION**

If an instrument such as the FOIA had been in place by the time of this evil assault, the people would have had a stronger voice in

they invade our privacy (yes, but not everyone peeps into someone's bedroom through the keyhole); that they are partisan (yes, some are). But let's not throw away the baby with the bath water. If the press didn't give access to politicians, the human rights activists, students, labour leaders and other groups; if the press didn't stand up to fight military dictatorship we wouldn't be sitting here today.

It is fair to admit that the way we operate has often exposed us to widespread public misunderstanding and unpopularity and that sometimes we do fall short in terms of level of objectivity, factuality and fairness. The reason is not far to seek. Deteriorating standards of education and declining economy have led, unfortunately, to a decline in levels of professionalism not only in the media industry but in virtually all professions. But the good thing is that we recognize that even our perceived deficiencies are cured by media pluralism. You can call this day, the golden age of media diversity.

In a democracy you need more freedom, not less. More freedom means strengthening of our democratic institutions and values. Less freedom means a drift into authoritarianism and the big bad state from which we exited only recently.

**RESTRICTIONS OF ACCESS TO INFORMATION**

The restriction of access to information comes in various forms:

- (a) The deliberate classification or reclassification of information no matter how insignificant as secret, top secret, confidential or restricted. This arises from the ingrained habit of the public servant to hoard information as a power component.
- (b) The subjection of government officials to a long-term or even everlasting duty of confidentiality even when the need for such confidentiality has lapsed.
- (c) The routine denial of access to official or independent sources of information.

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### THE ACCESS TO INFORMATION BILL

I would like to congratulate the framers of the Bill for the thoroughness and comprehensiveness of the Bill. I therefore have very few comments on the bill itself.

(a) I would prefer the Bill to be cited as Freedom of Information Act or Access to Information Act. The former title would be consistent with the letter (and spirit) of the constitution and would reinforce the idea of freedom as espoused in sections 22 and 39 of the 1999 Constitution.

(b) It appears necessary to define the expression “private companies performing public functions” so as to avoid ambiguity.

(c) There appears to be too many exemptions from access. The situation seems cured however by the fact there is a provision for judicial review. But considering the avalanche of cases that may arise, how speedily can the courts cope with them so that the courts do not inadvertently become a sanctuary for those who may wish to frustrate access?

(d) Perhaps there ought to be a provision that once information has been made public, any attempt to stop further publication should be overridden by the public's right to know.

(e) In all cases the requirements of public interest must remain the overriding consideration.

(f) To give oxygen to the Bill, all laws such as the Official Secrets Act, etc, that impede access to information should be repealed.

In conclusion, I'd like to restate that transparency and accountability are critical to democracy and development. They help to enhance participation in decision-making. Therefore, without access to information, democracy can be impaired.

*(Being remarks by Ray Ekpu, General Secretary (now President), Newspaper Proprietors Association of Nigeria (NPAN) on the “Access to Public Records and Information Bill” public hearing at the House of Representatives on October 4, 2001)*

## CHAPTER 3 FOI AND THE PUBLIC

### **The Right To Know...How You Are Killing Me** **(By Nnimmo Bassey)**

**Freedom of Information Act (FOIA)** is a welcome bill and we congratulate those behind its introduction. Official secrecy has been a cloak behind which justice has been denied generations of Nigerians and behind which fraud and other terrible crimes have been perpetuated against our people.

The question is: what constitutes public interest? When should information be withheld in order to protect the public good?

I am certain that this gathering accepts that in our experience with bad governments public interest rarely coincides with government interest. We have also seen in many instances that inaccessibility of official records has given certain individuals (and corporations) the belief that they too can restrict information even when it is in the interest of the public that such information be released.

#### **CASE IN POINT: SHELL'S TOXIC DUMP IN OZORO, DELTASTATE**

SPDC, through her agents, Schlumberger Dowell, ferried 1 million litres of suspected toxic substances in 40 tanks and injected these into a 17,000 deep dry well at Location 3, *Ibo Bush*, Erovie Quarters in the Isoko oil field. This activity was allegedly carried out between 1.00 and 3.00 a.m. from 1-5 July 1999.

The community was suspicious because they knew it was not in Shell's known character to conduct its operations in the dead of the night. They were also not aware that Shell had such pointed interest in dry wells.

The community demanded to know what sort of substances

3. Kindleberger, P.C. (1965) *Economic Development*, New York, McGraw-Hill, 1965, P.3.
4. Iyoha (1998), *op.cit.*
5. *Ibid.*
6. *Vanguard*, September 12, 2000, P.1
7. *World Development Report*, 1999.
8. Oriakhi, D. (1997), "National Economy: Balance of Trade and Economic Self-Reliance" in A.D. Nzemeka and E.O. Erhagbe (eds), *Nigerian Peoples and Culture*, United City Press, Benin City, P.117.

## FOIA And Economic Growth (By Festus Iyayi)

It was the former managing director of the International Monetary Fund (IMF), Monsieur M. Camdessus who once observed that Nigeria was "a historical scandal". Camdessus, perhaps, came to this conclusion after an objective evaluation of Nigeria's potential and the reality of the country's current socio-economic situation. Yet, Camdessus and the IMF, the World Bank, World Trade Organization and several other imperialists' institutions have contributed a great deal to the strangulation of the Nigerian economy, and the economies of other third world countries.

Nigeria is a country blessed with an abundance of physical and human resources, which include major oil and gas deposits, a variety of solid minerals, good agricultural land, and promising industrial base, a modernizing banking system in an economy that can potentially mobilize a productive labour force and a vibrant private sector. Yet, real income and consumption per capital is lower today than they were in 1970, i.e. before the onset of the "oil boom" which has, nevertheless, provided vast but temporary financial resources. It is estimated that between 1973 and 1993, approximately USD200 billion was invested in the country. The returns from this have been less than economic. As if this is not enough, the Nigerian economy has continued to witness deteriorated public infrastructure; public enterprise have been running far below capacity and unfinished and uncompleted projects litter the national landscape. It is estimated that 70 percent of the population live below the poverty line. Other social and economic indicators are below acceptable levels, especially against the background of previous investments as reflected in consistently high government expenditures; per capita income, which was \$1,200 in 1981, is less than \$300 now. Regression of the economy and de-industrialization has become therefore, realities in the

Nigerian economic environment<sup>1</sup>.

This un-cheerful background of the Nigerian economy is regrettably the economic base on which the Freedom of Information Act, 1999 (FOIA) is expected to operate when it fully becomes operational as Law. The Act, which among other things seeks to provide a right of access to public information or records kept by government, public institution and/or private bodies carrying out public functions for citizens of the country, will invariably play an influential role in the economic growth of the country. Economic growth in this context, being in a third world environment, is tied up with economic development. We are thus considering how the Freedom of Information Act of 1999 affects the growth and development of the Nigerian economy.

### **ECONOMIC GROWTH AND DEVELOPMENT**

Economic growth refers to the increase in output or per capita income over time. It is used in analyzing the economic performance over time of advanced industrialized countries. The increase over time in output or GNP in real world economies does not proceed at a steady pace. Rather, periods of economic growth are followed in a more or less regular manner by periods of less rapid growth sometimes-even periods of decline in income. In other words, there are noticeable fluctuations in the level and growth of aggregate output over time. These fluctuations in the level of GNP over time are called business cycles<sup>2</sup>.

Without bothering you with numerous theories like the neoclassical model of economic growth, the Harrod-Domar model and several others, let us quickly point out that economic development, which means more output accompanied by structural change, is used to investigate the economic performance over time of the low-income or less developed countries. For developing countries, therefore, growth and development should go hand in hand since growth without development leads nowhere and development without growth is almost impossible to contemplate. While economic growth and economic development are used to

example, many of the distressed banks that collapsed towards the end of the 1990s succeeded in hoodwinking their customers, as a result of non-availability of sufficient information about such banks. Even insurance companies, manufacturing concerns, private schools, etc, all need to be accountable to the public by making information about their operations, strength and weaknesses available to the public. FOIA will enable journalists and other interested members of the public to gain access to information concerning such private concerns. This will give room for wider participation in the economic development of the country.

There is no doubt that FOIA will play a very influential/critical role in the economic growth/development of Nigeria. Those who are buying up Nigeria's property today in the name of privatization will have access to more information to enable them buy whatever they are buying. But, more importantly, FOIA will enable Nigerians to have sufficient information about development in the Nigerian economy.

Such information will guide the citizens in making their choices. Such information will also go a long way in democratizing the economy. It will also enable the people to actualize the sovereignty reposed in them. This will contribute in no small way to the empowerment of the citizens.

*(This presentation was made on behalf of Dr. Festus Iyayi of the University of Benin by Felix Oriakhi, chairman, Committee for the Defence of Human Rights (CDHR), Edo State, at the Benin Roundtable)*

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manufacturing sector.

- (2) Slow growth of the industrial sector with capacity utilization averaging about 30%. They have been worsened by the heavy dependence of the sector on imported inputs.
- (3) High internal and external debt burden. The size of the debt has increased over the years without any appreciable decline in spite of the magnitude of debt servicing.
- (4) Infrastructure is decaying and does not meet the demands of a rapidly increasing population.
- (5) High and growing rate of unemployment.
- (6) Macro-economic structures have deteriorated due to intractable inflation, continued and seemingly irreversible naira depreciation, increasing import dependence, steadily increasing interest rates, and erosion of savings and investments with a consequent industrial decline<sup>8</sup>.
- (7) Corrupt political leaders and bureaucracy.

The Freedom of Information Act (FOIA) will enable journalists and other communication experts, and even ordinary citizens with sufficient interests in a given economic issue to get information without hindrance. Such information could go a long way in assisting the economy to grow and develop. But the non-availability of such information could also frustrate potential investors. Firstly, investors need to have ideas about the environment, the relative stability of such environment, available infrastructural facilities and other essential things. Similarly, government will benefit a great deal as economic policies will attract sufficient scrutiny as soon as they are made known to the public.

But, it seems access to information presently hardly exists. The on-going privatization has attracted criticisms partly as a result of its poor information management. There are several government policies that are not sufficiently publicized to enable citizens contribute their quota. The FOIA will assist information flow from the government to the citizens and vice-versa. Similarly, several big business concerns are also in the habit of hoarding information. This has caused a lot of problems in the workings of the economy. For

describe the process of economic advancement in developing countries, both concepts are not strictly speaking the same. According to Professor Charles Kindleberger, economic growth means more output and economic development implies both more output and changes in the technical and institutional arrangement by which it is produced<sup>3</sup>. Thus, economic development goes beyond mere economic growth to imply changes in the structure of outputs and in the allocation of inputs by sectors. In short, economic development means growth plus structural change and transformation<sup>4</sup>.

Any economy that grows is likely to develop and if the economy is developing, it must also be growing. Thus, in the developing world, i.e., in the low-income countries of Africa, Asia and Latin America, growth and development normally go hand in hand. Since there is a lot of structural changes taking place in such countries, issues of growth and economic advancement are by consensus studied as development economics. Economic development and growth, defined as a sustained secular increase in income per capita, has been one of the main objectives pursued by most countries throughout history.

The quest for economic growth is understandable since it can improve the well being of the poor and increase the welfare of all members of society. However, as an objective of economic policy, economic development has been generally quite difficult to achieve. Today, most of the countries of the Third World remain underdeveloped and mired in poverty and misery. An underdeveloped country is in a stable, low-income level equilibrium trap. In a typical less developed country, income is low and population growth is high, leading to low per capita income. In such a country, like Nigeria, development is held back by a vicious circle of poverty; low income results in low-saving and investment which in turn results in continued low income. It is often difficult for such a country to break out of the vicious circle of poverty and underdevelopment, and move into a new plateau when the process of development and growth is cumulative and self-sustaining. Thus, underdevelopment subsists<sup>5</sup>.

What the classification fails to point out is the fact that underdeveloped countries are essentially neo-colonial countries under the hegemonistic domination of great industrialized and developed countries like the USA, Britain, Canada, Italy, German, etc. However, the economies of the underdeveloped countries are tied to the apron string of the economies of the developed countries in a purely imperialistic capitalist arrangement. This is the situation that Nigeria finds herself today. Some of the characteristics of underdeveloped or developing economy include:

- (i) A low average real income and a low growth rate of real income per capita.
- (ii) A high consumption income ratio or a low saving ratio.
- (iii) Relative labour abundance (i.e., it is relatively capital poor or have a low capital-labour ratio).
- (iv) A low-level of technology.
- (v) A high illiteracy rate (a low percentage of the population is literate); Nigeria is 49%.
- (vi) A low life expectancy at birth.
- (vii) High infant mortality.
- (viii) Inadequate health services (e.g., the number of hospital beds per thousand is low and/or the number of doctors per 100,000 inhabitants is low).
- (ix) Inadequate supply of social overhead capital (the available roads, railways, ports, telecommunications, etc, tend to be insufficient).
- (x) Low energy consumption per capita.
- (xi) High percentage of the population employed in agriculture (a low proportion of their population in industry).
- (xii) Low average food intake (protein-caloric intake is inadequate).

Problems that militate against under-developed countries and frustrate them from getting away from the vicious circle of underdevelopment are:

- (1) Rapid population growth and inadequate human capital development.
- (2) Insufficient savings, inadequate investment and low capital formation.
- (3) Use of backward technology.
- (4) Unfavourable external economic environment and export dependence on one or a few primary products.
- (5) Escalating debt and a crippling debt-service burden.
- (6) Unequal trade relations between developed countries and poor developing countries, with developed countries calling the shots and deciding the terms of trade in their favour.
- (7) Neo-colonialism and the willing collaboration of leaders of poor developing countries with leaders and capitalists of rich developed countries to continue to impose capitalism on the developing countries, etc.

From the foregoing analysis, we can see that economic growth and development in Nigeria is a near hoax. Over 41 years of political independence, the country is still bedeviled with serious economic problems. Nigeria is a poor country with 70 percent of its citizens surviving on an income of less than \$1 (N100) a day, while 90.8 percent of the population is surviving on less than \$2 (N200) a day<sup>6</sup>. With an average annual per capita of \$310 in 1999, the World Development Report<sup>7</sup> ranked the country 179th out of 200 nations.

Before the 1970s, Nigeria was self-sufficient in food production and the economy was partially balanced, but with the advent of the oil boom, agriculture and manufacturing were relegated to the background.

Subsequently, the non-oil sector of the economy became stagnant, and revenues accruing from crude oil sales were not effectively managed to stimulate desired growth levels and sustainable economic development.

As a result, a lot of problems manifested and they have beleaguered the Nigerian economy. Some of the problems include:

- (1) Slow growth of the agricultural sector. This has resulted in inadequate output of food items and raw materials needed as input by

individual.

It should be noted that the FOIA is one of the four major statutes facilitating open government in the U.S.A. The others are:

(i) The Federal Advisory Committee Act with its regulations which has its sights set more firmly on the real target of bureaucratic decision making with the basic objectives of establishing standards and uniform procedures to govern the creation, operation and termination of federal advisory committees, to ensure that whenever possible advisory committee meetings are open to the public and accessible; to reduce their cost; to avoid specific interest group domination and rubber stamping of prior decisions; to keep the public and congress advised on all aspects of advisory committees and to ensure they remain advisory and not executive.

(ii) The Sunshine Act of 1976 which is an “open meeting” law allowing access to the meetings of those agencies within its scope with the aim of opening up to the public portions of the “deliberative processes” of certain agencies.

(iii) The Privacy Act of 1974 with its numerous amendments which regulates the collection, control, content, dissemination and use of certain categories of government information and focuses upon “systems of records” established, controlled or maintained by an agency.

**(B) CANADA**

The Canadian Constitution is a written federal constitution. In Canada, there is the Access to Information Act (A.I.A). It was drafted by the administration and developed through amendment. The A.I.A. has eight or nine as many exemptions as FOIA of the US. Unlike the A.I.A. the FOIA did not provide for an information ombudsman. Congressmen were jealous of their role as citizens' representatives and Americans like litigation.

The A.I.A. was passed in 1982 as part of the broad

As the Federal House of Representatives considers the bill for the enactment on the Freedom of Information Act (FOIA) the opinion is that the right to life, liberty and property which can be said to be what constitutes public interest can only be guaranteed if Nigerians are allowed to determine what happens to them based on their culture and history and not models from other parts of the world.

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**Accessing Information For Public Interest  
(By Mrs. Bisi Amagada)**

Permit me to refer to a workshop organized by my organization, FOCOS, for journalists at the National Press Centre, Abuja, 1999 with the theme “Media Focus/Image-making: Accountability and Integrity, Imperatives for National Survival, year 2000 and beyond.”

One of the strongest messages we got from the communiqué was this: “It is expected that a journalist worth his/her salt must be an embodiment of useful and concrete knowledge of whatever information is being sought or disseminated.”

In other words, unless you know, you're not likely to give correct information to anybody. So, the questions arise: -

(1) What is the image or personality of the information seeker like? What picture does he/she present to the officer or officers keeping the vital information being sought? Appearance, mode of dressing influence the response you'll get.

(2) Are the questions leading to the answers to the information you're seeking; Are they well researched? Does the enquirer beat about the bush or has armed himself/herself with concise, direct questions?

(3) What is the real and true motive for the information being sought- (a) Self-interest (b) Political gain, or (c) General interest for

the good of the public? We've got to convince our information provider that our desire to access information is for public good. This is where the ability to be a skilful investigative journalist comes in.

Display useful, intelligent approach, be informed and you'll access information from high places.

We need to build on the success we scored following the effective media war we waged which drove the military back to the barracks.

An accountable journalist who has earned the tag of integrity has already possessed the ingredients that will help him/her access information freely. Painstaking, persistent pursuit of objective usually earns one a good dividend. We must pursue this relentlessly.

Your attitude as a journalist, your style and approach can enhance or mar your chances in accessing information. We need to have a positive outlook to achieve this and equip ourselves to surmount human hindrances in the pursuit of our job.

I fully support the bill on accessing information for the good of the people, but we need to go beyond the newsroom of the print and electronic media to achieve optimum result. We need to sensitize the citizenry, right to the grass root to create and generate an awareness of their right to access free information. We need the co-operation of NGOs and CBOs who work with grass root citizens to baptize them into this human rights issue. IPC must not leave out women or the generality of voters who really are in the rural setting of our villages.

They must be carried along as we fight for this bill, their contributions can be generated through local meetings, cultural groups, women organizations, even churches and mosques. The time to carry out the exercise is now.

*(Mrs. Amagada, Journalist, Media Consultant and President of Fountain Counselling Services, FOCOS, made the presentation at the Benin round table)*

for law enforcement purposes if disclosure would result in certain types of harm. Reliance by an agency on an exemption is discretionary and not mandatory and so exempt information may be closed. Where there is a refusal to supply information, appeal procedures are specifically provided in each agency's FOIA regulations. A denial letter will inform the applicant of a right of appeal, usually within 30 days. The official refusing the appeal must be identified, and the exemption and reasons for refusal must be stated. The applicant must be informed of his or her right to apply to the federal court where there is a complete rehearing with the burden of proof on the agency. Attorney fees are recoverable where an applicant substantially succeeds.

The FOIA in the US. has been hailed as the "great initiator" of open government. It should however be noted that there has been considerable opposition to it. While in 1979 Dresner spoke highly of the Act's impact upon government accountability, scrutiny and improved decision making as well as on inhibiting corruption, from 1980 the executive had presented repeated proposals for reforms of the FOIA because of the cost of its administration, the quantity of case law and because the Act was being used in ways which congress never intended. The business community has also been lobbying for reform, which would facilitate businesses opportunity to challenge requests for information about them. A reform was introduced in 1987 by executive order improving the position of third parties. The law enforcement agencies too were not satisfied with the exemption, which covers their operations. In 1986, after years of deliberation, congress passed a major FOIA reform, which extends the exemption available to law enforcement practices. The 1986 Act actually excludes certain categories of documents from the FOIA. Besides, the records or information no longer have to be investigatory and may be withheld when they could reasonably be expected to interfere with enforcement proceedings, could deprive a person of a fair trial, could reveal the identity of a confidential source which furnished information and could disclose techniques and procedures for law enforcement investigations or prosecution; or disclosure could reasonably be expected to endanger the life or physical safety of any

the FOIA. These include national defence or foreign policy information that is properly classified as confidential, secret or top secret by Presidential executive order; National security tends to be seen in terms of defence and foreign policy. An executive order of 1982 reversed the trend of relaxation of security classifications and “broadened the discretion to create official secrets.” Many of the safeguards against over enthusiastic classification were removed. Mandatory secrecy requirement, rather than permissive ones became more common. The “balancing test” requiring the weighing of public access against the government's need for secrecy was eliminated and systematic declassification was cancelled.

A new executive order took effect in October 1995. It liberalized the 1982 order. It eases the process of declassification in several ways by shortening the period of classification in most instances to 10 years; automatic declassification has been introduced for records over 25 years old unless information is “especially sensitive”. Systematic declassification is re-introduced in other cases, which establishes a programme of review classification. The “balancing test” is restored in an amended form to determine whether the public interest in disclosure out-weighs the damage to national security that might reasonably be expected from disclosure. It removes presumptions against automatic classification in some areas like foreign government information. Concise reasons must be given on the documents for classification. A security classification Appeal Panel and a Policy Advisory Council are established. The order will be coordinated by the Information Security Oversight Office under the National Security Council.

Under the FOIA the internal rules and practices of an agency will be exempted but not the manuals and instructions on the interpretation of regulations. Other important exceptions include trade secrets, commercial and financial information obtained by the government that is privileged or confidential, inter or intra memoranda or letters which are not available by law, information protected by other statutes especially concerning the C.I.B.. and also taxation personnel or medical files disclosure of which would constitute an invasion of privacy, and investigatory records compiled

## A Doctrinal And Comparative Perspective Of The Enhancement Of Citizens' Participation In Democratic Governance (By Ademola O. Popoola, Ph. D)

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

It is an established doctrine of the law of the constitution, particularly in the United States, that freedom of speech and the press have a preferred status over all other rights; including the rights to life and personal liberty. For this reason, the rights to freedom of speech and the press are more jealously guarded against governmental interference than other rights including the right to life. This may appear rather strange, more so, as life seems more basic and valuable since without it there can be no speech and no press. The latter are mere incidents of life, manifestations of man's existence as a living being.” (Nwabueze, 1982:457).

But the basic value of life is important and unquestionably

so from the standpoint of the lone individual. From the perspective of the community, freedom of speech and of the press “are indeed the very life of the political community”, the essence of its rights to self-government (ibid.). Free Speech and a free press are instruments of self-government by the people. They enable the people to be informed and educated about affairs of government, thereby also enabling them to form and express intelligent opinions on such matters. Free dissemination and discussion of ideas and opinion is thus indispensable to democratic governance. We shall return to the theme of the preferred status of speech and the press later in the course of this presentation.

How the 1999 Constitution has gone about protecting the freedom of speech and of the press shall be our next concern.

### **FREEDOM OF SPEECH AND OF THE PRESS UNDER THE 1999 CONSTITUTION**

Section 39 of the 1999 Constitution provides:

- (1) “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.
- (2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to establish and operate any medium for the dissemination of information, ideas and opinions.
- (3) Provided that no person other than the Government of the Federation or of a State or any other person or body authorized by the President on the fulfilment of conditions laid down by an Act of the National Assembly shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.
- (4) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society.
  - (a) For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts of regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films, or

participation of citizens in the process of governance. It was a representative participation.

Bentham, however, would have seen it as proper for government to have restricted a free flow of information about its activities. He argued for three exceptions: (1) where publicity would assist an enemy of the State (2) where it would harm the innocent, or (3) where it would inflict unduly harsh punishment on convicted persons.

It is against this background that we now proceed to examine the approaches of different jurisdiction to freedom of information.

### **COMPARATIVE PERSPECTIVE**

#### **(A) THE UNITED STATES OF AMERICA**

There has been a Freedom of Information Act (FOIA) in the U.S.A since 1966. Previous statutes had only allowed public access to government documents if a “need to know” was established and they allowed agencies to withhold information for “good cause” (see the House-keeping Statute of 1789, and the Administrative Procedure Act of 1946).

All agencies in the executive branch of the federal government, including administrative regulatory agencies, are subject to the FOIA. Judicial and legislative branches of government are, however, excluded from the operation of the Act, just as members of the President's immediate personal staff, whose sole function is to give advice and assistance to the President. State governments and local and city governments are not included in the legislation. Many of these however have their own FOI laws.

The aim of the FOIA, as amended in 1974, is to provide public access to an agency's records if it is covered by the Act. An applicant does not have to demonstrate a specific interest in a matter to view relevant documents. An idle curiosity is sufficient. The legislation indeed provides a presumptive right of access to documents and files to **anyone** (not just an America).

The legislation, however, provides for nine exemptions from

In the “almighty state” (the Leviathan) citizens have no need of governmental information. So do those who purport to speak on their behalf. Government is absolute and it is absolute because it needs absolute power to defend society. Too much information about state activity will 'demystify' the process of government.

When, on the other hand, government is limited and is in the nature of a trust on behalf of the community, as a democratically elected government necessarily is, such assumptions of absolutism, which inform the relationship between state and society, government and the community, can no longer hold. The nature of the bond between the state and its citizens and between citizens *inter se* is formulated in an implied contract. Breach by the government justifies its removal. To John Locke, the supreme power of the state resides in the legislature and behind the legislature are the people. The people govern but they are not government. They are not the legislature, although they are represented in it. In matters of government, the community could not make claims for information directly but via their representatives.

The force of the argument posed on behalf of society is thus political. The growth of governmental power quite simply necessitated greater safeguards against abuse. As Bentham in 'On Publicity' puts it “Secrecy, being an instrument of conspiracy, ought never to be the system of a regular government”. Bentham's appeal is to a political morality, which government must adhere to and which is sympathetic to a representative democracy and publicity in matters of government. “Without publicity, no good is permanent, under the auspices of publicity no evil can continue”.

Secrecy was thus the climate in which, at worst, those placed in government would abuse the power, which has been given to them. It protected misrule. Publicity, regular elections and a free press were thus needed to safeguard the electorate from their chosen governors - from the excesses of “bullies, blackguards and buffoons”.

Liberal philosophers have also accepted sharing of information as an essential component of democracy itself. Democracy had to be extended to ensure the greater informed

(b) Imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.”

It is further provided in section 22 of the Constitution (which section is non-justiciable) that:

**“The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter (Chapter 11) and uphold the responsibility and accountability of the Government to the people.”**

It is, at this juncture, pertinent to ask: what is the scope of the right guaranteed? What does freedom of speech and of the press entail? Does it guarantee freedom of access to information? What is the value of freedom of information in the context of democratic governance? How does it augment the preferred status of freedom of speech and of the press referred to earlier on? In our context, how does freedom of information enhance the capacity to actualize the values and ideals embedded in the Chapter on Fundamental Objectives and Directive Principles of State Policy in the Constitution? These are some of the issues that will receive attention in this paper.

#### **THE SCOPE OF FREEDOM OF SPEECH AND OF THE PRESS UNDER THE CONSTITUTION**

Section 39 of the 1999 Constitution reproduces the 1979 Constitutional provision (S. 36) in its exact terms. We will recall as a matter of fact that few issues in the 1979 Constitution at the time it was drafted provoked as much public controversy as the freedom of the press. Professor Nwabueze (1982), while asserting that much of the discussion is confused and unedifying, has identified the main sources of the perceived confusion. There is first, in his view, the erroneous assumption that press freedom requires special protection

for the press as an institution whereas, in the context of that concept, the press is not an institution comprising special members, it is simply a vehicle, or organ for the dissemination of ideas or opinions to the public through the medium of the printed word. A newspaper, magazine or other periodical is operated as a business and has to be manned by workers, but its use for the dissemination of ideas or opinions is open to the public at large. The protection needed is, therefore, not for the workers as such but for access to the medium by any person for the dissemination of information and ideas.

Secondly, there is the failure to appreciate the difference between freedom of speech and press freedom. This difference lies not just in the difference between the spoken and the printed word and the wider range of the latter. Whereas speech is an irrepressible attribute of a man's being so long as he lives, and a constitutional guarantee of its freedom is given to provide protection not so much against suppression as against unreasonable punishment or other consequences. As for press freedom, the protection needed is essentially against suppression or prior restraint, in the technical language of the law on the subject. Unlike speech, expression through the medium of the press can be prevented by a system of licensing or by the prescription of a publication already in circulation. It can also be stifled by the imposition of unreasonable punishment for what is published. But punishment for publication is a far less danger to press freedom than complete inability to publish at all. This is why press freedom has come to mean essentially freedom from all *prior restraints* whether in the form of a licence refusal, which prevents publication from inception or a ban, or proscription of a further publication or distribution. It connotes the right of every person to own a printing press, to publish what information or ideas he pleases, to decide the editorial policy of the publication and to enforce it upon his staff, and to distribute or circulate freely without having to obtain a licence from the authorities or to face suppression or proscription. It is the freedom from all prior restraints complemented by the freedom from unreasonable punishment for what is published that lies at the basis of the legal definition of press freedom.

our integrity can be compromised, our identity shaken, our security shattered. Details of legitimate intimate relationships, medical facts, of prolonged sensitive negotiations, extremely delicate investigations in the public interest, development of strategic or commercial plans and the long-term development of products requiring constant experimentation and creation of thought or the protection of ideas, all often require secrecy. Without the guarantee of secrecy there would be no protection for their development.

The law has indeed come to recognize this by the enactment of copyright and patent laws, the law of confidentiality and specific privacy laws such as those that have been enacted in America and parts of the Commonwealth and Europe. Some American states have also made unauthorized appropriation of industrial secrets a crime.

#### INFORMATION AND THE STATE

Birkinshaw (1996; 18) has rightly observed that: "The position that a ruling body adopts towards the provision of information about its activities to a representative chamber or the civil society at large will inevitably be coloured by considerations about the proper role of government, as well as sheer political expedience."

When, for instance, government was in the personal household of the monarch, the words of James 1 of England expressed the "private nature" of state business. He warned: "None shall presume henceforth to meddle with anything concerning our government or deep matters of state". Francis Bacon, for his part, in his subtle justification of state secrecy stated:

**"Concerning government, it is a part of knowledge secret and retired in both these respects in which things are deemed secret: for some things are secret because they are hard to know and some because they are not fit to utter. We see all governments as obscure and invisible."**

confused data. They are the most basic forms of information. Without the application of these categories and intuitions we would be incapable of achieving judgment or making decisions. We would indeed be incapable of existence beyond that of a vegetable.

It should however be noted that the information to which we apply our faculties of judgment and decision-making is far from immutable. It is subject to change, historical development, inaccuracy, distortion or imprecision, and so on. That is the reason for placing a high premium on telling the truth, faithful and accurate recording of events, care in the provision of information, and for punishing cheats and frauds or censuring liars, or holding as culpable the negligent transmission of information that causes harm.

As a practical reality, communication must take place on the basis that the conditions constituting communicative competence are true. If not, communication in any meaningful sense of the word would be impossible. The "ideal speech situation" is one whereby all participants must be given the same opportunity to debate and justify according to reasoned argument without external pressure or domination. All assertions and norms and claims are subject to examination and appraisal in discussion. This situation is a fulfilment of the conditions which enable meaningful communication, and it is frustrated by systematically distorted communication, by manipulation of public opinion, by misinformation, by a lack of full information on which to exercise a proper freedom of choice, or ideologies legitimating class, economic or political domination. The attempt to convey correct information is indeed the basis on which communication is premised. As providers of information, we know the consequences of providing false information. There is, however, the other side to the provision of information; control of information; the pursuit of secrecy or confidentiality or the quest for privacy, which is essential to our full development as human beings. The question has always been how to reconcile this with the 'ideal speech situation'. We agree with Birkinshaw (1996) that it can be reconciled by accepting that there are spheres of our personal and public lives that are a legitimate object of secrecy. Without adequate protection for justifiable secrets

What then does the 1999 Constitution guarantee? It is here important to note that the 1963 Constitution which preceded the 1979 Constitution provided that "every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference" (S.25)(1). Freedom of the press is not specifically mentioned, but it is unquestionably comprehended. All media of expression are covered.

The 1999 Constitution, like the 1979 Constitution reproduces the 1963 provision, and then goes further to say that without prejudice to its generality, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions (S.39). In effect, freedom from state licensing of newspapers, magazines or other publications and from proscription or ban on account of what is published is differentiated from speech and accorded a separate and more emphatic constitutional protection. The provision says that every person has a right to own or establish and operate any medium of communication e.g. a newspaper. The operation of a medium of communication definitely carries with it the right of the operator to publish in it what information, ideas and opinions that he pleases, without licence and without censorship by the authorities (Nwabueze, 1982).

Freedom of speech and the press under the Constitution is, however, balanced with the security of the State, orderly government, public morality and the presentation of the reputation of individual members of the community. It is provided that the constitutional protection accorded to the freedom of speech and the press shall not invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health (b) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephones, wireless broadcasting, television or the exhibition of cinematograph films (c) which imposes restriction upon persons holding office under the government, members of the armed forces or members of the police force, or (d) for the purpose of protecting the

rights and freedoms of other persons.

### **DOES THE FREEDOM OF SPEECH AND THE PRESS EMBRACE FREEDOM OF INFORMATION?**

It is sometime claimed that press freedom embraces not only the right to report news without prior restraint or unreasonable punishment for what is published, but also an unrestrained right of newsmen to gather information and the right not to be compelled to disclose its source.

As for the right to gather information, the U.S. Supreme Court in the case of Bromsberg v. Hayes (1972) 408 U.S. 665 at 684 held that no “constitutional right of special access to information not available to the public generally is guaranteed to the press”. The court also stated in Zemel V. Rusk (1965) 381 U.S. 1 at page 17 that “the right to speech and publish does not carry with it the unrestrained right to gather information.”

There is accordingly neither a constitutional right to have access to particular government information or to require openness from the bureaucracy nor a constitutional duty on the part of the government to furnish to newsmen information that is not available to the members of the general public. This is also the position under the 1999 Constitution.

But is this desirable? And how can the situation be remedied? What does the experience of other countries in this regard suggest? What does 'freedom of information' really mean?

### **FREEDOM OF INFORMATION: THE CONCEPT**

For most of those who employ the phrase, 'freedom of information' means having access to files, or to information in any form, in order to know what government is up to. In some jurisdictions it may mean not only allowing access to government documents in whatever form they happen to exist, but also opening up the meetings of governments, their advisory bodies and client groups to public scrutiny - the 'open government' dimension. Or it may

involve access by individuals to files containing information about themselves and an assurance that the information is not being used for improper or unauthorized purposes.

The popular phrase 'Information Society' has come to describe the essence of the advanced computerized world. From financial markets to government, from national security to education, from multinational corporations to small employers, from people to social welfare, medical treatment and social services, we are confronted by information repositories and retrieval systems whose capacity to store and transmit information is simply staggering. To be sure, we have always been in a general sense, an information society. What is novel in our present context is the heightened awareness of the use, collection, dissemination or withholding of information. Such functions are now facilitated by artificial intelligence systems, advanced information technology and the opportunities which exists to influence public opinion through ever more sophisticated broadcasting telecommunication and information technology networks (Birkinshaw, 1996).

### **THE IMPERATIVE OF INFORMATION FLOW AND THE LIMITATION THERETO**

There can be little doubt that our capacity as human beings to acquire, use and store information is essential for our survival. At a practical level, disasters are avoided, accidents prevented and sustenance provided by our use of information. While information is important, our ability to discern the degree of the reliability of the information provided is essential in the exploitation of resources or relationships, or in the exposure of Sham (Birkinshaw, ibid).

Information is also necessary to make sensible choice or wise judgment. Moral and ethical evaluation depends upon information acquired through our own and our predecessors' experience. Information in the form of facts, in fact constitutes the basis of order in our lives and of community. Facts, according to Kant, are categories or intuitions, which affect the working of the mind itself. They are the starting point of our organization of

Attorney General and Minister of Justice, has been giving Nigerians goose pimples. Within five months of the gruesome murder, not less than four police officers have been appointed at various times to head the investigating team. Nothing is being heard about “Mr. Fryo” who allegedly made confessional statement that he knew the killers of Chief Ige. The governor of Osun State, Chief Bisi Akande, publicly declared that he knew the killers of Ige. Why has Akande not been compelled by security agencies to divulge his privileged knowledge to the Nigerian public? Is he being left to make such implicating statement without questioning because he enjoys constitutional immunity from investigation while in office as a state governor? The FOIA must look into such immunity enjoyed by public officers.

One may go on and on to cite examples of high-level corruption and human rights abuses perpetrated against the Nigerian state and Nigerian citizens by Nigerian leaders, but which have been swept under the carpet without anybody raising an eyebrow. Until Nigerian leaders are made to publicly account for their actions and deeds in office, the Freedom of Information Act aimed at making information on public affairs accessible to Nigerians will end up a mirage. There should be declassification of security reports right from General Buhari regime till date to know who directed what and the roles played by individuals.

Assets declaration by public officers to the Code of Conduct Bureau on assumption of office and at expiration of tenure should be made a public affair for proper and honest evaluation of how Nigerian public officers came about their wealth. The recent case of Kogi state governor, Prince Abubakar Audu, who allegedly acquired two houses worth about N1billion in the United States of America and Britain should be an eye opener for the sponsors of the Freedom of Information Act. While Governor Audu claimed that he declared the two houses in his assets declaration form submitted to Code of Conduct Bureau in May 1999, it was discovered that the houses were built in early 2001 while Audu bought them in May 2001. It becomes difficult to decipher how houses that were built in 2001 made their way into an assets declaration form filled in 1999.

Members of the mass media of communication, as the fourth

constitutional package reflecting a wish for a new constitutional structure as Canada removed the last vestige of control from Westminster. Under it, access is allowed to Federal Government records and these include “letters, memos, books, plans, maps, photographs, films, microfilms, sound recordings, computerized data and any other documentary material regardless of physical form or characteristics or any copy thereof”. It has been held to apply to E-mail correspondence and that bodies under the Act should keep E-mail correspondence for two years. An access register exists which contains descriptions of government records, their probable locations and other information which will likely assist in identifying precisely which records an applicant wishes to see. Instructions are provided on how to identify, as precisely as possible, the information an applicant is looking for, how to get assistance and how to apply for access. Government departments have access coordinators who assist free of charge.

A request must be in writing and there is an application fee of \$5 with additional fee for time in excess of five hours spent on a request and for computer processing and copying time. An applicant must be a citizen of Canada or a permanent resident. An agency has thirty days to respond to the initial request, though this may be extended where a request is complicated. The head of each government institution covered by the Act must submit an annual report to parliament on the administration of the Act. If a body claims that information is exempt, it has to justify that it is exempt. The Act does not apply to Crown Commercial Organizations. Besides, information may be classified for internal security purposes under a Treasury Board Manual of 1991.

Excluded materials include Cabinet Secrets or confidences of the Queen's Privy Council covering such items as policy proposals, background options and discussions, agenda of Privy Council meetings and minister/adviser discussions on policy briefings and draft legislation. Discussion papers may be released if inter-alia the decision to which they relate has been made public.

The A.I.A. provides for mandatory and discretionary exemptions. The former include classes of documents such as

information from foreign, provincial or municipal governments, certain confidential information from the Royal Canadian Mounted Police, personal information and information supplied by outside sources. The discretionary exemptions are extensive and include those which might harm internal/provincial affairs, international affairs, Canadian defence or the detection or prevention of subversive or hostile activities, lawful investigations, or those which might facilitate the committing of a criminal offence if released.

If release would threaten trade secrets, legal privilege or personal safety it may be exempted. Also exempt is the advice or recommendations developed by or for an institution or a minister, which would disclose accounts of their deliberations and consultations *apropos* of negotiating plans or position. Third party information covering trade secrets, competitive ability, contractual matters or other confidential information may be waved from exemption without consent where the disclosure would be in the public interest and it relates to health, public safety or the protection of the environment. Safeguards ensure third party notice and right of challenge.

Data banks covering personal information may be made exempt where they contain exempt files, which consist predominantly of personal information held for law enforcement or reasons of national security. They are made exempt under an order of the Privy Council.

It should be noted that one of the most commonly invoked exemptions under A.I.A. is that relating to personal information. A Privacy Act was passed in 1982. It allows access to personal individual records of scheduled government departments by the individual subject concerned where these records are held by the department. It does not cover private sector bodies. A privacy commissioner (PC) shares premises and general staff with the information commissioner (I.O.) although they are different individuals and they have different legal advisers because the interests of the two may clash.

administration, the properties were returned to those from whom they were seized. Nigerians deserve to know why the decision to return the seized illegitimately acquired property was taken, who was the brain behind the decision and what the decision was intended to achieve in the overall interest of Nigerians.

During the Gulf War of 1990, Nigeria was said to have benefited from an oil windfall to the tune of Twelve Billion Dollars (\$12billion) which has not been accounted for, twelve years after. Nigerians deserve to know how the money was spent and on what projects.

General Ibrahim Babangida government annulled the nation's freest, fairest and credible presidential election in June 1993. The annulment shook Nigeria to her very foundation. Eleven years after, Nigerians are yet to be told the reason or reasons for the annulment and who and who were involved. Why was Chief M.K.O. Abiola, the winner of the election and known intimate friend of General Babangida, denied the mantle of leadership as the president of Federal Republic of Nigeria? The Freedom of Information Act must be strengthened such that Babangida could be compelled to disclose information on the annulment to the Nigerian public if only to avoid repeat occurrence in future.

The mysterious death of Chief M.K.O. Abiola in detention also deserves adequate public information. Likewise, the death of General Shehu Musa Yar'Adua. At the sittings of the Oputa Panel, a former Lagos State Commissioner of Police, Alhaji Abubakar Tsav, disclosed that while he was investigating the killing of Mr. Dele Giwa, pioneer editor-in-chief of *Newswatch* magazine, through a letter bomb on October 19, 1986, he (Tsav) was closing in on the culprits when the case was transferred to another officer and the case file withdrawn from him. Why was the case taken away from Tsav and transferred to another officer? Who gave the order for the transfer of the case from the original investigating officer to another? Where is the case file now? These are questions deserving answers if FOIA is to be an effective instrument for curbing the excesses of Nigerian public officers.

Similarly, the murder of Chief Bola Ige, the nation's

views of Nigerians submitted its report, nothing has been heard about the exercise again. On May 1, 2000, the federal government announced a new national minimum wage of N6,500 per month and subsequent twenty-five (25) percent increment in 2002. Today, many states can not pay the wage and the said increment has not been effected. Yet, the government does not consider it expedient to avail Nigerians information on why the new national minimum wage cannot be implemented by the state and local governments and why the 25 percent increment is put on hold. There are so many other areas of our national life and public affairs on which government has concealed information like the smuggling of a clause into the Electoral Bill 2001, corruption in high places and the culprits, the sacking of Odi Community in Bayelsa state and Zaki Biam in Benue state, the nation's external debt, depreciating value of the naira against the dollar and other convertible currencies, the Lagos bomb explosions and so on.

#### FOR FOIA TO BE EFFECTIVE

For the Freedom of Information Act to be effective and achieve its desired goal, there is an urgent need to initiate process of re-orienting the attitude of Nigerians to shed off their garb of complacency and wear the apparel of agitation to know how they are being governed. Nigerian leaders have, over the years, capitalized on the complacency, timidity and docility of the people to run the machinery of government based on personal whims and caprices. Nigerians are in the dark about so many issues that have negatively affected their national life. It is imperative to ask questions about activities of the nation's past leaders.

When General Murtala Mohammed came to power in July 1975, he started the process of purging public officers of corrupt tendencies. Out of the twelve (12) state governors who served in General Gowon regime, ten of them were found to have corruptly and illegitimately enriched themselves. Assets acquired illegitimately by the governors and their aides were confiscated and turned to public property. During General Babangida

#### (C) AUSTRALIA

The FOIA was enacted in 1982. In 1983 an FOI Amendment was passed to cover certain deficiencies in the 1982 legislation including access to documents up to five years old at the time of the commencement of the 1983 Act. Further reforms took place in 1986, 1988 and 1991. The 1982 Act places a duty on the responsible minister to publish not later than 12 months after commencement of the Act particulars of the organization he heads, its functions and powers, arrangement allowing public participation for non-official persons or groups in whatever form in the formulation of policy, the organization's administration, the categories of its documents and details on access procedures and officers. Ministers have to publish in the *Federal Gazette* all documents including computerized records which may be used to make decisions or recommendations affecting rights, privileges, benefits, obligations, penalties or other detriments. Every person has a legally enforceable right to agency and ministerial documents which are not exempt. A decision on access has to be given within 60 days and refusal must be accompanied with reasons.

The Act provides access to documents not information as such. Documents are exempt where disclosure would be contrary to public interest, it could reasonably be expected to cause damage to the security of defence of the commonwealth, international relations, and federal/state relations. Cabinet and Executive Council documents are exempt. So are internal working documents where disclosure would reveal advice or deliberations relating to the deliberative functions of an agency or minister or of the Commonwealth Government and would be against public interest. A certificate from the Minister covering these exemptions is conclusive evidence of the public interest. This decision cannot be reviewed by the Administrative Appeal Tribunal (AAT). The Tribunal can determine whether there is a reasonable basis for the exemption claim. If it does not believe there is, it may recommend revocation.

There is also provision for the **ombudsman**. However,

annual reports of the **ombudsman** are notable for his own complaints that he receives inadequate funding to perform his responsibilities under the FOIA. Several persons who wish to be represented before the AAT were turned down because of a lack of funding; he received no additional staff for his FOIA responsibilities. The 1983 legislation not only added the representational role to his responsibilities he has to monitor the Act and recommend improvement in access.

**(D) NEW ZEALAND**

New Zealand enacted an FOIA known as the Official Information Act in 1982. It bears some resemblances to the Australian legislation although it makes provision for the publication of internal rules and has many distinct characteristics. An information ombudsman has been created. It is known as the New Zealand ombudsman. It deals with information complaints. His decisions are mandatory on the commencement of the 22nd day after the day in which his representation is made to the department, unless the responsible minister otherwise directs or decides by order in council. Such orders are rare. There is a public interest override on some exemption including the constitutional conventions protecting policy advice. The Act also creates an information authority whose duties are:

- (i) To review as a first priority the protection afforded to official information by any Act with a view to seeking whether that protection is both reasonable and compatible with the purpose of FOIA
- (ii) To define and review categories of official information with a view to enlarging the categories of official information to which access is given as a matter of right.
- (iii) To recommend the making of regulations prescribing:
  - (a) Categories of official information to which access is given as a matter of right
  - (b) Such condition if any as it considers appropriate in relation

that the programme would end up a fruitless exercise because it was not designed to succeed in the first place. Gani and numerous other critics were hounded into detention across the country for their effrontery to keep the people informed about the deceptive game Babangida was playing with the transition programme. The critics were however vindicated when Babangida, through the instrumentality of deception, ensured that the transition programme did not end up a success.

Those who saw through Abacha's mind to succeed himself were equally not spared the discomfort of dingy cells and detention centers across the country. General Shehu Musa Yar'Adua, the current President of the Federal Republic, Chief Olusegun Obasanjo, my humble self (Shehu Sani), Kunle Ajibade, Chris Anyanwu, Colonel Lawan Gwadabe and many others who dared call on Abacha to, at least, be sincere and honest in his dealings with the Nigerian people were framed-up as coup plotters, arraigned before a special military tribunal and sentenced to various prison terms, and in some cases, to death.

General Abdulsalami Abubakar who succeeded Abacha also ran a close-knit government concealing information on public affairs from Nigerian people. For instance, the contents of the 1999 constitution were never made available for public scrutiny until he handed over the mantle of leadership to Chief Olusegun Obasanjo on May 29, 1999. Therefore, General Abubakar cannot be absolved from blame for the current constitutional crises that constitute threats to the survival of democracy in the country.

If Nigerians had hoped and nursed high expectations that, with the return of democratic civil rule, they would be active participants in governance, such hope and expectations have turned out to be illusion. It is still business as usual. At all levels of governance, from the federal through the state to the local government, there is significant distance between the elected leaders and the people. It is yet to be ascertained how much public officers earn as salaries and allowances. For two years, Nigerians were kept debating the review of the 1999 constitution, but about a year after the presidential committee saddled with the responsibility of collating

power for thirty (30) years. The military juntas ruled with iron fist. They were not only secretive about the management of public affairs, they were deceptive too as witnessed during General Ibrahim Babangida era and General Sani Abacha regime. Babangida would put certain policy measure in place only to change it at will without consideration for the feelings of the general populace. Because of his deceptive manner of governance, Nigerians could not trust pronouncements from their president and thus the nicknaming of Babangida as “*Maradona*” after the Argentine soccer whiz kid, Diego Maradona, noted for his dribbling skill on the football pitch. To many Nigerians, if Babangida said “Good Morning”, there was need for one to look at one's watch to ascertain that it was indeed, morning time.

During the military era, criticism of government policies was taken personal and critics were hounded into detention. To the military dictators, all information on government activities is classified and must not be divulged to the public. While it is a truism that information on matters of defence, military formations and capabilities, foreign affairs and internal security build up, is, to a large extent, not easily accessible to the general public in the interest of national security, it becomes difficult to fathom why information on matters of economics, monetary policies, social development, education, law, politics and even, appointments into public offices, is hoarded.

For instance, during the General Muhammadu Buhari administration, two journalists with *The Guardian* newspapers, Messrs Tunde Thompson and Nduka Irabor, were arrested, detained, tried by a special military tribunal and jailed for publishing the anticipated appointment of General Hananiya as the High Commissioner to Britain ahead of government's formal announcement of the appointment. It is yet to be seen, seventeen (17) years after, how *The Guardian* publication posed threat to national security at that time.

When Babangida was dilly-dallying with the implementation of his transition programme to democratic civil rule, pro-democracy activists like Chief Gani Fawehinmi raised alarm

to the giving of access to any category of official information.

### **(E) SWEDEN**

Sweden has had a Freedom of the Press Act as part of its constitution since 1766. All official documents are now available for inspection and copying although public corporations defined as commercial organizations are excluded. Besides, internal memorandum are not available until filed, that is the matter to which they refer has been finally resolved. Documents received or dispatched by the authority are within the terms of the Act. The four areas of exemptions are national security and foreign affairs, suppression of crime and illegality, protection of legitimate economic interest and personal privacy.

The statutory details concerning exempt items are contained in the Secrecy Act and refer to classes of documents and not their contents. The Secret Act specifies a period for which a document will be secret, from two years to seventy years. Since 1981 the emphasis has been on increasing secrecy. Internal review may follow a refusal followed by an appeal to the administrative courts. Appeal is cheap and readily available. A Data Inspection Board administers a Data Act of 1973.

### **(G) FRANCE**

The French Law on access to administrative documents was approved in July 1978. It has been in force since December 1978. Those served by the French administration have access to “non-name” linked documents. The 1978 Act applies to private organizations charged by the state with operating a public service. The Act has been criticized for its vagueness and for the terms of its exemptions. A special commission known as the **Commission d' Acces aus Documents Administrahp** was established to supervise the implementation of the Law. The Access laws are available to citizens and non-citizens alike. In 1993, there were 3,200 information complaints, which were sent by C.A.D.A to the **Conseil d Etat**.

**OBSERVATION**

It can be seen from the foregoing that there are different approaches adopted by countries operating in a liberal democratic tradition and at broadly similar stages of economic development. The different socio-cultural and political backgrounds of the countries have also ensured variation in their approaches to FOI. All of them, however, reacted to the growth of government and bureaucracy, the escalation of information gathering and control by executive agencies and in some cases, private bodies and the ability of democratic institutions of representative government to oversee these developments effectively.

**NIGERIA**

**THE FREEDOM OF INFORMATION BILL**

The above bill, which is now before the National Assembly, is greatly inspired by, and combines the features of equivalent legislation in the other jurisdictions considered earlier on. It provides for right of access to records (S.3), information about government and/or publication to be published in the Federal Gazette at least once every year (S.4). The mode of request for access to records (to be in writing) (S.5); requirement of notice where access to records are requested (S.6), transfer of request (S.7), extension of time limits (S.8), where access is refused (reason to be given) (S.9); fees and action for waivers (S.10), criminal liability for destruction of records (S.11), forms of access to records (S.12), where information is not in separate and distinct form (S.13), exemption in respect of international affairs and defence (S.14), records compiled for law enforcement purpose or for internal matters of a government and or public institution (S.15), economic interest of the Federal Republic of Nigeria (S.16), records containing personal information (S.17), third party information (S.18), judicial review (S.23), refusal by head of government and or public institution to disclose records (S.24), access to record by court (S.26), burden of proof (S.28), order to disclose records (S.29),

affecting the lives of the people and society are taken.

In a democratic setting, every individual is expected to be active participant in the management of public affairs. The starting point is the electoral process by which the people decide, through voting or ballot box, who their leaders should be. By the same process, they are periodically availed the opportunity to either renew the mandate of their leaders or effect changes in the leadership structure.

Democracy affords the people opportunity to exercise, to a large extent, certain fundamental rights and freedoms especially the right to freedom of expression and access to information on how societal resources, both material and immaterial, which affect their lives are being managed. The people have the right to ask questions about policy initiatives and actions of their leaders and it is incumbent on the leaders to oblige the people information on how and why such policy initiatives and actions came about. In short, for popular participation of the people in public affairs, leaders are not supposed to be secretive in the management of societal affairs.

In advanced democracies like the United States of America, Germany, Britain, France, among others, governments try as much as possible to make information on fundamental political, social, economic, scientific and even technological decisions reasonably available to the citizenry. The essence of that is to keep the citizens abreast of the beneficial effects of such decisions and also prepare the minds of the people for the likely negative implications of the decisions.

In Africa, nay Nigeria, the management of public affairs can be likened to activities of cult groups. Governance is seen as the exclusive preserve of certain groups of people who decide what constitute public interests and needs of the society without consideration for the positions, views or opinions of the general public. We cannot divorce this anti-democratic credential of Nigerian leaders from the country's long years of harrowing experience under military dictatorship.

In Nigeria's forty-two (42) years of attaining political independence from Britain, the military had held the reins of political

Practice and the Ideal.

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**Role Of FOIA In The Enhancement Of  
Popular/Democratic Participation In  
Governance  
(By Sheu Sani)**

The most universally accepted definition of the word “*Democracy*” is the ancient Greek concept of “*Government of the people, by the people and for the people*”.

Going by this definition, it infers that, although the phenomenal growth in human population and expansion in physical sizes of villages, towns and cities, and of course, the merger of communities into states and countries have made it difficult for every individual to participate in the running of daily affairs of a society, those entrusted with leadership responsibilities must constantly keep the people abreast of how, why and for what purposes decisions

exempted materials (S.30), protection of public officer (S.31), document under security classification (S.32), submission of reports (S.33) and complementary procedures (S.34)

The explanatory memorandum makes clear:

1. That the Act seeks to provide a right of access to public information or records kept by government, public institution and/or private bodies carrying out public function for citizens of the country.
2. That this will increase the availability of public records and information to citizens of the country in order to participate more effectively in the making and administration of laws and policies and to promote accountability of public officer.
3. That the Act also seeks to provide the disclosure of public records or information by public officers without authorization thereof provided it is for public interest and such officers are protected from the consequences flowing from such disclosure.
4. That the Act is intended to complement and not replace existing procedures for access to public records and information and is not intended to limit in any way access to those types of official information that have, hitherto, been normally available to the general public.

**ACCESS TO INFORMATION AND CITIZENS'  
PARTICIPATION IN DEMOCRATIC GOVERNANCE: A  
RECAP**

As we have seen, the explanatory memorandum to the FOI Bill (Nigeria), states *inter alia* that:

- (i) That the Act seeks to provide a right of access to public information or records kept by government, public institution and/or private bodies carrying out public function for citizens of the country.

(ii) Access to information will increase the availability of public records and information to citizens of the country in order to participate more effectively in the making and administration of laws and policies and to promote accountability of public officer.

There can be no rational dissent on the necessity for access to information as the basis for informed judgement and decision making, even in private life. This becomes more compelling in public life. In a democratic set up where sovereignty is declared to belong to the people of Nigeria from whom government through this constitution derives all its powers and authority (S.14 (2) of the constitution) it assumes a more pungent dimension. Free speech and a free press are instruments of self-government by the people because they enable people to be informed and educated about affairs of government, thereby also enabling them to form and express intelligent opinions on such matters. Free dissemination and discussion of ideas and opinions is thus indispensable to democratic governance. "Political responsibility" as a concept of democratic government" as Nwabueze (1982: 457) has noted, "requires that public opinion should be one of factors informing the actions of government. Indeed, an extreme view of political responsibility postulates public opinion as the determinant of policy, since... a responsible person is one whose conduct responds to an outside determiner".

Speech concerning public affairs has rightly been said to be the essence of self-government. It is the means by which the society as a collection of individuals can participate in government. Free speech and free press are the very definition of democracy, the ultimate values of all democratic living for as Prof. Sir Anhur Levis (cited by Nwabueze: 1982) has said, the primary meaning of democracy is that all those affected by a decision should participate in making it. It goes without saying that the capacity of citizens to participate in governance in the sense outlined above stands to be enhanced where they have free access to the requisite information. Discussion is unquestionably indispensable to the discovery of political truth. When ideas compete in the market, full and free discussion exposes the false. It also encourages the testing of our own

prejudices and preconceptions. It conduces to wise policies by ensuring that decisions are taken only after various policy options have been publicly debated. Besides, by allowing free discussion, ideas held by the government and those advocated by the opponents have the opportunity to compete for acceptance by the public. Free access to information also enables corruption, abuse of office and other official wrongdoing by public servants to be publicly exposed. The fact that their conduct is open to public disclosure and debate in the mass media may be the greatest check on official misconduct. The truth of the matter is that administration of government has become more complex. The opportunities for malfeasance and corruption have also multiplied. Crime has grown to most serious proportions, and the danger of its protection by officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, enhances the primary need for a vigilant, courageous and well-informed citizenry and press.

The administration of government is however, not the only thing on which it is important for the public to be informed. The necessity extends to all other matters of public concern. In modern times the management of affairs of the people is of great concern to the public as a whole. Freedom of information will definitely facilitate these. It is therefore in the interest of our nascent democracy that the Freedom of Information Bill now before the National Assembly should be given a speedy passage.

*(Professor Popoola of the Department Of International Law, Faculty Of Law, Obafemi Awolowo University, Ile-Ife, Nigeria made the presentation at the Ibadan round table)*

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## FOI AND ACCOUNTABILITY

a large extent the nature of its accountability.

Accountability is knowing, accepting and doing government assignment with a sense of probity and honesty with the open commitment to give feedback of stewardship.

Accountability is a prerequisite for good governance because it instills a sense of responsibility in officials who know they can be called upon to give an account of their works.

Accountability takes the forms of appropriate self-disclosure and scrutiny through snap checks.

Some countries have gone further by creating parliamentary human rights committees, and laws and procedures to protect vulnerable groups or to hold particularly powerful institutions to account.

As societies become more pluralistic it will be necessary to devise new and imaginative mechanisms for ensuring that democracies do not lead to the tyranny of majorities over minorities or vice versa.

### **ACCESS TO INFORMATION, HUMAN RIGHTS AND GOVERNMENT ACCOUNTABILITY - ESTABLISHING A RELATIONSHIP**

Discussing the ultimate linkages between Access to Information, Human Rights and Government Accountability as contained in the agenda of this Roundtable is important now when not few people are calling for transparency in government and participation of citizens in decision-making processes.

However, let it be known that the relationship among these three human focussed concepts or phrases can better flourish on new legal frameworks and constitutional concepts in light of the recent crises in government at all tiers sign-posting that not only is Nigeria not yet at democracy, most elected people in government are yet to be fully exorcised of military vestiges which have in the past created difficulty for the work of journalists.

The meaning of access to information remains vague when not linked with human rights and accountable government

## FOI, GOOD GOVERNANCE AND PARTICIPATION

estate of the realm, must re-energize themselves in the task of making public officers accountable for their deeds in office and governments responsive to the yearnings and aspirations of greater majority of Nigerian people. They should go out of the ordinary to fetch information even if it means digging the soil of hoarded information with their teeth. The current trend whereby newspaper reports are based essentially on either speeches by public officers or press releases from their aides does not help the effectiveness of the Freedom of Information Act neither does it enhance popular participation of Nigerian people in democratic governance. The media are the bastion of hope for the survival of democracy in Nigeria through dissemination of credible information. Therefore, the success or otherwise of the Freedom of Information Act would certainly rest on how well and committed the press carries out its responsibility as the mirror of societal affairs.

*(Comrade Sheu Sani, President of Civil Rights Congress, made this presentation at the Kaduna Roundtable/Public Hearing).*

☞ Right to acquire and own immovable property anywhere in Nigeria.

### NATURE OF HUMAN RIGHTS

Justice Eso J.S.C in *Ransome-Kuti vs. Attorney General of the Federation* had this to say:

**“By nature of a fundamental human right, “it is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition for civilized existence and what has been done by our constitution that is the Nigeria (constitution) order in council 1960 up to the present constitution is to have these rights enshrined in the constitution so that the rights could be “immutable” to the extent of the “non-immutability of the constitution itself”.**

Many other international human rights catalogues describe categories of these rights making it transactional and a major benchmark for assessing good government that is transparent and accountable.

### 3. GOVERNMENT ACCOUNTABILITY

On the third phrase in the topic, which concerns government accountability, there are different ways in which a democratic institution and individuals can display commitments to accountable, transparent leadership and protection of human rights. Most countries, for example, have written constitutions, which contains a set of fundamental rights that the state is not permitted to violate. They also try to operate within the rule of law meaning that no one is above the law and that everyone is accountable to the courts.

Most often the way government opens its operations to public scrutiny and allows for free access to information determine to

accountability are interdependent and co-exist in any democratic society.

The first step towards advancing the tenets of human rights and democratize the practice of its value is to free the space for freedom of information which in turn enhances government accountability and promotes the broad based participation of the citizenry.

Two important rights which give us the right to information, are the rights to freedom of speech and expression. The right to talk about things freely, the right to express oneself freely whether by writing, speaking, drawing, painting, broadcasting, singing or through popular theatre.

These rights include the right to know because unless we know about something, we cannot express anything or demonstrate dissent against it. The right to life and liberty can only flourish through the right to know about those things which affect our lives.

Freedom of information in a democracy is a condition precedent for the uninterrupted enjoyment of human rights entrenched in the constitution in terms of their promotion, protection, defence and development hence such rights as listed below have no meaning wherein adherence to their tenets and practices of their value cannot be highlighted because of deliberate efforts of people in government to close the space for seeking and obtaining information.

Human rights entrenched in sections 33-44 of 1999 Nigeria Constitution include the following:

- Right to Life
- ☞ Right to dignity of human person
- ☞ Right to personal liberty
- ☞ Right to fair hearing
- ☞ Right to private and family life
- ☞ Right to freedom of thought, conscience and religion
- ☞ Right to freedom of expression and the press
- ☞ Right to peaceful assembly and association
- ☞ Right to freedom of movement
- ☞ Right to freedom from discrimination

## **Access To Information, Human Rights And Government Accountability - Establishing A Relationship (By Mashood Erubami)**

The struggle against military rule was motivated by results of visible misrules in terms of resources mismanagement, disregard for the rule of law, endemic corruption at the top and low echelon of government which has now deep-rooted in all sectors of the society and of course non-inclusive governance disenabling the citizens from active participation in political decision making processes and not being able to hold the military leaders accountable.

Whereas the clamour for democratic governance and accountable leadership derives from the understanding that they are the best form of government as they promote the right to elections, representative form of government and freedom of choice, respect for the rule of law, accountability, the rights and freedoms of individuals, independent judiciary and freedom of the press.

Paradoxically, almost three years into the current civilian government coming from many years of unrelieved military dictatorship, democracy under president Olusegun Obasanjo leadership has remained difficult to manage and is yet to make discernible positive turn-around in the lives of most Nigerians. Saddest of all is that majority of elected representatives are those who still hold tenacious allegiance to past military rulers having not been fully exorcised of military vestiges, a pointer to the way they still hold sway on those values that have messed our political past and rubbishing the current democratic experiments.

The country is today adjudged one of the most corrupt even though by the same people that subsists unashamedly on our corruptive practice, at a time that we should be revolutionarily committed to building a true nation, advancing the democratic

experience towards consolidation.

The pity of it all is that our leaders at all levels have refused to grasp the imperative for transparent and accountable leadership to build a less corrupt society that upholds the tenets of human rights and values of democratic practices.

The country is faced with diverse crisis in her social, political and economic domains coupled with ethnic, communal, religious and resource conflicts while a global consensus appears to be emerging on the deteriorating impact of corruption on our economic and political endeavours.

This necessarily call for concerted effort among NGOs in partnership with the press as the greatest voices of the voiceless to combat running government behind closed doors and combat corruption in public life while pushing, above all, the ideals of transparency, good and accountable governance as paramount consideration in the effort to consolidate our fragile democracy.

It is in the above regard that any attempt to establish relationship between access to information, human rights and government accountability, should reside in the understanding that access to information is not an end but a means to achieving an end.

Free Access to Information must be understood within the context of its affordability and availability. However, we shall be limiting our contribution at this roundtable to the subject of its availability.

It is apposite to state that despite constitutional or legal guarantees in our constitutions and other statute books, the use to which the media put information at its disposal goes a long way to sustain its linkage with human rights and good governance which to a large extent determines the spirit of adherence to human rights tenets, practice of its values and character of government accountability in any given society nay Nigeria.

The battle for free access to information was started by the CLO in the 90s' with the first Draft of Access to OFFICIAL INFORMATION ACT against fiercely repressive constitutional order which took its root from deliberate in-adherence by state power to the provisions of international covenants on civil and

not allow the ruled to aspire beyond their locality and use its manifestations to improve on their selfish desires, exhibiting pride as grand masters of the people and rendering state services through their cronies, for themselves.

Militarism promotes graft, greed, non-transparency and unaccountable leadership. It fosters social programs that constraint the work of the media thereby creating unconducive atmosphere for the maximum development of new social contracts that could enhance human rights and broad based participation, ultimately subjecting the Nigerian masses to denial which undermined the growth potential of the country.

Military leaders do not respect the coming of age of the press nor see it as a social partner in agenda setting or monitoring execution hence they are reluctant to grant freedom of access to information.

(iv). **FEAR OF NEWS DISTORTION**

It is quite evident that even legislators who are constitutionally empowered to make laws are sometimes apprehensive of the use to which information could be put. On July 6, 1999 Senator Mohammed Kure called on the senate to clear out the press from covering the proceedings of the upper House, quoting “mischievous distortion” of facts on the issue of furniture allowance by the Raypower Radio as reason.

2. **HUMAN RIGHTS**

Now, on the second phrase in the topic. Human Rights are indivisible, inalienable and universal legal claims which guarantee the existence of human beings especially through those rights entrenched in a written constitution. These rights in the constitution at regular intervals, and for the purposes of transparency and good governance require media review and judicial interpretation to make them immediate realities in our interpersonal and group relations.

Access to information, human rights and government

information received in confidence is integral to the concept of press freedom exercised on behalf of the end users, which the press serves.

Mr. Ojelade Idowu asserted that “where the right is not recognized by law, the ethics of journalism profession recognized it and demand that such right must be defended and exercised”.

There is growing fear among the ruling and governing classes that information freely obtained in confidence but misused could be justified under the privilege of non-disclosure to prevent trial and conviction depending on the ideological direction of the judge sitting over the case.

The significance of the privilege of non-disclosure was aptly put by Justice A.L. Balogun thus: -

*“If newsmen were compelled to disclose their sources of information they would soon be bereft of information, which it is in the public interest to make known. Their sources of information would go unremedied. Misdeeds and serious faults and mistakes in the corridors of power and elsewhere would never be make known to the public”.*

In a situation where freedom of press is restricted, its role to uphold the tenets of human rights, the practice of its value and holding government accountable to the people would be seriously undermined.

**(iii). FORM OF GOVERNMENT - MILITARY**

Because of the absolute command system of military rule under which governmental endeavours are conducted in secrecy, there is usually the tendency to hide many things from the public. This has created a dogged struggle between the press acting as agent of social, economic and political transformation on behalf of the people and the government that wants the media as mere channels for effecting minimal transformation.

Military leaders operate the form of government which did

political rights and other provisions in the National Constitution. The draft then was made to achieve the following objectives: -

**OBJECTIVES**

- ☐ To make official information more freely available.
- ☐ To provide for proper access by each person to official information relating to that person.
- ☐ To protect official information to the extent consistent with the public interest, and preservation of personal privacy.
- ☐ To protect serving public officers from administrative retaliation for disclosing certain kinds of official information without authorization.
- ☐ To establish procedures for the achievement of those purposes and to repeal certain statutory provisions inconsistent with the terms of purposes hereof.

**PURPOSE OF THE ACCESS TO OFFICIAL INFORMATION ACT**

- (i). To extend the present laws of the Federation to provide a right of access to information in records under the control of government institutions in accordance with the principles that government information should be available to the public.
- (ii). To increase the availability of official information to citizens of the Federal Republic of Nigeria.
- (iii). To enable their more effective participation in the making and administration of laws and policies and
- (iv). Promote the accountability of ministries and other public officers, and thereby to enhance respect for the law and to promote the good government of the Federal Republic of Nigeria.

The Act becomes socially desirable in the sense in which its objective

and purpose conform with the constitution and international human rights catalogues.

Article 19 of **International Covenant on Civil and Political Rights (ICCPR)** states that:

**Everyone shall have the right to hold opinion without interference.**

**Everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally in writing or in print, in the form of art, or through any other media of his choice.**

Thus the right to make official information freely available is guaranteed.

Section 39 (1) of the 1999 Nigerian Constitution is a derivative of the above article 19 guaranteeing the right to freedom of expression and the press stating that:

“Every person shall be entitled to freedom of expression including freedom to hold opinion and to **receive** and **impart** ideas and information without interference”.

Much as there is no contest against seeking information, its uninhibited receipt and freedom to use it to **impart** ideas becomes contentious when viewed within the context of its impact on those who rely on such information to inform their judgment about state of governmental operations, human rights and accountable leadership.

It is against the above backdrop that we would proceed to discuss and share opinion on the issues of access of information in relation to human rights and government accountability.

Giving the context of the main theme of this Roundtable the truth of the matter is that there cannot be best human rights practices

conform with principles of openness and responsibility.

(c) The right of Nigerians are guaranteed in the nation's constitution, yet the citizens still lack the capacity to pursue adherence to their tenets and practice of their values. Violations especially under an atmosphere of social deterioration can only be confronted with free access to information about their occurrences towards bringing the issues around right denials onto the national agenda and beyond the shore of the nation for its universal considerations.

(d) The need to effectively perform and defend the social responsibility of the media in accordance with the constitution of the country and in the nation’s interest.

**FACTORS MILITATING AGAINST FREE ACCESS TO INFORMATION**

**(i). OWNERSHIP CHARACTER**

Government machinery has become too complicated, powerful and corrupt. So it wants to protect itself under the cloak of secrecy. Most information needed is difficult to retrieve because of difficulty in filing and records keeping. Above all, there exists some laws under which information could be withheld.

Most newspapers in Nigeria are owned and controlled by the southerners. Freedom of the Press or criticism coming from such media to most Nigerians outside the southern zone of ownership is perceived from the subsisting prejudice against presumed graphical design of “southerners” to bring down any government outside the south by underplaying national interest and upholding sectional interest.

**(ii). PRIVILEGE OF NON-DISCLOSURE OF SOURCES**

Although Section 39 (3a) of the 1999 Nigerian Constitution regulates the right to enjoy the privilege of non-disclosure, it is the opinion of media scholars that preventing the disclosure of

appropriateness, truthfulness, timeliness and fraud free information, failure of which it dies natural death.

(b). The code of ethics put together by the NUJ and the Nigeria Press Council provides enough professional checks on the conduct and responsibilities of the media.

(c). **GLOBAL LINKAGES**

Global interdependence in news merchandism and media networking place checks on the press as it does not operate in isolation. Nigerian Press is a member of the global media movement and is monitored within the network.

For instance Article 19 provides institutional mechanism for monitoring media rights violations and document their occurrences.

(d). **JUDICIAL CHECK**

The courts provide another institutional checks on arbitrary withdrawal of human rights and protects human and social security. The courts are there to adjudicate between citizens who feel their rights are injured and the media accused of such torts under such laws for defamation contempt and libel.

**WHY THE NEED FOR FREEDOM OF INFORMATION ACT?**

(a) The past of Nigeria was untidy and cruel to Nigerians due to lack of transparency and human rights regimes that provide for the maximum development of the potentials of the citizens and government accountability.

(b) The new beginning from May 29, 1999 opened up the necessity for the effective monitoring of those who wield the powers to make laws and the executives to be held accountable for their actions at federal, state and local government levels bringing them to

and government cannot be held accountable if access to information is restricted in any form.

Paradoxically, misuse of freely obtained information could also create deteriorating conditions of human rights and allow for the flourishing of irresponsible and irresponsible governance.

For example, if the media received information that 1000 people were killed in an ethnic clash and went ahead to splash it on its front page that 1000 people from the same area say Hausas were killed, the likely conclusion is that Hausas will also embark on reprisal attack on the ethnic group that carried out the massacre against their people thereby creating a state of turmoil and siege through which human rights are violated by the state wide unleashing terror to stop the carnage.

The issue of what then should a journalist should do in this circumstance present a delicate balance, because we cannot say that the media should hide the truth to avoid a state of violence. Whichever method would be used to save the polity from possible eruptions would be guided by a new social contract for social justice which must necessarily accompany the new effort at enacting a freedom of information Act.

Let us therefore start by understanding the key words in the topic. There are basically three concepts or phrases. They are Access to information, Human Rights and Government Accountability. Understanding what they mean will make the issues of their relationship apparent.

**1. FREE ACCESS TO INFORMATION**

The philosophical underpinning of the 1999 Constitution is the recognition of the freedom of the media to receive **information** and **impart** ideas.

Access to information is itself a human right and withholding of information is a human right violation, which is presently non-justiciable.

At the level of legislature, you find most often the idea of clearing the public and press galleries of legislative houses routinely

to shield vital information from the knowledge of the press and the public.

This is a graphic denial of the right to information and necessary tool for informed judgment, which can give effect to the participatory will of the people

Also at the executive level, no press or public is invited to witness cabinet proceedings and since participants at that level are mostly appointed by the fiat of the president or his cronies, people's interests are not only usually not defended but also citizens rights to participate and be involved in decision making is obstructed.

At the end of each cabinet meeting, "Minister of Information" doles to Nigerians what he is asked to inform.

Transparency at all levels of government is very vital to making the elected truly representative, responsive, accountable and to effectively check the excessive use of power.

In Chapter 11 Section 22 of the 1999 Constitution:

*It is the obligation of the mass media, the press, radio, television and its other agencies to at all times be free to uphold the fundamental objectives and directive principles of state responsibility and accountability of the government to the people.*

Despite providing obligations for the mass media, the constitution is silent on the rights of the press to gather and publish news and information without constraints, opening the guard of the press too loose without protection against forced disclosure.

Perhaps at this juncture, we should ask why has constitutional guarantee for freedom of expression usually met with the opposition of successive state powers?

Under the regime of the self-acclaimed evil genius, retired General Ibrahim Babangida the Political Bureau recommended that:

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**“ Freedom of the Press should be clearly enshrined in the constitution. This freedom should adequately**

**guarantee to the press the right to receive and disseminate information and protect the sources of such information. Any existing legislation which tends to unduly strangle the freedom of the press should be reviewed”.**

The above is what the position should be but why is the current situation contrary. It has been so under the military and so it is under civilian regime.

The practice of press control is not peculiar to the military; it is also in the character of civilian governments usually foisted on us to bar the free flow of information.

Past efforts at gagging the press include the promulgation of decrees, which arise from the fear of misuse of information and possible distortion and problems associated with the prosecution and conviction of journalists who hide under the privilege of non-disclosure.

1. Treason and Treasonable Offences Decree No 29 of 1993 under which any person who “utter any word, displays anything or publishes any material” that the government judges is capable of breaking up Nigeria becomes guilty of treason and liable on conviction to be sentenced to death.
2. Offensive Publications (Proscription) Decree No 35 of 1993 which gives the Head of State unfettered power to proscribe, seize and confiscate any offending publication without recourse to judicial reactivation.

The above decrees were put in place to shield government from the press prying into the public and private misdemeanour, whereas the fears unnecessarily expressed by people in government are allayed by some checks on the activities of the media.

- (a). Much as the media provide checks on the activities of government and the citizens, its own activities are counterchecked foremost by the end users of information it disseminates.

In fact the credibility of any media rests on its adjudged

be enhanced as a result of the promulgation of the bill into law to serve as an effective watchdog in democratic governance.

The seeming centrality of the media in the quest for the actualisation of the FOIA is not unconnected with the fact that the media are the major instruments for the provision of information to a heterogeneous audience in different geographical locations. Due recognition must be given to the media's role in gathering, processing and dissemination of information as not every member of the public is in a position to carry out the task. Most people get access to information, through the media. Again it can be said that as specialised agencies for information gathering and dissemination they have become the platform, among others, for informing the citizens about democratic issues.

### THE FOI BILL

The proposed FOI Bill or Access to Information Act 2000 had been one piece of legislation that the International Press Centre had been pursuing with determination. Reading from the proposed act itself, there are 34 sections with a four-point indication of the purpose it is to serve. These are that it:

- ⊙ seeks to provide a right of access to public information or records kept by government, public institution and/or private bodies carrying out public functions for citizens of the country.
- ⊙ will increase the availability of public records and information to citizens of the country in order to participate more effectively in the making and administration of laws and policies and to promote accountability of public officers.
- ⊙ seeks to provide for the disclosure of public records or information by public officers without authorisation thereof, provided it is for (the) public interest and such officers are protected from adverse consequences flowing from such disclosure.
- ⊙ is intended to complement and not replace existing procedures for access to public records and information and is not intended to limit in any way access to those types of official information that

concentrating on the free processes of obtaining useful oral and material data for information purposes.

Free Access to Information is a function of the enjoyment of the **Right to freedom of expression** as guaranteed in Chapter IV Section 39(1) of the 1999 constitution.

This right remains the most significant tool for advancing and consolidating democracy on sustainable basis.

Free Access to Information facilitates collection of facts which civil society and the general public could rely upon to make informed judgment about the elected and represents a basic tool through which the elected can account for their stewardship and be held accountable.

Apart from being used as a means of balancing political power, it creates legitimacy, which would never be there in a situation where the political leadership conducts their activities in the dark.

The desirability of a **Freedom of Information Act** being discussed today for onward submission for ratification by National Assembly continues to impel its creativity in an emerging social order where group interest set the social classes against itself.

The correctness of the approach of the sponsors also reside in the practice of what they are preaching i.e. **engaging the government to enhance the potential for public participation in the realm of governance and democratic process.**

This is so because the **Freedom of Information Act** as amended contains basic principles of good legislation with set standards deduced from international human rights instruments and practices in other democracies in different parts of the world. Such principles behove on the legislatures to make public the verbatim records of minutes of their meetings in a timely fashion, including documentary materials relating to government activities including call to sessions, agenda, bills, committee reports and promulgated laws. Only through a legislation which guarantees free access to information to media, civil society groups and individuals can the affairs of public officers be opened up for public scrutiny and participation while ensuring the legitimacy of public institutions and internalization of democratic tenets and practices of its values.

## RECOMMENDATIONS

To effectively fight corruption and bad governance in Nigeria the Official Secrets Act and other allied laws or promulgations must be repealed and access to information by citizens must be promoted. It is in this respect that we must start to lobby and pressurize the National Assembly to enact a Freedom of Information Act for us.

Position of civil society groups on the necessity and imperative for a new information order must proceed with the crumbling of the old prejudices and wrong judgment on the part of end users of information and the people who rely on the best usage of these information for their consumption especially now that Nigeria is transiting to democracy and multipartism.

Politicians, especially legislators, must work arduously with members of the civil society on the desirability and possibility of a new Act guaranteeing the exercise of the citizens' democratic rights by the passing into law the proposed Freedom of Information Act 2002 without delay.

The validity of this reasoning and of the facts on which it is based is obviously born out of today's events, past encounters of media practitioners in the hands of military dictators and the avalanche of repressive laws still guiding and gagging free media operations.

This must give form to rational thinking by Nigeria to show to the outside world her strong commitment for the upholding of the tenets of human rights and practices of values of democracy.

The resultant effect of deliberate and selfish conduct of public business behind close doors is that the public is unable to receive sufficient information about the activities of their elected representatives.

What this amounts to is that political leadership cannot be held responsible for their unknown actions and civil society groups and the general public are barred from influencing public policy which represent an unveiled denial of the right to know making media monitoring of the government to ensure accountability become difficult while engagement of the institutions of government

bring out some salient issues and some of the possible fears that may surround the bill. By itself, the bill is not an isolated piece of legislation as it has an organic link to the constitution. The 1999 constitution provides for the enactment of laws (in section 39) that are reasonably justifiable in a democratic society and promulgation of laws to protect the rights and freedoms of others. The proposed bill is in that sense an attempt to give practical expression to that provision and also to extend the frontiers of freedom of expression.

What the proposed FOIA seeks to do is to eliminate the tendency to violate freedom of expression with respect to the press by bureaucratic or commercial censorship, threats or intimidation of journalists or punishment of devotees of freedom. It is one of the mechanisms of guaranteeing freedom of expression for every individual and the press. This guarantee of access is not absolute as there are areas that may require some degree of control in the interest of defence, public order or safety or health and public morality (Sec 45(3))

There is the question of responsibility of journalists, a vexatious issue in the context of Nigeria. Partisanship on the basis of ties to religion, ethnicity and geography are common concerns and tend to give opponents of freedom of the press the weapon to oppose the FOIA. Of course, for those who are comfortable with the status quo, it is not significant that creative responses are necessary to strengthen the provision of freedom of expression, promote citizen participation and further cultivate a culture of good democratic governance. It is convenient for such persons not to challenge the NUJ, NGE, NPAN and BON to take appropriate steps toward sustaining freedom for the media. It is a fact that all these bodies have at one time or the other demonstrated concern for responsive and responsible journalism.

Recourse to the Constitution again underlines the need for the FOIA when it provides in section 25 that the media have a responsibility to hold the government accountable to the people. This provision is non-justiciable for the moment, a gap that the bill would contribute in overcoming by giving practical expression to the issue of freedom for the media. The fourth estate status of the press would

Among its many functions, it is designed to:

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

From the foregoing, there is an impression that the FOIA is beneficial to every person. Indeed the FOIA, contrary to the narrow view of it, is not designed to benefit the media alone or to strengthen the media to witch-hunt officials in both the public and private sectors. No doubt the media stand to benefit from the act in two ways: access to meetings of governmental and organisational bodies, and classified public official files. Whatever information the media receive and process is selectively disseminated to the public on the basis of professional criteria or considerations.

### THE MEDIA AND THE FOIA

The supposed benefits to be derived by the media from the promulgation into law of the FOIA need to be further discussed to

by the citizenry could not be easily pursued to foster transparency and accountability in government.

*(Comrade Mashood Erubami, National President, Campaign for Democracy (CD), made the presentation at Ibadan Roundtable)*

## FOIA As A Tool For Promoting Accountability (By Hon. Nimi Walson-Jack)

I would like to begin this presentation by recalling the words of former U.S President James Madison (1882). He said:

**“A popular government, without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives”.**

At the heart of every democracy is meaningful, active participation by its people in government decisions. The soul of such a system is the ability of ordinary citizens to hold government officials accountable for their actions, known as “transparency”. This essential democratic process takes many forms, but all allow concerned citizens to see openly into the activities of their government, rather than permitting these processes to be in secrecy.

The principles underlying transparency in government activity are embodied in the Constitution of Nigeria. More people are familiar with the right to freedom of information. But the principles go beyond mere right to information.

In Nigeria, as in many countries of the world, transparency in judicial proceedings, much of which evolve from English

common law, has generally promised the right to a public trial. The records of proceedings of trials are available to every person who pays the minimum fee. So it is easy to see the reasoning behind decisions by our judicial officers. And any person can question or criticize or commend these decisions; support or dismiss the reasoning.

Likewise, the legislature as exemplified by the National and State Assemblies has over the course of history and in our short democratic run, opened itself both to influence from groups of citizens and organizations, and to comment from knowledge experts, officials, and citizens during debate and “hearing” on proposed legislation or on important issues. Except when the legislature is in an executive session to discuss in-house matters like salaries and allowances, citizens have access to sit in and listen to deliberations on issues, and proposed legislation.

The problem at the moment lie with the executive arm of government also referred to as the administration. To the man on the street, the executive arm is the government; the Legislature is an agency of the Governor's office, while the judiciary is in the Ministry of Justice.

What is needed in this country is a legislation that would guarantee the citizens' access to information on the operations of government. The formation of public policy and decisions is public business and should not be conducted in secret. The public has a right to have access to information held by the government. This information could be in the form of records, files, registers and data, copies of account and of procedure, and may include information on issues concerning project, which directly affect the people or the environment, health, agriculture, wealth creation, etc. The Freedom of Information Act seeks to bring transparency and accountability into governance.

There are those who think or believe that the FOIA is merely a vehicle for the media to force its way into government departments. That may well be true. But it is also true that the FOIA is meant to give the public access and quite often the news media the vehicle that provides that access. It is all about check and balance which an

## Impact And Implications Of FOI For Democratic Governance (By Abubakar Muazu)

The issue of Freedom of Information Act (FOIA) is in many respects one of the aspects of the struggle for protecting and promoting democracy in Nigeria. The veracity of this assertion can be located in the initial conception of the organizers of this forum that this paper should be addressing the “Absence of FOI Under Civil Rule: Impact and Implications for Democratic Governance”. What that required was to focus on the imperatives for a Freedom of Information Act (FOIA) in Nigeria. It means that while there is currently a civil government in place a lot still needs to be done to ensure proper democratic practice. There is a lingering fear that the current rules (from the constitution to other laws) do not provide the required space associated with democratic governance. There is still some room for non-transparent governance, lack of accountability and dictatorship. There lies the challenge for proponents of open democratic governance and for civil society. The FOIA is a quest for people to have access to information to enhance their meaningful participation in the democratic process. What is at stake is the absence of such an Act to further the frontiers of freedom to sustain democratic governance in Nigeria. There is no doubt that the absence of the Act is potentially dangerous to people's participation, sustenance of democracy and the frontiers of freedom.

### WHAT IS THE FOIA?

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

falling into error.”

It is beyond doubt the duty of the government to pro-actively keep the public informed on issues important to their well-being. The enlightened citizenry in order to hold government accountable for its actions could use this information.

*(Hon. Nimi Walson-Jack, Executive Director, Centre for Responsive Politics, made the presentation at the Port Harcourt round table).*

FOIA provides. Incidentally the Nigerian constitution gives the press (media) a duty to inform citizens as it is stated in chapter four (d) of the Nigerian Constitution that “every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference”. This responsibility cannot be carried out unless there is a law to guarantee access to the records.

The system of government in most of the developing countries is a cabal, with a secret clique operating behind closed doors that remains inaccessible to the common people. In fact, this has been one of its major sources of power. For too long our government has operated on a culture of “keep our secrets secret”, which treats government as the property of military dictators and public servants. Even our elected leadership has inherited and maintained this undemocratic tradition. Mercifully however, this culture of secrecy that characterizes government functioning is gradually changing due to global developments.

The right of access to information is growing, and assuming prominence in the contemporary world with the spread of democratic culture and the increasing credence given to people's participation in the process of sustainable development. It is being increasingly viewed as fundamental to the realization of economic and social, as well as civil and political rights. Effective democracy requires informed participation by all.

Our local, state and federal governments deny the citizens these rights and perpetuate their own rule through a culture of secrecy. While this is true of even the most democratic governments, its impact on the people of the developing countries is more evident. Having been left out of the process of governance due to poverty and illiteracy, the majority of the population being governed cannot comprehend the processes that affect their lives. Suppression of information by the State thus often leads to the most blatant forms of human rights violations.

In recent years, large scale corruption and abuse of power by governments have placed a renewed emphasis on the need for transparency and accountability which can only be established where

there is easy access to information, not only by those in the government but by a range of actors in the private sector.

### PRINCIPLES OF ACCOUNTABILITY

In a democratic system, governance from the village to the national level has to be accountable to the people. A Right to Information ensures that the people can hold public bodies accountable on a regular basis without having to lay the entire burden on their elected representatives who are themselves often unable to get the information.

### PRINCIPLES OF PARTICIPATION

Since most government works are carried out for the benefit of the people, the people must know exactly how things are being done. To participate in the planning and decision making process, people must have sufficient information about the nature of projects and programmes to be undertaken in their areas. This will enable them to give their opinion well in time for required changes or modifications. This in turn will reduce project costs and will increase project outputs manifold.

### PRINCIPLES OF TRANSPARENCY

In recent times, we have seen great misuse, misappropriation and also careless use of public funds. To counter this, it is essential that there should be complete transparency in all public dealings. This is bound to bring about a more careful utilization and application of funds.

### CONSTITUTIONAL PROTECTION OF THE RIGHT TO KNOW

The concept of freedom of information has developed out of the basic right to freedom of opinion and expression enshrined in the Universal

information. However, the law must make it binding on private bodies to disclose certain kinds of information that could affect for instance public health.

### REDRESS

Simple avenues of redress should be available in cases of refusal of information.

### ETERNAL VIGILANCE

It is our duty as citizens to see to it that a good law, the Freedom of Information Bill, is passed so that we can have the effective right to hold our government accountable. This can be achieved in the following ways:

1. We must keep track of the issue through radio, television and newspapers.
2. We must keep a watch on the proceedings of the State and National Assembly to know when the bill is being debated or a public hearing is scheduled.
3. We must make it a duty to read and study the text of the bill. This can sometimes be obtained through journalists and newspaper offices.
4. We should make representations regarding the issue to our elected officials and political leaders and other concerned officials especially members of the National Assembly.
5. Let us continue to be in touch with bodies like the International Press Centre, Media Rights Agenda and other civil society groups and their backers in the national Assembly, who are working on this issue and discuss the bill with them.
6. We can all write about the issue in the local newspapers, magazines or other publications.

It was *Robert H. Jackson* who said that: "it is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from

storing and disseminating information and upgrading the existing systems for enabling easy access. There should be methods in which information can reach people easily such as making information of certain types available at accessible outlets such as post offices, etc. Information should also be given in a simple organized form so that it is easy to comprehend. Gazette and publications, which are usually unavailable, are of no use to lay citizens, given the low literacy rate.

### REASONABLE FEE STRUCTURE

The law, if it provides for a levy of fee for getting information, must ensure that the fee is reasonable and does not act as a deterrent for asking information and does not end up debaring information from the disadvantaged who cannot afford the fees.

### ACCOUNTABILITY

A Right to Information law must lay down clearly the principles of accountability. It must state specifically who is responsible for providing information. Penalties should be imposed on officials who delay, without any just cause, the giving of information or refuse on unwarranted grounds.

### TIME LIMIT

The law must contain provisions for timely imparting of the information. The concerned public officials should face a penalty for not doing so. The time limit should be reasonable and should not jeopardize a person's right; and there should be an order of urgency and accessibility. Information regarding a person's life should be made available at the shortest time, say within 48 hours.

### APPLICATION TO PRIVATE BODIES

Strictly speaking, the right to information is for government-held

Declaration of Human Rights (1948). Its Article 19 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.”**

This provision is a fundamental right in Nigeria, as in many other countries. However, a constitutional guarantee only is not enough, as constitutions usually define the principles; legislation is still required to give body and blood to the constitutional rights.

There are now a handful of countries in the world that have a legal right for their citizen to access government information. They include the United States of America, Australia, Canada, France, New Zealand, Sweden, South Africa, Nepal and to some extent Pakistan.

In Sweden, the constitutional guarantee of the right to know and the concept of open government go back to 1766. There are few other countries whose constitutions expressly guarantee a right of access to government-held information. The South African constitution (1996) goes a step further by guaranteeing a right of access to information that is required for the exercise or protection of any rights held not only by the government but also by private parties. Similarly, the Constitution of Nepal (1990) gives every citizen the right to demand and receive information in any matter of public importance, provided that nothing could compel any person to provide information on any matter about which secrecy is to be maintained by law (Article 16).

The Indian Supreme Court for example, has held that the freedom of expression clause of the Constitution of India does oblige the government to disclose particulars of government transactions. It is, therefore, becoming increasingly clear that having a specific constitutional right-to-know framework is imperative to effectively ensure a system of open government.

Some countries, even though without constitutional

guarantee of the right to know, have adopted Freedom of Information Acts (FOIAs). With the passage of the FOIAs, the burden of proof shifts from the individual to the government. Those seeking information are no longer required to show a need for information. Instead, the need to know has been replaced by a right-to-know doctrine. The government now has to justify the need for security. The FOIAs thus have set new standards for determining which records may be withheld.

Given its potential impact and far reaching implications, this right is usually made subject to certain conditions such as respect of the rights or reputations of others; protection of national security or of public order, or of public health or morals.

Although much of the required information does not have any bearing on, for example, national security or the reputation of others, it is surprising to see the extent of the use of the claim of privilege to deny disclosures in matters which do not seem to be in the least sensitive or requiring confidentiality. Requests for information from any public body are generally refused saying that it is a part of secret records or that it is confidential or that it just cannot be given. Most people continue to accept this as the truth.

The demand for a Freedom of Information Act is based on the premise that transparency and freedom of information are the essence of good governance, and improved access to public record is necessary to ensure that Nigerians are better informed about the management of their affairs and that the government is made more accountable to the people.

In a law providing for freedom of information, the following record of all public offices are clearly stated to be public record:

- a. Instructions, policies and guidelines;
- b. Record relating to sale, purchase, lease, mortgage, acquisition or transfer in any other manner of properties both movable and immovable;
- c. Record pertaining to approvals, consents, permissions, concessions, benefits, privileges, licenses, contracts, permits, agreements, and any other advantages; and

- d. Final orders including decisions taken at all meetings.

The following have been acknowledged as exceptions:

- a. Notes on file, minutes of meetings and interim orders;
- b. Records of banking companies and financial institutions relating to the accounts of their customers
- c. Records declared as classified under the policy made by the Government
- d. Records relating to the personal privacy of an individual; and
- e. Records of private documents furnished to a public office either on an express or implied condition that information contained in any such document should not be disclosed to a third person.

It is usual for a FOIA to require every office to designate an official for the purpose of the Act. If no such official is designated or in the event of the absence or non-availability of the designated official, the person in charge of the public office is usually the designated official.

**CULTURE OF SILENCE MUST END  
WHAT A RIGHT TO INFORMATION ACT SHOULD CONTAIN?**

**MINIMALEXCEPTIONS**

Even though the Right to Information is a fundamental right, exceptions under certain circumstances are inevitable. However, care must be taken to keep the exceptions within the limits prescribed by the Constitution. The list of exceptions must be limited and specific and they must be stated clearly, so as not to give rise to any ambiguity and thereby allowing for misinterpretation and abuse.

**EASYACCESS**

The law should contain provisions for setting up specific systems for

codified -- some 190 years after America gained its independence. So, I'd say, in that respect Nigeria is way ahead of the curve.

Likewise, information at the state level is governed by freedom of information laws in all fifty states. Most of the state laws are broad in nature allowing anyone, regardless of residency, to have access to information, after all the basic tenet of freedom of information is that the information belongs to the citizenry.

They call it PUBLIC information. Not media information or government information. The people create the government, which amasses the information. Hence the information belongs to the public. While the media may be the most proficient and prolific users of the freedom of information laws, they are merely a subset of the public as a whole and are afforded no special status in the United States. Members of the media and the public alike have the same access to the same universe of information.

Pretty often we can open a newspaper and see the fruits of the freedom of information laws, but how do they apply to everyday citizens?

Let's focus on three areas: quality of life, commercial and political.

Communities in the United States are turning more and more frequently to sunshine laws as a means to better their quality of life. From transportation project designs to knowing what type of hazardous materials are stored near your neighborhood, community activists can sometimes shed light on a situation that previously was a mystery.

A case in Maryland several years ago had a community concerned about developers buying-up tracts of land along a two-mile stretch in the rural section of the county. Activists suspected the developers knew something they didn't. After pursuing the normal channels, they were forced to file FOIA requests with several different county, state and federal agencies. Their strategy: obtain copies of anything and everything to discern any patterns or inconsistencies.

In fact they requested so many documents that they were starting to get a hard time from the agency clerks who were responsible for filling the requests. So, the activists sent a young

have hitherto been normally available to the general public.

The bill has implications for the Official Secrets Act, which seems to promote the conduct of government and other public activities in secrecy. With officers beholden to the oath of non-disclosure, the situation as obtains today, leaves room for non-transparent and non-accountable governance even if there is the desire to provide good governance. That partly explains the shrouding of governmental activities in secrecy. For example, apart from the ritual of presenting the budget to the legislature, it is proving difficult to get an accurate and reliable account of expenditure by ministries and parastatals on the pretext that it is government secret. Adversarial claims are not yet open to scrutiny with regard to governmental accountability and probity practices.

The FOI intends to provide for right of access to records, information about the government and public institutions, request for access to records, notice where access to records are requested, transfer of request for records, extension of time limits to meet request for records, what steps to take where access is refused, the question of fees and action for waivers and destruction or falsification of records, including access to records. The bill also gives consideration to situations in which information is not available in separate and distinct form, international affairs and defence, law enforcement and investigations, economic interests of the Federal Republic of Nigeria, personal information, third party information, advice, legal practitioner client privilege, course of research materials sever ability, judicial review, refusal by head of government or public institution to disclose records, hearing in a summary way, access to record by court, court to take precautions against disclosing information, burden of proof, order to disclose records.

The bill also considers exempted material, protection of public officers, document under security classification, submission of reports and complementary procedures.

The framers of the bill were sensitive to issues of protection of records, peoples right to know, international relations, national security and national interest, public order, peace and safety, and

respect for the rule of law by making the courts major definers of access, dimensions, consequences and definition of records. Certainly democracy can flourish best where there is a higher observance of the rule of law. There is a recognition that officials alone cannot define and set the parameters of public interest and be solely relied upon to deliver services to the people. There must be additional room for making checks and balances in a democracy more effective for good governance and democracy to endure.

### IMPACT & IMPLICATIONS OF FOIA ON DEMOCRACY

It must be clear from this oversimplified submission that there are some expected impact and implications of FOIA on civil democratic governance.

It is not doubtful that access to information is capable of making the citizenry to understand and appreciate the workings of government and other public institutions and even contribute their quota in the process. In other words, people's access to information may help erode encrustations of ignorance about government and public institutions.

Since democracy requires openness in the processes of decision-making and policy formulation, public officials must lay open their activities for critical contributions from the public.

The release of information and allowing access to certain types of information would make officials keep proper record of their organizations and maintain a clear direction on the responsibilities assigned to them. It would require of elected officials especially to demonstrate the degree to which they have been upholding the people's mandate. The FOIA is an accountability instrument.

Viewed from another perspective power is too important to be left in the hands of officials alone. While some of them may be inclined as a matter of principle to consider their position as an opportunity to serve the public, others may use their position as a privilege to service their individual interest rather than that of the collective members of the society. Access to information on all officials and the agencies or organizations in which they operate

## America's Experience Of FOI: An Account (By Bill Wyatt)

The National Conference of State Legislatures is a bi-partisan organization based in Denver, Colorado that provides research on state policy issues to state legislators and their staff. NCSL also has a presence in Washington, D.C. where we serve as the voice of state legislatures within the halls of Congress and the presidential administration.

My experience with freedom of information laws comes from my work as a researcher for a former U.S. Senator and Labor Secretary. I rely on access to public information on a regular basis to assist in developing policy positions, conducting opposition research and vulnerability surveys. I'll talk more about those later.

The authors of the Texas Public Information Act felt so strongly about the need for the law that they included their philosophy in the text of the law:

*Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees.*

### **"Government is the servant and not the master of the people...."**

Think about that for a minute. It's not often that you see that kind of imagery written into the actual text of the law. What it emphasizes is the symbiotic relationship between information and freedom. While that sort of freedom was envisioned by the American founding fathers, it wasn't until 1966 that the right to public information was

to truly survive in Nigeria and the common man and woman in the streets to have a feel of democracy dividends, the issue of corruption has to be taken seriously by the government. If this is going to happen, the Freedom of Information Bill must be in place; there are no two ways about it. The Anti-Corruption Commission will only be a window dressing if the public, not only the press, is shielded from access to information.

Finally, I want to conclude this paper by suggesting that transparency and access to information include each department putting up information boards in their offices on what is required from the public officially, in terms of fees and payments to perform the functions. For example, there will be billboards in the Passport Offices stating the official fees for obtaining a passport. This will help reduce, if not stamp out corruption. The police stations can have boards stating that bail is free.

*(Mrs. Oby Nwankwo, Executive Director, CIRDDOC, made the presentation at Port-Harcourt roundtable)*

would help induce public vigilance on them and their work. Public office is a trust that must be monitored to ensure proper respect for the oath that officials swore to uphold. Eternal vigilance is the panacea to sustaining democratic governance. The public cannot do so in ignorance.

One of the important principles of democracy is that there must be respect for the rule of law. Access to evidential records and other types of information for persons standing trial in their defence and access by the court are meant to actualise the principle of fair hearing as provided for in the constitution. FOIA seeks to eliminate the culture of judicial arbitrariness that military rule through absurd decrees foisted on this nation. It tends to help the citizen to find a more conducive setting to express himself/herself and be responsible for his/her statements. Where such statement or view violates the law, it is the courts that would decide the status of the statement in the light of the provision of the law. The emphasis on the courts is unmistakable in the draft bill suggesting the need for respecting the law.

The existence of such a law would go a long way in strengthening the watchdog role of the media in a democratic environment. The present directive principle that defines the obligation of the media to hold the government accountable to the people would be rendered possible. In a sense it would partly address the mischief of non-justiciability of the role for the media. Access to information on government and other public institutions would provide more people information at the shortest possible time at a cheaper cost. When more people get more informed the better it is for the sustenance of democratic governance. This would result in the actualisation of the people's right to know. Among many ways of meeting this right inherent in the right-to-know principle is the right to be informed and educated-a principle upheld by the constitution.

The FOIA is the instrument required to unveil the veneer of secrecy that surrounds the actions of government, organisations and officials. Because public officials have been accustomed to the military bastardisation of the rules and regulations of accountable governance, they have found it convenient to express annoyance

when asked to account for their actions. Such officials would have no roof under which they can hide to cover up the abuse of their oath of office and the privileges they enjoy from holding that office. There would, hopefully, be no room for sweeping important public issues under the carpet. It means that public offices would become the province of those who have strong altruistic public service and to those who are ready to subordinate their primordial interest to that of the collective members of society.

Of course, much has been said about the value of having a Freedom of Information Act in Nigeria. There are the optimists who welcome such a law and believe it would work. That optimism is a product of the belief in democracy. On another dimension we have pessimists who are afraid of the power that the people may wield in a democracy and are afraid of having such a law. There is the fear of abuse even if some believe in democratic governance. Others are apprehensive of the media having access to public records more easily. The bill, as it is, balances all these concerns. But one question need be raised regarding the media. That question is of access to the media in the face of rising cover cost of publications and the commercialisation of news by the broadcast media. What can be done about the Press Council and the National Broadcasting Commission (NBC) to not only promote access to information for the citizen but also to provide further opportunities for the people to have access to express themselves.

*(Abubakar Muazu of the Mass Communication Department, University of Maiduguri, Maiduguri, Nigeria made the presentation at the Kaduna round table)*

## **Access To Information In A Democratic Society (By Ehi Uwaifoh Esq.)**

A democratic society by the loosest of definition is one in which the leadership is elected and can be removed, and in which policies are

respect for human rights as the close monitoring of government and its agencies will call for restraint on the part of government officials. It will enhance participatory democracy in Nigeria, as information that would be freely available, will empower members of civil society to make informed decisions and monitor distortions in policy implementation. Citizens can improve the quality of decisions and policies of people in government when the authority is open and it is possible for citizens and stakeholders to participate in the decision making process.

The political objectives of State Policy (Section 15 (4)) which the media is called upon to uphold include that the State shall foster a feeling of belonging and of involvement among the various peoples of the Federation, to the end that loyalty to the nation shall override sectional loyalties. The State shall abolish all corrupt practices and abuse of power. As I said earlier, secrecy leads to corruption. Secrecy rather than being inclusive is exclusive. By denying access to information, people are excluded from governance and this is anti-democracy.

### **BENEFITS TO THE MEDIA**

The FOIA, if passed, will improve the circulation of information through the mass media and enable it conduct its constitutional duty under section 22 of holding government accountable to the people. The media will have access to more accurate information, which will improve the quality of the media in Nigeria. If the government is sincere in its anti-corruption campaign, it should carry the media along in the process. If there is a FOIA in place, this will facilitate the process as the media and Nigerians will be able to take part effectively in the campaign. Finally, the law will be of benefit to all sectors of society including the government.

The present leadership in Nigeria appears to be paying lip service to the issue of corruption in Nigeria and has not shown sincerity in its actions. It is being speculated that the Commission was actually set up to witch-hunt or blackmail political opponents. Whether this is true or false, let me make the point that for democracy

accountability of a political office holder to his people and the nation failed.

### **ECONOMIC IMPLICATIONS**

Government officials generally resist the notion of transparency and accountability without understanding its direct benefit to them as well as to society and governance itself. They fail to understand that transparency builds confidence in the people and encourages their participation in development and other activities of government, which in turn assures stability in government and a viable economy.

Although it is the responsibility of public officers and those in authority to account to the people for their actions, Nigerians also have the responsibility to put pressure on public officers to live up to expectations. The law, when passed, will give access to information to members of the public and equip them to hold public officers accountable for their actions.

Contracts worth billions of naira are awarded daily in Nigeria and most of them are not executed. This evil continues because the media and indeed the people are not availed of the facts and terms of such contracts. The majority of these contracts are not executed and even when they are executed, the end product is sub-standard. The media is incapacitated, as there is no available information to work on. Most times they proceed on assumptions and on inaccurate information and sooner or later the issue dies a natural death.

### **POLITICAL IMPLICATIONS**

Accountability and transparency in government cannot be possible if citizens have no right of access to information held by the State or its agencies. Accountability and transparency are achievable only when a process is installed which imposes an obligation on public officers and other persons exercising authority in the public domain to be transparent and to account to members of the public for their actions.

As the Media Rights Agenda rightly observed in the flier promoting the FOIA, the Law will promote development, peace and

formulated and articulated on the basis of a synthesis of the prevailing opinion of the people. And where there is acute divergence between the opinion and expectation of the people and the elected, crisis of confidence brews which leads to removal from office at elections. The exercise of this democratic right is dependent on the electorate and how far they are informed about the activities of government.

The contribution of an Access to Information Act in democratic society is inexhaustive but the ones that easily come to mind are as follows:

### **(1) CORRUPTION AND TRANSPARENCY**

An Access to Information Act, which gives access to public records within the four corners of the security of the nation will greatly enhance transparency in the administration of the polity and reduce corruption and its attendant influences.

Some of the critical areas in which this will be useful are as follows:

#### **Contract Bidding And Award**

After bid processes and award of contract it will be possible to know the different figures submitted as bid for the job, the technical qualifications of the bidding parties and why the parties who won the contract did. This is important because a major drain on our economy is inflation of contracts with the incidents of kickback and kick front. The military milked the nation dry here and the civilians are continuing.

#### **Access To Declaration Of Assets**

The public will have access to the assets declaration of public officials and the critical segment of the society will be able to investigate the truth therein and any unmerited addition during and after the exit of the occupant of a particular office. We are witnesses

to the unfolding drama in Kogi State, and to date we do not know what our leaders are worth so that we can look at their pedigree and form an opinion whether such earnings and assets are justified.

### **Financial Records**

The Act will enable public access to how much money was allowed to any particular office, how much was released and how same was spent. Please refer to the whole attempt to shroud the books of the House of Representatives as well as other agencies of government in secret.

### **Judiciary**

Access to information will ameliorate the crisis that brews in the Judicial System particularly with regard to public documents. Sometimes government departments refuse to disclose critical information in their possession that would have enabled a litigant enforce his right against an agency or a particular individual.

Additionally, with the passage of the Access to Information Act, the negative effect of the Public Officers Protection Act will be greatly reduced. The Act provides in S.2 (1)(a) that actions against government officials and government agencies must be instituted within 90 days, but because of the secrecy in which government activities are shrouded, litigants usually do not have access, and do not know when their rights have accrued as well as when a cause of action arises. Their actions are thus time-barred even though they have a good cause of action. This has worked tremendous injustice.

Also, the Evidence Act requires that only certified true documents will be admitted in judicial proceedings. With the obligation now imposed on heads of government, the difficulties experienced on filing certified documents would be eased.

So in a nutshell, the access to information Act will cure the injustice that prevails in some of the situations enumerated above, foster confidence in the judicial process, which is an integral principle of the democratic setting.

Under subsection 2 of this section, “Sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its powers and authority; security and welfare of the people shall be the primary purpose of government and the participation by people in government shall be ensured in accordance with the provisions of this constitution”.

Wherein lies the participation of the people if they cannot have access to documents and information on activities of government? Year in year out, the government comes up with a budget. Implementation is shrouded in secrecy. Secrecy leads to corruption. Monitoring of the budget and its implementation become impossible because each department guards jealously the necessary documents to assist the people to know which aspects of the budget have been implemented and which have not. This is why, in spite of huge sums of money announced at the beginning of every budget year, there is no improvement in the standard of living of the people; rather their situation gets worse by the year.

Section 16 states the economic objectives to include controlling the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity. I am not aware of any government or public institution that publishes annual information relating to receipt of funds and expenditure of such funds for public consumption. Even if they do, they are marked “confidential”.

It is impossible for the media to perform the functions ascribed to it by section 22 if the activities of government are shrouded in secrecy. An example of this is the refusal of the Code of Conduct Bureau to release to the media the Declaration of Assets Form of a governor who is accused of using state funds to purchase choice properties in the UK and the USA. The governor's defence was that the properties were purchased before his election as governor and that he declared them as his assets on resumption of office. The controversy and dust raised by the allegations and denials would have been prevented if the Bureau had made the forms available and accessible to the media. It was a test case on the issue of

*impart ideas and information without interference”.*

Subsection 3 (b) is a proviso to that section which justifies the breach of section 39 by government or public institutions. It provides “Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society *for the purpose of imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.*

The subsection is an undue restriction and derogation from the fundamental rights guaranteed by section 39. Is this interference reasonably justifiable in a democratic society? I make bold to say NO!

It is only when information is accessible that citizens can assess the performance of their elected representatives. The right to *receive and impart ideas without interference* is one of the most basic rights in a democratic society and it should be a right to which every Nigeria should be entitled. Without access to information and freedom of expression, democracy is a sham.

Chapter 2 of the Constitution deals with Fundamental Objectives and Directive Principles of State Policy. Section 22 of that Chapter states the obligation of the Mass Media as follows: “the press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people”.

It is pertinent to set out the fundamental objectives referred to which the media should be free to uphold. These include the political, economic, educational, foreign policy and environmental objectives of State Policy.

Section 14 (1) of the Constitution states that the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice. For starters, let me say that secrecy is anti-democracy. Transparency and accountability are the twin pillars of democracy. Freedom of Information Act is a necessary part of transparency and accountability and therefore democracy.

## (2) PUBLIC AWARENESS

With the ease with which public information will be accessed, the populace will become more aware and enlightened, more critical and demanding. They will become more involved and concerned in the management of their affairs. The present docility and apathy will be reduced. They will be able to vote wisely at elections for those who will better represent their interest and hold them to the fulfilment of their duties in office. Considering our difficult history, an alert and vigilant populace is the security for the survival of the present transition to a democracy.

*“The ground for taking ignorance to be restrictive of freedom is that it causes people to make choices, which they would not have made if they had seen what the realization of their choices involved.”*

***A.J. Ayer (Sir Alfred) (1910-89), British philosopher. The Meaning of Life and Other Essays, “The Concept of Freedom” (1990).***

The legislature through its cliquish executive session seek to shut out information from the purview of the populace. This is antithetical to the concept of transparency and an anathema in a democracy. I can say with the Act they can be compelled to tell us what is executive about their session. This I am sure will dissuade its practice.

***“..Our country was founded on democratic principles of openness and accountability and for 30 years Freedom of Information Act has supported these.”***

- Bill Clinton.

Hopefully someday we can say the same in this clime.

**(3) PSYCHOLOGICAL EFFECT ON PUBLIC OFFICE HOLDERS**

Officials elected and appointed will become more careful in their administration in that there will also be the fear that any person can access whatever they are doing at any particular time. Truly some will devise more ingenious ways of covering their track but at least not everybody is ingenious.

**(4) ECONOMY**

Because the Act will engender more transparency, persons doing business here will become more confident in the process, so that there will be more willing participants in the economy via Foreign Direct Investment. It may even be more effective than the present global junketing.

**(5) FUNDAMENTAL RIGHTS**

S39 of the 1999 Constitution and Article 19 of the United Nations Universal Declaration of Human Right provide for Right to freedom of opinion and expression and to receive and impart ideas and information without interference. These are like skeletons, there is no doubt the Access to Information Act will cloth them with flesh and enhance the circulatory system that gives the fundamental human rights enshrined in those enactments life.

There are so many things begging for revelation on the public altar. With this Act there will be no hiding place for our demigods and golden fishes. There is a misconception that the Act will be for the media alone. There cannot be anything more misleading. Everybody will gain, including the National Assembly in carrying out its oversight functions on the activities of the executive. There cannot be a more virile instrument to ensure transparency and complement the Anti-Corruption Act. Pass it now.

*(Ehi Uwaifoh Esq., an Abuja, Nigeria based lawyer has worked*

*closely with the Media Rights Agenda and the House Committee on Information on the FOI bill. He made the presentation at the Abuja round table).*

## **Constitutional, Economic and Political Implications Of Passage of FOI Law And Benefits to the Media (By Mrs. Oby Nwankwo)**

The Freedom of Information Act is a law which will make public records and information in the custody of any government, federal, state or Local more accessible to every person in Nigeria. In other words, the law will grant right of access to official information and this right will be legally enforceable and can be challenged in court if denied.

There is a culture of secrecy in government institutions in Nigeria. The current state of access to information in Nigeria is appalling. The culture of secrecy insulates governments and their activities from public scrutiny. Hardly any law permits access to official information.

Numerous legislations contain secrecy clauses forbidding the disclosure of official information by civil servants and other public officers, with penal sanctions for any breach. Documents are routinely marked as “classified”, “secret”, “top secret” or “confidential”. This situation has severely undermined the right and ability of citizens to have access to information about government activities, programmes and policies.

**CONSTITUTIONAL IMPLICATIONS**

Section 39 of the Constitution of the Federal Republic of Nigeria 1999 provides that “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and

information described in paragraph (1) (a) and (b) if that disclosure would be in the public interest as it relates to public health, public safety or protection of the environment and, if the public interest in disclosure clearly outweighs in importance any financial loss or gain to, or prejudice to the competitive position of, or interference with contractual or other negotiation of a third party.

18. (1) The head of a government and or public institution may refuse to disclose any record requested under this Act that contains drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated except that a specific record or relevant portion thereof shall not be exempted when the records is publicly cited and identified by the head of the government and/or public institution. The exemption provided in this subsection extends to all those records of officers and agencies of National, State Houses of Assembly and Local Government Legislative Councils, which pertain to the preparation of legislative documents.

(2) Subsection (1) does not apply in respect of a record that contain

(a) an account of, or a statement of reason for a decision that is made in the exercise of a discretionary power or an adjudicative function and which affect the rights of a person; or

(b) a report prepared by consultant or an adviser who was not, at the time the report was prepared, an officer or employee of a government and/or public institution or personal staff of an elected or appointed government official

19. The head of a government and or public institution may refuse to disclose any record requested under this Act that contains information pertaining to:

(a) test questions, scoring keys and other examination data used to administer an academic examination or determine the qualifications of an application for a license or employment before the conduct of the examination, issuance of licence or employment

mother with a baby carriage to request some documents. When the clerk told her it would take weeks to copy the information, the young mother unveiled a copy machine from her baby carriage and went to work!

It was as the activists expected; the government was in the planning process to build a new road along the two miles which is why the developers were buying the land - to turn a profit when it comes time for the government to purchase the right-of-way.

Another example of quality of life would be to use freedom of information requests to obtain environmental information about a particular area. Let's say I'm on the market to buy a home. I find a neighbourhood I love but I am suspicious about the low home prices. I go to the Environmental Protection Agency and request information relating to the area. Low and behold, the neighbourhood is near an old landfill where chemicals have leached into the groundwater in years past. Buyer beware!

The second area I'd like to focus on is commercial uses of sunshine laws. In the United States, many corporations have the same legal standing as an individual. Requests can be submitted on behalf of a country just as an individual can.

What does a corporation want with public records? What else? A step on their competitor. Airlines, railroads and other federally and state regulated industries frequently use public information to access equipment maintenance records when considering purchasing used equipment such as aircraft and locomotives.

A government contractor who lost out on a bid can submit a freedom of information request for the proposals of other bidders to get a better understanding of why they didn't get the contract.

The third area where public information is particularly useful is politics. Yes, of course, there is an occasional story about corruption, which is good. That is what the freedom of information laws are designed to do. However, meeting minutes, voting records, travel expenses and other documents give citizens a great deal of information with which they can make an informed decision next time they have to cast their ballot for a public official.

As an opposition researcher, I use these records on a daily

basis to help frame the public debate during a political campaign. The purpose is to contrast your candidate on policy issues of importance to the people. The information also allows someone to hold the policymaker accountable for a particular stance or vote on an issue.

Even once freedom of information is enacted it is not without its challenges. Issues of compliance and implementation still plague the American system of government. Bureaucrats, lawyers and others are very sceptical when they are on the receiving end of a freedom of information request.

Students at the West Virginia University had to partake in a research project wherein they were required to file freedom of information requests for documents from the state-run university. What they found is that the university was violating West Virginia's freedom of information act by routinely failing to fill such requests in a timely manner.

It can take days, weeks or even years for the agency to determine if the documents requested are truly public information or whether or not they are a matter of national security.

In fact a biographer in Miami, Florida was seeking information on his latest subject, a Cuban dissident. He turned to the Central Intelligence Agency for information. His freedom of information request was finally filled 17 years later!

Editors of the State Journal Register in Springfield, Illinois suggest that "the laws can be circumvented or even used as a club to beat the public away from documents that should be available."

While there are plenty of horror stories about compliance issues, there are an equal amount of success stories to go along with them. No matter. You can cross that bridge when you get there. A freedom of information act with compliance issues is better than none at all.

*(Bill Wyatt of the National Conference of State Legislatures of the US made the presentation at the Port Harcourt round table/public hearing).*

(2) The head of a government and or public institution may disclose any record requested under this Act that contains personal information if

- (a) the individual to whom it relates consents to the disclosure;
- (b) the information is publicly available.

17. (1) subject to this section, the head of a government and/or public institution shall refuse to disclose any record requested under this Act that contains

- (a) Trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause competitive harm. Nothing contained in this subsection shall be construed to prevent a person or business from consenting to disclosure.
- (b) information the disclosure of which could reasonably be expected to interfere with the contractual or other negotiations of a third party.
- (c) proposal and bids for any contract, grant, or agreement, including information, disclosure of which would frustrate procurement or give an advantage to any person.

(2) The head of a government and or public institution shall not, pursuant to subsection (1), refuse to disclose a part of a record that contains the result or product of environmental testing carried out by or on behalf of a government and/of public institution.

(3) Where the head of a government and or public institution discloses a record requested under this Act, or a part thereof, that contains the results of a product or environmental testing, the head of the institution shall at the same time as the record or part thereof is disclosed provide a person who requested the record with a written explanation of the methods used in conducting the test.

(4) The head of a government and or public institution shall disclose any record requested under this Act, or any part thereof, that contains

## APPENDIX A

- (i) the currency, coinage or legal tender of the Federal Republic of Nigeria,
- (ii) contemplated charge in taxes, tariff rates, duties or any other revenue source,
- (iii) a contemplated charge in the conditions of operation of financial institutions; and
- (iv) a contemplated sale or purchase of securities or of foreign or Niger

15. The head of a government and or public institution may refuse to the disclose any record requested under this Act that contain

- (i) information the disclosure of which may be injurious to the conduct of international affairs and
- (ii) the defense of the Federal Republic of Nigeria.

16. (1) Subject to subsection (2), the head of a government and or the public institution shall refuse to disclose any record requested under this Act that contains personal information maintained with respect to clients, patients, residents, students or other individuals;

- (i) receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from government and or public institutions:
- (ii) personal files and personal information maintained with respect to employees or elected officials of any government and/or public institution or applicants for such positions;
- (iii) files and personal information maintained with respect to any applicant, registrant or licensee by any government and/or public institution cooperating with or engaged in professional or occupational registration, licensure or discipline;
- (iv) information requires of any tax payer in connection with the assessment or collation of any tax unless disclosure is otherwise required by statute; and
- (v) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or other agencies.

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- (ii) interfere with pending administrative enforcement proceedings conducted by any government and/or public institution;
  - (iii) deprive a person of a fair trial or an impartial hearing;
  - (iv) unavoidably disclose the identity of a confidential source;
  - (v) constitute an invasion of personal privacy.
  - (vi) obstructs an ongoing criminal investigation
  - (b) information the disclosure of which could reasonable be expected to be injurious to the security of penal institutions.
  - (c) information that could reasonably be expected to facilitate the commission of an offence.
- (2)For the purposes paragraph (1) (a) (vi), “Investigation” means investigation that-
- (a) pertains to the administration or enforcement of any enactment
  - (b) is authorized by or pursuant to any enactment.

14. The head of a government and or public institution may refuse to disclose any record requested under this Act that contain;
- (a) trade secret or financial, commercial, scientific, or technical information that belongs to the government of the Federal Republic of Nigeria, any State or Local Government thereof, and has substantial economic value or is likely to have substantial value;
  - (b) Information the disclose of which could reasonably be expected to prejudice the competitive position of a government and/or public institution;
  - (c) scientific or technical information obtained through research by an officer or employee of a government and/or public institution, the disclosure of which could reasonably be expected to deprive the officer or employee of priority of publication; or
  - (d) information the disclosure of which could reasonably be expected to be materially injurious to the financial interest of the Federal Republic of Nigeria, or any State or Local Government thereof, or the ability of the Federal Government, a State or Local Government to manage its economy, or could reasonably be expected to result in an undue benefit to any person including but not limited to the following information-

## APPENDIX A

affairs of a government and/or public institution, access in that form may be refused and access shall be given in another form.

(3) Subject to the provision of this Act, where a person requests access to a record in a particular form and, for a reason specified in subsection (2) hereof, access in that form is refused but access is given in another form, the person requesting access shall not be requested to pay a charge in respect of the provision of access to a record in the form obtained.

12. Where a request is made to a government and or public institution and the information is not available in a discrete form in documents of the government and/or public institution but could be produced in a written document containing the information in discrete form by-

(i) the use of computer or other equipment that is ordinarily available to the government and/or public institution for retrieving or collating stored information, or

(ii) the making of a transcript from a sound recording held in the government and or public institution, the government and/or public institution shall deal with the request as if it were a request for access to a written documents so produced and containing that information, and, for that purpose, this Act applies as if the government and or public institution had such a document in it possession.

13. (1) The head of a government and or public institution may refuse to disclose any record requested under this Act that contains;

(a) records compiled by any government and or/ public administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a government and/or public institution, but only to the extent that disclosure would

(i) interfere with that pending or actually and reasonably contemplated law enforcement proceedings instituted or to be instituted by any law enforcement or correctional agency;

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### ACCESS TO INFORMATION BILL

1. This Act may be cited as the Access to Information Act, 1999.

2. In this Act, unless the context otherwise requires-

“Court” means the Federal High Court or a State High Court with jurisdiction in the place where the official information in question is kept by a Federal, State or Local Government institution.

“Foreign State” means any State other than the Federal Republic of Nigeria;

“Public/Government Institution” means any legislative, executive, judicial, administrative or advisory body of the Federal, State or Local Governments,

“Public record or document” means a record in any form having been or being used, received, possessed or under the control of any public body or private bodies relating to matters of public interest and includes-

(a) any writing on any material

(b) any data, information recorded or stored in any device whatsoever, and any material subsequently derived from data, information so recorded or stored; any label, making or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;

(c) any book, card, form, map, plan, graph, drawing or newspaper;

(d) any photography, film, negative, microfilm, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

“Minister” means the Minister charge with responsibility for information.

“Person” includes a corporation sole, and also a body of persons. whether corporate or incorporate; acting individually or as

a group.

“Personal Information” means any official information held about an identifiable person; but does not include information that bears on the public duties of public employees and officials; and

“Public Official” means a person who exercises or formerly exercised, for the purpose of the government, the functions of any office or employment under the State.

3. (1) Subject to the provisions of this Act but notwithstanding anything contained in any other Act, Edict, Law, or Regulation, every person whether or not that person is a citizen of the Federal Republic of Nigeria, has a legally enforceable right to, and shall on request, be given access to any information or record under the control of a government or public institution.

(2) An applicant herein need not demonstrate any specific interest in the information being requested for.

(3) For the purpose of this Act, any record requested under this Act that does not exist but can, subject to such limitations as may be prescribed by regulation, be produced from a machine, readable record under the control of a government and or public institution using computer hardware and software normally used by the government and or public institution shall be deemed to be a record under the control of the government and / or public institution.

4. (1) The head of every government and or public institution to which this Act applies shall cause to be published in the applicable official Gazette at least once every year

(a) description of the institution and its responsibilities including details to facilitate the exercise of the right of access under this Act.

(b) A description of all classes of records under the control of the institution in sufficient detail to facilitate the exercise of the right of access under this Act.

the purpose of withholding any portions exempt from disclosure under this Act.

(5) Nothing in this Act shall supercede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

10. Any person who willfully attempt, tries to or destroys and or alters any record to which this Act applies whether or not it is in his/her custody commits an offence and shall on conviction be liable to one year imprisonment

11. (1) Access to a record shall be given to the person requesting such access in one or more of the following forms:

(a) a reasonable opportunity to inspect or copy the record.

(b) In the case of a record from which sounds or visual images are capable of being reproduced or transcribed into writing, the making of arrangements to hear, view or transcribe these sounds or visual images;

(c) in the case of a document by which words are recorded in the form of shorthand writing or in codified form, provision by the government and/or public institution of a written transcript of the words recorded or contained in the document.

(2) If the giving of access in the form requested by the person-

(a) would interfere unreasonably with the operations of the government and or public institution, or the performance by any officer or employee thereof of his functions;

(b) would having regard to the physical nature of the record, be inappropriate or detrimental to the preservation of the record.

(c) would, but for the provisions of this Act, involve an infringement of copyright (other than copyright owned by the government of the Federal Republic of Nigeria, a state, a local government, or and or public institution thereof) subsisting in a matter contained in the record being matter that does not relate to the

research through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government and/or public institution; or

(b) consultations are necessary to comply with the request **and** cannot reasonably be completed within the original time limit.

(c) the head of a government and or public institution shall give notice of the extension stating whether the extension falls under the circumstances set out in paragraph (a) or (b) of this section..

9. (1) A government or public regulation shall provide that-

(a) fees shall be limited to reasonable standard charge for document search, duplication, review and transcription where necessary, when records are requested for commercial use;

(b) fees shall be limited to reasonable standard charges for document search, duplication, review and transcription where necessary, when records are not sought for commercial use and the request is made by an educational or noncommercial, scientific research, or a representative of the news media; and

(2) Document shall be furnished without any charge or at a charge reduced below the fees established under Section 9 (1) (b) if disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(3) Fees schedules shall provide for the recovery of only the direct costs of search, duplication, reproduction, review or transcription where the record being requested under this Act is produced as a result of the request from a machine or readable record under the control of a government and/or public institution.

(4) Review costs shall include only the direct costs incurred during the initial examination of a document for the purpose of determining whether the documents must be disclosed under this section and for

(c) A description of all manuals used by employees of the institution in administering or carrying out any of the program or activities of the institutions;

(d) A description of documents containing final opinions including concurring and dissenting opinions as well as orders made in the adjudication of cases;

(e) Description of documents containing substantive rules of the institution;

(f) Description of documents containing statements and interpretations of policy, which have been adopted by the institution;

(g) A description of documents containing final planning policies, recommendations, and decisions;

(h) A description of documents containing factual reports, inspection reports and studies whether prepared by or for the institution;

(i) A description of documents containing information relating to the receipt of funds or expenditure funds of the institution;

(j) A description of documents containing the names, salaries, titles, and dates of employment of all employees and officers of the institution;

(k) Description of documents containing opinions concerning the rights of the State, the Public, a sub-division of the State or local government or of any Private persons;

(l) A description of documents containing the name of every official and final records of voting in all proceedings of the institution;

(m) A description of files containing applications for any contracts, permit, grant, or agreement.

(n) A list of reports, document, studies, or publications prepared by independent contractors for the institution;

(o) A description of materials containing information relating to any grant or contract made by or between the institution and another government or public institution or private organization; and

(p) The title and address of the appropriate officers or employees of the institution to whom requests for access to records under this Act should be sent, provided that the failure of any

government and/or public institution to published any information under this sub-section shall not prejudicially affect the right of access to public records and information in the custody of such government and/or public institution as provided for under this Act.

(2) Any person entitled to the right of access conferred by this Act shall have the right to institute proceedings in a Court to compel the head of any government institution and/or public body to comply with the provisions of this section.

(3) The government and or public institutions to which this Act applies are all authorities whether executive, legislative or judicial agencies, ministries, and extra-ministerial departments of the Federal Government, States and Local Governments, together with all corporations established by law and all companies in which a Federal, State or Local Government authority **has an interest** and also private companies performing public functions.

5. A request for access to a record under this Act shall be made in writing to the government and or public institution that has control of the record and shall provide sufficient detail to enable an employee of the institution identify the record.

6. (1) Where access to a record is requested under this Act the head of the government and/or public institution to which the request is made shall, subject to Sections 7,8, and 9, within seven days after request is received;

(a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and if access is to be given, give the person who made the request access to the record or part thereof.

(b) if access is refused the notice given under sub-section (a) shall state the specific provision of this Act on which the refusal was based, set forth the names of each person responsible for the denial of such

request and indicate whether a record exists. And shall state that the person who made the request has a right to have the decision reviewed by a court

(2) Where the head of a government and or public institution fails to give access to record requested under this Act or a part thereof within the time limit set out in this Act, the head of the government and or public institution shall be deemed to have refused to give access.

7.(1) Where a government and or public institution receives a request for access to a request record under this Act, and the head of the institution considers that another government and/or public institution has a greater interest in the record, the head of the institution to which the request is made, may, subject to such conditions as may be prescribed by regulation, within three days after the request is received, transfer the request, and if necessary, the record to the other government and/or public institution, in which case the head of the institution transferring the request shall give written notice of the transfer to the person who made the request.

(2) Where a request is transferred under sub-section (1) of this section, the request shall be deemed to have been made to the government and or public institution to which it was transferred on the day the government and/or public institution received it.

(3) For the purpose of sub-section (1), a government and/or public institution has a greater interest in a record if the record was originally produced in or for the institution and in the case of a record not originally produced in or for a government and or public institution, the institution was the first government and/or public institution to receive the record or a copy thereof.

8.(1) The head of a government and or public institution may extend the time limit set out in Section 6 in respect of a request under this Act for a period of time not exceeding seven days, if

(a) the request is for a larger number of records or necessitates a

society groups, the media and the legislature identified the following benefits of the FOIA:

**Constitutional**

- ☞ Facilitating access to public documents the knowledge of which will assist the people to monitor governance and hold the government accountable while also making them relevant stakeholders in the Nigerian project.
- ☞ Helping to uphold the constitutional right of the people to information as guaranteed in the constitution.

**Economic**

- ☞ Encouraging the entronement of a culture of transparency in the public domain.
- ☞ Assisting lawmakers to obtain required information for the purpose of making laws for economic development and good governance.

**Political**

- ☞ Enhancing participatory democracy by opening up the political space while also promoting the respect of human rights.
- ☞ Empowering the civil society to make informed decisions and monitoring distortions in policy implementation.
- ☞ Ensuring a feedback system between the government and the governed thereby removing the notion of master-servant relationship held by some state officials.

**RECOMMENDATIONS**

But in order to facilitate the passage of the FOI bill into law by the National Assembly and popularise its usage by every Nigerian, the round table/public hearing recommended that:

- (b) Architects' and 'engineers' plan for building not constructed in whole or in part with public funds and for buildings constructed with public funds, to the extent that disclosure would compromise security, and
- (c) library circulation and other records identifying library users with specific materials.
- (d) matters that is subject to Legal Practitioner-Client Privilege.
- (e) course materials or research materials prepared by faculty members.

20. Notwithstanding any other provision of this Act, where a request is made to a government and or public institution for access to a record to which access may be denied under this Act, the head of the institution shall disclose any part of the record that does not contain, and can be severed from any part that contains any such information or material for which access may be denied

21. Where the head of a government or public institution may refuse access to a record under this Act, public interest shall be more served by the disclosure of the record, access to the record or document shall be given

22. (1) Any person who has been refused access to a record requested under this Act, or a part thereof may apply to the Court for a review of the matter within thirty days after the head of the government and/or public institution refuses or is deemed to have refused the request, or within such further time as the court may after the expiration of those thirty days fix or allow.

(2) An application made under sub-section 1 shall be heard and determined summarily.

## APPENDIX A

23. Notwithstanding anything contained in any other Act or enactment or any privilege under any law, the Court may, in the course of any proceedings before the Court arising from an application under section 21 of this Act, examine any record to which this Act applies that is under the control of government and/or public institution, and no such record may be withheld from the Court on any ground.

24. In any proceedings before the Court arising from an application under this Act,

(i) the Court shall take precaution, when receiving representations Ex-Parte and conducting hearings in camera to avoid the disclosure by the court or any person of any information or material on the basis of which the Head of a government and/or public institution will be authorized to refuse to disclose a record or a part of a record thereof under this Act.

(ii) the burden of establishing that the head of a government and or public institution is authorized to refused to disclose a record under this Act or a part thereof shall be on the government and/or public institution concerned.

25. Where the head of a government and or public institution refuses to disclose a record requested under this Act, or a part thereof on the basis of a provision of this Act, the Court shall subject to such conditions as it deem fit order the head of the institution to disclose the record or part thereof to the person who requested for access to the record-

(i) if the Court determines that the head of the institution is not authorized to refuse to disclose the record or part thereof; or

(ii) where the head of the institution is so authorized, but the Court nevertheless determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the record or part thereof;

(iii) where the Court makes a finding that the interest of the public in

## APPENDIX E

### **COMMUNIQUE OF THE IPC ROUND TABLE/PUBLIC HEARING ON THE FREEDOM OF INFORMATION BILL (FOI Bill) HELD IN PORT-HARCOURT, RIVERS STATE, NIGERIA ON JUNE 13 AND 14, 2002**

The Port-Harcourt round table/public hearing was the 4<sup>th</sup> of such to be organized by the International Press Centre (IPC), Lagos, Nigeria with the funding support of the Democracy and Governance Program of the United States Embassy.

The aim of the round table/public hearing was to create better awareness and enlist the support of civil society groups, the media and the legislature for the passage into Law of the Access to Information bill currently pending before the National Assembly.

The round table discussions on the first day were led by Mr. Williams Wyatt, an American expert on the FOI and Public Affairs Manager of the Conference of State Legislatures of the United States and Mr. Nimi Walson-Jack, Executive Director of the Center for Responsive Politics (represented by Ms. Peace Epele).

It was facilitated by Professor Omafume Onoge, Executive Director of Center for the Advancement of the Social Sciences (CASS); Dr. Chinyere Okunna, Mass Communication Department of the Nnamdi Azikiwe University, Awka; Dr. Lucky Akaruese, President of the Committee for the Defence of Human Rights (CDHR) and Mrs. Oby Nwankwo, Executive Director, CIRDDOC. The Honourable Speaker of the Rivers State House of Assembly, Mr. Rotimi Amaechi, presided over the public hearing held on the second and final day of the program.

#### ***BENEFITS***

Participants in the round table/public hearing representing civil

## APPENDIX D

would be guaranteed when information is put in the public domain as a means of checks and balances of public officers.

The oath of secrecy administered on public officers be stopped henceforth as it is incompatible with the democratic demands for freedom of information and expression.

A committee be set up to work out strategies for multidimensional advocacy for the passage of the bill into law.

The enactment of FOIA will reduce incidents of social crises in the country.

## APPENDIX A

having the record being made available is greater and more vital than the interest being served if the application is refused, in whatever circumstances.

26. This Act does not apply to-

- (a) published material or material available for purchase by the public.
- (b) Library or museum material made or acquired and preserved solely for public reference or exhibition purpose; or
- (c) material placed in the National Library, the National Museum or the non-public section of the institutions.

27. (1) Notwithstanding anything contained in the Criminal Code, Penal code, the Official Secrets Act, or any other enactment;

(i) no civil or criminal proceedings shall lie against any government or public institution, or against any person acting on behalf of the government and or public institution, thereof, for the disclosure in good faith of any record or any part of a record pursuant to this Act, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Act, if care is taken to give the required notice ;

(ii) nothing shall prejudicially affect any public officer who, without authorization discloses to any person any public record and/or information which he reasonably believes will show.

- (a) a violation of any law, rule or regulation;
- (b) mismanagement, a 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 Act

(2) No civil or criminal proceedings shall lie against any person receiving the information or further disclosing it.

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28. (1) The fact that any record in the custody of a government and/or public institution is kept by that institution under security classification or is a classified document within the meaning of the Official Secrets Act does not preclude it from being disclosed pursuant to a request for disclosure thereof under the provisions of this Act, but in every case the head of the government and/or public institution to which a request for such record is made shall decide whether such record is of a type of which he/she is entitled to refuse disclosure under this Act.

(2) If the head of the government and or public institution to which the request for a record mentioned in sub-section (1) is made decides that such record is of the type for which access to such record shall be given to the requester or if it is of a type referred to in sub-section (1) he shall give notice to the requester.

29. (1) On or before February 1 of each year, each Federal Government or public institution shall submit to the Attorney General of the Federal Republic of Nigeria and each State and or Local Government or public institution shall submit to the Attorney General of the State a report which shall cover the preceding fiscal year and which shall include-

- (a) the number of determinations made by the Government and or Public Institution not to comply with request for records made to such Government or Public Institution under this Act and the reasons for each such determinations;
- (b) the number of appeals made by persons under this Act, and the reason for the action upon each appeal that results in a denial of information;
- (c) a description of whether a court has upheld the decision of the Government and or Public Institution to withhold information under such circumstances and a concise description of the scope of any information withheld.
- (d) The number of request for records pending before the Government and or Public Institution as of October 31 of the preceding year and the median number of days that such request had

## APPENDIX D

### **COMMUNIQUÉ OF THE CIVIL SOCIETY ROUNDTABLE ON THE FREEDOM OF INFORMATION BILL ORGANISED BY THE INTERNATIONAL PRESS CENTRE (IPC) WITH THE SUPPORT OF THE AMERICAN EMBASSY AT THE ASO MOTEL, KADUNA ON MAY 22 AND 23, 2002.**

The International Press Center (IPC), Lagos held civil society roundtable at the Aso Motel, Kaduna on May 22 and 23, 2002. The theme of the discussion was *FOIA and Democratic/Popular Participation in Governance*.

In attendance were participants from civil society groups from Maiduguri, Kano, Kaduna and Minna. At the end of two-day deliberation participants agreed that:

The Freedom of Information Act is a legislation that can open up the democratic space and guarantee civil society participation in governance.

The passage of the bill into law should be rigorously pursued by civil society groups to ensure that this is achieved as soon as possible before the life span of the present National Assembly expires.

The provisions of the law that limits disclosure of personal information should be respected.

The process of governance would be enhanced if a larger spectrum of the society is allowed to make inputs.

The fear being expressed by some Nigerians that the media is incapable of handling the information that will be freely accessed is not true, since the same information will be available to a large number of people and cannot therefore be put to mischievous use.

The rapid development of development of the nation

## APPENDIX C

sense of urgency to the passage into Law of the Freedom of Information bill.

### RECOMMENDATIONS

The Roundtable/Public Hearing also made the following recommendations:

✍ That all organs of mass communication, including the Internet, be deployed to create massive awareness for the FOI bill.

✍ That organizing bodies of the FOI campaign should intensify collaboration with other relevant advocacy groups like the Nigeria Union of Journalists (NUJ), the Center for Free Speech (CFS), etc, so as to utilize their collective experience in advocacy.

✍ That organizing bodies should utilize incidents of national and international importance to raise awareness and support for the FOI bill.

✍ That organizing bodies should initiate and sustain efforts to inform, educate and communicate with all layers of the political class and allied professional cadres on the benefits derivable from the FOI bill.

✍ That State Houses of Assembly should enjoin the National Assembly to hasten the passage of the FOI bill while also initiating action to pass a similar bill in their respective states

### CONCLUSION

The round table constituted a local coordinating committee for the FOI campaign with the mandate to enlist grassroot support for the initiative.

Participants expressed sincere gratitude to the resource persons and invited guests as well as the Democracy and Governance (D&G) Program of the US Embassy, sponsors of the round table/public hearing.

## APPENDIX A

been pending before the Government and or Public Institution as of that date;

(e) The number of requests for records received by the Government and or Public Institution and the number of requests which the Government and or Public Institution processes.

(f) The median number of days taken by the Government and or Public Institution to process different types of requests;

(g) The total amount of fees collected by the Government and or Public Institution to process such requests; and

(h) The number of full-time staff of Government and or Public Institution for processing such requests.

(2) Each government or public institution shall make such report available to the public including by computer telecommunications or by other electronic means

(3) The Attorney General shall make each report, which has been submitted to him, available at a single electronic access point

(4) He shall notify the Chairman, ranking minority member of the relevant Committee of the Senate and the House of Representatives or the House of Assembly not later than April of the year in which each such report is issued, that such reports are available by electronic means.

(5) The Attorney General shall develop reporting and performance guidelines in connection with reports required by this section and may establish additional requirements for such reports as the Attorney General may determine..

(6) The Attorney General shall submit an annual report on or before April 1 of each calendar year, which shall include for the prior

## APPENDIX A

calendar year a listing of the number of cases arising under this Act, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed.

(7) Such report shall also include a description of the efforts taken by the Ministry of Justice to encourage all government or public institution to comply with this Act.

(8) For purpose of this section, the term-

(a) "government" includes any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any other independent regulatory government or public institution; and

(b) "record" includes government or public institution record subject to the requirements of this Act when maintained by government or public institutions in any format, including an electronic format.

30 (1) Where the question whether any public record and or information is to be made available, where that question arises under this Act, the question shall be determined in accordance with the provisions stated herein, unless otherwise exempted by this Act.

### EXPLANATORY MEMORANDUM

1. This Act seeks to provide a right of access to public information or records kept by government, public institution and/or private bodies carrying out public functions for citizens of the country.

2. This will increase the availability of public records and information to citizens of the country in order to participate more effectively in the making and administration of law and policies and to promote accountability of public officers.

## APPENDIX C

Also discussed were strategies and tactics for ensuring speedy passage of the Freedom of Information bill now before the National Assembly.

The public hearing (held on the second day) was attended by the Speaker of the Lagos State House of Assembly, Hon. Olorunnimbe Mamora accompanied by Hon. Jide Omowore, Chairman, Lagos House Committee on Human Rights, the Judiciary and Public Petitions and Hon. Kola Oyewo, Chairman House Committee on Information, Ethics and Strategy. Also present were top journalists including Mr. Femi Abbas and Dipo Onabanjo, Deputy Editor-in-Chief and Editor, respectively, of Monitor newspapers, Ibadan.

At the hearing representatives of the media and civil society groups made presentations on the desirability of the FOI Law and why it should be supported by state legislatures.

### OBSERVATIONS

At both the round table and the public hearing participants observed as follows:

✍ That access to information should be guaranteed. This will make democracy thrive by enhancing citizens' involvement in governance and encouraging public institutions to conform to the principles of accountability and transparency.

✍ That access to information will provide a legal framework that prevents government business from being conducted 'behind closed doors' and also foster the Federal Government's policy of transparent and accountable governance.

✍ That access to information will enable the media, civil society and opinion molders open up sources of information to the generality of the citizenry.

✍ That the Freedom of Information Law will promote citizens' confidence in democratic governance by enabling them to obtain useful information on societal and governmental affairs.

That the two chambers of the National Assembly need to attach a

**COMMUNIQUE OF A ROUND TABLE/PUBLIC HEARING ON THE FREEDOM OF INFORMATION (FOI) BILL ORGANIZED BY THE INTERNATIONAL PRESS CENTER (IPC) LAGOS AT THE UNIVERSITY OF IBADAN CONFERENCE CENTER, IBADAN, ON FEBRUARY 26 - 27, 2002.**

**PREAMBLE**

The International Press Center, Lagos, in collaboration with the Democracy and Governance (D&G) Program of the US Embassy organized a two-day Roundtable/Public Hearing on Freedom of Information Act (FOIA) and Good Governance at the University of Ibadan Conference Center/Guest Houses from February 26-27, 2002.

The roundtable (held on the first day) was declared open by the Speaker of the Oyo State House of Assembly, Hon. Asimiyu Alarape, represented by Hon. D.A. Lawal. It drew participants from various professional bodies, interest groups and non-governmental organizations including Labour, the Legal and Medical professions, the Legislature, the Press, the Academia and Students.

Presentations were also made on:

① *Freedom of Information and the Enhancement of Citizens Participation in Democratic Governance* by Professor Ademola Popoola of the Faculty of Law, Obafemi Awolowo University, Ile-Ife, and,

② *Access to Information, Human Rights and Government Accountability Establishing a Relationship* by Mr. Mashood Erubami, President, Campaign for Democracy (CD)

Syndicated discussions on the ingredients and promotion of good governance and the role of the Freedom of Information Act followed.

3. The Act also seeks to provide the disclosure of public records or information by public officers without authorization thereof provided it is for public interest and such officers are protected from adverse consequences flowing from such disclosure.

4. This Act is intended to complement and not replace existing procedures for access to public records and information and is not intended to limit in any way access to those types of official information that have, hitherto, been normally available to the general public.

**COMMUNIQUE OF THE IPC ROUNDTABLE/PUBLIC HEARING ON FREEDOM OF INFORMATION ACT (FOIA) HELD AT THE MOTEL BENIN PLAZA FROM DECEMBER 17 TO 18, 2001**

A Roundtable/Public Hearing on the need for a Freedom of Information Act in Nigeria was held in Benin City from December 17-18, 2001. Supported by the Democracy and Governance Program of the US Embassy, it was well attended by individual members and representatives of civil society and professional groups.

After an exhaustive consideration of the freedom of information bill presently pending before the National Assembly, it was unanimously resolved as follows:

1. That the passage of the bill into Law will:

- ✍ greatly strengthen the foundations of open democratic governance in Nigeria.
- ✍ promote a culture of record keeping and a responsive service oriented public service for the country as a whole.
- ✍ awaken the generality of the populace to take a keener interest and partake more constructively in matters of management of public affairs.
- ✍ Promote a culture of transparency and accountability in Nigeria.

2. The round table was agreed on the point that the media in particular will be strengthened to carry out more accurately and efficiently, its constitutional duties of informing and enlightening the public and promoting accountability especially as enshrined in Section 22 of the constitution of the Federal Republic of Nigeria (1999).

3. It was unanimously agreed upon that governmental institutions

and agencies which from time to time are concerned with studies, enquiry and investigation of matters, also stand to benefit from the body of information that the Act will generate;

4. That all stakeholders in the Nigerian economy will be placed in a better position to make informed decisions on the operation of the Nigerian economy and its dynamics.

5. Participants were fully agreed on the importance of popularizing the content of the Bill and the advantages that will accrue to all interest groups in Nigeria from the enactment of the Bill into Law. In this regard, the round table:

- ✍ adopted an action plan aimed at creating a network amongst NGOs, CBOs, professional groups, unions, chambers of commerce, etc, and liaison with state and national assembly members; and
- ✍ established a Local Coordinating Committee of six persons that will facilitate public enlightenment on and canvass for support within Edo and Delta States for the passage of the Bill into Law as soon as possible.

- ☐ The language of the FOI bill should be simplified for it to be easily understood and accessible to a majority of the populace while the final act should be translated into local languages for better understanding and wider usage.
- ☐ There should be general civic and human rights education, which should also be incorporated in schools' curriculum in order for the people to appreciate that access to information is a right and not a privilege.
- ☐ There is a need for constant civil society forum involving the business community and interaction with elected representatives in order to highlight the benefits of the FOI bill for the purpose of ensuring accountability and promoting good governance.
- ☐ The press should be at the vanguard of the promotion of the FOI bill while there should be constant interaction of media stakeholders on the FOI so as to win maximum support for its enactment.
- ☐ There should be mass orientation and re-orientation so that the people can be encouraged to adopt the FOI as a tool to fight corruption at all levels of our society.
- ☐ The people through their various organisations as well as the NGOs should adopt necessary measures like regular constituency briefings to monitor elected representatives in order to make them accountable for their deeds and acts. The issue of FOI should be raised at such forums.
- ☐ There is a need to revisit traditional institutions and values that are in accordance with human rights in order to use them to enlist support for FOI. The structures should also be used to encourage the participation of marginalized and vulnerable groups like women, youths and the partially-abled in governance.
- ☐ There should be a mass programme to eradicate illiteracy that may hinder the understanding and the usage of the FOIA.
- ☐ All cultural practices should be made to embrace openness and participation being some of the ideals that the FOIA seeks to promote. NGOs and CBOs should set up lobbying structures that will be guided by a code of conduct and use them to win support for the FOI among other issues. Lobbying could also be done via correspondences, individually and collectively.

## APPENDIX F

### THE ABUJA RESOLUTION

#### **BEING THE COMMUNIQUE OF A ROUND TABLE/PUBLIC HEARING ON THE FREEDOM (ACCESS) OF INFORMATION BILL ON TUESDAY JUNE 18 AND WEDNESDAY JUNE 19, 2002 AT HARMONIA HOTEL, GIMBIYA CRESCENT, ABUJA, FEDERAL CAPITAL TERRITORY.**

The International Press Center IPC held its fifth round table/public hearing on the Freedom of Information Act (FOIA) in Abuja on June 18 & 19, 2002 under the theme: *Freedom of Information in a Democracy*.

As in previous round tables held in Benin, Ibadan, Kaduna, and Port Harcourt participants were drawn from the civil society groups, the media, the professional groups and the legislature.

Introductory statements by the IPC Coordinator, Mr. Lanre Arogundade and the Ag. Executive Director of the Media Rights Agenda (MRA), Mr. Tive Denedo, preceded the round table discussions. There were lead presentations by Mr. William Wyatt of the American Conference of State Legislatures and Mr. Ehi Uwaifoh, Legal Practitioner and consultant on the Access to Information Bill. The Honorable Deputy-Speaker of the House of Representatives, Prince Chibudom Nwuche, represented by his Special Assistant on Media, Mr. Yinka Oduwole, presided over the two-day deliberations. Participants welcomed the round table and generally agreed that it raised important issues and questions on strategies that would lead to the passage of the Freedom of Information Bill pending before the National Assembly.

*The round table resolved as follows:*

IPC has therefore been able to continuously create interactive fora between the press and the society; the media and the government; and the local and international media towards enhancing professionalism and strengthening the democratic institutions.

#### **ROLE**

Overall, IPC offers a wide spectrum of opportunity for the strengthening of professionalism in the Nigerian Press while promoting discourse on the media, democracy and good governance.

#### **PARTNERING & NETWORKING**

The IPC has been in partnership with other Nigerian NGOs and CSOs as well as international bodies. Some of the networks and partnerships in which the International Press Centre, Lagos, has been involved include OneWorld Africa (OWA), Electoral Reform Network (ERN), and Freedom of Information Coalition (FOIC).

#### **ACCESSIBILITY**

A unique advantage of IPC is its central location in Ogba area of Ikeja, Capital of Lagos State where over half of media houses and journalism training schools in Lagos are sited. This guarantees easy accessibility for its principal users media managers, editors, practising journalists and students as well as other corporate bodies and the public.

groups.

- Publication of books, journals and reports.
- Press releases, bulletins, dispatches and alerts.

## MAJOR ACTIVITIES

- Seminars
- Workshops
- Internet Training Programmes for journalists
- Lectures

## FACILITIES

- Conference hall - meetings, training, seminars, conferences
- Cyber café - Internet training, email services, browsing, networking
- Boardroom Monitoring, roundtable, meetings
- Library journals, newspapers, magazines, periodicals
- PCs, Tel/fax machines, audio/visual equipment

## PATRONAGE

IPC enjoys the enthusiastic patronage of practising journalists, journalism students, mass communication teachers, media organisations and even members of the public who have been making use of the facilities especially the Internet access and the conference hall. Journalists are particularly eager to learn more about the role of the Internet in modern day journalism practice.

*✍* That the Bill is needed for good governance, accountability and sustainable social-economic development.

*✍* That the Bill is of immense benefit for the entire citizenry as it would allow for information that is necessary for popular participation in the democratic process and thereby enhance the survival of democracy in Nigeria.

*✍* That there should be wider involvement and increased networking amongst civil society groups and other stakeholders towards speedy passage of the Bill.

*✍* That the business community in particular should be more involved in the passage of the bill as it would enhance transparency and accountability and provide for a level playing field in the conduct of business in Nigeria.

*✍* That there should be a Media Advocacy Committee for the actualization of the passage of the Bill.

*✍* That a secretariat or resource base should be created to serve as the engine room to coordinate efforts and activities that would lead to the passage of the bill.

*✍* That there should be greater efforts at lobbying legislatures for the passage of the Bill, because it would also aid them in the performance of their constitutional duties.

# IPC: OUR MISSION

The International Press Centre - IPC is a not-for-profit, non-governmental, independent media resource center.

It exists to provide capacity building for journalists, render professional services to media groups and organisations and support advocacy for freedom of expression, freedom of opinion, freedom of the press, access to information, self regulation, media independence and pluralism in Nigeria and the West African sub-region.

IPC's mission derives from the need to strengthen the media and the journalists in fulfilling their traditional and constitutional obligation of monitoring governance, serving as the society's watchdog and promoting democratic values.

Commissioned on October 9, 1999, it is a component of the Media-for-Democracy In Nigeria Project (MFD), established through the initiative of the International Federation of Journalists (IFJ), Belgium, Article 19 (International Freedom of Expression Group), U.K, Reporters Sans Frontiers (RSF), France and the West African Journalists Association (WAJA) with the support of the European Commission.

The Nigerian MFD partners - Media Rights Agenda (MRA), Independent Journalism Centre (IJC) and the Journalists for Democratic Rights (JODER) constitute the Board of Directors.

## GOALS/OBJECTIVES:

- To partake in activities aimed at strengthening capacity and professionalism of the media and journalists.
- To partake and support all necessary activities to promote freedom of expression and preserve media independence.
- To facilitate the reform and upgrading of media Laws to bring them into conformity with international rights charters and conventions.
- To provide fora for discourse on the role and responsibilities of the media in democratic dispensations.
- To offer research and library services to the media, journalists and the public.
- To improve the knowledge of journalists in information technology and Internet use.
- To encourage the involvement of the media in conflict management and resolution.
- To facilitate the participation of journalists in international media events, seminars and fellowships.
- To address issues of ethics in the practice of journalism.

## TOOLS/METHODOLOGY

- Roundtable discussions, dialogues, workshops, seminars, conferences and lectures.
- Training on Internet use, computer assisted reporting and newsroom management.
- Networking, Internet chat and email discussion