

## Freedom of Information Act (FOIA) As A tool for The Protection and Advancement of Human Rights in Nigeria

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### ABSTRACT

*Abstract— The right of members of the public to access information held by public institutions is the fundamental prerequisite for the enthronement of good governance, advancement of human right and consolidation of democratic norms and practice. Democracy depends on open government and the opportunity for people to participate actively, but this cannot effectively and meaningfully take place until the right of citizens, their inalienable rights are guaranteed. It is in the light of the above that this paper examined the freedom of information Act (FOIA) as a tool for the protection and advancement of democracy and human right in Nigeria. The paper critically explores the act to unravel the expected benefits on the right of Nigerians and appraised whether it has impacted positively or negatively on them. The challenges in aiding the advancement of human right in Nigeria and the prospect of overcoming all the hiccups lies with the holistic implementation of the Act to the letter. The paper concludes that ensuring that having access to all the information contend in the Act is the inalienable right of Nigerians and that anything on the contrary constitute a flagrant abuse of the fundamental human right of Nigerians no matter their status in the society.*

**Keywords:** *Freedom of Information Act, Protection, Advancement, Democracy, Human Right and Nigeria.*

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## INTRODUCTION

Information unarguably is the stimulus of all thoughts and action of all living creatures. Information, in its various forms is the prerequisite for the functioning of modern society because success in every area of life and industry is attributed to the intelligent use of information of the appropriate type. The Freedom of Information Act refers to the right which citizens in a society are expected to have to access information held by government institutions and officials. This information makes public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers/citizens in general from adverse consequences of divulging certain kinds of official information without authorization and establish procedure for achievement of those purposes.

It is an indubitable fact that the vacuum that is ignorant and prejudice needs to be filled with reliable information insofar as it is possible to provide it. Moreover, information is clearly a commodity that can be generated and manipulated to produce more information and high quality information resource is a prerequisite in the drive for decision making. Hence, countries are implementing strategies and policies that enable them take advantage of the opportunities that are offered by the use of information. Among the strategies are - creating information and communication infrastructure that enable information to flow efficiently, and cheaply among their citizens and organisation, developing education and training so that there is ready supply of appropriately skilled people, supporting the development of the Information and Communication Technology (ICT) and information content products and services to meet the growing demand for information that will guarantee their right to existence (McCredie and Rice, 1999:45-46, Olubunmi, 2015).

According to Davis and Davidson (1991), efficient flow, access to, and the use of information have become crucial factors in determining the economic strength of nations/states. Nations/states would prosper or falter depending on the investment in building an information infrastructure and since human knowledge improvement presupposes information flow vis a vis human right access, the collective intellectual abilities of a nation, its human capital will also depend on access to information to improve economic right. Kuunifan (2011), averred that access to information as a tool in ensuring transparency in government is an essential to ensuring accountability and prevents corruption. It is the right of the citizen to access this information. Information that can protect and advance the right or the citizens can be construed to be the "blood and oxygen" of a democratic society. Whether formalized in a constitution or understood tacitly in the minds of the citizens, open democracy, assumes a basic consensus about its purpose and the nature of its citizenry. In a democratic society, the public is expected to have access to information to right not only on how they are governed, but also on anything that is of interest to the individual or group. Human

right can only be ensured when the citizens are informed as to how to operate and on what principles (Glenn, 1990:215-217).

Government, especially democracy is a two-way flow of information between the government and the governed and even though in theory the people governed, in practice, representatives of the governed make decisions. Birkinshaw (2010), points out one characteristic of democracy which is the participatory nature of the political class, where citizens have the right to know and access relevant data about themselves and also have their right to privacy and human existence protected. The provision/access of information is a key element in citizenship. The citizens need detailed and accurate data and information on the activities of government to help them participate/contribute meaningfully to debate on appropriate strategies for socio-economic planning growth and development. These are the basic right of the citizens. People cannot play full part in society without access to information. They cannot exercise their right and claim entitlements without information, nor can they participate fully in democratic process. Access to these improved information fuels some of the changes the society is experiencing from economy to 'information democracy'. It is the socio-political system in which all the people are guaranteed the right to benefit from the access to information resources for their wellbeing (Doctor, 1992:46-96).

However, the right to information that guarantees the right and liberty of the citizens has attracted a great deal of attention all over the world. The right of citizens to access information that protects their inalienable right is founded in the ideal political principle that government should be of the people, by the people and for the people. Meanwhile, it has been said that accessing information that will enhance and advance the right of citizens has been a herculean task in Africa, nay Nigeria due to incessant human right abuse. Even when there are laws that allow citizens to access information that protect and advance their right, it is only on paper as government/leaders only allow that information it feels the public/citizens should access. In this regards, there are two opposing principles to disclosure of government in Nigeria. As said earlier, government decides both what it shall release to the public and when; when it bothers on the right of the citizens. This is the official secrecy tradition, where all government information is secret unless government chooses to release it. There is an opposing principle that government information is available to the public in those cases where government must justify why it wishes to resist access. This principles and approaches undermine or negate global laws that rights to access information is one essential pillar and strategy to improve governance, curb corruption, strengthen democracy and protect human right (Dareh and Underwood, 2010).

## CONCEPTUAL CLARIFICATION

The framework of analysis in this paper is hinged on freedom of information bill and the concept of human right.

## **Freedom of Information Bill**

What is today freedom of information Act was a collaboration between citizens, organized civic actors and government. It took seventeen years from the origin of its first draft until its adoption. The first draft of the bill was prepared by Tunde Fagbohunlu (SAN) in 1994. The freedom of information Act, 2011 was passed by both chambers of the 6<sup>th</sup> National Assembly on the 24 May, 2011 and assented by President Goodluck Ebele Jonathan on 28 May, 2011 (FOI, 2011). The FOI Act upon its assent supersedes the Official Secrets Act (OSA), originally enacted in 1911, which forbade the unauthorized transmission, obtaining, reproduction, or retention of any classified matter. The Act applies not only to public institutions but also to private organisations providing public services, performing public functions or utilizing public funds. The underlying philosophy of the Act is that public servants are custodians of a public trust on behalf of a population who have a right to know what they do.

In particular, the FOI Act promises to remove the aura of mystery and exclusion with which public servants cloak the ordinary operations of government and public institutions. It also seeks to change the manner in which public records and information are managed. The Act builds on an assumption of openness, by placing on those who wish to keep public information away from the people, the onus of justifying why they have to do so. If fully implemented, the FOI Act will transform quite fundamentally the way in which conducts of business and the perception of the people towards the government. The act is a marked shift from the Official Secret Act (OSA), which promotes secrecy and criminalizes the disclosure of information.

## **Features of the FOI Act 2011**

The Act (an expansion of section 39 of the Constitution of the Federal Republic of Nigeria), is intended to make public records and information more freely available, provide for public access to public records and information, protect public interest and the protection of personal privacy, protect serving public from adverse consequences for disclosing certain kinds of official information without authorization and established procedures for the achievement of those objectives. At the judicial level, the act also spelt out ways of getting access to records by court, materials and documents under the security classification (Yusuf, 2018).

**Section I (1)** of the Act establishes 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. This right is guaranteed, notwithstanding anything contained in any other Act, law or regulation. The Act also stipulates that request for information or records are to be processed within seven days. This is seven days in total and seven working days. There are also three additional days given in which to transfer requests to another agency if necessary. If the information is large, the law allows an extension of seven days. If the request is to be denied, then written notice must be given stating reasons why access was denied. The act penalizes

the wrongful denial of information, destruction, falsification or alteration of information or records, or any attempt to any of these things.

**Section 10** of the Act sets precautions against the destruction and falsification of records and documents. Destruction of records is a felony under the act punishable with a minimum penalty of one year imprisonment for the officer or head of the institution. There is also a fine of ₦500, 000 (five hundred thousand naira) payable for wrongfully denying access. The Act places responsibility on public institutions to ensure that they keep records and information about their activities, operations and businesses. It also requires them to maintain properly organized information and records to facilitate easy access to such information. The Act encourages public institutions and government agencies to be proactive about publishing information. In an effort to encourage proactive disclosure, the law affords protection to whistle blowers. Any public officials who blow the whistle of failure of public duty, abuse of power and miss-management of funds etc. are entitled to be protected against legal proceedings and from reprisals.

**Section 27** of the FOI Act provides immunity for public officers against any form of civil or criminal proceeding for disclosure in good faith of any information pursuant to the FOI Act. The Act allows everyone the right to initiate proceedings in court to compel any public institution to comply with the provisions of the Act. It also provides a thirty-day window within which anyone who has been denied access by any public institutions can bring the matter to court for a judicial review.

The National Human Rights Commission (NHRC) would also, under the laws applicable to it, have a role in ensuring proper implementation of the rights contained in the FOI Act. Meanwhile, the Act provides a range of eight (8) issues based exemptions to the public right to know. However, these eight exemptions are subject to a three-part test which are-

1. The issue must relate to one of the eight exemptions listed in the Act.
2. The harm that the disclosure of the said record or information would cause to the specific exemption must be clearly shown.
3. Justification must be provided to show that the harm which the disclosure of the said information or record would cause to the specific exemption clearly outweighs the public interest in the information or record being publicly made available.

**Section 11-17** of the Act states that the following categories of information are exempted from disclosure -

- \* Information that could damage conduct of international affairs and defence of Nigeria.
- \* Information on administration law enforcement proceedings and investigation.
- \* Personal information.

\* Third party information such as trade secrets or financial information.

\* Legal practitioner and health workers' privileges (FOI, 2011).

An analysis of what is expected of Ministries, Departments and Agencies of government (MDAs) under the Act 2011 shows that public institutions have obligations and duties that is well grounded within the parameters of the law. These include but are not limited to the following- information disclosure obligations, information management, setting up an information department/designation of information officers in Section 2 and reporting obligations in Section 29 (1) of the Act.

## **HUMAN RIGHTS**

Human rights are the basic rights and freedom that belong to every person in the world from birth till death. These rights apply regardless of where you come from, what you believe or how you choose to live your life. They can never be taken away, although they can sometimes be restricted, e.g. if a person breaks the law, or in the interest of national security. These basic rights are based on shared values like dignity, fairness, equality, respect and independence. These values are defined and protected by law. Human right has been defined as the inalienable rights of people. They are legal enlightenments which every citizen should enjoy without fear of the government or other fellow citizens. They are said to be the rights which cannot be said to have been given to man by man, but are earned by man for being a human because they are necessary for his continuous happy existence with himself, his fellow man and for participation in complex society. (Kaluge, 2013).

In Nigeria, citizens enjoy many rights but the inalienable fundamental rights of citizens are statute protected by the Constitution of the Federal Republic of Nigeria. Chapter IV of the Constitution lists out the basic fundamental human rights enjoyed by citizens of the country. The fundamental rights of Nigerians captured under Chapter IV of the Constitution are as follows.

### **Right to Life**

Under the constitution, every person has a right to life and no one shall be intentionally deprived of his life. The Constitution, however, provides exceptions where violation of this right is acceptable.

\* Where the taking of the life is in execution of a sentence of a court in respect of a criminal offence in which a person has been found guilty in Nigeria.

\* Where the loss of life is as a result of the use of such force as is reasonably necessary and in such circumstances as permitted by law.

\* For the defence of any person from unlawful violence or defence of property.

\* In order to make a lawful arrest or prevent the escape of a person lawfully detained or for the purpose of suppressing a riot, insurrection or mutiny.

Aside from the above circumstances, any violation of a person's right to life is an abuse of that person's fundamental rights and is usually found in torture and extra-judicial killings e.g. the activities of the terror group, Boko Haram, involving the reckless attacks

and murder of civilians; the denial of Nigerians of their rights to socio-economic opportunities as enshrined in the 2011 freedom of information Act by the officials, institutions and agencies concerned.

### **The Right to Dignity of Human Person**

Every person is entitled to respect of his/her dignity. No person shall be subjected to torture or inhuman treatment, be held in slavery or servitude or be required to perform forced or compulsory labour.

### **Right to Personal Liberty**

Under the Constitution, every person shall be entitled to his personal liberty and no person shall be deprived of his right except in special circumstances and in accordance with a procedure permitted by law. It is the right not to be subjected to imprisonment, arrest and other physical coercion in any manner that does not have legal justification. The right is the freedoms to live as one chooses without too many restrictions or constraints from government or its agencies. This right has also been defined as the freedom from bodily restraint and the right of the person to contract to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and to bring up children, to worship God according to the dictates of his own conscience and generally enjoy those privileges recognized as being essential to the orderly pursuit of happiness. Example of violation of this right can be found in cases of unlawful arrest and detention by Nigeria's law enforcement agencies. The National Human Rights Commission Audit for the year 2012 released in May 2013, showed that out of 173 prisons audited in Nigeria, the number of awaiting trial inmates stood at 35,889 (NHRC, 2012).

### **Right to Fair Hearing**

The Constitution of Nigeria guarantees a person the right to fair hearing within a reasonable time by a court or other tribunal established by law in determination of his/her civil rights and obligations including a question or determination by or against any government or authority. The Constitution also provides that the court or tribunal shall be constituted in a manner as to secure its independence and impartiality in determining the said civil rights and obligations. The law goes on to provide that civil proceedings of the court or tribunal shall be held in public and where a person is charged with criminal offence, he/she shall, unless the charge is withdrawn, also be entitled to fair hearing in public within a reasonable time by the court or tribunal and be presumed innocent until proven guilty. Off course the right to fair learning is the cornerstone of justice.

### **Right to Private and Family Life**

This right guarantees and protects the right to privacy of citizens, their homes, correspondence, telephone, conversations and telegraphic communications. By this right, security operatives should not tap one's phone lines or subject one house to unwanted searches or seizures of one's property. In Nigeria, these rights have been severally abuse.

### **Right to Freedom of Expression at the Press**

Every citizen shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference. This right has been severally abuse in Nigeria. Other fundamental human rights as captured in chapter IV of the Constitution of the Federal Republic of Nigeria as amended are-

### **Right to Freedom of Thought, Conscience and Religion**

This right guarantees people entitlement to religious belief and practice, freedom to change, propagate one's religion or belief in worship, teaching, practice and observance. Despite this constitutional provision, however, there have been frequent reports of human rights abuses.

### **Right to Peaceful Assembly and Association**

Under this right, every person is entitled to assemble freely and associate with others and form or belong to any political party, trade union or any other association for the protection of his/her interest. It should be noted, however, that to hold a peaceful assembly, one must obtain the appropriate permit.

### **Right Freedom of Movement**

Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof and no citizens of Nigeria shall be expelled from Nigeria or refuse entry or exit. However, the law impose restrictions on the residence or movement of any person who has committed a criminal offence in order to prevent him from leaving the country and also the law provide for the removal of any person from Nigeria to another to be tried outside Nigeria for any criminal offence or to undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence he has been found guilty of provided that there is a reciprocal agreement between Nigeria and the other country.

### **Right to freedom from Discrimination**

Every citizen shall not be subjected to any form of discrimination, disability or deprivation by reason of place of origin, circumstances of birth, sex, religion or political opinion.



### **Right to Acquire and Own Immovable Property Anywhere in Nigeria**

Every citizens of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

Apart from the above listed fundamental right there are many other rights that citizens are entitled to. But it must be stressed that although these rights are there to protect one's interest, they should not be used to violate other people's rights.

### **THEORETICAL FRAMEWORK**

The framework for the analysis of freedom of information Act as a tool for the protection and advancement of human rights in Nigeria or anywhere in the world takes its foundation from theories of political philosophers and economist theory during the eighteen century. Consequently, this paper shall adopt the 'Social Contract' theory by Jean Jacques Rousseau and 'On Liberty' by John Stuart Mill. These theories captured what constitutes a universally acceptable fundamental human rights norms as enshrined in different constitutions of countries in the world. Jean-Jacques Rousseau (1762), in his theory of the "social contract", expressly states that "man is born free and everywhere is he is chain". As a champion of the enlightenment during the period under review, his theory helped fueled the French Revolution as his views undermined aristocratic rule. He explored the nature of freedom and the demands of the individual human rights from the state. He also advocated for the punishment of any individual who decides to abuse this rights.

In the same vein, John Stuart Mill (1859), in his theory "On liberty" argued about the right of free speech (freedom of speech), warned "against tyranny of the majority" and advocated for the rule of law by the authorities to enhance human rights. The above postulation by these theorists constitutes what is today fundamental human right, as adopted by countries of the world including Nigeria. For example, Thomas Paine, a journalist, while reflecting on the French Revolution blamed the hoarding of information from the public by the king of France as one of the cause of the revolution. It goes to show that inhibiting information or failure to allow the citizens access is an infringement on the rights of the citizens. It can lead to chaos

### **THE FOI ACT AND HUMAN RIGHTS IN NIGERIA: HISTORICAL EVOLUTION FOI ACT**

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

The objective of the campaign was to lay down as a legal principle the right of access to documents and information in the custody of the government or its officials and agencies as a necessary corollary to the guarantee of freedom of expression. It was also aimed at creating mechanisms for the effective exercise of this right (MRA, 2011).

The “draft access to public records and information act” produced by media right agenda in 1994 became the basis for further discussion and debates on the issue and was subsequently subjected to a series of review exercise involving various stakeholders among the various interest groups represented at the workshop. Their conclusion was that since statute which permit access to official information in Nigeria were few, the overall effect is that a culture of secrecy prevails in all government institutions, nurtured and given legal effect to such laws as the official secrets and some provision in the criminal code which make it an offence to disclose certain types of government held information (MRA, 2011).

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

\* That every person whether a citizen of Nigeria or not, should have a legally enforceable right to be given, on request, access to any record under the control of any government or public institution.

\* That the access to public records and information bill should be enacted into law to give effect to section 36 of the 1979 constitution of the Federal Republic of Nigeria which guarantees every person the right to hold opinion and to receive and impact ideas and information without inference.

\* That the executive, legislative and judicial organs and institutions should be subject to the freedom of information legislation.

\* That the right to receive and impact information and ideas is a fundamental constituent of the right to freedom of expression and as such Nigerians should imbibe the culture of protesting any time they are deprived of information through the closure or proscription of media institutions.

\* The duty to be fair and just is a corollary to the right to access to public records and information. (RII, 2011).

The draft of the access to public records and information bill adopted by participations at the conference should be enacted into law without delay. However, the enactment of this bill into law was delayed due to the prevailing military and emerging democratic governments that were opposed to the FOI Bill. The House of Representatives on 25 August, 2004 passed the FOI Bill with minor amendment. The senate on its part passed the FOI Bill on 15 November; 2006. After clause by clause consideration of the bill and conclusion of third reading at its plenary session, the national assembly constituted the conference committee on the freedom of information

bill passed by the House of Representative and Senate. Therefore, the National Assembly passed the bill into law and was assented to by the president on the 28 May, 2011 (Odumtan, 2011). The signing of the bill into law by President Goodluck Ebele Jonathan after more than 12 years of strenuous and tortuous advocacy brought to the fore or success to the law on the right to know.

### **FOI Act as a means to Deepened Democracy in Nigeria**

Democracy is about liberalism, transparency and strong followership and it is expected that the coming on board of the FOI Act will not only deepened democracy, but will also enhance its strong participation. It will also fast tract the process of development of the country through guaranteeing transparency, and a more responsible governance in all arms of government, three tiers of government for rapid development of the country. Since the beginning of the Fourth republic in 1999, our democracy has been described as ailing and anti-democratic as a result of disrespect for the wishes and expectations of Nigerians by our leaders. The area of concern is in the conduct of elections, management of scarce resources, irresponsible/uncaring style of governance, not being accountable and unresponsive to peoples need, lack of respect to the electorates who voted them to power, lack of respect to the rule of law, situation where governance is carried out in utmost secrecy and without carrying the citizens along.

It is therefore expected that the legalization of the Act will make our democracy more meaningful by attracting majority of Nigerians into active political participation. It will make governance more interesting for meaningful participation in the planning and decision making process. Nigerians deserve to have adequate information about the nature of the business of governance and public programmes to be undertaken in their areas. This will enable Nigerians to bring their opinion to bear through active participation in governance. The FOI Act when well implemented, will enhance popular participation in the democratic process and governance; thereby promoting transparency and accountability by the managers of the Nigerian political system, and stop the misuse and irresponsible management of public fund in our system. This will lead to proper utilization and application of the Nigerian scarce resources for the lives of Nigerians.

The Act will enable the citizens and the electorates to have a correct information about the candidates who are contesting in an elections- their antecedent, their track record in their previous place of work, level of integrity; thereby ensuring that Nigerian election are fair, more credible and transparent. It will also help the Independent Electoral Commission (INEC) to regulate the expenditure of candidates during elections on the one hand and the public to know the source of funds spend by candidates in an election on the other hand. The role of Civil Society Organization (CSO) in the sustenance of a liberal democracy cannot be overemphasize. With a well-informed, robust empowered and a robust civil society organization, our democracy will thrive, impunity among political office holders will be greatly minimize. This is because

through the FOI Act, various civil society groups will access relevant official information, publish, inform and mobilize Nigerian about what the intended candidates are bringing to the table if they win.

Lastly, the FOI Act if well managed, will reduce to the barest minimum cases in the election tribunal cases after election. This is so because with the public knowledge of the vital information about every candidate, they would either be disqualified before the primary elections by their party or they will be dropped/disqualified during the screening of candidates before the elections proper by INEC. This will have deepened our democracy and enhance development in our nation. The public fund that is used to prosecute cases in the tribunal after controversial elections by elected officials will be used for developmental programmes.

### **HUMAN RIGHTS: HISTORICAL DEVELOPMENT**

The history of human right in Nigeria predates the advent of colonial rule. Human rights and fundamental freedom were recognized in the traditional Nigeria societies. The idea of rights was not however conceived in the modern notion. Such values as right to family, kin and clan membership, freedom of thought, speech, belief and association, right to enjoy private property and right to participate in governance of the affairs of the society were seriously guarded. In areas where the Sharia legal system was firmly entrenched, especially in the Northern Nigeria, human rights and fundamental freedom were specifically protected and guaranteed in accordance with the trends of Islam which hold justice and equity in high esteem. It was not until 1922, through the Clifford Constitution that limited franchise was introduced for the first time in Nigeria by the British colonial government. The struggle for better political participation by early nationalists led to enhanced political rights in the pre-independence constitutions culminating in the Lyttleton Constitution of 1954 (Ikelegbe, 2013:61-70).

The entrenchment of fundamental human rights in Nigeria in the modern era could however be traced to the 1960 independence Constitution. The independence Constitution of 1960 and the Republican Constitution of 1963 have provisions for the protection of fundamental human right. The 1979 and the 1999 constitutions went further by providing a Bill of Rights. Fundamental Objectives and Directive Principles of State Policy in Chapter II also recognized economics, social and cultural rights. The entrenchment of human rights provisions in our Constitutions was aimed at creating a society which protects political freedom as well as the social and economic wellbeing of Nigerians (Constitution FRN, 1999:25-28).

At the international level, the term "human rights" first appeared in the public domain for the first time in the year 1942 to 1944 in the course of internal policy discussion in the United States on the subjects of the principles on which the post war organisation would be based. The expression became an everyday parlance only after the Second World War and the founding of the United Nations in 1945. It replaced the phrase "natural rights" which fell into disfavor in part because the concept of natural law to which it was linked had become a subject of great controversy (Oukanmi,

2014:19-22). Meanwhile, the Charter of the United Nations (1945) begins by reaffirming “faith in the fundamental human rights, in the dignity and worth of the human or person, in the equal rights of men and women and of nations large and small”. It states that the purpose of the UN is among other things, “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples (and) to achieve international co-operation in promoting and encouraging freedoms for all without distinction as to race, sex, language or religion”. Recognition of human rights received its greatest impetus on 10 December, 1948, when the UN General Assembly adopted the Universal Declaration of Human Rights (Basu, 2004:192-193). The prayer of Thomas Paine was thus heard. In dedicating the rights of man to George Washington, Paine had prayed that the rights of man may become as universal as your benevolence may wish and that you may enjoy the happiness of seeing the New World regenerate the old; though the Universal Declaration of Human Rights did not. Also on 16<sup>th</sup> December, 1966, the international covenant on economic, social and cultural rights and the international covenant on civil and political rights were adopted. The peculiar aspect of the African Charter on human and people’s Rights is the inclusion of people rights in this document.

### **FOI Act and Human Rights in Nigeria: The Nexus**

It has been established in this paper that the essence of the FOI Act is to guarantee the right of information within the control of public institutions to all Nigerians, regardless of age, class or occupation. It effectively gives the right to know to every Nigerian. On the other hand, human rights are those rights that belong to every individual—man or woman, girl or a boy, infant or the elderly simply because they are human beings. It embodies the basic standard without which people cannot realize their inherent human dignity. Human rights are universal; they are the birthright of every member of the human family. It is not earned. It is inalienable, i.e. it cannot be lost; it is indivisible, it cannot be denied. Having established this fact, the correlation between the FOI Act and human rights hinges on the rights to access and the rights of Nigerians as enshrined in section 39 and Chapter II of the 1999 Constitution of the Federal Republic of Nigeria respectively. By virtue of the fundamental human rights of Nigerians as allowed by the law of the land, every Nigerian has the right to access every information as allowed by the FOI Act of 2011. This is so because the purpose of the Act is to make public records and information more freely available, provide for public access to public records and information; protect public access to public records and information; protect records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization, and establish procedures for the achievement of those objectives.

Under the Nigerian Constitution, freedom of expression is boldly spelt out and also the FOI Act concurs to that as a right of Nigerians. In every democracy, access to information is an important aspect of the universal guarantee of freedom of information

which includes the right to seek and to receive as well as to impart information. This is also proclaimed in Article 19 of the Universal Declaration of Human Rights and protected in the international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the Africa Charter on Human and the Peoples Right. Article 19 of the ICCPR provides that everyone shall have the right to hold opinion without interference.

Article 13 is of the United Nations Convention against corruption (adopted by Resolution 58/4 of the General Assembly of the UN in October, 2003), requires governments to ensure citizen participation in anti-corruption measures through-

a. Enhancing the transparency of and promoting the contribution of the public in decision making processes.

b. Ensuring that the public has effective access to information (Dawodu, 2016).

Access to information is one of the fundamental requirements of having a viable democracy in any country. The tendency to withhold information from the people at large should be limited as much as possible. According Abdul Waheed Khan, Assistant Director-General for communication and information of UNESCO:

The concept of the flow of information and ideas constitutes the nucleus of democracy and is also critical to the respect of Human rights. With the right to freedom of expression, which incorporate the right to seek, receive and impart information and ideas, the right to vote is undermined, human right abuses are perpetrated in secret and it becomes impossible to expose corrupt and inefficient governments. Therefore, the essence of free flow of information and ideas is predicated upon the truism that public bodies hold information not for themselves but on behalf of the public. If public bodies with vast information hold them in secret, the right to freedom of expression, guaranteed under intentional law in many constitutions and other extant laws would be seriously undermined.

### **The Challenges of FOI Act in the Protection and Advancement of Human Rights in Nigeria**

Freedom of information is a multifaceted right that includes not only the right to express or disseminate information and ideas, but also encapsulate the right to seek information and the right to received information and the right to impart information and ideas. Impacting this information, especially in Nigeria comes with great challenges. Before looking at the challenges, let's look at the benefits of the FOI Act in protecting and advancing the rights of Nigerian.

### **Benefits of FOI Act in Nigeria**

The denial of access to information and the attendant widespread ignorance in the society does more harm to the society then any harm could possibly arise from granting access to members of the public. Some scholars have in their work focused on the cost and benefits associated with the introduction of FOI legislation. Guido (1989:67-95),

looked at the FOI law in the United States, Hazel (1989:189-210), looked at the FOI Act in Australia, Canada and New Zealand, and Mendel (2001), studied the position in France. They all concluded that the benefits exceeded the costs. They all perceived the benefits to be significant to all parties affected by the legislation i.e. ministries, civil servant, pressure groups and individual members of the public.

1. Analysts have also identified that the FOI Act is a vital tool to ensure democracy and responsible governance in Nigeria and is a potent tool in the protection and advancement of human right in Nigeria. This is because it curbs the recklessness of the executive, judiciary and the legislature. The effective implementation of Act in Nigeria brings openness, transparency and good governance; thereby complimenting government's avowed commitment to stamping out corruption in Nigeria which is the bane of the country's development. Also, Enonche (2012), opined that the Act would assist various government agencies such as the National Human Rights Commission (NHRC), the INEC, ICPC, EFCC, and other law enforcement agencies in the performance of their duties. The FOI Act facilitates open government because even if some information in a document qualifies for an exemption to FOI law, the rest must be disclosed.
2. The Act also gives the citizens the right to know the financial status of our leaders. It makes it compulsory for all political leaders in the country to declare their asset, how money is being spent by the government and for what purposes. For instance, Socio-Economic Rights and Accountability Project (SERAP), a non-governmental organization with the primary objective of promoting accountability, transparency and citizens right in public and private sector, in 2011 requested for information on how the sum of 126 billion naira was released for fuel subsidy instead of the initial sum of 250 billion allocated for it (Okpeh, 2010). Also early this year 2020, SERAP also filed two suits in the High Court of Justices mandating the President and other political office holders to declare their asset and secondly stop the release of 37 billion naira for the renovation of the National Assembly complex until an Environmental Impact Assessment is carried out. The FOI Act grant the citizens express permission and the right to access any information they wish. Finally, the law would also promote more objective and informed decisions; meaning that traditionally closed governments and reluctant bureaucrats will have to fundamentally changes their ways of working. However, bringing about this change is the greatest challenge before the nation. The FOIA will complement effectively the anti-corruption measures in Nigeria.
3. The Act also make sure that public records and information are freely available to the public and this is to the extent consistent with the public interest and the protection of personal privacy and the protection of serving officers from consequences of divulging it. Those who expose corrupt practices in our society are not witch-hunt. The whistle blowers are protected from harassment for revealing vital hidden information to the public. Policy makers can have access

to reliable information from which they can distil empirical data for evaluating the successes or otherwise of government policies and modifying them were necessary.

4. It allow the public to monitor service delivery from government and public officers and the level of their effectiveness in all arears including social policies, basic education, and the distribution of basic amenities to alleviate poverty and enhance education. This will make the public to have the necessary confidence and assurance as to whether the governance is according to the will of the people.
5. The general public and government alike can now monitor the allocation and flow of scarce public resources to ensure that there is equitable distribution of developmental projects across the country. Everyone can learn how budgetary allocations for projects such as roads, hospitals, schools, power, water, etc are managed/utilized by contractors. It also helps communities to have adequate information about the projects that government is bringing into the community and to advocates against anyone that may negatively impact on the community.

## **THE CHALLENGES**

As mentioned earlier, there have been some successes since the FOI Act was passed in 2011. There has been an increasing and encouraging member of individuals and organisations requesting information since the emergence of the law. There have been varied reactions by public institutions to requests for access to information that range from outright and unsubstantiated refusal, to delay in granting requests. However, most of the cases have been indicated by Civil Society Organisations (CSO) to demand for information, accountability and good governance in Nigeria. For instance, SERAP has been at the fore-front in recent times in trying to promote accountability, transparency and citizen's right in public and private sector in the country. Conflicting laws such as the Official Secret Act, Evidence Act, Public Complain Commission Act, and others have all hindered the full implementation of the FOI Act in Nigeria, thereby robbing Nigerian of the right to access vital information that can better their life.

### **Some Inherent Deficiencies in the FOI Act**

A major challenge to the FOI Act against the right of Nigeria is that it contains some inherent deficiencies. The Act has more exemption sections and clauses than sections that grant Nigerian the right of access to information. This situation has been exploited by some public officers for mischievous purposes (Godfrey, et al., 2024). For example, only sections 1 and 3 of the Act grant access to information; as many as ten sections- 7, 11, 12, 14, 15, 16, 17, 18, 19 and 28 deny the public the right to access information. This is the reason why some civil liberty advocates argue that the final draft legislation of the Act was watered down by the legislature in order to reduce the effectiveness of the law. Exceptions should ordinarily be clearly and narrowly been drawn and subject to strict



“harm” and public interest test. Curiously, throughout the gamut of the FOI Act, the phrase “public interest” was not defined (Inokoba, 2014, p. 2268).

### **Low literacy Rate in Nigeria**

The greatest challenge hampering the right of Nigerian in the FOI Act is the abysmally low levels of basic literacy in Nigeria (Udoh, 2013; Udoh, 2015). Knowing ones right to access information in the Act requires a literate population. The Nigeria courts have repeatedly upheld education as a human right inherent in the right to information in section 39 of the Constitution of the Federal Republic of Nigeria 1999. Adult literacy in Nigeria stands at 57.9%.

### **Culture of Secrecy of Government Institutions**

The culture of secrecy of government information has robbed Nigerian of the right to access information. Many former British colonies including Nigeria have official secret laws and civil service rules, which have guided their operations for years. The culture of secrecy makes access to information that will enhance the life of Nigerian cumbersome (USAID-NIGERIA 2015-2019).

### **Low Level of Public Awareness of the FOI Act**

This point is tied or connected to illiteracy. There is a low level of awareness within the populace about the FOI Act and how to obtain or access public information (Udo & Udohm 2023). Many Nigerian don't still know their right and the fact that there is a law like the FOI Act; even some educated Nigerian does not know much about the law.

### **Poor Record Keeping and Infrastructure**

Another challenge to accessing information from the Act is poor or inadequate or absence of record creation, record keeping, organisation and maintenance of documents. Record keeping in most Nigerian Ministries, Departments and Agencies (MDA's) is still manual base. Section 4 of the Act provides for public institutions to respond to requests for information within seven days. However, many MDA's can't meet this deadline because information and records in many public institutions are still paper based and majority of documents containing the information have been torn and eaten by insect and rodents. Many of the public institutions are not connected to internet or their servers are perpetually down (Igwe, 2015).

### **Non-Domestication of the FOI Act by most States in Nigeria**

The reluctant of must states in Nigeria to adopt and domesticate the FOI Act is another challenge for Nigeria in accessing their right at the state level. As of today, only Ekiti and Lagos have domesticated to FOI Act. This shows that some states are not in support of the Act or are paying lip service to it. For example, recently when Femi Falana (SAN), counsel to Al-Zazaky wrote to the Attorney General of the Federation

and Minister of Justice requesting for the release of the Shites leader, Abubakar Malami told him that Al-Zazaky case is in the hands of Kaduna State government. Falana was hoping that the Federal Government would grant Al-Zazakay freedom just as it did to Dasuki and Sowere.

### **Existence of Subsisting Laws Which Conflict with the FOI Act**

The existence of subsisting laws which conflict with the FOI Act is another challenge to the protection and advancement of human right through FOI Act. The subsisting laws include, the Official Secret Act, the Evidence Act, the Criminal Code, the Penal Code, the Public Complain Commission Act, and many others. Although sections 27 and 28 of the FOI Act overrides the provisions of these laws with respect to disclosure of information, the laws are still yet to be repealed or amended by the legislature. Until they are repealed or amended, these laws will continue to adversely affect the right of Nigeria when it comes to access vital information.

### **Lack of Political Will**

Another challenges in the implementation of the FOI Act is the lack of political on the part of our leaders who are saddle with the responsibility of firstly making sure the Act come to fruition or exist (Udoh & Umotong, 2013). The lack of political will stemmed from a number of factors which include among others- the public access to information as allowed by the Act will engender/expose them to political opponents. Their opponents will get to know their misconduct, misappropriation and mismanagement of public fund. The public officers also feared that public access to the FOI Act will jeopardize/risk their interest by exposing the inadequacies of government policies and programmes.

### **CONCLUSION**

The right to access information held by public bodies sometimes referred to as the Freedom of Information Law has existed for centuries, dating back to far as 1776 when Sweden become the first country to pass the FOI Act. Presently, over 100 countries including Nigeria now has the law in operation. The importance of this legal instrument in impacting human right cannot be over emphasized. As a tool kits in protecting and advancing human right and democracy in Nigeria, the FOI Act have not done much in carrying out these responsibilities (Nyarks, 2006; Nyarks, 2012). As it has always been said, Nigeria is very good in making good policies but the problem has always been its implementation. The story has not been different in the implementation of the FOI Act. As mentioned in this paper, cases of human right abuse as a result of inability to access vital information that can free citizens from the chains and shackles of draconian laws still exist in Nigeria. All over the country, there are reports of cases of human right abuse, disobedience to court orders by security agencies, inability to access justice in the shortest time frame, poor administration of justice, illegal detention, still exist in Nigeria.

Since 2011 when the FOI Act was signed till now, Nigerian still find it difficult to access information that border on their fundamental human right (Nyarks, 2022). For instances the right to know the expenditure of government, transparency in government, making the asset of public servant known to the public to avoid corruption and embezzlement of funds. There is palpable fear that the FOI Act may go the same way as “bail” in police detention which is only on paper, as Nigerian still pay for bail. On paper, the Act looks comprehensive and all embracing. It legalizes not only citizen’s right to official or public information, but also ensures that all hitherto existing laws that may hinder the right to know are amended or subordinate to FOI Act. The onus for this realization still lies on the National Human Right Commission (NHRC), Civil Society Organisation, (CSO), Non-governmental Organisations (NGO), Educational institutions and other pressure groups such as Academic Staff Union of Universities (ASUU), etc to redouble their efforts towards making sure that the FOI Act is implemented to the letter in order to protect and advance human right in Nigeria.

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