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Freedom of Information NEWSLETTER

Volume 1, No. 5, October 2014

FREEDOM OF INFORMATION NEWS

Paraguay Becomes 100th Country to Adopt FOI Law

The ranks of countries with Freedom of Information laws swelled on September 18, 2014 as the Latin American nation of Paraguay joined the league by becoming the 100th country in the world to adopt an access to information law.



President Horacio Cartes of Paraguay

Paraguay's "Access to Public Information and Transparency Law," was passed by Parliament on August 21, 2014 and signed into Law by Paraguayan President Horacio Cartes, less than a month later, on September 18, 2014.

"transparency" when it comes into effect next year.

The campaign for a Freedom of Information law in Paraguay began almost 10 years ago but the legislation comes on the heels of an anti-corruption movement in 2013 that demanded greater government transparency.

According to Ezequiel F. Santagada, Executive Director of the Instituto de Derecho y

Economía Ambiental (IDEA), "This series of events was known in Paraguay as the 'transparency' *Continued on page 3*

The Law will guarantee "free citizen access to public information and governmental

APAI Working Group Asks AU, UNESCO to Proclaim September 28 Right to Information Day

The African Platform on Access to Information (APAI) last month reiterated its call to the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the African Union (AU) to formally recognize September 28 of every year as International Right to Information Day.

In a statement issued by the APAI Working Group secretariat in Windhoek, Namibia, in commemoration of the 2014 Right to Information Day, the Group urged the AU Commission to table a proposal at the next AU Summit asking the Heads of States and Government of the AU to adopt September 28 as African "Right

to Information Day" and to initiate an Experts Group to develop further instruments to strengthen the right of access to information on the continent, as proposed in the APAI Declaration adopted in Cape Town, South Africa, on September 19, 2011.

Similarly, the Working Group also urged UNESCO, through its next General Conference, to proclaim September 28 as International Right to Information Day and to recommend to the United Nations General Assembly to endorse the proclamation and set the date aside as a day to raise awareness about the importance of the right of access to information throughout the world.

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APAI Working Group Asks AU, UNESCO to Proclaim September 28 Right to Information Day

It noted that UNESCO and the AU Commission have been valuable partners to the APAI Working Group in the process of developing and adopting the APAI Declaration, which seeks to promote the right of access to information and outlines principles aimed at advancing the right in Africa.

Mr. Edetaen Ojo, Chair of the APAI Working Group, said: "Three years after the adoption of this critically important Declaration and Action Plan, we are convinced that the time has come to take concrete steps to ensure that the objectives of the Declaration are realized and that the right of access to information becomes real and meaningful for all African citizens."

The Working Group noted the important steps already taken by some AU organs, particularly the Commission on Human and Peoples' Rights, which adopted Resolution 222 on May 2, 2012, at its 50th Ordinary Session held in Banjul, The Gambia, wherein it requested the AU to consider proclaiming September 28 as International Right to Information Day in Africa, as proposed in the APAI Declaration; and the Pan African Parliament, which formally recognized the APAI Declaration in its "Midrand Declaration", adopted on May 15, 2013.

The Working Group said it was gratified by the increasing number of national laws on access to information passed by African countries in the last few years and called for greater efforts to ensure that the laws are implemented effectively and realize their full potential. It also called on other African countries lagging behind to urgently pass similar laws guaranteeing their citizens a right to information,



Edetaen Ojo,
Chair, APAI Working Group

consistent with the standards established by the Model Law on Access to Information, developed by the Special Rapporteur on Freedom of Expression and Access to Information in Africa and adopted by the African Commission.

The APAI Working Group is a network of civil society organisations promoting access to information in Africa. The APAI Declaration sets out the key principles that need to be satisfied to fully realise the right of access to information. The Declaration was adopted by stakeholders present at the first Pan African Conference on Access to Information (PACAI) held September 17 to 19, 2011 in Cape Town, South Africa.

Members of the Working Group include: Africa Freedom of Information Centre (AFIC); Article 19; Federation of African Journalists (FAJ); Highway Africa; Media Foundation for West Africa (MFWA); Media Institute of Southern Africa (MISA); Media Rights Agenda (MRA); Open Democracy Advice Centre (ODAC); and The African Editors' Forum (TAEF). ■

FREEDOM OF INFORMATION NEWS

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Paraguay Becomes 100th Country to Adopt FOI Law

spring' and it is contributing to alter the power equation between citizens and public servants."

There was a large protest in the capital city of Asunción where thousands marched on the capitol building last year with rolls of toilet paper, determined to "clean up" corruption in Congress.

As the movement gained momentum, hundreds of businesses – restaurants, bars, and movie theatres – across the country refused to serve senators accused of nepotism. There was public outrage and widespread protests in the capital. The law has therefore been described as part of an effort to root out nepotism and was led by a coalition of senators from a number of Paraguay's major political parties. It has historically been prominent among high-level government officials.

Daniel Vargas Téllez, a social activist was also key to the passing of the law and was at the forefront of the Freedom of Information movement. In 2007, Vargas was involved in a high-profile court case after the mayor of San Lorenzo denied him access to a list of government contractors, their duties, and their respective salaries.

In 2013, the Supreme Court of Paraguay ruled in his favour and ordered the disclosure of public officials' salaries, relying on a ruling of the Inter-American Court of Human Rights that access to government information is a fundamental human right, also spelled out by the United Nations in the International Covenant on Civil and Political Rights.

This decision is believed to have paved the way for the later legislation on access to information. Vargas was conferred with the "Torch of Freedom Award" for his role in promoting open access.

Shortcomings in the law have already been highlighted, including the fact that the punishments

prescribed for various offences are weak as the original bill had included a penalty of jail time for those convicted of nepotism while in the modified law jail time was replaced by administrative leave from public office for five years. Some critics have also described the law as hollow

In spite of these criticisms, the law is largely seen as a positive step towards transparency and enables Paraguay to join the international openness movement.

Promising prospects also exist for new laws to be passed in the near future in the Bahamas, Bhutan, Morocco, Mozambique and elsewhere and there are ongoing active campaigns in about 20 countries.

Civil society right to information advocates and campaigners for government openness believe that their campaigns have achieved significant success, especially over the last 20 years since 1994 when there were only 15 countries in the world with access to information laws.

With 100 out of 196 countries of the world now having access to information laws, most of the world's seven billion people now enjoy a legal right of access to information, at least in theory. The total number of people living in countries with access to information laws now stands at approximately 5.7 billion.

According to Helen Darbishire, Executive Director of the Madrid-based right to information specialist organization, Access Info Europe, "Hitting 100 laws is a very exciting development for the global right to information movement. There are still many challenges ahead. The quality of access to information laws varies enormously. There is insufficient transparency in practice and we urgently need more comparative data on how these laws are working.

Another landmark celebration awaits freedom of information activists in 2016 when Sweden's access to information law, the first in the world, will be 250 years old.

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List of Countries with FOI Laws (September 2014)

1	Sweden	1766	52	Slovenia	2003
2	United States	1966	53	Turkey	2003
3	France	1978	54	Antigua	2004
4	Australia	1982	55	Argentina	2004
5	New Zealand	1982	56	Dominican Republic	2004
6	Canada	1983	57	Ecuador	2004
7	Colombia	1985	58	Switzerland	2004
8	Austria	1987	59	Azerbaijan	2005
9	Denmark	1987	60	Germany	2005
10	Italy	1990	61	India	2005
11	Netherlands	1991	62	Montenegro	2005
12	Belgium	1994	63	Taiwan	2005
13	Belize	1994	64	Uganda	2005
14	Iceland	1996	65	Honduras	2006
15	Lithuania	1996	66	Macedonia	2006
16	South Korea	1996	67	Norway	2006
17	Ireland	1997	68	China	2007
18	Thailand	1997	69	Jordan	2007
19	Uzbekistan	1997	70	Kyrgyzstan	2007
20	Israel	1998	71	Nepal	2007
21	Latvia	1998	72	Nicaragua	2007
22	Albania	1999	73	Portugal	2007
23	Czech Republic	1999	74	Bangladesh	2008
24	Finland	1999	75	Chile	2008
25	Georgia	1999	76	Ethiopia	2008
26	Greece	1999	77	Guatemala	2008
27	Japan	1999	78	Uruguay	2008
28	Liechtenstein	1999	79	Cook Islands	2009
29	Trinidad	1999	80	Russia	2009
30	Bosnia and Herzegovina	2000	81	Guinea	2010
31	Bulgaria	2000	82	Indonesia	2010
32	Estonia	2000	83	Liberia	2010
33	Moldova	2000	84	Brazil	2011
34	Slovakia	2000	85	El Salvador	2011
35	South Africa	2000	86	Hungary	2011
36	United Kingdom	2000	87	Malta	2011
37	Poland	2001	88	Mongolia	2011
38	Romania	2001	89	Niger	2011
39	Angola	2002	90	Nigeria	2011
40	Jamaica	2002	91	Tunisia	2011
41	Mexico	2002	92	Ukraine	2011
42	Pakistan	2002	93	Yemen	2012
43	Panama	2002	94	Rwanda	2013
44	Tajikistan	2002	95	Guyana	2013
45	Zimbabwe	2002	96	Sierra Leone	2013
46	Armenia	2003	97	Spain	2013
47	Croatia	2003	98	Ivory Coast	2013
48	Kosovo	2003	99	Maldives	2014
49	Peru	2003	100	Paraguay	2014
50	Saint Vincent and the Grenadines	2003			
51	Serbia	2003			

Courtesy: FreedomInfo.org ■

Infrastructure Commission, Accountant General Top FOI Act Compliance Rankings

The Public and Private Development Centre (PPDC), in collaboration with BudGIT Information Technology Network and the Open Society Initiative of West Africa (OSIWA) have released the "Nigerian Public Institutions Ranking on Transparency 2014".

Released in September 2014, the rankings assessed 67 public institutions based on Freedom of Information requests made by the organisation and its partners. Public institutions ranked included the Federal Civil Service Commission, Federal Ministry of Communication Technology, Office of the Accountant General of the Federation, National Health Insurance Scheme, Universal Basic Education Commission, National Universities Commission, among others.

The best performing institutions, according to the rankings, are the Infrastructure Concession Regulatory Commission (ICRC) and the Office of the Accountant General of the Federation both at first place; the Federal Civil Service Commission at third place, the Federal Ministry of Communication Technology at fourth and the National Planning Commission at fifth. Thirty-five of the 67 institutions jointly placed lowest at 32nd position, all recording no proactive disclosure, non-responsive to information requests and no disclosure as level of disclosure.

The Presidency, Federal Ministry of Petroleum Resources, Nigerian National Petroleum Corporation (NNPC), Federal Ministry of Interior, Federal Ministry of Aviation, Federal Ministry of Foreign And Inter-Governmental Affairs and the Federal Ministry of Justice are some of the institutions ranked in the least transparent 32nd position.

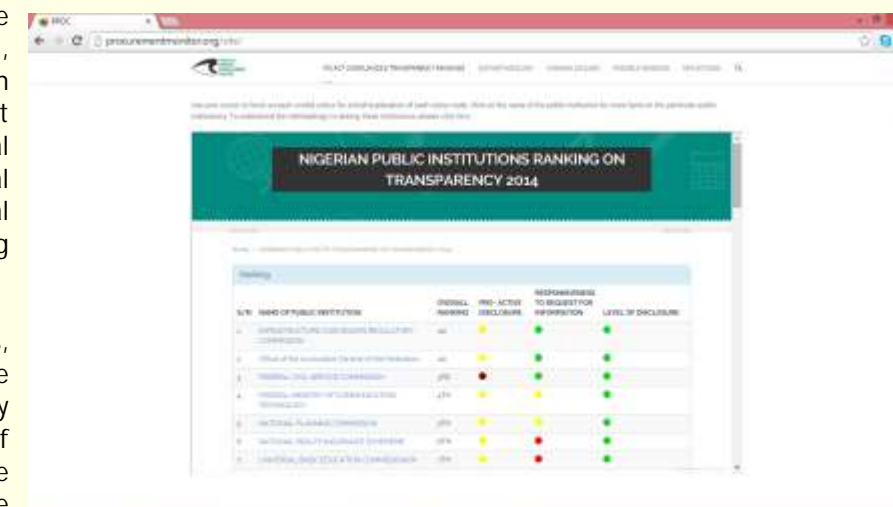
This exposed the low level of compliance among public institutions in their access to information and transparency mandate as imposed by the provisions and obligations in the FOI Act.

Of the 67 ranked institutions, only seven were recorded to undertake partial proactive disclosure while the others recorded no proactive disclosure. Nine organizations were recorded to respond to information requests within the time stipulated by the law which is seven days, four were recorded to respond between 9-14 days and 17 were recorded to respond between 17-111 days while the others were recorded as non-responsive. A total of 18 institutions

were granted full disclosure status, three were granted partial disclosure status and the others recorded as no disclosures.

The rankings, along with factsheets per institution explaining how the rankings were arrived at, are available at the website www.procurementmonitor.org.

Detailed methodology used in carrying out the ranking, common excuses of public institutions and possible remedies are also available on the website.



The rankings were developed based on public finance information readily available, responsiveness to requests for procurement information, level of disclosure and the cost of disclosure.

In the area of proactive disclosure, no public institution was awarded the green button that signifies full disclosure because insufficient public finance records were accessible to the public at both the institution's office premises and on the website of the institutions.

However, institutions like the ICRC and the Office of the Accountant General attained the yellow batch for partial proactive disclosure because their websites contained some of the required information.

The rankings are the result of procurement monitoring activities that require access to procurement related records in order to follow decision making processes around the award of contracts. The survey relied on procurement and contract related information because by virtue of the Public Procurement Act 2007 and Section 2 of the FOI Act, these are a part of routine documentation for which records are mandatorily kept; therefore the requests would only require the public institutions to duplicate the requested records rather than requiring them to produce such records anew. ■

Digital Service will Assist FOI Implementation, Says Alhaji Aji

Former Head of the Civil Service of the Federation, Alhaji Bukar Goni Aji has disclosed that the new Digital Service Strategy adopted by the Federal Civil Service will enhance the effective implementation of the Freedom of Information Act.

Alhaji Aji made this known when he declared open the Federal Digital Service Centre (DSS) in Abuja shortly before he retired from service.



Alhaji Bukar Goni Aji,
Former Head of the Civil Service of the Federation

feedback. Records, products and services are also expected to be digitalized and made accessible online. Electronic and online Directory of services, agencies and public office holders are also to be developed in a one-stop-shop environment.

According to him, with this strategy, information should be readily available to citizens while it will also help the

He explained that the Digital Service Strategy (DSS) which was presented and adopted at the meeting of Service wide Permanent Secretaries in April 2014 as the new focus of the Federal Civil Service will in addition enhance service deliveries, improve implementation of government projects and programmes in line with the transformation agenda of the present administration.

The Digital Service Strategy is simply a means of communicating and listening to feedback through digital channels, communicating with citizens in the places they are, without traveling long distances, using social media to consult, engage and create awareness, ensuring transparent, accountable, effective and efficient service delivery online.

Alhaji Aji said other expectations of the policy include providing services, kiosks, call centers, portals and other electronic channels for creating awareness, information dissemination, suggestions, comments, complaints and

organization and management of information, making it easily accessible when needed. The strategy is also aimed at strengthening compliance with the proactive disclosure obligations of public institutions.

Alhaji Aji noted that "Nigerian citizens are increasingly expecting high quality, prompt services delivered electronically, online and where possible in real time" adding that the adoption of Digital Service Strategy in the Federal Civil Service is therefore aimed at providing better and quick services to the public and achieving enhanced value for money for the government.

The Permanent Secretary, Common Services Office in the Office of the Head of the Civil Service of the Federation, Mr. Yemi Adedokun, has also disclosed that a circular had been issued directing all Ministries, Departments and Agencies (MDAs) of government to adopt the Digital Service Strategy and establish Digital Service Centres in their respective organizations.

FCT Council of NUJ Establishes FOI Desk

The Federal Capital Territory (FCT) Council of the Nigeria Union of Journalists (NUJ) last month inaugurated a Freedom of Information (FOI) Desk in Abuja to handle issues related to the Act in Abuja.

The Council appointed Mr. Akin Orimolade, a lawyer, as head of the three-member committee, which has Ruth Tene Natsa and Okere Mollet Chinyere as members.

Speaking at the launch on September 24, 2014, the Council Chairman, Mr Chuks Ehirim, called on

the committee to ensure that reports of infringements of the rights of journalists in the course of their duty are addressed.

He said: "the import of the FOI Desk is to ensure that journalists within the FCT are protected from inherent harassment in the course of their duties. There are lots of violations to the rights of journalists, not only in the FCT, and it is only right that we rise to the occasion to ensure they are protected from all forms of harassment in the course of their duties."

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FOI Activists Campaign for Inclusion of Right to Know in Post-2015 Development Agenda

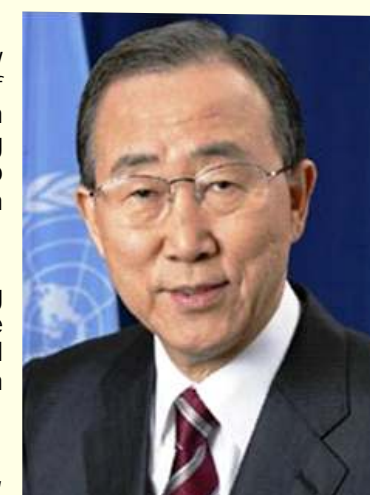
The International Right to Know Day was celebrated by freedom of information activists around the world on September 28 with various events, including a campaign for the inclusion of the right to information and freedom of expression in the Post-2015 Development Agenda.

Freedom of Information activists are calling on the United Nations to highlight the importance of freedom of expression and access to information and enshrine them in the Post-2015 Agenda.

The UN Secretary General, Mr. Ban Ki-moon, is expected to publish a synthesis report at the end of 2014 of three global processes that have contributed to the establishment of the Post-2015 framework.

However, in a joint letter sent to the Secretary General on the Right to Know Day, ARTICLE 19 and other freedom of expression and freedom of information stakeholders are urging him to acknowledge the Right to Know Day on September 28 as well as highlight the importance of the right to information and free media as well as the protection of civil society organisations' ability to organise and engage.

The Post-2015 Development Agenda refers to a process led by the UN that aims to help define the future global development framework that will succeed the Millennium Development Goals (MDGs), a set of eight global development targets which will come to an end in 2015. Information activists have advocated for the inclusion of access to information and independent media in the



Ban Ki-moon, UN Secretary General

Agenda for the Post-2015 Sustainable Development Goals since these have been left out.

The Right to Know Day coincided with the start of a year-long negotiation process to determine the Post-2015 Agenda.

The process includes the discussion of the framework that will be the foundation for international policy commitments for the next 15 years and beyond.

Determined goals will awaken efforts to improve the daily lives of vulnerable and marginalised people, and set out targets that will be the focus of the attention of donors striving for sustainable development.

The letter called for access to information issues to be addressed as part of the SDGs to avoid the continued hindrance to development progress.

It stressed the need for access to information by everyone, for everyone, and the ability to act upon it rather than the restricted data revolution status quo of limited and unreliable information by the few and for the few, noting that by ensuring better knowledge of how governments operate, people are protected and empowered to have greater control over their lives.

The letter stressed the need for the Right to Information not to be forgotten in the SDGs as governments and civil society organisations around the world celebrate the progress made so far. ■

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FCT Council of NUJ Establishes FOI Desk

Mr. Ehirim assured the committee of the full backing of the Council, adding that the chapter will call on the National Human Rights Commission (NHRC) and other related agencies to ensure an effective working relationship with the committee towards the protection of journalist's rights.

In his response, the committee chair, assured the Council that they will justify the confidence reposed in them by successfully carrying out their task.

He said, "I want to sincerely thank the chapter for the confidence they have reposed on us and we promise to carry out this onerous task we've been entrusted with by ensuring that no member of the council will be hindered from getting the necessary information under the FOI Act."

According to him, "We are aware of the wordings and intention of the FOI Act and will ensure that whoever stands in the way of journalists effectively carrying out their duties will be made to bear the full brunt of the law."

Godwin Chigbu: A Fervent FOI Litigator

Godwin Ndubuisi Chigbu is a fervent Freedom of Information litigator with an impressive portfolio of FOI cases under his belt already, in just two short years since his initial foray into the sector.

Introduced to Freedom of Information litigation by his principal, Mr. Chibuzo Ekwewuo, the Managing Partner of his present Law Firm, A & E Law Partnership in Abuja, Mr. Chigbu appears to have a natural affinity for freedom of information litigation.



Barr. Godwin Ndubuisi Chigbu

in his well-researched address and brilliant reply on point of Law..." It was clear that in this new area of law, the judge was impressed with the young advocate.

Mr. Chigbu grew up in his village in Ovim, Isuikwuato LGA, Abia State. He is from a family of eight. Having lost his parents who were teachers while still young, he was brought up by older siblings. He comments that though the journey was not easy, God led the way. He points out that his father, who had the greatest

influence on him in his childhood, taught him discipline and hard work.

Mr. Chigbu attended primary and secondary schools in his village in Abia State and also did his LLB in Abia State University in the same Local Government. Following his Law School programme at the Nigerian Law School in Bwari, Abuja, he completed the mandatory one-year NYSC programme in Gombe State.

A religious family man, Mr. Chigbu describes himself as a practicing Christian whose hope is first of all founded in God who has practically led him thus far. He spends his free time with his family, listens to the news and particular programmes of interest and reads for self-improvement. He is a strong believer in the value of hard work.

From his knowledge and experience in FOI Litigation in Nigeria, he explains that access to information is gradually developing and the attitude of judges towards FOI suits is changing positively.

This, he illustrates by reference to his initial experience with a judge who in 2011 refused to grant him leave to sue the National Assembly even after delaying the ruling on the application for leave for several months. Now, he says, the judge has evolved to the extent that he is now granting leave to litigants on the issue of access to information without much ado.

Mr Chigbu believes that one of the strongest challenges faced in the fight for freedom of information is the initial uncooperative stance of

Continued on page 13

Court Adjourns Judgment in EiE Vs First Bank FOI Case Indefinitely

A Federal High Court in Lagos presided over by Justice Mohammed Yunusa has adjourned judgment indefinitely in the Freedom of Information suit filed by Enough is Enough (EiE Nigeria) against the First Bank of Nigeria Plc (FBN).

The Court, on June 19, 2014, heard all applications and initially adjourned Judgment to September 25, 2014. At the adjourned date, however, the court did not sit as counsel to both parties were informed that the Judge had other engagements.

Justice Yinusa had granted EiE Nigeria leave to apply for an Order of Mandamus to compel FBN to disclose and make available to it information relating to the loan facility it granted to the Nigerian Civil Aviation Authority (NCAA) for the purchase of two bullet proof BMW 760 LI HSS vehicles for former Aviation Minister, Mrs Stella Oduah.

EiE asked the Court in a motion exparte for leave to apply for the order compelling the FBN to disclose and make available to it the following:

- The credit application file for the loan facility of N836,970,156.00 for the purchase of two bullet proof BMW 760 LI HSS vehicles for the NCAA from Coscharis Motors Ltd with; the original documents, including pro-forma invoice (s) from the supplier, request letter from the NCAA and insurance certificate for the assets (in this case the BMW vehicles); rationale for approval including the credit application (or an acceptable alternative) originating the request and details of the approving authority; offer letter to NCAA stating the terms and conditions of the loan;
- The loan account statement reflecting the two payments already made as stated during the testimony of Mr. Joyce D. Nkemakolam, the Director of Aerodrome and Airspace Standards and former Director General of NCAA.

On February 27, 2014, the Court granted the order sought by EiE. Thereafter, EiE filed its application for judicial review, seeking among other reliefs, an Order of Mandamus



Yemi Adamolekun, Executive Director, EiE

compelling FBN to disclose and make available the Information requested as well as compelling the Attorney General of Federation to prosecute FBN for wrongful denial of the information requested.

Subsequently, FBN filed an objection to the Suit on the ground that EiE Nigeria lacks locus standi to institute the Suit.

In its response, EiE argued that the provisions of the FOI Act permits any person to access or request information and that such an applicant needs not demonstrate any specific interest in the information requested. EiE Nigeria also argued that any such applicant in exercise of the right to access information also has the right to institute proceedings in Court to challenge refusal.

FBN further argued that it is not a public institution and therefore cannot be subject to the FOI Act. But EiE countered same by arguing that FBN performs public duties and thereby qualifies as a public institution as envisaged under the FOI Act.

The proceedings followed the request for the information made by EiE by a letter dated October 30, 2013 and the subsequent refusal of FBN to provide the information and documents.

Court Fixes EiE Vs Coscharis Motors FOI Case for Judgement

Justice Mohammed Yunusa of the Federal High Court in Lagos has fixed judgment in the Freedom of Information case filed by Enough is Enough (EiE Nigeria) against Coscharis Motors Limited for November 11, 2014 after hearing counsel to both parties.

This is sequel to the litigation processes that followed the refusal of Coscharis Motors to give to EiE, the information it requested through an FOI application it made.

In a letter dated October 28, 2013, EiE Nigeria had requested Coscharis Motors to furnish it with information

relating to the importation and sale of two bullet-proof BMW cars it sold to the Nigerian Civil Aviation Authority (NCAA), citing the provisions of the FOI Act to back its request. Coscharis Motors did not respond to the request.

Consequently, EiE, on February 27, 2014, approached the Court in a motion exparte, seeking leave to apply for the order compelling the Coscharis Motors to disclose and make available to it invoice and landing documents for two vehicles acquired by the NCAA with chassis numbers WBAHP41050DW68032 and WBAHP41010DW68044

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Disclosure of Information About a Contract Already Awarded Cannot Interfere with Rights of a Third Party

In the Federal High Court of Nigeria
In the Abuja Judicial Division
Holden at Abuja
On Friday the 1st Day of March, 2013
Before His Lordship Hon. Justice A.F.A Ademola, Judge
Suit No. FHC/ABJ/CS/582/2012

Between:

Public & Private Development Centre
Ltd/GT
PPDC) (For itself and on behalf of the Nigeria Contract
Monitoring Coalition – APPLICANT

And

1. Power Holding Company of Nigeria
Nigeria (PHCN) PLC
2. Hon. Attorney-General of the Federation -
RESPONDENTS

Summary of the Facts

The Applicant in the suit brought by Motion on Notice dated December 14, 2012 pursuant to Order 34 Rules 5 & 6 Federal High Court (Civil Procedure) Rules 2009; Sections 1, 2(6) & 20 of the Freedom of Information Act, 2011 and the inherent powers of the Court, prayed for the following Reliefs:

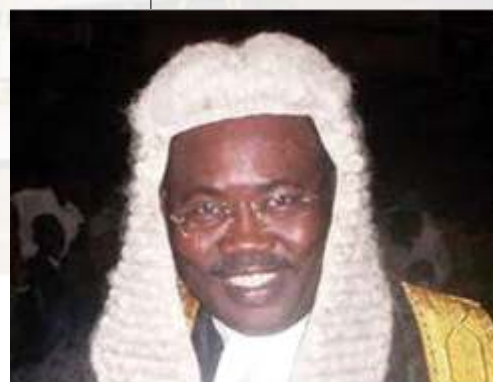
- * A Declaration that the failure of the 1st and 2nd Respondents to furnish the Applicant with the documents/information sought vide Applicant's letter of August 30, 2012 amounts to a wrongful denial of information under the Freedom of Information Act.
- * An Order of the Court compelling the Respondents to forthwith furnish the Applicant with the information and copies of the documents set out in the Schedule hereto.

Schedule

The following documents and information were listed in the Schedule as the documents and information

sought by the Applicant in its letter dated August 30, 2012, in respect of Bid No. NGP-D2, for the award of a contract for the supply and installation of 300 units of 11 KV, 500A On-Load Sectionalizers for installation at the High Voltage Distribution System (HVDS) networks at Karu (in Abuja); the Lagos University Teaching Hospital (LUTH), Ogba and Agege (all in Lagos); and Challenge (Ibadan):

- a) The procurement plan.
- b) The Needs Assessment document (if separate from the procurement plan).
- c) Documentation on design and specification requirement which are not contained in the standard bidding documents.
- d) Documentation on the scope of the procurement.
- e) Bidding documents issued to all bidders in respect of the procurement.
- f) A list of all contractors that submitted bids in respect of the procurement.
- g) Copy of the bid evaluation report of the



Mr. Mohammed Bello Adoke (SAN),
Attorney-General of the Federation and Minister of Justice

- technical sub-committee of the Tenders' Board for the procurement.
- h) Minutes of the Tenders' Board approving the winning bids.
- i) Copies of the letters of award of contract and final contract award documents for the award of the contract for the procurement.
- j) Documentation on the current status of the procurement project.
- k) Document showing the procurement contract sum, conditions of the procurement contract and payment terms and schedule.
- l) Name and addresses of all Distribution Companies on whose behalf the procurement was undertaken and which will subsequently be responsible for the utilization and management of the goods and works procured.

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Disclosure of Information About a Contract Already Awarded Cannot Interfere with Rights of a Third Party

The Application was supported by an amended statement with names of Applicant, Description of Applicant, Reliefs sought, grounds which reliefs are sought; facts relied upon, affidavit with EXHIBITS A- E and a written address.

The Respondent filed a Counter-Affidavit of five paragraphs sworn to by Kemi Iyandade, a Litigation Clerk in the office of Messrs Joseph Ochuko Tobi & Co, Counsel to the 1st Respondent with Exhibits A & B, a written address prior to paying default fees under Order 34, Rule 5(3) & (4) of the Federal High Court (Civil Procedure) Rules, 2009.

Upon service, the Applicant's Counsel, G.N. Chigbu, filed a reply on points of Law to the 1st Respondent's address dated January 28, 2013.

The suit commenced in the Court on October 23, 2012 but was delayed by several interlocutory applications of Counsel until February 8, 2013 when G.N. Chigbu, Applicant's Counsel; and Edna Ejikeme for 1st Respondent, proffered oral argument and adopted their written address in court.

The 2nd Respondent though served, never entered appearance nor filed papers. Accordingly this suit was reserved for judgment by the court:

Statement of Issues Arising from the Facts

The Applicant's counsel in the application for an order of mandamus submitted one issue for determination in his written address dated December 14, 2012 to wit: Whether the Applicant has proved its entitlement to the relief sought in the action.

The 1st Respondent in its written address dated January 15, 2013 and filed on January 1, 2013 adopted the Applicant's issue as the only issue arising for determination.

The Court therefore formulated the said issue for determination in the Judgment.

Determination of Issues by an Applicant of Law to Facts
The Applicant's Counsel submitted that pursuant to leave of the Court granted on October 29, 2012, the substantive motion on notice for mandamus dated December 14, 2012 was filed on the same day.



Dr. Sam Amadi,
Chairman, Nigerian Electricity Regulatory Commission

Power Holding Company of Nigeria, the 1st Respondent, sometime in 2011, through its Project Management Unit (PMU) conducted a Public Procurement exercise, described as Bid No. NGP-D2, involving the award of contract for the supply and installation of 300 units of 11 KV, 500A On-Load Sectionalizers for installation at the High Voltage Distribution System (HVDS) networks at Karu (Abuja); at LUTH, Ogba and Agege (all in Lagos); and Challenge (Ibadan).

The Applicant, pursuant to the right conferred on it to obtain public records and information from public institutions pursuant to the Freedom of Information Act, 2011, applied to the 1st Respondent through its PMU for the copies of the documents and information set out in the schedule to the application. The 1st Respondent refused to furnish it with the said documents and information.

Therefore Applicant sought the leave of the Court to bring an application to enforce the Applicant's right under the Freedom of information Act, 2011 and same was granted on October 29, 2012.

The 1st Respondent in response to the application for procurement information on the installation of 300 No. 11KV 500A on load sectionalizers at the said locations wrote a letter dated November 9, 2012 annexing the documents/information required to the Applicant except the document in paragraph 'g' of the Schedule attached to the motion on notice dated December 14, 2012, that is a copy of the Bid Evaluation Report of the Technical Sub-Committee of the Tenders Board for the procurement.

The Applicant's Counsel submitted that it has complied with Sections 1(2), 2(6) & (7), 4 and 7(a) of the Freedom of Information Act, 2011 and satisfied the conditions precedent for the issuance of an order of mandamus from the court.

He cited the following cases: Gani Fawehinmi V. IGP (2007) 7 NWLR (pt.767) 606; Atungwu V. Ochekwu (2000) 1 NWLR (pt.641) 507; and Inyang V. Ebong (2002) 2 NWLR (pt.751) 284.

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Finally Applicant's Counsel urged the Court to grant the application in the interest of justice and observance of the Rule of Law.

The 1st Respondent's Counsel opposed the grant of the application based on Section 15(1)(b) of the Freedom of Information Act, submitting that the information and documents sought for by the Applicant is a copy of the Bid Evaluation Report of the Technical sub-committee of the Tender's Board for the procurement and that it involved a third party, the winner of the bid, namely Crown Resources Development Co. Ltd, hereinafter referred to as the Contractor.

He argued further that the intention of the section has its origins in the privity of contract doctrine in the Law of Contract, submitting the Release of information to a third party, that is the Applicant, would affect the contractual relationship between parties to the contract.

The 1st Respondent's Counsel argued that in the present case, the contractor has contractual relationship with 1st Respondent and not the Applicant whilst 1st Respondent cannot be required to disclose or release information or documents between her and the contractor to the Applicant who is not privy to the contract since it would be contrary to Law.

He cited Section 15(1)(b) of the Freedom of Information Act provides thus – "A public institution shall deny an application for information that contains: ... information the disclosure of which could reasonably - be expected to interfere with the contractual or other negotiations of a third party."

He urged the Court to dismiss the relief of the Applicant as it affects paragraphs of the Schedule of the said application as its grant would cause injustice to the Contractor who is not a party to this suit resulting in a breach of the privity of contract doctrine.



Ms Seember Nyager, CEO of PPDC

Justice Ademola said a scrutiny of Section 15(1)(b) of Freedom of Information Act 2011 states the circumstances under which a public institution shall deny an application for information to a person, which are that:

- The transaction must still be at the negotiation stage
- A third party must be involved; and
- The disclosure of the information could reasonably be expected to interfere with the contractual or other negotiations of a third party.

Justice Ademola said he agreed with the Applicant Counsel's submissions in his reply on points of Law that for a public institution to be justified in denying information under the said section of the Law, the above mentioned conditions must exist concurrently.

The judge said the uncontroverted evidence before the Court states unequivocally that the negotiations were concluded and the contract awarded since November 30, 2011 with the contract effective from March 26, 2012. He referred to the 1st Respondent's Exhibit B, Paragraph one, Annexure VII in the proceedings.

The judge said the Applicant's averments in the affidavit in support of the substantive motion were not contradicted by the 1st & 2nd Respondents and held that they are deemed as true having being admitted by the opposing party, that is the 1st & 2nd Respondents. He cited *Ogoejeofor V. Ogoejeofor* (2006) 1 S.C (pt.1) 157.

Justice Ademola said this principle of Law also applies to Paragraph 7 of the affidavit in support of the substantive motion wherein the Applicant deposed to requesting inter alia for the documents in issue on August 30, 2012 - several months after conclusion of negotiations between the 1st Respondent and the Contractor, that is the third party.

The judge said he could not agree more with Applicant Counsel's arguments in his reply on points of Law that

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Disclosure of Information About a Contract Already Awarded Cannot Interfere with Rights of a Third Party

negotiations have been concluded and the contract awarded, and therefore "the disclosure of the information sought by the Applicant cannot by any stretch of the imagination reasonably be expected to interfere with any contractual or other negotiations of the Contractor, that is the third party."

Justice Ademola noted that "As rightly argued by Counsel in his well researched address and brilliant reply on point of Law, the 1st Respondent has failed to satisfy conditions (a) and (c) of Section 15(1) (b) of the Freedom of Information Act 2011 and not entitled to the exemption stated herein."



Justice Mariam Aloma Mukhta,
Chief Justice of Nigeria

He held that the 1st Respondent's processes and written arguments lacked substance, were frivolous, time-wasting and an abuse of the Court process as they have no justification in denying the Applicant the documents sought.

He accordingly granted prayers 1 & 2 of the Applicant's Motion on Notice dated December 14, 2012, particularly in respect of item "g" in the schedule therein.

The judge also awarded costs of N20,000 jointly and/or severally against the 1st & 2nd Respondents in favour of the Applicant. ■

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FOI Lawyer's Profile

Godwin Chigbu: A Fervent FOI Litigator

of Mr. Ekwewkwuo whom, he remarked, "would always talk of the benefits that would accrue to the public in terms of transparency in governance and reduction of corruption if public documents are easily accessible to the public."

Speaking of his most challenging and inspiring cases, he recalls a case against a bank involving millions of naira where he represented a prominent person in Nigeria who has shown absolute confidence in his ability to successfully conduct the matter for him despite knowing the dire consequence of losing the case. He also notes a criminal case against the EFCC where he fought and was able to ensure his client's liberty by the effective use of the judicial process.

Mr. Chigbu's advise is that if Nigeria must come out of the pit of corruption, lawyers must tenaciously pursue FOI related cases. He also advises young lawyers on the value and benefit of hard work pays, saying "he that endures to the end shall wear the crown of glory". ■

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FOI Litigation

Court Fixes EiE Vs Coscharis Motors FOI Case for Judgement

and details of payment for the vehicles, if they were paid in full or hire purchased as reported by the media.

On February 27, 2014, the Court granted the order sought by EiE. EiE thereafter filed its application for Judicial review, seeking among other reliefs, an Order of Mandamus compelling Coscharis Motors to disclose and make available the Information requested as well as compelling the Attorney General of Federation to prosecute Coscharis Motors for wrongful denial of the information requested.

Coscharis Motors, opposing the application, argued that it is a private company and cannot be made subject to the FOI Act. EiE responding argued that Coscharis Motors having utilized public funds, qualifies as a Public Company under the FOI Act.

The case was adjourned to 2 October 2014 for hearing after which hearing Justice Yunusa heard the application and response of both parties and thereafter fixed judgment for November 11, 2014. ■

BBC Wastes over £10m as Severance Pay for Staff Later Re-employed

In the United Kingdom, information obtained through a Freedom of Information request revealed that the British Broadcasting Corporation (BBC) has wasted more than £10million in redundancy payment to staff whom it laid off and shortly afterwards re-employed after they received their severance pay.

The information showed that 286 full-time staff of the BBC who were laid off as being redundant between September 1, 2002 and August 31, 2014, who received a total of £10,230,905, have since been rehired on "permanent or fixed-term" contracts.

Over the past four years alone, 81 staff have been re-employed after pocketing £3,001,684 in severance pay.

According to the Sunday Express, the figures do not include BBC staff made redundant who were then taken back on a freelance basis or employed as consultants through other companies.

The Sunday Express reports that public anger at the enormous severance payments forced BBC director general Tony Hall to impose a £150,000 cap from



David Cameron, British Prime Minister
September 2013. His predecessor, George Entwistle,

was paid £470,000 for just 54 days work before resigning over his handling of the Jimmy Savile scandal.

Former chief operating officer, Caroline Thomson, received £680,000 in severance while the deputy director general, Mark Byford, got £949,000. ■

Over 300 Drivers in Liverpool are Older than 90 Years

The city of Liverpool in the United Kingdom has more than 300 motorists who are over 90-years-old, according to figures released under the UK's Freedom of Information Act 2000.

Figures obtained by the Sunday ECHO show from UK's Driver and Vehicle Licensing Agency (DLVA) under the Freedom of Information Act show that the oldest people to hold full licences in the city are two men, aged 103 and 102. A 97-year-old is the eldest woman in Liverpool to have a full licence.

In all, there are 226 men and 85 women aged 91 or older, from Liverpool, who are licenced to drive. Figures from the Agency also indicate that those drivers are the least likely to have penalty points.

Men aged 91 to 100 in Liverpool have an average of just 0.11 points on their licence, compared to 0.57 points for men aged 21 to 30, and 0.59 points for men aged 31

to 40.

Neither the 103-year-old nor the 102-year-old has a single penalty point.

Where women are concerned, the figures are even more impressive. Not one of the 85 drivers aged 91 to 100 has a single penalty point. Women aged 31 to 40 have the most points, with 0.27.

The figures also show that, overall, women are much more careful drivers than men. Men of all ages from Liverpool have an average of 0.43 points on their licence; for women the figure is 0.21.

Anyone aged over 70 years has to renew their driving licence every three years, as against every 10 years for younger drivers. They also have to continue to meet minimum eyesight requirements. ■

The Freedom of Information Act in Nigerian Airspace Management Agency

The Freedom of Information Act (FOIA) requires all Government institutions to disclose to the public information about its activities. It also requires Agencies to work proactively and respond to requests from the public promptly. Public institutions are also enjoined to use modern technology to inform citizens of what is done by their organizations. In this regard, Agencies should readily and systematically post information online to inform the public about its activities. Providing more information online reduces the need for individualized request and may help reduce existing backlogs.

The FOIA is not only concerned with responding to request for information by the public, it also requires that all Government organizations should keep, organize and maintain their records in a manner that makes them accessible to the public and also requires public institutions to proactively disclose certain categories of information through making such information available to the public using multimedia formats (i.e. print, electronic and online media).

The Nigerian Airspace Management Agency (NAMA) commenced immediate implementation of the Act as soon as Mr. President assented to the bill. A committee was set up by the Management to ensure the implementation of the FOI act as indicated in the guidelines prepared by the Federal Ministry of Justice and to develop an institutional capacity building for its implementation.

Based on directives from the Federal Ministry of Justice, the Agency has since established an FOIA unit with



Engr. Ibrahim Abdulsalam,
Managing Director of Nigerian Airspace Management Agency

dedicated staff, email addresses as well as a contract person whose

telephone numbers and email addresses are posted on this Agency's website for the general public to access.

Steps Taken to Enhance Effective Implementation of the Act by NAMA

Due to the few number of FOIA requests received by NAMA, the Agency has a small FOIA office. Officers have attended some training and it is in the plan of the Agency to sponsor more officers as well as members of the FOIA committee for training in the year 2014 particularly on the Attorneys General's FOIA guidelines and access to information in line with the FOIA. The Agency also intends to carry out an Agency wide training on the Act amongst the various Stakeholders in the Agency.

In the Financial Year 2013, NAMA granted seven (7) requests in full, no request was part granted and none was denied. In the course of the year, the FOIA team members in NAMA interacted with various

agencies of Government. Information about the Agency is posted on the Agency's website. The NAMA's FOIA team is domiciled in planning, Research and Statistics department with a few staff who handle the schedule along with other duties. There is also a committee which is made up of an attorney and representatives from other departments that advise on the FOIA. Due to the small number of FOIA requests NAMA received, we believe this is quite adequate.

Steps Taken to Ensure that NAMA Has an Effective System for Responding to Requests

NAMA maintains a database to track and facilitate effective and efficient response to all requests. The FOIA team receives enough support from the IT department to ensure requests are met. The database kept by the Agency is sufficient and provides valuable help to the FOIA team to enforce internal deadlines for documents. In addition, the email and phone number of the FOIA contact person are displayed on this website and requests from the public are usually received and responded to immediately.

Spotlight on Success of Implementation of the Act

A recent request by Independent Service Delivery Monitoring Group (ISDMG) which sought and obtained information about the activities of the Agency in line with its core mandate of enhancing safety and security of the Nigerian Airspace was used as a basis for assessing Government Agencies on service delivery responsiveness and NAMA was rated as one of the best performing Agencies in Nigeria and it was given an award in that regard. ■

Upcoming FOI Events

November 4, 2014: Centre for Freedom of Information European Conference

Scotland is to play host to the largest ever gathering of Information Commissioners from across Europe at a conference organised by the University of Dundee's Centre for Freedom of Information. The Centre for Freedom of Information is a joint venture between the University of Dundee and the Scottish Information Commissioner.

The conference which is to hold in Edinburgh hopes to address the challenges for practitioners in interpreting and implementing access to information laws which derive from European legislation. Speakers at this event include academics and practitioners and many of the Information Commissioners from across Europe will be participating. Full details at <http://www.centrefoi.org.uk/seminars.php>

Wednesday, November 5, 2014: OGP 'Openness in Natural Resources' Working Group

Time: 8:30-9:30 AM EST

Language: English

Presenters: Suneeta Kaimal, Deputy Director, Natural Resource Governance Institute; Dr. Lalanath de Silva, Director of the Environmental Democracy Practice, World Resource Institute; Nirata T. Samadhi, Deputy Head for National Priority Planning and State Budget Evaluation, Indonesia's President Delivery Unit for Development Monitoring and Oversight (PDU)

Sponsored by the OGP Support Unit and the World Bank, the OGP Openness in Natural Resources Working Group (OGP-ONR) is one of five thematic working groups that will contribute to peer exchange and learning across the Open Government Partnership. This webinar will also serve as a platform to re-launch the working group and give practitioners an opportunity to find out more about it, as well as provide information on how they could join if interested for both Government and civil society. As part of the re-launch, the webinar hopes to initiate discussions on the topic of natural resource governance in OGP countries.

By sharing lessons learned and good practice, the

working group aims to leverage the OGP platform to advance collective understanding of how increased openness in the natural resources sector can bring significant benefits to citizens and governments.

The webinar will look at environmental commitments in the first action plans and discuss the evaluation of the IRM findings; provide an overview of commitments that are currently being implemented, with a particular focus in Indonesia where the speaker will discuss some of the challenges and opportunities to implement natural resource commitments; and present two indices that measure different aspects of natural resources and openness and demonstrate how these indices can help shape natural resource commitments among OGP member countries.

November 11-21, 2014: MRA/MacArthur FOI Training Workshops for CSOs and the Media

Media Rights Agenda will be training CSOs and Media participants on FOI in the South South, South East and South West Zones of Nigeria.

11-12 Nov: MRA/MacArthur South West Training Workshop for CSOs, Ibadan.

17-18 Nov: MRA/MacArthur South South and South East FOI Training Workshop for CSOs, Calabar

20-21 Nov: MRA/MacArthur South South and South East FOI Training Workshop for the Media, Calabar.

November 12, 2014: Launch of Independent Review of the U.S. Second National Action Plan

All stakeholders, including government and civil society representatives, are invited to attend the official kick-off of the independent review of the United States' Second Open Government Partnership National Action Plan. The Open Government Partnership and Rutgers School of Public Affairs and Administration plan to hold this brown bag lunch event at the OpenGov Hub, 1110 Vermont Ave NW #500 in Washington, DC at 11:30am – 1:00pm. ■

Regional / International Developments

AFIC Launches the 'State of Right to Information in Africa 2014' Report

The Africa Freedom of Information Centre (AFIC) has launched the first issue of the State of the Right to Information in Africa Report amidst celebration of the Right to Know Day on September 28, 2014.

Following information activists' celebration of the Right to Know/Right to Information Day



Mrs. Rosemary Namayanja, Minister of Information and National Guidance of Uganda

around the world, the report was officially launched on Monday, September 29, 2014 by the Minister of Information and National Guidance, Mrs. Rosemary Namayanja as part of the RTI day in Uganda.

This publication is aimed at complementing efforts for the advancement of the right to information in Africa by supporting advocacy for adoption and implementation of access to information provisions as well as contributing to building a knowledge base. AFIC and its members are committed to providing annual reflections on the development of the right to information in Africa through annual publication of the State of Right to Information in Africa.

The State of Right to Information in Africa Report 2014 accounts for the performance of AFIC members on the observation of the right of access to information and the implementation of laws and initiatives, to enable assessment and reflection. The report provides a reflection on the status of countries with regard to African Union (AU) treaties that recognize RTI, FOI laws as well as citizen experiences.

This report also hopes to support national campaigns for ratification, domestication and implementation of regional treaties, adoption of RTI laws holding governments accountable on various commitments. Intergovernmental bodies such as the AU and African Commission on Human and Peoples' Rights will also find this resourceful in engaging member states and state parties on RTI. The engagement of Civil Society Organizations is also instrumental in supporting these efforts.

This first issue provides a reflection of progress African countries have made in advancing the right to information from a regional perspective. Specifically, countries are assessed on the state of ratification and domestication of African Union treaties that recognize the right to information, status of treaty reporting in terms of

Article 62 of the African Charter on Human and Peoples' Rights as well as adoption of freedom of information laws in line with article IV of Declaration of Principles of Freedom of Expression in Africa.

Gilbert Sendugwa, AFIC's Executive Director, stated that "Ratification, domestication and effective implementation of regional treaties that recognize peoples' right to information is essential for continental integration, democracy and security. Countries where there has been little or no progress on this agenda have experienced tension and conflict. Unfortunately, whereas there have been calls by African leaders for Africa to resolve its issues, many countries have not ratified key African treaties on access to information while a good number do not respect reporting obligations".

To obtain the right impact at national and regional level, communication and dissemination of this report is key. Given the centrality of access to information in promoting transparency, accountability, rule of law, democracy, peace and security, AFIC calls upon all stakeholders including the African Union, Governments and civil society to prioritize the advancement of the right to information in Africa.

This report, released on 29 September, is available online at www.africafoicentre.org. The Centre appreciates the great contributions that went into this initiative and trusts that important lessons will be drawn from this initiative and process to guide future editions. ■

Angola's FOI Law Needs Better Implementation, Says AFIC

The Africa Freedom of Information Centre (AFIC) has told a United Nations Panel that Angola is not sufficiently implementing its right to information law and should make efforts to do so.

Gilbert Sendugwa, AFIC's Executive Director said this in a statement at a meeting under the auspices of the UN Human Rights Council on October 7, 2014. The Universal Periodic Review is a unique process which involves a review of the human rights records of all UN Member States and ultimately recommendations about actions to be taken. While



Gilbert Sendugwa, AFIC's Executive Director

commending Angola's compliance with international treaty reporting obligations, AFIC noted the gap between treaties and their implementation in respect of inadequate protective environment for citizens' right to information, inadequacies of the Freedom of Information Act and lack of implementation of the Freedom of Information Act.

The Centre also noted Angola's importance in the promotion of human rights, transparency, accountability, democracy and rule of law as one of 13 African countries that have adopted national right to information laws. This statement by AFIC sought to make a constructive contribution to the preparation process of the UPR for the Republic of Angola and address serious policy and practice deficits regarding citizens' right to information in the country.

AFIC pointed out that the Republic of Angola is yet to ratify, domesticate or implement key instruments including the African Charter on Democracy, Elections and Governance, African Charter on the Values and Principles of Public Service and Administration, the African Union Convention on Preventing and Combating Corruption and the African Statistics Charter. The Centre notes that the lack of ratification and domestication of these instruments causes the protective environment for the right to information in Angola to remain inadequate and limits the right to information provided in these treaties which are pertinent to Angola's citizens. AFIC insists that without access to information there cannot be

democracy nor progress against corruption and poor governance.

The Angolan law was also said to have fallen short of regional and international standards regarding scope, clarity on process for requesting and receiving information, language and accessibility, limited exemptions, whistleblower protection, obligation to publish information and right to appeal. AFIC pointed to The Model Law on Access to Information for African Union Member States and the African Platform on Access to Information (APAI) Declaration which provide important guidance on strengthening access to information laws in the

context of Africa.

The Centre also noted the lack of implementation of the law in several respects despite the positive step of its enactment. It explained that the Government of Angola is yet to sensitise the public on their right to information, set up the Monitoring Commission to promote and monitor implementation, appointment, train and equip Officers and allocate budget for access to information programmes. It drew attention to the secrecy of the Public Services Administration contrary to Article 6 of the African Charter on Values and Principles of Public Service and Administration.

AFIC's recommendations to Angola were that:

- Its government should in collaboration with civil society should develop and implement a comprehensive Freedom of Information Action Implementation Programme with clear actions, time frames and resources to advance the right to information in the country.
- It should set up the Freedom of Information Monitoring Commission provided for under the current Freedom of Information Act.
- There should be an amendment of the Freedom of Information Act to bring it in line with regional and international standards. ■

Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
The Socio-Economic Rights and Accountability Project, (SERAP)	Information on the spending of recovered stolen public assets since the return of civil rule in 1999, what amounts have been spent and what projects the funds have been applied to and to publish widely the information on a dedicated website. The information is to give SERAP and the general public a true picture and a clear understanding of how the spending of recovered public stolen funds have impacted on the lives of the ordinary, common, poor and indigent and other disadvantaged Nigerians."	Public Institution The Accountant-General of the Federation	26 September 2011	In a letter dated 11 October 2011 and signed on behalf of the Accountant-General by the Deputy Director legal, it stated that they were looking into the nature of the request vis-à-vis the Freedom of Information Act (FOI) 2011 and would reply in due course.	A matter was instituted in court for declaratory reliefs of violation of principles of accountability, a binding obligation to provide the information and for an order of mandamus compelling the Accountant General to release information.
Ojukwu Chikaosolu,	Information on the list of companies that had obtained import licenses and the volumes allocated in their respective permits. He sought the information with a view to exposing sharp and fraudulent practices in the petroleum import transactions through an informative and open process. He also demanded to know whether the Executive Secretary had resigned his employment with the Nigerian National Petroleum Corporation, NNPC, before being appointed to his present position.	Executive Secretary of the Petroleum Products Pricing Regulatory Agency (PPPRA), Reginald Stanley	July 19, 2012	The agency in a letter signed by Ja'afar Abubakar refused to release the requested information claiming that it does not fall within the public information envisaged by the FOI Act.	Justice Gabriel Kolawole of the Abuja Federal High Court granted the lawyer the requested leave for an order to compel the executive secretary and the agency to release the requested information.
Nigerian Contract Monitoring Coalition	Documents containing details of a contract for the supply and installation of High Voltage Distribution systems in Abuja, Lagos and Ibadan.	Power Holding Company of Nigeria (PHCN) and Abuja Electricity Distribution Company Plc	August 30 and 31 2012	The request was turned down by both PHCN Abuja and Electricity Distribution Company Plc and the information was not released	By a letter dated April 2, 2013, and signed by its General Manager, Project Monitoring Unit, PMU, Mr A.J. Ciroma, the PHCN forwarded a copy of the "Bid Evaluation Report containing all annexes" and a copy of the signed contract document to the Nigerian Contract Monitoring Coalition.

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FOI Tracker

Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
					PHCN provided some of the records and information demanded by the coalition after receiving service of an order issued by Justice A.F.A. Ademola of the Federal High Court in Abuja granting the coalition leave to apply for an order of mandamus to compel the electricity company to disclose details of the contract. It also requested the Public and Private Development Centre, PPDC, which instituted the suit on behalf of the Nigerian Contract Monitoring Coalition, to forward its bank account details to PHCN to enable the company pay the N20,000 costs awarded against PHCN by the court.
Patrick Osagie Eholor, One Love Foundation International, a non-governmental organisation (NGO)	Information regarding the allowances, emoluments, constituency allocations of Uzamere and Osahon requesting for these information.	National Assembly, Abuja	April 3, 2013	The National Assembly replied on April 22, 2013 requesting an extension to supply the information but were not forthcoming with the information afterward.	A case was instituted in court which ended in Justice Mohammed Liman of the Federal High Court in Benin City, Edo State ordering the Clerk of the National Assembly to furnish Chief Patrick Osagie Eholor with the salaries, emoluments and constituency allowances of Senator Ehigie Uzamere and Hon. Nosakhare Osahon, representing Edo South and Ovia Federal Constituency respectively in the National Assembly.

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FOI Tracker

Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
Femi Falana	Information on the state of mental and physical health of the Executive Governor of Taraba State, Danbaba Suntai	Attorney General of the Federation	August 27, 2013	The AGF rejected the request without any legal justification and in flagrant disregard of the express and clear provisions of the FOI Act. The AGF's refusal to accede to his request was viewed as violating S (3) of the Freedom of Information Act, 2011.	A case was instituted in court to compel the AGF to release the information and asking the court to declare that the refusal of the AGF to accede to his earlier request for information on the state of the governor's health was illegal and unconstitutional.
Comrade Taiwo Otiolaye	Information regarding the use of masked security personnel before, during and after the gubernatorial election held on August 9, 2014 in Osun State. Details of the request include questions asking what date the decision was taken to deploy said personnel, who/what body gave approval for the deployment, how many were deployed and how much of public funds were spent on the deployment.	State Security Services, Abuja	September 8, 2014	The request was acknowledged on September 10, 2014 but information requested was not provided.	Denial of access to information.

" FOI Quotes "

<p>* "Secrecy is the freedom zealots dream of: no watchman to check the door, no accountant to check the books, no judge to check the law. The secret government has no constitution. The rules it follows are the rules it makes up." - Bill Moyers. U.S. journalist</p> <p>* "Excessive administration secrecy... feeds conspiracy theories and reduces the public's confidence in</p>	<p>government." - John McCain, 2008. Candidate for US president.</p> <p>* "The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures</p>	<p>might be revealed, or because of speculative or abstract fears." - Barack Obama, Jan. 21, 2009.</p> <p>* "Openness fosters the fair administration of justice and, like a watchdog, protects citizens from arbitrary state action." - Marie Deschamps, 2011. Writing for the majority in Canadian Broadcasting Corp. v Canada (Attorney General) [2011] 1 SCR 19. ■</p>
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The Tshwane Principles on National Security and the Right to Information

The Tshwane Principles on National Security and the Right to Information address the question of how to ensure public access to government information without jeopardizing legitimate efforts to protect people from national security threats.

These Principles are based on international and national law and practices. They were developed in order to provide guidance to those engaged in drafting, revising, or implementing relevant laws or policies.

Based on more than two years of consultation around the world with government actors, the security sector and civil society, they set out in unprecedented detail guidelines on the appropriate limits of secrecy, the role of whistleblowers, and other issues.

Here is a 15-point overview:

1. The public has a right of access to government information, including information from private entities that perform public functions or receive public funds. (Principle 1)
2. It is up to the government to prove the necessity of restrictions on the right to information. (Principle 4)
3. Governments may legitimately withhold information in narrowly defined areas, such as defence plans, weapons development, and the operations and sources used by intelligence services. Also, they may withhold confidential information supplied by foreign governments that is linked to national security matters. (Principle 9)
4. But governments should never withhold information concerning violations of international human rights and humanitarian law, including information about the circumstances and perpetrators of torture and crimes against humanity, and the location of secret prisons. This includes information about past abuses under previous regimes, and any information they hold regarding violations committed by their own agents or by others. (Principle 10A)
5. The public has a right to know about systems of surveillance, and the procedures for



Colonel Sambo Dasuki,
National Security Adviser to President Goodluck Jonathan

authorizing them. (Principle 10E)

6. No government entity may be exempt from disclosure requirements—including security sector and intelligence authorities. The public also has a right to know about the existence of all security sector entities, the laws and regulations that govern them, and their budgets. (Principles 5 and 10C)
7. Whistleblowers in the public sector should not face retaliation if the public interest in the information disclosed outweighs the public interest in secrecy. But they should have first made a reasonable effort to address the issue through official complaint mechanisms, provided that an effective mechanism exists. (Principles 40, 41, and 43)
8. Criminal action against those who leak information should be considered only if the information poses a “real and identifiable risk of causing significant harm” that overrides the public interest in disclosure. (Principles 43 and 46)
9. Journalists and others who do not work for the government should not be prosecuted for receiving, possessing or disclosing classified information to the public, or for conspiracy or other crimes based on their seeking or accessing classified information. (Principle 47)
10. Journalists and others who do not work for the government should not be forced to reveal a confidential source or other unpublished information in a leak investigation. (Principle 48)
11. Public access to judicial processes is essential: “invocation of national security may not be relied upon to undermine the fundamental right of the public to access judicial processes.” Media and the public should be permitted to challenge any limitation on public access to judicial processes. (Principle 28)
12. Governments should not be permitted to keep state secrets or other information confidential that

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Proactive Transparency: The Future of the Right to Information: A Review of Stands, Challenges and Opportunities

Authored by Helen Darbishire and written for the World Bank Governance Working Paper Series, *Proactive Transparency: The future of the right to information?* is a volume that discusses the nature and necessity of proactive transparency by the government to the public in 2010.

The book is divided into chapters which include: The Drivers of Proactive Transparency; Access to Information Laws and Proactive Transparency; International and Comparative Standards for Proactive Disclosure; Proactive Transparency in Practice; and Funding, Promoting, Monitoring and Enforcing Proactive Disclosure.

The book describes the benefits of proactive disclosure as it stands as the future for the right to know and identifies four drivers which have developed proactive transparency. According to Darbishire, “The first is the need to inform the public about laws and decisions and the public’s right to be informed, to know their rights and obligations. The second is the public’s demand for the information needed to hold governments accountable both at and between elections. The third is the demand for information in order to participate actively in decision-making. The fourth is the provision to the public of information needed to access government services, which has expanded significantly in the past decade with growth of electronic access to services or e-government.”

It proposes that these drivers led to progressive development of laws and practices for proactive disclosure which have been given further momentum by the advent of the internet. The development of Access to Information Laws which have increasingly enshrined proactive disclosure within their provisions has also advanced proactive transparency.

Darbishire noted from comparing the national and international provisions on proactive disclosure that it is possible to identify a set of 14 core-minimum of classes of

information for proactive disclosure. She identified them as: Institutional information; Organization information; Operational information; Decisions and acts; Public services information; Budget information; Open meetings information; Decision-making & public participation; Subsidies information; Public procurement information; Lists, registers, databases; Information about information held; Publications information; and Information about the right to information.

The paper states that though the precise standards for what information should be proactively disclosed are still being defined, it is possible to identify common classes of information which should form the minimum of any national access to information regime.

Looking at the lessons learned from the practical experiences of implementing proactive disclosure regimes, it recommended that due consideration should be given to how information will be structured, organized, edited, and when and where it will be disclosed. It also explained that it is essential in setting up proactive disclosure regimes to allocate necessary resources, to consider rolling out proactive disclosure programs progressively, and to establish effective enforcement mechanisms to ensure compliance. ■



Helen Darbishire,
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The Tshwane Principles on National Security and the Right to Information

- prevents victims of human rights violations from seeking or obtaining a remedy for their violation. (Principle 30)
13. There should be independent oversight bodies for the security sector, and the bodies should be able to access all information needed for effective oversight. (Principles 6, 31–33)
14. Information should be classified only as long as necessary, and never indefinitely. Laws should govern the maximum permissible period of

- classification. (Principle 16)
15. There should be clear procedures for requesting declassification, with priority procedures for the declassification of information of public interest. (Principle 17)

The full text of the Tshwane Principles are available for download at:
<http://www.opensocietyfoundations.org/publications/global-principles-nationalsecurity-and-freedom-information-tshwane-principles/> ■