

Relevance of Nigeria's Freedom of Information (FOI) Act (2011) in Information Gathering and Dissemination

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Abstract

This study investigates Freedom of Information (FOI) Act as a panacea for information gathering and dissemination in Nigeria. The specific objective of the study focuses on the need to assess the recently enacted FOI Act to the practice of journalism which has become a law in Nigeria. It should be noted that bearing in mind the peculiarity of the Nigerian situation, the enacted Freedom of Information Act may be ineffective if journalists do not avail themselves to make use of it in their reportage. Also, the study reveals that FO Act is totally a democratic Act which drives home the principle of the rule of law, due process, transparency, and accountability. This research work further argues that the Act helps to strengthen democracy and of benefit to journalists in Nigeria as it makes information gathering and dissemination less cumbersome. The study recommends that the Act should not be for journalists alone to allay the misconception that it is a media Act. Legislatures and indeed stakeholders should see it as essential to the survival of democracy in Nigeria. It further recommends that journalists should perform their jobs effectively by holding the government accountable to the people as enshrined in the Constitution of Federal Republic of Nigeria, as the Act removes impediments to information gathering and news reportage. Government at all levels must ensure full utilization of the Act to help fight corruption which has become a major problem to the development of Nigeria.

Key terms: Nigeria Freedom of Information Act, Information Gathering, and Dissemination.

Introduction

There is no doubt that Nigerians are conversant with suppressing information due to long years of military incursion into governance in Nigeria; thus media as an institution were governed through the issuance and promulgation of Decrees by the military government. Even with the development and establishment of media houses, the Freedom of Information had been denied by successive government in Nigeria on many occasions. To further buttress this assertion, mass media institutions especially the print media were shut down in the past by both the military and civilian governments. In the same vein, Decrees were promulgated to prevent press freedom and thus led to various agitations. The Freedom of Information Bill is expected to give every Nigerian the right to apply for information and records held by the government or government agencies or institutions. Before now, some existing laws and regulations especially the Official Secret Act

made it an offence for civil servants and public officials to give information to members of the public without specific authorization by senior government officials.

Progressively, with the coming of civilian administration in 1999, there has been a clamour for Freedom of Information Bill. The clamour was finally granted by the administration of President Goodluck Jonathan after many years of agitation. The question however arises, with the passage of the Bill; will there be improvement in the information being disseminated to the public? Hence, there is need to study the advantages accruable from FOI Act, its role in journalism practice, essence of the Bill, issues and challenges in the use of the by the Nigerian journalists.

Theoretical Framework

The libertarian theory is suitable for this study. The theory, which is described as the ‘free press theory’, gives an individual or organisation including the press should be free to publish and express information freely (Umechukwu, 2001). The main idea of this theory is that libertarian theory is located in John Milton’s notion of the ‘self righting process of the free market place of ideas.’ This implies that government ideas would drive out bad ones if all ideas were guaranteed free expression (McQuail, 1987). In addition, John Stuart Mill ideas were the central foundation of this theory. Mill posits thus:

The peculiar evil of silencing the expression of an opinion is that it is robbing the human race posterity as well as the existing generation those with dissent from the opinion are even more Than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error (McQuail, 2005, p. 169)

This infers that the idea of John Milton and John Stuart Mill are compatible with the principles of the press as a ‘free market place of ideas,’ first put in place in 1918 by an American judge (Defleur, 2010). The libertarian theory is a necessity in a democratic society because it is a core principle of democracy. From all indications, democratic countries incorporate in their constitutions the principles of liberty, freedom of speech, freedom of expression and freedom of the press.

Conceptual Clarifications

Historical Perspective of Freedom of Information in Nigeria

According to Macebuh (2010), available data indicative of the fact that the idea of a Freedom of Information Law for Nigeria was conceived in 1993 by three different independent organisations i.e. Media Rights Agenda (MRA), Civil Liberties Organisation (CLO) and the Nigeria Union of Journalists (NUJ). According to a statement on the Freedom of Information Coalition website (2010), the various groups, subsequently, agreed to work together on a campaign for the enactment of a Freedom of Information Act. (<http://www.article19.org/pdfs/analysis/nigeria.foi.00.pdf>).

Consequently, on Wednesday November 15, 2006 the Senate of Federal Republic of Nigeria finally passed the Freedom of Information Bill and forwarded to the President Goodluck Jonathan for his assent, which would make the bill a law. Before its historic passage, the bill was in the National Assembly for more than six years.

The title of the bill though quite lengthy, deserves spelling out in full, as it explains everything that the bill seeks to achieve. The title is:

A Bill for an Act to make public records and information more freely available, provide for public records and information, protects public records and information to the extent consistent with public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorisation and establish procedures for the achievement of these purposes and related purposes thereof, 2006.

Consequently, Section 1 of the Freedom of information Bill states:

Subject to the provisions of this Act, but notwithstanding anything contained in any other act, law or regulation, every citizen of the Federal Republic of Nigeria, has a legally enforceable right to, and shall, on application be given access to any record under the control of a government or public institution.

From the above, we can say that the Freedom of Information Bill has the following merits:

- It will provide access to public information or records kept by government, public institutions and even private organisations carrying out public functions for Nigerians and even non-Nigerians residents in the country.
- With more information available to the citizens, they can participate more meaningfully in the governance of the country, in the making of laws and formulation of government policies.
- It will provide greater accountability on the part of public officers. This is probably the most important benefit of the bill given the penchant of public officers to be secretive with information. Hitherto such secretiveness had encouraged corruption and the looting of public funds without detection.
- What is more, the bill provides that public officers who destroy information in their custody will be imprisoned.

Also, Article 19 of the Universal Declaration of Human Rights states that the Global Campaign for Free Expression campaign was to lay down as a legal principle the rights of access to documents and information in the custody of the government or its officials and agencies as a necessary corollary to the guarantee of freedom of expression. It was also aimed at creating mechanisms for the effective exercise of this right.

Furthermore, Macebuh (2010), posits that the right of access to information held by government and public authorities remain a tool for promoting accountability in governance and as well an essential component of the right to freedom of expression. This view has gained wide international acceptance and endorsement around the world.

The underlying philosophy of the right of access to information is captured by Article IV (1) of the Declaration of Principles on Freedom of Expression in Africa cited in the Media Right Agenda (2009) which states that: *Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.*

However, the advent of democratic government of President Olusegun Obasanjo on May 29, 1999, the fourth attempt at an enduring democratic system of governance, gave birth to another hope of a civilised conduct of the affairs of the Nigerian government and the realisation of the dividends of democracy. But a democracy's health and longevity depend upon public trust and confidence and thus is nourished by open access to information. A government is responsible to individuals and communities, which in turn have a right to know what the government is doing on its behalf (Media Right Agenda 2000).

According to Macebuh (2010), the freedom of information act is not the cure-all for secrecy many had hoped for, and it's certainly a much weaker version than that proposed by the government in its initial White Paper, combined with a number of other initiatives, the Freedom of Information Act does not mark a significant shift in the relationship between the government and the governed.

For the first time the government's 'Right to Secrecy' is replaced in law with the public's 'Right to Know'. This change took place several decades ago in most other developed countries, but it is to be hoped that Nigeria will quickly catch up. How quickly things change depends on how the government, the media and the public react to the new rights.

Succinctly, the freedom of information act 2011 was passed into law by the administration of Goodluck Jonathan in the second quarter of 2011. One of the earliest extensive review and documentation on freedom of information act was documented in Media Rights Agenda 2000. All over the world, government regulate various fields of human endeavour. Thus banking, education, healthcare delivery, hotels etc. are regulated. This means that these industries were provided with basic structures for their operation. The mass media industry was equally regulated. However, because of the peculiar nature of the mass media as vehicles for free expression, which is a fundamental human right, government was careful to regulate the media only to the extent consistent with the expectations of a democratic society. Thus, over-regulation of the media which stifle free expression brought about the underground press and even rebellion

Definition of Freedom of Information (FOI) Act

On the 28th May, 2011, Nigeria's President Goodluck Jonathan signed into law the freedom of information (FOI) Act. With the coming into force of the Act, every person who has a legal right of access to information, records and documents held by government bodies and private bodies carrying out public functions (www.ibanet.org). This Act is to make public records and information more freely available, provide for public access to public records and information, perfect public records and information to the extent consistent with the public interest and the protection of personal privacy, protecting public officers from adverse consequences of divulging certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters (www.icrc.gov.ng).

According to Sterling (2009), as cited in Macebuh (2010), the Freedom of Information Act (FOIA) is an information disclosure statute that provides the principal means of access to records of the executive branch of the United States Federal Government. It stated that in United States, the FOIA, codified at U.S.C. sections 552, was enacted in 1966 and has been amended several times since then, significantly by the Electronic Amendments of 1996.

Sterling (2009), as cited again in Macebuh (2010), also defined freedom of information as the right to which members of the public in any society have access to information held by government bodies. 'It is now recognised as a fundamental human right to which all citizens of any country and indeed all human beings are entitled'. He further explained that this right is encapsulated in Laws which are variously known in different countries as; Right to Information Act; Freedom of Information Act; Access to Information Act; Right to Access to Information Act; Right to know Act etc.

In the same vein, according to Akinfeleye and Tony Momoh, freedom of information is an avenue for individuals and journalists to have access to information at all levels of the government. The Bill first came into being in the year 1999 when sponsored by a group called Coalition of Freedom.

The Freedom of Information Law according to Areh (2005) seeks to provide public access to official records and information in line with public interest and protection of personal privacy. It also protects serving public officers and adverse consequences for disclosing certain information without authorization and equally establishes procedures for the achievement of those purposes and related purposes thereof.

The Bill, which has now been passed into law, is expected to help individuals and pressmen source for information without hindrance and interference. The Act will also allow Nigerians to have access to all kinds of information needed by the public especially on government policies and activities. It is also expected to create an avenue for liberal democracy and foster no room for secrecy.

Relevance of the FOI Act

Ononamadu (2015), posits that the denial of access to information and the attendant widespread ignorance in the Nigerian society has done more harm to the society than any harm that could possibly arise from growing access to members of the public. Ononamadu, (2015), further argues that, as a country that witnessed decades of military rule during which press freedom was restricted and the colonial Official Secret fully applied, the FOI Act became a relief that could not come in a better time when culture of secrecy about all government was classified as top secret and this veil of society made it difficult to obtain information is tagged ‘classified’, ‘confidential’, ‘restricted’, ‘not to be disclosed’, ‘official secret’.

The FOI Act provides citizens, students, researchers and politicians, easy access to information to conduct studies to understand how government processes, policies, systems and functions of public officers and offices work. It has legally prevented public servant from hiding under the plethora of known and unknown laws that prevent them from divulging official facts and figures of the public. Notably is the Official Secret Act, which makes it an offence, not only for public servants to give no government information, but also for anyone to receive or reproduce such information, as well as other laws in the statute books that inhibit freedom of expression of speech Ononamadu, (2015).

Also, Enoche (2012), argued that FOI Act gives Nigerians the vital tool to hold public institutions accountable. The Act is a vital tool to ensure democracy and responsible government in Nigeria.

Limitations of the Act

The followings are the limitations of the Freedom of Information (FOI) Act:

- Defense/security matters;

- The conduct of international affairs;
- Law enforcement investigation;
- Trade secrets, financial, commercial, technical and scientific information of economic value;
- Third party information, solicitor/client privilege;
- Test questions and examination, etc.

Role of FOIA in Information Gathering and Dissemination

FOIA plays an important role in keeping government and its agencies transparent and accountable to the people. In other words, this facilitates the work of journalists in the area of information gathering and dissemination especially in the surveillance function of the media. Again, the mutual distrust between journalists and government can be minimised through this Act; this because journalists had often accused government of withholding information from the journalists in name of secrecy, security and national interest. Apparently, with this Act, the watchdog role of the journalists in exposing a wide range of government misconduct and waste is made possible through the Act. Although, the Act does not provide access to all documents however, it does make public records and information more freely available to the public and journalists. In addition, this means that freedom of information is freedom of a person or people to publish and consume information. Essentially, information gathering and dissemination is easier to carry out because of the free access to records and information thereby reducing speculation, fake news, insinuations in news gathering and reporting.

Impediments to Effective Utilization of Freedom of Information (FOI) Act

Okunna (1995:14) identifies these under listed impediments to effective use advantages accrued from FOIA. They are:

- **Failure to adhere to canon of journalism:** Canon of journalism is a concept which encourages fundamental principles on which journalism is built. Journalists who seek to benefit from FOIA must also come with clean hands. Those who want to benefit must or should be advised to be committed to be truthful, objective, fair, accurate, independent and responsible.
- **Lack of openness of news source:** In third world or developing countries like Nigeria, we are beclouded with mutual suspicion for one another. A news source considering this factor may hide or frustrate the process of making information available to the user. This can also be in form of secrecy on the part of government officials or the management of corporate bodies who want to hide something.
- **Conflict of interest:** Though FOIA may be a veritable tool for news gathering and reporting, however conflicts of interest among players can mar the exchange processes. These days' journalists are registered members of various societies ranging from religious,

political, social-cultural and professional groups. Apart from the personal interest of the journalists, these bodies also play a lot of role in information gathering and reportage.

- **Laziness on the part of reporter:** In a situation where a reporter is lazy, he or she may find it difficult to visit information banks to collect or clarify certain information. Hence, they resort to 'armchair journalism'. The situation may be worse when journalists are poorly paid.
- **Lack of proper training of journalists:** In advanced countries, information are gathered and stored into data banks through computers and accessed by internet with ease. But journalists must have at least some basic skills in information and communication technology (ICT). In case of Nigeria situation, most of our journalists are poorly trained and may not have this fundamental requirement.
- **Corruption:** no matter how good FOIA is to the entire mass communication process, a cankerworm called corruption is capable of destroying whatever that should be gained. Those that are custody of such information may demand for money or any other gratification before such information materials are released to the reporter or individuals.
- **Lack of proper information management:** It is not enough to make laws seeking to make information available to people but how do you properly manage this information in such a way that any individual can easily walk in and makes demand. Nigeria is a country where it is easy to make policies but implementation and sustaining them is always a challenge.
- **Emergence of cartel journalism:** Cartel journalism is the formation of beats associations for the purpose of protecting mutual interests. This may not be said to be wrong altogether, but it becomes unethical if it leads to the suppression and distortion of information which is genuinely facilitated by FOIA. As a matter of fact, it is censorship, which is an impediment to freedom and principle which FOIA stands for.
- **Undue excuse on the use of protection of national security by government:** Laws such as Official Secrets Act, Criminal Code, the Penal Code Act, the Evidence Act and Constitution itself makes certain restrictions into certain information that should not be made available to the public including journalists. But most times, government hide behind these laws to denial public and journalists' access to information in the name of protecting national interest.
- **High illiteracy level among Nigerian populace:** Nigeria is a nation with high rate of illiteracy among her population. It should be noted that FOIA is not meant for journalists alone but also publics who are interested in finding certain information either from government agencies, corporate bodies and even security agencies on issues that pertains to their welfare. Aside from this, most Nigerians seem to pay less attention to what is happening around them. Therefore, parading around government agencies and other related information source may be seen as waste of time.

Summary/conclusion

The highlight of this article is hereby given or presented by way of summary from which conclusion was drawn. This article also was channelled at looking at the importance of the FOIA by the performance of journalists in Nigeria. Various laws, books, journals and constitution were consulted; the revelation indicates that FOIA is an Act that seeks to grant information access to Nigerians especially journalists.

The FOIA is absolutely a democratic Act which can further drive home the principle of rule of the law, due process and transparency. The enactment of the Act therefore would encourage and facilitate governance and accountability on the part of Nigerian government with better public participation in the affairs of the state. Arising from this, the Act seeks to strengthen the information seeking power on the people and that the Act is to serve the interest of the general public.

Furthermore, the paper reveals that even though Nigeria has over the years had uninterrupted democratic governments, the FOIA remains necessary because it helps to strengthen democracy and good governance by eliminating existing impediments to information gathering and news reporting by journalists. Subsequently, this article shall be beneficial to general public, media industry, government at all levels, stakeholders etc. as it makes their jobs especially journalists less difficult.

Recommendation

1. The use of FOIA should not be left in the hands of journalists and media practitioners alone. Without doubt, this may account for the misconception that the Act is a Media Act that is meant for journalists alone.
2. Legislature, judiciary and executive arms of the government should see FOIA as essential ingredients for survival of Nigeria's democracy. By so doing, the public will be able to understand government better and participate in democratic activities effectively.
3. For journalists to be effectively carryout their roles of holding the government accountable to the people as enshrined in the constitution, all the impediments to obtaining and use of official information must be eliminated through the Act.
4. Lastly but not the least, for the anti-corruption fight against corruption to be effective and pro-active, the executive arm of the government must ensure that the Act assented to is fully utilised. This is one of the valid ways the anti-corruption agencies such as Economic and Financial Crimes Commission (EFCC) can obtain necessary information and documents needed for the prosecution of corrupt public officers and make our nascent democracy grow.

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