

Unlocking Nigeria's Closet of Secrecy

A Report on the Campaign for a
Freedom of Information Act in Nigeria



Media Rights Agenda

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Freedom of Information Act in Nigeria

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Other Publications by Media Rights Agenda (MRA)

- * *Media Rights Monitor* (Monthly Newsletter) published since 1995
- * Annual Reports on the state of the Nigerian Media
 - + *Sentenced to Silence*, 1998
 - + *Back from the Brink*, 1999
 - + *A Harvest of Blooms*, 2000
- * Other reports and publications
 - + *Unshackling the Nigerian Media: An Agenda for Reform*, July 1997 (In collaboration with ARTICLE 19)
- * *Media Scorecard* (Report of the Print Media Coverage of the Political Transition Programme - six issues, from January - June 1999)
- * *Airwaves Scorecard* (Report of the Broadcast Media Coverage of the Political Transition Programme - six issues, from January - June 1999)

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Foreword

The right of access to information held by Governments and public authorities remains a tool for promoting accountability in governance and as well an essential component of the right to freedom of expression. This view has gained wide international acceptance and endorsement as demonstrated by the recent Commonwealth freedom of information principles adopted at the Commonwealth Head of Government Meeting (CHOGM) in Durban, South Africa, which came to a close on November 15, 1999.

The organisation, in its communiqué at the end of its meeting, said it took note of the Commonwealth Freedom of Information Principles earlier endorsed by Commonwealth Law Ministers and forwarded to Heads of Government.

It, therefore, unequivocally declared its recognition of “the importance of public access to official information, both in promoting transparency and accountable governance and in encouraging the full participation of citizens in the democratic process.”

In an earlier communiqué issued at the end of its meeting in the Port of Spain, Trinidad and Tobago, between May 3 to 7, 1999, the Commonwealth Law Ministers had noted the receipt of a set of draft principles and guidelines on the right to know prepared by an Expert Group in March 1999. They recalled that at their meeting in Barbados in 1980, they emphasized the importance of access, by citizens, to official information in the promotion of public participation in a democratic governmental process. They noted that the benefits such access can bring include the facilitation of public participation in public affairs, enhancing the accountability of government, providing a powerful aid in the fight against corruption as well as being a key livelihood and development issue.

Several decades before this, at its first session, the United Nations General Assembly, in its resolution 59(1) of December 14, 1946, stated that: “Freedom of Information is a fundamental human rights and is the touchstone of all the freedoms to which the United Nations is consecrated. Freedom of information implies the right to gather, transmit and publish news anywhere and everywhere without fetters. As such, it is an essential factor in any serious effort to promote the peace and progress of the world.”

Subsequent human rights instruments emanating from the United Nations systems have underscored this view in their wordings. For instance, Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that “Everyone shall have the right to freedom of expression; this rights shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Nearer home, Article 9 of the African Charter on Human and Peoples’ Rights provides that: “Every individual shall have the right to receive information.”

In two separate studies in the 1980s, the UN considered the factors that have an impact on development. These included the free choice by all citizens of the model for development, full participation in the definition and application of development policy and the existence of

effective safeguards against arbitrary government action and in favour of respect for human rights (Documents No. E/CN.4/1421 and E/CN.4/4/1488).

In one of these reports (Document No. E/CN.4/1488, Para. 98), the UN stated that the “exercise of the various rights to participate may be as crucial in ensuring satisfaction of the right to food as of the right to take part in public affairs.” The UN specified several rights considered particularly important to participation. These included freedom of expression and information.

The United Nations Special Rapporteur on Freedom of Opinion and Expression, Mr. Abid Hussain, has consistently underscored the primacy of the right of access to information in the exercise of the right to freedom of expression.

In his report to the UN Commission on Human Rights in April 1995 (Document No. E/CN.4/1995/321 Para. 35), the Special Rapporteur said: “Freedom will be bereft of effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.”

Again, in April 1997, the Special Rapporteur also noted in his fourth report to the Commission that “the right to seek and receive information is one of the essential elements of freedom of expression” and urged, “the right of everyone to receive information and ideas just be adequately protected.”

The Special Rapporteur was to return to this issue in his 1999 report. He said in the report that he “strongly encourages states to take necessary steps to ensure the full realisation of the right to access to information.”

As a starting point, he proposed to undertake a comparative study of the different approaches taken in the various countries and regions in this regard.

Numerous countries in the world, including South Africa, Costa Rica, Guatemala, India, Malawi, United States, Australia, Canada, New Zealand, Norway, Denmark, Holland, Sweden and South Korea, have constitutional guarantees of access to government-held information. Many more others have explicit legislative provisions on freedom of information. Sweden has had a freedom of information legislation for over 200 years.

The decision of the Supreme Court of India, a developing country like Nigeria, in *State of U.P v Raj Narain*, AIR 1975 SC 865 and 884 on the imperative of a right to access of information is instructive.

The court said: “The people of this country have a right to know every public act, everything that is done in a public act, everything that is done in a public way, by their public functionaries” adding that “They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.”

The primacy of freedom to information to development was also emphasised by a group of South Africa experts. In a paper entitled: *The Reconstruction and Development Programme: A Policy Framework*, (Johannesburg: African National Congress 1994) section 5.14.1, quoted by L. Johannessen, J. Klaaren and J. White in: “A Motivation for Legislation on Access to Information”, *The South African Law Journal*, Vol. 112, Part (Feb. 1995) 45, 48, they observed: “Open debate and transparency in government and society are crucial elements of reconstruction and development. This requires an information policy that guarantees active exchange of information and opinion among all members of society”.

ARTICLE 19, the London-based International Centre Against Censorship and Media Rights Agenda in their 1997 joint report entitled: *Unshackling The Nigerian media: an Agenda for Reform*, noted that “the social and political role of information is critical in contemporary society. The right to seek and have access to information is one of the most essential elements of freedom of speech and expression”.

These provisions and pronouncements evidence a growing recognition nationally and international of the obligations on governments to provide information to their citizens through clearly defined legal and constitutional procedures. There is without a doubt a compelling need for Nigeria to enact at the earliest possible time, a freedom of information legislation to foster government accountability and an informed citizenry if its latest attempt at democratic governance is to meet with maximum success. Besides, as one writer once put it, “an open government is the only government that truly serves the public interest”.

This report, which is the outcome of the 2000 World Press Freedom Day workshop organised by Media Rights Agenda in collaboration with the United Nations Information Centre (UNIC) in Lagos UNESCO and NTA Channel 10, is aimed at ensuing public awareness about the Freedom of Information Bill and thereby facilitating its speedy enactment.

Edetaen Ojo
Executive Director
Media Rights Agenda
August, 2000

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Chapter One

Introduction / Statement Of The Problem

Nigeria stands at the threshold of history. After 40 years of political independence, and despite being blessed with abundant human and mineral resources, the country still grapples with the problem of want in the midst of plenty. There is a pervasive culture of mismanagement in its public sector, and public utilities, where they may exist, do not function. The country's political history is replete with proven tales of fraud and sundry anomalies. Its social and religious lives are no less disturbingly turbulent.

Much of the responsibility for this state of affairs is traced to the successive military governments that have ruled the country, reputed to be Africa's most populous with a population of over 120 million people. By the last count, Nigeria has been ruled for over 30 years out of its 40 years of political independence by seven military regimes that forcibly seized power while the civilians have ruled for only 10 years.

Despite the often nationalistic flavour with which successive military rules have clothed their reasons for the forceful seizure of power, their pretended altruism soon gives way when citizens' inquisition into their natural penchant for disregard for openness becomes incessant. Accountability similarly suffers.

It is widely acknowledged that an essential feature of good governance is the element of accountability. This is the act of providing detailed information and explanations on the actions of government officials to citizens. Similarly, an essential feature of accountability is openness, which is the act of granting an unrestricted access to citizens about the activities of government officials. A large dose of both quotients enable citizens to effectively cross-check assertions by government officials and correlate planning activities, encourages rational policy choices, improve government decisions and enhance the political process.

All of these ingredients have been lacking in the Nigerian public sector over which the military has presided for the most part. The advent of the democratic government of President Olusegun Obasanjo on May 29, 1999, the fourth attempt at an enduring democratic system of governance, gave birth to another hope of a civilised conduct of the affairs of the Nigerian government and the realisation of the dividends of democracy.

But a democracy's health and longevity depends upon public trust and confidence and this is nourished by open access to information. A government is responsible to individuals and communities, which in turn have a right to know what the government, is doing on its behalf.

In the absence of these two essential and mutually correlated elements of openness and accountability in the running of the affairs of a government, the result has been secrecy under the facade of a nebulous National Security. Government officials often hide under cover of National Security to penetrate fraud and sundry illegalities.

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In most developing countries, secrecy in governance has attained the status of official state policy. The result is the endemic and alarming rate of corruption and general lack of transparency in the conduct of government affairs in the countries.

In Nigeria, a veil of secrecy surrounds the conduct of government affairs. Officials of government do not only routinely deny citizens, whom they supposedly serve, explanations for actions undertaken on their behalf, they also block citizens' access to even the most mundane of publicly held information. The result has been an effective disablement of persons and institutions interested in helping to inject accountability and transparency into the governing process of the country with the attendant consequence of the mind boggling fraud and general corruption in the public sector.

Corruption in Nigeria has attained such an epidemic proportion that Transparency International (TI), in its Corruption Perception Index (1995-1997), rated Nigeria as the most corrupt nation in the world. The period also witnessed the worst form of dictatorship by late Head of State, General Sani Abacha. The following year, 1998, after the death of General Abacha, Nigeria improved in TI's ranking, dropping to the third position.

Interestingly, while Nigeria maintained the unenviable position of the most corrupt nation in the world in the rating of TI, its despotic military government under the strong grip of General Abacha, was equally earning the inglorious tag as one of the worst enemies of the press and freedom of expression by the Committee of Protect Journalists (CPJ). General Abacha attained the number one position as the worst enemy of the press position in 1998 before he died in office after having made the list for four consecutive years. Since his death, Nigeria's relating in TI corruption index has improved and the Nigerian government has dropped out of the list of the club of enemy of the press in CPJ's listing.

The rating of Nigeria as the most corrupt nation By TI and concurrent naming of General Abacha as number one enemy of the press by CPJ, proved, among others, one interesting fact: There indeed exists a strong correlation between the level of openness and transparency in government and the level of repression by the government.

To perpetrate the regime of secrecy in the conduct of government affairs, successive Nigerian governments have erected a plethora of administrative bottlenecks meant to achieve denial of access to public information. Even governments that make pretensions about being democratic in orientation, routinely exhibit unprogressive tendencies.

For example, with an excuse of lack of terms and conditions for granting public access to declarations made to it by public office holders, the Code of Conduct Bureau denied Media Rights Agenda access to information regarding assets and liabilities declared by public office holders in the present government.

This is in spite of the fact that the Bureau acknowledges the constitutional guarantee given under Paragraph 3 of Part One of the Third Schedule of the 1999 Constitution to members of the public who may be interested in such information, to access it.

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The Civil Liberties Organisation (CLO) reported in its publication titled: *Behind the wall*, (August 1996) based on prison conditions in Nigeria and the prison system, that its efforts to ascertain the reason for the failure of the National Prisons Reform Commission (NPRC) met with brick wall from official quarters. The result has been that the attempt by the CLO to ensure adherence to, and execution of, a government policy decision has been effectively disabled.

Similarly, numerous other legislation have very specific secrecy clauses, which forbid the disclosure of information, usually under very broad “public interest” claims. Even the courts of law are, in many cases, precluded from compelling the disclosure of such information.

Instances of such secrecy clauses are contained in legislative provisions such as Section 168 of the Evidence Act; Section 2 of the Federal Commissions (Privileges and Immunities) Act, Cap 130, LFN, 1990; Section 10(2) of the Public Complaints Commission Act; Section 12(2) of the Architects (Registration, etc.) Act; and Section 13 of the Statistics Act, Cap 416, LFN, 1990.

Besides, certain categories of government officials are obliged upon employment to subscribe to an oath of secrecy under which they undertake not to disclose any information which comes to them in the course of the performance of their duties unless specifically authorised to do so. For instance, in accepting an offer of employment in a Nigerian Government department or agency, the employee is required to subscribe to the following declaration:

“I....., do solemnly and sincerely promise that I will not directly or indirectly reveal except to a person to whom it is in the interest of the government to communicate any article, nor document or information which has been or shall be entrusted to me in confidence by any person holden officer under the Majesty’s government or the Nigerian Government of which I may obtain in the course of the work which I perform and I will, further, during the continuance of this work exercise due care and diligence to prevent the knowledge of any such article, note, or information being communicated by any person against the interest of the government. I realize that failure on my part to keep these promises renders me liable to imprisonment under the official secret ordinance, 1942 and that the obligation of secrecy imposed upon me by that ordinance will continue after I have left the Government service”

Unwittingly, such oath creates a world of cultism for civil servants and has engendered a culture of secrecy in government institutions. This has resulted in a situation where civil servants and other public officers are unwilling to disclose even the most innocuous information to citizens and journalists, grant press interviews or give their views and opinions on public issues unless specifically authorised to do so by a very senior

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government official. They also insulate governments and their actions from public scrutiny.

The Official Secrets Act, referred to above and which successive governments have continue to retain since the colonial periods, provides in Section 1(1) of the Act, amongst other things, that:

“...a person who -

- (a) transmits any classified matter to a person to whom he is not authorised on behalf of the government transmit it, or
- (b) obtains, reproduces or retains any classified matter which he is not authorised on behalf of the government to obtain, reproduce or retain, as the case may be, shall be guilty of an offence.”

Any person who commits an offence under this provision is liable on conviction, or indictment, to imprisonment for a term not exceeding 14 years, and on summary conviction, to imprisonment for a term not exceeding two years or a fine of an amount not exceeding N200 or to both such imprisonment and fine.

Routinely, government documents are marked “classified”, “(top) secret” or “confidential”. Members of the public have virtually no access to such documents except those voluntarily released by usually senior government officials or issued as press statements.

Besides, the scope and matters which falls under the “classified”, “(top) secret” or “confidential” category, are neither delineated and nor defined. This leaves an octopus of a dragnet on the path of any official who may wish to act in public interest by supplying public information in his domain.

The morbid fear, which this all-embracing threat leaves, has added to making the civil servant to be most unwilling to assist seekers of public information. The public cannot access even information as harmless as the number of staff in a government agency.

Besides the fact that the government has taken on no legal obligation to disclose information to members of the public, it has, in fact, also arrogated to itself the legal authority to punish any one who is able to obtain such information for himself through the Official Secret Act.

This is clearly not in tandem with Section 39(1) of the 1999 Constitution of the Federal Republic of Nigeria, which gives rights to citizens to receive and impart ideas and information without interference.

Besides the legal hazards posed by the Official Secrets Act to anyone seeking to access information and records in the custody of the government, some sections of the Criminal Code also erects further impediments in the way of anyone seeking information from unofficial sources in the services of any government. The Criminal Code makes it a penal offence for any public or civil servant to give out official information.

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Section 97(1) of the law provides that: “Any person who being employed in the public service, publishes or communicates any fact which comes to his knowledge by virtue of his office and which it is his duty to keep secret, or any document which comes to his possession by virtue of this office and which it is his duty to keep secret, except to some person to whom he is bound to public or communicate it, is guilty of a misdemeanor, and is liable to imprisonment for two years.”

The fact of the evident disablement of citizens from inquisition into and participation in the governance process of Nigeria by these sundry legal structure, and in the light of the attendant consequences of this culture of secrecy, among which are mind boggling fraud and corruption, have made the need for citizens’ access to government information imperative. This imperative need is also internationally recognised as essential both in promoting transparency and accountability in governance and in encouraging the full participation of citizens in the democratic process.

Chapter Two

The Campaign For Freedom Of Information In Nigeria: The Journey To The Present

In 1993, Media Rights Agenda, the Civil Liberties Organisation, and the Nigerian Union of Journalists agreed to work together to campaign for the introduction of freedom of information legislation in Nigeria.

The objective of the campaign was to lay down as a legal principle the right to be informed about administrative documents as a necessary corollary to the guarantee of freedom of expression and to prescribe rules for the exercise of this right.

The initial consultations among the participating organisations were geared, among other things, towards determining the various interest groups likely to be affected by the legislation; those who should have a right or standing to request information under a freedom of information regime and under what circumstances information may be denied those seeking them; what departments or organs of government would be responsible for releasing information and documents to those seeking them; and determining the agencies and arms of government to which the legislation would extend.

In 1994, Media Rights Agenda produced a draft Access to Official Information Act. The content of the draft was based on consultations among the three groups, the experience of other countries operating freedom of information legislation and suggestions made by practicing Nigerian journalists in the questionnaires administered by Media Rights Agenda. The draft became the basis for further discussions and debates on the issue.

On March 10 and 11, 1995, the three participating organisations jointly organized a two-day technical workshop to examine and revise the draft, taking into consideration the views of other interest groups, which might use the proposed legislation. Participants in the workshop included human rights workers, journalists, lawyers, university lecturers and representatives of government departments and agencies such as the National Broadcasting Commission and the Federal Ministry of Information.

The thrust of the debate at the workshop was aimed at achieving a consensus among the various interest groups that are affected by the availability or otherwise of a legally protected right of access to government held information.

A fundamental notion underlying the workshop was a common understanding among the various interest groups represented that the legal regime governing access to government held information in Nigeria must undergo a structural transformation. In their view, in its present form, the law on access to information is that there is no general access to information unless statutes specifically permit same.

Their conclusion was that since statutes which permit access to official information in Nigeria were few, the overall effect was that a culture of secrecy prevails in all government

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institutions, nurtured and given legal effect to by such legislation as the Official Secrets Act and some provisions in the Criminal Code which make it an offence to disclose certain types of government held information.

The general consensus at the workshop was that this legal regime should be replaced with one in which there is a general right of access to government held information, unless such a right is specifically removed by statute in specific circumstances and to protect specific, statutorily recognised interests.

At the end of the workshop, the participants issued the following 13-point Communique:

Participants representing diverse interest groups, including the press, academia, government institutions, non-governmental organizations, the legal profession, unions, etc., met for two days, March 10th and 11th 1995, at the Nigerian Institute of Advanced Legal Studies, Lagos under the auspices of the Civil Liberties Organisation (CLO), the Media Rights Agenda (MRA) and the Nigerian Union of Journalists (NUJ) at a technical conference 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 as follows:

- 1. That every person whether a citizen of Nigeria or nor, should have a legally enforceable right to be given, on request, access to any record under the control of any government or public institution.*
- 2. That the Access to Public Records and Information Bill should be enacted to give effect to Section 36 of the 1979 Constitution of the Federal Republic of Nigeria, which guarantees every person the right to hold opinions and to receive and impart ideas and information without interference.*
- 3. That Executive, legislative and judicial organs and institutions should be subject to freedom of information legislation.*
- 4. That through a freedom of information culture which will engender openness, transparency and accountability in government, Nigerians can overcome the vicious circle of corruption, underdevelopment and political instability.*
- 5. That all laws, inconsistent with the realization of the ideal of free flow of information such as the Official Secret Act, Sedition law, the National Broadcasting Commission Decree, the Newspapers Decree, etc. should be reviewed.*

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6. *The Draft of the Access to Public Records and Information Bill adopted by participants at the Conference should be enacted into law without delay.*
7. *That a Monitoring and Campaigns Committee (MCG), comprising the Civil Liberties Organisation, Media Rights Agenda and the Nigerian Union of Journalists be set up to among other things.*
 - i) *Circulate the Access to Public Records and Information Bill and the Conference Report to all interest groups which should be involved in the lobby for the enactment of the legislation and particularly:*
 - a. *The Nigerian Bar Association*
 - b. *Human rights groups and other NGOs;*
 - c. *Environmental protection groups;*
 - d. *Minority rights groups;*
 - e. *Professional bodies and associations;*
 - f. *Consumer rights protection groups;*
 - g. *The business community*
 - h. *The academic community;*
 - i. *The Nigerian press organisation;*
 - j. *The Nigerian Institute of Public Relations; and*
 - k. *Newspapers Proprietors Association of Nigeria.*
 - ii) *Urge the Nigerian Bar Association to put the Access to Public Records and Information issues on its agenda at all levels;*
 - iii) *Urge the Nigerian Union of Journalists to put the Access to Public Records and Information issue on its agenda at all level.*
 - iv) *Formally contact the Nigerian Press Council with a view to securing its support and assistance in ensuring the enactment of the legislation.*
 - v) *Send the Draft Bill to the Federal Ministry of Information and the Federal Ministry of Justice with a view to having the Bill enacted into law; and*
 - vi) *Generally arise public awareness on the Access to Public Records and Information issue.*
8. *That the right to receive and impart 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*

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are deprived of information through the closure or proscription of media institutions.

9. *That the culture of Media closure and proscription as a means of media control is condemnable as it violates the right to freedom of expression and is likely to encourage over-reliance on rumour as well as the emergence of the underground press in Nigeria.*
10. *That the arbitrary arrest, detention, harassment and intimidation of journalists are inimical to the exercise of the right to freedom of expression and should therefore be discontinued while all those still in detention should be released immediately.*
11. *That all media houses, including newspapers and magazines, which have been proscribed or shut down should be re-opened forthwith.*
12. *That the Constitution of the Federal Republic of Nigeria having imposed obligations on the press should also protect the media from all forms of degradation through an express provision guaranteeing press freedom.*
13. *That the duty to be fair and just is a corollary to a right of access to public records and information.*

Based on discussions at the workshop, Media Rights Agenda produced a revised second draft of the proposed legislation later that year.

At the March 1995 workshop, a Campaigns and Monitoring Committee was established to carry out follow-up actions on the campaign for the enactment of the second draft into law. Although getting constitutional backing for the legislation was crucial, and the National Constitutional Conference was then still in session, it was agreed by the participating groups that it would be inappropriate to lobby the Conference, which they rejected as lacking credibility. Therefore, the draft was never submitted to the Conference. However, it was sent to the Minister for Information, and the Minister of Justice and Attorney-General of the Federation.

The Civil Liberties Organisation, Media Rights Agenda and the Nigerian Union of Journalists continued to invite views from concerned parties within Nigeria and in the international arena on the draft legislation.

From March 16 to 18, 1999, Media Rights Agenda, working with ARTICLE 19, the International Centre Against Censorship, in London; and the Nigerian National Human Rights Commission, organized a Workshop on Media Law Reform in Nigeria at Ota in Ogun State. The workshop was attended by 61 representatives of the media, both independent and state controlled; regulatory bodies; the legal profession; international institutions, including the United Nations Special Rapporteur on Freedom of Opinion and

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Expression, Dr. Abid Hussain; local and international non-governmental organizations; and other interest groups.

A substantial part of the workshop was devoted to discussion of the draft Freedom of Information legislation, which was further reviewed. In The Ota Platform of Action on Media Law Reform in Nigeria, a consensus document which emerged at the end of that workshop, further recommendations were made on the content of the draft legislation. The recommendations contained in that document were effected in the revised draft of the proposed legislation.

The Ota Platform of Action also recommends that a Freedom of Information legislation should be enacted at the earliest possible opportunity, reflecting the principle of maximum disclosure.

The recommendations contained in the Ota Platform of Action are as follows:

- *In addition to a constitutional guarantee of the right of access to public information, a Freedom of Information Act should be enacted at the earliest possible opportunity, reflecting the principle of maximum disclosure.*
- *Participants agreed that the draft Access to Public Records and Official Information Act published by Media Rights Agenda, Civil Liberties Organisation and the Nigerian Union of Journalists, should be taken as the basis for discussions on this issue, but that its provisions require further review.*
- *All legislation which unduly inhibits or restricts the right to freedom of information, such as the Official Secrets Act, should be amended to reflect the principles of the Freedom of Information Act.*
- *The National Archives Act should be reviewed and the clause which provides for the non-disclosure of state records or documents until after 10 years should be expunged.*
- *The cost of obtaining public information should be affordable to the majority of citizens.*
- *The proposed Act should contain a provision which stipulates that the individual requesting the information need not demonstrate any specific interest in the information provided.*
- *Doctoring of public records before they are released to the person, entity or community requesting them and obstruction of access to public records should be made a criminal offence.*
- *In the application of any exception, there should be a presumption of access to public information in the proposed Act. Exceptions should be*

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narrowly drawn and subject to a test of actual harm.

- *There should be established an independent body to hear appeals from individuals who have been denied access to public information. Such appeals should be held timeously.*
- *Government should take the lead, in close cooperation with civil society, to provide public education to civil servants and the broader population about the workings and benefits of a freedom of information regime.*

Shortly after the inauguration of the new civilian government, President Olusegun Obasanjo announced his plan to present to the National Assembly for consideration and enactment into law an anti-corruption Bill. On June 10, 1999, Media Rights Agenda wrote to President Obasanjo expressing support for his avowed commitment to fight corruption in Nigeria and his plan to present an anti-corruption Bill to the National Assembly.

Media Rights Agenda, however, observed that accountability and transparency in Government were crucial to any meaningful anti-corruption crusade, arguing that accountability and transparency could not be possible if citizens have no right of access to information held by the State or its agencies or if no mechanism exists for giving practical effect to the right to freedom of information.

It therefore, requested President Obasanjo to also present the draft Freedom of Information Bill to the National Assembly for consideration and support efforts to secure its enactment.

However, by a letter dated July 19, 1999, signed by his personal assistant, Mr. Ojo A. Taiwo, President Obasanjo advised Media Rights Agenda to send the draft directly to the National Assembly.

Prior to the receipt of the letter from President Obasanjo, Media Rights Agenda, representing the sponsoring organizations for the Bill, met with members of the National Assembly with the objective of identifying possible arrowheads for the campaign efforts and to secure their support for the Bill.

Following the letter from the President declining to introduce the Bill, Media Rights Agenda intensified its lobbying among members of the National Assembly. Media Rights Agenda also distributed the draft legislation and other relevant documents to numerous human rights groups and other civil society organizations in Nigeria.

The Bill was subsequently sponsored in the House of Representatives by Honourable Jerry Sonny Ugokwe, Honourable Tony Anyanwu, and Honourable Nduka Irabor and published in the Federal Government's Official Gazette No. 91, Vol. 86 (See Appendix 1).

While the Bill was making its way through the legislative process, the sponsoring organizations continued to use the occasion of every meeting to raise the issue of the need for a freedom of information legislation in Nigeria, with the result that many such organizations endorse the draft legislation and expressed support for efforts to secure its

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enactment into law.

Media focus on the various activities embarked upon in the continuing effort to achieve the enactment of the Freedom of Information Bill has been a crucial aspect of the advocacy programme. In realization of this, the sponsoring organizations have made efforts to generate media support for the initiative. The efforts include visits to media houses to meet with journalists, editors and columnists to solicit support for the campaign through the publication of articles, editorial comments and stories on the freedom of information issue; issuing periodic press releases to highlight developments on the issues; granting of press interviews on the issue; facilitating publication in the print media of feature stories and opinion articles as well as radio and television debates and discussions on the issues; etc.

The primary purpose of these efforts have been to keep the issue alive in the public domain and create a ground swell of public opinion in favour of a regime of access to information to act as a further pressure for legislative action by the National Assembly. These efforts have been successful as the issue has caught on and frequently crops up in the course of public discussions and debates.

The Bill has now gone through two readings on the floor of the House of Representatives where it received widespread support with no opposition. It was then consigned to the House Committee on Information, which has also recommended the passage of the Bill with very minor modifications. The indications are that the Bill will be passed in the very near future.

Chapter Three

Key Issues In The Freedom Of Information Bill

The Freedom Of Information Bill presently before the House of Representatives is guided by a set of universally acknowledged principles. The principles are based on international and regional laws and standards, involving state practices (as reflected, *inter alia*, in national laws and judgements of national courts) and the general principles of law recognised by the comity of nations.

They are a product of a long process of study, analysis and consultation overseen by Media Rights Agenda, drawing on extensive experience and work with partner organisations, chiefly ARTICLE 19, the International Centre Against Censorship in London.

These principles include:

* Maximum disclosure: This encapsulates a presumption that all information held by public bodies should be subject to disclosure and that these presumptions may be overcome only in very limited circumstances.

* Obligation to publish: This establishes that apart from acceding to requests to public held information, public bodies are obliged to publish and disseminate widely, documents of significant public interest, subject only to reasonable limits based on resources and capacity.

* Promotion of open government: The Bill seeks to provide for public education by government agencies regarding the scope of information which is available and the manner in which such rights may be exercised.

* Limited scope of exemptions: In the event that a request for information from a public body is denied, such refusal to disclose information must be justified by passing the three-part test. These are that:

- the information must relate to a legitimate aim listed in the law;
- disclosure must threaten to cause substantial harm to that aim; and
- the harm to the aim must be greater than the public interest in having the information.

* Process to facilitate access: The Bill outlines the process of a rapid and fair access to information. In the event of a denial of right of access, the Bill provides that an independent review of such refusal should be sought at two levels: within the public body; and appeals to the court.

* Costs: The Bill outlines the costing process of gaining access to information to ensure that is not so high as to deter potential applicants, given that the whole rationale behind freedom of information laws is to promote open access to information.

* Disclosure takes precedence: The Bill outlines the extent that a law shall conflict with the principle of maximum disclosure to merit being set aside.

* Protection for whistle-blowers: Notwithstanding provisions in the criminal and penal code, and the Official Secret Act, individuals should be protected from any legal, administrative or employment related sanctions for releasing information on wrong-doings; commission of a criminal offence, negation of legal obligation, miscarriage of justice, corruption or dishonesty or serious maladministration regarding a public officer or body.

Chapter Four

Advocacy Efforts

Report of Workshop on the Freedom of Information Act in Nigeria

On May 3, 2000, the World Press Freedom Day, Media Rights Agenda organized a workshop on the Freedom of Information Act in Nigeria, in collaboration with the United Nations Information Centre (UNIC) in Lagos, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Nigerian Television Authority (NTA) Channel 10.

The one day workshop, which was held as part of activities to mark this year's World Press Freedom Day, took place at the Peninsula Resort Centre, Ajah, in Lagos State on May 3.

The principal objective of the workshop was to formulate a plan of action to secure the enactment of a Freedom of Information Act in Nigeria and the outcome was expected to give impetus to the campaign to sensitize legislators and concerned citizens in Nigeria that peace and security can only be built through legal instruments that ensure transparency and accountability in governance.

About 72 participants representing United Nations agencies in Nigeria, the media, the legal profession, human rights organizations, the Legislature, the Judiciary, academic institutions and international human rights organizations attended the workshop.

The brief opening ceremony was chaired by Mr. Lanre Arogundade, Co-ordinator of the International Press Center in Lagos. He was supported by Mr. Finjap Njinga, Director of the United Nations Information Center (UNIC); Mr. Emmanuel Apea, UNESCO Director; Mr. Tive Denedo, Acting Executive Director of Media Rights Agenda; Mr. Mohammed Sani Umar, Chief Public Affairs Officer of the National Human Rights Commission; Honourable Ajishola Owoseni, Chairman of Olorunda Local Government Council, and Ms. Dupe Ajayi, a journalist.

Arogundade in his opening remarks asked the media to look inward and examine itself on the role it has played so far with the aim of strengthening professionalism in the industry. He also made a demand on the Justice Chukwudifu Oputa Panel probing the human rights abuses of past military regimes, to recommend the payment of full compensation and tendering of official apology to all journalists, editors, vendors and publishers that were molested, shot, arrested and detained; as well as media houses that were shut down, burnt or had their publications seized and vehicles vandalised by agents of the military governments.

In a welcome address, Mr. Denedo, reminded participants of the burden that secrecy has foisted on the nation saying that one way of guaranteeing the development of the country is for the government to be transparent, open and accountable through the enactment and implementation of the Freedom of Information Act.

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In his remarks, Mr. Njinga said African States and governments should be encouraged to enact and enforce national laws that ensure transparency. He said the United Nations supports efforts of the media to consolidate the positive changes taking place in the continent and would encourage genuine intervention to promote divergent views in the compressed global village.

In a joint statement by Mr. Kofi Annan, UN Secretary-General; Mr. Koichiro Matsuura, Director -General of UNESCO, and Mary Robinson, UN High Commissioner for Human Rights, which was read by Mr. Apea, the UN officials noted the relevance of press freedom to transparency, good governance and the rule of law. They asked all states to ratify the relevant international human rights instruments and scrutinise their domestic legal systems with a view to bringing them into line with international standards governing the right to freedom of opinion and expression.

At the end of the opening ceremony, 36 of the participants were divided into four working groups to formulate a plan of action for work to be done on Advocacy, Training for Judges, Training of Legislative Aides, and Enforcement of the Act.

The participants rose from the working group session to declare a ten point communique and an eight point plan of action that should improve the advocacy efforts for the enactment of the Bill.

The conference held at The Peninsula Resort Centre, Ajah in Lagos, and brought together 34 representatives of the media, both independent and state controlled, legal profession, international institutions, human rights groups.

Speeches At The Conference



**(A) A Welcome Address By Tive Denedo, Acting Executive Director,
Media Rights Agenda, At The World Press Freedom Day Workshop
Held At Peninsula Resort Centre, Ajah, Lagos.**

It is with great delight that I warmly welcome each and every one of you to the first world press freedom day, that is celebrated in Nigeria without the background noise of martial music. There is no doubt that a free press and the military are strange bedfellows, so celebrating the freedom of the press under a civilian regime with pomp and colour can be justified.

The World Press Freedom Day is very important to us at Media Rights Agenda. It helps us to focus on our central challenge of helping to develop and to sustain a vibrant pluralistic media in Nigeria and making it possible for the media to have available to it's use, the kind of information that will help the citizens make informed choices that will improve their lives.

Although, successive governments in Nigeria have claimed that this country has one of the freest media in the world, we all know that the media industry is operating under the weight of many obnoxious laws that have made the practice of journalism a very painful exercise.

There is an over-riding pall of secrecy in the conduct of government affairs which does not help the media in asserting itself as the fourth estate of the realm whose role and responsibility should be complementary to those of the other three arms of governments. Secrecy encourages corruption and greed, and all these cause increase in poverty. Poverty in turn brings hunger, disease, inadequate medical care, unemployment, inadequate shelter and underdevelopment. Underdevelopment causes strife, violence and insecurity.

It disturbs the education of children and leaves them on the street to vend pure water, with all the odds stacked against them. On the street the kids waste human potentials required to make positive contribution to building a prosperous Nigerian nation.

As a people who care, we cannot continue to watch while the government is being run by a group of individuals pleading the Official Secret Act to deny us of our right to decent living and an opportunity to help manage the distortion in the implementation of policies. If we fold our arms and watch governance continue under darkness, millions of lives will be destroyed. This is the heavy burden that secrecy has foisted on the people of Nigeria. This is why, as a free expression group, we have declared our position that government must be open, transparent and accountable. We shall do all within our means and the law of the land to ensure that access is not only guaranteed but is enforced. Our strategy is a framework that will support every effort by Nigerians to ask unceasingly

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for access to public information and use same to shape a destiny filled with hope. It is a framework that will make government, through the instrumentality of law, unable to play down the public interest in the quest for a freedom of information regime.

The media has always been ready to take the initiative to change situations and circumstances and we do hope that it will take the opportunity offered by this unique world press Freedom Day to bring more energy to bear on the quest for the enactment of the Freedom of Information Bill.

Another issue that the media must address today is the distress syndrome in the media. For the media to report effectively its must be strong and viable. Today, the media is not economically strong and the prospects are frightening. Effort at ensuring freedom from censorship will yeild no significant positive result if there is no freedom form want.

Our contribution to the struggle against secrecy will be in vain, if other voices from the judiciary, NGOs, CSOs, and other sympathizers are not heard across the land in support of this noble objective. We cannot achieve these goals alone. We must have companions and collaborators and our first choice among others is the media. The media is a formidable ally and very crucial to the success of the Bill.

The efforts in the crusade against secrecy is presently receiving due attention at the Lower House of the National Assembly and with more vocal support it will get the same overwhelming backing at the Senate.

Let me implore you that as you deliberate on the issues on how to guarantee enactment of the Bill, remember that whatever you will do here today will help in creating a conducive climate for a thousand ideas to flourish and participatory democracy strengthened through the availability of relevant information to the public.

**(B) Joint Message by UN Secretary-General, Mr. Kofi Annan; UNESCO
DirectorGeneral, Mr. Koichiro Matsuura and UN High Commissioner of
for Human Rights, Mrs. Mary Robinson On The Occasion Of
World Press Freedom Day, 3 May 2000**

On this first World Press Freedom Day of the new century, and in the context of the International Year of the Culture of Peace, we urge all actors in conflict situations around the world – governments, local authorities and armed forces – to protect the right of all citizens to reliable information and the right of journalists to provide it without fearing for their security, their freedom or their life.

In every society, freedom of the press is essential to transparency, accountability, good governance and the rule of law. It cannot be suppressed without dire consequences for social cohesion and stability. When it is sacrificed, whatever the reasons invoked, the chances are that conflict is not far down the road. All States should ratify the relevant international human rights instruments and should scrutinise their domestic legal systems with a view to bringing them into line with international standards governing the right to freedom of opinion and expression.

In times of conflict, the media's responsibilities for independent and pluralistic reporting are more important than ever. They can help to prevent the worst atrocities. But when belligerents see freedom of expression as an enemy to their cause and the media as a tool for propaganda, journalists who attempt to report in a non-partisan way face pressure, manipulation, intimidation, or even elimination. And when they are forced to leave, the cycle of violence does not end. The only remaining eye-witnesses – aid workers and local residents – often become the next targets.

In the aftermath of war, the establishment of a free and independent press offers a way out of mistrust and fear, into an environment where true dialogue is possible because people can think for themselves and base their opinions on facts.

Particular attention should be given to ensuring that women's voices are heard. Women are often the first ones affected by armed conflict. It is, therefore, right and indeed necessary that women have full access to information and that they be there to cover the issues, with equal strength and in equal numbers. Governments are urged to do all they can to overcome any formal and cultural obstacles to the exercise by women of their right to freedom of expression.

Wherever their independence or security is threatened – whether in repressive societies, in times of conflict or in post-conflict situations – local journalists must be supported and protected in their efforts to maintain a flow of fair and independent information. The

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international media, too, have an important role to play, in providing non-partisan coverage of conflicts and in calling the world's attention to humanitarian crises, human rights abuses and other situations where oblivion would be the worst of fates for suffering human beings.

The international community must keep on seeking to remedy severe violations of press freedom. On behalf of our organisations, and in the interest of knowledge, justice, and peace, we promise to explore every approach that offers hope of enabling the media to carry out their invaluable and often dangerous work.

**(C) Remarks By Mr. C. Finjap Njinga, Director, United Nations
Information Centre, Lagos, At The Opening Ceremony Of A One-day
Workshop On The “Freedom Of Information Act In Nigeria” To
Commemorate World Press Freedom Day 2000, Pennisula Resort, Ajah,
Lagos State.**

PROTOCOL AND ACKNOWLEDGEMENT

May I begin by saying how pleased I am to be a part of this ceremony, the very first observance of World Press Freedom Day in the new century.

For the benefit of those who may not be aware, the observance of World Press Freedom Day arose from the decision taken by the United Nations on 20 December 1993 following the choice that emerged from the meeting of editors and publishers in Windhoek, Namibia from 29 April to 3 May 1991. The Windhoek meeting, which was organised by UNESCO and the United Nations, was held to review the media environment in Africa and to promote an independent and pluralistic press on the continent. The meeting also aimed to encourage the democratization process in Africa.

The Windhoek Declaration of 1991 is still very relevant and may I say that portions of the document stress some of the reasons we are gathered here today. Please let me share with you, the aspects of that declaration, which may be relevant to your deliberations:

- The development of a truly independent and pluralistic press in Africa and the provision of constitutional guarantees of freedom of the press and association are essential to the growth of democracy on the continent.
- There is a world-wide trend towards democracy, freedom of information and expression and these are fundamental to the fulfillment of human aspirations.

African states should be encouraged to enact and enforce national laws that ensure transparency, accountability and participatory democracy. The United Nations supports media and peoples' efforts to consolidate the positive changes taking place in Africa and will encourage genuine interventions to counter the negative ones. Public, especially media, access to government-held information is one way to strengthen participatory democracy and Freedom of Information Act is certainly an effective instrument to measure good governance.

The need for freedom of information has become more highlighted as a powerful tool in a compressed and globalising world. It should be seen as a channel for free and balanced dissemination of information. Governments should be happy to provide information, seek and respect the different points of views of the citizens in the society as a whole and within the immediate communities they serve.

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The main objective of today's workshop is to formulate a plan of action for an enactment of a national law that should help to strengthen participatory democracy and empower the citizenry to exercise their constitutional right to freedom of expression in Nigeria.

We believe, at the United Nations, that peace and security can be built through legal instruments that ensure transparency and accountability in governance. Peace, security and development are, of course, the main goals of the United Nations. But these are no longer the exclusive responsibility of governments or intergovernmental organisations. The governed now have a responsibility as stakeholders and partners and should therefore participate more effectively in how they are governed.

The observance of World Press Freedom Day is not just for journalists and media professionals, it is at the heart of the interests of all citizens. The United Nations support the development and expansion of 'information age' and recognises the fact the world cannot overlook the challenges of an 'information society', particularly that of access to information. The theme of this year's observance, however, highlights the dangers of reporting conflicts, it stresses the need to protect the rights of the journalists who cover conflicts in all parts of the world. It stresses the need to defend the freedom of the press and ensure that those who commit crimes against journalists are brought to book.

Violence against media practitioners has increased in recent years. Everyday on the planet, hundreds of journalists and communications professionals are detained, harassed or killed. In 1998 alone, 20 journalists were killed and no fewer than 500 had been killed in the past 10 years. In a majority of these cases, the killers were still at large and had not been brought to trial.

I would like to acknowledge the foresight of Media Rights Agenda for putting together a draft legislation on Freedom of Information in Nigeria and for realising quite early that a national law to provide access to government-held information would be part of the process of creating public awareness about participatory governance at this period of Nigeria's nascent democracy. That draft legislation is the key material for today's working sessions and I hope that participants have carefully appraised the contents to facilitate their contributions to the deliberations.

At the end of the workshop, I should be happy to note the outcome of the deliberations and look forward to supporting the follow-up actions for the enactment of Freedom of Information Act in Nigeria.

For much of the first quarter of this year, the United Nations has been engrossed in campaigns and activities to promote a new millennium action plan for global development in the 21st Century. Secretary-General Kofi Annan, in a 58-page report presented to the peoples of the world on Monday, 3 April in New York, talked about the new role of the United Nations. The Secretary-General's report takes a broader and longer-term view of the state of the world and the new challenges it poses for the world body.

Group Reports

Working Group A

- Theme:** How to ensure compliance in the enforcement of the Freedom of Information Act
- Chair:** **Edwin Baiye**, Chairman, Editorial Board, *Daily Times* newspapers
- Rapporteur:** **Samson Bako**, Publications Officer Constitutional Rights Project.
- Question posed:** * Given the attitude of some Nigerians, who disregard judicial pronouncements, how can the Freedom of Information Act be enforced and sustained?

Summary of Discussions

The group recognised that there is the problem of attempts to obstruct justice and frustrate investigation by certain categories of citizens in the country. It also agreed that others are contemptuous of judicial pronouncements and attributed all of these to the absence of an effective system for the administration of justice in Nigeria.

The group, therefore, suggested that for the Freedom of Information Act to be successfully enforced, all enforcement procedures must be clearly spelt out through training and re-training programmes for law enforcement officials.

The group observed that the long years during which law enforcement officers operated under the military has eroded some of the basic operational rules which need to be reinforced before they can understand their roles, as the Freedom of Information Act may raise issues that will challenge the National Security directives.

To ensure that there are as little grey areas as possible, the group requested that all matters of enforcement be tried under prerogative orders such as the order of mandamus.

Worried by the possibility of long drawn legal tussles over denial of access to information the group requested that an office of the ombudsman be created as a short cut for redressing the violations. This office, it believes, is very vital irrespective of what it may cost.

The group argued that the cost implication of secrecy is greater than that of running an open government that can lead to a stable democratic culture and viable economy.

The group also asked for the provision of maximum penalty for any one involved in the alteration or destruction of documents that should be made available to the public.

The group expects that every law that will impede the enforcement of the Freedom of Information Act should immediately be repealed and even suggested a provision that

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should read thus: “Any law that runs counter to the provision of the Freedom of Information Act, shall, to the extent of its inconsistency, be a nullity.”

Working Group B

- Theme:** Role of the Legislative aides in the enactment of the Freedom of Information Act.
- Chair:** **Sylvester Odion-Akhaine**, Executive Director of Centre for Constitutionalism and Domilitarisation
- Rapporteur:** **Adebayo Aromi**, Chief Executive Officer of Media Perfection
- Question posed:** * What role should legislative aides play in the run-up to and post-enactment of the Bill?

Summary of Discussions

The first issue the group had to contend with was the debate over the relevance of the issues of the legislative aides in the run-up to the enactment of the Bill and even after the Bill has been passed into law. The argument is that they have nothing to contribute to the enactment of the Bill so that they should not be factored in for training or special consideration.

Following intense debate on the issue, the group decided that the Bill, being a federal Bill that will affect the conduct of governance for all Nigerians, it requires that as many people as possible should be fully aware of the provisions and the importance of the Bill to the society.

The group asserted that the legislative aides are essential to the work of the National Assembly and, therefore, should be open to training about every matter that is presented before the National Assembly, including the Freedom of Information Bill.

In view of their close relationship to the legislators, the group believe that the aides who are liaison officers between the law makers and their constituencies, can be turned into pressure groups by lobbyists and other Nigerians with Bills in the Assembly.

The group also expects that the legislative aides can be used in inter-legislative lobbying in the process of enacting the Freedom of Information Bill and asked that occasional orientation programmes be designed to equip them for the roles assigned to them.

To achieve a pool of result oriented legislative aides, the groups suggested that the mode employment to the National Assembly should be depersonalised.

The group believes that by such mode of recruitment, the best materials in terms of merit and role performance would be attracted to Nigeria’s foremost political institutions.

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The group also recommended training on issues of democracy and good governance as well as relating to the media and the public to enable them speak in tune with the legislators they work with.

The group noted that by collaborating with some international organisations, local NGOs, private sector, media centres, the media and government, a lot of resources can be raised to organise a training that will not only help in improving the understanding of Freedom of Information issues but having an effective legislative administration of the National Assembly.

Working Group C

- Theme:** The role of the Judiciary in a Freedom of Information regime.
- Chair:** **Professor Ameze Guobadia**, Director of Studies at the Nigerian Institute of Advance Legal Studies, UNILAG, Lagos
- Rapporteur:** **Osaro Odemwingie**, Publications Officers of Media Rights Agenda
- Question posed:** * How can the Judiciary be made relevant in the implementation of the Freedom of Information regime

Summary of Discussions

In answering the thematic question on the role of the judiciary, the group looked at a lot of other issues concerning the judiciary that may hamper its active participation in the implementation of the Freedom of Information Act. They considered the level of awareness among judicial officers of the issues that are involved in making information more freely available to the citizens.

The group also looked at the slow pace of adjudication of matters in the court and examined the need for a special court for the trial of violations of the Act. The group also considered specifying a time limit for the adjudication of matters before the court on denial of access to Freedom of Information so as to avoid the abuse of the processes of court through series of adjournment which may lead to undue delay in the suits that may arise.

After due deliberations on all these issues, the group resolved that there cannot be special courts established for the adjudication of matters involving denial of access to information.

Although, the group weighed the cost implication, the process of and the feasibility of establishing a special court, which it considered might also be contentious, it decided that it is against the provisions of the constitution, especially in a democracy, to establish courts for any offence no matter how grave it might be.

The group expressed its fear that with the normal procedure of court, the information being

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requested for which may be time bound, may be of no value at the time the case might have been decided years later.

The group believed that discouraging such abuse of the judicial process which at the end of the day may rob the information of its value, a realistic time limit should be set within which a matter can be heard and judgment given.

The group asked that the concept National Security should be properly explained and given a limited definition in order to avoid a situation where information that would ordinarily have been given out to satisfy public interest being classified and restricted by the tag of National Security.

In recognition of the vital role of training for judicial officers who require a deep understanding of the details of the Act, the group recommended the need to liaise and collaborate with the National Judicial Institute for training of personnel and provision of resource materials

The group agreed that the training could help promote a positive attitude among judicial officers towards the Act as the judiciary, when fully empowered, is expected to play a key role in the success of the Act.

The group recommended that the judiciary must be financially independent to ensure that the judges have a very dispassionate, free and fair assessment of issues regarding the violations of the Act.

Working Group D

- Theme:** Design an advocacy programme that will help the enactment of the Freedom of Information Bill in the Senate
- Chair:** **Ayo Olukotun**, Lecturer at the Lagos State University, Lagos
- Rapporteur:** **Maxwell Kadiri**, Legal Officer at Media Rights Agenda
- Question posed:** * What form of advocacy programme will ensure that the Freedom of Information Bill is well received at the Senate?

Summary of Discussions

The group was of the view that although its mandate is to map out strategies for advocacy in the Senate the Freedom of Information is for the good of everyone and that the general public should, therefore, be included in the drive for mass awareness on the provision of the Bill.

Pursuant to that agreement, the group suggested that there should be a consistent public enlightenment campaign in the run-up to the enactment, the enactment itself and post-

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enactment events such as implementation, denials and litigation arising from the enforcement of the Act.

According to the group, the best strategy for publicising the Bill is a multi-media approach, which will include all modern organs of mass communication but with an emphasis on radio, which is the most available, affordable and influential means of mass mobilisation. The group agreed that sponsorship drive should be initiated across the donor community and the private sector to support the publicity.

Reviewing the perception that the Bill is designed to give more power to the journalist, the group asked that this issue should be explained in detail at every forum possible, that the Bill is beneficial to all Nigerians who are interested in the sustenance of democracy and a government that is open, accountable and transparent.

The group also looked at the African society, which it said, has a tradition for hoarding information and suggested that an orientation process be started to change that attitude to reflect the dynamism of the world's culture of which Nigeria is a part.

The group gave specific assignment for the advocacy programme that will facilitate a broad-based support for the Bill in the Senate. They include:

- initiate regular meetings with the Senate Committee on Information as well as all the Senators at different times.
- provide resource materials on the Freedom of Information Bill to Senators
- create interviews and media appearance opportunities for members of the Senate Committee on Information.
- solicit support of credible and reliable Nigerians to interact with Senators on the Freedom of Information Bill.
- solicit the support of International Organisations, and other influential non-governmental groups to push for the passing of the Bill at the Senate.

The group also discussed the possibility of the publicity being carried out in as many local languages as possible for a maximum spread of the message across the country.

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Communiqué / Plan of Action

COMMUNIQUÉ

Participants at the Workshop on the Freedom of Information Act held in Lagos and organised by Media Rights Agenda (MRA), in collaboration with the United Nations Information Centre (UNIC) in Lagos, the United Nations Educational, Scientific and Cultural Organisation (UNESCO), and the Nigerian Television Authority (NTA) Channel 10, on World Press Freedom Day, May 3, 2000 to formulate a plan of action for the enactment of the Freedom of Information Act in Nigeria, agreed to the following:

1. That the Freedom of Information Act is for public good and therefore desirable.
2. That public understanding of the Freedom of Information Act is imperative and that multi-media approach should be adopted to publicize it.
3. That well-meaning Nigerians and credible professional groups among others should be involved in the process of enlightenment of the public on the need for the Freedom of Information Act.
4. That in order to enforce the Freedom of Information Act, the office of ombudsman should be instituted to monitor the implementation of the Act.
5. That judicial independence must be guaranteed for effective implementation of the Freedom of Information Act and in order to prevent foreseeable obstacles to the implementation, national security interests should be properly defined and given a limited interpretation.
6. That denial of access to information should attract judicial sanction while members of the public should take advantage of prerogative orders, such as the order of mandamus, to enforce their right of access to information.
7. That the Judiciary, including all categories of court officials, and the Legislature, including legislative aides, are important stakeholders in the law-making process and should have a broad knowledge of the Freedom of Information Act.
8. That training for the Judiciary and members of the Legislature, particularly legislative aides, with regard to the Freedom of Information Act is a necessity and should be supported by the United Nations and other international organisations as well as non-governmental organisations.
9. That the recruitment of legislative aides should be de-personalized to place emphasis on merit for role-performance with regard to Freedom of Information Act.
10. That the National Assembly should promptly enact the Freedom of Information

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Act as a legislative tool that would encourage transparency and accountability in governance and strengthen Nigeria's nascent democracy.

The motion for adoption of the communiqué was moved by Sam Ade Oyewole, Vice President of the United Nations Association of Nigeria, and seconded by Goodluck Obi, Coordinator-General of the Global Alert for Defence of Youth and the Less Privileged.

PLAN OF ACTION

Recommendations from the Strategy Sessions and Discussions

The strategy-working groups agreed that the Freedom of Information Act is a very relevant legal instrument that will ensure an open government thereby strengthening democracy and the development of Nigeria.

The strategy group suggested that the sponsors of the workshop should:

1. Initiate regular awareness generating meetings with members of the Senate to enable them appreciate the importance of the Bill as well as have a broad understanding of the issues.
2. Convene a meeting of stakeholders among civil society groups and professionals with Senators to demonstrate the benefits of the Bill to each group.
3. Collaborate with mass movement groups as a means of building grassroots and popular support for the Freedom of Information Bill.
4. Enlist the support of reputable Nigerians including credible public officers, as a core group to generate support for the Bill in the Senate in the run-up to the enactment of the Freedom of Information Act.
5. Employ a multi-media awareness drive in publicising the message of the Freedom of Information Bill to all geographical sections of the country.
6. Solicit the support of international organisations, diplomatic community, donor agencies and sympathetic groups and individuals to give material as well as financial support to the cause of the enactment of the Freedom of Information Bill.
7. Involve the National Judicial Commission and other relevant bodies for the training of judicial offices and legislative aides in the run-up to the enactment of the Freedom of Information Bill.
8. Seek the support of the National Assembly for the repeal of all laws that may hamper the effective administration of the Freedom of Information Act.

Other Advocacy Efforts: Meetings With House Members

Other Advocacy Efforts

The campaign efforts my Media Rights Agenda and its collaborating organizations for the enactment of a Freedom of Information in Nigeria has successfully put the issues involved on the front burner of public discourse.

On its part, the National Assembly appears to have been effectively sensitized on the merits the imperatives for the enactment of the Freedom of Information Act going by a commitment made by the deputy speaker of the House of Representatives, Prince Chibudom Nwuche, that the Bill will be passed by the House in the shortest time possible.

In the course of campaigning for the enactment of the Freedom of Information Bill, Media Rights Agenda as well as other like-minded organizations have organized a series of activities, including formal and informal meetings with members of the National Assembly, a seminar for journalists on Freedom of Information in Nigeria and a World Press Freedom Day workshop on the Freedom of Information Act in Nigeria.

In addition, MRA personnel have held series of formal and informal meetings with representatives of other non-government organizations and associations, journalists and editors, as well as other individuals and organizations to solicit their support and assistance in ensuring the passage of the Bill. Some of the advocacy activities held so far are as follows:

Meeting with Members of the House of Representatives

On December 1, 1999, a delegation from Media Rights Agenda met formally in Abuja with members of the House of Representatives, led by the Acting Speaker, Honourable Chibudom Nwuche, to solicit their support for the Freedom of Information Bill.

MRA's delegation, led by its Executive Director, Mr. Edetaen Ojo, also comprised Executive committee member, Miss Josephine Izuagie; and Legal Officer, Mr. Maxwell Kadiri.

They were received by the Acting Speaker and scores of other members of the House of Representatives, including Honourable Tony Anyanwu and Honourable Nduka Irabor (two of the three sponsors of the Bill), Honourable Okechukwu Chidi Duru, Honourable Almona Isei, Honourable Mao Arukwe Ohuabuwa, and Honourable Onazi Samuel Obande.

Mr. Ojo told the Speaker and other members of the House represent at the meeting that they were in Abuja to solicit the support of members of the House for the enactment of the Freedom of Information Bill, which was already before the House.

He said Media Rights Agenda and its other partners were keenly interested in the Bill as they believe that it will aid transparency and accountability in government as well as ensure public participation in the political process.

Other Advocacy Efforts: Meetings With House Members

Mr. Ojo noted that the Executive arm of the Federal Government had repeatedly stated its commitment to these principles and the passage of the Bill would facilitate the actualisation of this commitment.

He said the idea of a Freedom of Information act appeared to enjoy popular support although there had been a little apprehension expressed about what use the media would put such an Act to.

But Mr. Ojo argued that such apprehension was unjustified as the Freedom of Information Act was not primarily for the media, but for the society at large, especially at a period when the Government was talking about transparency and accountability, anti-corruption and political participation.

Besides, he said, studies worldwide had shown that the parliaments in different countries across the globe, which have freedom of information legislation, put them to use far more than the media as it provides them with an additional avenue for getting information about the activities of the Executive arm of government.

He presented the Speaker with documents outlining the international guiding principles of freedom of information legislation and MRA's interest in the Bill.

Responding, Honourable Nwuche said the Bill could not have come at a more timely moment and promised that it would be passed into law within the shortest time possible.

He said the House was committed to promoting transparency and accountability in governance and that although members of the House of Representatives already have unlimited access to government held information, they want to make this benefit available to the generality of Nigerians, whose right it is to also enjoy the prerogative of access to government held information to enable them play rightful role in upholding and entrenching democratic principles.

Prior to meeting with the Acting Speaker of the House of Representatives, Media Rights Agenda had written to all the 359 members of the House to secure their support for the Bill.

Several officers and staff members of MRA have also since June held separate meetings with numerous members of the House to solicit their support for the Bill. In October, a delegation made up MRA's Publications Officer, Mr. Osaro Odemwingie, and Dr. Jon Lunn, Africa Researcher at ARTICLE 19, MRA's international partner in London, met with several members of the Assembly during a two-day visit to the National Assembly to also garner support for the Bill.

Among the senators met by Dr. Lunn and Mr. Odemwingie were members of the Senate Committee on Information led by its chairman, Senator Ibrahim Mantu. Among members of the House were Engineer Bala Ka'Oje and Dr. Shehu A. Garba who is the House Committee Chairman on Education.

Other Advocacy Efforts: Reception for Legislators

At the meeting, the Senate Committee members expressed support for the Bill, but asked the delegation to take it upon itself to reorient the press to be more objective and mature in its reports as they believe that by doing so the press stood a better chance of discharging its constitutional responsibilities.

Reception for Legislators

As part of strategies aimed at sustaining the harmonious relationship between members of the House of Representatives and MRA personnel and in order to reach out to other legislators who may still be undecided on the need for a freedom of information regime in Nigeria, Media Rights Agenda organized a reception for members of the House of Representatives on February 16, 2000.

The reception was held at the Abuja Sheraton Hotel and Towers and was attended by about 250 members of the house including Honourable Uche Maduako, Chairman House of Committee on Information; Honourable Jerry Ugokwe and Honourable Anyanwu, two leading sponsors of the Bill.

The event lasted for about two hours and provided a highly interactive platform for guests and MRA personnel to discuss issues relevant to the Bill and its enactment. Representatives of Media Rights Agenda used the occasion to further explain the principles behind the Freedom of Information Bill and to impress on the legislators the need for a speedy passage of the Bill.

In a speech at the occasion, Hon. Maduako pledged the Information Committee's commitment in ensuring transparency and accountability in governance and its members' belief in the indispensability of freedom of access to government information in achieving these objectives. He assured the gathering that members of the House were favourably disposed towards the Bill.

Honourable Anyanwu also made a commitment to continue to work towards the enactment of the Bill, saying that his commitment was informed by a personal desire to promote accountability and a belief that the media is best placed to ensure this.

Other speakers at the event agreed that accountability in governance could not be guaranteed in the absence of a freedom of information regime and therefore pledge unflinching support for the enactment of the Bill.

Thereafter, the legislators and MRA representatives present broke into small informal groups where further discussions on issues in the Bill went on as the reception progressed.

Earlier in a welcome address MRA's Director of Legal Services, Mr. Tunde Fagbohunlu, said Media Rights Agenda was proud of the working relationship it had established with the legislators on the project. He traced the Bill to an effort which began in 1994 between the Civil Liberties Organisation (CLO), Nigeria Union of Journalists (NUJ) and MRA and expressed the hope that the Bill will eventually get the endorsement of the House.

Other representatives of Media Rights Agenda present at the event were Executive

Other Advocacy Efforts: Seminar on FOI Act In Nigeria

Committee members, Miss Izuagie and Mr. Austin Agbongsuremi; Mr. Kadiri and Miss Ademola Adeola, Legal Officers, and Mr. Odemwingie, Publications Officer.

Seminar on the Freedom of Information Act in Nigeria

The Seminar on the Freedom of Information Act in Nigeria was organized by the Media For Democracy (MFD) project, comprising Media Rights Agenda (MRA), the Independent Journalism Centre (IJC), Journalists for Democratic Rights (JODER) and the International Press Centre (IPC) in conjunction with the Nigerian Union of Journalists organized. The Seminar was held from December 16 to 18, 1999 at the Gombe Jewel Hotel, Kaduna.

The central objective of the seminar was to facilitate a better understanding of the content of the Freedom of Information Bill by journalists who would be among the principal users and see4k, through them, to engender greater public awareness of the Bill and the relevant issues. It was also aimed at emphasizing the overall importance of the Bill to the civil society and how it could promote transparency, accountability and contribute to the overall development of the country.

The participants were mainly Journalists from print and electronic media houses across Nigeria. In all, twenty-two journalists attended the seminar which had eight sessions of paper presentation, lectures and group discussion. Treated topics/issues ranged from the theoretical, analytical to the professional. Erudite scholars, lawyers, journalists and member of the National House of Assembly facilitated the sessions.

A brief opening ceremony was held on the first day of the Seminar, December 16, 1999. It was chaired by the National Officer of Nigeria Union of Journalists, (national trustees, Zone A), Mr. Sylvester Madaki, supported the Honourable Anyanwu. Mr. Wale Adeoye, the Chair of JODER represented the MFD group, while Mr. Lanre Arogundade, Coordinator of the International Press Centre, Lagos, moderated the sessions.

The first working session of the seminar was on the *Freedom of Information Act: An International Review*. Mr. Kadiri, MRA's Legal Officer, led the discussion with the presentation of an incisive account of countries that had adopted the Freedom of Information legislation.

The second paper titled: *Economic Perspective and Benefit of Freedom of Information* was delivered by Honourable Tony Anyanwu. Honourable Anyanwu, noted that since the advantages of the Bill would not be for the journalists alone, it was important that the ordinary persons on the street should be aware of its exercise, understand it and be ready to abide by its provision. He therefore charged the media to sensitise the public about the bill and its inherent advantages. This according to him., would help to mount pressure on the National Assembly to work fast on the bill.

The third session focused on the *Media and Need for a Freedom of Information legislation*, and was facilitated by Mr. Ojo, MRA's Executive Director. He stressed that the principle of accountability and transparency in governance were fundamental to the growth

Other Advocacy Efforts: Seminar on FOI Act In Nigeria

of democracy and that these two principles were about openness and access to information, which he argued, could not be possible if citizens have no right of access to information held by the state on its agencies or, if no means exists for effectual use of the right to freedom of information.

According to him, openness has a great capacity to improve the quality of governance and builds citizens' confidence in development projects and other activities of the government.

Mr. Festus Okoye, the Executive Director of Human Rights Monitor, Kaduna led the discussion on the *Legal / Constitutional Perspective of a Freedom of Information Legislation*. Mr. Okoye conducted a critical examination of the Freedom of Information Bill and concluded that although the legislation succeeded in conferring a right of access to information on the people, it did not provide for how such information should be used.

Discussions on the topic, *Freedom of Information Act (FOI) as Working Tool for Journalists*, was led by Mr. Arogundade, who cautioned journalists to be socially responsible in using their right to access to information.

The second day of the seminar was conducted in working group sessions. The first group discussed *Possible Constraints of Information Act as a Working tool for the Media*, while the second group discussed *Possible constraints to Enactment of a Freedom of Information Act*.

At the end of the seminar, the following communique was issued by the participants:

A three-day National Seminar on the "Freedom of Information Act in Nigeria" was held at the Gombe Jewel Hotel, Kaduna from Wednesday, December 15 to Friday, December 17, 1999. The seminar held under the auspices of the Media for Democracy (MFD), a collaboration of Media Rights Agenda (MRA), the Independent Journalism Centre (IJC), and Journalists for Democratic Rights (JODER), with the Support of the European Union through the International Federation of Journalists (IFJ) in Brussels. The Seminar was attended by about 30 participants drawn from among journalists from print and electronic media establishments and various state councils of the Nigeria Union of Journalists (NUJ) in northern Nigeria and Lagos, as well as representatives of non-governmental organizations working on media issues and a member of the National Assembly.

Preamble

Erudite, professional and incisive papers were presented at the seminar. They include "Freedom of Information: An International Review", "Economic Perspectives/Benefits of Freedom of Information Legislation", "The Media and the Need for a Freedom of Information Legislation", "Freedom of Information Act as a Working Tool for the Media", "Legal/

Other Advocacy Efforts: Seminar on FOI Act In Nigeria

Constitutional Perspective of a Freedom of Information Legislation”, etc.

All the papers were exhaustively discussed by the participants who also added other dimensions on the presentations. After the exhaustive, intensive and critical examination of the papers presented, participants issued the following observations, recommendation and resolutions:

Observations

The participants commend the Media For Democracy group for organizing the seminar. Participants also commend members of the National Assembly, particularly the sponsors of the Freedom of Information Bill in the House of Representatives, for their interest and support so far for the Bill. The participants also note:

That following our colonial heritage and the long period of military rule, there has become entrenched in the conduct of government business in Nigeria, a culture of secrecy, which insulates governments and their actions from public scrutiny.

That there is hardly any law in Nigeria which permits access to official information, and that even where a law recognizes that members of the public have a role to play in achieving the purpose of that law, the mechanism for effective public participation are either absent or are so vague that they negate the principle of public participation.

President Olusegun Obasajo’s promise to run an open transparent administration and fight corruption, will remain a dream because accountability and transparency in government cannot be possible if the government’s books are not open to member of the public, including the media.

That the Code of Conduct for Ministers issues by President Obasanjo to members of his Cabinet as well as the Code of Conduct for Public Officers contained in the Fifth Schedule to the 1999 Constitution will be meaningless and unenforceable if citizens have no right of access to information held by the State or its agencies and if no mechanism exists for giving practical effect to the right of freedom of information.

That all over the world, a strong feature of a responsible and responsive government is its ability to enable the citizens and interested individuals to know the happenings in government and society and that information is not just a necessity, but an essential part of good government.

That when a government is open, it is possible for citizens and stakeholders to participate in the decision-making process, and that openness therefore has a great capacity to improve the quality of governance.

Other Advocacy Efforts: Seminar on FOI Act In Nigeria

Resolution

The Seminar resolved that:

- 1. Nigerians should put pressure on the National Assembly and the Federal Government to enact a Freedom of Information Act by asking legislators to support the Bill currently in the House of Representatives and prevailing on President Obasanjo to give his assent to the Bill when it comes to him for signature, as a mark of his administration's commitment to transparency and accountability in governance.*
- 2. The Nigerian Press has an important role to play in ensuring that the Freedom of Information Bill is passed into law by enlightening the government and members of the public on its relevance to the sustenance of the various democratic structures. The Press should also ensure the enactment of the Bill by focusing on the issues involved in order to generate the necessary groundswell of public opinion which will further pressurize members of the National Assembly into supporting the Bill and passing it into law.*
- 3. Members of the Executive arm of the Government should support the Bill as it also has direct benefits for them as well as the larger society, and is absolutely vital misappropriation of public funds and property is to be checked.*
- 4. The media has a responsibility to publicize the issue of a Freedom of Information Act, educate members of the public and ensure that it remains on the national discourse until it is passed into law.*
- 5. The House of Representatives and the Senate should pass the Bill without delay as it will protect the rights of their constituencies and make their job easier.*
- 6. The House of Representatives and the Senate should ensure that the exemptions contained in the Bill are clearly defined in order not to allow the ambiguity of such to be used to deny Nigerian access to information*
- 7. The Government should create an enabling environment for the implementation of the proposed Freedom of Information Act by repealing the Official Secrets Act and all other laws in the statute books that inhibit freedom of expression and freedom of speech. The Judiciary should also create a favourable environment for adjudication on cases pertaining to refusal to disclose information as stipulated in the proposed Freedom of information Act.*
- 8. The Constitution Review Committee should include the Freedom of Information Act in the proposed revised Constitution and ensure that its interpretation is clear and without any ambiguity.*

Other Advocacy Efforts: Media Advocacy

9. *When the Freedom of Information Bill is passed into law, the reading, viewing, and listening public, to which the media is accountable, will have higher expectations from the media. The proposed Act will, therefore, require a high sense of commitment and responsibility on the part of journalists who will be expected to check information thoroughly on the part of journalists who will be expected to check information thoroughly and endeavour to publish the truth for the public good. This would also require the journalist to avoid all forms of self-censorship as the Act will protect them and their sources from official reprisals.*

10. *In order for journalists to adequately utilize the Freedom of Information Act when it becomes a reality, media owners need to train and re-train their journalists to ensure that they specify the highest standards in ethical conduct and are adequately equipped professionally to meet the challenges of the profession.*

11. *The Nigerian Press Organization, comprising the Nigeria Union of Journalists (NUJ), the Nigerian Guild of Editors (NGE), and the Newspapers Proprietors Association of Nigeria (NPAN) should publicize and enforce the Code of Ethics of Journalists in order to ensure that the Freedom of Information Act, when it becomes law, is not abused and that journalists are able to meet the higher standards of accuracy and fairness which will be required of them.*

Media Advocacy

Apart from scores of articles on the Freedom of Information Bill that Media Rights Agenda has facilitated in many newspapers and magazines, there has also been an impressive use of electronics media to sensitise the Nigeria people on the efforts at ensuring the enactments of a Freedom of Information Bill and the underlying principles behind the Bill.

Some of the electronic media in which Media Rights Agenda's personnel, collaborating partners and guests have appeared to promote the Bill and explain its principles include the African Independent Television (AIT), Lagos and Abuja, in its Kakaki programme, a popular breakfast programme; Raypower 1 radio, MiNAJ broadcasting International Television, Nigerian Television Authority (NTA) Channel 10 in its Morning Ride programme, another breakfast programme; the Federal Radio Corporation of Nigeria in Kaduna; NTA Kaduna; Murhi International Television (MiTV), Lagos; Radio Lagos, Degue Broadcasting Network (DBN) television, Channels Television, etc.

Among Media Rights Agenda personnel that have appeared on some of the programmes are Mr. Ojo and Mr. Tive Denedo, Mr. Fagbohunlu, Mr. Odemwingie and Mr. Kadiri. Similarly, several members of the House of Representatives including Honourable Ugokwe and Honourable Anyanwu, have also been guests at some of the media programmes to articulate its principles.

Appendix 1

(i) **The Freedom of Information Bill**

Extraordinary

Federal Republic of Nigeria Official Gazette

No. 91
Vol. 86

Lagos – 8th December, 1999

Government Notice No. 200

The following is published as Supplement to this Gazette:

S.I. No.	Short Title
Page	
HB 22	A Bill for an Act to make 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 from Adverse consequences for Disclosing certain kinds of Official Information without Authorization and Establish Procedures for the Achievement of those purposes; and Related Purposes hereof
C277-C298	

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FREEDOM OF INFORMATION BILL, 1999
ARRANGEMENT OF CLAUSES

CLAUSES:

1. Short Title
2. Interpretation
3. Right of access to records
4. Information about government institution
5. Request for access to records
6. Notice where access to records are requested
7. Transfer of request
8. Extension of time limit
9. Where access is refused
10. Fees etc, and action for waiver
11. Destruction or falsification of records
12. Access to records
13. Where information is not available in discrete form
14. Internal affairs and defence
15. Law enforcement and investigations
16. Economic interest of the Federal Republic of Nigeria
17. Personal information
18. Third party information
19. Advice
20. Legal practitioner/client privilege
21. Course or Research materials
22. Severability
23. Judicial review
24. Refusal by head of government and or public institution to disclose records
25. Hearing in a summary way
26. Access to records by court

C278

27. Court to take precautions against disclosing records
28. Burden of proof
29. Order to disclose records
30. Exempted material
31. Protection of public officers, Cap. 77 LFN 1990; Cap. 245 LFN 1990
And Cap. 335 LFN 1990
32. Document under security classification Cap. 335 LFN, 1990.
33. Submission of records
34. Complementary procedures.

1 control of any public body or private bodies relating to matters of public
2 interest and includes-

3 (a) any writing on any material;
4 (b) any information recorded or stored on other devices; and any material
5 subsequently derived from information so recorded or stored;
6 (c) any label, marking, or other writing that identifies or describes
7 anything of which it forms part, or to which it is attached by any means;
8 (d) any book, card, form, map, plan, graph, or drawing;
9 (e) any photograph, film, negative, microfilm, tape, or other device in
10 which one or more visual images are embodied so as to be capable (with or
11 without the aid of some other equipment) of being reproduced;

12 "Minister" means the Minister charged with responsibility for
13 information.

14 "Person" includes a corporate sole, and also a body of persons,
15 whether corporate or incorporate; acting individually or as a group.

16 "Personal information" means any official information held about all
17 identifiable person; but does not include information that bears on the
18 public duties of public employees and officials; and

19 "Public Officer" means a person who exercises or formerly exercised, for
20 the purpose of the government, the functions of any office or employment
21 under the State.

Right of
access to
records.

22 3.-(1) Subject to the provisions of this Act but notwithstanding anything
23 contained in any other Act, Edict, Law, or Regulation, every person whether or
24 not that person is a citizen of the Federal Republic of Nigeria, has a legally
25 enforceable right to, and shall, on request, be given access to any record under
26 the control of a government or public institution.

27 (2) An applicant herein need not demonstrate specific interest in the
28 information being requested for.

29 (3) For the purpose of this Act, any record requested under this Act that
30 does not exist but can, subject to such limitations as may be prescribed by

-
1. regulation, be produced from a machine, readable record under the control of a
2. government and or public institution using computer hardware and software
3. normally used by the government and or public institution shall be deemed to
4. be a record under the control of the government and/or public institution.
5. 4.-(1) The head of every government and or public institution to which
6. this Act applies shall cause to be published in the Federal *Gazette* at least once
7. every year-
8. (a) a description of the organisation and responsibilities of the
9. institution including details of programmes and functions of each division,
10. branch and department of the institution;
11. (b) a description of all classes of records under the control of the
12. institution in sufficient detail to facilitate the exercise of the right of access
13. under this Act;
14. (c) a description of all manuals used by employees of the institution in
15. administering or carrying out any of the programmes or activities of the
16. institutions;
17. (d) a description of documents containing final opinions including
18. concurring and dissenting opinions as well as orders made in the
19. adjudication of cases;
20. (e) a description of documents containing substantive rules of the
21. institution;
22. (f) a description of documents containing statements and interpretations
23. of policy which have been adopted by the institution;
24. (g) a description of documents containing final planning policies,
25. recommendations, and decisions;
26. (h) a description of documents containing factual reports, inspection
27. reports, and studies whether prepared by or for the institution;
28. (i) a description of documents containing information relating to the
29. receipt or expenditure of public or other funds of the institution;
30. (j) a description of documents containing the names, salaries, titles, and

Information
about
government
Institution.

-
- 1 dates of employment of all employees and officers of the institution;
- 2 (k) a description of documents containing opinions concerning the rights
- 3 of the State, the public, a sub-division of the State or a local government of
- 4 any private person;
- 5 (l) a description of documents containing the name of every official and
- 6 the final records of voting in all proceedings of the institution;
- 7 (m) a description of files containing applications for any contract, permit,
- 8 grants, or agreement.
- 9 (n) a list of reports, documents, studies, or publications prepared by
- 10 independent consultants or other independent contractors for the
- 11 institution;
- 12 (o) a description of materials containing information relating to any grant
- 13 or contract made by or between the institution and another government and/
- 14 or public institution or private organization; and
- 15 (p) the title and address of the appropriate officers or employees of the
- 16 institution to whom requests for access to records under this Act should be
- 17 sent, provided and that the failure of any government and/or public institution to
- 18 publish any information required to be published under this sub-section
- 19 shall not prejudicially affect the right of access to public records and
- 20 information in the custody of such government and/or public institution as
- 21 provided for under this Act.
- 22 (2) Any person entitled to the right of access conferred by this Act shall have
- 23 the right to institute proceedings in a Court to compel the head of any government
- 24 institution and/or public body to comply with the provisions of this section;
- 25 (3) The government and or public institutions to which this Act applies are all
- 26 authorities whether executive, legislative or judicial agencies, ministries, and extra-
- 27 ministerial departments of the Federal Government and of all State and local
- 28 governments, together with all corporations established by law and all companies
- 29 in which a Federal, State or Local Government authority has a controlling interest
- 30 and also private companies performing public functions.

<p>1 5. A request for access to a record under this Act shall be made in writing</p> <p>2 to the government and or public institution that has control of the record and</p> <p>3 shall provide sufficient detail to enable an experienced employee of the institution</p> <p>4 with a reasonable effort to identify the record.</p>	<p>Request for access to records.</p>
<p>5 6. Where access to a record is requested under this Act, the head of the</p> <p>6 government and/or public institution to which the request is made shall, subject</p> <p>7 to Sections 7, 8, and 10, within seven days after the request is received.</p> <p>8 (a) give written notice to the person who made the request as to whether</p> <p>9 or not access to the record or a part thereof will be given; and</p> <p>10 (b) if access is to be given, give the person who made the request</p> <p>11 access to the record or part thereof.</p>	<p>Notice where Access to records are requested.</p>
<p>12 7.-(1) Where a government and or public institution receives a request</p> <p>13 for access to a record under this Act, and the head of the institution considers</p> <p>14 that another government and/or public institution has a greater interest in the</p> <p>15 record, the head of the institution to which the request is made may, subject to</p> <p>16 such conditions as may be prescribed by regulation, within three days after the</p> <p>17 request is received, transfer the request, and if necessary, the record to the</p> <p>18 other government and/or public institution, in which case the head of the</p> <p>19 institution transferring the request shall give written notice of the transfer to</p> <p>20 the persons who made the request, which notice shall contain a statement</p> <p>21 informing the person who made the request that such decision to transfer the</p> <p>22 request can be reviewed by a Court.</p> <p>23 (2) For the purpose of Section 6, where a request is transferred under sub-</p> <p>24 section (1) of this section, the request shall be deemed to have been made to the</p> <p>25 government and or public institution to which it was transferred on the day the</p> <p>26 government and/or public institution received it.</p> <p>27 (3) For the purpose of sub-section (1), a government and/or public</p> <p>28 institution has a greater interest in a record if-</p> <p>29 (a) the record was originally produced in or for the institution; or</p> <p>30 (b) in the case of a record not originally produced in or for a government</p> <p>and or public institution, the institution was the first government and/or</p>	<p>Transfer of request.</p>

- 1 public institution to receive the record or a copy thereof.
- Extension of
Time limits. 2 8.-(1) The head of a government and or public institution may extend the
3 time limit set out in Section 7 or sub-section 7 (1) in respect of a request under
this
4 Act for a reasonable period of time, and in any event not exceeding seven days,
5 if-
- 6 (a) the request is for a larger number of records or necessitates a research
7 through a large number of records and meeting the original time limit would
8 unreasonably interfere with the operations of the government and/or public
9 institutions; or
- 10 (b) consultations are necessary to comply with the request that cannot
11 reasonably be completed within the original time limit,
12 by giving notice of the extension stating whether the extension falls under
13 the circumstances set out in paragraph (a) or (b), which notice shall contain
14 a statement that the person has a right to have the decision to extend the
15 time limit reviewed by a Court.
- Where access
Is refused. 16 9.-(1) Where the head of a government and or public institution refuses to
17 give access to a record requested under this Act, or a part thereof, the head of the
18 institution shall state in the notice given under section 6 (a) the specific
provision
19 of this Act on which the refusal was based and shall state in the notice that the
20 person who made the request has a right to have the decision refusing access
21 reviewed by a Court.
- 22 (2) Any notification of denial of any request for records shall set forth the
23 names of each person responsible for the denial of such request.
- 24 (3) The head of a government and or public institution shall be required to
25 indicate under sub-section (1) whether a record exists.
- 26 (4) Where the head of a government and or public institution fails to give
27 access to record requested under this Act or part thereof within the time limits
28 set out in this Act, the head of the institution shall, for the purposes of this Act,
29 be deemed to have refused to give access.

1	10.-(1) A government or public regulations shall provide that-	Fees etc, and
2	(a) fees shall be limited to reasonable standard charges for document	Action for
3	search, duplication, review and transcription where necessary, when	waivers.
4	records are requested for commercial use;	
5	(b) fees shall be limited to reasonable standard charges for document	
6	search, duplication, review and transcription where necessary, when	
7	records are not sought for commercial use and the request is made by an	
8	educational or noncommercial, scientific research, or a representative of	
9	the news media; and	
10	(c) for any request not described in (a) or (b) fees shall be limited to	
11	reasonable standard charges for document search, duplication, review	
12	and transcription where necessary.	
13	(2) Document shall be furnished without any charge or at a charge reduced	
14	below the fees established under Section 11 (1) (b) if disclosure of the	
15	information is in the public interest because it is likely to contribute significantly	
16	to public understanding of the operations or activities of the government and	
17	is not operations or activities of the government and is not primarily in the	
18	commercial interest of the requester.	
19	(3) Fees schedules shall provide for the recovery of only the direct costs	
20	of search, duplication, reproduction, review or transcription where the record	
21	being requested under this Act is produced as a result of the request from a	
22	machine readable record under the control of a government and/or public	
23	institution.	
24	(4) Review costs shall include only direct costs incurred during the	
25	initial examination of a document for the purposes of determining whether the	
26	documents must be disclosed under this section and for the purpose of	
27	withholding any portions exempt from disclosure under this Act.	
28	(5) Review costs may not include any costs incurred in resolving issues	
29	of law or policy that may be raised in the course of processing a request under	
30	this section.	

-
- 1 (6) No fee may be charged by any government or public institution
2. (a) if the costs of routine collection and processing of the fee are likely to
3. equal or exceed the cost for the fee; or
4. (b) for any request described in Section 10(1) (a) (b) or (c) for the first two
5. hours of search time or for the first one hundred pages of publications,
6. (7) No government or public institution may request advance payment of any
7. fees unless the requester has previously failed to pay fees in a timely fashion.
8. (8) Nothing in this Act shall supercede fees chargeable under a statute
9. specifically providing for setting the level of fees for particular types of records.
10. (9) In any action by a requester regarding the waiver of fees under this
11. section, the court shall determine the matter de novo, provided that court's Fees
12. review of the matter shall be limited to the record before the Government of Public
13. Institution.
- Destruction or falsification of record.
14. 11. It shall be a criminal offence punishable on conviction to a minimum of 3 years
15. imprisonment for any officer or the head of any government and/or public institution
16. to which this Act applies who tries to either willfully destroy any records kept in
17. in his/her custody or attempts to doctor or otherwise alter same before they are
18. released to any person, entity or community requesting for it.
- Access records
19. 12.-(1) Access to a record shall be given to the person requesting such
20. access in one or more of the following forms:
21. (a) a reasonable opportunity to inspect or copy the record;
22. (b) in the case of a record that is an article or thing from which sounds or
23. visual images are capable of being reproduced, the making of arrangements
24. for the person to hear or view these sounds or visual images;
25. (c) in the case of a document by which words are recorded in a manner in
26. which they are capable of being reproduced in the form of sound or which
27. words are contained in the form of shorthand writing or in codified form,
28. provision by the government and/or public institution of a written transcript
29. of the words recorded or contained in the document.
30. (2) Subject to sub-section (3) of this section, where the person requesting

1 access has requested such access in a particular form, access shall be given in
2 that form.

3 (3) If the giving of access in the form requested by the person-
4 (a) would interfere unreasonably with the operations of the government
5 and or public institution, or the performance by any officer or employee
6 thereof of his functions,
7 (b) would be detrimental to the preservation of the record or, having
8 regard to the physical nature of the record, would not be appropriate; or
9 (c) would, but for the provisions of this Act, involve an infringement of
10 copyright (other than copyright owned by the Federal Republic of Nigeria,
11 a state, or a local government, or a government and or public institution
12 thereof) subsisting in matter contained in the record being matter that
13 does not relate to the affairs of a government and/or public institution,
14 access in that form may be refused and access shall be given in another
15 form.

16 (4) Subject to sub-section 12 (1), where a person requests access to a
17 record in a particular form and, for a reason specified in sub-section (3) hereof,
18 access in that form is refused but access is given in another form, the person
19 requesting access shall not be requested pay a charge in respect of the
20 provision of access to the record that is greater than the charge that he would
21 have been required to pay if access had been given in the form requested.

22 13. Where a request is made to a government and or public institution and-
23 (a) it appears from the request that the desire of the person requesting
24 access is for information that is not available in discrete form in documents
25 of the government and/or public institution, and
26 (b) the government and or public institution could produce a written
27 document containing the information in discrete form by-
28 (i) the use of a computer or of other equipment that is ordinarily
29 available to the government and/or public institution for retrieving or
30 collating stored information, or

Where
information
is not
available in
distinct form.

	1	(ii) the making of a transcript from a sound recording held in the
	2	government and or public institution,
	3	the government and/or public institution shall deal with the request as if it
	4	were a request for access to a written document so produced and
		containing
	5	that information, and, for that purpose, this Act applies as if the
		government
	6	and or public institution had such a document in its possession.
International	7	14.-(1) The head of a government and or public institution may refuse to
affairs and	8	disclose any record requested under this Act that contains information the
defence.	9	disclosure of which may be injurious to the conduct of international affairs and the
	10	defence of the Federal Republic of Nigeria.
	11	(2) However, such right to refuse the disclosure of any record requested by
	12	an applicant ceases to exist where the interest of the public in having the said
	13	record being made available to them outweighs whatever injury disclosing such
	14	records would have to the aforementioned interests.
Law	15	15.-(1) The head of a government and or public institution may refuse to
enforcement	16	disclose any record requested under this Act that contains;
and	17	(a) records compiled by any government and/or public institution for
investigations.	18	administrative enforcement proceedings and any law enforcement or
	19	correctional agency for law enforcement purposes or for internal matters of a
	20	government and/or public institution, but only to the extent that disclosure
	21	would:
	22	(i) interfere with pending or actual and reasonably contemplated law
	23	enforcement proceedings conducted by any law enforcement or correctional
	24	agency;
	25	(ii) interfere with pending administrative enforcement proceedings
	26	conducted by any government and/or public institution;
	27	(iii) deprive a person of a fair trial or an impartial hearing;
	28	(iv) unavoidably disclose the identity of a confidential source
	29	(v) constitute an invasion of a personal privacy under section 19 of this
	30	Act, however, where the interest of the public would be better served by

1 having such record being made available, this exemption to disclosure
2 shall not apply.

3 (vii) obstruct an ongoing criminal investigation.

4 (b) information the disclosure of which could reasonably be expected to
5 be injurious to the security of penal institutions.

6 (2) The head of a government and or public institution may refuse to
7 disclose any record requested under this Act that contains information that
8 could reasonable be expected to facilitate the commission of an offence.

9 (3) For the purposes of paragraph (1) (a), "Investigation" means an
10 investigation that-

11 (a) pertains to the administration or enforcement of any enactment.

12 (b) is authorized by or pursuant to any enactment.

13 16. The head of a government and or public institution may refuse to
14 disclose any record requested under this Act that contains;

15 (a) trade secret or financial, commercial, scientific or technical information
16 that belongs to the government of the Federal Republic of Nigeria or any

17 State or Local Government thereof, and has substantial economic value or
18 is likely to have substantial value;

19 (b) information the disclose of which could reasonably be expected
20 to prejudice the competitive position of a government and/or public
21 institution;

22 (c) scientific or technical information obtained through research by an
23 officer or employee of a government and/or public institution, the disclosure
24 of which could reasonably be expected to deprive the officer or employee
25 of priority of publication; or

26 (d) information the disclosure of which could reasonably be expected to
27 be materially injurious to the financial interest of the Federal Republic of
28 Nigeria, or any State or Local Government thereof, or the ability of the
29 Federal Government thereof, or the ability of the Federal Government, a
30 State or Local Government to manage its economy, or could reasonably be

Economic
interest of
the Federal
Republic of
Nigeria

-
- 1 expected to result in an undue benefit to any person including but not
limited
- 2 to the following information-
- 3 (I) the currency, coinage or legal tender of the Federal Republic of
Nigeria,
- 4 (ii) a contemplated change in the rate of banks interest or in government
5 borrowing;
- 6 (iii) a contemplated change in tariff rates, taxes, duties or any other
7 revenue source,
- 8 (iv) a contemplated change in the conditions of operation of financial
9 institutions; and
- 10 (v) a contemplated sale or purchase of securities or of foreign or Nigerian
11 currency.
- Personal 12 17.-(1) Subject to subsection (2), the head of a government and or public
Information. 13 institution shall refuse to disclose any record requested under this Act that contains
14 personal information. Information exempted under this subsection shall include:
- 15 (I) files and personal information maintained with respect to clients,
16 patients, residents, students, or other individuals receiving social, medical,
17 educational, vocational, financial, supervisory or custodial care or services
18 directly or indirectly from federal agencies or government and or public
19 institutions:
- 20 (ii) personnel files and personal information maintained with respect to
21 employees, appointees or elected officials of any government and/or public
22 institution or applicants for such positions;
- 23 (iii) files and personal information maintained with respect to any
24 applicant, registrant or licensee by any government and/or public institution
25 cooperating with or engaged in professional or occupational registration,
26 licensure or discipline;
- 27 (iv) information required of any tax payer in connection with the
28 assessment or collection of any tax unless disclosure is otherwise requested
29 by state statute; and
- 30 (v) information revealing the identity of persons who file complaints

1 with or provide information to administrative, investigative, law
2 enforcement or penal agencies.

3 (2) The head of a government and or public institution may disclose any
4 record requested under this Act that contains personal information if-

5 (a) the individual to whom it relates consents to the disclosure;

6 (b) the information is publicly available.

7 (3) Where disclosure of any information referred to in this section would
8 be in the public interest, and if the public interest in the disclosure of such
9 information clearly outweighs the protection of the privacy of the individual to
10 who such information relates, the head of the government and/or public
11 institution to whom a request for disclosure is made shall disclose such
12 information.

13 18.-(1) Subject to this section, the head of a government and/or public
14 institution shall refuse to disclose any record requested under this Act that
15 contains.

Third party
information.

16 (a) Trade secrets and commercial or financial information obtained from
17 a person or business where such trade secrets or information are proprietary,
18 privileged or confidential, or where disclosure of such trade secrets or
19 information may cause competitive harm. Nothing contained in this
20 subsection shall be construed to prevent a person or business from
21 consenting to disclosure.

22 (b) information the disclosure of which could reasonably be expected to
23 interfere with the contractual or other negotiations of a third party.

24 (c) proposal and bids for any contract, grants, or agreement, including
25 information which if it were disclosed would frustrate procurement or give
26 an advantage to any person.

27 (2) The head of a government and or public institution shall not, pursuant
28 to subsection (1), refuse to disclose a part of a record if that part contains the
29 result or product of environmental testing carried out by or on behalf of a
30 government and/or public institution.

1 (3) Where the head of a government and or public institution discloses a
2 record requested under this Act, or a part thereof, that contains the results of a
3 product or environmental testing, the head of the institution shall at the same time
4 as the record or part thereof is disclosed provide a person who requested the
5 record with a written explanation of the methods used in conducting the test.

6 (4) The head of a government and public institution shall disclose any record
7 requested under this Act, or any part thereof, that contains information described
8 in paragraph (1) (a) and (b) if that disclosure would be in the public interest as it
9 relates to public health, public safety or protection of the environment and, if the
10 public interest in disclosure clearly outweighs in importance any financial loss or
11 gain to, or prejudice to the competitive position of, or interference with contractual
12 or other negotiation of a third party.

Advice, etc. 13 19.-(1) The head of a government and or public institution may refuse to
14 disclose any record requested under this Act, that contains preliminary drafts,
15 notes, recommendations, memoranda and other records in which opinions are
16 expressed, or policies or actions are formulated, except that a specific record or
17 relevant portion thereof shall not be exempted when the record is publicly cited
18 and identified by the head of the government and/or public institution. The
19 exemption provided in this subsection extends to all those records of officers and
20 agencies of National or State Houses of Assembly which pertain to the preparation
21 of legislative documents.

22 (2) Subsection (1) does not apply in respect of a record that contains-

23 (a) an account of, or a statement of reasons for a decision that is made in
24 the exercise of a discretionary power or an adjudicative function and which
25 affect the rights of a person; or

26 (b) a report prepared by consultant or an adviser who was not, at the time
27 the report was prepared, an officer or employee of a government and/or
28 public institution or a member of staff of a Minister of the Federal Government
29 or Commissioner of a State Government.

1	20. The head of a government and or public institution may refuse to	Legal
2	disclose any record requested under this Act that contains information that is	Practitioner/
3	subject to Legal Practitioner-Client privilege.	Client Privilege
4	21. The head of a government and or public institution may refuse to	Course or
5	disclose any record requested under this Act which contains course materials	Research
6	or research materials prepared by faculty members.	Materials.
7	22. Notwithstanding any other provision of this Act, where a request is	Severability
8	made to a government and or public institution for access to a record that the	
9	head of the institution is authorized to refuse to disclose under this Act by	
10	reason of information or other material contained in the record, the head of the	
11	institution shall disclose any part of the record that does not contain, and can	
12	be severed from any part that contains any such information or material.	
13	23. Any person who has been refused access to a record requested under	Judicial
14	this Act, or a part thereof may apply to the Court for a review of the matter	review.
15	within thirty days after the head of the government and/or public institution	
16	refuses or is deemed to have refused the request, or within such further time as	
17	the Court may either before or after the expiration of those thirty days fix or	
18	allow.	
19	24. The head of a government and or public institution may refuse to	Refusal by
20	disclose any record requested under this Act that contains information	head of
21	pertaining to:	government
22	(a) test questions, scoring keys and other examination data used to	and or public
23	administer an academic examination or determine the qualifications of an	institution to
24	application for a license or employment.	discrete
25	(b) architects' and engineers' plans for buildings not constructed in	records.
26	whole or in part with public funds and for buildings constructed with	
27	public funds, to the extent that disclosure would compromise security,	
28	and	
29	(c) library circulation and other records identifying library users with	
30	specific materials.	

Hearing in a summary way.	1	25. An application made under section 23 shall be heard and determined
	2	summarily.
Access to Record by Court. course	3	26. Notwithstanding anything contained in any other Decree, Act or
	4	enactment or any privilege under the law of evidence, the Court may, in the
	5	of any proceedings before the Court arising from an application under section 23
	6	of this Act, examine any record to which this Act applies that is under the control
	7	of government and/or public institution, and no such record may be withheld
	8	from the court on any ground.
Court to take precautions against disclosing information.	9	27. In any proceedings before the Court arising from an application under
	10	section 23, the Court shall take precaution, including when appropriate, receiving
	11	representations <i>ex-parte</i> and conducting hearings in <i>camera</i> to avoid the
	12	disclosure by the Court or any person of any information of other material on a
	13	basis of which the head of a government and/or public institution will be authorized
	14	to disclose a part of a record requested under this Act.
Burden of Proof.	15	28. In any proceedings before the Court arising from an application under
	16	section 23, the burden of establishing that the head of a government and or public
	17	institution is authorized to refuse to disclose a record under this Act or a part
	18	thereof shall be on the government and/or public institution concerned.
Order to disclose Records.	19	29. – (1) Where the head of a government and of public institution refuses
	20	to disclose a record requested under this Act, or a part thereof on the basis of a
	21	provision of this Act, the Court shall order the head of the institution to disclose
	22	the record or part thereof to the person who requested for access to the record-
	23	(I) if the Court determines that the head of the institution is not authorized
	24	to refuse to disclose the record or part thereof; or
	25	(ii) where the head of the institution is so authorised, but the Court
	26	nevertheless determines that the head of the institution did not have
	27	reasonable grounds on which to refuse to disclose the record or part
	28	thereof;
	29	(iii) where the court makes a finding that the interest of the public in
	30	having the record being made available is greater and more vital than the

1 interest being served if the application is refused, in whatever
2 circumstance.

3 (2) Any order the Court makes in pursuance of this section may be made
4 subject to such conditions as the Court deems appropriate.

5 30. This Act does not apply to-

Exempted
material.

6 (a) published material or material available for purchase by the public;

7 (b) library or museum material made or acquired and preserved solely for

8 public reference or exhibition purposes; or

9 (c) material placed in the National Library, the National Museum or the

10 non-public section of the National Archives of the Federal Republic of

11 Nigeria on behalf of any person or organization other than a government

12 and/or public institutions.

13 31.-(1) Notwithstanding anything contained in the Criminal code, penal
14 Code, the Official Secrets Act, or any other enactment, no civil or criminal

Protection
of public
officers
Cap. 77
LFN, 1990
Cap. 245
LFN, 1990
Cap. 335
LFN, 1990

15 proceedings shall lie against any government and or public institution, or against

16 any person acting on behalf of the government and or public institution, and no

17 proceedings shall lie against the Federal Government, State or Local Government

18 any institution thereof, for the disclosure in good faith of any record or any part

19 of a record pursuant to this Act, for any consequences that flow from that

20 disclosure, or for the failure to give any notice required under this Act, if care is

21 taken to give the required notice.

22 (2) Nothing contained in the Criminal Code or the Official Secrets Act shall

23 prejudicially affect any public officer who, without authorization discloses to

24 any person any public record and/or information which he reasonably believes

25 to show.

26 (a) a violation of any law, rule or regulation,

27 (b) mismanagement, a gross waste of funds, fraud, and abuse of

28 authority; or

29 (c) a substantial and specific danger to public health or safety

30 notwithstanding that such information was not disclosed pursuant to the

31 provision of this Act.

	1	(3) No civil or criminal proceedings shall lie against any person receiving the
	2	information or further disclosing it.
Document Under security Classification Cap. 335, LFN. 1990.	3	32.-(1) the fact that any record in the custody of government and/or public
	4	institution is kept by that institution under security classification or a classified
	5	document within the meaning of the Official Secrets Act does not preclude it from
	6	being disclosed pursuant to a request for disclosure thereof under the provisions
	7	of this Act, but in every case the head of the government and/or public institution
	8	to which a request for such record is made shall decide whether such record is of
	9	a type referred to in sections 14, 15, 16, 17, 18, 19, 20 or 21 of this Act.
	10	(2) if the head of the government and or public institution to which the
	11	request for a record mentioned in sub-section (1) is made, decides that such record
	12	is not a type mentioned in the sections referred to in sub-section (1) hereof, access
	13	to such record shall be given to the person requesting for such access.
	14	(3) If the head of the government and or public institution to which the
	15	request for a record mentioned in sub-section (1) is made decides that such record
	16	is of a type mentioned in the sections referred to in sub-section (1) hereof, he shall
	17	give notice to the person requesting for the record.
Submission of reports.	18	33.-(1) On or before February 1 of each year, each government or public
	19	institution shall submit to the Attorney General of the Federal Republic of Nigeria
	20	a report which shall cover the preceding fiscal year and which shall include-
	21	(a) the number of determinations made by the Government or Public Institution
	22	not to comply with requests for records made to such Government or Public
	23	Institution under this Act and the reasons for each such determinations;
	24	(b) the number of appeals made by persons under this Act, and the reason for
	25	the action upon each appeal that results in a denial of information;
	26	(c) a description of whether a court has upheld the decision of the Government
	27	and/or Public Institution to withhold information under such circumstances and a
	28	concise description of the scope of any information withheld;
	29	(d) the number of requests for records pending before the Government or
	30	Public Institution as of October 31 of the preceding year and the median number

1 of days that such request had been pending before the Government and/or
2 Public Institution as of that date;

3 (e) the number of requests for records received by the Government or
4 Public Institution and the number of requests which the Government or
5 Public Institution processes;

6 (f) the median number of days taken by the Government or Public Institution
7 to process different types of requests;

8 (g) the total amount of fees collected by the Government or Public
9 Institution to process such request; and

10 (h) the number of full-time staff of the Government or Public Institution
11 devoted to processing requests for records, and or the total amount expended
12 by the Government or Public Institution for processing such requests.

13 (2) Each government or public institution shall make such report available
14 to the public including by computer telecommunications, or if computer
15 telecommunications means have not been established by the Government or
16 Public Institution, by other electronic means.

17 (3) The Attorney-General shall make each report, which has been submitted
18 to him, available at a single electronic access point.

19 (4) He shall notify the Chairman and ranking minority member of the
20 Committee on Government Reform Oversight of the House of Representatives
21 and the Chairman and ranking minority member of the Committees on
22 Government Affairs and the Judiciary of the Senate, not later than April 1 of the
23 year in which each such report is issued, that such reports are available by
24 electronic means.

25 (5) The Attorney-General shall develop reporting and performance
26 guidelines in connection with reports required by this section and may establish
27 additional requirements for such reports as the Attorney-General determines
28 may be useful.

29 (6) The Attorney-General shall submit an annual report on or before April
30 1 of each calendar year which shall include for the prior calendar year a listing
31 of the number of cases arising under this Act, the exemption involved in each

	1	case, the disposition of such case, and the cost, fees, and penalties assessed.
	2	(7) Such report shall also include a description of the efforts taken by the
	3	Ministry of Justice to encourage all government or public institutions to comply
	4	with this Act.
Complementary Procedures.	5	(8) For purposes of this section, the term-
	6.	(a) "government" include any executive department, military department,
	7.	government corporation, government controlled corporation, or other establishment
	8.	in the executive branch of the government (including the Executive Officer of the
	9.	President), or any other independent regulatory government or public
	10	institution; and
	11	(b) "records" means any term used in this Act in reference to information
	12	which includes any information that would be government or public institution
	13	record subject to the requirements of this Act when maintained by government or
	14	public institutions in any format, including an electronic format.
Complementary Procedures	15	34.-(1) This Act is intended to complement and not replace existing
	16	procedures for access to public records and information and is not intended to
	17	limit in any way access to those types of official information that have, hitherto,
	18	been normally available to the general public.
	19	(2) Where the question whether any public record and or information is to be
	20	made available, where that question arises under this Act, the question shall be
	21	determined in accordance with the provisions stated herein, unless otherwise
	22	exempted by this Act.

EXPLANATORY MEMORANDUM

This Bill seeks to provide a right of access to public information or records kept by government, public institution and/or private bodies carrying out public Functions for citizens and non-citizens of the country.

2. This Bill will increase the availability of public records and information to citizens of the country in order to participate more effectively in the making and administration of laws and policies and to promote accountability of public officers.

3. The Bill also seeks to provide the disclosure of public records or information by public officers without authorisation thereof provided it is for public interest and such officers are protected from adverse consequences flowing from such disclosure.

Appendix II

Editorial (Newspaper) Comments Regarding Key Issues In Freedom of Information

- a) *The Guardian Editorial May 10, 2000 P. 16*

The Freedom Of Information Bill

Mr. Kofi Annan's emphasis on the right of journalists to enjoy unfettered access to information at the World Press Freedom Day, celebrated last week, ought to be considered against the background of the restrictions often imposed on journalists in the discharge of their duties. The UN Secretary-General established an instructive connection between press freedom and the values of transparency, accountability, good governance and the rule of law. Clearly, he chose an auspicious moment to deliver this message. The World Press Freedom Day has become an annual occasion for reiterating the central value of information to the building of open and progressive societies and how indeed, an unfettered information flow invariably empowers the individual in society. Regrettably, however, the authorities in many societies impose various forms of censorship on the press, thereby violating the right of all persons to enjoy free access to information. The obnoxious power game that this inspire often results in conflicts. According to the UN Secretary-General: "Information cannot be suppressed without dire consequences for social cohesion and stability. When it is scarified, whatever the reasons involved, the chances are that conflict is not far down the road." Mr. Annan is right.

His message particular has a deep resonance for the Nigerian situation where the expansion of the scope of human expression ought to remain a central pillar of the current democratic process. The history of the Nigerian mass media indeed indicates the extent to which censorship in various guises can result in the promotion of conflicts between the state and civil society. Nigerian journalists are wont to point to several instances in the past, even under civilian dispensations, when official authority was employed to block free access to information. This attitude is further enshrined by the existence of laws such as Official Secrets Act (1962), the Defamatory and Offensive Publication Act (1966), Printing Press Regulations Act (1964), Section 58 of the Criminal Code Act of 1958, and the Newspapers (Amendment) Act of 1964, which altogether enforce a regime of secrecy. Coincidentally, a major concern among journalists and other human rights groups has been how to enhance journalism practice and information dissemination in the country by dismantling these existing barriers. That concern has received more eloquent expression under the present dispensation.

Editorial (Newspapers) Comments Regarding Key Issues In FOI

Not surprisingly, the National Assembly is now considering "The Freedom of Information Bill" whose final objective is to make public records and information more freely available to the media and the public, and to protect public officers from adverse consequences for disclosing certain kinds of official information without authorization. Sponsored by Jerry Sonny Ugokwe, Tony Anyanwu and Nduka Irabor, all members of the House of Representatives, the bill was first presented to the House last December. Since then it has undergone two readings. It promises to be an important piece of legislation. The underlying principles project the required standards of a civilised relationship between the mass media and the state, and are consistent with the aspirations of a democratic dispensation. A conducive environment for the dissemination of information would on the long run strengthen other institutions in society especially the judiciary, the civil service, academia and even the legislature itself. The proposed law is equally timely. It would help modify the seemingly totalitarian scope of the Official Secrets Act. To be known eventually as "The Freedom of Information Act 1999," the bill provides for the right of access to records and the processes of obtaining and releasing information about government institutions. Without any doubt, the practice of journalism would be further enhanced by this legislation.

What should be underscored, however, is that the freedom of information does not include the abuse of information or the violation of national security and public health. This is a necessary distinction that is often overlooked by the more ardent promoters of the freedom of information. Whereas, an inalienable principle is that the enjoyment of basic rights also connotes a sense of duty and service to the community. Significantly, therefore, the proposed bill in Section 12-21 outlines those specific instances when a government official may refuse to disclose information. These include those instances when access to records and information could prove injurious to international affairs defence, law enforcement, the country's economic interest, personal information, third party information and issues involving legal practitioner-client privilege. However, the refusal of access to information as proposed in the aforementioned sections still does not constitute an absolute privilege. In Section 9(1-4) earlier, the Bill outlines the relevant procedures for such refusal.

On the whole, it is a comprehensive piece of legislation. It deals with the processes of making government institutions more transparent and accessible, while insisting on the protection of public records and information only on the extent that such is consistent with public interest and the protection of personal privacy. What can be deduced is that whereas this law is intended to ensure a better working environment for journalists, it also signifies added responsibility on their part. Journalists may, in the future, enjoy greater access to information, but they can only do so by demonstrating greater responsibility and decorum in the management of information, particularly the delicate linkage between information and national interest. Unfortunately, the structures for the enforcement of standards in journalism are currently weak. Ethics and accountability constitute as much a problem in the newsroom as in the general society. Our lawmakers should speed up work on the Freedom of information Bill and ensure its success. Mass media institutions and professional bodies such as the Nigerian Union of Journalists (NUJ) and the Nigerian

Editorial (Newspapers) Comments Regarding Key Issues In FOI

Guild of Editors (NGE) as well as individual journalists should also begin to prepare for the special challenges indicated by the proposal legislation. The task of building an open and civilised society is, after all, a shared duty and responsibility at the very centre of the social contract.

Editorial (Newspapers) Comments Regarding Key Issues In FOI

b) *Daily Times May 23, 2000 P.8*

Enacting The Freedom Of Information Act

The world over, there is increasing premium on the transmission and recycling of accurate information. Even authoritarian systems increasingly discern that the reliability of their planning as well as their ability to connect rapidly changing global trends relates to their capacity changing to make valuable information widely available.

It even requires more, in a democracy like ours where the ability of the populace to participate in managing their own affairs is seriously hindered by the dearth of verified information and data. It is for this reason and more that the Freedom of Information Act proposed to the legislature by Media Rights Agenda and a motley of non-governmental organisations deserves more than causal attention.

For a governmental that has made transparency and accountability as well as the struggle against corruption cardinal principles, it stands to reason to empower the media through the enabling auspices of the Act. This apart, the constitutional mandate given to the media to monitor governance can only be meaningfully pursued when the Information Act is in place.

There are economic benefits attached to promulgating the Information Act. One of them is the fact that private companies can take advantage of the enhanced information flow to beef up their portfolio and profiles, thus generating healthy spin-offs for the entire economy. In particular, foreign investors, who have long complained about bureaucratic bottlenecks, some of which relate to information flow, can heave a sign of relief.

Contrary to the perception in some quarters that the proposed Act is a new instrument sought by the media to increase their visibility and influence, an Information Act will stimulate research as well as generation and recycling of knowledge.

In countries like South Africa and Malawi, which are already operating an Information Act, there is an observable fillip to research and development actually, in view of the improved learning environment which such an Act bring in its wake. Furthermore, as currently phrased, the Act contains clauses, which adequately take care of national security, as well as the fundamental rights of individuals.

The *DAILY TIMES* commends the initiative and foresight of lawmakers like Honourable Nduka Irabor and Honourable Tony Anyanwu, who continue to advocate the need to have the Act passed quickly enough.

We call on the Senate to ensure that the good work done so far by the House and other concerned citizens are not frittered away.

Editorial (Newspapers) Comments Regarding Key Issues In FOI

c) *Post Express May 19, 2000 P. 8*

Waiting for the Freedom of Information Act

A bill seeking to make public records and information easily available to the media and public is currently receiving attention in the House of Representatives.

At the heart of this bill, sponsored by Representatives Jerry Ugokwe, Tony Anyanwu and Nduka Irabor, is the desire to bring about free flow of information on public policies, which is a critical element of civil society.

In brief, this proposed legislation seeks to enhance public accountability by ensuring that journalists have unhindered access to information, without unnecessarily jeopardizing national security. There is also reasonable guarantee in the bill for the right of public officers to resist disclosure of information and records they may consider to be of secret nature.

The Freedom of Information Bill when passed will no doubt be one of the best things to happen to our current quest for transparency and accountability in governance.

All too often, civil society expects the media to be more forthright and more investigative in reporting public affairs. Ironically, in all but few Third World Nations, access to public information and records by journalists is highly restricted. Hence, laws and decrees are put in place to curtail the ability of the journalists to reach critical public information needed by the populace to rationally assess those in authority.

In Nigeria in particular, there are several extant laws that subvert freedom of the press that is theoretically guaranteed by the constitution. Some of these include the Official Secrets Act (1962); the Defamatory and Offensive Publication Act (1966) and the Printing Press Regulations Act (1964). These are besides the sundry provisions in our constitution and Criminal Codes that disempower the media in the exercise of their social responsibilities.

As Mr. Kofi Anna, the United Nations Secretary-General aptly observed on the World Press Freedom Day: "Information cannot be suppressed without dire consequences for social cohesion and stability. When it is scarified, whatever the reasons involved, the chances are that conflict is not far down the road." This diagnosis is true of most African countries experiencing serious social upheavals and hiccups. Information in most of these countries has become scarce commodity, leading to unhealthy suspicion and violence.

In considering the passage of the Freedom of Information Bill, the House of Representatives should bear in mind that the ideals of democracy can hardly be attained in a polity marked

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by his high level of secrecy in the conduct of public affairs. In fact, the bill, when passed, will certainly boost the present administration's declared commitment to transparency and integrity in the conduct of government business.

For one, the bill contains provisions on how to make public institutions more transparent and open to public scrutiny even while guaranteeing the protection of public information and records whose disclosure may not be in the public interest. For another, it also clearly provides for the protection of individual's privacy.

Sponsors of the Freedom of Information Bill are apparently aware of the possible abuse that such a legislation may suffer at the hands of unethical practitioners. They have adequate answer to this also. In this circumstance, journalists would do well to ensure that such abuse is avoided when the bill becomes law as we expect it would, sooner than later.

By and lard, we urge the House of Representatives to speed up action on this all-important bill. It certainly will do our society a world of good.

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Daily Monitor, May 8, 2000 -pg 3

Press: Still not free

On Wednesday, May 3, World Press Day was celebrated across the globe. The event was marked in a low key in this country but few organisations and individuals brought enormous intensity into bringing its significance to the force.

Not only emphasis on the freedom of expression but uninhibited access to information reiterated the benefits to the society. This kept reoccurring.

It is not surprising that such intensity was brought to bear on the Press and its attendant benefits.

Two or three years ago, the Press operated under very excruciating conditions

In 1998, 55 cases of press attacks were reported, while in 1999, a total of 147 cases of press attacks were recorded.

Ironically, more Press assault occurred in 1998 but were neither reported nor recorded because the amount of repression prevented for victims from voicing out injustice for fear of further reprisal.

But reported cases of Press assault increased in 1999 since the atmosphere had become “safe” for voicing out such attacks.

The level of impunity and brutal attack on not just the Press but on people’s right further denigrated the nation and reduced her esteem in the eyes of the world.

All these, however, were to change with the commencement, on May 29, 1999, of a civilianised, democratic government headed by President Olusegun Obasanjo.

Prepared to tackle, even if just to document cases of infringement on rights, the government of President Obasanjo set up a Human Rights Violation Panel headed by Justice Chukwudify Oputa, in addition to National Human Rights Commission headed by Justice Paul Nwokedi.

The activities of these two bodies around would necessarily dovetail for obvious reasons.

Also, Federal Government, in more ways have begun according information (and the press) some from a recognition. But this is still a far cry from the freedom of the Press requires to flourish.

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While there are moral, quasi legal and indeed legal measures for “curbing the excesses” of the Press, not enough latitude has been allowed the Press in accessing information.

When does a public officer supposedly protecting government secret is really, unknowingly denying the Press its social responsibility function and depriving the public of useful, vital information? This moral issues needs to be thrashed.

Although, various effort such as the establishment of Press Court, Press Council etc, to tackle irresponsible use of information has been underway, one major effort whose pursuance in the last five years has brought a ray of hope is the Federation of information Act Bill.

The Freedom of Information Act Bill was pushed by Media Rights Agenda (MRA), a Non-Governmental Organisation (NGO) basically focused on sensitising the nation and the world to abuses or denial of rights of individuals and or corporate organisations.

Presently, this effort appears to have impacted only at the centre and even when it is yet to sail through.

It would just be good if the Bill goes through because the benefits of the Executive, the Legislature, the judiciary and citizenry is immense.

Similar Bills earlier proposed had met stiff opposition because of erroneous, although sometimes unjustifiable impression that the Press would ever “misquote and embarrass” public figures. This is not right and should not be encouraged.

In *Daily Monitor's* view, adequate education for the various tiers of government should be intensified because, more than every, the time for purposeful information use is now: the democratic era.



Media Rights Agenda (MRA) is an independent, non-governmental organisation established in August 1993 for the purpose of promoting and protecting press freedom and freedom of expression in Nigeria. MRA is registered in Nigeria, has Observer Status with the African Commission on Human and Peoples' Rights in Banjul, The Gambia.

MRA's programmes fall into four broad categories, namely: Litigation, Training, Research and Publications, and Advocacy, although its projects in these areas often overlapped. Its specific project activities include monitoring of attacks on the press, publication of reports on media issues, legislative lobbying, organizing seminars, conferences and workshops, research and litigation, particularly class actions and legal assistance to journalists who are physically attacked, arrested or detained, unjustly dismissed from their work or are harassed in other manners.

The Aims and Objectives of Media Rights Agenda are:

- a. to promote respect and recognition for press freedom and freedom of expression in Nigeria;
- b. to provide protection and support for journalists and writers engaged in the lawful pursuit of their professional duties;
- c. to promote the highest standards of professional ethics, integrity, training and conduct in the journalism profession; and
- d. to bring about a conducive social and legal atmosphere for the practice of journalism, and ensure the protection of the journalist's right not to be compelled to work against his or her conviction or disclose confidential sources of information.

Media Rights Agenda has an administrative structure made up of Trustees, the Executive Committee, Advisory Council and the Secretariat.

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