



Freedom of information act and democratic consolidation in Nigeria: Prospects and challenges

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Abstract

The right of members of the public to access information held by public institutions is a fundamental prerequisite for the enthronement of good governance and the consolidation of democratic norms and practices. Democracy depends on open government and the opportunity for people to participate actively, but this cannot effectively and meaningfully take place until citizens have legal and an unhindered access to public information. It is in light of this that the paper examined the Nigerian Freedom of Information Act (FOIA) and its potential to serve as a platform for the sustenance of the country's democratic experiment. The main argument of the paper is that FOIA could serve as a framework for the empowerment of Nigerians by institutionalizing transparency and accountability as pillars of governance in Nigeria. To achieve this objective the study made use of secondary sources of data, especially internet information. In drawing its conclusion, the discourse argued that though the FOIA has the potentials to strengthen the country's democracy, but there are still formidable obstacles to the full implementation of the legislation on the right to know. And these challenges must be addressed in order for the FOIA to contribute to the process of democratic deepening in Nigeria.

Keywords: Freedom of Information Act; Right to Know; Democratic Consolidation; Civil Society; Good Governance; Transparency and Accountability

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1. Introduction

The right to relevant public information by the citizenry and the role the full implementation of this right plays on governance and participatory democracy cannot be overemphasized. To drive home this point, Stephen Harper, the Canadian opposition leaders wrote in 2005:

Information is the life blood of a democracy, without adequate access to information about government policies, programmes, citizens and parliamentarians cannot make informed decisions and incompetent or corrupt government can be hidden under a cloak of secrecy (cited in R2K Publication, 2011)

The weight of this truth is felt even more seriously in undeveloped nations where corruption and secrecy is the norm rather than the exception. Nigeria is such a nation. It is therefore less surprising that the struggle for the legalization of the public right to information in Nigeria took long years of patient, tortuous and contentious battle by civil liberty organizations.

The right to access information held by public bodies sometimes referred to the practice of opening up government to citizens has existed for centuries dating as far back as 1776 when Sweden became the first country to pass the Freedom of Information Act (FOIA). Presently over 90 countries including Nigeria now has a FOI law in operation (Abdulai, 2009; Okpeh, 2010). In addition, 30 other countries are at the verge of making the FOI into law. The importance of this legal instrument to contemporary process of governance is not farfetched: Access to information as a key component of governance and development has the potential to tackle poverty, for example for ensuring the proper expenditure of public funds, the effective implementation of development programmes and the monitoring of Millennium Development Goals (MDGs). The US President Barak Obama while addressing the Indian Parliament in November 8, 2010, also attested to the importance of FOIA:

...your landmark Right to Information Act is empowering citizens with the ability to get the service to which they are entitled and hold officials accountable (cited in Sekhar, 2010).

The above statement is in support of the UN General Assembly position which declared FOI as a fundamental human right in 1964 (Haruna, 2010). The African Commission on Human and Peoples Rights also views the access to information as a fundamental human right when it declared 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 (Cited in Sendugwa, 2010).

But what exactly is meant by freedom of information and why is it so important to the democratic and governance process in Nigeria? Specifically, how does the FOIA serve as a platform for the consolidation of democracy in Nigeria? In addition, what are the challenges to the full and effective implementation of the FOIA in Nigeria? These are the research questions that the discourse will make bold attempt to give answers

to. In attempt to give direction and scope to the research exercise, our main assumption is that there is a causal relationship between citizens' right to information and deepening of democracy in Nigeria. Hence, the main purpose of the study is to establish the role citizens' right to information as propagated by the FOI Act could play in the consolidation of democracy in Nigeria.

Since the purpose of the FOIA is geared toward informed meaningful and effective participation of the citizenry in governance, the paper is built on the civil society theory as propagated by Diamond (1999) and Gold (1990). The theoretical model gives emphasis to the role civil society plays in ensuring good and responsive governance. The proponents of this theory argue that civil society groups are able to check the excesses of government by making sure that the governance process is participatory, transparent and accountable to the citizenry. As interest groups, they often aggregate and articulate issues that are pertinent to the larger society which more often than not are parallel to the interest of the managers of the state. Civil societies are able to achieve because they are autonomous and independent of the state. Thus, the argument of this paper is that for civil societies to ensure that governments are alive to their responsibilities to citizenry, they must have a legal and unfettered access to relevant public information on the operations of government. This is where the FOIA becomes an indispensable tool in ensuring effective and meaningful participation of the citizens in the affairs of the state.

The paper is organized into six sections. It begins with an introduction followed by the conceptual discourse on the themes of democratic consolidation and its interface with the right of citizens to information. The third part of the paper of the paper examines the history and politics of the FOIA in Nigeria, while the fourth aspect of the study present the prospect of FOIA serving as a platform for democratic consolidation in Nigeria. The fifth section examines the challenges to effective implementation of the FOI law. Finally, the discourse concludes with a closing remark and the way forward.

2. Conceptual discourse on democratic consolidation and citizens' right to information

From The title of the paper, it is obvious that the central theme of the study is the link between citizens' right to information and democratic consolidation. For us to ascertain the true nature of this relationship, it is important the paper starts this section with the presentation of scholarship on democratic consolidation.

Conceptions of democratic consolidation as posited by scholars of various persuasions have focused on variables that include the legitimization, institutionalization and culture of democratic practices among others. Democratic consolidation in the views of Gunther et al. (1996) is about the institutionalization of a series of complex democratic institutions such as the executive, the legislature, the judiciary and political parties. To them, democratic consolidation is on course when there has been an adoption of processes values, and democratic institutions by the political class and the masses.

In similar vein, Diamond (1997; cited in Majeed, 2011) conceive democratic consolidation as a state whereby institutions, rules and constrains of democracy become the sole legitimate means of acquisition, exercise and management of political power. The phrase also involves constructing new rules and

institutions of political life as well as doing away with undemocratic habits and practices of old regime (Abe, 2011).

Linz and Stefan (1995; cited in Inokoba and Maliki, 2011) in their contribution argue that in a consolidated democracy, “democracy becomes the only game in towns” and offer a framework encompassing behavioural, attitudinal and constitutional means of engaging in political competition as well as the management of the affairs of the state. Behaviourally, it means that no significant national, social, economic, political or institutional actors attempt to use non-democratic methods in the attainment of their goals. Attitudinally, a democracy is consolidated when democratic procedures is seen by the vast majority as the most preferred way of governing collective life, and when support for anti-system alternatives is quite small or isolated from pro-democratic forces. Institutionally, the phrase implies government and non-governmental forces alike are subjected to and habituated to, the laws and institutions of the democratic process. In other words, democratic consolidation entails the enthronement of democratic values and attitudes in the political processes with the aim of strengthening the democratic institutions of the state (Inokoba and Maliki, 2011)

From the foregoing arguments, one can also conceive democratic consolidation as a process of securing and deepening democracy as well as prolonging its life expectancy. According to Schedler (1998), who gave a broader conceptualization of the term, he describes democratic consolidation as:

...the challenges of making new democracies secure, of extending their life expectancy beyond the short term, of making them immune against the threat of authoritarian regression of building laws against eventual “reverse waves”.

And in attempt to make democracy “the only game in town” Schedler (1998) identified some prerequisites of democratic consolidation which include the following: popular legitimization, the diffusion of democratic values, the neutralization of anti-democratic forces, civilian supremacy over the military, democratization of political parties, the stabilization of democratic values by political actors, liberalization of the political space, the decentralization of state power, judicial reforms and the institution of responsive and effective governance.

From the foregoing review of the scholarship on democratic consolidation, we can deduce the following: one, the phenomenon refers to several attitudes, values, processes and structures put in place to strengthen the democratization process and institutions as a platform to ensure good and effective governance. Secondly, democratic consolidation could be seen as a project in progress (that is a continuum) – geared towards protecting, strengthening and prolonging the life and quality of the democratic process and institutions. This position is based on the premise that every democracy no matter its level of age, development and advancement must from time to time take measures to make its political processes and structures more democratically open to public scrutiny, responsive and accountable to the interest and aspirations of the larger citizenry.

The paper thus argues that one fundamental way of ensuring democratic sustainability is through creating a platform for popular participation of the citizenry in the political process. And one effective means of full

and meaningful participation of the citizens in governance is through providing avenues that will enable them have access to information about the day to day activities of the government. This underscores the importance of citizens' right to information in democratic consolidation as contained in the FOI Act. The FOIA could contribute to democratic consolidating through ensuring citizens participation in governance, transparency, accountability and responsiveness of the governing process. This is so because the bottom-line of democracy is all about the peoples' involvement and control of the government. And for the citizens to effectively contribute to the political system as well as check the powers of the government, they must have an unrestricted access to relevant information about the affairs of the state. This is where the citizens' right to information (FOIA) connects with the phenomenon of democratic consolidation.

3. History and politics of FOI Act

The process of making the FOI Bill into an Act at the Nigerian National Assembly was characterized with so much contentious and protracted controversy and politics. The right to information bill was first introduced to the National Assembly (NASS) in 1999. Because of the conflicting interests and views of the Bill among politicians in both chambers of the Parliament and executive arm of government, it took more than 12 years before the right to know became law in Nigeria. For the FOI to be enacted into law, civil liberty advocates adopted several strategies during the incubation period of the bill (Bilkisu, 2011); these included lobbying and working in collaboration with proponents of the bill in both chambers of the National Assembly.

In fact, the FOI Bill was a private Bill developed by a Lagos based Non-Governmental Organization (NGO), Media Right Agenda (MRA) supported by other NGOs such as the Right to Know Movement of Nigeria and the Open Society Justice Initiative for West Africa (Bilkisu, 2011). The bill was first introduced to the floors of the 4th NASS on December 8, 1999. The FOI Bill did not get priority attention from the national law makers because it was viewed by opponents of the Bill as a piece of legislation that would provide legal platform for the media to pry into peoples' lives, invade privacy and distract public officers from carrying out their duties. Furthermore, opponents of the Bill also argued that the Bill will give the nosy and unrestrained media in Nigeria ammunition to promote sensationalism and malign public officers. Another argument put forward by the opponents of the bill was that it has the potentials to threaten National security because it will grant the Nigerian media and civil society groups legal and unrestrained access to confidential and secret information that border on national security of the nation (Bilkisu, 2011).

As a result of the above excuses and controversy, progress on the legislative process of the Bill was very slow until the tenure of the fourth legislature ended. With the swearing in of the 5th National Assembly, the Bill returned to the floors of both Chambers of the NASS as required by law. MRA once again spearheaded this move to make the Bill into a law on the floors of the NASS. For another four year the Bill was subjected to various forms of endless legislative debates and scheming. However, in August 2004, the House of Representatives passed it with minor amendments. After several twists, turns and unnecessary postponements, the Senate unanimously passed the Bill on November 15, 2006. The NASS subsequently in February 2007 instituted the Conference Committee on the FOI Bill to harmonize the two versions of the Bill

passed by both Chambers of the NASS. The Committee completed the harmonization process on February 14th, 2007 and the Bill was eventually passed by both Houses of the NASS (Odumtan, 2011).

The Bill was subsequently sent to the President for his assent. As expected, President Obasanjo denied ever receiving the Bill from the NASS. This gave rise to so many misgivings and wide spread public outcry; infact, several people imputed diverse motives into the President's reluctance to assent to the Bill. This dispute continued until the expiration of the life of the 5th National Assembly. However, the refusal of President Obasanjo to assent to the Bill denied him the golden opportunity to back up his promise to entrench probity and transparency in public service.

With the commencement of the 6th National Assembly, the Bill was again sent to both Chambers of the NASS. Again, MRA was the driving force and main advocate for the passage of the Bill. This time around, in order to fast track the legislation process MRA had to ensure that the Bill ran concurrently in both houses of the NASS. Characteristically of the legislation process in the NASS, the FOI Bill yet suffered unexplicable delay and setback in both houses of the NASS. In the House of Representatives, members stepped down the Bill without reasons while in the Senate, the Bill suffered some delays in hands of the Senate Committee which has watered down the provisions of the Bill after the public hearing which the Senate held on June 2nd 2008. As a result, there was a lack of progress in the legislature process of the Bill at both Chambers of NASS (Oduntan, 2001).

Despite these unnecessary delays and attempts to neutralize the Bill, the civil liberty groups remained undaunted in their quest to make sure that the right to information is entrenched in the Nigeria constitution. To actualize their objective, the supporters of the Bill had to re-strategize by forming a FOI Coalition Network and in order to strengthen their advocacy efforts they made use of combinations of different methods, including one on one visits, telephone calls, lobbying of lawmakers and their stakeholders, media advocacy, etc. Their FOI Coalition efforts eventually paid off when the House of Representatives and the Senate subsequently passed the Bill on February 24th and March 16th 2011 respectively (MRA, 2011). There was still anxiety among supporters of the Bill before the President assented to it, which he did on the last day before the Bill expire. On May 28th, 2011, President GoodluckEbele Jonathan signed the FOI Bill into law bringing to fruitful conclusion, the more than 12 years of strenuous and tortuous advocacy for enactment of the law on the right to know.

The establishment of the right to information by the FOIA is in consonance with Article 9 of the African Charter on Human and Peoples' Rights – which is part of Nigerian law under cap AO9, Laws of the Federation of Nigeria 2004 and also encapsulated in Section 39 of the 1999 Constitution of the Federal Republic of Nigeria (Right to Information Initiatives, 2011). The establishment of the FOIA establishes the right of members of the public to access information held by public institutions in Nigeria, which by definition under the Act, includes all Government Ministries, Department and Agencies (MDAs) and other government institutions and public bodies in the three arms and tiers of government; and private institutions that utilize public funds, perform public functions, or provide public services. The essential provisions of the FOIA will be presented in the next section of the discourse.

4. FOIA as a platform for deepening democracy in Nigeria

The passage of the FOI Bill into law was greeted with a lot of delight and expectations by the Nigeria public. This is so because among other benefits, it is expected that the FOI Act will enhance participatory democracy and as well as the development of Nigeria through guaranteeing transparent, and more responsible governance process. However, before we delve into an examination of expected impact of the FOIA on participatory democracy, it is imperative that we present a brief summary of the content of the FOI law.

As earlier reiterated, the FOI legislation comprises laws that guarantee access to data held by the state as confidential information. The FOIA establishes a right to know legal process by which requests may be made for government held information, to be received freely or at minimal cost, bearing exceptions. In other words, by the provisions of the information law, government ministries and agencies are duty bound to publish and promote openness. Hence, the FOIA provide for the following:

- Guarantees the right of access to information held by public institutions, which utilizes public funds and functions or provides public services.

Requesting all institutions to proactively disclose basic information about their structures and processes and mandate them to build the capacity of their staff to effectively implement and comply with the provisions of the Act.

- Provides protection for whistle blowers who drive attention to lapses in implementation of policies, lack of transparency and accountability in the conduct of government business or provision of service to the people.
- Makes adequate provision for information needs of illiterate and disable applicants.
- Recognize a range of legitimate exemptions and limitations to publics' right to know.
- Creates reporting obligations on compliance with the law for all institutions affected by it. These reports are expected to be submitted to the Attorney-General of the Federation.
- Requires the Federal Attorney-General to oversee the effective implementation of the Act and report on execution of the FOIA to the NASS annually.
- All laws inconsistent with the realization of the ideal of free flows of information such as the Official Secret Act (OSA), the Sedition Law, the National Broadcasting Commission Act, the Newspaper Act, etc should be reviewed.
- Makes the cost of obtaining information more affordable to the majority of Nigerian citizens (See Oduntan, 2011; FOI Act, 2011; Right to Information Initiative, 2011; Sekhar, 2010).

From all indications, the FOIA looks comprehensive and all embracing, it legalizes not only the citizen's right to official or public information, but also ensures that all hitherto existing laws that may hinder the realization of the right-to-know are amended or subordinate the FOIA.

The pertinent question is how can this right to information law contribute to the sustenance and deepening of Nigerian democratic practice? The legalization of the right to know could play an indispensable role in the process of deepening democratic norms and practices in Nigeria. Democracy in Nigeria has been severally described as ailing as a result of the following attributes: disrespect for the wishes and decisions of

the Nigerian people, especially during elections; governance style that is uncaring irresponsible, unaccountable and unresponsive to the needs and interest of majority of Nigerians; governance that is not built on respect for the rule of law but rather carried out under an environment of reckless official impunity; the business of government is carried out in utmost secrecy and without legal avenue for the participation of Nigerian people in the management of the Nigerian commonwealth. It is our believe that the legalization of the right to information and its effective implementation could go a long towards addressing some of the aforementioned challenges of democracy in Nigeria.

First and foremost, the legalization of the citizens' (Nigerians) Access to Information (ATI) makes democracy more meaningful by creating the avenue for vast majority of Nigerians to participate in the governance process. In particular, the FOIA empowers ordinary citizens, especially those in rural areas. Since most government works are carried out for the benefit of the people, the people must know exactly how government business is carried out. And to meaningfully participate in the planning and decision making process, Nigerians must have adequate information about the nature of the business of governance and public programmes to be undertaken in their areas. It is believed that this will enable them to give their opinion well in time for required changes or modifications. One major benefit of the principle of participation encouraged by the FOIA is that it enables Nigerians to own the governance process as well as sustainability of government programmes and projects.

By ensuring unfettered access to public information and popular participation in the democratic process and governance, an effective implementation of the FOI law also promotes the principles of transparency and accountability by the managers of the Nigerian political system. There is no doubt that one of the major bane of democratic governance in Nigeria has been monumental or brazen misuse, misappropriate, and irresponsible use of public funds by the governing class. And no thanks to the environment of official secrecy under which government business is carried out in Nigeria. Hence, it is our belief that a well implemented FOIA will go a long way to bring about a more careful utilization and application of the Nigerian Commonwealth since the people are now armed with relevant information concerning the business of governance. In this way, the FOI laws provide a practical and robust platform for achieving the good governance principles of transparency, accountability and public participation (Abdulai, 2009).

A well implemented FOIA also have the potential in ensuring that Nigerian elections are more credible, lawful and fair where the wishes and decisions of the electorates are respected by the political competitors. The Act could play this critical role by ensuring that citizens are more informed about the people they are electing and their activities while Nigerian voters will rely less on lies and falsehood by politicians, political deceit by governments and may well be less inclined to fall back on their primordial sentiments and affiliations when voting, which is a predominant political culture in Nigeria. In other words, an effective FOI law will make elections in Nigeria more meaningful and indispensable instrument of democratic deepening. The underlying foundation of the democratic tradition rest on the premise of an informed constituency that is able, thoughtful, to choose its representatives on the basis of the strength of their antecedents and records and that is able to hold the Nigerian government accountable for the policies and decisions it promulgates (Abdulai, 2009). What this simply means is that the public can regularly access information on the government activities and policies thus, making the government directly accountable on day to day basis

rather than just during periods of elections. By so doing, the right to know enhances and consolidates the social contract between the Nigerian people and those who govern them.

As a corollary to the above point, it is expected that the FOI Law will empower Nigerians with relevant information that will enable them to know the sources of funding of political parties, campaign rallies, enticing gifts given to the Nigerian voters during elections and the party's statements of account; all these fall within the scope of the law on the right to know because they are all issues of public concern. Under the same law, "states are compelled to give detail account of their expenditures on public and private causes" and on such flimsies as congratulatory messages, the source of funding of the pet projects of Nigerian "first ladies", chieftaincy titles and flamboyant honorary awards to enable Nigerians measure their relevance to their welfare (Shuaib, 2006).

Again democracy cannot be sustained without well informed, legally empowered, vibrant and robust civil society. This is one veritable element that is missing in democratic practice in Nigeria. It also accounts for the reason why there is so much lawlessness and brazen sense of impunity among political office holders in Nigeria. An effective FOI Act can effectively check these excesses of politicians by legally empowering the various civil society groups to access relevant official information as well as publish, inform and mobilize the larger Nigeria society to be alive to their responsibility of making government at all levels to be more accountable, responsible and responsive to their interests and needs.

The very nature of democratic government implies accountability and transparency, presence of a free press and other democratic checks. It is now a common knowledge that the media in Nigeria have successfully exposed corruption in high places and remained undaunted in the face of intimidation, politicization and sentiments expressed in some quarters against their professional stubbornness. Nigerians are more comfortable with the information from the independent press than from opposition politicians who are usually one sided in their attempt to put those in authority in bad light. Hence, the unfettered access of the private media to information is in the interest of the Nigerian citizenry. With the strong investigative journalism in Nigeria and a functional FOI Act, the media will be strengthened to expose corrupt practices; this is so because the risk and fear of discovery will finally reduce inordinate tendencies of institutions and officers to vices.

An unhindered access of the Nigerian citizenry to public information is also a vital and fundamental instrument of enthroneing and consolidating government legitimacy. Information sharing and openness can entrench national stability by establishing a two-way dialogue between the state and Nigerian citizens, helping to promote public trust in the political system. Such process of institutionalized dialogue can combat or assuage feelings of alienation and discontentment as well as reduce the risk of disillusioned sections of the public resorting to violence or extra-judicial means to promote their political interests. In this way, entrenching a functional FOI law can enable people to be part of decision-making processes, thus reducing any public perception of exclusion of opportunity or unfair advantage of one group over another" (Abdulai, 2009).

Apparently, information is a vital and indispensable ingredient of participatory democracy. Democratic deepening or consolidation cannot take place if the populace are not legally empowered with information

concerning the management of the state. Hence, the FOIA is no doubt an effective platform that can check the excesses of the Nigerian public office holders by placing all their activities as representatives of the people, within the public domain. By so doing, well implemented FOI law will make democratic governance in Nigeria more accountable, responsible and responsive to the needs and interests of the Nigeria public.

5. Challenges to the implementation of the FOI law in Nigeria

From the foregoing presentation, there is no doubt about the potentials and ability of the FOA Act to have positive impact on democratic norms, practices, and structures in Nigeria. However, we are not obvious of the challenges that have so far frustrated the fruitful implementation of this laudable addition to democratic practice in Nigeria. Broadly speaking, these challenges range from inherent weakness of the information law itself to undemocratic practices of public office holders as well as their reluctance to make the necessary institutional and attitudinal changes to implement the FOI Act.

After more than three year of its enactment as part of the law of the Federal Republic of Nigeria, it is now clear to many observers that the FOIA contain some inherent deficiencies. The information legislation contain more exemption sections and clauses than sections that grant access to information a situation which have been exploited by some public officers for mischievous purposes. For instance, only sections 1 and 3 grant access to information as many as ten sections (Section 7, 11, 12, 14, 15, 16, 17, 18, 19 and 28) are meant to deny the public access to information. This is basically the reason why some civil liberty advocates argue that final draft legislation of the FOI was watered down by legislators in order to reduce the effectiveness of the law. Exceptions should ordinarily be clearly and narrowly drawn and subject to strict "harm" and public interest tests (Okpeh, 2010).

Also the time limit provided for granting or refusal to grant requests as provided in Section 4 of the Act is seen by keen observers as too short and unrealistic, especially when one considers the unnecessary lengthy procedures associated with government offices in Nigeria. And as expected, several government offices and public officials have used this defect as an excuse to deny public information to applicants. For instance, one of the first victims of this unreasonable time limit for granting request for public held record or refusal to grant such request was the Socio-Economic Rights and Accountability Project (SERAP), a non-governmental organization with the primary objective of promoting accountability and transparency in the public and private sectors. The group requested for information on how the sum of N126 trillion was released for fuel subsidy instead of the initial sum of N250 billion allocated for fuel subsidy in the year 2011; this request was challenged in the law court by the Accountant General of the Federation on the grounds that the request was filed "out of time" stipulated by the Act (Okpeh, 2010).

Another challenge to the full implementation of the FOIA is the existence of subsisting laws which conflict with the information law, notably the Official Secret Act, the Evidence Act, the Public Complaint Commission Act, and others. These laws are contrary to the provisions of the FOIA especially Section 28 of the Act which impliedly provides for the amendment or outright repeal of such conflicting laws.

The extant culture of secrecy that exist in the public service which is premised on the Official Secrecy Act and Civil Service Rules are yet other obstacles to the fruitful implementation of the FOIA. The culture of secrecy in government makes the notion of public scrutiny an alien concept. Government officials in Nigeria like most other African countries are obliged upon appointment to be guided by “various oaths of secrecy under which they undertake not to disclose any information which comes to them in the course of the performance of their duties” (Ojo, 2010). After decades of operating official secret laws, there has emerged an iron-cast culture of secret “among civil servants and public officials and it has become extremely difficult for many of them to change.” (Ojo, 2010).

There is also the challenge of low level of awareness among members of the Nigerian public – this has adversely affected the implementation of the FOIA since it was signed into law. Most ordinary Nigerians do not readily see a link between FOIA and their daily struggles to work out a living. They therefore do not see the FOIA as a platform that could contribute to their wellbeing (Right to Information Initiative, 2011). Hence, there is a need for massive and effective public enlightenment programme to educate both those in power or authority and the public service as well as the larger society about the role the FOIA could play in the deepening of democracy and development of the Nigerian society (Ojo, 2010).

Another real challenge to full implementation of the FOIA is inadequate or absence of record creation, record keeping organization and maintenance of document. FOIA regime cannot be functional until public offices and officials in Nigeria develop a system and habit of official record creation, keeping and organization.

Yet, another challenge to the functional operation of the FOIA is Section 7(5) of the Constitution of Nigeria. This section gives immunity to Nigerian President, governors and their deputies from arrest, prosecution, and imprisonment. As expected, it has been very difficult to access information from these public offices. The benefiting officials of the immunity clause have severally hide under this section to commit all sorts of anti-public atrocities as well as declined inquiries by the public about happenings in these offices. And in all instances the law has been powerless to check the excesses of these political office holders.

Apart from these, there is also the problem of the refusal of the 36 state governments to adopt and domesticate the FOI law. Only Ekiti state have domesticated the FOIA, this goes a long to show that the managers of the Nigerian political system particularly the state governors are not comfortable and predisposed the idea of the legalization of the right to know. And this is not a good signal for democracy in Nigeria since democracy is all about open and transparent participatory government. However, some legal experts have faulted the whole idea of domestication of the law. For instance, former Attorney-General of the Federation and Minister of Justice, Chief Richard Akinjide said:

In constitutional law, it is called the doctrine of ‘covering the field’ in a federal system. The consequence of that is that once the federal legislature interviews in a subject and passes a legislation, which comprehensively covers a particular subject in a particular field; all the other states’ legislatures throughout the federation have no constitutional power to legislate on that subject again (cited in Okachie, 2012).

The above situation is obtainable in the US, Canada, India, Australia and several other federal systems. Similarly, Amnesty International (AI) dismissed the issue of domestication and called on the government to embrace the Act and ensure its direct application to their states.

Corollary to the above point, government at all levels in Nigeria have so far deliberately refused to make budgetary allocations for the full implementation of the FOIA. Regrettably, although there is general recognition that openness is an essential component of good governance, political leaders and public office holders have deliberately refused to see the FOIA as an issue worth investing resources in. Taking into consideration the lean finance resources and vast competing needs, political office holders have used this as an excuse for not adopting the FOI laws until such resources are available.

Ultimately, the final constraint that ties all the above aforementioned obstacles to the effective implementation of the FOIA is the lack of political will on the part of Nigerian leaders who ideally have the responsibility for putting such laws in place. The absence of political will is a product of several factors including the fear by public officials that greater public access to information which the FOIA engenders, will make them vulnerable to their political opponents as such laws will expose their misconduct and misappropriation and mismanagement of public funds. There is also the fear that the FOIA will put their personal interest at risk by exposing the failure of government programmes and policies (Ojo, 2010).

6. Closing remarks

It is evidently clear from the foregoing that it is one thing for a political system to enact a law but it is another to implement it. Laws such as the FOI Act do not enforce themselves; they can only come into force through the efforts of government agencies and stakeholders in the civil society. Hence, for the Nigerian people, the civil society and democracy to enjoy the full benefits of the FOI Act, there is the urgent need to confront and address the aforementioned challenges to the full implementation of the FOIA. The civil liberty groups still have a lot to do especially in the area of aggressive and robust public awareness campaign of the citizenry. These civil society groups and like-minded progressive Nigerians still need to continue to push for the amendment or total repeal of anti-people and undemocratic sections of the Nigerian Constitution such as the immunity clause and the Official Secret Act. To realize the objectives of the FOIA, it is also important to build an informed, dynamic and patriotic civil service, which is ready to change from the culture of bureaucratic secrecy and embrace openness, transparency and accountability.

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