

FREEDOM OF INFORMATION ACT: A PARADIGM SHIFT IN PRESS FREEDOM IN NIGERIA?

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Abstract: Freedom of expression and the press had since 1979 been introduced into the constitution of the Federal Republic of Nigeria particularly under Chapter IV of the constitution captioned 'Fundamental Rights'.

This right of expression and free press, particularly as provided for in section 39(1) of the constitution of Federal Republic of Nigeria 1999 (as amended) confers on everyone freedom of expression, which includes freedom to hold opinions and to receive and impart ideas and information without interference.

However, inspite of the aforestated constitutional provisions and other similar enactments, access to information, particularly public records by members of the public in general and the press in particular has remained a mirage.

It is against this backdrop that this paper examines the impact of the Freedom of Information Act, 2011 (which was enacted into law after its prolonged setback and delays) on press rights of unfettered access to information.

This paper further examines among other things, the extent to which FOI Act 2011 had been implemented, the challenges confronting its applicability as well as the prospects of the Act in the nearest future. Likely means of improving its effective implementation/enforceability are also suggested.

Keywords: Act, Freedom, Information, Paradigm shift, Press.

INTRODUCTION

Information dissemination, that is the right to receive and impart information without any inhibitions or restraint has remained the major need of every society in a bid to ensure lofty ideals of democracy. Right to receive and impart information without restraint is commonly referred to as 'freedom of information' or 'freedom of expression and the press'.

Blackstone¹ describes 'freedom of the press' thus: *Liberty of the press consists in laying no previous restraints upon publication and not in freedom from censure for criminal matters where published. Every man has the undoubted right to lay what sentiment he pleases before the public. . . to forbid that is to destroy the freedom of the press but if he publishes what is illegal or mischievous he must face the consequences of his own temerity.*

Article 19 of the United Nations Declaration of Human Rights provides that 'everyone has right of freedom of opinion and expression, the right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'²

¹ Blackstone commentaries on the Laws of England. T. Cooley 2nd Revised Edition 1872 Pp. 151-152.

² Article 9 of the African Charter on Human and Peoples' Rights Cap A9 Laws of Federation of Nigeria 2004 has a similar provision.

The late sage, Chief Obafemi Awolowo underscore the importance of press freedom when he opined³ thus: *Freedom to know the truth is the first among all freedoms. . . . To know the truth, and to disseminate untruths to the ignorant, or to disseminate news carelessly as to whether it is true or false, is the most heinous of all sins in a democracy. Truth and liberty are twin sisters. Where there is truth, there is liberty.*

Under the constitution of the Federal Republic of Nigeria⁴, freedom of expression and the press is considered to be fundamental and inalienable right.

Section 39⁵ provides as follows: (a) *Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.* (b) *Without prejudice to the generality of sub-section (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information ideas and opinions.*

Section 22 of the constitution further provides: *“The press, radio, television and other agencies of the mass media shall at all times be free to uphold the responsibility and accountability of the Government to the people”.*

The constitution makes it abundantly clear that every person has the right to receive and disseminate ideas and information. The French philosopher⁶ Voltaire underscore the importance of the right to freedom of expression thus: *“I may not agree with what you say but I will defend to the death your right to say it.”* It is important to note that an essential ingredient of press freedom is free and unrestricted access to information particularly from government agencies and parastatals.

Lord Denning underscore the aforesaid in *British Steel Corporation v. Granda Television Ltd.*,⁷ when he held as follows: *The public has a right of access to information, which is of public concern and of which the public ought to know. The newspapers are the agents so to speak, of the public to collect that information and to tell the public of it. In support of this right of access, that newspapers should not in general be compelled to disclose their sources of information, neither by means of discovery before trial, nor by questions of cross-examination at the trial, nor by subpoena. The*

reason is because, if they were compelled to disclose their sources they would so be bereft of information which they ought to have. Their sources would dry up. Wrongdoing would not be disclosed.

He further held with incisive candour that: *Charlatans would not be exposed. Unfairness would go unremedied. Misdeeds in the corridors of power, in companies or in government departments would never be known-Investigative journalism has proved itself as a valuable adjunct of the freedom of the press.*

Also, commenting on the significance of unfettered access to information by members of fourth estate of realm and the public at large. Patrick Henry⁸ stated thus: *The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them . . . I am not an advocate for divulging indiscriminately all the operations of government, though the practice of our ancestors, in some degree, justifies it. Such transactions as relate to military operations or affairs of great consequence, the immediate promulgation of which might defeat the interests of the community, I would not wish to be published, till the end which required their secrecy should have been effected. But to cover with the veil of secrecy the common routine of business, is an abomination in the eyes of every intelligent man. . . .”⁹*

HISTORICAL PERSPECTIVE OF PRESS FREEDOM

Nigeria became independent on 1st day of October, 1960. The activities of the press thus changed in status from being a press with hundred percent focused on nationalism and agitation for independence to those of ensuring the consolidation of the gains of independence and governance.¹⁰

It is instructive to note that the evolution and development of Press Freedom in Nigeria has a chequered history. The reason for the aforesaid was largely due to political instability which consequently led to experimentation with different types of system of government.

The period between October 1960 and January 1966 witnessed the emergence of post-colonial newspapers as medium of information dissemination both at the National and Regional levels. Neither the 1960 independence constitution nor the 1963 Republican constitution specifically provided for press freedom,

³ Awolowo, O. “The press in the service of the state”, Voice of Reasons op. cit. p. 174-175.

⁴ C F R N 1999 (as amended).

⁵ C F R N 1999 (as amended).

⁶ Cited in Mass Comm Law by Amber Neito & John F. Schmitt, Rowman & Littlefield Publishers Inc, Lanham, Maryland, USA, 2005, P. 14.

⁷ (1981) 1 All ER 417 at 441

⁸ His comments at the debates preceding the adoption of the United States Constitution in 1775

⁹ Justice William O. Douglas, *The Right of The People*, Pyramid Books n. Y. P. 52

¹⁰ Yakubu J. A, *Press Law in Nigeria 1999* Malthouse Press Ltd. Ibadan Nigeria.

however the democratic system of government in practice encouraged information dissemination with not too noticeable inhibitions.

However, with the military incursions into governance between January 1966 and September 30, 1979¹¹ the freedom of expression and the press suffered major set-backs. Various decrees promulgated by the military government during the mentioned period made unfettered access to information, particularly as it relates to day to day running of government difficult.¹²

FREEDOM OF THE PRESS

With the promulgation of the 1979 constitution and the return of power to the democratically elected government, the press for the first time in the evolution of the Nigerian Legal System enjoyed a new status as the veritable fourth estate of the realm.¹³

Section 36 of the 1979 constitution provided thus: “36 (1) Every person shall be entitled to 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 own, establish and operate any medium, for the dissemination of information, ideas and opinions . . .

Section 21¹⁴ further provided thus: *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 fundamental objectives contained in this chapter and uphold the responsibility and accountability and accountability of the Government to the people.*¹⁵

The robust provisions of the 1979 constitution led to a lot of activities on the part of the Nigerian press, together with its effective and unfettered rights to disseminate information. However, in a sharp contrast to the above mentioned period, the period between December 31, 1983 and May 29, 1999 could

be classified as dark ages for the press and by extension right of citizens to freedom of expression¹⁶.

The military putsch of 1983 heralded the draconian regime of General Mohammed Buhari and subsequently the dictatorial dispositions of the successive military government continued¹⁷ until May 29, 1999¹⁸.

Aside from the suspension and modification decree No. 1 every military regime always introduce after coming into power, there are other decrees¹⁹ promulgated which whittled down right of access to information and unfettered freedom to disseminate information. Ironically however, the period under discourse witnessed flurry of activities among members of the fourth estate of realm who demonstrates great resilience notwithstanding the repressive and oppressive decrees promulgated to whittle down its activities. The third Republic came into being following the coming into force of the 1999 constitution on the 29th day of May, 1999.

This constitution²⁰ which is still in force returned Nigeria back to the democratic norms practiced in most countries of the world. It provides for the fundamental rights of everyone²¹ while its section 1 (1) and (3) provides thus: “(1) this constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. (3) If any other law is inconsistent with the provisions of this constitution

¹⁶ Ibid P. 9

¹⁷ Generals Ibrahim b. Babangida, Sanni Abacha and Abdusalam Abubakar.

¹⁸ Nigeria formally returned to democratic system of government.

¹⁹ Some of the Decrees directed against the Press included: Public officers (Protection Against False Accusation) Decree No. 4 of 1984; Newswatch (Proscription and Prohibition from circulation) Decree No. 6 of 1987; Offensive publications (Proscriptions) Decree No. 35 of 1993; The Reporter (Proscription and Prohibition from Circulation) Decree 1993; Newspapers, etc (Proscription and Prohibition from Circulation) Decree 48 of 1993; The Concord Weekly Magazine (Proscription from circulation) Decree No. 6 of 1994; The Punch Newspaper (proscription and Prohibition from Circulation) Decree No. 7 of 1994; The Guardian Newspapers and Guardian Week Magazine (proscription and prohibiton from circulation) decree No. 9 of 1994. See generally, Thompson, *Power and the Press*, Academy Press Plc, 2nd ed. 1997.

²⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended)

²¹ Chapter IV CFRN 1999 (as amended).

¹¹ 1979 general elections in Nigeria ushered in the Second Republic which also short-lived.

¹² The constitution suspension and modification Decree No. 1 of 1966; State Security (Detention of Persons) Decree No. 3 of 1966 which made it legitimate to arrest and detained ‘erring’ persons without trial.

¹³ Ibid at P. 6

¹⁴ C F R N 1979

¹⁵ This provision notwithstanding its vast merits is non-justiceable.

this constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

The provisions of the constitution which guarantees the Press Freedom, that is sections 22 and 39 are in line with the universal conception that freedom of the press and of expression are so fundamental that any law that tends to impede any of the two ideas cannot stand. The cumulative effect of these provisions is that it is fundamental in any civilized society to guarantee the right of each person to express himself not only in respect of issues of public interest,²² but also issues of private concern.

It is therefore important to note that the system of government being practiced usually determines the enforcement and observance of press freedom. The aforesaid is underscored by Ademola CJF (as he then was) in Chief S.L. Akintola v. Sir Adesoji Aderemi & Ors²³ thus: *Ours is a constitutional democracy. It is of the essence of democracy that all its members are imbued with a spirit of tolerance, compromise and restraint. Those in power are willing to respect the fundamental rights of everyone, including the minority; and the minority will not be over-obstructive towards the majority. Both sides will observe the principles as accepted principles in a democratic society.*

The court in plethora of cases²⁴ usually ensured that the fundamental right of freedom of the press is respected and protected. The court in *Tony Momoh v. The Senate*²⁵ held as follows: *It must be remembered at all times that a free press is one of the pillars of freedom in this country as indeed in any democratic society. A free press reports matters of general public importance, and cannot, in law be under an obligation, save in exceptional circumstances to disclose the identity of the persons who supply it with the information appearing in its report. Section 36 of the constitution which guarantees freedom of speech and expression (and press freedom) does provide a constitutional protection of free flow of information. In respect of the press, the editor's or reporter's constitutional right to a confidential relationship with his source stems from that constitutional guarantee of freedom of speech and expression. If this right does not exist or is not protected by the courts when contravened or when there is a likelihood of its being contravened, the press sources of information would*

dry up and the public would be deprived of being informed of many matters of great public importance.

The court held further that: *This must not be allowed to happen in a free and democratic society. In a country with a written constitution which establishes a constitutional structure involving a tripartite allocation of power to the legislature, the executive and the judiciary as coordinate organs of government, the judiciary as the guardian of the fundamental law of the land has the role of passing on a validity of exercise of powers by the Legislative and Executive and to require them to observe the constitution of the land.*

However, inspite of constitutional provisions and plethora of judicial pronouncements supporting press freedom and rights of every person to receive and impart information without any inhibitions, free access to information remains a mirage in Nigeria.

FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) is a law that gives you the right to access information from the federal government. It is often described as the law that keeps citizens in the know about their government.²⁶ The Freedom of Information Act enjoys a universal appeal both at the evolved and the evolving democracies.²⁷

The Black's Law Dictionary²⁸ describes the FOIA as follows: *The federal statute that establishes guidelines for public disclosure of documents and materials created and held by federal agencies. The basic purpose of the statute or of a state statute modelled after it, is to give the public access to official information so that the public will be better informed and the government will be more accountable for its actions.*

The passage of the Freedom of Information Act into Law in Nigeria has a chequered history. The struggle to have a law guaranteeing freedom of information it would be recalled was sustained for eleven years by activists and some civil society organizations²⁹ before

²² Yakubu, J. A, *Press Law in Nigeria* 1999 Malthouse Press Ltd. Ibadan Nigeria.

²³ (1962) W N L R 185

²⁴ Adikwu & Ors. v. Federal House of Representatives & Ors. (1982)3 NCLR 394; Tony Momoh v. The Senate (1981) 1 NCLR 105

²⁵ (1981) 1 NCLR 105

²⁶ www.foia.gov-accessed on 16/10/12

²⁷ The evolved democracies such as United States of America, United Kingdom, Australia and Canada among others, and the evolving democracies which include mostly countries in Africa now operate FOIA.

²⁸ Eight Edition page 689.

²⁹ The coalition of Nigeria civil society groups which worked and advocated for the passage of FOI till include: Right to know Movement, Media Rights Agenda, Civil Liberties Organization Nigeria Union of Journalists, Open Society Justice Initiative e.t.c.

it was finally passed and signed into law.³⁰ Earlier in 2007, it would be recalled, that both chambers of the National Assembly passed the FOI bill and forward it to the then President Olusegun Obasanjo for his assent.

Unfortunately, Nigeria's quest to achieve this veritable tool for the advancement of her social, political and economic growth met a brick wall when the bill was vetoed by the then President and Commander-In-Chief. However, the promoters of the Act remained undaunted in the struggle to actualize their set objective of ensuring that the bill was passed into law.

The resilience and determination of the promoters of the FOI bill paid off eleven years later when the said bill was adopted by the Senate³¹ on 24th May, 2011 and assented to by the President of the Federal Republic of Nigeria on 31st day of May, 2011. It is important to note that since the passing into law the FOIA, only three states of the Federation³² have adopted it at the state level.

The purport of the FOIA passed into law in Nigeria is to make public records and information freely available, provide for public access to public records and information, protect public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain official-information and establish procedures for the achievement of those purposes and related purposes thereof.

This Act which has 32 sections provides in its section 2 as follows: (a) *Notwithstanding anything contained in any other Act, Law or Regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is hereby established.* (b) *An applicant herein need not demonstrate any specific interest in the information being applied for.* (c) *Any person entitled to the right to information under this Bill, shall have the right to institute proceedings in a court to compel any public institution to comply with the provisions of this Act.*

It is important to note that the provision of section 2 as aforesaid makes it easy for members of the public to access information from public institutions

³⁰ A paper delivered by Christmas Akpodiete, Esq at the Presidential Media Forum for Practising Journalists in the office of Nigerian President, held in Abuja on 15th June, 2012
www.frontiersnews.com/index/php/news/868.

³¹ Upper Chamber of the Legislative arm of government in Nigeria.

³² Delta, Ekiti and Lagos States.

without any inhibition. However, where information is not made available by the relevant bodies or institutions, any person shall have the right standing (*locus standi*) to institute proceedings in a court to compel any public institution to comply with the provisions of this Act.

The Act, in its Section 3 provides that public institutions shall ensure that they keep records of all their activities and operations and make them available to members of the public whenever such requests are made.

Section 3(3) (a-p) contains list of materials and information the public institutions should publish to the public. In a bid to ensure eradication of corruption and promote good governance, the FOIA defines public institutions³³ to cover every sector of public and private life. It provides thus- *Public institutions are all authorities whether executive, legislative or judicial agencies, ministries and extra-ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and also, private companies utilizing public funds, providing public services or performing public functions.*

It is important to note that before the FOIA 2011 governance in Nigeria was shrouded in secrecy since the sitting political and public office holders are not under obligation to disclose some vital information, particularly those bothering on fiscal policies, receipt or expenditure of public or other funds of the institution.

However, upon the enactment of the FOIA, it becomes obligatory on the part of the public officers and political office holders to disclose information relating to (i) list of all manuals used by employees of the institution in administering or carrying out any of the programmes or activities of the institutions; (ii) documents containing the names, salaries, titles, and dates of employment of all employees and officers of the institution; (iii) a list of files containing applications for any contract, permit, grants, licenses or agreement just but to mention a few.

The provision of the FOIA³⁴ states clearly that where a public institution refused fail and or neglects to publish the information as specified by the Act, any person can apply for any or all the records. In order words, an applicant is expected to access public records or information by filling an application for access to record or information in accordance with the section, whether in writing or otherwise. The implication therefore is that both literate and illiterate

³³ Section 3 (7)

³⁴ Section 2 (3)

can apply for information under this Act. The Act further provides³⁵ that within seven days after the application for access to records and information is received by the public institution, such institution is expected to make the information available to the applicant.

However, in a situation where the institution considered that the applicant should be denied, it will within seven days after the application is received notify the applicant in writing of such, stating reasons for the denial and the applicable section of the Act. The aforesaid makes it explicitly clear that access to information may sometimes be refused by an institution, but the reason(s) thereof must be communicated to the applicant in writing. The procedure for denial is clearly stated in section 7 of the Act.

Interestingly, the right of access to information is projected as sacrosanct by the Act, the inclusion of certain exempted records and information in the list of those which the public cannot ordinarily have access has introduced the thinking that 'all animals are equal, but some are more equal than the others.'³⁶ The public institution through its head or officer designated to handle access to public records matters shall refuse access to the following classes namely: International Affairs and Defence of the Federal Republic of Nigeria.

Section 12 of the FOI Act provides as follows: (a) *A public institution may deny an application for any information the disclosure of which may be injurious to the conduct of international affairs and the defence of the Federal Republic of Nigeria.*

However, the proviso to the above sub-section tries to cushion its effect: (b) *Notwithstanding subsection (1), an application for information shall not be denied where the public interest in disclosing the information out weights whatever injury disclosure would cause.*

The Act³⁷ further restricts disclosure of certain information for specific reasons which appear appropriate in a decent and democratic society. Section 13 of the Act provides extensively as follows: (c) *A public institution may deny an application for any information which contains – (a) Record compiled by any public institution for administrative enforcement proceedings and by any law enforcement or correctional agency for the law enforcement purposes or for internal matters of a public*

institution, but only to the extent that disclosure would – (i) Interfere with pending or actual and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency. (ii) Interfere with pending administrative enforcement proceedings conducted by any public institution;(iii) Deprive a person of a fair trial or an impartial hearing;(iv) Unavoidably disclose the identity of a confidential;(v) Constitute an invasion of personal privacy under section 15 of this Act. However, where the interest of the public would be better served by having such record being made available, this exemption to disclosure shall not apply;(vi) Obstruct an ongoing criminal investigation.

All the aforesaid and sub-sections (2) and (3) thereof are self-regulatory measures put in place by the Act to prevent its abuse and infringement on other rights of the citizens.

It is important, however to note that one of the major impacts of the FOI Act on the Nigeria Legal System is that it further entrenches the right to freedom of expression and the press as contained in the constitution of the Federal Republic of Nigeria.³⁸ The right to receive, impart ideas and information without interference is emphasized. Basically, the FOI Act has greatly whittled-down the influence of the Official Secrets Act.³⁹

Cognizance of the duties imposed on a public officer to keep official secrets under the Official Secrets Act⁴⁰, Criminal Code Act⁴¹, Penal Code Act⁴² and any other Act, law or regulations, the provisions of the FOI Act exonerates such officers from any punishment if the disclosure is in accordance with the provisions of the FOI Act.⁴³

The Act provides further that where the Public Officer did not obtain authorization (and there are clear provisions of the Criminal Code Act or Official Secrets Act requiring such authorization before disclosure) and he is in possession of the information that there is a violation of any law or rule and regulations, mismanagement of funds, fraud and

³⁵ Sections 4 (a)-(b)

³⁶ Akinlawon, A. *F.O.I Act 2011: Synoptic Overview* Nigerian Tribune, Issue of Monday, 14 January, 2013.

³⁷ Section 13

³⁸ Section 39 of the constitution of the Federal Republic of Nigeria, 1999 as amended and its counterpart in Article 19 of the Universal Declaration of Human Rights provide extensively for freedom of expression and the press.

³⁹ Official Secrets Act Cap 03 LFN 2004 deals primarily with the protection of official information and control of mail forwarding agencies.

⁴⁰ Cap.03 LFN 2004, see Section 1 (1) and (2)

⁴¹ Cap C 38 LFN 2004, see Section

⁴² Cap P 3 LFN 2004. see Section

⁴³ Section 27(1)

abuse of authority or substantial/specific danger to public health or safety, the officer is entitled to disclose such without being liable for any offence.⁴⁴

It is instructive to note that 'classified information' as defined under the Official Secrets Act is not exempted from disclosure in as much it did not fall under the exemptions in the F.O.I. Act.

ENFORCEMENT OF FOI ACT 2011

Generally, the FOI Act provides that any applicant who is aggrieved with the public institution's compliance with the Act or handling of his request can approach the court to compel compliance or for judicial review.⁴⁵ The question that readily comes to mind here is that where an applicant's request for information is denied or refused (partly or wholly) what happens? The applicant can apply to the court for a review of the denial/refusal within 30 days after refusal/denial.⁴⁶ The court may extend the time beyond 30 days or make it lesser than 30 days, while it also has the discretion to conduct the matter summarily.⁴⁷

The court is empowered by the Act notwithstanding the provision of any law or regulation to examine any information in the custody of the public institution applicable under the Act, however the court is enjoined to be precautious in handling such information in its proceedings.⁴⁸

It is important to note that the Act provides for instances where the court may order disclosure as follows: (i) *If the court determines that the institution is not authorized to deny the application for information; or(ii) Where the institution is so authorized, but the court nevertheless determines that the institution did not have reasonable ground on which to deny the application;*(iii) *Where the court makes a finding that the interest of the public in having the record being made available is greater and more vital than the interest being served if the application is denied, in whatever circumstance.*⁴⁹

The court could make its order conditional as it deems fit and appropriate in a given circumstance. Procedurally, the public institution must bear the burden of establishing that it has a right to deny the information in an application for judicial review or

refusal of an application. In essence, the public institution has the burden or onus of proof under the Act.

APPLICATION OF FOI ACT, 2011

There have been various attempt at invoking the provisions of the FOI Act since its enactment in year 2011 usually to test its practicability particularly in an environment where state business and or governance is known to be shrouded in secrecy. In a bid to ensure transparency in the fiscal policies and appropriation of funds by the national Assembly⁵⁰, an organization known as Legal Defence and Assistance Project (LEPAD) invoked the provisions of the FOI Act where by its letter dated July 6, 2011 addressed to the Clerk of the National Assembly, requested for information under sections 2 and 3 of FOI Act on salary, emolument and allowances paid to all senators and members of the House of Representatives from June 2007 to May 2011.

However, following the refusal of the Clerk of the National Assembly to accede to its letter LEPAD filed a suit asking a Federal High Court sitting in Abuja, the Federal capital Territory to compel that it be furnished with the requested information. The court overruling the preliminary objection brought on behalf of the NASS⁵¹ on the ground that the applicant lacked jurisdiction, held that every citizen was entitled to have access to public information under the FOI Act and ordered the clerk of the National Assembly to release the requested information within 14 days of the ruling.⁵²

Sequel to the enactment of the FOI Act, the 'Daily Trust' newspapers⁵³ requested that the Nigeria National Petroleum Corporation (NNPC) furnish it with the details of a recruitment exercise which was alleged to be tainted with fraud and favouritism, invoking the provisions of the FOI Act, 2011.⁵⁴ It is important to note that this singular act has helped the NNPC to own up to its responsibility as an accountable public institution by coming-up with its position on the recruitment exercise.

⁴⁴ Section 27 (2) and (3). See also Akinlawon, A. *F.O.I. Act 2011: Synoptic Overview*. Nigerian tribune issue of Monday, 14 January, 2013.

⁴⁵ Sections 1(2), 2(6), 7(1), 8, 10, 20, 21 and 25 among others.

⁴⁶ Section 20

⁴⁷ Section 21

⁴⁸ Sections 22 and 23

⁴⁹ Section 25

⁵⁰ The National Assembly is the legislative arm of government in Nigeria consisting of the Senate (upper house) and House of Representatives (lower house).

⁵¹ National Assembly

⁵² 'Nigerian Tribune' Newspapers issue of Thursday, 26th June, 2012 P. 4

⁵³ 'Daily Trust' is a daily tabloid published in Nigeria.

⁵⁴ 'Vanguard' Newspapers, issue of Wednesday 22nd August, 2012

In a similar vein, a legal practitioner⁵⁵ sequel to the aircraft crash that killed over 157 people in Lagos, Nigeria invoked the provisions of the FOI Act⁵⁶ requested from the Federal Ministry of Aviation, among other things: (i) Reports of all the air crashes, accidents and or incidents that occurred within the Nigerian Airspace between November 20, 1969 and June 3rd 2012; and (ii) alternatively, if the reports on the crash of 3rd June, 2012 was not ready, an information as to when same would be ready should be supplied.⁵⁷

It is important to note that notwithstanding the instances of FOI Act practical applications/invocations earlier mentioned, much is still needed to be done in a bid to ensure that the Act achieves its desired goals and objectives of uninhibited dissemination of information, ensuring that public institutions are being managed with openness and transparency, among others. There is no doubt that effective flow of information has been identified as an important solution to the numerous problems which bedeviled both the private and public sectors in Nigeria.

Recently, the Attorney-General of the Federation (AGF) Mohammed Adoke (SAN) was enjoined to increase efforts in creating awareness and enlightenment among public institutions and within the Civil Service about the superiority of the Freedom of Information (FOI) Act to other laws, especially the Official Secrets Act⁵⁸

The stakeholders in the media industry has recommended that every public institution to which the Act applies should take advantage of new information and communication technologies to improve its record-keeping system, to make information filing and retrieval less cumbersome and also meet up with its obligation on pro-active disclosure.

The Act, also as a means of ensuring compliance with its provisions expressly states that the public institution need to be conscious of the fact that it is obliged to file a report of the operations of the FOI Act for every preceding year on or before the 1st February of the year of report. The report is sent to the Attorney-General of the Federation who is

expected to publish the report for public accessibility and submit same to the National Assembly on or before 1st April, every year. In an attempt to comply with the provisions of issuing guidelines for the purpose of reporting and determining performance, the Attorney-General of the Federation issued implementation guidelines on the 29th day of January, 2012 annexing the sample of the expected report in compliance with Section 29 of the FOI Act.⁵⁹

LIMITATIONS TO THE EFFECTIVENESS OF FOI ACT

There are some factors which limit the application and effectiveness of the FOI Act, some of the key factors are underlisted. (a) Illiteracy: Vast majority of the populace for whom benefits the Act was enacted are either uneducated or ignorant of its existence. (b) Poverty: The need to make ends-meet by most Nigerians, have overridden their interest in governance, while they consider the resort to the FOI Act for accountability from public institution as time-wasting and unnecessary venture. (c) Lucuna and defects noticeable in the Act.⁶⁰

The National Orientation Agency⁶¹ at a workshop⁶² emphasized on why Nigerians must take advantage of the FOI Act, to make input into good governance and accountability in the country, since the Act is meant to ensure that there is public participation in governance, the business of government is open to public scrutiny, laid down procedures in the conduct of public affairs are adhered to, transparency and accountability in governance are institutionalized, corruption is stemmed and scarce resources are judiciously deployed for the well-being of citizens.⁶³

The National Orientation Agency (NOA) gave five major objectives in publicizing the Act, namely: (a) To improve citizens' awareness and understanding of the provisions of the Act; (b) To seek information from public institutions at the Local Government level; (c) To stimulate proactive disclosure by public institutions as required by the Act; (d) To ensure that

⁵⁵ Mr. Bamidele Aturu is a Nigerian Legal Practitioner based in Lagos.

⁵⁶ Sections 1, 3 and 4

⁵⁷ 'The Guardian' Newspapers, issue of Tuesday 26th June, 2012 P. 85.

⁵⁸ Keynote address presented at a workshop hosted by Media Rights Agenda (MRA) with the support of USAID as reported in 'The Guardian' Newspapers issue of Thursday, October 18, 2012, P. 4

⁵⁹ Akinlawon, A., F.O.I. Act 2011: *Synoptic Overview*, 'Nigerian Tribune' Newspapers issue of Monday, 14th January, 2013 P. 29.

⁶⁰ The Act itself out rightly exempted certain records and information. See Sections 12&13.

⁶¹ Federal Government Agency, saddled with the responsibility of sensitization and enlightenment on various government policies and programmes.

⁶² 'Train the-Trainer' workshop held at Oshodi Isolo Local Government in Lagos for NOA State directors and their Heads of Programmes Divisions

⁶³ Amoye, G. *Wake Up, NOA alerts Nigerians on FOI Act* Nigerian Tribune,, issue of Friday 15 February, 2013. P. 18

public institutions provide access to information applied for under the Act and; (e) To ensure that the NOA spearheads the public sensitization of the Act.

However, what appears to be the major set-back and casts-shadow on the FOI Act is the jurisdictional challenges obstructing its wheel of progress. The Act remains unenforceable in most of the federating states on the ground that it is yet to be enacted as state laws.⁶⁴ It is equally important to reiterate the unwholesome attitude of public officials who notwithstanding the passing into law the FOI Act still reluctant to supply the requested information. The public institutions sometimes appeal against the court decisions compelling them to make available the requested information to the applicants.

For instance the Economic and Financial Crimes Commission (EFCC) recently appealed the decision of a Federal High Court ordering the release of detailed information on the seized properties from the former Managing Director of Oceanic Bank (Nig.) Plc. to one Mr. Boniface Okezie (President of the Progressive Shareholders Association of Nigeria)⁶⁵. The above underscore the position that the attitude of the public officials is still negative to the holistic approach of the FOI Act to information dissemination, probity and accountability in governance in Nigeria.

CONCLUSION

Generally, a critical evaluation and over-view of the Freedom of Information Act, 2011 reveals that there was a serious problem of accessing information from the public officials (prior to the enactment of this Act) as they often-times hide under the provisions of the Official Secret Act, which encourages governance at different levels to be shrouded in secrecy and devoid of accountability.

It must also be admitted that the FOI Act in its present form is flawed with lacuna and legal challenges, particularly as it relates to enforcement and the attitudes of both the members of the public and the public officials to the Act.

However, it should be noted, that notwithstanding the pit-falls and lacuna identifiable in the FOI Act, 2011 the Act has set a template for the advancement of the ideas of democracy and development upon which

Nigerians could demand for probity, transparency and accountability in governance.

REFERENCES

Books

- [1] Cooley, T. *Blackstone Commentaries on the Laws of England* 2nd Edition.
- [2] Douglas, W. O. *The Right of the People*, Pyramid Books New York, United States of America.
- [3] Malemi, E. *Mass Media Law, 2009* Princeton Publishing Company, Lagos, Third Edition.
- [4] Neito, A & Schmitt, J. F. *Mass Communication Law*, 205 Rowman & Littlefield Publishers Inc, Lanham, Maryland, USA.
- [5] Thompson, T. *Power and the Press* 1997 Academy Press Plc. 2nd Edition.
- [6] Yakubu, J. A, *Press Law in Nigeria* 1999, Malthouse Press Limited.

Statutes

- [1] African Charter on Human and Peoples' Rights Cap A9 LFN 2004
- [2] Constitution of the Federal Republic of Nigeria, (as amended) 1999
- [3] Constitution of the Federal Republic of Nigeria, 1979
- [4] Criminal Code Act, Cap C 38 LFN 2004
- [5] Freedom of Information Act, 2011
- [6] Official Secrets Act, Cap 03 LFN 2004
- [7] Penal Code Act, Cap P 3 LFN 2004

Newspapers & Journals

- [1] Black's Law Dictionary Eight Edition
- [2] Nigerian Tribune Newspapers, Issue of Monday, 14 January, 2013
- [3] Nigerian Tribune Newspapers Issue of 26 June, 2012
- [4] Nigerian Tribune Newspapers, Issue of Friday 15 February, 2013
- [5] The Guardian Newspapers, Issue of Tuesday 26 June, 2012
- [6] The Guardian Newspapers, Issue of Thursday 18 October, 2012
- [7] The Guardian Newspapers, Issue of Tuesday March 5, 2013
- [8] Vanguard Newspapers, Issue of Wednesday 22nd August, 2012

⁶⁴ Except for Lagos, Delta and Ekiti States which had enacted the FOI Act as State Laws.

⁶⁵ The Guardian issue of Tuesday, march 5, 2013 P. 69 titled *EFCC's appeal against disclosure verdict over FOI Act is unhealthy*. Being excerpts of the interview granted by Adetokunbo Mumuni, a social rights and anti-corruption crusader.

