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A Communication on Freedom of Information Bill In Nigeria: Background, Merits And Challenges Ahead

Okechukwu Innocent Eme

*Department of Public Administration & Local Government Studies,
University of Nigeria, Nsukka, Nigeria
okechukwunnent@yahoo.com*

INTRODUCTION

Praise of Folly; the classic written by the legendary Erasmus that chronicles the moral atrophy of his age, is a work with ageless essence. Juxtaposing his philosophy of rectitude in public office with the moral decadence of his era, he wrote as though he had Nigeria in mind, since public service here had exhibited much negativism. Nigeria has severally been adjudged one of the most corrupt nations. Corruption, many posited, is the unyielding obstacle in our country's path to development. This is because it does not only drain our scarce resources; it also frustrates all efforts at broader socio-economic development (See Daily Independent Editorial of November 24, 2006).

Regrettably, beneficiaries of this corrupt system have over the years resisted attempts by the mass media (press) to keep a tab on governance and official records. For example, two Guardian newspaper journalists, Tunde Thompson and Nduka Irabo, were in 1984 jailed for a story they wrote on diplomatic postings, which the Buhari junta considered offensive and promptly promulgated Decree No. 4 (Accusation against public officers) under which they were tried and jailed. Tony Momoh, the then General Manager, (GM) of Daily Times said of the implications of the obnoxious Decree No. 4, "the pity, however, is that without intending it, arrest and detention of journalists may well serve as a blanket for unbridled corruption in our public life" (Madike, 2006: B12).

Attention in media circles at present is centered on the trial of two Nigerian journalists arrested for alleged seditious publications. Rotimi Durojaiye of Independent Newspapers Limited and Gbenga Aruleba of Africa Independent Television (AIT), are charged with sedition in connection with materials they authored on the cost and age of the controversial presidential jet recently purchased by the President Olusegun Obasanjo's administration.

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Over the past seven months, there have been attempts to down play the astonishing troubles of the said new Boeing 737 – 800 which the government said it bought from the Boeing Company. Though there is no official pronouncement as to the cost and age of the airbus, media reports put the cost at US\$72 million (about 9.3 billion Naira) (see Daily Independent of June 12, 2006).

Beyond the jet's economic implications for the masses, Durojaiye initiated an inquest to unravel details of the business that seemed closed to the public. His investigation uncovered aspects of the presidential jet project that analysts believed are often more relevant for the long-term benefit of the polity. That is the due process or transparency puzzle.

The story produced a vile smell that assailed the nostril of the government. Durojaiye and Arulebe were subsequently arrested, detained and charged to court. The two journalists were accused of conspiring to “commit a seditious act against the president of the Federal Republic of Nigeria or the government of the Federation”. The alleged offence was said to have contravened section 51(1)(a) of the Criminal Code Act Chapter 77 Laws of the Federation 1990 and punishable under section 51(1) of the same act” (Akpaekong, 2006: B10).

In view of the above antecedents, media practitioners in Nigeria and other interested parties within the organized civil society have been trying to secure the enactment of the Freedom of Information Bill into law. The bill, when it becomes law; would guarantee citizens substantial access to official records, and many believe such law would help avoid situations like the examples cited above (i.e. between media and government).

In the words of President Johnson, “I have always believed that freedom of information is so vital that only the national security, not the desire of public officials or private citizens, should determine when it must be restricted” (Relyea, 1978: 310).

FIOB allows individuals or organizations to request documents from a government agency. While not all documents are releaseable, many are. Government agencies may withhold documents that fall into section that deals with broad exemption categories. Included within this entry is a legislative history of FIOB, a short description of the major provisions of the bill, merits and challenges facing its implementations in Nigeria.

WHAT IS FIOB?

The Freedom of Information Bill is one of the Federal laws that deal with openness and transparency in governance. The bill sought to ensure the availability of public records to Nigerians as of right to facilitate their informed participation in

public discourse, formulation and administration of policies, promotion of accountability by public officials as well as facilitating government anti-corruption efforts.

Government transparency and accountability are the underlying tenets behind FOIB. The former refers to the ability to find out what is going on inside of government. The latter refers to holding elected and unelected government officials responsible for their actions. In other words, the main principles of the bill include: to ensure general declassification of information, right of access to information and the principle of maximum disclosure of information. While the House of Representatives passed the bill in 2004 and the Senate in 2006, the debate surrounding transparency in government long predates the bill. James Madison wrote in personal correspondence:

“A popular Government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance”. And a people who mean to be their own Governors must arm themselves with the power which knowledge gives” (Piotrowski, 2004; 114, see Madison, 1999, 790).

LEGISLATIVE HISTORY OF FIOB IN NIGERIA

Varying proposed pieces of freedom of information bill were prepared and debated in the National Assembly for over seven years before the final bill was passed. The clean report of the bill already passed by the Senate demanded additional inputs by several government agencies that were invited to contribute to the bill. Ndoma-Egbe listed the agencies as the Head of Service of the Federation, Nigeria Police Force, State Security Service, Economic and Crime Commission, National Drug Law Enforcement Agency, National Agency for Food, Drug Administration and Control, Nigeria customs Service, Corporate Affairs Commission and Defense Intelligence Agency (Akeregba, 2006:40).

In accepting inputs from the agencies, the Senate Ad hoc committee said, it agreed that another avenue be created for the agencies and parastatals and stakeholders that ought to have participated in previous public hearings but did not, to make their inputs towards the bill since it is essentially about public records (Ibid).

Section 4 of the bill passed mandated individuals seeking information to make written requests giving sufficient details to the government institution. Section 10 of the bill which forbids government officials from tampering with official information states thus:

It shall be a criminal offence punishable on conviction with three years imprisonment for any officer of the head of any government or public institution to which this Act applies who tries to either willfully destroy any records kept in his/

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her custody or attempts to doctor or otherwise alter same before they are released to any person, entity, or community applying for it” (Aziken and Adebuyi, 2006: 14). When the president assents to the FOIB, Nigeria will become the fourth African country with a freedom of information law, after South Africa, Uganda, and Angola. The FOIB grants the media and the general public the right to apply for information on government business from government agencies or from private bodies performing public roles.

The bill, according to the Senate’s harmonized version, is “for an act to make public records and information more readily available, provide for public access to public records and information, project public 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 purposes and related purposes thereof”.

Section 2(1) of the bill states, “Subject to the provisions of this Act but notwithstanding anything contained in any other act, law, or regulation, every citizen of the Federal Republic of Nigeria, has a legally enforceable right to, and shall, on application be given access to any record under the control of a government or public institution”. The bill says such applicant “need not demonstrate specific interest in the information being applied for”.

The FOIB provides in section 5(1) “Where access to record is applied for under this act, the head of the government or public institution to which the application is made shall ... not later than 14 working days following the date of receipt of the application: (a) give written notice to the person who made the application as to whether or not access to the record or a part thereof will be given; and (b) if access is to be given, give the person who made the application access to the record or a part thereof”.

Many see the passage of the bill as a triumph for civil society. The road to the final passage of the FOIB by the National Assembly has been long and tortuous. It started during Obasanjo’s inaugural speech on May 29, 1999, when he identified corruption as “the greatest single bane of our society today”, saying that in his administration “all rules and regulations designed to help honesty and transparency in dealing with government will be restored and enforced”. The president followed shortly after that with an announcement of his plan to present an anti-corruption bill to the National Assembly.

Obviously encouraged by the emerging atmosphere of transparency and accountability, the Media Rights Agenda (MRA), a non-governmental organization wrote to the president on June 10, 1999 to commend his anti-corruption stance and remind him that accountability was impossible unless citizens have justiceable right to information from public institutions. MRA frequented the president to present

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to the National Assembly his administration's anti-corruption bill along with a draft FOIB prepared by civil society organizations as executive bills. The president declined that request in a letter dated July 19, 1999, insisting instead that MRA presents the draft FOIB directly to the National Assembly.

But a member of the House of Representatives, Tony Anyanwu, agreed to sponsor the FOIB at the Lower House, making it the first private member's bill to be introduced in the National Assembly in the Fourth Republic. In time, advocacy for FOIB expanded into the formation of a Freedom of information Coalition, which, among other strategies, tried to make the matter a campaign issue in the programmes of the various political parties. The FOIB underwent First and Second Readings in the House of Representatives on February 22, 2000 and the committee submitted its report to the House on July 25, 2000. Public hearing on the bill was held at the House of Representatives from October 3 – 4, 2001 to encourage greater public input. The House of Representatives passed the FOIB in 2004.

The bill has received now concurrent passage by the Senate, and it is awaiting harmonization by the Senate and House of Representatives before assent by the president. Also, the bill when assented to by the president, equally gave discretionary powers to the courts to determine the length of time offenders are to spend behind bars subject to a maximum of 3 years as contained in section 10. Section 13 of the bill, however, gives restrictions against the disclosure of materials that could be injurious to the conduct of the country's international relations and defense commitments.

HOW DEOS FIOB WORK?

Significantly, FIOB is a disclosure statute. All agency records are accessible to the public unless specifically exempt from disclosure. Documents, not information, are requested and released under FOIB. This is a significant difference. One cannot request the government to make a report or compile and summarize information. Under section 5 of the bill, one can only request pre-existing agency records. There is no clear definition of what is an agency record. Typically, documents must be in control of government agency from which they are requested (Piotrowski, 2004: 114-5).

According to the bill, any one can make a request including Nigerian citizens, foreigners, corporations and governments. As stated earlier, FIOB is a disclosure statute, meaning it opens up documents in the government for release. With that said, there are two exemptions written into FOIB: materials that could be injurious to the conduct of the country's international relations and defense commitment. In order words, documents that have been classified for national defence of foreign policy are not releasable. To make a request, one must send a

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written request to the individual agency you would like to release the documents. This can be carried out either by the mail, fax, or e-mail. It is important that you write to the correct agency and you are as specific as possible to write a FOIB request.

The FOIB provides in section 5(1) "Where access to record is applied for under this act, the head of the government or public institution to which the application is made shall ... not later than 14 working days following the date of receipt of the application: (a) give written notice to the person who made the application as to whether or not access to the record or a part thereof will be given; and (b) if access is to be given, give the person who made the application access to the record or a part thereof".

MERITS OF FIOB

The Freedom of Information Bill will make the activities of all public officers and institutions readily available to the press and indeed the public at large at any point in time. According to Ndoma-Egba, this bill, when passed will ensure the availability of public records to citizens of the country as of right and this will in turn facilitate their more informed participation in public discourse, formulation and administration of policies, promote accountability by public officers and facilitate government's anti-corruption efforts, it will also promote openness in governance and consequently transparency" (Akeregha, 2006: 140). This is because with the passage of the bill it would remove all controversies around the official secrets Act of 1962 and the Newspaper Amendment Act of 1964.

Many saw these Acts as laying trap for the journalists and the innocent. For example, section (1) of the former provided that "A person who transmits any official matter to a person to whom he is not authorized on behalf of the government to transmit it, or (b) obtains, reproduces or retain any classified matter which is not authorized on behalf of government to obtain, reproduce or retain as the case may be, shall be guilty of an offence" (Akpaekong, 2006: B10). The Act was borrowed from the official secret ordinance of 1891 and was enacted by the colonial authorities in Nigeria because they found no legal ways of dealing with civil servants who broke their oaths and leaked government documents to the press. The latter ostensibly forbade the publication of false reports. Under this Act, it would be an offence to write that the president will arrive Nnamdi Azikiwe Airport Abuja by 10 am whereas the president arrived at 12.00 noon.

Again, Nigeria socio-economic and political systems will benefit in the long run. That is, our system will benefit in the long run if media practitioners undertake more of investigative journalism which will help expose corrupt practices at all levels rather than relying wholly on official records. Also, officials who hold offices of public trust must accept the power that comes with an attendant

responsibility. This includes accountability, rule of law and probity. Such foundations can only lead to the efficient running of the country, and evolution of policies that are people oriented rather than the narrow interests of a cabal (See Daily Independent Editorial of November 24, 2006). Finally, the FOIB will support democratic stability and provide the Nigerian media the relevant environment to practice their profession.

CHALLENGES AHEAD

According to Obia (2006; B10), The FOIB is as significant as it is challenging to critical sectors of the Nigerian social system. Nigeria has a high degree illiteracy rate and even among the elite, there appears to be a terrible reading culture, which translates into a general ignorance culture. According to Media Right Agenda (MRA), despite the fact the group wrote and sent copies of the FOIB to each of the 469 members of the National Assembly, when it was being initiated in the House of Representatives, to solicit their support the only reaction the organization got was a telephone call from Honorable Jerry Ugokwe.

Also, the media in Nigeria must rise to the occasion and live to the expectation of the general populace to access information that are relevant to them, the nation and public officers. That is, the FOIB imposes greater responsibility on the media, media owners and journalists in the country, as more resourcefulness would be expected of them. Emeka Omeruah, gave expression to government's anxiety about the power of the press when he said during the celebration of the 24th anniversary of television in the country in October 1984 that "the press still looks as the government as something to be brought down" (Eme, 1995:113). Tony Momoh believes the media would rise to the challenge. He says, "The media in Nigeria is vibrant and has achieved so much despite the constraints of the environment. The FOIB would make the media more resourceful" (Obia, 2006: B11). The Bill would equally face a strong challenge from the civil servants and their traditional oath of secrecy.

Nearly all government's information in Nigeria is classified as top secret. The restriction is reinforced by a plethora of laws, including the Evidence Act, the Statistics Act, the Public Complaints Commission Act and the Criminal Code among others. Eme (2006) adds "the public servants are a product of old systems which include the colonial government and later on the military politicians. These are governments that are not transparent, and accountable to the populace and, therefore assume that the populace have no input into decision making and in any case, they do not even have to know how decisions come about. They claimed that they know best what the populace want and that they are there to salvage them. They do a kind of voodoo administration in which no body calls them to order and nobody asks them to account for their actions. (See also Obia, 2006).

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Finally, the attitude of the Obasanjo's administration to the bill is another challenge that will face the operation of the bill. Though the president has publicly hailed the passage of the bill, many observers believe his recent political posturing leave little hope for the operation of the FOIB. For example, state security operations raided the Abuja office of Weekly Leadership Newspaper over an article assumed to be too critical of Obasanjo's actions.

CONCLUSION: MAKING FOIB WORK IN NIGERIA

Implementation of FIOB is a complex process. Inherent in this process are multiple tensions and challenges identified above. To resolve this tension, there is a need to amend the sections dealing with the unresolved controversy over the permissible limits of press coverage and investigation of an individual's life. Whistle Blowers' Bill and privacy Act in Nigeria should be reinforced to help the press inform, educate and entertain the populace. Also, the National Assembly should draft a guide that would help them to know how to request government records. Again, there is a need for the government to expunge acts and constitutional provisions that inhibit press freedom.

Furthermore, there is a need for the courts to increase their pace in matters relating to release of information by government officials to individuals or the press. Nigerians cannot be alarmist over the slow dispensation of justice in our system of adjudication; but we must acknowledge that it took almost three years for governor Peter Obi to regain his "stolen" mandate in the 2003 governorship election in Anambra State. Finally, the National Assembly must minimize the cost and pain of obtaining documents under the FOIB, so to encourage citizens to utilize the instrument meaningfully.

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