

### NOA Embarks on Massive Nationwide Sensitization on FOI Act

**T**he National Orientation Agency (NOA) has embarked on a massive nationwide sensitization on the Freedom of Information Act to improve citizens' awareness and understanding of the provisions of the Act.

Besides seeking to improve citizens' awareness and understanding, the NOA is also aiming to sensitise citizens to exercise their rights under the Act to seek information from public institutions at various levels; stimulate proactive disclosure of information by public institutions as required by the Act; and ensure that public institutions provide access to information applied

for by members of the public under the FOI Act.

One of the weaknesses of the Nigerian FOI Act is the fact that there is no central body, such as an information commissioner or a government department, specifically given overall responsibility by the Act to promote the right to information. In addition, public awareness-raising efforts, including producing guidelines for members of the public on how to use the Act, are not specifically mandated by law.

The NOA's decision, therefore, to spearhead public sensitization on the FOI Act, without doubt, helps to strengthen the Law and enhances the possibility for its effective implementation. *Continued on page 3*



Mr. Mike Omeri,  
Director-General of National Orientation Agency

### MRA Publishes Sector Specific FOI Guidelines

Media Rights Agenda (MRA) has published six sector specific guidelines for civil society organisations (CSOs) on using the Freedom of Information (FOI) Act. The guidelines are intended to provide a straightforward and simplified explanation of how the Nigerian Freedom of Information Act can be put to use specifically in identified sectors.

The sectors addressed by these guidelines are: The Environmental, Public Finance Management, Agricultural,

Women, Youth and the Health sectors.

The FOI Act, 2011 grants the public the right to access information held by government officials and public institutions and some private entities that enjoy the use of public funds.

These sectors are key areas of interest that contribute immensely to the growth and development of the society.

The guidelines highlights some issues within the sectors that the

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# Welcome Statement

Last month, on May 28, 2014, Nigeria's Freedom of Information Act clocked three years since its signing into Law by President Goodluck Jonathan.

In empowering citizens to demand information from public institutions and governments, the Law is beginning to make a significant impact on governance in Nigeria, gradually changing the relationship between citizens and the government.

This month, Media Rights Agenda (MRA) publishes the first edition of the **Freedom of Information Newsletter**, a monthly publication which will aggregate news, information and analysis about the usage of the FOI Act and its implementation in Nigeria while also sharing global Freedom of Information best practices and developments. Such developments, it is hoped, will also inspire actions in Nigeria to enhance the usage and implementation of the Law.

The Newsletter will pursue these and other objectives in a variety of regular sections.

There is currently no dedicated or systematic tracking mechanism for usage of the Freedom of Information Act in the country or requests for information being made and the Newsletter will attempt to provide some information in this regard with its section on "FOI Tracker" until a more comprehensive tracking system is developed.

The "FOI Tracker" will highlight requests for information being made by individuals, organizations or other entities, indicating the requester, the information requested, the public institution or private body to which the request was made, the date of the request, the current status or outcome of the request, etc.

In the "FOI Hall of Fame", the Newsletter will showcase every month an individual or organization that has made significant contributions to promoting or advancing the implementation of the FOI Act.

Such efforts may be through public enlightenment and sensitization activities on the Act; training and capacity-building; Freedom of Information monitoring and research; other engagements such as creatively or actively using the Act to seek information, conducting advocacy for policy or institutional reform to strengthen the implementation of the law; applying technological innovations to promote the Law or enhance the free flow of information, among others.

The Newsletter will also showcase in this section public institutions which meet any of these criteria or are adjudged to be most responsive to requests for information from members of the public or in other ways contributing to the effective implementation of the Act.

In the "FOI Lawyers Profile", the Newsletter will profile every month a lawyer who has demonstrated a commitment to ensuring the compliance with the provisions of the Act by conducting FOI litigation or providing legal assistance in FOI cases on a *pro bono* basis.

The Newsletter will also highlight ongoing FOI cases in court every month and in the "FOI Law Reports" section, it will carry reports of rulings and judgments of courts, including courts of first instance and appellate courts, in FOI cases, whether such decisions are positive or negative. In this way, the Newsletter will contribute towards the building a body of jurisprudence in FOI cases.

Other sections in the Newsletter will include: "FOI Resources", "Oncoming FOI Events", "Regional/International Developments", "FOI Standards and Principles", among others.

Media Rights Agenda welcomes comments, questions, suggestions or other feedback on any aspect of the Newsletter as well as contributions from members of the public. These may be sent by email to: [foi@mediarightsagenda.org](mailto:foi@mediarightsagenda.org)

**Editor**

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### NOA Embarks on Massive Nationwide Sensitization on FOI Act

The NOA's institutional structure and resources make it an ideal body to promote the FOI Act nationwide. It has a three-tier structure that aligns with the federal structure of Nigeria with a national headquarters; State Directorates; and Local Government Offices.

In terms of staffing, the personnel make up of the Agency reflects the demographic complexity of Nigeria while it has a robust grassroots structure with officers in its 774 local government offices across the country.

The NOA also has a Community Brigade Support in each local government area and Ward as well as Citizens' Responsibility Volunteers (CRVs) in each Ward all over the Federation. It has a "Theatre For Development" (TFD) department, a vibrant ICT Unit which runs its social media platforms and the NOA Community Radio.

The NOA has conducted baseline surveys on awareness of the FOI Act in 12 pilot states across the six geo-political zones of the country, namely Gombe, Sokoto, Kebbi, Kaduna, Lagos, Oyo, Enugu, Ebonyi, Plateau, Benue, Rivers, and Delta States as well as the Federal Capital Territory (FCT), Abuja.

It has also carried out "Train-the-Trainers" sessions at national, state and local government levels and held Theatre for Development and "Community Dialogue" Sessions (CDS) in six communities in 146 Local Government Areas within the seven pilot states and the Federal Capital Territory, where it has chosen to implement its initial engagements.

From its "Training of Trainers" activities at the National, State and Local Government levels, a total of 2,406 people have been trained to drive the grassroots sensitization on the FOI Act in 146 Local Government Areas in the seven pilot States and the FCT.

Those trained include NOA State Directors, Heads of Programmes, Chief Orientation and Mobilization Officers (COMOs), Local Government Field Officers, CRVs, some of whom are businessmen, students, community leaders, applicants, teachers, serving and retired senior civil servants, clerics, youth and women leaders.

A total of 876 grassroots public sensitization activities (438 TFDs and 438 CDs) took place in 876 communities across the seven pilot states and the Federal Capital Territory during the period that the

programme lasted.

The NOA has also produced and distributed in the seven pilot states and the FCT a total of 360,000 copies of the FOI Act in English and three indigenous languages,

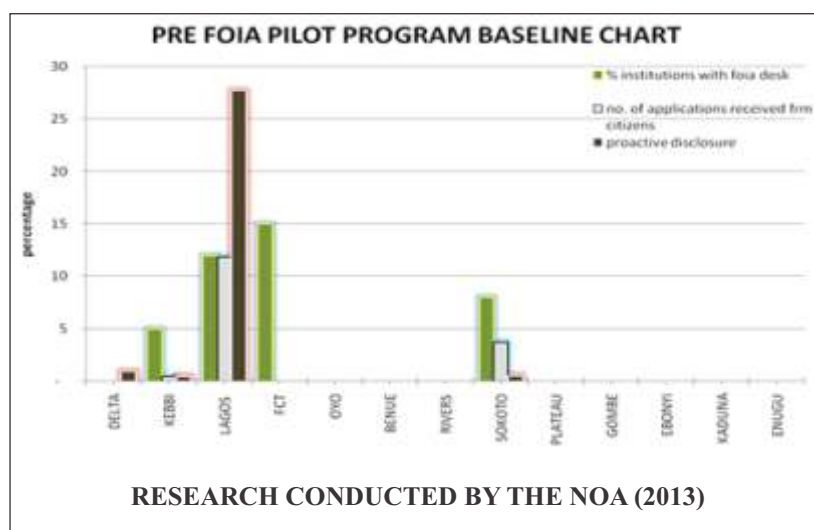
namely Hausa, Igbo and Yoruba.

NOA's Director-General, Mr. Mike Omeri, said owing to the work so far done by the Agency, the Nigerian Bar Association (NBA) and the National Human Rights Commission (NHRC) seeking collaboration with it on how to further effectively publicise the FOI Act.

According to Mr. Omeri, the Nigeria Police Force has also established FOI Units in their National, State and Local Government Commands and requested 1,000 copies of the publications from NOA for their personnel, which have been delivered to the office of the Inspector General of Police.

He said the Security Administrators' Meeting, which is presided over by the Special Services Office located in the Office of the Secretary to the Government of the Federation, has also requested the NOA to provide its members with copies of the FOI Act.

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### **NOA Embarks on Massive Nationwide Sensitization on FOI Act**

The Security Administrators' Meeting consists of representatives of the 36 State Governors and the FCT, all security organizations and relevant government departments and agencies.

The NOA intermittently blasted Bulk SMS messages to randomly selected GSM numbers weekly, conveying messages relevant to the FOI Act and also maintains a weekly e-polling slot on the Nigeria Television Authority (NTA) which provides a corridor for Nigerians to express their opinions on issues related to the FOI Act sensitization project.

The NOA aggregated, analysed and factored the feedback into its grassroots sensitization.

The NOA is convinced that the grassroots sensitization on the FOI Act has added impetus to the Agency's advocacy and campaign for transparency and accountability in governance.

According to Mr. Omeri, "Understanding and taking advantage of the provisions of the Act, expands the space for citizens' participation in governance, guarantees responsive and responsible governance, guarantees judicious deployment of public funds and invariably, deepens democratic practice, which are cardinal to NOA's mandate."

The NOA plans to do more sensitization activities, subject to the availability of resources.

Part of its future plans are to scale up the sensitisation effort to cover more states and communities.

In addition, it hopes to conduct a post-programme impact assessment in the seven pilot states and the FCT, where it has so far conducted activities, to measure the impact of its efforts.

The NOA also wants to carry out a pre-programme survey in seven additional states.

The NOA said its projects have also revealed that given the linguistic and ethnic complexity of Nigeria, there is the need for translation of the FOI Act into more indigenous Nigerian languages, including Arabic for the Northern and Muslim readers.

According to Mr. Omeri, "In the course of the



**Mr. Mike Omeri,**  
*Director-General of National Orientation Agency*

programme, it was found that more people in the north, especially Muslims, are more likely to read Arabic than Hausa."

In response to this situation, the Agency is undertaking to translate the Act into 21 indigenous languages and produce copies. It also sees a need for the translation and production of the benefits of the Act in the 21 indigenous languages.

Most of the NOA's efforts have been supported by the United Nations Development Programme's (UNDP) Democratic Governance for Development (DGD) Project, 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), the Canadian International Development Agency (CIDA), the Korea International Cooperation Agency and the UNDP.

Reflecting on the lessons learnt from the NOA'S initial efforts, Mr Omeri said: "Going by the conduct of the sessions, particularly, the participation of the public, the exercise can be said to be a huge success, so far. Much as the issue of the FOI Act, 2011 sounded new to most participants, they welcomed the legislation which they believe will greatly improve governance and deepen democracy by enhancing citizens participation in shaping their affairs."

## PPDC: Using the FOI Act to Ensure Probity in Public Finance Management



With over 100 freedom of information requests made in the last three years to various public and private entities across different sectors and about 70 percent of them answered, the Public and Private Development Centre (PPDC) is certainly a civil society leader in advancing the implementation of the Freedom of Information Act, 2011. The Abuja-based non-governmental organization, which specializes in public procurement monitoring, also aggressively litigates cases of denial of access to information.



Ms. Seember Nyager, Executive Director of PPDC

One of the first NGOs in Nigeria to recognize the link between access to information and its work, even before the FOI Act was passed into Law, the PPDC published ***“Guidelines for Accessing Procurement Information from Ministries, Departments and Agencies”*** in 2010 in an effort to empower public procurement observers around the country to obtain the critically important procurement information and records they need to do their job of monitoring public procurement processes effectively.

PPDC focuses on transparency in the public procurement sector and more broadly on opening up contracting processes. It also runs a platform called HomeVida that provides incentives to film makers to produce films that promote integrity.

PPDC has made remarkable progress in the use of the FOI Act and has incorporated the Act into different activities carried out by the organization. Firstly, it uses the Act as a resource for training procurement monitors to demand procurement information. It also uses the Act to make requests for information.

In the past three years, PPDC has made over 100 written requests for information with over 70 answered.

PPDC's Chief Executive Officer, Ms Seember Nyager, however, noted that responses do not

always mean that the information requested was provided as “there may be some back and forth as in the case of UBEC and in the end, the institution still declined to provide the requested information.”

A number of its information requests have been completely ignored and Ms Nyager says the Ministry of Education and the Ministry of Health are the most notorious for ignoring requests for information. The Nigerian Immigration Service has also not responded to PPDC's request on

the selection of a consultant for the tragic recruitment exercise in March 2014.

The focus of PPDC information requests are usually information around the public finance management process, particularly the procurement process and contract implementation.

So far, PPDC has challenged over 12 request denials in court and has recorded several successes, including a judgment obtained on behalf of the Nigerian Contract Monitoring Coalition against the erstwhile Power Holding Corporation of Nigeria (PHCN) that affirmed the right to procurement and contract records for select power sector contracts; a judgment affirming the right to information on revenue generated by the Federal Capital Territory Administration (FCTA) through the “Park and Pay Scheme” (now suspended), a mandatory order for the release of bank statements and other payment details which was obtained against the Integrated Parking Services, a private sector organization hired to run the Park and Pay Service by the FCTA.

PPDC has also unsuccessfully litigated a case, now on appeal, against the Nigerian National Petroleum Corporation (NNPC). PPDC lost the case on a technicality on the ground that it failed to give NNPC prior notice of its intention to sue, known as “pre-action notice”.

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# PPDC: Using the FOI Act to Ensure Probity in Public Finance Management



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PPDC currently has about six FOI cases pending in court. One of them is against Julius Berger, the multinational construction company, over its failure to disclose information relating to the Lagos-Ibadan expressway contract.

It is also prosecuting another case against the Office of the National Security Adviser to President Goodluck Jonathan concerning the non-disclosure of information on CCTV cameras and other security contracts for which allocations were released in 2013.



*Mr Chibuzo Ekwewuo, Chair, Board of PPDC*

Also pending is another suit against the Federal Ministry of Finance for refusing to disclose requested information on the light rail contract.

PPDC's litigation is handled by lawyers from its partner law firm, A&E Law Partnership, Abuja and it has been able to sustain a robust litigation effort by coming to an arrangement with the Law firm which is providing it legal services on a pro bono basis.

Ms Nyager says from her experience in using the FOI Act, on the average, an FOI judicial review process takes three to four months to complete. However, most public institutions tend to provide the requested information if they think the requester will definitely go to court to compel the institution to release the information, which is now working in PPDC's favour as it almost always litigates any refusal.

Ms Nyager observes that proactive disclosure by public institutions needs a lot of improvement in the country.

According to her, "It is disconcerting that public institutions with a stake in one project may not share information effectively amongst themselves and the silo mentality and/or practise makes contract execution offer less value for money."

PPDC also complains about the lack of feedback from bodies with oversight roles. For instance, Ms Nyager said, PPDC's written petitions to the Attorney General of the Federation on prohibitive costs which are not aligned with the Attorney General's guidelines on costs have gone unanswered and attempts to get the National Human Rights Commission (NHRC) to deal with denial of information from Universal Basic Education Commission (UBEC) has produced no feedback.

In the result, Ms Nyager says, despite the potential for a floodgate of litigation, the courts still seem to be the best option in enforcing the right to information.

PPDC says it uses the information received as a means to an end which is really to ensure probity in the utilization of public resources and it hopes for stronger enforcement that would ensure greater proactive disclosure so that it can focus on following the money right into the projects that are being implemented.

Ms Nyager is urging citizens to make effective use of the FOI Act as "Right now, citizens are seen to replicate the silo mentality that operates in public institutions and so they need to start walking the talk on how we share and use information. The silo mentality is the attitude and mind-set when there is reluctance to share information and knowledge with others. This mentality reduces efficiency of the overall operation, reduces morale, and may contribute to the demise of a productive culture."

PPDC has an E-Library that would no doubt be a useful tool or resource for those interested in Freedom of Information. A list and details of FOI requests among other publications including Procurement Publications, Procurement Monitoring Training tools, Procurement Bills and Laws, Tenders, Budgets, General Anti-Corruption, Information on FOI cases, etc., can be found at the PPDC E-Library using the following web address: [www.library.procurementmonitor.org](http://www.library.procurementmonitor.org).

You can contact PPDC using the following details:  
1st floor, UAC Building Central Business District, Abuja.

Email: [ppdc@procurementmonitor.org](mailto:ppdc@procurementmonitor.org);  
[info@ppdcng.org](mailto:info@ppdcng.org)

Phone number: 234-9-2900171



## FOI Resources

### Citizen's Guide to Freedom of Information

The Citizen's Guide to Freedom of Information (FOI) Act is a Media Rights Agenda (MRA) publication which explains the FOI Act and its usage for Nigerian Citizens. It examines what freedom of information is about and how it relates to every individual and sector in the society. The passage of the FOI Act fills a huge gap which hitherto existed in the legal framework for citizens' access to information held by public officers, authorities and institutions in Nigeria. Based on this assertion, the Citizen's Guide to the FOI Act, 2011 highlights the main points and issues raised in the Act as a guide for an average citizen on the FOI Act 2011 such

as what is Freedom of Information and why it is important. The Guide points out that the Freedom of Information is not only the right of the media but the right of every citizen of a country irrespective of tribe, race and ethnic group. The freedom to access information by every citizen is also irrespective of the medium of such information. It also indicates how paramount information is to human life and it being central to human existence and critical for decision-making, whether as individuals or as organizations. These decisions include personal, professional, business, political decisions, among others. ■

### FOI Apps for Blackberry, Android & Java-Enabled Phones

Media Rights Agenda (MRA) launched an FOI Application for java-enabled, Blackberry and Android powered mobile device and tablets to enable users download the Nigeria Freedom of Information (FOI) Act 2011.

These FOI Applications are aimed at improving the level of public awareness of the Law and to encourage public engagement in the use of the Law by creating platforms where users can easily get assistance about the FOI Act.

The FOI applications for java-enabled and Blackberry mobile

devices were developed by Paradigm Initiative Nigeria (PIN) with support from the United State Agency for International Development (USAID) through a grant from PACT Nigeria. Similarly, an FOI Application was developed for Android powered devices by Eko-Konnnect with support from Ford Foundation.

The apps contain voice call options, email and capability to send SMS for obtaining more information.

To download these apps, visit MRA's website where the three versions can be downloaded - <http://mediarightsagenda.net/web/foi-app/>. ■



### Up Coming FOI Events

6 - 8 August 2014:

**International Workshop on Open Data for Science and Sustainability in Developing Countries (OpenDataSSDC), Nairobi, Kenya.**

The International Workshop on Open Data for Science and Sustainability in Developing Countries to be held at the United Nations Offices in Nairobi, Kenya provides an opportunity to present accomplishments in using of research and improving access to data in reducing the digital divide since the World Summit on Information Society (WSIS), held in Geneva 2003 and Tunis 2005, as well as the programs of each of the partners. For more information, visit the websites: <http://www.codata-pastd.org/>; <http://www.wfeo.net/events/open-data-ssdc-international-workshop/>

**16 - 23 August 2014: Information Network-Africa Call for Papers for the WLIC 2014 Open Session, Lyon, France.**

Access to Information Network-Africa (ATINA) invites proposals for papers to be presented at its Open Session during the 2014 International Federation of Library Associations and Institutions (IFLA) World Library and Information Congress (WLIC) 80th Annual Conference. For more information, visit: <http://conference.ifla.org/ifla80/calls-for-papers/effective-access-information-key-sustainable-poverty-reduction-and-thriving> ■

## ● FOI Lawyer's Profile ●

### **Ayodeji Acquah: An Experienced Lawyer Cutting His Teeth in FOI Litigation**

**A**yodeji Acquah is a Legal Practitioner with 26 years of practice experience having been called to the Nigerian Bar in 1988. He is a pioneer member of the Network of Lawyers set up by Media Rights Agenda (MRA) to provide pro bono legal services on issues



**Barr. Ayodeji Acquah**

concerning the implementation of the Freedom of Information (FOI) Act, including Litigation cases of denial of access to information.

Mr. Acquah is the Principal Partner of Ayodeji Acquah & Co., but before establishing his law firm, he worked with the late Chief Gani Fawehinmi (SAN) in his Chambers and later with Chief Adegboyega Awomolo (SAN) at Awomolo and Associates.

He became involved with FOI from following the debates generated by the Bill before its passage in 2011 and the opportunity to be a part of a team of lawyers and other stakeholders that attended the FOI Act Implementers Strategy Meeting, a workshop organized by MRA in Abuja on September 16 and 17, 2013.

His greatest influences have been Mr. Ade Ogunmefun, the then Headmaster of the Alafia Institute, Mokola, Ibadan which was his Primary School and Professor (Sir) Joseph Obemeata, Principal of his

secondary school who he regards as molders of men and dream makers.

Mr. Acquah grew up hearing about the late Chief Gani Fawehinmi (SAN) and his habit of using the Law to advance the cause of the society and was thereafter privileged to have had his Law School attachment in Gani Fawehinmi Chambers and worked with him after qualifying as a lawyer. Chief Fawehinmi was therefore a significant influence in his life. He was also largely influenced by two uncles who are also lawyers, Mr. J. A. O Awomolo and Chief Adegboyega Awomolo (SAN) both of whom impressed him with their logical approach to issues.

He also states that the entire staff of MRA, particularly its Executive Director, Edet Ojo, have been a major influence in his desire to work on FOI cases.

He explains that although Mr. Ojo is not a lawyer, he “continues to impress me with the strength of his incisive and well reasoned arguments during our several strategy sessions on the various FOI cases we handle.”

Mr. Acquah is notably a fervent reader over a wide range of subjects and used to visit the library constantly when he was younger. He can best be described as loyal, honest and committed to causes he believes in.

Speaking on the present status of FOI in Nigeria, he states that “though awareness of the law is increasing, there is still a long way to go in sensitizing the Judiciary, the governed and particularly the government as to the latter's limits under the law.”

His most challenging case so far was a case at the then Industrial

Arbitration Panel sitting in Lagos years ago when he was privileged to appear as counsel beside the late Chief Fawehinmi for the State Government against its workers who had embarked on strike in protest against the inability of the Government to pay what they demanded as minimum wage. The sittings were usually very rowdy, he says, with the workers hurling insults at both the opposing counsel and their client represented by virtually all members of the State Executive. The workers briefed Gani Fawehinmi's Chambers but when it was obvious that things were not going their way, especially when they disobeyed the earlier Order that they should suspend their strike action, they turned violent and ended up manhandling some of the people in court.

One of the key challenges he has faced in his fight for access to information is the lack of sufficient information about the FOI Law and what it can be used to achieve in the advancement of the society particularly Nigeria's democratic experience. He believes that the Judiciary, being the last hope of the common man, should continue to interpret FOI Law through its various robust decisions. Mr. Acquah also believes that in the next few years, as more people become aware of the law in Nigeria and what it can be used to achieve, it will encourage the government to become more responsible and responsive.

His advice for colleagues as regards FOI and for young lawyers in general is for them to continue to broaden their interest in and knowledge of the Law. He remarks that the FOI Act is an awesome instrument to ensure good governance.



# FOI Litigation

## The EIE Project Ltd/GTE

vs

## First Bank of Nigeria Plc. & The Attorney General of the Federation

**A** Federal High Court sitting in Lagos presided by Justice Mohammed Yinusa granted Enough is Enough (EIE), a Non-Governmental Organization leave to apply for an Order of Mandamus to compel First Bank of Nigeria Plc. (FBN), to disclose information relating to the loan facility granted by FBN to the Nigerian Civil Aviation Authority (NCAA) for the purchase of two bullet proof BMW 760 LI HSS vehicles.

EIE asked the Court in a motion ex parte for leave to apply for the order compelling the FBN to disclose and make the following information available to the organisation;

- a. The credit application file for the loan facility of ₦836,970,15

6.00 for the purchase of two bullet proof BMW 760 LI HSS vehicles for the NCAA from Coscharis Motors Ltd with; the Original documents including pro-forma invoice (s) from the supplier, request letter from the NCAA and insurance certificate for the assets (in this case the BMW vehicles); rationale for approval including the credit application (or an acceptable alternative) originating the request and details of the approving authority; offer letter to NCAA stating the terms and conditions of the loan;

- b. The loan account statement reflecting the two payments already made as stated during the testimony of Mr. Joyce D. Nkemakolam, the Director of Aerodrome and Airspace Standards and former Director General of NCAA.

On February 27, 2014, the Court granted the order sought by EIE. EIE thereafter filed its application

for judicial review, seeking among other reliefs, an Order of Mandamus compelling FBN to disclose and make available the Information requested as well as compelling the Attorney General of Federation to prosecute FBN for unlawful denial of the information so requested.

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

In opposition, EIE argued in response that the

provisions of the FOI Act permits any person to access or request information and that such an Applicant need not demonstrate any specific interest in the information requested. It also contended that any such applicant in exercise of the right to

access information also has the right to institute proceedings in Court to challenge the refusal.

Part of the argument put forward by FBN is that it is not a Public institution and therefore cannot be subject to the FOI Act, 2011.

EIE countered same by arguing that FBN performs public duties and thereby qualifies as a public institution as envisaged under the FOI Act.

These proceedings followed the request for the information made by EIE in a letter dated 30 October 2013 and the subsequent refusal to provide the information and documents by FBN.

The Court on June 19, 2014 heard all applications and adjourned final Judgment in the Suit to 25 September, 2014.



Yemi Adamolekun, E.D of EIE



Bisi Onasanya, C.E.O of FBN

## EIE Project Ltd/GTE

Vs

**Coscharis Motors Ltd & The Attorney General of the Federation**

**J**ustice Mohammed Yinusa sitting at the Federal High Court in Lagos granted leave to Enough is Enough, a Non-Governmental Organization to apply for an Order of Mandamus to compel Coscharis Motors Ltd., to disclose information relating to the purchase of the two bullet proof BMW 760 LI HSS vehicles for Nigerian Civil Aviation Authority (NCAA) by Coscharis Motors Ltd.



**Cosmas Maduka, CEO of Coscharis Motors**

EIE asked the Court in a motion exparte for leave to apply for the order compelling the Coscharis Motors Ltd. to make the following information available to it:

- invoice and landing documents for the two vehicles acquired by the NCAA with chassis numbers WBAHP41050DW68032 and WBAHP41010DW68044;
- details of payment for the vehicles, if they were they paid in full or hire purchased as reported by the media.

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

Coscharis Motors, in opposition, argued that it is a private body and cannot be made subject to the FOI Act. EIE in response argued that Coscharis Motors, having utilized public funds and received tax waivers to import vehicle, qualified as a public institution under the FOI Act.

The proceedings followed the request for the information made by EIE in a letter dated October 28, 2013 and the subsequent refusal to provide the information by Coscharis Motors.

The case was adjourned to October 2, 2014 for hearing.

## EIE Project Ltd/GTE

Vs

**The Nigerian Civil Aviation Authority & The Attorney General of the Federation**

**A** Federal High Court sitting in Lagos presided over by Justice Mohammed Yinusa, granted leave to Enough is Enough(EIE), a Non-Governmental Organization, to apply for an Order of Mandamus to compel the Nigerian Civil Aviation Authority (NCAA), a public institution to disclose information relating to the purchase of the two bullet proof BMW 760 LI HSS vehicles by the NCAA.

EIE asked the Court in a motion exparte for leave to apply for the order compelling the NCAA to disclose and make the following information available:

Statements of income and expenditure of the NCAA from January 2010 to October 2013.



**Mohammed Bello Adokie, Attorney General of the Federation**

On February 27, 2014 the Court granted the order sought by EIE. EIE thereafter filed its application for judicial review, seeking among other reliefs, an Order of Mandamus compelling NCAA to make available the Information requested as well as compelling the Attorney

General of Federation to prosecute NCAA for wrongful denial of the information so requested.

NCAA filed an Objection arguing that EIE did not serve it with a pre-action notice before commencing the suit and that failure to issue the pre-action notice as provided in Section 24(2) of the Civil Aviation Act 2006 makes the Suit defective.

EIE in response to NCAA's Objection argued that EIE will be subjecting its statutory right to the discretion of the Court if it issues NCAA with a pre-action notice, because the 30 days provided by the FOI Act for an applicant to approach the Court for Judicial Review would have elapsed. NCAA in its reply on Points of Law further argued that EIE ought to have given NCAA the pre-action notice since the Court can still enlarge the time.

The proceedings followed the request for the information made by EIE in a letter dated October 30, 2013 and the subsequent refusal by NCAA to provide the information and documents.

The case has been adjourned to October 20, 2014 for hearing.

## ***Court Will Not Grant Order of Mandamus if Alternative Remedy is Available***

In the High Court of Lagos State

In the Ikeja Judicial Division

Before Justice Y.O. Idowu (Mrs.)

Sitting at Court No. 10, General Civil Division Ikeja

Wednesday, 14<sup>th</sup> March 2012

Suit No. ID/211/2009

### **Between:**

Incorporated Trustees of the Citizens

Assistance Centre

APPLICANT

### **And**

1. Hon. S. Adeyemi  
Ikuforiji

2. Lagos State House of  
A s s e m b l y  
RESPONDENTS

The Applicant in the suit brought a motion on notice dated November 22, 2011 pursuant to Order 40 Rules 3 and 5 of the High Court of Lagos State (Civil Procedure) Rules, 2004, Sections 1(1), 2, 3, 4, 20, 21, 22 and 25 of the Freedom of Information Act, 2011, Section 39 of Constitution of the Federal Republic of Nigeria, 1999 (as amended), Article 13 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap DA9, LFN (2004) and the inherent jurisdiction of the Court, praying for:

- “ An order of mandamus compelling the Respondents to release or make available to the Applicant the information requested in the letter dated July 14, 2011 or “Exhibit Citizens Centre 1”
- “ And for such further or other order(s) as the Court may deem fit to make in the circumstances.

However, the Respondents filed a Notice of Preliminary Objection dated November 30, 2011 on the following grounds:

- “ That the Applicant lacks the requisite legal

capacity/locus standi to commence this action.

- “ That the Applicant in the Suit is an improper party.
- “ That the Applicant is not a juristic person.
- “ That the Applicant has no reasonable cause of action.
- “ That the application for mandamus is speculative, academic, frivolous, vexatious and an abuse of the Court process.

- “ The relevant statute (Freedom of Information Act, 2011) relied upon by the Applicant.

The Respondents contended that the applicant in the applications for an order of mandamus fails on the following grounds:

- a. That the statute is not retrospective
- b. That by Section 14(1) (6) of the FOI Act the Respondents herein are precluded over exemption of personal information from publication as demanded by the Applicant (exception to

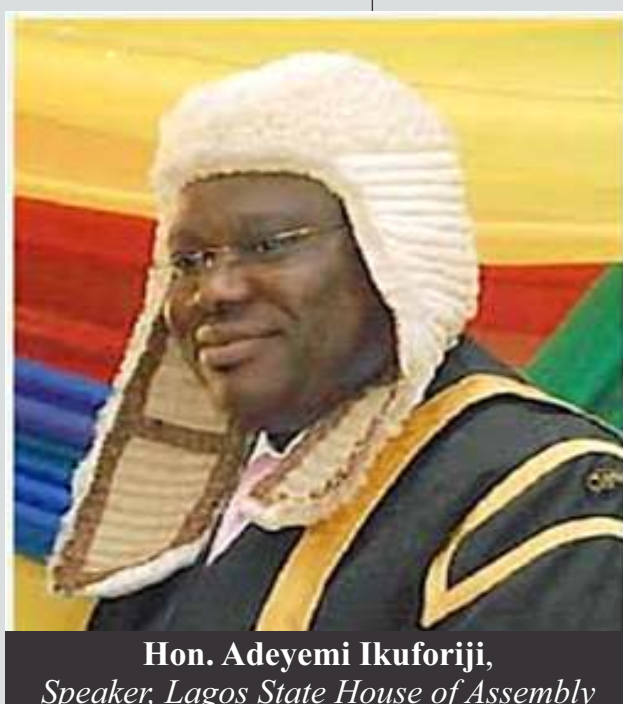
the rule).

The preliminary objection was supported by a 20-paragraph counter-affidavit dated December 5, 2011 wherein the deponent averred that the Applicant in the Suit is not a registered organization, unknown to law, hence cannot maintain or institute proceedings before a court of law.

It was also averred that the overhead costs sought to be published cannot be published without creating crisis in the interest of the state and its security.

It was further averred that the law relied upon by the Applicant, the Freedom of Information Act, took effect from May 28, 2011 and as such cannot suffice for the Applicant requesting for information on overhead costs from 1999 to September 2011.

The Respondent said it could deny the Applicant information where the subject of the information



**Hon. Adeyemi Ikuforiji,**  
*Speaker, Lagos State House of Assembly*

*Continued on page 12*



## **Court Will Not Grant Order of Mandamus if Alternative Remedy is Available**

includes personal information maintained with respect to the Respondents' employees, appointees and/or support staff.

It was also averred that the Respondents and their staff, appointees and/or elected officials will suffer irreparable injury and/or prejudice if the information is made available to the Applicant who may likely publish it in the media; and no indemnity can cure the damage that will result from such grant.

Justice Idowu noted that the gravamen of the preliminary objection to be considered is whether the Applicant's motion on notice is properly before the court with regards to Sections 20 and 21 of the Freedom of Information Act, 2011 and said it would form her focus in considering the application. She added that she would also adopt the issues for determination raised by the Respondents.

Justice Idowu noted that locus standi means the legal capacity or authority to sue in a cause or matter and that for a plaintiff to sue in a matter, he has to disclose his interest in the matter. She cited *Ayorinde v. Kuforiji* (2007) 4 NWLR (Pt. 1024) 341.

The judge said it is trite law that only juristic persons can sue or be sued. She said they include natural persons, incorporated companies, corporations with perpetual succession and unincorporated associations granted the status of legal persons by law. She referred to *Gov., Kwara State v. Lawal* (2007) 13 NWLR (Pt. 1051) 347.

On whether there is a reasonable cause of action, she said the law is that there must be a controversy between parties that a court is called upon to resolve in a suit, otherwise the court will lack jurisdiction to entertain the suit.

She said: "In other words, there must exist a cause of action between the parties, which term may be described as a civil right or obligation for the determination by a court of law or a dispute in respect of which a court of law is entitled to invoke its judicial powers to determine."

The judge noted that the grouse between the parties is quite apparent which is on the refusal to grant information requested by the Applicant, adding that this answers the issue of locus standi and cause of action of the Applicant in the affirmative.

She also noted that the Applicant has in their counter-affidavit exhibited their certificate of incorporation thereby laying to rest the issue of it not being a juristic person.

Citing the preamble to the Act, the judge said: "I must say here that this clearly answers the issue of whether this act is

meant to be retrospective in nature. This would have been clearly stated here if intended. The commencement date of operation of the Act follows as the 28<sup>th</sup> day of May, 2011. This again lays to rest the issue of whether the Act is intended to be retrospective in nature."

She noted that in arguing their preliminary objection, the Respondents stated that the Applicant has not shown any reasonable interest for wanting the information and thus cannot be obliged with it.

The judge said: "I must say here that this assertion is unfounded as section 1(2) of the Act reads that an Applicant under this Act need not demonstrate any specific interest in the information being applied for. Once it is a public information, no interest or purpose to which the information is to be used is required to be shown."

She also noted that the Respondent did not deny the Applicant's allegation that it never gave the Applicant a written refusal to its request for the information and that it was only in court in the Respondent's preliminary



**Barr. Nurudeen Ogbara** of *Citizens Assistance Centres*

## **Court Will Not Grant Order of Mandamus if Alternative Remedy is Available**

objection that the Applicant learnt the basis of the refusal.

The judge said section 7(1) of the Act is quite clear and unambiguous and that “the Applicant has a right to challenge the decision refusing access and have it reviewed by a court.”

But she said she agreed with the Respondent's argument that what is open for an Applicant to do is to bring an action to court asking it to consider the refusal, reasons for it and review it, and not make a straight up application for mandamus.

Noting the Respondent's argument that the Applicant delayed beyond the 30 days approved by section 20 of the Act before filing the action, the judge said the primary concern of the court in the construction of statutes is to ascertain the intention of law makers as deducible from the language of the statute being construed, and cited *A.G. Federation v. Abubakar* (2007) 10 NWLR (Pt. 1041) 1.

In other words, she said, a court can only determine the intention of the Legislature as expressed in a particular provision of the Constitution or a statute by critically examining the words used to couch that particular provision. Thus, she said, the Court can only interpret the words according to their literal meaning, and the sentences therein, according to their grammatical meaning.

The judge said the court in *Dangote v. C.S.C. Plateau State* (2001) 4 S.C. Pt. II, 43 at 56 held that “it is a well settled principle that where a special procedure is prescribed for the enforcement of a particular right or remedy, non-compliance with or departure from such a procedure is fatal to the enforcement of the remedy.”

She therefore held that the non-observance of section 20 by the Applicant is fatal to their application.

According to her, “Mandamus is an extraordinary and residuary remedy that ought to be granted only when there is no other means of obtaining justice. It lies to secure the performance of a public duty, in the performance of which the Applicant has a sufficient legal interest. Consequently, irrespective of the fact that an applicant for an order of mandamus has satisfied other requirements for securing the remedy, the Court will not grant the order if a specific alternative remedy which is equally convenient, beneficial and effectual is available.” She referred to

*Atta v. C.O.P.* (2003) 17 NWLR (Pt. 849) 250 and *Fawehinmi v. I.G.P.* (2000) 7 NWLR (Pt. 665) 481

The judge outlined the conditions precedent to grant of an order of mandamus as follows:



**Hon. Adeyemi Ikuforiji**

- “ The order of mandamus lies to secure the performance of a public duty, in the performance of which the Applicant has a sufficient legal interest. The Applicant must show that he has demanded the performance of the duty and that performance has been refused by the authority obliged to discharge it.
- “ The duty to be performed must be of a public nature. She referred to *C.B.N. v. S.A.P (Nig.) Ltd* (2005) 3 NWLR (Pt. 911) 152.
- “ The public duty, the performance of which may be commanded by an order of mandamus is one that must be imposed upon the person against whom the order is sought. Such public duty need not to be imposed by statute only. It maybe a duty under that common law and even a duty under customary law. She referred to *C.B.N. v. S.A.P. (Nig.) Ltd* (2005) 3 NWLR (Pt. 911) 152

The judge said a Court may refuse to make an order of mandamus:

- “ Unless it has been shown that a distinct demand for performance of the duty has been made and that the demand has deliberately not been complied with;
- “ If there is undue delay;
- “ Where the motives of the Applicant are unreasonable. She referred to *Atta v. C. o. P.* (2003) 17 NWLR (Pt. 849) 250

## Court Will Not Grant Order of Mandamus if Alternative Remedy is Available

She said a Court before whom an application for mandamus is made has a discretion to grant or refuse it but that the Court must however exercise its discretion judicially and judiciously and again cited *Attav. C.O.P (2003) 17 NWLR (Pt.849) 250*.

According to her, “Courts, tribunals and administrative bodies, in general have a duty to exercise their statutory discretions one way or the other when the circumstances calling for the exercise of those discretion arise but are not normally under any duty to determine that matter or exercise such discretion in particular way.” She referred to *Attav. C.O.P. (Supra)*.

However, she said, a Court does not make an order

which it cannot enforce, relying on *Fawehinmi v. I.G.P (Supra)*.

The judge said abuse of the process of Court simply means that the process of the Court has not been used bona fide and properly. She explained that it is a term generally applied to a proceeding which is frivolous, vexatious or oppressive and that it could also mean abuse of legal process. She referred to *Iwuagolu v. Azyka (2007) 5 NWLR (Pt. 1028) 613*.

She disagreed with the Respondent's contention that the Applicant's application is an abuse of Court process, saying that where a procedure for redress is provided by the law and a litigant fails to follow the procedure, this could not be termed as an abuse of Court process.

On the issue of whether the Act is retrospective in nature, the judge referred to the paragraph of the preamble which she had highlighted in the judgment, saying it which answers the question succinctly.

She noted that in *Adesanoye v. Adewole (2000) 9 NWLR (Pt. 671) 127*, the Court held that “although the legislature has the authority and competence to make retrospective legislation within the constitution which allocates legislative functions to it, in which case the retrospective nature of the legislation may be partial or total, merely procedural

or substantive, an interpretation giving retrospective effect to a statute should not be readily accepted where that would affect vested rights or impose liability or disqualification for past events.”

The judge said that there are three kinds of statutes that can be said to be retrospective, namely:

- Statutes that attach benevolent consequences to a prior event;
- Statutes that impose a penalty on a person who is described by reference to a prior event but the penalty is not a consequence of the event; and
- Statutes that attach prejudicial consequences to a prior event. She cited *Adesanoye v. Adewole (Supra)*.



**Barr. Nurudeen Ogbara**

She noted that the Applicant is seeking for information from May 1999 to September 2011 and held that since the commencement date of the Act is May 28, 2011, and the Act is clearly not retrospective in nature, the application could never have

been granted.

On whether the Respondents have the power to exempt certain information from the public, the judge said she would answer the question affirmatively by reason of Section 14 of the Act as raised by the Respondent.

Quoting Section 14 (1) of the Act, she said a public institution must deny an application for information that contains personal information and information exempted under the section which includes personnel files and personal information maintained with respect to employees, appointees or elected officials of any public institution or applicants for such positions.

She also cited the proviso in Section 14(2) of the Act that a public institution shall disclose any information

*Continued on page 15*



**Court Will Not Grant Order of Mandamus if Alternative Remedy is Available**

that contains personal information if the individual to whom it relates consents to the disclosure or if the information is publicly available as well as the provision that where the disclosure of any information referred to in the section would be in the public interest, and if the public interest in the disclosure of such information clearly outweighs the protection of the privacy of the individual to whom such information relates, the public institution to whom a request for disclosure is made shall disclose such information subject to Section 14(2) of the Act.

The judge therefore agreed with the Respondents' argument that the overhead expenses sought by the Applicant fall under information precluded from public knowledge by section 14(1)(b) of the Act.

She said the term "judicial review" means a Court's power to review the actions of other branches or levels of government, especially the Court's power to invalidate legislative and executive action as being unconstitutional. She referred to *A.G. Fed v. Abule* (2005) 11NWLR (Pt. 936) 369.

Justice Idowu said "when a suit is instituted, its contents may be considered either from the points of view of its inherent benefits to the proponent of the action or from the benefit derivable jurisprudentially speaking, by the society at large such as in a case on constitutional or administrative law. Speaking analytically, it is safe to postulate that the determination of justice while demonstrating the latitude of individual liberty ought generally to be consistent with the welfare and ethic of the society." She referred to *Magit v. University of Agric, Makurdi* (2005) 19 NWLR (Pt. 959) 211.

"Saying that Section 20 of the Act is clear as to the time limit and procedure to be adopted in bringing this kind of application and ought to be complied with, the judge said she agreed with the Counsel for the Respondents that the extension obtained was to bring the mandamus application before the Court and not in view of Section 20 which requires that extension may be got from

Court before the expiration of the 30 days to bring an application for judicial review as to refusal of the request for information."

She noted that the

Applicant's letter was dated July 14, 2011 but that the action was not commenced until well after the required 30 days.

The judge said that "it is trite that where the words of a statute are clear and unambiguous, the function of the Court is to apply the words in their simple and ordinary meaning." She cited *Awolowo v. Shagari* (1979) All NLR 120.

She said in view of the foregoing, she agreed with the objection of the Respondents and thereby held that the application for mandamus failed for the following reasons:

- .. That the application is clearly out of the time specified to be brought by Section 20 of the Freedom of Information Act 2011;
- .. A Court does not make an order which it cannot enforce;
- .. That the statute is not retrospective; and
- .. That by Section 14 (i) (b) of the Act, the Respondents are precluded over exemption of personal information from publication as demanded by the Applicant.



## FOI Case Studies

### RTI Law Used to Reveal Corruption in India

In India, following a response to a right to information request, it was revealed that former Delhi Chief Minister Sheila Dikshit, installed as many as 31 air conditioners, 15 desert coolers, 16 air purifiers, and 25 heaters,



Sheila Dikshit, former Delhi Chief Minister

among other appliances at her official four-bedroom bungalow

The three-term chief minister vacated the four-bedroom bungalow spread over 3.5 acres of land after suffering an election defeat and moved to a three-bedroom flat in central Delhi.

In an official response to a request for information by right to information activist Subhash Agrawal under India's Right to Information Act, the Central Public Works Department said renovation of the bungalow for former Prime Minister Manmohan Singh cost less than the equivalent of US\$600

However, the Central Public Works Department said Dikshit incurred expenses of over the equivalent of US\$30,500 on the electrical renovation of the bungalow to customize it

Dikshit already faces allegations of massive corruption related to the 2010 Commonwealth Games hosted by the Indian capital

### FOI Request Shows that UK MPs Spent £250,000 of Taxpayers' Money on Portraits

A freedom of Information request made by the *Evening Standard*, showed that Members of Parliament (MPs) in the United Kingdom (UK) spent about GBP250,000 of taxpayers' money on portraits of themselves

Information obtained in January 2014 following the FOI request revealed that a portrait of East London Labour MP Diane Abbott cost GBP11,750, exactly the same amount that former Prime Minister Margaret Thatcher's full-size statue cost.

Other MPs were also reported to have similarly commissioned artists to re-create their likeness with the brush.

Conservative MP Ian Duncan Smith had a portrait of himself which cost GBP10,000.

His fellow party member Kenneth Clarke had a portrait that cost GBP8,000.

### US FOI Act Reveals Money Voted for 6 Detroit Schools 'Fraudulently Spent'

In the United States, documents obtained by the Detroit News under the U.S. Freedom of Information Act, revealed that money that was voted for six Detroit schools was "fraudulently spent".

According to the auditors reports obtained under the FOI Act, the money was used to pay for staff parties and mobile phone bills.

The computer equipment that were said to have been bought with some of the money could not be found on the schools' premises.

Some of the money had also been paid to one of the school principals as "loan".

The audit report noted that some of the principals violated Internal Revenue Service (IRS) rules by paying staff salaries from school money instead of through the District Payroll Department, which meant that taxes were not deducted from the salaries.

## Countries With FOI Laws In Africa Cross the Dozen Mark

In February 2000, South Africa became the first African country with a law that provided for access to information also known as Freedom of Information (FOI) and Right to Information (RTI).

Since then, FOI and its presence in the continent has steadily strengthened among African states.

Recognition and implementation of access to information has grown as the list of countries with such laws have increased while civil society organisations in those without the law aggressively canvass for the enactment of their right to information laws. Freedom of information movements are springing up around the continent and effecting changes in democratic governance.

Thirteen out of the 54 countries in Africa have enacted FOI laws and there are increasing possibilities for freedom of information laws to be enacted in other countries.

African countries that have adopted FOI laws are South Africa, Sierra Leone, Cote D'Ivoire, Angola, Zimbabwe, Uganda, Ethiopia, Liberia, Niger, Nigeria, Guinea Conakry, Tunisia and Rwanda. Although the Parliament of South Sudan has passed an FOI Bill into law, it has not been assented to by the presidency.

Countries like Botswana and Ghana have indicated intentions to adopt the FOI law, although until the laws are adopted, the integrity of such declarations cannot be ascertained.

In July 2013, the Freedom of Information Advocates Network (FOIANet) published a report titled 'Global Right to Information Update: An Analysis by Region' that gives a vivid analysis of the development of FOI in Africa. It carried out a SWOT analysis of the trend that exists in Africa in regards to the adoption, implementation and development of FOI in Africa.

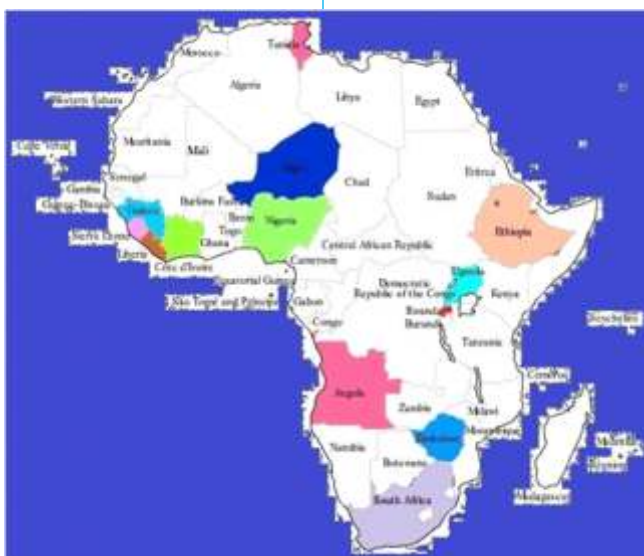
FOIANet identified a number of strengths in support of FOI activity which were: Strong regional and national RTI networks; Civil Society Organization (CSO) experience in initiating and

drafting RTI Bills; Growing RTI knowledge base; Reasonable regional policy environment; 11 countries with RTI laws; Understanding of RTI's utility in various sectors and Special mechanisms such as the ACHPR Special Rapporteur on Freedom of Expression and Access to Information.

They identified the following as weaknesses in the region: the secretive culture left by the colonial regimes and liberation movements; weak laws and

poor enforcement mechanisms and capacity; Inadequate political will for RTI in the majority of countries; weak institutional mechanisms at regional and national levels; restrictive legal and operational environments for civil society; slow democratization and lack of human rights culture and limited funding bases for CSO and government programmes.

The report also highlighted threats and opportunities for the development of



FOI in Africa.

The opportunities include: improving policy environments underpinned by Six African Union treaties that recognize RTI; large number of CSOs with Observer Status with ACHPR; special initiatives like the APAI Declaration, Open Government Partnership; 17 countries have constitutional guarantees for RTI; Model Law on Access to Information for Africa and the Open Contract Initiative.

The threats outlined were militarism and lack of democratic space; Competing global interests and emergence of new powers; economic hardships leading to the sacrifice of human rights agendas and the prioritization of economic issues over RTI; as well as terrorism and emergence of secretive regimes.

The report noted that "Africa has recently celebrated a surge in the recognition of the right to information. Since 2005, RTI laws have been passed by six Sub Saharan African counties, tripling the number of laws in place. In the last two years alone, Liberia, Guinea, Niger and Nigeria have all introduced RTI laws. This flurry of laws is in large part due to the successful campaigning of RTI activists within those states."



### **African Platform on Access to Information (APAI) Declaration**

The African Platform on Access to Information (APAI) Declaration was adopted at the Pan African Conference on Access to Information (PACAI) on September 19, 2011 in Cape Town, South Africa, upon a motion for adoption moved by Advocate Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and People's Rights and seconded by Honourable Norris Tweah, Deputy Minister of Information, Culture and Tourism for the Republic of Liberia.

The document lists a number of key principles intended to advance the right of access to information in all its dimensions, nationally, regionally, and internationally, and represents the first declaration on access to information on the African continent.

#### **Key Principles**

**1. Fundamental Right Accessible to Everyone.** Access to information is a fundamental human right, in accordance with Article 9 of the African Charter on Human and Peoples' Rights. It is open to everyone, and no one should be privileged or prejudiced in the exercise of this right on account of belonging to a class or group howsoever defined, and whether in terms of gender, class, race, political association, occupation, sexual orientation, age, nationality, HIV status, and other bases as cited in many African constitutions. It is not required that anyone must demonstrate a specific legal or personal interest in the information requested or sought or otherwise required to provide justification for seeking access to the information.

**2. Maximum Disclosure.** The presumption is that all information held by public bodies is public and as such should be subject to disclosure. Only in limited circumstances set out in these principles below may disclosure be denied.

**3. Established in Law.** The right of access to information shall be established by law in each African country. Such law shall be binding and enforceable and based on the principle of maximum disclosure. The law shall take precedence over other conflicting laws that limit access to information.

**4. Applies to Public Bodies and Private Bodies.** The obligations of ATI shall apply to all public bodies, as well as to private bodies that are owned or controlled by the government, utilise public funds, perform

functions or provide services on behalf of public institutions, or have exclusive contracts to exploit natural resources (with regards to said funds, functions, services or resources), or which are in possession of information which is of significant public interest due to its relation to the protection of human rights, the environment or public health and safety, or to the exposure of corruption or illegal actions or where the release of the information may assist in exercising or protecting any right.

**5. Clear and Unambiguous Process.** The law shall include procedures for the exercise of the right. The process to obtain information should be simple and fast and take advantage of new information and communication technologies where possible. Bodies falling under the scope of the ATI law should provide assistance to requesters in order to ensure that they receive the information they need. The information provided should be provided in a form understandable to the requestor. Information should be disclosed within a clear and reasonable deadline provided for by law. It should be available at low or no cost.

**6. Obligation to Publish Information.** Public and relevant private bodies shall be obliged to proactively release information in a timely manner about their functions, powers, structures, officials, decisions, expenditures, budgets, and other information relating to their activities that is of public interest. The dissemination should use all reasonable means of communications, including ICTs, to maximise access to all communities and sectors of society.

**7. Language and Accessibility.** To the greatest extent possible, information should be available in the language of the person seeking it, in an accessible location, in a format that is as accessible as possible, and, in particular, ensures that it is accessible to those who may be particularly affected by the subject matter of the information.

**8. Limited Exemptions.** The right of access to information shall only be limited by provisions expressly provided for in the law. Those exemptions should be strictly defined and the withholding of information should only be allowed if the body can demonstrate that there would be and the withholding of information should only be allowed if the body can demonstrate that there would be a

*Continued on page 19*



significant harm if the information is released and that the public interest in withholding the information is clearly shown to be greater than the public interest in disclosure. Information can only be withheld for the period that the harm would occur. No information relating to human rights abuses or imminent dangers to public health, environment, or safety may be withheld.

**9. Oversight Bodies.** Independent bodies such as an ombudsperson or information commissioner should be established to monitor and hold government bodies and relevant private entities to account on their access to information disclosure practices, to receive and decide upon complaints, and generally oversee the implementation of the access to information legislation. The oversight body should be adequately funded.

**10. Right to Personal Data.** All persons have a right to access and correct their personal data held by third parties.

**11. Whistleblower Protection.** To ensure the free flow of information in the public interest, adequate protections against legal, administrative and employment-related sanctions should be provided for those who disclose information on wrong-doing and other information in the public interest.

**12. Right of Appeal.** Everyone has a right to appeal administratively any action that hinders or denies access to information or any failure to proactively disclose information. They have a right to further appeal to an independent body and to finally seek judicial review of all limits of their right of access to information.

**13. Duty to Collect and Manage Information.** Public and relevant private bodies have a duty to collect information on their operations and activities on behalf of their citizens. They also have a duty to respect minimum standards in relation to the management of this information to ensure that it may easily be made accessible to citizens.

**14. Duty to Fully Implement.** Public and relevant private bodies have an obligation to ensure the law is fully implemented. This includes internal procedures and processes and the designation of responsible officials.

The declaration is available to be read and downloaded at

<http://www.africanplatform.org/campaign/apai-declaration/> in English, French, Arabic and Portuguese.

The Declaration can also be signed at

<http://www.africanplatform.org/index.php?id=16>.

## MRA Publishes Sector Specific FOI Guidelines

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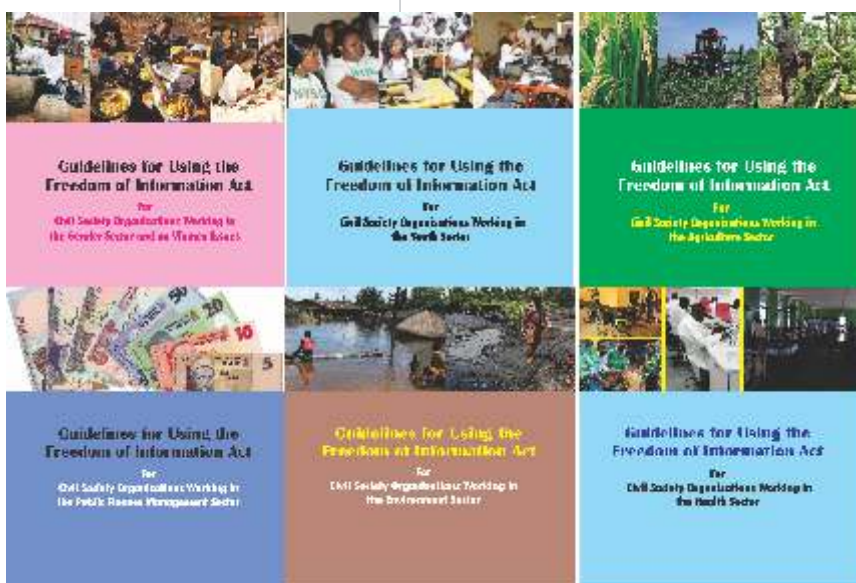
Act can be used to address. This will help as a guide

to generate requests and provides a step-by-step approach to the proper use of the Act in seeking information and getting responses. It simplifies the Act by explaining its provisions; the right of access to information and how far it extends, the duties and obligations of public institutions, follow

up procedures, fees and exemptions. It provides a detailed yet simple explanation of how to use the Act. It also identifies some public institutions,

agencies and parastatals within the sectors to be

considered when requesting information although it is not exhaustive as different requests could have their own peculiarities. It provides sample application and follow up letters.



According to MRA, “These guidelines aims to enhance the use of the FOI Act and as a result foster greater participation in governance.”

# FOI Tracker

<b>Requester</b>	<b>Information Requested</b>	<b>Public Institution</b>	<b>Date</b>	<b>Outcome of Request</b>	<b>Current Status</b>
<b>Media Rights Agenda (MRA)</b>	<b>Detailed information on the agency's decision to ban the documentary, "Fueling Poverty." Copies of the minutes of all the meetings of officials, officers or relevant organ or organs of the Board where the documentary, "Fueling Poverty", was discussed, including the meeting or meetings where the decision was taken to prohibit the documentary from distribution and exhibition in Nigeria; and a copy of the decision of the Board as formally conveyed to the producers of the documentary.</b>	<b>National Film and Videos Censors Board (NFVCB)</b>	<b>April 18 2012</b>	<b>Information requested was given.</b>	<b>Successful access to information</b>
<b>Olanrewaju Suraju Chairman, Civil Society Network Against Corruption (CSNAC)</b>	<b>Official information on payment for new House of Assembly complex</b>	<b>Nasarawa State Governor</b>	<b>Sept. 9 2013</b>	<b>Failure to provide information requested.</b>	<b>Instituted an action in a High Court in Nasarawa State sitting in Lafia seeking a declaration that the act of the State House of Assembly by withholding said information on grounds that the said piece of information being demanded, is subject of investigation, is not within the exceptions contemplated by the Freedom of Information Act 2011 and for an order compelling the legislators to release the information together with an order for one million naira general damages.</b>
<b>Centre for Social Justice (CSJ)</b>	<b>Details of the statutory transfers in the 2013 federal budget</b>	<b>Minister of Finance</b>	<b>April 5 2013</b>	<b>The request was denied.</b>	<b>A case was instituted in court and by the judgment of Justice Abdu Kafarati of the Federal</b>



# FOI Tracker

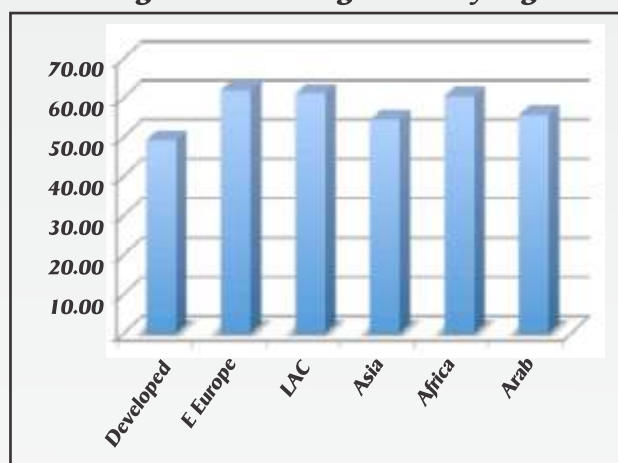
Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
					High Court dated February 25, 2014 in the Matter of Centre for Social Justice V Minister of Finance (Suit No. FHC/ABJ/CS/301/2013), Centre for Social Justice (CSJ) has been granted the right of access to the details of the statutory transfers in the 2013 federal budget
Incorporated Trustees Of Human Development Initiatives	Budgets of the local government council for the years 2012, 2013 and 2014 as well as documents detailing list of all projects duly approved for implementation in 2013, and the actual cost of each of the projects duly approved for Implementation in 2013.	Ika South Local Government Council	February 24, 2014	Failure to provide information requested and refusal to state any reason for this.	The applicant instituted an action against Ika South Local Government Council and Hon Andrew Obiazi in the Federal High Court, Asaba over refusal of information and refusal to give valid reasons for this.
Human Development Initiatives (HDI), a Non-Governmental Organization	Budgets of the local government council for the years 2012, 2013 and 2014 as well as documents detailing list of all projects duly approved for implementation in 2013, and the actual cost of each of the projects duly approved for Implementation in 2013.	Oshimili South Local Government Council	February 21, 2014.	Failure to provide information requested and refusal to state any reason for this.	The applicant instituted an action against Oshimili South Local Government Council and Hon Olanrewaju Chiwe in the Federal High Court, Asaba over refusal of information and refusal to give valid reasons for this.
Human Development Initiatives (HDI), a Non-Governmental Organization	Budgets of the local government council for the years 2012, 2013 and 2014 as well as documents detailing list of all projects duly approved for implementation in 2013, and the actual cost of each of the projects duly approved for Implementation in 2013.	Oshimili North Local Government Council	February 24, 2014	Failure to provide information requested and refusal to state any reason for this.	The applicant instituted an action against Oshimili North Local Government Council and Hon Innocent Esenwaeze in the Federal High Court, Asaba over refusal of information and refusal to give valid reasons for this.

# FOI Literature Review

## Right to Information (RTI) Rating Data Analysis Series: Overview of Results and Trends (by Access Info Europe & the Centre for Law and Democracy)

The RTI Rating developed by Access Info Europe (AIE) and the Centre for Law and Democracy (CLD) provides numerical assessment and rating of the overall legal framework for the RTI in a country based on the effect of the framework on the right to access information held by public authorities. The need for the rating of compliance with RTI by component countries of the world needed to be taken into cognizance as it gives a clearer idea of how the right to access information is being implemented and how effective it is in respective countries. As such, the methodology for this analysis was developed and first launched on the International Right to Know Day, September 28, 2010. The RTI Rating Data Analysis was last updated in September 28, 2013 and this update would be the basis of this review.

**Average Total Percentage Scores by Region**



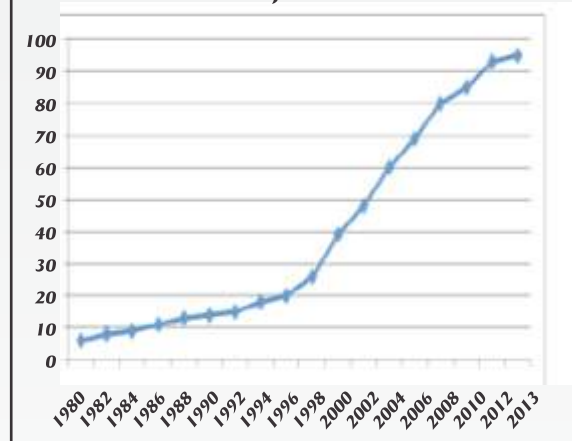
The RTI Rating Data Analysis Series Report is divided into the following parts: Introduction, Methodology, General overview of Results, RTI and Date of Adoption, Regional Trends; and Conclusion. The standards developed by AIE and CLD for the Rating provides an overall numerical assessment of a country's legal effect to RTI by scoring a meaningful point out of a maximum of 150 points. At the heart of the RTI Rating methodology are 61 indicators drawn from international standards developed by United Nations (UN) and other regional human rights bodies supported by a comparative study of numerous RTI laws across the globe. A draft set of indicators was honed and developed by AIE and CLD in two ways. The first was a pilot application conducted on a number of countries, adapting them to resolve any problems. Second was an Advisory Council of renowned RTI experts from around the world to

provide detailed advice to CLD and AIE on the development of the indicators.

Countries score points within a set of range scores depending on how well the legal framework for RTI delivers the indicators which are grouped into seven main categories thereby providing the assessment of the legal framework's specific strength or weaknesses in the seven thematic areas. These areas are the Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections and Promotional Measures with the maximum points for these categories being 6, 30, 30, 30, 30, 8 and 16 respectively which adds up to the cumulative 150 points.

The Rating also indicates records and trends of countries that have adopted the national RTI laws up until September 2013. The overall results demonstrate that there is vast room for improvement. As of September 2013, 95 countries, from all regions of the world had adopted national RTI laws. Surprisingly, Serbia tops the list with 135 points followed by India

**Growth in Number of RTI Laws over Time**



and Slovenia each with 130 points. From the bottom, we find Austria with 37 points, Liechtenstein with 42 points and Tajikistan with 51 points. When categorized into three score ranges, the 95 countries fall into the following score ranges as indicated in the table below:

Score Range	Number Of Countries
37-69	24
70-102	49
102-135	22

*Continued on page 23*

## Freedom Of Information Coalition Listserv

The Freedom of Information (FOI) Coalition Listserv was created on September 9, 2003 as a platform for a sustained and coordinated campaign for the passage of the Freedom of Information Bill into Law.

Although it is a restricted group, members of the listserv come from many different sectors, including civil society organizations, the media, academia, the legal profession, anti-corruption agencies, and government institutions at Federal, State and Local Government levels, among others.

Since the passage of the FOI Bill into Law in May 2011, the listserv has become a platform for: sharing information about the status and progress of implementation of the FOI Act; Debates and discussions about access to information held by public institutions; Transparency and accountability in government; corruption issues as well as freedom of expression and the free flow of information generally.

The listserv has remained for many years one of the most vibrant platforms in Nigeria for debates and discussions about these issues.

The listserv is listed in the Yahoo Groups directory. However, approval is required for anyone seeking to join the group, though there are no formal requirements beyond an interest in the issues which the listserv is focused on.

All members of the group can post messages, which are delivered to other members. However, messages require approval before they are delivered. Members can set their preferences to whether they want to receive every individual message or only periodic digests. Attachments to messages are permitted in the group. The address for posting messages to the group is: foicoalition@yahoogroups.com

To join the group, send a blank email from your preferred email address to: foicoalition-subscribe@yahoogroups.com.

## FOI Literature Review

*Continued from page 22*

The Rating report also shows the rate of adoption of new RTI laws by countries of the world. It indicates through pictorial illustration that new RTI laws were slowly and relatively steady between 1980 and 1998 after which it began to increase dramatically.

Another illustration in this analysis shows the distribution of this growth by region when until 1995, almost all of the (relatively slow) growth could be attributed to developed countries with less than five laws cumulatively adopted in all five other regions of the world by that date.

Regional Trends in the RTI Rating Data Analysis determines the preponderance of new and emerging democracies among the top scoring countries in RTI and the concomitant clustering of older and better established democracies at the bottom. For instance, of the 21 top scoring countries, only one is from Western Europe, eight are from East and Central

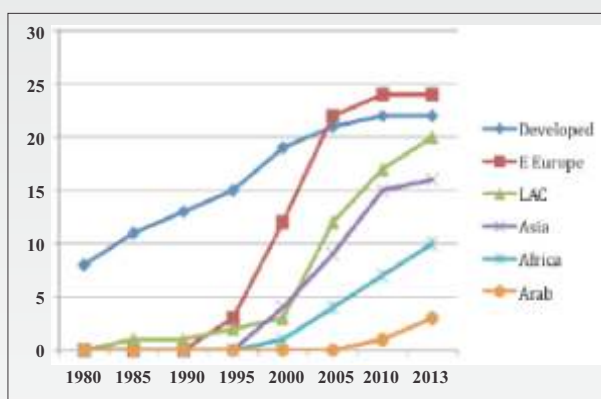
Europe, Five from Latin America and the Caribbean, three each from Africa and Asia and one from the Middle East. At the bottom,

Western Europe dominates the 20 countries with 9 entries followed by Asia with 5, Eastern Europe and Latin American and the Caribbean each with 2 and Africa and the Middle East with one each.

Finally the RTI Rating Data Analysis Series check the number of RTI laws globally multiplied in the

last 20 years more than 5 times from just 18 in 1993 to 95 in 2013. As measured by the RTI Rating, the quality of these law is distributed roughly over a bell curve, with an average score in both median and mean terms of about 85 points, or 57% of the possible total of 150, and the average score in most of the RTI Rating categories fall into 50-60% range.

*Growth in Number of RTI Laws over Time and by Region*





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