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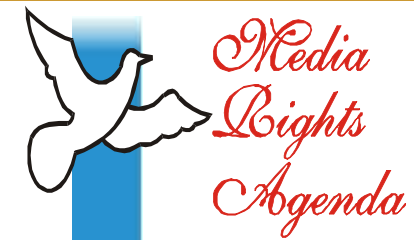


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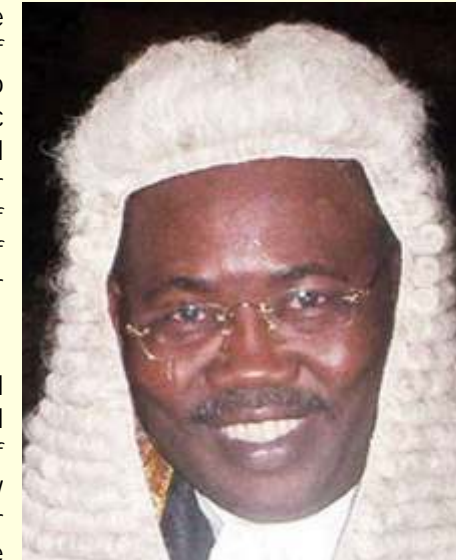
# Freedom of Information NEWSLETTER

Volume 1, No. 11, April 2015

## AGF Indicts Legislature, Judiciary for Non-Compliance with the FOI Act



The Attorney General of the Federation and Minister of Justice, Mr Mohammed Bello Adoke (SAN), has indicted public institutions under the legislative and judicial branches of government for non-compliance with the Freedom of Information Act, accusing them of not submitting any report on their implementation of the Act since 2012.



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

Section 29 of the FOI Act requires all public institutions to submit annual reports to the Attorney-General of the Federation on or before February 1 of each year with details of their implementation of the Law for the preceding fiscal year. Section 29(1) provides that the report

by each public institution should include the following information:

- The number of determinations made by the institution not to comply with applications for information made to such public institution and the reasons for such decisions;
- The number of appeals made by persons under the Act, and the reason for the action upon each appeal that results in a denial of information;
- A description of whether a court has upheld the decision

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## The Future of Freedom of Information Under a Buhari Administration

Early indications are that a regime of transparency and accountability will be among the hallmarks of the administration of incoming President Muhammadu Buhari, going by pledges he made during his campaign stumps and shortly after he was declared winner of the March 28, 2015 Presidential Elections.



**General Muhammadu Buhari**

General Buhari has promised to "encourage proactive disclosure of information by government institutions in the spirit of the Freedom of Information Act" and ensure that all ministries, departments and agencies of

government "comply with their accountability responsibilities to Nigerians through the National Assembly".

These and other pledges are contained in "My Covenant with Nigerians", a document outlining his agenda for Nigeria and how he intends "to

bring about the change that our country needs and deserves".

Whether these promises will be kept remains to be seen. But General Buhari ran his campaign for office,

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## The Future of Freedom of Information Under a Buhari Administration



**President Goodluck Jonathan**

pledging to enthrone transparency and accountability and fight public sector corruption, relying on the widespread perception of him among Nigerians and the international community as a man of integrity and someone who keeps his word.

Outgoing President Goodluck Jonathan has been widely commended locally and internationally for his bold move in signing into Law the Freedom of Information Bill on May 28, 2011 to open up governance to Nigerians, especially in the light of the fact that four years earlier, then President Olusegun Obasanjo bluntly refused to sign a similar Bill passed by the National Assembly.

However, the implementation of the Act under the Jonathan Administration has been rather lackluster, with the Presidency itself consistently remaining among the worst performing institutions in terms of non-compliance in all assessments conducted throughout the nearly four years of the existence of the Law.

The Presidency as well as institutions and agencies within the Presidency were notorious for not responding to requests for information made to them under the FOI Act and in exceptional cases when they responded, only in one instance has the information requested been provided and even then, only partial information was provided.

Indeed, the Presidency as well as institutions and agencies within the

Presidency hardly submitted annual reports on their implementation of the Act to the Attorney-General of the Federation throughout the four years, in flagrant breach of Section 29 of the FOI Act. In 2012, the Office of the Secretary to the Government of the Federation submitted a report to the Attorney-General of the Federation for the year 2011. It was the only office within the Presidency that submitted a report for that year and since then, it has submitted no further report for 2012, 2013 and 2014.

Neither the Presidency nor any institution or agency within the Presidency submitted any report for the year 2012. In 2014, the Office of the National Security Adviser submitted a report to the Attorney-General of the Federation for the year 2013. It was the only office within the Presidency that submitted a report for that year and it has not submitted any other report before or after that.

Neither the Presidency nor any institution or agency within the Presidency submitted any report for the year 2014.

President Jonathan's transparency credentials have been further damaged by his consistent refusal to declare his assets publicly or accede to requests made to the Presidency to disclose his asset declaration form and his stout defence of his position when he famously said in June 2012 that "I don't give a damn" despite public criticisms of him over the matter.

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## AGF Indicts Legislature, Judiciary for Non-Compliance with the FOI Act

of the public institution to withhold information under such circumstances and a concise description of the scope of any information withheld;

- The number of applications for information pending before the public institution as at October 31 of the preceding year and the median number of days that such application had been pending before the public institution as of that date;
- The number of applications for information received by the public institution and the number of applications which the public institution processed;
- The median number of days taken by the public institution to process different types of application for information;
- The total amount of fees collected by the public institution to process such applications; and
- The number of full-time staff of the public institution devoted to processing applications for information, and the total amount expended by the public institution for processing such applications.

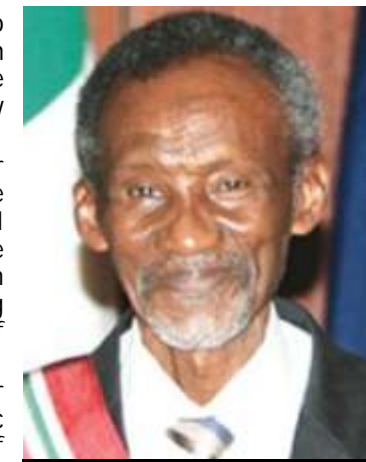
The reports are in turn to be collated by the Attorney-General of the Federation who is required to submit a consolidated report annually to the National Assembly not later than April 1 each year.

In his narrative report for the year 2014, issued on March 30, 2015, the Attorney-General of the Federation identified challenges encountered in the implementation of the Act as well as measures he has taken to encourage its implementation. He also attached a schedule of the reports he received from public institutions as well as an analysis of the reports.

He noted that there is general apathy amongst those that should operate the Act, adding that it was a matter of concern that in spite of reminders, public institutions under the legislative and judicial branches of government have not submitted any report to the Attorney-General since 2012.

However, records from the office of the Attorney-General of the Federation indicate that the Court of Appeal submitted a report in 2014 covering its implementation of the Act during the year 2013. That is the only report ever submitted by the Court of Appeal and it is the only institution within the judicial branch of government to have ever submitted a report to the Attorney-General of the Federation.

Other challenges identified by the Attorney-General of the Federation include lack of funding for FOI activities in government departments and general apathy among those who should be operators of the Act, worsened by a



**Hon. Justice Mahmud Mohammed**  
- Chief Justice of Nigeria

high level of ignorance about the provisions of the Act and the obligations it provides for.

To this end, the report called for intense and continuous sensitisation of government officials and stressed the need for each tier of government to complement the other and aim towards uniform implementation of the Act.

The report also noted that public institutions respond to requests for information well after the seven days provided by the Act, which is primarily as a result of the lack of necessary structures and framework for its implementation.

The Attorney-General of the Federation also observed that most institutions prefer to set up FOI committees rather than FOI units, which will require separate budgetary vote, adding that FOI committees cannot respond to requests timely.

He reported that the Federal Ministry of Justice had organized FOI sensitization workshops and trainings in Abuja, Calabar, Nasarawa, Kaduna and Lagos for heads of FOI Units and Committees in Ministries, Department and Agencies (MDAs) as well as continuously updated the FOI website on matters related to the implementation of the Act in Nigeria.

The report also stated that in compliance with Section 13 of the FOI Act, which mandates government or public institutions to ensure that their officials receive appropriate training on the right to information and on the effective implementation of the Act, the Ministry held a series of sensitization workshops for its staff on Grade Levels 8 to 14 and the directorate cadre at its headquarters.

The Attorney-General of the Federation also reported that his Ministry collaborated with civil society organisations (CSOs) on training and technical aspects of the Act, noting that the bulk of FOI requests have originated from these organizations, which helps keep public institutions on their toes and enhance their understanding of the practical aspect of the Act.

The report mentioned that the FOI Unit of the Ministry of Justice has participated as resource persons in some CSO workshops and seminars.

The Attorney-General of the Federation was of the view that although the FOI Act is relatively new, public perception of it and its application are gradually taking root and will ultimately stand the country in good stead.

He stated that the Ministry has encouraged public institutions to comply with the proactive disclosures obligation under the

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## Special Reports

### MRA Mentoring Programme Fosters FOI Experts Across the Country

**T**he second phase of Media Rights Agenda's (MRA) Mentoring Programme aimed at raising Freedom of Information experts and champions across the country came to an end in March with all the participating organisations routinely and actively using the Freedom of Information Act in their work.

The first and second phases of the programme involved MRA mentoring 12 civil society organisations (CSOs) that were trained and mentored to understand, use and mainstream the FOI Act in order to enhance effectiveness in their works. After the first phase which ended in March 2014, MRA also provided ongoing technical support to the organisation by telephone and email. A number of issues were raised in the different organisations which necessitated a second phase to strengthen the abilities of the organizations in their use of the Act.

MRA used the second phase of the programme to address these issues, tackle the challenges, consolidate and build on the mentoring programme taking note of the lessons learnt in order to make FOI champions of these mentees.

The Mentoring project involved the following organisations in the different zones:

- \* The Justice Development and Peace Commission, Ogun State and the Centre for Grassroots Women Advancement and Development, Oyo State in the South West
- \* The Grassroots Women Foundation (GWF), Enugu State and the Imo Youth Network Programme, Imo State in the South East
- \* The Borno Coalition for Democracy and Progress (BOCODEP), Borno State and Bauchi Coalition for the Improvement of Public Expenditure Management (BACIPEM), Bauchi State in the North East
- \* The Interfaith Mediation Center and the Muslim League for Accountability (MULAC) in Kaduna State for the North West
- \* The Stakeholder Democracy Network, Rivers State and Bayelsa Non-Governmental Organisation Forum (BANGOF), Bayelsa State in the South South
- \* The Inter-Gender Development Centre, Plateau State and Youth Initiatives for Advocacy Growth and Advancement (YIAGA), Federal Capital Territory (FCT) in the North Central Zone.



Fr. John Patrick Ngyi, JDPC Director

In the first phase, MRA held training activities for all the mentee organisations in Lagos and encouraged them to make requests in their states and step down the training received. MRA personnel then visited these organisations at a later date to follow up on the activities carried out, the challenges faced and the responses received as well as getting any other relevant information garnered from their experiences.

Following the completion of the initial phase, MRA personnel visited the locations of the mentee organisations to address issues raised, carrying out abridged trainings for staff, members and affiliates of these groups together with the trainees, identifying public institutions with which the mentee organisation work; developing and drafting requests for information which the mentee organisations were to administer to the public institutions; as well as capturing their experiences in making the requests and getting feedback on them.

The second phase involved similar activities and some logistics support was provided to the mentee organisations to facilitate submission and follow-up of FOI requests.

Indeed, the objectives and expected outcomes of the mentoring programme has been attained, the organisations are now quite confident in their use of the Freedom of Information Act with a good understanding of its uses and benefits and have been engaging public institutions in their sectors. The organisations were also provided with Information Education Communication (IEC) materials and other kinds of support needed.

A core aspect of the mentoring programme is to foster a sense of ownership of the FOI Act which motivated the organisations to mainstream the use of the Act in their programmes and activities. To encourage this as well as a feeling of belonging with the FOI community in Nigeria, the mentee organisations have participated in a number of other events including the African Regional Conference on the Implementation of Freedom of Information in March 2014 and the Second Freedom of Information Implementers' Strategy meeting in January 2015.

The Regional Conference featured a session where the mentee organisations were able to share their experiences on using and implementing the Freedom of Information Act. In addition to sharing their experiences and getting to ask questions and broaden their understanding of the implementation of the FOI Act in Nigeria, the mentee organisations were also a critical

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## Special Reports

### MRA Mentoring Programme Fosters FOI Experts Across the Country

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part of the proceedings at the Implementers' meeting with two mentee organisations being elected to the Board of Governors of the Freedom of Information Coalition. Mr. Yusuf Yakub Arrigasiyyu from the Muslim League for Accountability (MULAC) in Kaduna and Mr. Isah Garba from the Bauchi State Coalition for the Improvement of Public Expenditure Management (BACIPEM) in Bauchi were elected to represent their zones on the Board.

The mentoring programme also aimed at building FOI experts and champions who will be able to train other civil society groups in their areas and build the capacities of staff, members and affiliates of mentee organizations on usage of the Act.

The Justice Development and Peace Commission (JDPC) and the Youth Initiative for Advocacy, Growth and Advancement (YIAGA), in particular have been able to mainstream the use of the FOIA in their activities towards achieving other goals.

JDPC has so far undertaken capacity building for Community Based Associations and Leaders; public enlightenment to different associations and professional bodies, litigation and extensive use of the FOI Act in making requests across Ogun State. Some of the organisations trained through the JDPC are already using the Act to make requests to their local government authorities.

JDPC has made over 40 FOI requests to local governments in Ogun State and the Independent National Electoral Commission (INEC), among other public institutions, asking for information on procurements, local government expenditure, local government budgets, PVC distribution, etc. Although they have sometimes been ignored and refused some information, JDPC has also received a significant number of responses and information requested and have not been deterred in continuing to engage the FOI implementation process.

With the use of an in-house lawyer, JDPC has challenged two instances of denial of access to information in court. Speaking on their experience using the Act, Mrs Ireti Disu, Deputy Director/Coordinator, Human Rights Programme said it has been "quite interesting and especially when we meet in a different programme with government official and issue of FOI requests are mentioned, they feel jittery". She also notably mentions that "Groups trained call Local Government Chairmen to come and give account of stewardship."

YIAGA has been able to mainstream the Act and nurture a younger generation of FOI users and has used the FOI Act in



Mr. Samsom Itodo,  
Executive Director of YIAGA

advocacy, training and monitoring. YIAGA has made FOI requests to the Federal Ministry of Works, Ministry of Health, National Youth Service Corps (NYSC), Nigerian Civil Aviation Authority (NCAA), National Bureau of Statistics and INEC, among others. At least six of their FOI requests have been ignored but they have also been able to get responses and information from some public institutions including a letter from the NYSC Directorate Headquarters and the Secretary to the Government of the Federation showing

details of the compensation paid to the families of the 10 slain National Youth Service Corps members during the 2011 post-election violence in Bauchi State.

YIAGA has also instituted a case challenging the denial of its FOI request to the Senate for documents related to the Constitution Review. YIAGA states that from its experience using the FOI Act, that it is "a veritable tool in our engagement with State actors on policy issues, research, citizens' engagement and also in mobilizing citizens' action to demand accountability" but also notes "we have experienced some challenges which include delay in compliance - follow-up letters/warning letters had to be issued to the public institutions before complying, the lack of compliance by some Institutions and lack of funds for litigation."

Motivated by the outcomes of their FOI engagements, the Muslim League for Accountability (MULAC) has also engaged in advocacy efforts towards the passage of an FOI bill in Kaduna.

The mentoring programme has been able to reach a wide range of FOI Implementers through the geographic and sector spread of its mentees.

The programme has been able to enhance CSO activities as more Nigerian CSOs spread across the country are equipped to train others to understand, use and mainstream the Act in their work and ultimately, the use of FOI Act is enhanced and implementation made more effective.

MRA's mentoring project was supported by the United Nations Development Programme's (UNDP) Democratic Governance for Development (DGD) II Project. The DGD II Project is a joint donor-funded project managed by UNDP in support of deepening democracy in Nigeria and is funded with contributions from the European Union, the UK Department for International Development (DFID), Canada Department of Foreign Affairs, Trade and Development (DFATD), and the UNDP. ■





# Special Reports



## A Novel FOI and Elections Project to Engage the 2015 Elections Ends

In the lead up to the 2015 General Elections, Media Rights Agenda (MRA) partnered with the Transition Monitoring Group (TMG) in the Freedom of Information and Elections Project to assess the preparedness of the Independent National Electoral Commission (INEC) and other agencies involved in the conduct of elections in Nigeria.

When Public institutions led by INEC were reported to be putting plans and structures in place to guarantee the smooth conduct of the general elections as the 2015 elections drew nearer, it became critically important for civil society organisations (CSOs) to apply the principles of the FOI Act to ensure transparency, accountability and the effectiveness of the arrangements put in place for the electoral process.

The Freedom of Information Act was signed into Law by President Goodluck Jonathan on May 28, 2011, several weeks after the 2011 general elections in Nigeria ended. The 2015 General Elections therefore became the first opportunity to test the relevance and utility of the Law in the context of general elections. Given the centrality of transparency and access to information to the credibility and fairness of elections and electoral processes in general, project of this nature was of major importance, especially in Nigeria which has had a long-standing challenge with elections.

The FOI and Elections Project aimed to ensure that INEC and other public institutions involved with the elections lived up to their responsibilities and remain accountable for their actions

The monitoring exercise was carried out in all the states of the federation. The TMG, being a coalition of non-governmental and civil society organisations working to promote credible elections in Nigeria is made up of over 400 member organisations in all the 36 states of Nigeria and Abuja with the mandate to ensure the

highest standards in the administration of elections in Nigeria which includes free and fair elections.

The Project leveraged on the knowledge and expertise of MRA in access to information and the knowledge, expertise and experience of TMG in election and electoral matters, most importantly the extensive network for coverage through its members all over Nigeria.

Activities towards the implementation of the Project commenced with a two day Planning meeting at TMG Secretariat, Abuja which involved MRA staff and TMG Staff and officials. The major aim of the planning meeting was for both partners to discuss and determine the manner in which the Project was to be implemented.



*Participants at the North-West Zonal Workshop held in Kaduna*

At the planning meeting, the importance of a drafting meeting was decided upon and became necessary for the next phase of implementing the Project.

The drafting meeting was thereafter convened and had in attendance MRA staff, TMG zonal coordinators, TMG secretariat staff and elected officials. Quite a number of important activities were carried out at the drafting meeting which held for three days at Top Rank Hotel Galaxy, Utako, Abuja.

The meeting involved the following, among other things;

- \* Identifying the critical issues in the planning and preparation for elections.
- \* Deciding applicable standards and instruments in the conduct of elections such as the Constitution, the Electoral Act, relevant regional and international instruments, etc.

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# Special Reports



## A Novel FOI and Elections Project to Engage the 2015 Elections Ends

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- \* Agreeing on relevant Federal Government and State level institutions and agencies whose plans and activities should be monitored.
- \* Drafting thousands of requests for information pertaining to the 2015 elections. Questions were targeted at relevant Federal Government institutions and agencies in Abuja, particularly the INEC Headquarters as well as other relevant Government institutions and agencies across the states.
- \* Agreeing that the monitoring be extended to other government agencies working on Elections.
- \* Discussing the development of a "Manual on the Freedom of Information Act and Elections" which will contain guidelines to assist TMG members and other CSOs in using the FOI Act to make requests for election-related information.
- \* Agreeing that MRA will build their capacity to understand the FOI Act and use it to demand for records and information which will show the level of preparedness of INEC and other governmental agencies working on election for the forthcoming 2015 elections.

Following the Drafting Meeting, six zonal workshops were held across the six geo-political zones of the country for TMG member organisations within the zones. With help from TMG Zonal and State Coordinators, over 150 member organizations of the TMG were selected across the country.

The six zonal training workshops took place as follows;

- \* South West: August 12 - 15, 2014 at Premier Hotel, Ibadan;
- \* North Central: August 18 - 20, 2014 at Top Rank Hotel Galaxy, Abuja.
- \* North West: August 18 - 20, 2014 at



*Participants at the South-West Zonal Workshop held in Ibadan*

- Chimcherry Hotel, Kaduna
- \* South South: September 16 - 18, 2014 at Axari Hotel and Suites, Calabar
- \* South East: September 16 - 18, 2014 at Nondon Hotel, Enugu
- \* North East: October 9 - 11, 2014 at Hazibal Suites, Bauchi.

The series featured a number of workshops running simultaneously. The workshops were three-day intensive training on understanding and usage of the Freedom of Information Act to obtain information and assess the preparedness of INEC and other relevant government agencies for the 2015 elections.

The first and second days were dedicated to training participants on understanding the law while the third day was on the practical usage the FOI Act to make requests and review of the requests for information drawn up at the drafting meeting, adapting them to fit the different contexts and including questions peculiar to specific states, zones or regions.

At the end of the six zonal workshops, a total of 184 participants were trained made up of 134 men and 54 women.

Participating organizations left the training with series of FOI requests which were subsequently sent to INEC Headquarters, INEC state offices and other public institutions involved in conducting the general elections.

Bearing in mind that the purpose of the project was not only to gather information for the election process but to also create a culture of using the FOI

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## Special Reports



### A Novel FOI and Elections Project to Engage the 2015 Elections Ends

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Act in making requests for information from public institutions, participants were given different resource materials to enhance the smooth implementation of the project as well as subsequent engagements.

MRA provided the participating organizations with ongoing advice and technical support as was required by them. Over 60 organizations consequently engaged the identified public institutions all over the country. Dozens of FOI requests were made by participants across the 36 states and Abuja with well over half of the public Institutions sending in their responses.

Some of the public institutions engaged were INEC headquarters, INEC State Offices, State Emergency Management Agency, Nigerian Police Force, Nigerian Prisons, Federal and State Hospitals, Medical Associations and Unions, National Youth Service Corps (NYSC), The Nigeria Security and Civil Defence Corps (NSCDC), National Orientation Agency (NOA), National Broadcasting Commission (NBC), Political Parties, Department of the State Security (DSS), Federal Road Safety Corp (FRSC) e. t. c.

Some of the Participants took time to share their experiences on the project. For instance, Mrs. Comfort Okpe of Pearl Care Initiative (PCI), Markurdi, Benue State had this to say: "We are happy that even the few places we visited help to create awareness for the FOI project, not many people in Benue have heard about the FOI Act, Benue needs more publicity on FOI activities, and mode of operations."

Mr. Nneoyi Ofem of Nobel Organization for Solidarity and Development (NOSAD) in Calabar, Cross Rivers State reported thus; "We noticed that all the institutions do not have the position of FOI officer and therefore tend to claim ignorance of the



**Prof. Attahiru Jega, INEC Chairman**

FOI Act. Based on this, we started including copies of FOI Act in subsequent requests made."

Mr. Patrick Ato of Paul Belabo Justice Foundation (PBJF), Markurdi, Benue State said; "Where there is high awareness such as the Nigerian Police Force, they were quick in replying me which I commended them because their reply took care of every request we had demanded."

Similarly, Mr Ahmadi Okpara of Concerned Group for Environment, Population, and Development in Nigeria (N-COGE-P-D), Owerri, Imo State noted that; "Agencies and foundations (both local and foreign) interested in behavioral change in terms of freedom of information, not just as an enabling law but as a consistent habit and attitude could help build bridges between those in the Nigerian public service and members of the public (individuals, legal entities, and other groups) by supporting projects or initiatives that bring people on these two divides together. The reporting person strongly recommends an extensive formal approach (workshops, trainings) prior to extensive informal campaigns through new media tools and platforms such as the web and social media which would serve to nurture the discourse on freedom of information from a behavioral change perspective.."

The FOI and Elections Project was funded by the United Nations Development Programme's (UNDP) Democratic Governance for Development (DGD) II Project. The DGD II Project is a joint donor-funded project managed by UNDP in support of deepening democracy in Nigeria and is funded with contributions from the European Union, the UK Department for International Development (DFID), Canada Department of Foreign Affairs, Trade and Development (DFATD), and the UNDP. ■



## SPECIAL REPORTS

### Media Rights Agenda Draws the Curtain on FOI Newsletter Project

Nearly a year after the Freedom of Information Newsletter made its debut, Media Rights Agenda (MRA) is drawing the curtain on the pilot phase of the publication with the April 2015 edition. The project which initially started in June 2014, has featured many insightful and compelling articles about FOI usage and implementation in Nigeria and has shared global Freedom of Information best practices and developments. In all, 11 editions of the newsletter were published.

The FOI Newsletter was aimed at stimulating implementation activities in Nigeria and was created to inspire open governance in the nation. The FOI Newsletter was the first of its kind as there was no such periodical dedicated to reporting on the implementation of Freedom of Information in the country.

The Newsletter featured a collection of informative stories bordering on the issues of FOI implementation and Freedom of Information practices and developments and was put together and collated by a group of seasoned writers, editors and Freedom of Information experts.

The major objectives of the FOI Newsletter were to show the effectiveness of the law, monitor its usage, motivate others to use the law, sensitize the general public about the law and assist in making FOI requests while providing and identifying issues or information already existing in the public domain.

The Newsletter was on the average, a 24 page publication while two special editions had 32 pages each. It had a number of interesting sections each month, which include:

- \* Freedom of Information News, which features recent FOI events and happenings in Nigeria and around the world
- \* FOI Hall of Fame, which features FOI practitioners and organizations that are actively involved in promoting and developing Freedom of Information in Nigeria
- \* FOI Upcoming Events
- \* FOI Lawyers' Profile, which shines a spotlight on lawyers who are undertaking FOI litigation



- \* FOI Litigation, which highlights ongoing FOI court cases
- \* FOI Law Reports which features judgements and rulings in FOI cases.
- \* FOI Case Studies
- \* FOI Regional and International Developments
- \* FOI Standards and Principles
- \* FOI Tracker
- \* FOI Literature Review
- \* FOI Quotes
- \* FOI Tidbits

A few editions of the Newsletter also featured FOI Insight, FOI Implementation Reports and a Photo Gallery.

One of the highlights of the Newsletter was the FOI Tracker. The FOI Tracker helped to monitor the popularity of Freedom of Information and the extent to which the FOI Act is implemented. The FOI Tracker comprises a collection of FOI requests made by individuals and organizations over a period of time. The name of the requester, the information requested, the public institution to which it was made, the date of request, the outcome of the request and the status of the request are all included under the tracker.

Hard copies and soft copies of the newsletter were disseminated to various media houses, civil society organisations, other individuals and organizations and public institutions, among others. The Freedom of Information Newsletter has, to a large extent, increased awareness on the FOI Act and how it can be used by CSOs, professional bodies, the media and ordinary citizens. With its articles on praise worthy individuals and organizations that have been actively involved in FOI activities, the newsletter has been able to encourage individuals and professional bodies to engage the FOI Act.

The FOI Newsletter Project was implemented with support from the United Nations Development Programme's (UNDP) Democratic Governance for Development (DGD) II Project. The DGD II Project is a joint donor-funded project managed by UNDP in support of deepening democracy in Nigeria and is funded with contributions from the European Union, the UK Department for International Development (DFID), Canada Department of Foreign Affairs, Trade and Development (DFATD), and the UNDP. ■



## The Future of Freedom of Information Under a Buhari Administration

General Buhari has pledged to “publicly declare my assets and liabilities and encourage my political appointees to also publicly declare their assets and liabilities”.

According to him, his strategy for tackling corruption will not only focus on punishment, but will also provide incentives for disclosure and transparency.

He is promising Nigerians that he will show personal leadership in the war against corruption and also hold all the people who work with him to account.

General Buhari plans to review and implement audit recommendations by the Nigerian Extractive Industries Transparency Initiative (NEITI) and work with the National Assembly towards the immediate enactment of a Whistle Blower Act.

General Buhari's pledge to enhance proactive disclosure of information by government institutions as required by the Freedom of Information Act is particularly significant given the potential benefits of a well-functioning proactive disclosure regime and the fact that the proactive disclosure component of the Act has been the most disregarded aspect of the Law.

Section 2(3) of the FOI Act requires public institutions to proactively publish certain types of information even without anyone requesting them. These should be widely disseminated and made available to the public through various means, including electronic, print and online channels and at the organization's offices.

Every public institution is also required to review and update this information periodically and whenever any changes occur.

Section 2(6) of the Act gives every member of the public a right to institute proceedings before a court to compel any



**General Muhammadu Buhari**

public institution to comply with these requirements, if it is in default.

Every public institution covered by the Act, is required to publish the following information proactively:

- a description of the organization and its responsibilities, including details of the programmes and functions of each division, branch and department;
- a list of all classes of records under its control in sufficient detail to facilitate the exercise of the right to information.
- a list of all manuals used by its employees in administering or carrying out any of its programmes or activities;
- a description of documents containing final opinions including concurring and dissenting opinions as well as orders made in the adjudication of cases;
- documents containing its substantive rules;
- documents containing statements and interpretations of policy which it has adopted.
- documents containing final planning policies, recommendations and

decisions;

- documents containing factual reports, inspection reports and studies, whether prepared by or for the institution;
- documents containing information relating to the receipt or expenditure of public or other funds of the institution;
- documents containing the names, salaries and titles and dates of employment of all employees and officers of the institution;
- documents containing the rights of the state, public institutions, or of any private person(s);
- documents containing the name of every official and the final records of voting in all proceedings of the institution;
- a list of files containing applications for any contract, permit, grants, licenses or agreement;
- a list of reports, documents, studies, or publications prepared by independent contractors for the institution;
- a list of materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization; and
- the title and address of the appropriate officer of the institution to whom an application for information under the Act should be sent.

There are many benefits of proactive disclosure, both for public institutions which take the initiative to publish the information they hold and for members of the public.

From a public policy perspective that is aimed at ensuring better governance, the benefits of proactive disclosure for governments and public

*Continued on page 14*

## AGF's Annual Reports Reveal Slow Progress in Reporting FOI Implementation

In his latest annual report to the National Assembly on the implementation of the Freedom of Information Act, issued on March 30, 2015, the Attorney-General of the Federation and Minister of Justice, Mr Mohammed Bello Adoke (SAN), revealed that only 60 public institutions submitted their compliance annual reports for 2014.

Poor as the figure is with over 800 Federal public institutions in the country and thousands at the state level, it is the highest number ever recorded for any year since the enactment of the Act in 2011 and the inception of reporting the following year.

Section 29 of the FOI Act requires every public institution to submit on or before February 1 of each year a report covering the preceding fiscal year, to the Attorney-General of the Federation on its implementation of the Act.

In his first report to the National Assembly in 2012, the Attorney-General of the Federation reported that only 16 public institutions submitted their reports for 2011. The figure increased slightly the following year when he stated in his 2013 report that 28 institutions submitted their reports for 2012 within the stipulated period. Four more institutions also submitted their reports after the deadline, bringing the total for that year to 32 public institutions.

In his 2014 report, the Attorney-General reported that 40 public institutions submitted their annual report for 2013 within the specified period, although some other institutions also submitted after the deadline, bringing the total for 2013 to 51 public institutions.

The increase between the number of public institutions which submitted their annual reports for 2013 and those that submitted their reports for 2014 is the slightest annual increase ever recorded.

However, of the 60 public institutions that submitted their reports in 2014, only 33 of them actually submitted on or before February 1 stipulated in the FOI Act while 27 institutions submitted after the deadline.

Only 34 of the 60 public institutions reported that they had processed requests or applications for information for the year 2014 while the other 26 made nil submissions, indicating



**Danladi Kifasi, Head of Service of the Federation**

that they received no request for information throughout 2014.

The Attorney-General's 2012 report showed that for the year 2011, out of the 16 public institutions that submitted implementation reports, only four of them indicated that they received requests for information in 2011 while 12 of the submissions recorded nil entries for FOI requests received.

Similarly, for the year 2012, out of the 28 public institutions that submitted reports, 17 indicated that they had received FOI requests while 12 of the institutions recorded nil returns.

A total of 51 institutions are indicated to have submitted reports to the Attorney-General for 2013, which included an initial 40 and additional 11 that submitted after the February 1 deadline. Of the number, 38 public institutions indicated that FOI applications had been submitted to them in 2013 while 13 institutions made nil reports.

In the 2014 report, only three of the 51 public institutions that submitted reports indicated that they had no full time FOI staff while others indicated staff capacity ranging from 2 to 47 people devoted to FOI implementation.

The 2013 report also provided insight into the financial commitments necessary for FOI applications in different institutions. The Federal Ministry of Justice stated that ₦655 was expended on the processing of applications while the Abuja Geographic Information System (AGIS) indicated ₦50,000 per request which amounted in ₦200,000 for the four requests it received.

The Federal Capital Territory Administration (FCTA) quoted ₦2,500 per FOI application; the National Power Training Institution of Nigeria quoted ₦15,000 while the National Boundary Commission indicated ₦105,000. The average number of days for processing applications for information in public institutions ranged from four to 120 days.

The 2014 report in its breakdown of requests processed showed that the 34 institutions that processed information requests during the year claimed to have dealt with between one and 133 applications.

*Continued on page 12*

## AGF's Reports Reveal Slow Progress in Reporting FOI Implementation

The most applications processed were by the Nigeria Institute of Social and Economic Research (NISER) which received a total of 133 applications and the National Planning Commission which dealt with 65 applications.

The breakdown also showed a considerable number of requests being granted with others being transferred or denied based on exemptions. The only costs recorded in the 2014 report were by the Nigerian Airspace Management Agency (NAMA) for ₦5,000 and the Federal University, Dustin-Ma for ₦620.

All four reports show that the Federal Ministry of Justice, the National Planning Commission and the Nigerian Press Council each submitted their reports every year while 33 institutions submitted reports in only two of the years and eight institutions submitted reports in three of the four years.

The Attorney-General's annual reports have consistently indicated measures taken by him to encourage public institutions to comply with the Law both in their duty to submit annual reports to him as well as in other aspects such as their proactive disclosure obligations and responsiveness to requests for information from members of the public.

He indicated that the Office of the Attorney-General of the Federation had undertaken consultations, issued advisory opinions, organised sensitization workshops on the FOI Act for legal advisers of Ministries, Departments and Agencies (MDAs) and law officers of the Federal Ministry of Justice (FMOJ).

According to the Attorney-General, an advisory memorandum dated January 29, 2012 was disseminated to all MDAs and Public Institutions on the implementation of the FOI Act and the reporting requirements under it. The circular outlined expected commitments and reminded institutions of the approaching February 1 deadline as well as attempting to standardize reports. The circular was published in national newspapers and widely circulated.

He reported that circular signed by the Solicitor General of the Federation and Permanent Secretary of the FMOJ



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

reminded all MDAs of their obligations on March 6, 2012 closely followed by guidelines on the Implementation of the FOIA 2011 issued on March 15, 2012.

The Attorney-General indicated in his reports that the FMOJ established an FOIA Unit in the Office of the Attorney-General of the Federation and encouraged all public institutions to do the same thing, while indicating

interest in the pursuit of enhanced training and capacity building measures for legal advisers and FOIA officers on implementation measures.

He highlighted several implementation issues in his reports, including the need for additional resources to put in place the essential institutional mechanisms for effective monitoring and collation of reports and the possibility of overwhelming the courts with FOI cases as the prerogative to compel compliance under the Act rests with the courts.

Under the FOI Act, complaints arising from a refusal of an FOI request goes to the courts in the absence of an administrative machinery or channel such as an Information Commissioner or Tribunal to resolve complaints before they go to court.

The Attorney-General's reports also stated that in advanced jurisdictions, time is taken for the government to develop structures and institutional capacity for FOI implementation before the law is enacted.

It was pointed out that although the Act mandates the Attorney-General of the Federation to ensure compliance with the provisions of the Act, the enforcement powers given to the office by the Act are weak and ambiguous as regulations made cannot be backed with sanctions for their enforcement which makes the Attorney-General merely advisory.

The Attorney-General reported that although concerted efforts are being made to ensure compliance with the spirit and letters of the Act, there were significant weaknesses in the legislation, which are enough to engender necessary and appropriate review or amendments of the Act towards ensuring its efficient and effective implementation. ■

## UN Expert Says Secret Negotiations on Trade Treaties Pose a Threat to Human Rights

The United Nations Independent Expert on the promotion of a democratic and equitable international order, Mr. Alfred de Zayas, has expressed his deep concern over the general lack of awareness on the adverse effects that existing, or under negotiations, bilateral and multilateral free trade and investment agreements have on the enjoyment of human rights in many countries, particularly in the developing world.

In a statement issued in Geneva, Switzerland, Mr. de Zayas contended that proactive disclosure by governments, genuine consultation and public participation in decision-making are indispensable to making such agreements democratically legitimate.

He said: "I am concerned about the secrecy surrounding negotiations for trade treaties, which have excluded key stakeholder groups from the process, including labour unions, environmental protection groups, food-safety movements and health professionals."

According to Mr. de Zayas, "Fast-tracking" adoption of such treaties has a detrimental impact on the promotion of a democratic and equitable world order as it is tantamount to disenfranchising the public and constitutes a violation to accepted human rights law, which stipulates that every citizen shall have the right and the opportunity to take part in the conduct of public affairs.

He noted that there is a general lack of awareness concerning the adverse effects that existing bilateral and multilateral free trade and investment agreements already have on the enjoyment of human rights, including the right to health, the right to education and the right to live in a safe, clean, healthy and sustainable environment.

Human rights impact assessments, he said, should be urgently undertaken, given the numerous treaties currently under consideration and the potential risk they represent for the enjoyment of human rights.

Mr. de Zayas stated that he was "especially worried about the impact that investor-state arbitrations (ISDS) have already had and foreseeably will have on human rights, in



**Professor Alfred-Maurice de Zayas JD, PhD**

particular the provision which allows investors to challenge domestic legislation and administrative decisions if these can potentially reduce their profits."

He observed that such investor-state tribunals are made up of arbitrators, mostly corporate lawyers, whose independence has been put into question on grounds of conflict of interest, and whose decisions are not subject to appeal or to other forms of accountability.

He insisted that the apparent lack of independence, transparency and

accountability of ISDS tribunals also entails a prima-facie violation of the fundamental principle of legality laid down in international human rights law, including Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which requires that suits at law be adjudicated by independent tribunals.

According to him, "It has been argued that ISDS tilts the playing field away from democratic accountability, favouring 'big business' over the rights and interests of labourers and consumers. The establishment of parallel systems of dispute settlement and their exemption from scrutiny and appeal are incompatible with principles of constitutionality and the rule of law, and as such are harmful to the moral welfare of society ('contra bonos mores')."

Mr. de Zayas argued that since all States are bound by the United Nations Charter, all bi-lateral and international treaties must conform with the Charter and its principles of equal rights and self-determination of peoples, respect for human rights and fundamental freedoms, sovereign equality of States, the prohibition of the threat of and the use of force and of intervention in matters which are essentially within the domestic jurisdiction of States.

He said Article 103 of the UN Charter clearly stipulates that provisions of free trade and investment agreements as well as decisions of ISDS arbitrators must conform with the Charter and must not lead to a violation, erosion of or retrogression in human rights protection or compromise State sovereignty and the State's fundamental obligation

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## The Future of Freedom of Information Under a Buhari Administration

institutions ensuring that members of the public are appropriately informed about laws, policies and decisions that affect them.

Besides, the proactive disclosure of data, policy documents and other types of information will ensure that members of the public have the information they need to participate in policy and decision-making.

The proactive dissemination by public institutions of information about how they operate and what they do will help the public to access government services.

Proactive disclosure will also encourage better information management within public institutions as it will improve the institution's system of internal information flows, and thereby contribute to increased efficiency.

Proactive disclosure can also ensure more accountable use of public funds and thereby help to promote integrity in government.

It will also reduce the burden on public institutions of having to process numerous individual applications for information being filed under the FOI Act.

Similarly, from the point of view of members of the public, the benefits of proactive disclosure are many and



**General Muhammadu Buhari**

substantial.

For instance, the automatic availability of information under an effective proactive disclosure regime will ensure that members of the public have timely access to information. It also helps to ensure that there is equal access for all members of the public without the need for anyone to first file a request.

Proactive disclosure helps to ensure that all citizens can access at least a minimum amount of information about public institutions, including the vast majority of ordinary citizens who may never submit an FOI application.

Where a proactive disclosure regime is functioning properly and relevant information are automatically disclosed in real-time, it becomes difficult for public officials to later deny the existence of any particular information or to manipulate information.

Proactive disclosure also enhances security for members of the public seeking information relating to specific issues, institutions or groups, as it makes it possible for people to access sensitive information anonymously. It will therefore be impossible for public officials and other powerful interests in society to identify or track members of the public who are requesting specific information about them or their interests. ■

## UN Expert Says Secret Negotiations on Trade Treaties Pose a Threat to Human Rights

Continued from page 13

to ensure the human rights and well-being of all persons living under its jurisdiction.

In effect, he said, agreements or arbitral decisions that violate international human rights law are null and void as incompatible with Article 103 of the UN Charter and contrary to international public order.

Article 103 of the Charter stipulates that "in the event of conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present

charter shall prevail."

Alfred de Zayas, a United States citizen, was appointed the first Independent Expert on the promotion of a democratic and equitable international order by the UN Human Rights Council with effect from May 2012.

He is currently professor of international law at the Geneva School of Diplomacy. As a UN Human Rights Council's mandate holder, he is independent from any government or organization and serves in his individual capacity. ■

## Procurement Monitors Constituency Projects Platform

The "Constituency Projects Platform", a recent project of the Public and Private Development Centre (PPDC), is a developing tool towards the sensitization of the public on constituency projects.

The platform was set up partly in response to continuous requests for information on constituency projects. It attempts to share information on these projects not only based on such requests but rather to have the information available to be downloaded by anyone interested in any constituency project in various Local Government Areas across the country.

Constituency projects are projects included in the annual budget by members of parliament for the constituencies they represent. The platform contains a drop-down list of all thirty (36) States of the Federation and a drop-down list of all Local Government Areas under each State of the Federation which when selected reveals a list of all Constituency Projects



**Mrs. Nkemdili Ilo,**  
Procurement Monitoring Coordinator of PPDC

for the Local Government Area of the State selected.

Information on each Constituency Project including the title of the project; the amount awarded for the project; the agency responsible for the project; the ministry responsible for the project and also the National Assembly representative of the constituency responsible for the project is available on the platform. There is a column for members of the public to leave comments on constituency projects of their interest.

Visit the platform at <http://procurementmonitor.org/2014-constituency-projects/index.php>

The platform will be upgraded with additional information including contractors carrying out various projects, project status etc. Procurement monitors welcome candid feedback on the platform, similar platforms to learn from and ideas that could make the platform the most effective to use. ■

## AGF Indicts Legislature, Judiciary for Non-Compliance with the FOI Act

Continued from page 3

Act and hence, an increasing number of institutions are becoming sensitive to the proactive disclosure requirements under the Act.

According to the report, the Ministry intends to train its officers of Grade Levels 3 to 7 on the right to information and on the effective implementation of the Act in 2015, subject to the availability of funds.

The proposed training will take place at the Ministry's headquarters and will include other officers at the Ministry's zonal offices.

In addition, the Ministry plans to embark on quarterly interface with FOI desk officers in public institutions.

Explaining the formidable challenges encountered in FOI implementation, the Attorney-General of the Federation noted that in the 17 years period of advocacy from when the FOI Bill was first broached to its passing, little was done to garner public support and sensitise operators of the Act on their expected roles after its enactment.

This, he said, points to the need for a concerted effort by all

tiers of government to ensure that public officers shrug off a culture of secrecy and embrace the values of transparency and openness embedded in the Act.

The Attorney-General of the Federation requested that his office be empowered to draw up, harmonise and conduct training programmes for Chief Executive Officers and FOI desk officers of public institutions on a periodic basis as well as to take concrete steps towards effective records management.

He also raised the challenge of bottlenecks in public institutions, stating that FOI letters go from one officer to another before finally getting to the desk officer by the seventh day while in some institutions, top management is suspicious of the Act and as such, do not cooperate with the implementation.

The Attorney-General of the Federation therefore highlighted the statement of President Goodluck Jonathan upon the signing of the FOI Bill into Law in May 2011 to the effect that "the Government should not keep information confidential merely because public officials might be embarrassed by disclosures, because errors and failures might be revealed or because of speculative or abstract fears". ■



## Reports of Committees Set up by Government are not Public Documents until Used by the Government or its Agencies, Says Court

In the Federal High Court of Nigeria  
In the Abuja Judicial Division  
Holden At Abuja  
On Wednesday, the 30<sup>th</sup> Day of April, 2014  
Before His Lordship, Hon. Justice A.R. Mohammed,  
Judge

SUIT NO: FHC/ABJ/CS/222/2013

In the Matter of an Application by Centre for Social Justice  
for an Order of Mandamus

Between

Centre for Social Justice ..... Applicant

And

Secretary to the Government of  
the Federation .... Respondent

### Facts of the Case

The Applicant in the suit brought a Motion on Notice dated May 21, 2013, against the Respondent, the Secretary to the Government of the Federation. The Applicant sought the following reliefs:

- A Declaration that denying the Applicant access to copies of Presidential Reports constitutes an infringement of the Applicant's right guaranteed and protected by Section 1 of the Freedom of Information Act, 2011. The Presidential Reports sought by the Applicant are:

- Report of the Presidential Committee on the Rationalisation and Restructuring of Federal Government parastatals, commissions and agencies; also known as the Oronsaye Report.
- Report of the Federal Government Expenditure Review Committee (ERC) otherwise called Anya O. Anya Report.
- Report of the Presidential Project Assessment Committee (PPAC) otherwise called Report on Abandoned Projects.
- Report on Gen. T.Y. Danjuma Presidential Advisory Committee.

- A Declaration that the continued refusal of the Respondent to grant to the Applicant access to the copies of the Presidential Reports without a reason cognizable as an exemption under the Freedom of Information Act, violates Section 4 of

the Freedom of Information Act, 2011.

- An Order of Mandamus compelling the Respondent to grant to the Applicant access to the copies of the Presidential Reports aforementioned.



Senator Anyim Pius Anyim,  
Secretary to the Government of the Federation

The grounds for the application were as follows:

- The Freedom of Information Act in Section 1 entitles all Nigerians to a right of access to information in the custody or possession of any public official, agency or institution howsoever described and grants a right of access to the Courts for the enforcement of this right. An Applicant under the Freedom of Information Act need not demonstrate any specific interest in the information being applied for.
- Section 4 of the Freedom of Information Act sets out the timeline of 7 days for public institutions to accede to requests for information while Section 20 prescribes that applications for judicial review should be filed within 30 days after the public institutions denies or is deemed to have denied the application, or within such further time as the Court may either before or after the expiration of the 30 days fix or allow.
- The Respondent is the Secretary to the Government of the Federation in charge of keeping all governments records and reports.
- The Applicant by a letter dated the 15th of March, 2013 and received in the Respondent's office on the same day applied to the Respondent to grant it access to the copies of the aforesaid Presidential Reports to wit:

- Report of the Presidential Committee on the Rationalisation and Restructuring of

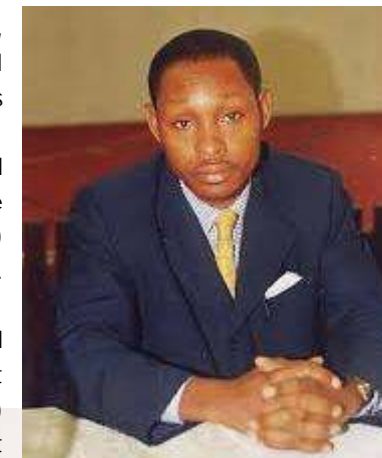
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## Reports of Committees Set up by Government are not Public Documents until Used by the Government or its Agencies, Says Court

Federal Government parastatals, commissions and agencies; also known as Oronsaye Report.

- Report of the Federal Government Expenditure Review Committee (ERC) otherwise called Anya O. Anya Report.
- Report of the Presidential Project Assessment Committee (PPAC) otherwise called Report on Abandoned Projects.
- Report of Gen. T.Y. Danjuma, Presidential Advisory Committee.



Eze Onyekpere,  
Lead Director, Centre for Social Justice

- The time allowed by law for the Respondent to provide to the Applicant copies of the aforementioned Presidential Reports has elapsed and the Respondent by a letter dated April 4, 2013 and served on the Applicant on April 5, 2013 indicated that the reports "are not readily available" and that "same are at various stages of consideration by the Government." The foregoing explanations by the Respondent are not exemptions cognizable under the Freedom of Information Act.
- The Respondent has violated the Applicant's right of access to the said Presidential Reports and the Applicant seeks the protection of the Court to vindicate its right.

The application was supported by a 9-paragraph affidavit deposed to by Omale Machi Samuel, the programme support officer of the Applicant. Attached to the application were two exhibits marked 1 and 2 respectively. The application was also accompanied with a written address dated and filed on May 21, 2013.

The Respondent reacted to the application dated May 21, 2013 with a counter affidavit of 20 paragraphs deposed to by Abdullahi Ahmad, an Assistant Legal Adviser in the office of the Respondent. The Respondent's counter affidavit was also accompanied with a written address. The Applicant then filed a Further Affidavit in response to the counter affidavit; the further Affidavit was

accompanied with a Written Address.

In the applicant's written address, one issue was formulated for determination as follows: "Whether the Applicant is entitled to order of mandamus compelling the Respondent to grant to the Applicant access to the copies of the Presidential Reports aforementioned."

Applicant's counsel, in his argument, submitted that the Court has the power to grant to the Applicant an order of mandamus and referred to the provisions of Order 34 rules 3 (1) and (4) of the Federal High Court Rules, 2009.

He also submitted that the use of the word "shall" in Sections of the Freedom of Information Act should be construed strictly to mean a command or mandate, and there is no discretion. Reference was made to the cases of Nigeria LND Ltd vs Afrucab Dev. Insurance Co. Ltd (1995) 8 NWLR, Part 597, 139 and Ugwu vs Ararume (2007) SC PT. 1, 88.

Finally, he urged the Court to grant the order of mandamus sought by the Applicant.

In the Respondent's written address, the following issues were formulated for determination:

- Whether the Applicant is entitled to access Presidential Reports of Government without a white paper being issued/gazetted by the Government on same.
- Whether the Freedom of Information Act, 2011 envisaged the release of various Governmental reports of committees without first releasing a Government white paper on same.
- Whether reports of various Government Committees set up, without a white paper release on same, can be considered as public documents to allow access to the Applicant.

On the first issue, the Respondent's counsel's submission was that the Presidential Reports of Committees forwarded to the Government are not released to the public until the Government considers the various

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## Reports of Committees Set up by Government are not Public Documents until Used by the Government or its Agencies, Says Court

recommendations as contained in the reports, and thereafter releases a White Paper on same; until such White Paper is released the document cannot be accessed by the public.

He further submitted that the Applicant requested for the reports of the various Committees as against a Government White Paper on same, which counsel said is a public document/record. Based on the request made does not fall under the information to be released to the Applicant under the Freedom of Information Act, 2011. The Court was referred to Section 20 (1), (2) (3) (4) of the Freedom of Information Act.



**Justice A. R. Mohammed,**  
Judge of the Federal High Court, Abuja

statement in support of application for leave under Rule 3 should be served with the Notice of Motion or Summons, but that the Applicant failed to comply with this cardinal provision for judicial review, thereby making the application incompetent. The Court was referred to the case of African Petroleum vs Owodunni (1 LCI).

On the issue of non-compliance with Order 34 Rule (1) of the Federal High Court (Civil Procedure) Rules, the Applicant's counsel submitted that the Court should ignore such argument as misleading. He referred the Court to the proof of

service on record to show that the bailiff of the Court duly served the Respondent the entire documents required by law.

On the issue of the gazette and government White Paper, Applicant's counsel submitted that it was never part of the Respondent's reason in refusing to make available the information via exhibit 2. He said that the issue of gazette and Government White Paper was an afterthought.

His Lordship, Justice Mohammed, said he had reviewed the arguments of the learned counsel for the parties in this matter and that the starting point in the consideration of the application is to resolve the issue of competence of the application itself as raised by the Respondent.

He said Respondent's counsel relied on Order 34, Rule 6 (1) of the Rules of the Court to contend that the Applicant has not complied with the said provision which requires that copies of the statement in support of the application for leave be served along with the Notice of motion or summons.

The Applicant on the other hand, according to the Judge, argued that all documents required by law to be served have been served by a bailiff of the Court.

The Judge said that he checked the "Process File" in the suit, that is the file containing the proof and affidavits of all processes served by the bailiff, and that the bailiff had filed an "Affidavit of Service" showing that he has served

On the second issue, he submitted that what the Freedom of Information Act envisages is the record and information that emanates from the Government as its own act. That acts of Government emanate after the Government must have issued a White Paper on reports submitted to it for consideration. He contended that reports submitted to the Government of the day do not form part of its record until a White Paper is issued in respect thereof.

On the third issue, he submitted that reports of a committee's work submitted to Government is not a public document until same is considered by the Government and a White Paper released thereon before it can be referred to as public document. The Court was referred to Section 102 (a) (i) (ii) (iii) of the Evidence Act, 2011.

He submitted that the Applicant is only entitled to the release of Information that is of a public nature which is gazetted information or a White Paper of the said reports but not the report of the Committee. In addition, he said, the Applicant's application for the aforementioned reports was misconceived.

Respondent's counsel further contended that Section 12 (1), (3) and (4) of the Freedom of Information Act, 2011 exempt the Respondent of any liability for denying the Applicant access to the information applied for.

He referred to Order 34 Rule 6 (1) of the Federal High Court Rules, 2009 under which the application was brought and submitted that the provision requires that copies of the

## Reports of Committees Set up by Government are not Public Documents until Used by the Government or its Agencies, Says Court

Motion on Notice dated May 21, 2013, that is the Applicant's application under review.

He noted that a careful reading of the said Motion on Notice dated May 21, 2013 would show that it is not accompanied with a statement in support of application for leave and that the Motion on Notice dated May 21, 2013 contained:

- (i) Affidavit in support,
- (ii) Two exhibits marked A and b
- (iii) A written address as argument on the application dated May 21, 2013.

He noted that he could not find the referred "statement" in the Motion on Notice and referred to Order 34 Rule 6 (1) of the Federal High Court Rules, 2009, which provides as follows: "Copies of the statement in support of an application for leave under Rule 3 shall be served with the notice on motion or summons and subject to sub-rule 2, no ground shall be relied upon or any relief sought at the hearing except the grounds and reliefs set out in the statement."

His Lordship said it can be seen that the requirement of serving the "statement" with the notice on motion is entrenched in the rules of Court and that although, rule 6 (1) is made subject to sub-rule 2 of the same rule 6, sub-rule 2 is a provision empowering the Judge hearing the motion or summons to allow the Applicant to amend his statement either to specify different or additional grounds or reliefs.

Justice Mohammed said it is thus clear that the requirement of order 34 rule 6(1) has not been complied with by the Applicant in the instant matter.

He said although he was not unmindful of the fact that the default being considered is as to the Rules of Court, but he wants to believe that since the matter was commenced by way of "Judicial Review for Order of Mandamus", it leaves the realms of actions or matters that come before the Court vide the usual writ of summons, originating summons or similar originating processes.

He said further that applications for Judicial review, of



**President Goodluck Jonathan**

mandamus, certiorari, quo-warranto and the likes are proceedings seeking to challenge or question administrative actions or decisions. The proceedings are therefore sui generis, hence, specific provisions have been made in the Rules to guide their application in Judicial proceedings.

He said where, therefore, an Applicant has not complied with a provision like Order 34 Rule 6(1) of the Rules in serving his notice of motion or summons, the failure will definitely affect the competence of the Motion on Notice. This, he said, is because the Motion on Notice or summons, as the case may be, would have become an "incomplete process" for the purpose of the application for order of mandamus.

Justice Mohammed held that on the ground alone, the application dated May 21, 2013 is incompetent and ought to be struck out.

He said, however, that he would endeavor to consider the Applicant's application on the merit in case he was wrong on his conclusion on the state of law as regards the provision of Order 34 Rule 6(1) of the Federal High Court Rules, 2009.

His Lordship formulated two issues to be resolved in the matter, as follows:

- I. Whether or not a document requested pursuant to the provision of Freedom of Information Act, 2011 is a public document?
- II. Whether or not, report(s) of committees set up by Government are public documents within the provisions of the Freedom of Information Act?

On the first issue formulated, His Lordship said recourse must be had to the Freedom of Information Act for the resolution of the issue and noted that the Applicant's contention was that by the provision of section 1 (1) of the Freedom of Information Act, right of access to record is established and guaranteed.

He referred to Section 1 (1) of the Act, which provides thus: "Notwithstanding anything contained in any Act,



## Reports of Committees Set up by Government are not Public Documents until Used by the Government or its Agencies, Says Court

Law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established.” Justice Mohammed agreed that from the wordings of section 1(1) of the Freedom of Information Act, there was no doubt that right of access to information and documents in the custody of public officials, agencies and institutions are guaranteed.



**Mr. Kingsley Nnajiaka,**  
Lawyer to Centre for Social Justice

“under the control of any public or private bodies relating to matters of public interest”.

He said there is no doubt that a committee report simpliciter, which formed the opinion of the committee members, cannot be described as a “public document” until the same has been received, used and possessed by the Government that set up the committee.

He said further that as it is with practice, Government receives or accepts reports of committees by issuance of “White Paper” or “Gazetting” Government position on the Report.

His Lordship stressed that it should be borne in mind that Government has no obligation to implement a particular report submitted by a committee set up for that purpose, adding that if, therefore, government has the discretion to accept any Report, the said Report cannot by any stretch of imagination be described as “public document”.

Justice Mohammed held that since it has been shown by Section 31 of the Freedom of Information Act that a Committee Report is not among the documents described as public documents, the Reports of the various committees requested by the Applicant are not public documents, adding that if the said Reports are not public documents, it then means that no right of access can inure in favour of the Applicant under Section 1(1) of the Freedom of Information Act, 2011.

He said further that no right exist for the Applicant to demand for the Reports of the various committees set up by Government, by virtue of the said Reports not being public documents, and that the Applicant’s action clearly lacked merit and could not stand.

In consequence of the above, HIS lordship dismissed the suit.

He made no order as to cost.

*Kingsley Nnajiaka Esq., for the Applicant* ■

In addition, he said, the deliberate and specific use of the words “information, whether or not contained in any written form, which is in the custody of any Public official, agency or institution”... can only mean that documents or information requested pursuant to the Freedom of Information Act are “public document and/or information.

In fact, he said, Section 31 of the Freedom of Information Act, which is the interpretation section, defined “public record or document” to mean “a record in any form having been prepared, or having been used, received, possessed or under the control of any public or private bodies relating to matters of public interest.”

His Lordship held that the document or information referred to in section 1 (1) of the Freedom of Information Act can mean no other document than a public document. He therefore answered the first issue formulated in the affirmative.

On the second issue, His Lordship said he had earlier reproduced the meaning ascribed to “public document” in section 31 of the Freedom of Information Act, 2011 and that the question is: does a committee report fit into the interpretation or definition of “public document” given in Section 31 of the Freedom of Information?

His Lordship answered the question in the negative, saying for a document to qualify as public document” as provided in Section 31 of the Act, the document must have been “prepared”, “used” “received” possessed or

## SERAP Sues Finance Minister over Missing N30 Trillion

Socio-Economic Rights and Accountability Project (SERAP), a non-governmental organization, has sued Dr. Ngozi Okonjo-Iweala, the Minister of Finance over her “failure to provide information about spending of the alleged missing N30 trillion, which represents some accruable income to the Federal Government in the past four years.”.

SERAP, through its lawyer, Olukayode Majekodunmi, filed the suit at the Federal High Court in Lagos following the refusal of a Freedom of Information request sent to the Minister dated February 2, 2015.

SERAP is seeking a declaration that by virtue of the provisions of Section 4 (a) of the FOI Act 2011, the Minister is under a binding legal obligation to provide it with up to date information relating to the spending of the alleged missing N30 trillion, which represents some accruable income to the federal government in the past four years.

Prof. Chukwuma Soludo, a former Governor of the Central Bank of Nigeria (CBN), had alleged that over N30 trillion was either missing, stolen, unaccounted for, or simply mismanaged under the minister’s watch consequent upon which SERAP made the request to the Minister.

SERAP contends in the suit that a necessary implication of the rule of law is that a public functionary and institution can only act in accordance with the law, as to do otherwise may enthrone arbitrariness.

The NGO also argued that Okonjo-Iweala as trustee of public funds has a legal duty to render account on the missing N30 trillion to the beneficiaries (Nigerians) of the trust, when called upon to do so.

It further argued that by virtue of Section 1(1) of the FOI Act, it is entitled, as of right, to request for or gain access to information which is in the custody or possession of any public official, agency or institution



**Ms. Ngozi Okonjo-Iweala,**  
Minister of Finance



**Adetokunbo Mumuni**  
Executive Director, SERAP

and by the provisions of Section 2(7) and 31 of the FOI Act, the Minister is a public official.

In its originating summon, SERAP noted that by virtue of Section 4 (a) of the FOI Act, when a person makes a request for information from a public official, institution or agency, the public official, institution or agency to whom the application is directed is under a binding legal obligation to provide the applicant with the information requested for, except as otherwise provided by the Act, within seven days after the application is received.

It added that by Sections 2(3)(d)(V) & (4) of the FOI Act, there is a binding legal duty to ensure that documents containing information relating to spending of the alleged missing N30 trillion is widely disseminated and made readily available to members of the public through various means.

SERAP argued that the Minister will not suffer any injury or prejudice if she releases the information to the organisation since the information requested for, apart from not being

exempted from disclosure under the FOI Act, bothers on an issue of national interest, public peace and security, public concern, social justice, good governance, transparency and accountability.

Majekodunmi noted that the Ministry of Finance, as a key agency of government, has a sacred duty to ensure that the country’s resources and wealth are used solely to fulfill the basic economic and social rights of all Nigerians and achieve the country’s overall socio-economic development.

He further argued that it is necessary to provide clarity as to what exactly happened to the said N30 trillion if the Ministry of Finance is to continue to play a leadership role in the transparent and accountable management of the country’s resources and wealth, and to enjoy the public trust and confidence essential for the ministry’s effectiveness and impact. ■



# Environmental Democracy Index for Launch on May 20

The Access Initiative (TAI) and the World Resources Institute (WRI) have scheduled May 20, 2015 for the launch of the Environmental Democracy Index (EDI), a new, interactive online tool and first index to measure and rank countries' commitments to access to information, public participation, and access to justice in environmental matters.

The launch will take place in Washington, DC in the United States.

Developed by The Access Initiative and the World Resources Institute, the EDI will be the first comprehensive index designed specifically to measure procedural rights in an environmental context.

The United Nations Environment Programme's (UNEP) Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, known as the UNEP P10 Bali Guidelines, provide EDI with an international standard against which national laws can be assessed.

According to TAI and WRI, the EDI is "an essential as a tool to help strengthen procedural rights given that the recent surge in laws on access has not been accompanied by a corresponding analysis of their quality, scope or implementation."

Besides, they said, the three fundamental "environmental democracy" rights have not received equal amounts of political attention.

According to them, although dozens of laws have been passed, particularly on the right to information, laws and regulations protecting citizens' rights to participate in decisions that impact their environment are often weak, vague or absent.

TAI and WRI noted that "public participation opportunities are usually confined to commenting on environmental impact assessments, and even then the public is seldom consulted until after the decision has been made. When these laws are not followed or are implemented ineffectively, citizens often struggle to find redress through accountability or access to justice mechanisms."

They believe that by using the measurement that EDI provides, citizens and governments around the world will



**Andrew Steer,**  
President and CEO of World Resources Institute

now be able to identify and understand the extent to which environmental democracy rights are being strengthened or weakened.

The EDI is designed to help address such global environmental problems as air and water pollution, extractive industry impacts and biodiversity loss by establishing a centralized hub of legal analysis and implementation data on procedural rights, and it is expected that the results will help establish both best practices and areas for improvement.

The index will be featured on an interactive web-based platform allowing users to compare and assess countries' performances at aggregated and disaggregated levels.

Thus, the EDI has both a broad scope and valuable depth that will facilitate comparisons between countries as well as comprehensive analysis of a single country's legal framework.

The unique design and expected contributions of EDI include:

- Comprehensive Evaluation of Environmental Democracy as there is currently no index that evaluates all the elements of Principle 10 of the Rio Declaration that was signed by 178 governments in 1992. Principle 10, also called the environmental democracy principle, states that environmental issues are best handled with public participation, access to information and access to justice and these three rights are referred to as the three pillars of Principle 10. However, existing transparency-related indices have been regarded as inadequate for measuring only access to information as none of them assess and rank laws and practices relating to public participation and/or access to justice.
- International Benchmarking Standard as the EDI benchmarks rights against an international standard established by UNEP.
- Actionable Evidence, since the indicators are actionable and supported by legal evidence and stories on the ground.

*Continued on page 23*

# Environmental Democracy Index for Launch on May 20

*Continued from page 22*

- Assessment of Laws in Practice, based on a set of practice indicators, piloted in the 2014 EDI, which will provide a snapshot of legal implementation of access rights.
- Up-to-date Scoring, as the EDI will be carried out every two years to ensure that the scores remain relevant and useful.

The EDI consists of indicators that compare national laws against 23 of the 26 UNEP P10 Bali Guidelines. The index is made up of 99 indicators, published by the Access Initiative, with each indicator including a guiding note and a scoring guide.

It also has an interactive map with country scores, produced by the World Resources Institute and the map will be updated every two years to reflect the updated scores.

The EDI will also have a separate page for each country with a breakdown of country scores by pillar, guideline and individual indicator, including the comments by participating environmental lawyers. The country pages will also include strengths and weaknesses of the legal framework.

The analysis that the EDI provides for each participating country is expected to help identify legal gaps in the three areas of environmental democracy.

For instance, in country "A" the index might show strong access to justice laws and weak public participation laws while in country "B", the situation could be reversed. Comparison is also expected to be easy as all the data is stored in one place on a user-friendly online platform.

A wide range of stakeholders are expected to find the EDI useful, including:

- Civil society organizations, which will be better able to target their campaigns to focus on areas where legal reform can bring about the most change.
- Governments and government officials, who will be able to easily identify where reform is most necessary and where they can apply more effort to



*Bromide of the Overview of The Environmental Democracy Index*

implement already-existing laws.

International Finance Institutions (IFIs) and multilateral institutions, which will be able to better assess progress towards commitments of good environmental governance.

Academics, who will benefit from the depth of the analysis that will provide a valuable source of material to be further explored through academic research.

For the 2014 Index, the EDI is limiting its scope to legally-binding national laws and regulations as well as sectoral laws for air and water quality, extractives, forests and terrestrial biodiversity.

Legislation for the energy, coastal, marine and fishery sectors is not being considered in the 2014 index, although it may be incorporated into future iterations of the index.

In terms of the methodology, the three pillars of environmental democracy, namely access to information, public participation and access to justice, were broken down into 26 guidelines in the UNEP P10 Bali Guidelines.

The EDI unpacks the 23 Guidelines on legislation into 99 indicators with the arithmetic average of the indicator scores for each guideline resulting in the guideline score. The average of the guideline scores make up the pillar score while the average of the three pillar scores provides the final country score.

The EDI scoring is designed such that high indicator scores reflect national laws that are well-aligned with a single aspect of a UNEP P10 Bali Guideline, although implementation and practice may lag behind in some cases.

In contrast, a low guideline score suggests that opportunities to access information, participate in decision-making, or access remedies or grievance mechanisms are inadequate and that major legal reforms are needed.

The EDI practice indicators, although not comprehensive, add a degree of nuance to the scores by suggesting the state of implementation. ■



### UNESCO Launches New Open Data Portal

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has launched a new transparency portal aimed at presenting comprehensive, quality and timely information about its projects.

Launched in March 2015 with the support of the United Kingdom, the open data portal contains information on 982 country projects, 430 regional projects and 516 global projects that UNESCO has supervised since 1970.

UNESCO Director General, Mrs. Irina Bokova, said upon the launch: "We need each and every Member State on board to make this a success. We are thrilled and hope we can share more details in the future."

The portal [opendata.UNESCO.org](http://opendata.UNESCO.org) is intended to present comprehensive, quality and timely information about UNESCO's projects, enabling users to find information by country or region, funding source, and sector.

It provides comprehensive project data, including budget, expenditure, completion status, implementing organization, project documents, and more.

The portal publishes programme and financial information that are in line with the UN system-experience of the International Aid Transparency Initiative (IATI) standards and other relevant transparency initiatives.

According to UNESCO, the organisation is now part of



Mrs Irina Bokova, UNESCO Director-General

more than 230 organizations that have published to the IATI Registry, which brings together donor and developing countries, civil society organizations and other experts in aid information who are committed to working together to increase the transparency of aid.

UNESCO said in a statement on the launch of the portal that "Since its creation 70 years ago, UNESCO has tirelessly championed the causes of education, culture, natural sciences, social and human sciences, communication and information, globally."

As an example of this, it said, the programme for the Enhancement of Literacy in Afghanistan (ELA), which was started in March 2010, benefited from a \$19.5 million contribution by Japan and aimed to improve the level of literacy, numeracy and vocational skills of the adult population in 70 districts of 15 provinces of Afghanistan.

UNESCO said over the next three years, until April 2013, the ELA programme helped some 360,000 adult learners in General Literacy competency.

In another example, UNESCO said as part of its efforts to combat extreme poverty in Mali, it is currently financing a \$57,000 project, focusing on youth policies. The project aims to increase youth participation in the social, cultural and economic spheres, demonstrating UNESCO's commitment to ensure that aid effectively contributes to sustainable development. ■

### New U.S. FOI Training Targets All Federal Employees

The United States Justice Department's Office of Information Policy (OIP) is introducing a new set of tools to train all federal government employees on Freedom of Information Act procedures.

The new training is designed for all federal employees, rather than just officials charged with implementing the Freedom of Information Act.

The new tools were released at a roll-out event on March 12, 2015 and include a brief video introduction to the Freedom of Information Act by Ms Melanie Ann Pustay, the Director of the Office of Information Policy; separate online training modules for both officials occupying specific Freedom of Information Act implementation positions as well as general

employees; and a quick-reference info-graphic presentation aimed at new federal employees.

The OIP conducts several training seminars every year, but in the past, these have been largely focused on Freedom of Information officials in federal agencies.

The OIP said while announcing the new training initiative that its "new collection of training tools are designed to help ensure that these important resources are available for all federal employees — from the senior executive, to the everyday employee whose records might become subject to FOIA, to the FOIA professionals responsible for processing records for disclosure." ■

### Reporter Uncovers Firestone Deal with Charles Taylor Using FOI Requests

A freelance reporter named Jonathan Jones carried out a seven year long investigation which uncovered a deal made between Charles Taylor, the former Liberian president and infamous warlord and the American Firestone Company.

In 2007, Jones' curiosity was kindled after coming across a striking one-line description of Liberia in a history book, *The State of Africa*, which described the country as "little more than a fiefdom of the American Firestone company, which owned its rubber plantations." After his findings, he began a search for the history of the tire company's operations in Liberia but found no records.

Jonathan Jones teamed up with ProPublica reporter T. Christian Miller and FRONTLINE producer Marcela Gaviria to expose details of the deal Firestone struck with the warlord, eventually revealing how millions of dollars were agreed to be paid to Taylor in exchange for being able to operate (money that, in Taylor's own words, provided the "financial assistance that we needed for the revolution"), and how Taylor turned the plantation into a base for rebels that he used to wage war.

In the course of the investigations, the investigative team obtained via a Freedom of Information Act (FOIA) request, documents that had never been seen including 200 state department cables obtained that provided an almost day-by-day account of events on the plantation during the war as reported by the U.S. Embassy.

Firestone's relationship with Charles Taylor was further confirmed by uncovered hundreds of court documents from an insurance case involving the company. The courts document which in total weighed 44 lbs included handwritten diary notes from Firestone management, confidential evacuation plans, and records of tax payments to Taylor.

The investigations involved discussions with former and current Liberian Firestone workers; more than a



Charles Taylor, former president of Liberia

dozen retired expatriate Firestone senior managers who helped to run the plantation during Taylor's rise; a Firestone attorney; dozens of diplomats, government officials, representatives of the United Nations and non-government organizations; leaders of former warring factions in Liberia; and Liberian president Ellen Johnson Sirleaf.

Gaviria, Miller, and Jones spent the spring of 2014 tracking down and reaching out to more than

300 Americans and Liberians who had been involved when the paths of Charles Taylor and Firestone intersected, and worked to convince them to share their stories. Gaviria spoke of her initial skepticism about delving back 25 years to scrutinize a group of Americans on an African plantation and was stunned by all the information uncovered by the investigation team. In her comments on the findings she said "My first instinct was, 'There's a lot of bad things that happen in this world — why focus on this?'" the veteran producer says. "But as I learned more and more, I just had this real, visceral feeling that this story stands for something larger. It was a no-brainer to pursue it."

After much convincing, sources began to open up; even former Firestone managers spoke on-camera with remarkable candor, and even shared home videos and photos from their time helping to run the plantation. In addition to documents obtained, the investigative team were able to obtain a kind of confirmation of sources that was not always possible in investigative journalism.

By June 2014 when the investigative team arrived in Liberia, they had gathered enough evidence and information, including first-person accounts of what had happened on the plantation during Taylor's rise.

The investigative team could not make a second trip to Liberia, as a result of the Ebola outbreak in West Africa, however, the interviews they had done there in June left a deep impression. ■



## FOI Case Studies

### Public Officers Manipulate Records to Avoid Detection of Corrupt Practices Through FOI Requests

Officials of Victoria's Department of Education in Australia have been discovered to have manipulated invoices containing evidence of their mismanagement of education funds in order to avoid media scrutiny and detection.

With the use of Freedom of Information laws in many parts of the world, many corrupt practices by public officers are being exposed. However, an emerging response is the practice by government officials of falsifying and manipulating records which members of public have the right to assess and might be interested in.

After investigations by the independent broad-based Anti-corruption Commission (IBAC), it was discovered that a former Acting Secretary of Victoria's Department of Education had received favours from authorities of the primary schools, including furniture and coffee machines bought for his personal use, in his office and home, with the primary school's funds.

The former Secretary, Jeff Rosewarne, admitted at an inquiry by IBAC that his personal tax returns had also been done free of charge by an alleged corrupt finance official.

According to Mr. Rosewarne, the Director of School Resources, Mr. Nino Napoli, had been doing his tax returns and that of his family for 10 years, free of charge.

The IBAC inquiry was told the Brighton Primary School paid invoices for the department's executive Christmas party in 2008. All invoices were written to indicate that they were for the provision of goods and services.

According to Mr Rosewarne "the invoice was misleading to prevent the media from labeling public servants as 'fat cats' if the

invoices were ever obtained under Freedom of Information requests."

The corrupt relationship between Mr. Rosewarne and Mr. Napoli resulted in money meant for students being used to benefit themselves.

Mr. Rosewarne also admitted that \$5,000 of education money was used to buy office furniture for his home, while Chandler Park Primary school purchased \$7,000 worth of Italian wine from the son of the school's principal, which was also sent to his home.

The IBAC hearing was told that at least \$2.5 million of suspect invoices had been paid by the Department of Education between 2007 and 2014, but it is suspected that the total value of fraudulent transactions could be much higher.

At the IBAC hearing, it was discovered that Mr Rosewarne, his wife and Mr. Napoli, who was identified as a senior department figure kingpin at the centre of IBAC's investigation, travelled on business class on different luxury trips, including trips to New York, London, Rome and Dubai.

IBAC produced emails and invoices showing Mr Rosewarne hid the cost of furniture he claimed was for his home office by having a school provide an invoice to a furniture supply for "printing" services.

Mr. Rosewarne admitted that no one in the department knew of or approved his purchase of home furniture until 2013, two years after he left.

Mr. Napoli's appointment as Director of School Resources has been terminated. ■

### Global News Journalists Win Award for Health Reporting Using FOI Law

Two Global News online journalists who used Canada's Freedom of Information Act to track vaccination rates for every school in Toronto, Canada, have won the Registered Nurses' Association of Ontario's Media Award for their health reporting.

Patrick Cain and Carmen Chai won the RNAO Media Award for best online story for their March 2014 story that mapped out vaccination rates at Toronto schools.

The story has also previously won a Canadian Medical Association award in 2014.

Cain, a data journalist, tracked vaccination rates for every school in Toronto. The information was obtained exclusively by Global News under the Freedom of Information Act and was presented to readers with an interactive map so that they could plug in their postal codes to find vaccination uptake in their neighbourhoods or search for a specific school.

The data revealed a significant disparity in vaccination uptake across the city. It showed that many schools were below the immunity rate of 95 per cent, which is the level, according to the Public Health Agency of Canada, at which there are enough people immunized to protect everyone.

Chai interviewed Toronto Public Health, federal health officials, researchers and parents to provide the context for the data.

RNAO President, Vanessa Burkoski, said in a statement that "These journalists haven't shied away from exploring difficult topics that have captured the public's attention," adding that "It's clear the winners demonstrate the ability of a high-functioning press, and the impact of a compelling story."

Cain and Chai will be honoured with other winners at the nurses' association annual general meeting scheduled to take place in Toronto on April 17, 2015 as part of the RNAO's 90th anniversary. ■

## FOI Implementation Reports by Public Institutions

### Freedom of Information Implementation Report: Central Bank of Nigeria (CBN)

In a commendable effort towards transparency and in compliance with the provisions of the Freedom of Information Act (FOIA) 2011 requiring public institutions to disclose information on its activities to the public, the Central Bank of Nigeria (CBN) has disclosed information on its Freedom of Information activities.

Available at <http://www.cenbank.org/FOI/> is the FOI Act, the CBN Service Charter on the FOIA, Frequently Asked Questions (FAQs) on its FOI Office and a report on its FOI Office and Implementation of the FOIA.

With the enactment of the FOI Act, the Management of the CBN set in motion the necessary machinery towards realizing the objectives of the Act by creating the FOI Office in the Corporate Secretariat Department of the Bank on February 22, 2013. The Committee of Governors at its 285th Meeting held on 22nd February, 2012, had approved the creation of an Office for the Freedom of Information function in the Corporate Secretariat. A new Organizational Structure for the Corporate Secretariat was also approved and a new Information Management Division made up of Public Complaints Office and Freedom of Information Office was created to implement the Freedom of Information Act in the Bank and to treat Public Complaints against the Bank. The two Offices are located in the Corporate Secretariat on the 10th Floor, Wing 'C', Head Office, Abuja.

The Objectives of the FOI Office are stated to include coordinating the implementation of and compliance with the FOI Act in the Bank, arranging to make records and information in the custody of the Bank available, subject to specified exemptions and due process and enhancing transparency and accountability of the Bank and its Officers. The Office is mandated to process oral or written application(s) for access to information and records; Liaise with other Business Units to address request(s); Manage all requests in collaboration with the Legal Services Department at all times; Prepare and submit the quarterly FOI implementation report to the CBN Board; Prepare and submit FOI implementation report to the Attorney-General of the Federation (AGF) on or before 1st February for the preceding year; Develop standard charges for documents and transcriptions in the Bank; and Provide advisory services on FOI.



Mr. Godwin Emefiele, CBN Governor

Following the establishment of this Office, the bank had ensured that its Annual Report was submitted to the Presidency and the National Assembly two months after the end of the financial year. Beyond the mandatory disclosure of information as required by the FOI Act, the Bank had also taken some proactive steps to publish the decisions of the CBN Monetary Policy Committee (MPC) meetings as well as views and comments of individual members of the MPC.

In the discharge of its duties, the CBN FOI Office is to collaborate with the Legal Services Department and other Business Units in addressing requests

and ensuring that the laid down procedures are followed at all times. The procedure for the processing of FOI requests laid down by the CBN is:

Receive request > Request the applicant to complete the form or assist them in doing so > Acknowledge receipt of request and register request > Review request based on the provision of FOIA > Obtain legal opinion on information sought by Applicant > Obtain the relevant information from the relevant Strategic Business Units (SBUs) if not exempted > Prepare for response, present before FOI committee and obtain management approval to release > Communicate outcome to the applicant > Log action taken

FAQs answered on the CBN website include What is FOIA?, Who can make a request under the FOIA?, How do I make a FOI request?, Where do I send an FOI request?, Are there time limits for which information requested, must be furnished?, Are there any criminal sanctions for Non-compliance with the Act?, Will I be charged any fee for making FOIA requests?, Are all Records releasable under the FOIA?. Answers to these questions were provided through consultation of the Act as it contains information provided by the Act.

The CBN also has a service charter on the FOIA 2011 which is a 6 page document that sets out the standards of service by the staff of the Information Management Division, Corporate Secretariat of the Central Bank of Nigeria regarding FOI issues to clients of the bank.

Dated February 4, 2014, the Charter was prepared by the FOI Office and states that the FOI grants the right to

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## " FOI Quotes "

- \* "The freedom of a nation cannot be upheld by laws alone, but also by the light of the nation and knowledge of their use." - *Anders Chydenius, 1763*. Chydenius was an enlightenment thinker and politician (1729-1803), whose work helped inspire the first freedom of information law, in Sweden and Finland in 1766. His work is described in a 2006 book and on the website of the *Anders Chydenius Foundation*.
- \* "Liberty cannot be preserved without a general knowledge among the people, who have a right... and a desire to know; but besides this, they have a right, an indisputable, unalienable, indefeasible, divine right to that most
- dreaded and envied kind of knowledge, I mean of the characters and conduct of their rulers." - *John Adams, 1765*. Second US President. A Dissertation on the Canon and Feudal Law.
- \* "Publicity is one of the purifying elements of politics. Nothing checks all the bad practices of politics like public exposure." - *Woodrow Wilson*. Quoted in R. Goodin, 1992, *Motivating Political Morality*, Cambridge, Mass.; Blackwell.
- \* "The only sure bulwark of continuing liberty is a government strong enough to protect the interests of its people, and a people strong enough and well informed enough to maintain its
- sovereign control over its government." *Franklin Delano Roosevelt, 1938*. US President. From a Fireside Chat radio broadcast.
- \* "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." - *United States Supreme Court, 1978*. In *NLRB v. Robbins Tire Co.*, 437 U.S. 214, 242.
- \* "Secrecy is a form of government regulation." - *US Commission on Protecting and Reducing Government Secrecy, 1997*. ■

## FOI Implementation Reports by Public Institutions

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### Freedom of Information Implementation Report: Central Bank of Nigeria (CBN)

access information contained in documents from Government Agencies, Parastatals, Federal Civil Service, Private and Public sectors. It also provides a method of applying for or accessing CBN documents under the FOI by written or oral request to the Governor of the bank in Abuja with attention to the Director of Corporate Secretariat. Requests are expected to clearly describe the documents to be accessed, state that the request is under the FOI Act and include contact details.

The Charter also aims to provide information on the range of services offered by the Department, the service standards clients should expect and how client's concerns would be addressed with the goal of providing a vibrant world class public service.

The Charter also states that decisions regarding requests to access information would be conveyed as soon as possible and within the stipulated seven days after being received though if the request involves personal or business information relating to a third party, advise would be sought on the release of the information which may take longer than 7 days to process. The

Charter however promises that the CBN will keep the requester informed on the progress of the application. If it is decided, that some or all of the information that requested will not be released, reasons are to be given for the decision.

In order to ensure timeliness, the CBN establishes all Heads of Business Units (Departments and Branches) as channels and contact persons for quick responses of issues in view of the sensitive nature of information that might be required and are to respond to all requests within 48 hours.

The CBN encourages genuine and constructive feedback, improvement, recommendations and /or compliments by writing to The Governor and the Director of Corporate Secretariat. The CBN however believing that service is a partnership and having pledged to meet needs stated in the Charter, expect that their staff be treated with respect, Business Units forward any requests received to the FOI Office within 24 hours, Business Units respond to requests within 48 hours and supply necessary information when required or be held liable under Sec 7(4) and (5) of the FOIA 2011. ■

## FOI Tracker

Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
Youth Initiative for Advocacy, Growth and Advancement	The release of the report on the state of the prosecution of electoral offenders arrested during the post-election violence which followed the formal announcement of the winner of the 2011 presidential elections. Specific information requests include report of the state of prosecution of the suspects arrested for killing 10 National Youth Service Corps (NYSC) members deployed by INEC to serve as electoral officers in Bauchi State and a report on the state of compensation to the family members of the deceased NYSC members.	The Chairman, Independent National Electoral Commission (INEC)	April 23, 2013	In a letter dated July 15, 2013 INEC responded stating that while INEC shares the concerns on prosecution of post-election violence and payment of compensation, the deceased corps members did not die while acting as electoral officers. It stated that INEC does not have the power to prosecute post-election offenders as powers are limited to prosecuting electoral offenders. The letter ended stating that INEC does not have any of the reports requested in the letter under reference.	Response without the provision of information.
Public and Private Development Center (PPDC)	Procurement and Contract records for the re-award of the Lagos - Ibadan Expressway	Federal Ministry of Works	March 24, 2014	The Ministry responded to the request on the 17th of April, 2015 attaching the Request of 'No-Objection' letter sent to Bureau of Public Procurement (BPP), certificate of no-objection from BPP, a list of all tendered bids, minutes of the bid opening meeting, attendance list of the individuals and organizations, documentation on the scope of works involved in the repairs, bid evaluation meeting reports and recommendations and signed copies of the award letters.	Partial information was provided. Therefore, in response to the letter, PPDC requested that the outstanding documents previously requested for be provided
Justice, Development and Peace	Information relating to Permanent Voters Card (PVC) Distribution in Ogun	The Honourable	February 19, 2015	In a letter dated February 26, 2015, the Commission responded	Successful access to information

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Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
Commission (JDPC)	State especially the number of PVCs sent to Ogun State from the INEC Office in Abuja; the number distributed to various local governments and wards in the state; the number of people who had collected PVCs and what was left to be distributed; and the number of missing PVCs and names on the register.	Commissioner, Independent National Electoral Commission (INEC), Ogun State Office		providing a summary report of registered voters in Ogun State showing PVC received and distributed as at February 25, 2015.	
Justice, Development and Peace Commission (JDPC)	The 2015 Local Government Budget and the list of Capital Expenditure executed in 2014	The Executive Chairman, Abeokuta North Local Government	February 20, 2015	In a letter dated March 3, 2015, the Abeokuta North Local Government acknowledged receipt of the letter but advised that the request be sent to the Ministry of Local Government and Chieftaincy Affairs.	Response without the provision of information.
Ships and Ports Communication Company	Details of the total revenue collected from Nigeria Liquefied Natural Gas (NLNG) from July 2013 to date; amount paid to private firms from the amount collected from NLNG; amount paid to Global West Vessel Specialists Nigeria Limited under the Maritime Security Contract signed from 2011 to date; total spending of the institution's public relations unit in 2011, 2012, 2013, 2014 and January to March 2015; detailed breakdown of the agency's public relations unit expenditure between 2011 and 2015 including names of companies that executed projects and amounts paid to them.	The Director-General, Nigerian Maritime and Safety Agency (NIMASA)	April 5, 2015	In a letter dated April 10, 2015, the Agency acknowledged receipt of the request for information and stated that the Agency will revert the information as appropriate.	Awaiting requested information.

## Freedom of Information Research Report

### By Media Rights Agenda

Media Rights Agenda published the "Freedom of Information Research Report" in a bid to determine the level of compliance of public institutions to releasing information to members of the public.

The "Freedom of Information Research Report" seeks to provide a glimpse into the ease with which members of the public are able to access information in the custody of public institution.

Recognising that a law will remain on the shelf if not implemented and towards effective implementation of the Freedom of Information Act 2011, MRA sought to engage important stakeholders.

In implementing the law, all stakeholders need to be involved, carrying out their respective duties and responsibilities to make it work. As there are obligations that need to be complied with on the demand side, those on the supply side also need to make demands.

The research report is a culmination of a baseline survey on how public institutions respond to requests for information from a variety of individuals representing different social strata in Nigeria.

The report consists of Chapter 1: Introduction and Purpose of the Research; Chapter 2: Methodology; Chapter 3: Findings, which contains consolidated outcomes of requests submitted both in Abuja and Lagos; Chapter 4: Outcomes of Requests Submitted in Abuja; Chapter 5: Outcomes of Requests in Lagos; Chapter Six: Observations, Challenges and Recommendations; and the Appendix.

The report details the methods it used in carrying out the survey; including the number of persons trained, the institutions they visited, the actual requests they submitted and the responses to these requests.

The requests sent were categorized into 'routine', 'difficult', and 'sensitive'. The responses received are also categorized into different types and the report analyses and reports on its findings based on all of these. The requesters also represented various sectors of the Nigerian society. They submitted requests in Abuja and Lagos after being trained. It is the first of such survey carried out after the passage of the Freedom of Information Act on May 28, 2011.

The report is written in easy to understand narrative supported with tables, charts and graphs which help to



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enhance a better understanding of the narrative.

The report also presents its findings in different forms. There is the consolidated report for Lagos and Abuja; report of findings for requests submitted in Abuja and report of findings of requests submitted in Lagos.

It also analyses and reports in the findings, the results for the three different categories of requests - routine, difficult and sensitive - for the consolidated, Abuja, and Lagos parts of the findings.

In the final and sixth chapter, the report makes critical 'Observations, Challenges and Recommendations'

while the appendix contains all the requests that requesters submitted, the institutions they submitted the requests to, the categorization of the requests, whether routine, difficult or sensitive and the response from the institutions.

Amongst recommendations made by the report is that the Office of the Head of Service of the Federation (OHSF) needs to be engaged to work closely with the office of the Attorney General and Minister of Justice to ensure the law works effectively.

It also recommends that the OHSF and the Attorney General have to come out with sanctions and reward systems to ensure the FOI Act is effectively implemented.

Germane to the effective implementation of the FOI Act is the state of public records which it describes as being in shambles and to address this, the report recommends digitization of public records and information, taking advantage of advancement in technology. It notes that public institutions can, not only digitize their records and information, but also easily put them in the public domain and make them accessible to the public.

Finally, the report urges all stakeholders to play their roles to ensure the FOI Act is effectively implemented.

Published three years after the signing of the FOI Act, there is a need for follow up and regular surveys, as Media Rights Agenda did with the survey, of the ease with which the public is able to access information in the custody of public institutions such that over time, it will be possible to determine if access to information is improving or worsening. Such a survey will also identify challenges to the effective implementation of the FOI Act and proffer solution particularly with the rapid pace of advancement in technology. ■