

# WINDOWS FOR TRANSPARENCY - Nigeria



**Report of Research into Laws of Nigeria  
with Access to Information Provisions**



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Access to Information Provisions**

*A publication of*



*Media  
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Agenda*

**Media Rights Agenda**

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## *Acknowledgements*

**T**his report is published by Media Rights Agenda (MRA) as part of a project titled “Monitoring Access to Information in West Africa” conducted in most of Anglophone West Africa from 2008 to 2010.

The project was implemented in four countries in West Africa, namely Ghana, Liberia, Nigeria and Sierra Leone and was carried out in collaboration with the Media Foundation for West Africa (MFWA) in Ghana; the Centre for Media Studies and Peace-Building (CEMESP) in Liberia; and the Society for Democratic Initiatives (SDI) in Sierra Leone.

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Mr. Tive Denedo, Campaigns Director of Media Rights Agenda, and Mr. Ayode Longe, Senior Programme Officer, coordinated and supervised the research as well as the writing and final editing of this report, while Mr. Edetaen Ojo, the Executive Director of Media Rights Agenda, had responsibility for the overall supervision of the project.

Media Rights Agenda is grateful for these various contributions.

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## *Preface*

**T**his report is based on a legal research conducted by Media Rights Agenda (MRA) to establish the scope of access to public information granted citizens and other members of the public under Nigerian Law.

The research was motivated by the need to explore possibilities for citizens and other members of the public in Nigeria to exercise their rights of access to information under the Law even in the absence of a comprehensive Freedom of Information Law as part of a wider project in selected countries in West Africa.

Media Rights Agenda began working on access to information issues in 1993. In 1994, it partnered with the Civil Liberties Organization (CLO) and the Nigeria Union of Journalists (NUJ) to launch a campaign for the adoption of a Freedom of Information Law in Nigeria.

Following from this process, it initiated a vigorous campaign in 1999 to get Nigeria's National Assembly to pass the draft Freedom of Information Bill into a Law which would be assented to by the President, as required by the Constitution.

After more than 10 years of a somewhat frustrating experience in trying to get the government to enact a Freedom of Information law, MRA is now reviewing its strategies for trying to bring about transparency in government and governance. A critical question in that review exercise is whether it is really necessary to wait for the passage of the Freedom of Information Bill before citizens can begin to push their governments to be more open and transparent.

Therefore, while MRA remains committed to the campaign for the enactment of a Freedom of Information Law in Nigeria and similar laws elsewhere on the continent, it has also decided to explore existing laws, regulations and policy documents which provide some opportunities for citizens to obtain information and services from governments and to begin pushing vigorously for their effective implementation.

In spite of the legal status of the right of access to information and the steps so far taken within the African Human Rights system to give effect to this right, Africa appears to be lagging behind other regions of the world in this global movement towards guaranteeing citizens' right of access to information, with West Africa being among the three worst off regions on the continent.



Very few countries on the continent have clear and specific guarantees of the right to information in their constitutions. Such countries include: Cameroon, the Democratic Republic of the Congo (DRC), Ethiopia, Ghana, Madagascar, Malawi, Mozambique, Senegal, South Africa, Tanzania and Uganda.

However, most of these countries do not have comprehensive freedom of information laws to elaborate this right. Only three of them – South Africa, Uganda and Ethiopia – have freedom of information laws to give effect to this right.

Although Uganda adopted its Access to Information Act since April 2005, full implementation is still being awaited more than five years after. The mandated Regulations which will bring the law into force are still not in place and so, despite having a constitutional guarantee and a freedom of information legislation, Ugandan citizens remain unable to enjoy the right of access to information.

Despite challenges of effective implementation, South Africa's Promotion of Access to Information Act (PAIA) of 2000, the first access to information law on the continent, also appears to be the most credible effort on the continent to empower citizens through access to information as a matter of right although there are recent moves in its Parliament to roll back this gain.

Ethiopia adopted the Law on Mass Media and Freedom of Information in 2008. Although the Ethiopian Law is merged with media legislation, it contains significant features of a Freedom of Information law.

Besides South Africa, Uganda and Ethiopia, the only other country on the continent with freedom of information law is Angola, which adopted its Access to Official Documents Law (Law 11/02) in 2005.

This means that only four countries out of the 54 in Africa have adopted freedom of information laws – that is about 7.4 per cent. No single country in three (West Africa, Central Africa, and North Africa) out of Africa's five sub-regions has a freedom of information law.

Zimbabwe has a law which it pretentiously calls the Access to Information and Protection of Privacy Act (AIPPA), adopted in 2002 and which it has adopted three times since then, in 2003, 2005 and 2008. But it is difficult to classify AIPPA as a freedom of information law in view of the scope of

exemptions contained in the Law and several obnoxious provisions designed to control the media and repress media freedom in the country. It is geared more towards restricting the free flow of information than facilitating it.

Over the past 12 years, there have been vigorous efforts in four countries in West Africa to adopt Freedom of Information laws. These are in Ghana, Liberia, Nigeria and Sierra Leone. There are indications that the bill will soon become law in Liberia because there is no evidence of strong opposition to the bill. In Sierra Leone, the Freedom of Information bill has been in the legislative process now for over five years but is yet to become Law. The situation is even worse in Ghana where the Right to Information Bill has been awaiting legislative action for over seven years. But nowhere in the sub-region has the situation been more disheartening than in Nigeria, where a Freedom of Information Bill has been awaiting passage since 1999.

Many reasons have been advanced for the slow pace of adoption of Freedom of Information laws in Africa, including:

Lack of political will on the part of leaders who ideally have the responsibility for putting such laws in place.

A culture of secrecy in government which makes the notion of public scrutiny an alien concept.

A “messiah complex” among political leaders who believe that they have come to save the people and that they know what is best for them and have all the answers to the problems.

The limited capacity within civil society to conduct effective advocacy for the adoption of freedom of information laws in the respective countries beyond mere sloganeering.

Other competing priorities in many countries where the argument is frequently made that when placed against the need to provide other services and infrastructure such as health, education, water, roads, etc., the requisite institutional arrangements and resources necessary to adopt and implement freedom of information laws will be too costly.

The low levels of awareness among members of the public which severely limits public demand for adoption of freedom of information laws.

Regardless of the absence of comprehensive freedom of information laws in most countries, the project which led to this report sought to explore ways in which citizens can use other existing laws, regulations and policy documents to advance their rights.

In many countries around the continent, there are scores of legislation with access to information clauses or provisions under which government bodies, including ministries, departments and agencies, are obliged to provide information to their citizens either proactively or upon a request being made.

This project sought to identify such laws in Ghana, Liberia, Nigeria and Sierra Leone with the ultimate goal of testing how effectively they are implemented or respected by government officials with a view to empowering citizens in these countries to take advantage of such provisions to advance their human rights in a variety of sectors.

The report will be a valuable resource for citizens and other members of the public interested in exercising their rights of access to information or in testing the levels of transparency and compliance with laws among public institutions in Nigeria.

It helps to identify the provisions or sections of laws, regulations and policies which require some public institutions to grant citizens or members of the public access to information directly or through which citizens and other members of the public can have indirect access to information, records and documents held by relevant public institutions.

We hope citizens and members of the Nigerian public will take advantage of this report to push for information from public institutions while the advocacy for a comprehensive Freedom of Information Law continues.

Edetaen Ojo  
Executive Director  
Media Rights Agenda

# ***Introduction***

## **PURPOSE AND SCOPE OF RESEARCH:**

The primary aim of this research is to identify clauses in existing laws and regulations which give citizens or members of the public access to information held by government bodies as well as those laws and regulations which specifically prohibit and constrain access to information. The research further intends to analyse the rationale behind the restrictions.

Thus the research is divided into two main segments, where the first part considered all the laws that promote access to information and the second part considered those that hinder access to information.

The scope of the research is limited to the existing Laws of the Federation of Nigeria as updated by the 2007 edition.

Meaning of Access to Information/Freedom of Information:

Access to Information and Freedom of Information implies the same thing and thus would be used interchangeably in this report.

Access to information is the ability to obtain information which is useful and practical, and which can help one to make an informed opinion on an issue. The right of access to information is a sine qua non for a democratic state pursuing the values of accountability, transparency, openness and responsiveness in the affairs of government institution; it is a vital component of democracy and also an aspect of good governance.

The existence of Freedom of Information makes it more likely that those who breach the political obligation will be found out, enabling the electorate to levy informed consequences.

## **THE ESSENCE OF THE RIGHT:**

Unhindered access to information, apart from being regarded as an essential ingredient in democratic governance, is also regarded as a fundamental right for without the freedom to think one's thoughts, conceive ideas, formulate views and express them freely there is no possibility of democratic governance. Furthermore, the right helps to render the processes of government more open and make those in power accountable; give meaning to freedom of expression, since one can only express meaningful opinion on an issue when he or she is duly informed.

Access to information is a method of securing the participation of members of society in social and political decision-making through a process of open discussion. Thus the importance can never be over-emphasised. The Government of Umaru Musa Yaradua cannot progress in its campaign against corruption because it does not adopt in truth, the principles of freedom of Information.

# ***Laws That Promote Access to Information / Freedom of Information in Nigeria***

## **INTRODUCTION:**

**L**aws discussed below refer to every provision in the existing Laws of the Federation of Nigeria that allow access to information.

Most of these provisions have a remote relationship with the subject matter because they do not expressly provide for access to information or the information seems irrelevant to right to freedom of information.

But they are considered because they are the only existing provisions in Nigerian Law that allow information to be available to the public.

For instance, all the laws that establish a Commission, Council or Board requires the Commission, Council or Board to maintain a register of its members and any correction made therein. These provisions allow access to information to the public; though seemingly irrelevant, they are considered for the purposes of this research. Though it could be argued that these information are necessary to inform the public of the people registered as fellows of such Commission, Board or Council so that they could raise questions where such members are of questionable character.

There are equally provisions that empower Commissions, Councils or Boards established under the Act to require any information from anybody both corporate and unincorporated persons, for the purpose of carrying out its functions under the Act.

Again this seemingly irrelevant provision has been considered because it will help the Commission, Council or Board serve the people better. Moreover, in ideal society, where the information is in the hands of the Government as opposed to individuals, the public would be deemed to have access to such information.

The only laws that directly provide for access to information are –

1. The Constitution of the Federal Republic of Nigeria, 1999: Section 22 of the 1999 Constitution empowered the mass media to watch over the Government and ensure that it upholds its objectives.

However this provision is limited by section 39(3) which made the powers granted to the mass media under section 22 subject to the provisions of laws that provide for secrecy.

2. African Charter on Human and People's Rights (Ratification and Enforcement) Act:

## ***Laws that Promote Access to Information / Freedom of Information in Nigeria***

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The African Charter is an international treaty that was incorporated into Nigerian Law by virtue of the African Charter on Human and People's Rights (Ratification and Enforcement) Act. In the case of *Abacha v Fawehmi* (2006) 6 Nigeria Weekly Law Report Part 660, page 228, the Supreme Court in interpreting the law stated that by virtue of the Act supra, the Charter has become part of the laws of Nigeria and must be upheld.

Thus, though there is no express provision for access to information in our municipal laws, same has been provided for under the Charter which is now a part of our municipal laws.

Apart from the above mentioned provisions, there are other Provisions which though not expressly providing for freedom of information nevertheless makes information accessible to the public. Below are the relevant provisions of the Nigerian Law that advances right to access to information/freedom of information.

### **1. ADVANCED FEE FRAUD AND OTHER FRAUD RELATED OFFENCES ACT OF 2006**

#### **Purpose:**

An Act to Prohibit and punish certain offences pertaining to Advance Fee Fraud and other fraud related offences and to repeal other Acts related therewith.

#### **Relevant Provision:**

Section 13- Duties of telecommunication and internet service providers and internet cafes.

(1) Notwithstanding, the provisions of the Nigerian Communications Commission Act 2003 or the provisions of any other law or enactment, any person or entity who in the normal course of business provides telecommunications or internet services or is the owner or person in the management of any premises being used as a telephone or internet cafe or by whatever name called shall-

(b) maintain a register of all fixed line customers which shall be liable to inspection by any authorized officer of the Commission; and submit returns to the Commission on demand on the use of its facilities.

(2) Any person whose normal course of business involves the provision of non-fixed line or Global System of Mobile Communications (GSM) or is in the management of any such services, shall submit on demand to the Commission such data and information as are necessary or expedient for giving full effect to the performance of the functions of the Commission under this Act.

### ***Laws that Promote Access to Information / Freedom of Information in Nigeria***

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(4) It shall be a valid defence for any provider of wire or electronic communication service, its officers, employees or agents or other specified persons for providing information or facilities to the Commission in any cause, matter or suit that the said provider, its officers, employees or agents or any other specified persons acted in compliance with the obligations imposed under this Act.

(5) Any person or entity who by virtue of subsections (1) and (2) of this section knows or ought to know that he should –

(b) furnish the Commission on demand, with the returns on the use of his service and facilities, or

(c) facilitate access to data and information by authorized employees or staff of the Commission, and fail to do so with intent to conceal or disguise the nature of his activities or the use of his services and facilities, commits an offence and is liable on conviction to imprisonment for a term of not less than three years without an option of fine and in the case of a continuing offence, a fine of ₦50,000 for each day the offence persists.

(6) Any person or entity convicted more than once under this Act shall have his operational license revoked or cancelled.

#### **Comment:**

The purpose of this Act is to checkmate advanced fee frauds and the commonest means through which fraud of this level is committed is through telecommunication. Thus the Act has empowered the Commission established therein to request for and obtain information from telecommunication operators that would enable them do their work better. This information will reveal persons whose communications are crime-related thereby making evidence related to the crime available for easy investigation and possible prosecution. To protect telecommunication operators against likely lawsuits from individuals who might claim that such disclosure breached their right to privacy or from the government who might claim that such disclosure offends the principles of secrecy in government, subsection (4) provided that it is a defense for the operator to merely show that he is acting in compliance with the obligations imposed by this Act. This might look quite good but human rights activists might like to argue that right to privacy of citizens should not be sacrificed for any reason. Nevertheless, this seems like a price worth paying by the citizens. Finally, subsection (5) buttressed the strong intentions of this Act by making failure to observe the responsibilities imposed under the Act, an offence.

## *Laws that Promote Access to Information / Freedom of Information in Nigeria*

### **2. AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHT (RATIFICATION AND ENFORCEMENT) ACT OF 1983**

#### **Purpose:**

"An Act to enable effect to be given in the Federal Republic of Nigeria to the African Charter on Human and Peoples' Rights made in Banjul on the 19th day of January, 1981 and for purposes connected therewith.

Whereas a Charter entitled the "African Charter on Human and Peoples' Rights" has been duly adopted by diverse States in Africa and Nigeria is desirous of adhering to the said Charter:

And whereas it is necessary and expedient to make legislative provision for the enforcement in Nigeria of the said Charter by way of an Act of the National Assembly:

1. As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the Schedule to this Act shall, subject as there under provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.
2. This Act may be cited as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act".

#### **Relevant Provision:**

Article 9

- (1) Every individual shall have the right to receive information
- (2) Every individual shall have the right to express and disseminate his opinions within the law.

#### **Comment:**

The African Charter on Human and People's Right has been defined by Mutombo Nkulu as a declaration of human rights in the context of the African continent and from the African world view; a correction, an interpretation, and an amplification of the UN Declaration of Human Rights. In other words it is an application of the UN Declaration of Human Rights to the African situation, written by Africans and for Africans.

This is the only provision in Nigerian Law that expressly provided for freedom of information. The Constitution is another provision, but with a restrictive proviso added therein.



### **Laws that Promote Access to Information / Freedom of Information in Nigeria**

In the case of *Abacha v Fawehmi* (supra), it was established that this Act is not only a charter of the African Nations which Nigeria is signatory to, but has by virtue of legislative intervention become part of Nigerian Municipal law, with all the authority of every other Act of the National Assembly. However, the applicability of the provisions including article 9, depends on the citizens, civil right society and activists to test these provisions and challenge the courts. This provision has been tested unsuccessfully when Media Rights Agenda requested from the ICPC assets declared by public officers. It turned out that there must be an Act of the National Assembly before this provision can be enforced.

### **3. BANKS AND OTHER FINANCIAL INSTITUTION ACT OF 1991**

#### **Purpose:**

“An Act to regulate Banking and other financial Institutions and for matters connected therewith”

Note that, “bank” means a bank licensed under this Act;

“The Bank” means the Central Bank of Nigeria ‘Bank’.

“Governor” means the Governor or any of the Deputy Governors of the Central Bank of Nigeria.

#### **Relevant Provisions:**

##### **Section 23- Display of Interest Rate:**

- (3) Every bank shall display at its offices its lending and deposit interest rates and shall render to the Bank information on such rates as may be specified, from time to time, by the Bank;  
Provided that the provisions of this subsection shall not apply to profit and loss sharing banks.

##### **Section 25- Returns by Banks**

- (1) Every bank shall submit to the Bank not later than 28 days after the last day of each month or such other interval as the Bank may specify, a statement showing-
- (a) the assets and liabilities of the bank; and
  - (b) an analysis of advances and other assets, at its head office and branches in and outside Nigeria in such form as the Bank may specify, from time to time.
- (2) Every bank shall submit such other information, documents, statistics or returns as the Bank may deem necessary for the proper understanding of the statements supplied under subsection (1) of this section.

**Laws that Promote Access to Information / Freedom of Information in Nigeria**

(4) Any bank which fails to comply with any of the requirements of subsection (1) or (2) of this section is, in respect of each such failure, guilty of an offence under this Act and liable on conviction to a fine of N5,000 for each day during which the offence continues.

**Section 26- Publication of consolidated statements-**

(1) The statements and information submitted by each bank under section 25 of this Act shall be regarded as confidential:

Provided that the Bank shall furnish any such statement or information to any agency of Government as required by law.

(2) Notwithstanding anything in this section, the Bank may prepare and publish consolidated statements aggregating the statements furnished under section 25 of this Act for each category of banks.

**Section 27- Publication of Annual Accounts of Banks-**

(1) Subject to the prior approval in writing of the Bank, a bank shall, not later than 4 months after the end of its financial year-

(a) cause to be published in a daily newspaper printed in and circulating in Nigeria and approved by the Bank;

(b) exhibit in a conspicuous position in each of its offices and branches in Nigeria; and

(c) forward to the Bank, copies of the bank's balance sheet and profit and loss account duly signed and containing the full and correct names of the directors of the bank.

(2) Every published account of a bank, under subsection (1) of this section, shall disclose in detail, penalties paid as a result of contravention of the provisions of this Act and provisions of any policy guidelines in force during the financial year in question and the auditor's report shall reflect such contravention.

(3) The balance sheet and profit and loss account of a bank shall bear on their face the report of an approved auditor and shall contain statements on such matters as may be specified by the Bank, from time to time.

(5) Any bank which fails to comply with any of the requirements of this section is in respect of each such failure guilty of an offence and liable on conviction to a fine of ₦100, 000.

**Section 30- Appointment and power of Director of Banking Supervision and other examiners**

(1) There shall be an officer of the Bank who shall be appointed by the Governor to be known as the Director of Banking Supervision or by such other title as the Governor may specify.

### **Laws that Promote Access to Information/Freedom of Information in Nigeria**

(2) The Director of Banking Supervision shall have power to carry out supervisory duties in respect of banks and for that purpose shall –

(b) have a right of access at all times to the books, accounts and vouchers of banks;

(c) have power to require from directors, managers and officers of banks such information and explanation as he deems necessary for the performance of his duties under this section.

#### **Comment:**

The aim of this Act is to make provisions for the regulation of banking and other financial institution. At the apex of this regulatory framework is the Central Bank of Nigeria (CBN), thus most of the provisions cited above merely seek to empower the CBN to acquire information necessary for this regulatory task. The whole essence of regulation is to avoid or reduce abuse of discretion and promote transparency as much as possible, on the part of the regulated.

Thus this information might not necessarily be in the hands of the public, but it is aimed at protecting their interest.

Section 27 (1) indicates that there is a degree of transparency in the banking process if these information are published regularly as prescribed. It is left for the public to use the information supplied in the publication.

#### **4. BIRTHS, DEATHS, ETC (COMPULSORY REGISTRATION) ACT OF 1991**

##### **Purpose:**

“An Act to provide for the registration of births, deaths etc, and for matters related therewith.”

##### **Relevant Provision:**

Section 41 - Search of Entries Kept by Registrar-General:

(1) A person shall be entitled at all reasonable hour upon payment of the prescribed fee to inspect any entry in any register and to obtain a Certified True Copy (CTC) of an entry.

##### **Comment:**

This provision gives the public access to information with respect to records of births and deaths. This provision could be handy for example, to a party in a testate proceeding, usually the wife of a deceased, to obtain evidence necessary in the suit. It will also serve in resolving false age declarations by our public officers and other Nigerians engaged in age grade events. With such information, the recipient will be better informed to avail him/herself of the benefits of such information under the law.

**Laws that Promote Access to Information/Freedom of Information in Nigeria**

**5. CENTRAL BANK OF NIGERIA ACT OF 2007**

**Purpose:**

“An Act to repeal the Central Bank of Nigeria Act 1991 and to establish the Central Bank of Nigeria Act and for related matters”.

**Relevant Provision:**

Section 28- Power to require certain Information

- (1) In addition to any of its powers under this Act, the Bank may
  - (a) require persons and institutions having access thereto, at all reasonable times, to supply in such forms as the Bank may from time to time direct, information relating to or touching or concerning matters affecting the economy of Nigeria;
- (2) The Bank shall take account of matters of confidential nature supplied to the Bank under this section, but where the Bank is satisfied that it is in the national interest and that the person supplying the information does not object to a proposal to publish it within a reasonable time of becoming aware of it, the Bank may, from any information in its possession, compile and publish statistical data, and anything relevant thereto, on the national economy.

Section 35- Publication of Monetary Policy:

The Bank shall make public at all times its minimum rediscount rate.

Section 57- Power to License and Regulate Credit bureau

- (2) For the purpose of subsection (1) of this section, the Bank shall have power to collect in such manner as the Bank may deem fit from any person or any such credit bureaux, credit information on the customers and banks and other financial institutions and the bank may disclose the information so collected in such manner as may be deemed appropriate by the Bank,

Provided that the disclosure of any information by the Bank to any person or institution shall be confidential between the Bank and the person or institution to whom the information is disclosed.

**Comment:**

This is also another way of empowering the Central Bank of Nigeria to obtain information necessary for its regulatory obligations under the law. Thus most of the provisions merely compel Nigerian Banks to furnish the CBN with all relevant information necessary to realise its goals under the Act. On the other hand, the CBN is also mandated to make certain publications such as its monetary policies. This is a vital way of enabling the public to make informed decisions on the economy of the nation. The mandatory collection and collation of information by a regulatory agency

### **Laws that Promote Access to Information / Freedom of Information in Nigeria**

from other departments under it for the purpose of internal administrative procedures, control or regulation does not make for access to information. But where the information so collected by the regulatory agency, no matter how limited, is regularly updated, published and made available for public use, it promotes access to public records held by government.

#### **6. CIVIL AVIATION ACT OF 2006**

##### **Purpose:**

An Act to repeal the Civil Aviation Act, Cap 51, Laws of the Federation of Nigeria, 1990 as amended and to re-enact the Civil Aviation Act to provide for the regulation of Civil Aviation, and for related Matters.”

##### **Relevant Provisions**

###### **Section 19- Power to request for information**

(1) For the purpose of obtaining required information for the proper discharge of the functions conferred upon it by this Act, any authorised officer of the authority may by notice in writing-

(a) Require any person who undertakes the business of air transport including carriage of passengers or goods in an aircraft for reward, to furnish such information relating to such business and flights as may be specified in the notices; and

(b) Specify the times and the form and manner in which, any information required under paragraph (a) of this subsection shall be furnished.

(2) In carrying out the functions conferred on the authority, an authorised officer of the authority shall have unrestricted access to the business premises, aircraft, structures and other apparatus used by any operator for the purpose of air transport or related operations.

(3) In this section, “authorised officer” means the director general or any other officer of the authority specifically or generally authorised by the director-general to carry out the functions of the authority under this Act.

##### **Comment:**

According to the purpose of this Act, the Civil Aviation Authority is a regulatory body established under the law, thus section 19 (supra) is merely giving the Director General and other officers of the authority, an avenue to get information necessary for this regulatory responsibility.

## *Laws that Promote Access to Information / Freedom of Information in Nigeria*

### **7. COMMUNITY BANKS ACT OF 1990**

#### **Purpose:**

An Act to provide for the establishment of Community Banks and for other matters connected therewith.

#### **Relevant Provision:**

Section 18-Power to require information:

In addition to the powers conferred on it under this Act, the Board may require any lawfully authorised person having access to a bank at all reasonable time to supply to it information in such form as the Board and the CBN may, from time to time require, relating to, or touching on or concerning matters affecting the interest of depositors or shareholders of the bank.

#### **Comment:**

This Act created a board which has the power, with the Central Bank, to regulate community banks in Nigeria. To realise this regulatory objective, the Act had deemed it necessary to empower the Board and the CBN to obtain necessary information. As the section indicates, the goal is to protect the depositors and shareholders of the Bank.

### **8. CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999**

#### **Purpose**

The Constitution is an expression of the wills and desires of the people that make up the sovereign nation of Nigeria, thus the preamble reads-

“We the people of the Federal Republic of Nigeria having firmly and solemnly resolved to live in unity and harmony as one indivisible and indissoluble sovereign nation under God, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding;

And to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people;

Do hereby make, enact and give to ourselves the following Constitution”-

#### **Relevant Provisions:**

22. The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the people.

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39. (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.

(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -

(a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or

(b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

### **Comment:**

The Constitution is the supreme law of the land, thus section 1(3) had provided that its provisions shall override any other provision in any other law and where any such law is inconsistent with the provisions of the Constitution, such law shall be void to the extent of its inconsistency.

It would have been a big relief to know that section 22 of the supreme law (the Constitution) recognised the mass media as the protector and indirect regulator of the fundamental objectives of the government; however this esteemed position given to the media is limited by section 39 (supra).

Thus on the one hand, the Constitution recognised the right of the media to express itself comment and criticize the government where it fails in its promises and on the other hand subjected this right to laws that prevent disclosure of information, by virtue of section 39(3).

Sections 39(1) recognised freedom of expression, freedom to hold opinion, impart ideas etc while subsection (3) cautioned that such right shall not invalidate laws, like the official secret Acts, Wireless Telegraphy Act, Evidence Act, Criminal Code Act etc which prohibit disclosure of information.

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Thus in the 'regulatory' powers of the mass media over the fundamental objectives of the government, it would have been ideal to grant the media right to obtain any information necessary to make an informed and eligible comment or opinion on the activities of the government in this respect, but by virtue of (3) supra, the only information that could avail the media are those allowed by the law while those prohibited by the law are not available.

This same restriction also applies to the citizens of Nigeria with respect to freedom of expression, freedom to hold opinions and to receive and impart ideas and information, as provided under subsection (1).

In other words, every provision in Nigerian Law that prohibits disclosure of information jeopardises the right of the mass media to uphold the fundamental objectives of the government and the right of the citizen to expression and information.

#### **9. COMPANIES AND ALLIED MATTERS ACT OF 1990**

##### **Purpose:**

"An Act to establish the Corporate Affairs Commission, provide for the incorporation of companies and incidental matters, registration of business names and the incorporation of trustees of certain communities, bodies and associations."

##### **Relevant Provisions:**

180(1) whenever a fixed or floating charge has become enforceable, the court shall have power to appoint a receiver and in the case of a floating charge, a receiver and manager of the assets subject to the charge.

181 Where a receiver or a receiver and manager is appointed by the court, advertisement to this effect shall be made by the receiver or the receiver and manager in the Gazette and in two daily newspapers.

317 (1). When an inspector is appointed under section 314 or 315 of this Act, it shall be the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under section 31 6 of this Act-

(a) to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power.

NB- Sections 314 and 315 refers to the power of the Commission to appoint inspectors to investigate the affairs of a company.

328(1). Where it is made to appear to the Commission, that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, the Commission may require any person who it has reasonable cause to believe



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- (a). to be or to have been interested in those shares or debentures; or
  - (b). to act or to have acted in relation to those shares or debentures as a legal practitioner or an agent of someone interested therein,
- to give to the Commission any information which the person has or might reasonably be expected to obtain as to the present and past interest in those shares or debentures and the names and addresses of the persons interested, and of any persons who act or have acted on their behalf in relation to the shares or debentures.

Sections 354 and 355 refers to the mandatory requirements of the law on companies to publish their financial statement

458 (1) If a company passes a resolution for voluntary winding up it shall, within 14 days after the passing of the resolution give notice of the resolution by advertisement in the Gazette or two daily newspapers and to the Commission.

(2). Contravention of subsection (1) supra attracts punishment.

606(1) The Commission shall preserve all documents delivered to it under this Act.

(2) Any person may, on application to the Commission be permitted to inspect documents kept under subsection (1) of this section or obtain certificates of incorporation or copies of or extracts from documents held by the Commission for the purposes of this Act.

### **Comments:**

The Companies and Allied Matters Act is the principal Act that regulate the activities of every company incorporated in Nigeria, thus its importance cannot be over-emphasised. To realise the purport of the provisions of this Act, the Corporate Affairs Commission was established under section 1, to administer the provisions of the Act, establish and maintain company registry in every state of the federation, conduct investigations into the activities of the companies incorporated under the Act and perform such other functions necessary to give effect to the purpose of the Act.

Section 181 of the Act provides for advertisement of receiver/manager in two national dailies and in the Gazette; section 317 requires officers of a company subject to investigation to furnish the inspector appointed therein, with all the relevant information necessary for the investigation; section 328 empowers the Corporate Affairs Commission to obtain information necessary for the investigation of any company subject to its investigation; Sections 354 and 355 refers to the publication of companies' financial statement; section 458 requires publication of resolution for winding up of company; and section 606 provides for preservation of all document delivered to the Commission and making same available to the public upon request.

All these provisions are aimed at giving the public information about the companies they are investing in and giving the Corporate Affairs Corporation information

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necessary to meet its regulatory obligations under the law. At the end, this process will pave way for transparency in business and protection of the public who are the shareholders and investors in these companies.

### **10. COMPANIES INCOME TAX ACT OF 2007**

#### **Purpose:**

“An Act to consolidate the provisions of the Companies Income Tax of 1961, and to make other provisions relating thereto”.

#### **Relevant Provisions**

##### **Section 60- Call for Returns, Books, Documents and Information**

(1) For the purpose of obtaining full information in respect of the profits within the time specified by the notice to any person the service shall give notice to that person requiring him to-

- (a) Complete and deliver to the service, any return specified in the notice
- (b) Appear personally before an officer of the service for examination with respect to any matter relating to such profits;
- (c) Produce or cause to be produced for examination, books, documents and any other information at the place and time stated in the notice which time may be from day to day, for such period as the Service may deem necessary; or
- (d) Give orally or in writing any other information including a name and address specified in such notice.

Subsection (3) makes contravention of the above provision an offence.

##### **Section 61- Information to be delivered by Bankers**

(1) Without prejudice to section 60 of this Act, every person engaged in banking, including any person charged with the administration of the Federal Savings Bank Act, shall prepare a return at the each month, specifying the names and addresses of new customers of the bank, and shall not later than the seventh day of the next following month deliver the return to a tax authority of the area where the bank operates, or where such customer is a company to the Federal Board of Inland Revenue.

(2) Subject to the foregoing provisions of this section, for the purpose of obtaining information relative to taxation, the Board may give notice to any person including a person engaged in banking business in Nigeria and any person charged with the administration of the Federal Savings Bank Act to provide within the time stipulated in notice, information including the name and address of any person specified in the notice;

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Provided that a person engaged in banking business in Nigeria including any person charged with the administration of the Federal Savings Bank Act, shall not be required to disclose any further information under this section unless such disclosure is required by a notice signed by the chairman of the Board.

#### **Section 64- Power to enter and Search Premises:**

(1) Where in respect of any trade or business carried on in Nigeria by any company (whether or not part of the operation is carried on outside Nigeria), the Board-

(a) Is satisfied that there is reasonable ground for suspecting that an offence including any form of partial or total non-disclosure of information or any irregularity or offence in connection with, or in relation to tax, has been committed, and

(b) Is of the opinion that evidence of the offence or irregularity is to be found in the premises, registered premises, registered office, any other office, or place of management of the company or in the residence of the principal officer, factor, agent or representative of the company,

the Board may authorise an officer of the Board to enter if necessary by force, the premises, registered office, any other office or place of management or the residence of the principal officer, factor, agent or representative of the company, at any time from the date of such authorisation by the Board and conduct a search.

#### **Comment:**

This Act is basically enacted for the purposes of taxation on companies incorporated in Nigeria. The Act established a Board to pursue its goals. The provisions cited above merely authorise the Board to get all the information relevant for the realisation of its goals under the Act.

### **11. COMPUTER PROFESSIONALS (REGISTRATION COUNCIL OF NIGERIA) ACT OF 1993**

#### **Purpose**

An Act to establish the Computer Professionals (Registration Council of Nigeria) and to make provisions for determining the standards of knowledge and skill to be attained by persons seeking to become members of the profession and for matters connected therewith."

#### **Relevant Provisions**

Section 8 Publication of registers and list of corrections

It shall be the duty of the Registrar-

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- (a) To cause the register to be printed, published and put on sale to members of the public not later than two years from the commencement of this Act; and
- (b) thereafter in each year after that in which a register is first published under paragraph (a) of this section, to cause to be printed, published and put on sale as aforesaid, either the corrected edition of the register or a list of corrections made to the register, since it was last printed; and
- (c) to cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Council; and
- (d) to keep the Register and the lists so deposited to be made available at all reasonable times for inspection by members of the public.

#### **Comment:**

There is a plethora of provisions under various Acts discussed hereunder that have the same provision with this. The preceding section will require the registrar of the Commission or Council or Board to maintain a register of the names, addresses, approved qualifications, and particulars of all persons who are entitled in accordance with the provisions of the Act to be enrolled as fellows, members or associates of the institute as the case may be, while the subsequent section would require the registrar to publish such list of members or any correction (addition or deletion) made therein.

The information so published is not public information strictu sensu, but they are nevertheless a means of availing the public with information that may be necessary for the public to assess and respond to the composition of the board as well as any other relevant issue. .

### **12. CORRUPT PRACTICES AND OTHER RELATED OFFENCES ACT OF 2003**

#### **Purpose:**

“An Act to prohibit and prescribe punishment for corrupt practices and other related offences and to establish Anti- Corruption Commission.”

#### **Relevant Provisions:**

##### **Section 48- Protection of informers and Information**

- (1) Subject to subsection (2), where any complaint made by any officer of the Commission states that the complaint is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information, identity of the person who gave the information and all other circumstances

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relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be disclosed in public but only to the trial judge and the defence lawyer in attendance in any civil, criminal or other proceedings in any court or tribunal.

(2) Any person who gives the information referred to in subsection (1) knowing the information to be false shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years, or fine not exceeding one hundred thousand naira.

#### **Comment:**

The whole essence of this Act is to curb corrupt practices and this will not be achieved without adequate information. Thus this provision merely promotes dissemination of such information by offering protection to informers.

### **13. COUNCIL OF NIGERIAN MINING ENGINEERS AND GEOSCIENTIST ACT OF 1990**

#### **Purpose:**

An Act to provide for the establishment of the Council of Nigerian Mining Engineers and Geoscientists and for the control of the practice of the profession of mining engineering and geosciences in Nigeria”

#### **Relevant Provision:**

Section 9-Duty of the secretary to prepare and maintain a register of the names, addresses, approved qualifications, and such other particulars as may be specified, of all persons entitled to register.

Section 10-Duty of the secretary to publish the register and lists of corrections

#### **Comments:**

Comments on ‘Computer Professionals (Registration Council of Nigeria) Act of 1993’ refer.

### **14. COPYRIGHT ACT OF 1990 AS AMENDED BOTH IN 1992 AND 1999**

#### **Purpose:**

An Act to make provisions for the definition, protection, transfer, infringement of and remedy and penalty thereof of the copyright in literary works, musical works, artistic works, cinematograph films, sound recordings, broadcast, and other ancillary matters.

#### **Relevant Provision:**

32A. (1) The Council may appoint copyright inspectors as it may deem fit by notice published in the Gazette.

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(2) A copyright inspector shall for the purposes of this Act have the power—

- (a) to enter, inspect and examine at any reasonable time any building or premises which he reasonably suspects is being used for any activity which is an infringement of copyright under this Act;
- (b) to arrest any person who he reasonably believes to have committed an offence under this Act;
- (c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with;
- (d) to require the production of the register required to be kept under section 13 of this Act and to inspect, examine or copy it;
- (e) to require any person who, he finds in such building or premises to give such information as it is in his power to give in relation to any purpose specified in this Act;

#### **Comments:**

This Act aims to protect copyright and other works of arts, and to achieve this, a Council was established under the Act. In administering the Act, the Council shall appoint inspectors who are empowered to investigate breach of the law for possible prosecution. In their inspectorial duties, the above provisions tend to avail the inspectors with information necessary for their duty.

### **15. CONSUMER PROTECTION COUNCIL ACT OF 1992**

#### **Purpose:**

An Act to provide for the establishment of the Consumer Protection Council and for matters connected therewith.

#### **Relevant Provision:**

20. A publisher or any advertiser shall not be liable under this section by reason of the dissemination by him of any false advertisement, unless he refuses at the request of the Council to furnish the Council with the name and address of the manufacturer, packer, distributor, seller, or advertising agency requiring him to disseminate or cause such advertisement to be made.

#### **Comment:**

This Act aims at protecting consumers of goods and services and this aim will be defeated without the relevant information. Thus this provision merely provides a protection to those that avail the Council with information that will help in carrying out the intendment of the Act.

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**16. CRIMINAL CODE ACT OF 1916**

**Purpose:**

An Act to establish a code of criminal law.

**Relevant Provisions:**

Section 373- Defamatory matter is a matter likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation.

Such matter may be expressed in spoken words or in any audible sounds, or in words legibly marked on any substance whatever, or by any sign or object signifying such matter otherwise than by words, and may be expressed either directly or by insinuation or irony.

It is immaterial whether at the time of the publication of the defamatory matter; the person concerning whom such matter is published is living or dead:

Provided that no prosecution for the publication of defamatory matter concerning a dead person shall be instituted without the consent of the Attorney-General of the Federation.

(a) in the case of spoken words or audible sounds, the speaking of such words or the making of such sounds in the hearing of the person defamed or any other person;

(b) in other cases, the exhibiting it in public, or causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with intent that it may be read or seen by the person defamed or by any other person.

(2) Sounds where recorded shall, if defamatory, be deemed to be published if reproduced in any place to the hearing of persons other than the person causing it to be reproduced.

(3) In this section-

“recorded” means sounds collected or stored by means of tape, disc, cylinder or other means whatsoever, where the sounds are capable of being reproduced or are intended for reproduction by electrical or mechanical means at any time or from time to time thereafter, and includes the matrix, and cognate expressions shall have the like meaning;

“sound” includes speech and mere noise

377. The publication of defamatory matter is not an offence if the publication is, at the time it is made, for the public benefit, and if the defamatory matter is true.

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378. The publication of defamatory matter is absolutely privileged, and no person is criminally liable in respect thereof, in the following cases-

- (1) if the matter is published by the President, Minister or a Governor or by order of the President, Minister or a Governor in any official document, Gazette or proceedings; or
- (2) if the publication is made in a petition to the President, Minister, or a Governor; or
- (3) if the publication takes place in any proceeding held before or under the authority of any court, or in any inquiry held under the authority of any Act, Law, Statute, or Order, or under the authority of the President, Minister, or a Governor; or
- (4) if the publication takes place in an official report made by a person appointed to hold an inquiry under the authority of any Act, Law, Statute, or Order in Council, or of The President, Minister, or a Governor; or
- (5) if the matter is published concerning a person subject to military discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct, and to some person having authority over him in respect of such conduct.

379. The publication of defamatory matter is conditionally privileged and no person is criminally liable in respect thereof, in the following cases-

- (1) if the defamatory matter consists of an extract from, or an abstract of, a petition to, or a Gazette or document published by or under the authority of, the President or a Governor of a State, or a Minister, and the publication is made without ill-will to the person defamed; or
- (2) if the defamatory matter constitutes, in whole or in part, a fair report, for the information of the public, of any proceeding of any court, whether preliminary or final; or of any public proceeding of any body, constituted, or authorised to hold such proceeding, by any Act, Law, Statute or Order; or of any public meeting so far as the public is concerned in the matter published; if in every such case the publication is made without ill-will to the person defamed; or
- (3) if the publication is for the information of the public at the request of any Government department or peace officer, or if the defamatory matter is any notice or report issued by such department or officer, for the information of the public, and if in every such case the publication is made without ill-will to the person defamed; or



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- (4) if the defamatory matter consists of fair comment either on any matter the publication of which, or on any report which, is herein before in the preceding or this section referred to; or
- (5) if the defamatory matter consists of fair comment upon the public conduct of any person in public affairs, or upon the public conduct of any person employed in the public service in the discharge of his public duties, or upon the character of any of such persons so far as it appears by such conduct; or
- (6) if the defamatory matter consists of fair comment on any published book or other literary production, or any composition or work of art, or performance publicly exhibited, or any other communication made to the public on any subject; or of the character of the author of such book, production, composition, work of art, or the person exhibiting such performance, so far as their characters may appear therefrom respectively; or
- (7) if the publication is in good faith for the purpose of seeking remedy or redress for any private or public wrong or grievance from a person who has, or is reasonably believed by the person publishing to have, the right to remedy or redress such wrong or grievance; or
- (8) if the publication is made in good faith by a person having any lawful authority over another, and is made by him in the course of a censure passed by him on the conduct of that other, in matters to which such lawful authority relates; or
- (9) if the publication is made on the invitation or challenge of the person defamed; or
- (10) if the publication is made in order to answer or refute some other defamatory matter published by the person defamed, concerning the person making the publication or some other person; or
- (11) if the defamatory matter constitutes an answer to inquiries made of the person publishing it, relating to some subject as to which the person by whom or on whose behalf the inquiry is made, has, or on reasonable grounds is believed by the person publishing to have, an interest in knowing the truth, and if the publication is made in good faith for the purpose of giving information in respect of that matter to that person; or
- (12) if the defamatory matter constitutes information given to the person to whom the defamatory matter is published, with respect to some subject as to which he has, or is on reasonable grounds believed to have, such an interest in knowing the truth, as to make the conduct of the person giving the information reasonable in the circumstances:

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Provided that as regards paragraphs (7), (8), (9), (10) and (11), the person making the publication honestly believes the matter published to be true, the matter published is relevant to the matters the existence of which may excuse the publication of defamatory matter, and the manner and extent of the publication do not exceed what is reasonably sufficient for the occasion; and as regards paragraph (12) that the defamatory matter is relevant to the subject therein mentioned, and that it is either true, or is made without ill-will to the person defamed and in the honest belief, on reasonable grounds, that it is true.

380.(1) In this and the next succeeding section, the term “periodical” includes any newspaper, review, magazine, or other writing or print, published periodically.

(2) The criminal responsibility of the proprietor, editor, or publisher, of any periodical for the publication of any defamatory matter contained therein, may be rebutted by proof that such publication took place without his knowledge and without negligence on his part.

381. The sale by any person of any book, pamphlet, or other printed or written matter, or of any number or part of any periodical, is not a publication thereof for the purposes of this chapter, unless such person knows that such book pamphlet printed or written matter, or number of any or part, contains defamatory matter, or in the case of any part or number of any periodical, that such periodical habitually contains defamatory matter

### **Comments:**

The Criminal Code as the name implies refers to a collection of rules that dictate what is and what is not crime in Nigeria.

The crime of defamation is sometimes used by politicians and public officers who wish to punish the media for exposing their rotten reputation. However, the criminal code has provided avenues to escape from such ploy in the above-cited provisions.

For instance, by section 377, defamation is not a crime if it is true and ‘for public benefit’. Thus if the public officer abused power by amassing him/her self inordinately, then he cannot complain when the media exposes this fact in an ugly way to the public.

Sections 378 and 379 made further exceptions (protections) by designating some of such publication as absolutely privileged and conditionally privileged respectively, in which cases, criminal responsibility is avoided.

Section 383 provided further protection for publishers where such defamation took place without his knowledge or negligence.

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**17. CRIMINAL PROCEDURE ACT OF 1945**

**Purpose:**

“An Act to make provision for the procedure to be followed in criminal cases in the High Court and Magistrates’ Courts”

**Relevant Provisions:**

Section 203- Public to have access to hearing.

Subject to the provisions of sections 204 and 223 of this Act and of any other written law specifically relating thereto the room or place in which any trial is to take place under this Act shall be an open court to which the public generally may have access as far as it can conveniently contain them:

Provided that the judge or magistrate presiding over such trial may, in his discretion and subject to the provisions of section 205 of this Act, exclude the public at any stage of the hearing on the grounds of public policy, decency or expedience:

Provided further that where the court is sitting in a place other than in a building the authority given to exclude the public shall be construed as being authority to prevent the public approaching so near to where the court is sitting as, in the opinion of the judge or magistrate, to be able to hear what is taking place at the trial or be able to communicate with any person allowed to be present thereat.

Section 204 refers to the power of the court to exclude publicity where the accused is below seventeen year old.

205. (1) An order made under either section 203 or 204 of this Act excluding the public from a court shall not unless specifically stated-

- (a) authorise the exclusion of bonafide representatives of a newspaper or news agency; or
- (b) apply to messengers, clerks and other persons required to attend at the said court for purposes connected with their employment.

(2) Where such an order is made the judge or magistrate, as the case may be, shall record the grounds upon which such decision is taken.

**Comments:**

The Criminal Procedure Act provides a laid down procedure for conducting criminal trials, starting from investigation, prosecution to judgement.

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Criminal trial is a very important process and must be pursued with caution, thus the Constitution in section 36(4) requires- 'Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in *public* within a reasonable time by a court or tribunal'

The Criminal Code in its wisdom and in line with the Constitutional requirement had made provision for trials to be in public and where publicity must be discouraged, the media is excluded from such prohibition.

This is to ensure that the public are well informed on the procedures of the court and to promote fairness and justice. The protection of the media under this provision is therefore most appropriate because the media is the most eligible source of information for the public. The entire Nigeria cannot attend every sitting of the court, thus, they can only determine whether fair hearing and justice was observed through the publications made by the media. This responsibility on the media should be exercised with prudence and dedication due to its delicate nature.

#### **18. CHARTERED INSTITUTE OF PURCHASING AND SUPPLY MANAGEMENT OF NIGERIA (ESTABLISHMENT) ACT OF 2007**

##### **Purpose**

"An Act to establish the Chartered Institute of Purchasing and Supply Management of Nigeria, to be charged with the responsibility for registration and discipline of its members; and for related matters."

##### **Relevant Provision:**

Section 9- Publication of registers of fellows and chartered members

(1) The Registrar shall –

- (a) Cause the first edition of the register to be printed, published and put on sale to members of the public within one year from the date of commencement of this Act;
- (b) Cause the first and subsequent editions of the register to be distributed to the members of the institute and member of the public at such terms as the Council may from time to time decide; and
- (c) Cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the institute and the Registrar shall make the register and the list so deposited available at all reasonable times for inspection by members of the public.

##### **Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

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**19. COUNCIL FOR THE REGULATION OF FREIGHT FORWARDING  
IN NIGERIA ACT OF 2007**

**Purpose:**

“An Act to establish a council for the regulation of freight forwarding in Nigeria and charged with the responsibility amongst others, of determining the standard of knowledge and skill to be attained by persons seeking to be registered members of freight forwarders of Nigeria in accordance with the provisions of this Act, and for related purposes”.

**Relevant Provision:**

Section 12- Publication of register and list of corrections-

(2) The Registrar shall –

(f) Cause the register to be printed, published and put on sale to members of the public not later than two years from the commencement of this Act; and

(g) Thereafter in each year cause to be printed, published and put on sale as aforesaid, either the corrected edition of the register or a list of corrections made to the register, since it was last printed; and

(h) Cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Council; and

(i) Keep the Register and the lists so deposited to be made available at all reasonable times for inspection by members of the public.

**Comments:**

Comments on ‘Computer Professionals (Registration Council of Nigeria) Act of 1993’ refer.

**20. DENTAL TECHNOLOGISTS (REGISTRATION, ETC.) ACT OF 1987**

**Purpose**

“An Act to establish a Board in respect of dental technologists and also to make incidental provisions for the control of the practice of the profession of dental technology”

**Relevant Provision:**

Section 9- Publication of registers of fellows and chartered members

(1) It shall be the duty of the Registrar to –

(a) To Cause the register to be printed, published and put on sale to members of the public not later than two years from the beginning of the year in which this Act comes into force; and

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(b) In each year after that in which a register is first published under subsection (a) of this section, to cause to be printed, published and put on sale as aforesaid either a correct edition of the register or a list of alterations made to each register since it was last printed; and

(c) To cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Board and it shall be the duty of the Board to keep the register and the list so deposited available at all reasonable times for inspection by members of the public.

**Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

**21. ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) ACT OF 2004**

**Purpose:**

An Act to repeal the Financial Crimes Commission (Establishment) Act 2002 and enact Financial Crimes Commission (Establishment, etc.) Act, 2004 and for matters connected therewith.

**Relevant Provision:**

38: Power to receive information without hindrance

(1) The Commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act.

(2) A person who –

(b) fails to comply with any lawful enquiry or requirements made by any authorized officer in accordance with the provision of this Act, commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine of twenty thousand naira or to both such imprisonment and fine.

39: Protecting informants and information, etc and Penalty for false information

(1) Officers of the Commission cannot be compelled to disclose the source of information or identity of their informants except by the order of the court.

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### **Comments:**

There are a plethora of provisions under the various Acts discussed hereunder with similar provision with this. These provisions appear in Acts where sensitive Commissions, Boards, Council etc are established to administer the provisions of the Act.

In its wisdom, these Acts had further empowered the Commission, Board or Council as the case may be, to require information necessary to carry out its duties under the Act. In some cases, the Act would make failure to avail such Commission, Council or Board with such information, a punishable offence. In some cases also, the Act would prohibit the Commission, Board or Council from making personal use of the information.

In any event, the aim of the law is to ensure that such Commission, Council or Board have all the information they need to give effect to the Act. EFCC Act is one of such Acts and the above provisions buttress the comments made hereunder.

### **22. EDUCATIONAL CORRESPONDENCE COLLEGES ACCREDITATION ACT OF 1987**

#### **Purpose:**

An Act to make provisions for accreditation by the Minister of Education a pre-condition for the operation (or continuation in business in the case of existing institution) of all private educational correspondence colleges wishing to conduct business in Nigeria”

#### **Relevant Provision:**

Section 5-Wide Publicity to be given to accredited correspondence colleges

- (1) In every case where the Ministry issues a certificate of accreditation to a correspondence college, a designated officer shall cause a publication to be made to that effect in the Federal Gazette and in as many newspapers having wide circulation in Nigeria as he may deem desirable.
- (2) The Minister shall cause to be prepared and maintained by a designated officer a register of the names and addresses, and of such other particulars as may be specified, of all correspondence colleges accredited in accordance with the provisions of this Act.
- (3) It shall be the duty of the designated officer-
  - (a) to Cause the register to be printed, published and put on sale to members of the public not later than six months after the commencement of this Act; and

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(b) not less than twice in each year after that in which a register is first published under paragraph (a) of this subsection, to cause to be printed, published and put on sale as aforesaid either a correct edition of the register or which shall be up to date as possible; and

(c) To cause a print of each edition to be available at all reasonable times for inspection by members of the public free of charge.

#### **Section 9- Power of designated Officer to enter premises and obtain Information.**

(1) For the purpose of this Act, any designated officer-

(a) Shall have a right of access, at all time during the normal working hours of the correspondence college concerned, to any building or any premises of any such correspondence college; and

(b) May by notice in writing served on any proprietor of a correspondence college, require the correspondence to furnish, in such form as he may direct, information on such matters as may be specified by him.

(2) A person required to furnish any information pursuant to subsection

(1) (b) of this section shall, within two months from the notice, comply with the notice.

#### **Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' and comments on Economic and Financial Crimes Commission Act of 2004 refers; with respect to section 5 and section 9 respectively.

### **23. ELECTIONS (REGISTRATION OF VOTERS ETC.) ACT OF 1991**

#### **Purpose:**

"An Act to provide for the procedure for the registration of persons qualified to vote and maintain and revise the register of voters."

#### **Relevant Provision:**

##### **Section 1-Registration of Voters**

##### **Section 6**

(1) The registration officer shall display the existing register of voters for a period of not less than 21 days at each registration centre or such other places within the constituency as the Commission thinks fit.

##### **Section 7**

(1) Where it is necessary to display any preliminary list under this Act, the registration officer shall prepare copies of the whole or any part of



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the list, and shall display copies of the preliminary list in each registration centre and such other places within a constituency as the Commission thinks fit and each list shall bear the date of its display.

(2) The registration officer shall attach on each preliminary list a notice stating

(a) That within 5 days of the display of the list, claims in respect of omissions or for corrections of any item in the list, may be made;

(b) That, within the same period, objections may be made under the Act to the inclusion of any name in the list; and

(c) That claims in the form EC2 or objections in the form EC3 respectively in the schedule to this Act may be obtained at Local Government Electoral Offices or such other public places throughout the constituency as shall be stated in the notice.

(3) Copies of the list or part thereof as displayed shall be available for inspection free of charge by members of the public at Local Government Electoral Offices or such other public places throughout the constituency as the Commission may direct, and copies may be inspected at those places during normal office hours for not less than five days after the display of the preliminary list.

**Section 12**

(1) The registration officer shall

(a) Not later than 30 days from the date when the preliminary list was first displayed or within such extended period as the Commission may allow, make such corrections in preliminary list, and he shall forward the list to the Commission;

(b) Number the names in the preliminary list in such a manner as the Commission may direct;

(c) And after endorsing and signing a certificate of verification on the preliminary list, he shall forward the list to the Commission.

(2) The preliminary list shall be printed and published by the Commission on such date as the Commission, after considering any alterations or amendment, recommended by the appropriate registration officer, may deem fit.

(3) For the purpose of this section, the preliminary list shall be deemed to be printed if it is produced in a visible form by lithography or any means which the Commission considers expedient in the circumstance.

**Section 13**

(1) The preliminary list in respect of each constituency when printed and published by the Commission shall be the register of voters for that

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constituency; and a copy of the register of voters, when published, may be inspected free of charge by members of the public during normal office hours at such place in the constituency as the Commission shall, in writing, appoint.

(2) Copies of the register of voters shall be made available by the Commission to the political parties at such price as it thinks reasonable.

#### **Comments:**

This is a very important law because of its role in the electoral process. It supplements the Electoral Act to ensure that free and fair election is attained. The above-cited provisions merely stipulate openness and transparency in the process of registration of voters. For this provision to be effective, the register of voters must be regularly reviewed, updated to cover new registrations. It must also be displayed for public viewing but where that is not done to allow for public response and feedback, it does not promote access to information and the purpose of the Act will be defeated.

#### **24. ELECTORAL ACT OF 2006**

##### **Purpose:**

“An Act to establish the Independent National Electoral Commission, regulate the conduct of Federal, State, and Area Council Elections and to repeal the Electoral Act, 2002, and for related matters.”

##### **Relevant Provision:**

###### **Section 15- Demand for Information Regarding Registration**

In the performance of his or her duties under this Act, a registration officer and an update officer shall-

(a) Demand from any applicant the information necessary to enable him to ascertain whether the applicant is qualified to be registered as a voter in accordance with the provisions of this Act; and

(b) Require any voter or applicant to complete an application form for the purpose of the registration; however in the case of an illiterate or a disabled person, such application form may be completed by the registration officer on the applicant's request.

###### **Section 16- Power to Print and issue Register of Voters**

The Commission shall cause a voters' register for each State to be printed, and any person or political party may obtain from the Commission, on payment of such charges a certified copy of any voters' register for the State or for a Local Government Area within it.

###### **Section 20- Display of Copies of the Voter's List**

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(1) Subject to the provisions of section 17 (1) of this Act, the Commission shall, by notice appoint a period of not less than 5 days and not exceeding 14 days, during which a copy of the voters' register for each Local Government and Area Council shall be displayed for public scrutiny and during which period any objections or complaints in relation to the names omitted, or included in the voters' register or in relation to any necessary' corrections, shall be raised or filed.

(2) During the period of the display of the supplementary voters' list under this Act, any person may

(a) raise an objection on the form prescribed by the Commission against the inclusion in the voters' register of any name of a person on grounds that the person is not qualified to vote or to be registered as voter in the State, Local Government Area and Area Council, Ward, or Registration Area or that the name of a deceased person is included in the register; or

(b) make a claim on the form prescribed by the Commission that the name of a person registered to vote has been omitted.

(3) Any objection under subsection (2) of this section shall be addressed to the Resident Electoral Commissioner through the Electoral Officer in charge of the Local Government or Area Council.

### **Comments:**

This is one of the most important laws in Nigeria because it is through the processes stipulated in the Act that the leaders of the country emerge. Thus it should be assumed that the intention of the draftsmen was to ensure that the process is as free and as fair as necessary.

Section 15 empowers the officer of the Commission to demand for information necessary to carry out its duties; section 16 requires the Commission to make the voters' register available to the people and section 20 requires the Commission to display the voters' register for public scrutiny. All these provisions are measures to ensure transparency in the process of election. The comments on the Election (Registration of Voters etc.) Act 1991 also apply.

### **25. EMPLOYEES HOUSING SCHEME (SPECIAL PROVISION) ACT**

### **Purpose:**

"An Act to make it obligatory for every employer of labour so designated by order, to establish, execute and maintain a housing scheme for its employees and to provide for matters connected therewith."

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### **Relevant Provision:**

Section 10- Power to obtain information, etc.

- (1) For the purposes of this Act, the secretary of the Council may by notice in writing addressed to or served on any designated employer, require that employer to furnish in such form as he may direct, information on such matters as may be specified by him.
- (2) A designated officer required to furnish information pursuant to subsection (1) of this section, shall within 42 days of the notice comply with the notice.

By section 11, failure to furnish such information attracts punishment.

### **Comments:**

Comments on Economic and Financial Crimes Commission Act of 2004 refer.

## **26. ENGINEERS (REGISTRATION ETC.) ACT OF 1970**

### **Purpose:**

“An Act to establish the Council of Registered Engineers of Nigeria and to make provisions for other matters connected therewith.”

### **Relevant Provision:**

Section 5- Publication of register and lists of corrections.

- (1) It shall be the duty of the Registrar –
  - (a) To Cause the register to be printed, published and put on sale to members of the public not later than two years from the beginning of the year in which this subsection comes into force;
  - (b) In each year after that in which a register is first published under paragraph (a) of this subsection, to cause to be printed, published and put on sale as aforesaid either a corrected edition of the register or a list of alterations made to each register since it was last printed; and
  - (c) To cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Council,and it shall be the duty of the Council to keep the register and the lists so deposited open at all reasonable times for inspection by members of the public.

### **Comments:**

Comments on ‘Computer Professionals (Registration Council of Nigeria) Act of 1993’ refer.

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**27. REGISTERED ENGINEERS (DISCIPLINARY TRIBUNAL AND ASSESSORS) RULES (A SUBSIDIARY LEGISLATION TO THE ABOVE ACT)**

**PROCEEDINGS BEFORE THE TRIBUNAL**

Section 7 (Proceedings to be in public) - "The proceedings of the Tribunal shall be held, and its findings and directions shall be pronounced in public."

**FINDINGS, ETC-**

Section 11 (Publication of Tribunal's Findings) - "Subject to section 16(3) of the Act (which relates to appeals), any direction given by the Tribunal shall be published in the Federal Gazette as soon as may be after the direction takes effect."

**Comments:**

This provision is in line with the constitutional requirement in section 36(3) that 'the proceedings of a court or the proceedings of any tribunal ... (including the announcement of the decisions of the court or tribunal) shall be held in public'.

Thus the above-cited provision requires the proceedings of the tribunal to be in public and its decision published. This is to uphold the principle of fair hearing that justice must not only be done, but must be seen to have been done. The public cannot determine whether or not justice has been done if proper publicity is not given to the proceedings and decisions of the tribunal. This is also a good means of promoting transparency and good governance.

**28. ESTATE SURVEYORS AND VALUERS (REGISTRATION ETC.) ACT OF 1975**

**Purpose:**

"An Act to establish the Estate Surveyors and Valuers Registration Board of Nigeria as a body corporate and to empower the Board inter alia to determine persons who are to become estate surveyors and valuers and what standards of knowledge and skill are to be attained by such persons and to make provisions for other matters connected therewith."

**Relevant Provisions:**

Section 7- Publication of Register and list of Corrections.

(2) It shall be the duty of the Registrar –

(d) To Cause a list of persons whose names and qualifications are contained in the register to be printed, published and put on sale to members of the public not later than two years from the beginning of the year in which this Act comes into force;

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(e) In each year after that in which a register is first published under subsection (a) of this section, to cause to be printed, published and put on sale as aforesaid either a corrected edition of the register or a list of alterations made to each register since it was last printed; and

(f) To cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Board

and it shall be the duty of the Board to keep the register and the lists so deposited to remain open at all reasonable times for inspection by members of the public.

**Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

**29. ESTATE SURVEYORS AND VALUES (DISCIPLINARY TRIBUNAL AND ASSESSORS) RULES**

**PROCEEDINGS BEFORE THE TRIBUNAL**

Section 7(Proceedings to be in public) - "The proceedings of the Tribunal shall be held, and its findings and directions shall be pronounced in public."

**FINDINGS, ETC-**

Section 11 (Publication of Tribunal's Findings) - "Subject to section 14(4) of the Act (which relates to appeals), any direction given by the Tribunal shall be published in the Federal Gazette as soon as may be after the direction takes effect."

**Comments:**

Comments on 'Registered Engineers (Disciplinary Tribunal and Assessors) Rules' (a subsidiary legislation to 'Engineers (Registration etc.) Act of 1970' refers.

**30. EXCISE (CONTROL OF DISTILLATION) ACT OF 1964**

**Purpose**

"An Act to make provision for the control and license from exercise purposes of the distillation of spirits"

**Relevant Provision:**

Section 21- Power of the Board to require information from licensees.

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### **Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

### **31. FACTORIES ACT OF 1987**

#### **Purpose:**

“An Act to provide for the registration, etc., of factories; to provide for factory workers and a wide spectrum of workers and other professionals exposed to occupational hazards, but for whom no adequate provisions have been formerly made; to make adequate provision regarding the safety of workers to which the Act applies and to impose penalties for any breach of its provisions,”

#### **Relevant Provision:**

Section 68- Publication in the Gazette of certificates issued or revoked by the Director of Factories

‘Whenever the Director of Factories issues, under the provisions of this Act, any certificate approving or authorising any person for the purpose of any of the provisions, or excepting any factory from the requirements of any of those provisions, or revokes any such provision, he shall notify the issue or revocation of certificate in the Gazette.

#### **Comment:**

This is a law that has been made to, amongst others, regulate the operations of factories in Nigeria. The Director has been empowered by the Act to issue or revoke certificates of factories as the case may be, for purposes of maintaining the standards expected by the law.

Thus the Act in its wisdom imposed an obligation on the Director to publish such issue or revocation of certificate. This is only wise in view of the fact that the public should be informed as well, of such decision to enable them make an informed opinion with respect to dealings with such factories.

### **32. FEDERAL RADIO CORPORATION OF NIGERIAN ACT OF 1987**

#### **Purpose:**

“An Act to establish the Federal Radio Corporation of Nigeria which in addition to providing effective radio broadcasting services on a national scale, will also be responsible for providing external broadcasting services”

#### **Relevant Provision:**

Section 6-Particular Functions of the Corporation-

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(k) to publish, print and reproduce any matter that may be conducive to the performance of any of its functions and offer for sale or other commercial purposes any matter so published, printed or reproduced.

### **Comments:**

There are several provisions in Nigerian Law that allow information to the public. Most of this information are not in the class of qualified, classified or prohibited information and they are helpful in informing the public of what is happening in that sector so that they can make an informed decision. The provision under consideration is one of such provisions.

### **33. ENVIRONMENTAL IMPACT ASSESSMENT ACT OF 1992**

#### **Purpose:**

An Act to set out the general principles, procedure and methods to enable the prior consideration of environmental impact assessment on certain public or private projects.

#### **Relevant Provision:**

Section 7- Before the Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comment on environmental impact assessment of the activity.

Section 9(1) -The Agency's decisions on any proposed activity subject to environmental impact assessment shall -

- (a) be in writing;
  - (b) state the reason therefore;
  - (c) include the provisions, if any, to prevent, reduce or instigate damage to the environment.
- (2) The report of the Agency shall be made available to interested person or group.
- (3) If no interested person or group requested for the report, it shall be the duty of the Agency to publish its decision in a manner by which members of the public or persons interested in the activity shall be notified.

17(1) - Every screening or mandatory study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors, that is –

- (c) comments concerning those effects received from the public, in accordance with provisions of this Act;



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25(1) - After receiving a mandatory study report in respect of a project, the Agency shall, in any manner it considers appropriate, publish in a notice setting out the following information –

- (a) the date on which the mandatory study report shall be available to the public;
- (b) the place at which copies of the report may be obtained; and
- (c) the deadline and address for filing comments on the conclusions and recommendations of the report.

(2) Prior to the deadline set out in the notice published by the Agency, any person may file comments with the Agency relating to the conclusions and recommendations of the mandatory study report.

Section 37(1) A review panel shall, in accordance with the provisions of this Act and its terms of reference-

- (a) ensure that the information required for an assessment by a review panel is obtained and made available to the public;
- (b) hold hearing in a manner that offers the public an opportunity to participate in the assessment;
- (c) Prepare a report setting out –
  - (ii) a summary of any comments received from the public.

39 - On receiving a report submitted by a mediator or a review panel, the Agency shall make the report available to the public in any manner the Council considers appropriate and shall advise the public that the report is available.

57 (1) - For the purpose of facilitating public access to records relating to environmental assessments, a public registry shall be established and operated in accordance with the provisions of this Act in respect of every project for which an environmental assessment is conducted.

(2) The public registry in respect of a project shall be maintained

- (a) by the Agency from the commencement of the environmental assessment until any follow-up program in respect of the project is completed; and
- (b) where the project is referred to mediation or review panel, by the Agency from the appointment of the mediator or the members of the review panel until the report of the mediator or review panel is submitted to the Agency or the Secretary to the Government of the Federation as the case may be.

(3) Subject to subsection (4) of this section, a public registry shall contain all records and information produced, collected or submitted with respect to the environmental assessment of the project, including

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- (a) any report relating to the assessment;
  - (b) any comments filed by the public in relation to the assessment; and
  - (c) any record prepared by the Agency for the purposes of section 35 of this Act.
- (4) A public registry shall contain a record referred to in subsection (3) of this section if the record falls within one of the following categories-
- (a) records that have otherwise been made available to the public carrying out the assessment pursuant to this Act and any additional records, that have otherwise been made publicly available;
  - (b) any record or part of a record that the Agency, in the case of a record in its possession, or any other Ministry or government agency determines would have been disclosed to the public if a request had been made in respect of that record at the time the record was filed with the registry, including any record that would be disclosed in the public interest;
  - (c) any record or part of a record, except a record or part containing third party information, if the President in the case of a record in the Agency's possession, or the President believes on reasonable grounds that its disclosure would be in the public interest because it is required in order for the public to participate effectively in the assessment,
- (5) Notwithstanding any other enactment, no civil or criminal proceedings shall lie against the Agency, or against any person acting on behalf of or under the direction of, and no proceedings shall lie against the State or any of its agencies for the disclosure in good faith of any record or any part of a record pursuant to this Act, for any consequences that flow from that disclosure, for the failure to give any notice if reasonable care is taken to give the required notice.
- (6) For the purposes of this section, "third party information" means –
- (a) trade secrets of a third party;
  - (b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;
  - (c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of a third party; and
  - (d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.
- 63 (1) In this Act, unless the context otherwise provides

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“Agency” means the Nigerian Environmental Protection Agency established by the Federal Environmental Protection Act;

“Council” means the Federal Environmental Protection Council established by the Federal Environmental Protection Agency Act;

“Environmental assessment” means, in respect of a project, an assessment of the environmental effects of the project that is conducted in accordance with this Act and any regulations made thereunder;

“environmental effect” means, in respect of a project,

(a) any change that the project may cause to the environment,

(b) any change the project may cause to the environment, whether any such change occurs within or outside Nigeria, and includes any effect of any such change on health and socio-economic conditions;

“project” means a physical work that a proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out or a physical activity that a proponent proposes to undertake or otherwise carry out;

#### **Comments:**

This is another law that provides for avenues to give the public access to information needed to make informed opinion. Section 7 calls for comments from the government, public etc before the Agency takes any decision on the environmental impact of any project/undertaking. Section 9 requires that such decision shall amongst other things be made available to interested parties and the public. Section 17 requires that every screening of a project and every mediation or assessment by a review panel shall include a consideration of comments received from the public. The underlying principle in the entire provisions cited above is the need to get the public involved in taking decisions relating to the environmental impact of any project or undertaking.

This Act is very vital in Nigeria where there have been series of complaints by the citizens especially from the Niger-Delta region where the activities of the oil multi-nationals have rendered a lot of people hungry and homeless. It is hoped that by participating in decision process, parties that are likely to be affected by such projects could express their grievances and probably stop such undertaking from damaging the environment or make the companies commit to taking adequate measures to curb any likely adverse effect of such activity. However, one should be pardoned to argue that this Act is a mere paper work that have not and might not be implemented, otherwise the havoc caused by the activities of the oil multi-national in the Niger-Delta would have been reduced and the exploitations of various big companies in Lagos and other major cities in Nigeria where air pollution has become the order of the day, would have reduced. It is hoped that the civil society and indeed the entire society will take up the responsibility of overseeing the implementation of this law, more especially in

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view of the recent move to privatise the power sector; because this implies more interference with the environment during construction of pipeline, generation and distribution of power.

#### **34. EVIDENCE ACT OF 1945**

##### **Purpose:**

This is an Act to provide for the rules of evidence in both civil and criminal procedures.

##### **Relevant Provision:**

111. (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.

(2) Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

##### **Comments:**

This is another provision that allows the public access to information to enable them make informed opinion on matters that affect their rights. It is another way of reserving or recovering original copy of a document, for example, original copy of a degree certificate. The Act went further to create a presumption that any officer who is authorised to deliver a document have custody of same, thereby negating any move by such officer to deny anybody who is entitled to such document, access to it. This is a wonderful provision that could reduce the bureaucratic bottleneck in getting a certified true copy of a document.

#### **35. HEALTH RECORDS OFFICERS (REGISTRATION, ETC.) OF 1989**

##### **Purpose:**

An Act to establish a Board for the control and practice of the profession of health records management and matters relating thereto.

##### **Relevant Provision:**

Section 8- Publication of Register and Lists of Corrections;

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- (1) It shall be the duty of the Registrar –
- (a) To cause the register to be printed, published and put on sale to members of the public not later than two years from the beginning of the year in which this Act comes into force;
  - (b) In each year after that in which a register is first published under paragraph (a) of this subsection, to cause to be printed, published and put on sale as aforesaid either a corrected edition of the register or a list of alterations made to each register since it was last printed; and;
  - (c) To cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Board, and it shall be the duty of the Board to keep each register and the lists so deposited open at all reasonable times for inspection by members of the public.

**Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

**36. INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA ACT OF 1965**

**Purpose:**

An Act to regulate the profession of accountancy and for matters connected therewith.

**Relevant Provision:**

Section 7- Publication of Register and Lists of Corrections;

- (1) It shall be the duty of the Registrar –
- (a) To cause the register to be printed, published and put on sale to members of the public not later than two years from the beginning of the year in which this Act comes into force;
  - (b) In each year after that in which a register is first published under paragraph (a) of this subsection, to cause to be printed, published and put on sale as aforesaid either a corrected edition of the register or a list of alterations made to each register since it was last printed; and;
  - (c) To cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Board, and it shall be the duty of the Council to keep each register and the lists so deposited available at the principal offices of the institute.

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**Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

**37. INSTITUTE OF CHARTERED CHEMISTS OF NIGERIA ACT OF 1993**

**Purpose:**

An Act to establish the institute of Chartered Chemists of Nigeria and to make provisions for determining the standard of knowledge and skill to be attained by persons seeking to become registered as chemists and for matters connected therewith.

**Relevant Provision:**

Section 7- Publication of Register and Lists of Corrections;

(1) It shall be the duty of the Registrar –

(a) To cause the register to be printed, published and put on sale to members of the public not later than two years from the beginning of the year in which this Act comes into force;

(b) In each year after that in which a register is first published under paragraph (a) of this subsection, to cause to be printed, published and put on sale as aforesaid either a corrected edition of the register or a list of alterations made to each register since it was last printed; and;

(c) To cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the institute, and it shall be the duty of the Council to keep each register and the lists so deposited available at all reasonable times for inspection by members of the public.

**Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

**4. INSTITUTE OF CHARTERED SECRETARY AND ADMINISTRATORS OF NIGERIA ACT OF 1991**

**Purpose:**

An Act to establish the Institute of Chartered Secretaries and Administrators of Nigeria and to make provisions for determining the standard of knowledge and skill to be attained by persons seeking to become chartered secretaries and administrators; and for matters connected therewith.

**Relevant Provision:**

Section 7- Publication of Register and Lists of Corrections;

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(1) It shall be the duty of the Registrar –

(a) To cause the register to be printed, published and put on sale to members of the public not later than two years from the beginning of the year in which this Act comes into force;

(b) In each year after that in which a register is first published under paragraph (a) of this subsection, to cause to be printed, published and put on sale as aforesaid either a corrected edition of the register or a list of alterations made to each register since it was last printed; and;

(c) To cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Board, and it shall be the duty of the Board to keep each register and the lists so deposited open at all reasonable times for inspection by members of the public.

**Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

**38. INSTITUTE OF PERSONNEL MANAGEMENT OF NIGERIA ACT OF 1992**

**Purpose:**

An Act to establish the Institute of Personnel Management of Nigeria and for matters connected therewith.

**Relevant Provision:**

Section 7- Publication of Register and Lists of Corrections;

(1) It shall be the duty of the Registrar –

(a) To cause the register to be printed, published and put on sale to members of the public not later than two years from the beginning of the year in which this Act comes into force;

(b) In each year after that in which a register is first published under paragraph (a) of this subsection, to cause to be printed, published and put on sale as aforesaid either a corrected edition of the register or a list of alterations made to each register since it was last printed; and;

(c) To cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Board, and it shall be the duty of the Board to keep each register and the lists so deposited open at all reasonable times for inspection by members of the public.

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### **Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

#### **39. INSTITUTE OF PUBLIC ANALYSTS OF NIGERIA ACT**

### **Purpose:**

An Act to establish the Institute of Public Analysts of Nigeria to regulate the profession and for matters connected therewith.

### **Relevant Provision:**

Section 7- Publication of Register and Lists of Corrections;

(1) It shall be the duty of the Registrar –

(a) To cause the register to be printed, published and put on sale to members of the public not later than two years from the beginning of the year in which this Act comes into force;

(b) In each year after that in which a register is first published under paragraph (a) of this subsection, to cause to be printed, published and put on sale as aforesaid either a corrected edition of the register or a list of alterations made to each register since it was last printed; and;

(c) To cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Board, and it shall be the duty of the Board to keep each register and the lists so deposited open at all reasonable times for inspection by members of the public.

### **Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

#### **40. INSURANCE ACT OF 2003**

### **Purpose:**

An Act to provide for a new Insurance Act.

### **Relevant Provision:**

Section 92- Inspection of Documents

a. A person may on payment to the Commission of the prescribed fee, inspect or make copies of any filed document or obtain certified copies of any such document in the custody of the Commission under this Act.



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b. No fee shall be paid to the Commission for information supplied by it to the chief executive or to the address of the principal office in Nigeria of the insurer, reinsurers, insurance broker or loss adjuster.

**Comments:**

Comments on Evidence Act refer.

**41. INVESTMENT AND SECURITIES ACT**

**Purpose:**

An Act to repeal the Investment and Securities Act, 1999 and to establish the Securities and Exchange Commission as the apex regulatory authority for the Nigerian capital market to ensure the protection of investors, maintain fair, efficient and transparent market and reduction of systemic risk; and for related matters.

**Relevant Provision:**

175. (1) The particulars of each loan to be raised pursuant to this Act shall be published in the Gazette or any other official document by the body raising the loan and shall include the following:

- (a) the beneficiary of the loan ;
- (b) the sum of money to be raised by the loan;
- (c) the mode or modes of raising the loan ;
- (d) the rate of interest payable on the loan;
- (e) the dates in each year on which the half-yearly or quarterly interest on the loan shall be payable;
- (f) the time at which a half-yearly, quarterly appropriation out of the general reserve and assets of the body or project of the body shall be made as a contribution;
- (g) the date of redemption of the registered bond or securities to be issued for the purpose of raising the loan; and
- (h) any other information relating to the loan, considered necessary to effectively raise the loan.

176. (1) A body shall keep a register in which all securities transactions entered into by the body are recorded into which shall be entered all information which by this Act is required to be entered in the register.

(2) A body shall for the purpose of carrying out its functions under subsection (1) of the section appoint any government agency or competent person as Registrar and the appointment shall be subject to such terms and conditions as may be deemed fit by the body concerned.

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- (3) The Registrar may be required to submit to an independent audit of his books of account in connection with his functions under this Part of this Act.

### **Comments:**

The above provisions require that where a body sets out to raise loan, particulars of such loan should be published. This is in line with the whole essence of the Act which is to maintain a fair, transparent capital market in Nigeria.

## **42. JOINT ADMISSION AND MATRICULATION BOARD ACT**

### **Purpose:**

“An Act to establish the Joint Admissions and Matriculation Board to administer a centralised admission system for Universities, Polytechnics and Colleges of Education”.

### **Relevant Provision:**

- (1) For the purpose of carrying out the functions conferred on the Board under this Act, the Registrar or any other employee of the Board authorised in that behalf -
- (a) shall have a right of access to all relevant records of any tertiary institution to which this Act applies;
  - (b) may by notice in writing served on any person in charge of any such tertiary institution require that person to furnish or cause to be furnished information on such matters as may be specified in the notice.
- (2) It shall be the duty of any person required to furnish information pursuant to subsection (1) of this section to comply with the notice within a reasonable period of time.

### **Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

## **43. LEGISLATIVE HOUSES (POWERS AND PRIVILEGES) ACT**

### **Purpose:**

“An Act to declare and define certain powers, privileges and immunities of the Legislative Houses established under the Constitution of the Federal Republic of Nigeria; and of the members of such legislative Houses; to regulate the conduct of the members and other persons connected with the proceedings thereof and for matters connected therewith”

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### **Relevant Provision:**

Section 26- Protection of persons responsible for publication authorised by a Legislative House

(1) Any person being a defendant in any civil or criminal proceedings instituted for or on account of or in respect of the publication by such person or by his servant, by order or under the authority of a Legislative House, of any reports, papers, minutes, votes or proceedings, may, on giving to the plaintiff or prosecutor, as the case may be, twenty four hours written notice of his intention, bring-

(a) Before the court in which such civil or criminal proceedings are being held a certificate under the hand of the president or speaker, as the case may be, of the Legislative House, stating that the report, paper, minutes or votes or proceedings in respect of which such civil or criminal proceeding have been instituted were published by such person or his servant by order or under the authority of a Legislative House;

(b) An affidavit verifying such certificate.

(2) The court shall thereupon immediately stay such civil or criminal proceedings, and the same and every process issued therein shall be deemed to be finally determined.

Section 27- Publication of extracts of proceedings without malice:

In any civil or criminal proceedings for printing any extract from or an abstract of any report, paper, minutes or votes or proceedings published by or under the authority of a Legislative house, if the court or jury, as the case may be, be satisfied that such extract or abstract was published bona fide and without malice, judgement or verdict, as the case may be, shall be entered for the defendant or accused.

### **Comment:**

This is another provision aimed at protecting those that help to disseminate information. The whole essence is making information available to the public.

## **44. LIBRARIANS (REGISTRATION ETC.) COUNCIL OF NIGERIA ACT**

### **Purpose:**

“An Act to establish the Librarians (Registration, etc.) Council of Nigeria for the registration of librarians and to make provisions for the practice of the profession and for matters connected therewith.”

### **Relevant Provision:**

Section 8- Publication of register and list of corrections.

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(4) It shall be the duty of the Registrar –

(d) To Cause a list of persons whose names and qualifications are contained in the register to be printed, published and put on sale to members of the public not later than six months from the beginning of the year in which this Act comes into force;

(e) In each year after that in which a register is first published under subsection (a) of this section, to cause to be printed, published and put on sale as aforesaid either a corrected edition of the register or a list of alterations made to each register since it was last printed; and To cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Council and the Council shall be the duty of the Board to keep the register and the lists so deposited to remain open at all reasonable times for inspection by members of the public.

#### **Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

### **45. LOCAL LOANS REGISTERED STOCK AND SECURITIES ACT**

#### **Purpose:**

"An Act to make provision for the creation and issue of registered stock, Government promissory notes and bearer for the purpose of raising loans in Nigeria."

#### **Relevant Provision:**

Section 41- Inspection of register and documents:

(1) No person shall be entitled to inspect, or to receive information derived from, any registered stock or security in the possession of the Government or any register, book or other document kept or maintained by or on behalf of the Government in relation to registered stock or securities, save on payment of such fee and save circumstances and on such terms and conditions as may be prescribed.

(2) Nothing in this section shall apply to Auditor-General for the Federation or to the Deputy Commission or Income Tax.

#### **Comments:**

This is an Act established to provide for the means and procedure involved in raising loans for the Government of Nigeria. Thus the draftsmen had considered it relevant to

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make this procedure open so that the public can participate. Though these information are available upon payment of fees, the Auditor-General of the Federation is allowed access without fee.

#### **46. MARRIAGE ACT**

##### **Purpose:**

“An Act to make provisions for the celebration of marriages.”

##### **Relevant Provision:**

Section 7- Whenever any persons desire to marry, one of the parties to the intended marriage shall sign and give to the registrar of the district in which the marriage is intended to take place a notice as in Form A in the First Schedule.

Section 10- Upon receipt of such notice the registrar shall cause the same to be entered in a book to be called the marriage notice book, which may be inspected during office hours without fee. He shall also publish such notice by causing a copy of the same to be affixed on the outer door of his office, and to be kept exposed there until he grants his certificate as hereinafter mentioned, or until three months shall have elapsed.”

##### **Comments:**

It would seem that the whole essence of access to information is to promote transparency and thereby reduce corruption in governance; the above provision seems far from this aim. One importance of notice and publication of intention to marry is that it is an opportunity to inform the public of such marriage so that same could be stopped, for instance, where it contravenes the law prohibiting marriage where either or both parties have been previously married. This provision strengthens the significance of marriage and protects its sanctity. Thus its values lie more in protecting social ethics than in good governance. In the end, the sole aim of legislation which is the betterment of the society is still achieved.

#### **47. MATRIMONIAL CAUSES ACT**

##### **Purpose:**

“An Act to make provision for Matrimonial Causes”

##### **Relevant Provision:**

Section 108:

Except as provided by this section, a person shall not in relation to any proceedings under this Act print or publish, or cause to be printed or published, any account of evidence in the proceedings, or any other account or particulars of the proceedings, other than-

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- (a) the names, addresses and occupations of the parties and witnesses, and the name or names of the member or members of the court and of the legal advisers of the parties;
  - (b) a concise statement of the nature and grounds of the proceedings and of the charges, defences and counter-charges in support of which evidence has been given;
  - (c) submissions on any points of law arising in the course of the proceedings, and the decision of the court on those points; or
  - (d) the judgment of the court and observations made by the court in giving judgment.
- (2) The court may, if it thinks fit in any particular proceedings, order that none of the matters referred to in subsection (1) (a) to (d) of this section shall be printed or published, or that any matter or part of a matter so referred to shall not be printed or published.
- (3) Any person who contravenes subsection (1) of this section, or prints or publishes, or causes to be printed or published, any matter, or part of a matter, in contravention of an order of a court under subsection (2) of this section shall be guilty of an offence punishable on conviction -
- (a) in the case of a first offence (or a second or subsequent offence if prosecuted summarily) by a fine not exceeding one thousand naira or imprisonment for a term not exceeding six months; and
  - (b) in the case of a second or subsequent offence, being an offence prosecuted otherwise than in a summary manner, by a fine not exceeding two thousand naira or imprisonment for a term not exceeding one year.
- (5) The preceding provisions of this section shall not apply to or in relation to-
- (a) the printing of any pleading, transcript of evidence or other document for use in connection with proceedings in any court or the communication of any such document to persons concerned in the proceedings;
  - (b) the printing or publishing of a notice or report in pursuance of the direction of a court;
  - (c) the printing or publishing of any publication bona fide intended primarily for the use of members of the legal or medical profession, being-
    - (i) a separate volume or part of a series of law reports, or
    - (ii) any other publication of a technical character, or

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(c) the printing or publishing of a photograph of any person, not being a photograph forming part of the evidence in proceedings under this Act.

#### **Comments:**

Matrimonial Causes Act is a laid down procedure guiding the process of settling matrimonial differences. The above provisions require publication of the proceedings in line with the constitutional requirement for publication of the proceedings of the court; though with some restriction. The restriction is necessary to avoid abuse of this right especially by people who might publish maliciously; to protect the privacy of the individuals involved in the divorce proceedings, separation etc, and maintain the sanctity of marriage. It is hoped that the judges will use the discretion judiciously, in determining when and when not to allow publication.

#### **48. MEDICAL AND DENTAL PRACTITIONERS ACT**

##### **Purpose:**

An Act to establish the Medical and Dental Council of Nigeria for the registration of medical practitioners and dental surgeons and to provide for a Disciplinary Tribunal for the discipline of members”

##### **Relevant Provision:**

Section 7: Publication of register and list of corrections.

- (1) It shall be the duty of the Registrar –
  - (a) To Cause the registers to be printed, published and put on sale to members of the public not later than two years from the beginning of the year in which this Act comes into force;
  - (b) In each year after that in which a register is first published under subsection (a) of this section, to cause to be printed, published and put on sale as aforesaid either a corrected edition of the register or a list of alterations made to each register since it was last printed; and
  - (c) To cause a print of each edition of the register and each list of corrections deposited under subsection (1) at the principal offices of the Council
- (2) It shall be the duty of the Council to keep the register and lists of corrections to be deposited under subsection (1) open at all reasonable times for inspection by members of the public.

##### **Comments:**

Comments on ‘Computer Professionals (Registration Council of Nigeria) Act of 1993’ refer.

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**49. MEDICAL REHABILITATION THERAPISTS (REGISTRATION ETC.) ACT**

**Purpose:**

“An Act to establish the Medical Rehabilitation Therapists Registration Board and to make incidental provisions therefore.”

**Relevant Provision**

**Section 7- Preparation and Maintenance of Register**

(1) It shall be the duty of the Registrar to prepare and maintain in accordance with rules made by the Council, a register of the names, addresses, approved qualifications, and of such other particulars, as may be specified of all persons who are entitled in accordance with the provisions of this Act to be registered as members of the relevant profession and who apply in the specified manner to be registered.

**Section 8- Publication of register and list of corrections**

(1) It shall be the duty of the Registrar –

(a) To Cause the register to be printed, published and put on sale to members of the public not later than two years from the beginning of the year in which this Act comes into force;

(f) In each year after that in which a register is first published under subsection (a) of this subsection, to cause to be printed, published and put on sale as aforesaid, a corrected edition of the register or a list of alterations made to each register since it was last printed; and

(g) To cause a print of each edition of the register and of each list of corrections to be deposited at the principal office of the Board

(2) It shall be the duty of the Board to keep each register and the lists so deposited under subsection (1) (c) of this section open at all reasonable times for inspection by members of the public.

**Comments:**

Comments on ‘Computer Professionals (Registration Council of Nigeria) Act of 1993’ refer.

**50. MONEY LAUNDERING ACT**

**Purpose:**

An Act to repeal the Money Laundering Act, 1995 No 3 and enact a new Money Laundering Act; and for related matters”



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### **Relevant Provision:**

7. A financial institution shall preserve and keep at the disposal of the authorities specified in section 8 of this act

(a) the record of the customer's identification for a period of at least ten years after the closure of the accounts or: the severance of relations with 'the customer ; and

(b) the record of transaction carried out by a customer and the report provided ~or in section 6 of this Act, for a period of at least ten years after carrying out the transaction or making of the result as the case may be.

8. The records referred to in section 7 of this Act shall be communicated only to the Central Bank, the National Drug Law Enforcement Agency (in this Act referred to as the Agency"), judicial authorities, customs officers and such other persons as the Central Bank may, from time to time, by order published in the *Gazette*, specify.

10. (I) Notwithstanding anything to the contrary in any other law or enactment, a financial institution or Casino shall report to the Agency in writing, within 7 days of any single transaction, lodgement or transfer of funds in excess of

(a) NI,000,000 or its equivalent, in the case of an individual; and

(b) 5 million Naira or its equivalent, in the case of a body corporate.

(2) A person, other than a financial institution, may voluntarily give information on any transaction, lodgement or transfer of funds in excess of-

(a) 100,000 or its equivalent, in the case of an individual; and

(b) N5,000,000 or its equivalent, in the case of a body corporate.

(3) The Agency shall acknowledge receipt of any disclosure, report or information received under this section and may demand such additional information as it may deem necessary.

(6) When it is not possible to ascertain the origin of the funds within the period of stoppage of the transaction, the Federal High Court may, at the request of the Agency, or other person or authority duly authorized in that behalf, order that the funds, accounts or securities referred to in the report be blocked.

(7) An order made by the Federal High Court under subsection (6) of this section shall be enforced forthwith.

(1) The Agency, pursuant to a Federal High Court Order obtained on a sworn declaration made by the Chairman of the Agency justifying the request, may in order to identify and locate narcotic drugs and

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psychotropic substances, proceeds, property, objects or other things related to the Agency of an offence under this Act or the Economic and Financial Crimes Commission Act 2002 or any other Act or law-

(a) place any bank account or any other account comparable to a bank account under surveillance,

(b) tap any telephone line or place it under surveillance;

(c) obtain access to any computer system, and

(d) obtain communication of any authentic instrument or private contract, together with all bank, financial and commercial records, when the account, telephone line or computer system is used or reasonably suspected to have been used by any person suspected of taking "part in a transaction involving the proceeds, of a financial or other crime.

(2) Banking secrecy shall not be invoked as a ground for objecting to the measures set out in subsection (1) of this section or for refusing to be witness to facts likely to constitute an offence under this Act or the National Drugs Law Enforcement Agency.

#### **Comments: The comments on Central Bank are applicable to this Act.**

The whole essence of the Money Laundering Act is to regulate money laundering in Nigeria. The above-cited provisions refer to exchange of information between the agency established under the Act and other agencies of the Government and individuals, for the purpose of achieving the goal of the Act. Disclosing the transaction of customers to the relevant agencies seems like invasion of their right to privacy, but this is a necessary price to be paid by the citizens to help curb crime in the society.

### **51. MORTGAGED INSTITUTIONS ACT**

#### **Purpose:**

"An Act to make provision for the establishment and licensing of mortgaged institutions to grant loans and advance to individuals for the purchase or construction of a dwelling house; improvement or extension of existing dwelling house; and to accept savings and deposits from members of the public and to pay interest thereon.

#### **Relevant Provision:**

Section 15 - Publication of Balance Sheet and Profit and loss Account

(1) Every mortgage institution shall, not later than 4 months after the end of each year-

(a) Cause to be published in a daily newspaper printed and circulating in Nigeria;

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- (b) Exhibit in a conspicuous position in each of its offices and branches in Nigeria; and
- (c) Forward to the Minister and to the Federal Mortgage Bank, copies of its balance sheet and profit and loss account, duly signed and containing the full and correct names of the directors of the mortgage institution.

Subsection 4 makes failure to observe the provisions of subsection (1) an offence.

#### **Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer. This is an attempt by the law to encourage transparency within the mortgage institution, to checkmate the financial activities of the bank and the directors overseeing the affairs of the bank. This will help to curb abuse of finance and ensure that the funds are properly disbursed to achieve the aim of the Act.

### **52. MUTUAL ASSISTANCE IN CRIMINAL MATTERS WITHIN THE COMMONWEALTH (ENACTMENT AND ENFORCEMENT) ACT**

#### **Purpose:**

An Act to make legislative provision to give the force of law to the scheme for Mutual Assistance in criminal matters within the Commonwealth.

#### **Relevant Provision:**

Section 10- Limitation on use of information or evidence

A requesting country under this Act shall not use any information or evidence obtained in response to a request for assistance under this Act in connection with any matter other than the criminal matter specified in the request, without the prior consent of the requested country.

#### **Comments:**

This is Act incorporating the Mutual Assistance Scheme by Commonwealth Nations. The whole essence of the scheme is to assist member nations in fighting crime in their country and this assistance will be futile without proper avenue to disseminate information amongst member nations. In recognising this, the Act had made provisions for the dissemination of relevant information amongst member states, though with certain condition. The conditions are well thought of in view of the independence of member nations and the need for them to regulate the manner that information relating to their country are circulated, for security purposes.

**53. MOTOR SPIRIT (RETURNS) ACT OF 1954**

**Purpose:**

An Act to make provision for making returns of motor spirit imported into Nigeria for the purposes incidental to the allocation of revenue derived from customs import duties on the said spirit and for other purposes connected therewith

**Relevant Provision:**

**Section 7-**

(1) Every registered importer shall furnish to the prescribed authority within such time and in such form as he may require in respect of each quarter such information relating to-

- (a) the quantity of motor spirit imported by him;
- (b) the quantity of warehoused motor spirit withdrawn from warehouse for use in Nigeria;
- (c) the quantity of motor spirit delivered by him to distributors;
- (d) the quantity and places of storage of stocks (other than warehoused stocks) of motor spirit stored by him for use in Nigeria;
- (e) the appropriation of motor spirit for the purposes of any business carried on by him;

as the prescribed authority may specify.

(2) Every registered importer shall upon demand made by the prescribed authority produce for inspection at such time and place as the prescribed authority may require any books or accounts or other documents of whatever nature relating to the matters in respect of which information may be required in accordance with subsection (1) of this section

(3) When a person ceases to be registered during any quarter he shall furnish to the prescribed authority within such time and in such form as he may specify such information as is mentioned in subsection (1) of this section in respect of that part of the said quarter during which he was registered.

(4) In this section, "warehoused" means deposited in state, Government or private warehouse approved or licensed as the case may be under the Customs, Excise Tariffs, et c (Consolidated) Act.

**Section 8**

(1) Every registered distributor shall furnish to the prescribed authority within such time in such form as he may require in respect of each quarter such information relating to-

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- (a) the premises in each State at which the business of the distributor is carried on;
  - (b) the opening and closing stocks of motor spirit and the quantities received at each set of premises during that quarter;
  - (c) the sale or disposal of motor spirit by him from each set of premises during that quarter;
  - (d) the appropriation of motor spirit for the purposes of any business carried on by him during that quarter,  
as the prescribed authority may specify.
- (2) Every registered distributor shall upon demand made by the prescribed authority produce for inspection at such time and place as the prescribed authority may require any books or accounts or other documents of whatever nature relating to the matters in respect of which information may be required in accordance with subsection (1) of this section.
- (3) When a person ceases to be registered during any quarter he shall furnish to the prescribed authority within such time and in such form as he may specify such information as is mentioned in subsection (1) of this section in respect of that part of the said quarter during which he was registered.

#### **Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer. This provision is necessary to curb oil bunkering and like crimes in Nigeria. Unfortunately, the only aspect of the inspection covered by the above provisions is with respect to the quantity of the motor spirit, no mention of the quality is made. The later should have been included to checkmate the importation of bad motor spirit that has caused untold hardships to the end users.

#### **54. MEDICAL LABORATORY SCIENCE COUNCIL OF NIGERIA ACT**

##### **Purpose:**

“An Act to establish the Medical Laboratory Science Council of Nigeria, repeal the institute of Medical Laboratory Technology Act, cap 114 Laws of the Federation of Nigeria 2004; and for related matters”

##### **Relevant Provision:**

Section 8- Publication of Register

- (1) The registrar shall cause to be published in every year (as from the commencement of this Act) an updated Register of members.
- (2) The Registrar shall have custody of all published edition of registered

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members and shall ensure that all such publications are open for inspection by members of the public.

(3) Nothing in this section shall be construed as requiring the publication of names of student Members, or of Honorary Fellows except otherwise directed by the Council.

(4) Section 21 requires that the Rules made under the Act be published in the Gazette.

#### **Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

#### **55. NATIONAL AGENCY FOR POPULATION PROGRAMMES AND DEVELOPMENT ACT**

##### **Purpose:**

"An Act to establish the National Agency for Population Programmes and Development to ensure successful implementation of the National Policy on population at all levels in accordance with set goals and objectives"

##### **Relevant Provision:**

Section 22- Access to records etc

'For the purpose of carrying out the functions of the Agency under this Act, the executive Director or any other officer of the agency authorised in that behalf shall-

(a) Have a right of access to all records of any health institution or authority engaged in population activity;

(b) By notice in writing served on a person in charge of any health institution or authority, require that person or authority to furnish information on such matter as may be specified in the notice; engaged in population activity;

(2) it shall be the duty of a person or authority required to furnish information pursuant to subsection (1) of this section to comply with the notice within a reasonable period of time.

#### **Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

#### **56. NATIONAL BOARD FOR TECHNICAL EDUCATION ACT**

##### **Purpose:**

"An Act to establish the National Board for Technical Education as a body corporate to advise the Federal Government on all aspects of technical education which fall outside the scope of the universities and other matters ancillary thereto"

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**Relevant Provision:**

Section 15- Power to obtain information

For the purpose of carrying out the functions conferred on the Board under this Act, the executive secretary or any other officer of the Board authorised in that behalf -

- (a) Shall have a right of access to all the records of any institution to which this section applies;
- (b) May by notice in writing served on a person in charge of any institution, require that person or authority to furnish information on such matter as may be specified in the notice;
- (2) It shall be the duty of a person required to furnish information pursuant to subsection (1) of this section to comply with the notice within a reasonable period of time.

In this section, reference to an institution to which this section applies refers to any polytechnics, colleges of technology or technical institution.

**Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

**57. NATIONAL BUSINESS AND TECHNICAL EXAMINATION BOARD ACT**

**Purpose:**

“An Act to establish the National Business and technical Examinations Board to have responsibility for the general control of the conduct of the technical and business examination hitherto conducted by the Royal Society of Arts of London City and Guilds of London and the West African Examination Council and matters connected therewith”

**Relevant Provision:**

Section 18- Power to obtain information

For the purpose of carrying out the functions conferred on the Board under this Act, the Registrar or any other employee of the Board authorised in that behalf -

- (a) Shall have a right of access to all records of any institution to which this Act applies;
- (b) May by notice in writing served on a person in charge of any institution, require that person or authority to furnish information on such matter as may be specified in the notice;

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(2) It shall be the duty of a person required to furnish information pursuant to subsection (1) of this section to comply with the notice within a reasonable period of time.

**Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

**58. NATIONAL COMMISSION FOR COLLEGES OF EDUCATION ACT**

**Purpose:**

“An Act to establish the National Commission for Colleges of Education to, amongst other things, advise the Federal Government on all aspects of teacher education falling outside the universities, and polytechnics and other matters ancillary thereto.

**Relevant Provision:**

Section 15- Power to obtain information

(1) For the purpose of carrying out the functions conferred on the Commission under this Act, the executive secretary or any other officer authorised in that behalf -

(a) Shall have a right of access to all the records of any institution to which this section applies;

(b) May by notice in writing served on a person in charge of any institution, require that person or authority to furnish information on such matter as may be specified in the notice;

(2) It shall be the duty of a person required to furnish information pursuant to subsection (1) of this section to comply with the notice within a reasonable period of time.

(3) In this section, the reference to an institution to which this section applies is a reference to any colleges of education or institution for the production of teachers.

**Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

**59. NATIONAL COMMISSION FOR MASS LITERACY, ADULT EDUCATION AND NON-FORMAL EDUCATION ACT**

**Purpose:**

An Act to establish the National Commission for Mass Literacy, Adult and Non-Formal Education and to provide for matters connected therewith.



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**Relevant Provision:**

**Section 19- Power to obtain information**

For the purpose of carrying out the functions conferred on the Commission under this Act, the executive secretary or any other officer of the Board authorised in that behalf -

(a) Shall have a right of access to all the records of any institution or authority to which this Act applies for specific purpose of discharging his duties under this Act;

(b) May by notice in writing served on a person in charge of any institution or responsible for mass literacy, adult and non-formal education require that person to furnish information on such matter as may be specified in the notice;

(2) It shall be the duty of a person required to furnish information pursuant to subsection (1) of this section to comply with the notice within a reasonable period of time.

**Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

**60. NATIONAL COMMISSION FOR NOMADIC EDUCATION ACT**

**Purpose:**

“An Act to establish the National Commission for Nomadic Education which will, amongst other things, establish, manage and maintain primary schools for nomadic children.”

**Relevant Provision:**

**Section 16- Power to obtain information**

(2) For the purpose of carrying out the functions conferred on the Commission under this Act, the executive secretary or any other officer authorised in that behalf-

(c) Shall have a right of access to all the records of any institution to which this section applies;

(d) May by notice in writing served on a person in charge of any institution, require that person or authority to furnish information on such matter as may be specified in the notice;

(4) It shall be the duty of a person required to furnish information pursuant to subsection (1) of this section to comply with the notice within a reasonable period of time.

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In this section, the reference to an institution to which this section applies is a reference to any regular school established for nomadic people.

#### **Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

#### **61. NATIONAL DRUG LAW ENFORCEMENT AGENCY ACT**

##### **Purpose:**

“An Act to establish the National Drug law enforcement Agency to enforce laws against the cultivation, processing, sale, trafficking and use of hard drugs and to empower the agency to investigate persons suspected to have dealings in drugs and other matters related therewith.

##### **Relevant Provision:**

Section 46-Information to be supplied by Nigerian Diplomatic Mission.

(1) Every head of any Nigerian Diplomatic Mission abroad, shall at least once in every six months, forward to the agency, information and documents about Nigerians convicted and sentenced for drug offences in their country of accreditation.

#### **Comments:**

This is another provision where there is an interchange of information between the agencies of the government for purposes of giving effect to the intendment of the Act.

#### **62. NATIONAL FILM AND VIDEO CENSORS BOARD ACT.**

##### **Purpose:**

“An Act to, amongst other things, establish the National Film and Video Censors Board to regulate the censorship and public exhibition of films and video works and for matters connected therewith”

##### **Relevant Provision:**

Section 27- Information to be furnished by distributors and exhibitors.

A distributor or an exhibitor of a film or video work shall, whenever requested so to do by a person authorised in that behalf by the Board, produce to that person such books or other documents with respect to a film or video work, being a film or video work to which this Act applies, as the Board may require for the purpose of the enforcement of the provisions of this Act.

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### **Section 29- Register of Films and Video Work**

- (1) There shall be kept by the Secretary of the Board a register of films and video works containing particulars in relation to each film and video work.
- (2) The register shall be open for inspection by members of the public on the payment of the prescribed fees.
- (3) The Board shall on request by any person and on payment of the prescribed fee, furnish that person with a copy of the entry in the register relating to a particular film or video work, being a copy certified to be true by the Executive Director.

### **Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

### **63. NATIONAL HONOURS ACT**

#### **Purpose:**

"An Act to make provision for the award of National honours by a warrant, issued by the President, for matters connected therewith"

#### **Relevant Provision:**

Subsidiary legislation: Honours Warrant

Section 3: Mode of Appointment to Orders, etc-

"The president shall by notice in the Federal Gazette signify his intention of appointing a person to a particular rank of an Order."

### **Comments:**

These are measures to keep the affairs of the Government transparent.

### **64. NATIONAL INSURANCE COMMISSION ACT**

#### **Purpose:**

"An Act to establish the National Insurance Commission with responsibility, among other things, to ensure the effective administration, supervision, regulation and control of insurance business in Nigeria.

#### **Relevant Provision:**

Section 39 empowers the Commission to obtain information from any insurance institution, for the purposes of carrying out its functions under the Act.

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**Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

**65. NATIONAL MANPOWER BOARD ACT**

**Purpose:**

‘An Act to establish the National Manpower Board to, among other things, determine and advise the Government on the nation’s manpower needs in occupations.’

**Relevant Provision:**

Section 20 granted the Executive Secretary of the Board access to all training and employment records of any establishment or institution needed by the Board in carrying out its functions under the Act.

**Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

**66. NATIONAL MEDICAL COLLEGE ACT**

**Purpose:**

“An Act to establish a National Medical College to be charged with the responsibility of conducting examinations in the various specialised branches of medicine, surgery, obstetrics and gynaecology and dental surgery and other related matters.

**Relevant Provision:**

Section 13-Publication of approved standards and institutions

The College shall, from time to time, publish in Federal Gazette and elsewhere as it may think fit-

(a) Particulars of the standard which are to be treated as sufficient for the purposes of examinations conducted by the College pursuant to this Act; and

(b) The list of institutions recognised for the purposes of section 10 of this Act.

Section 10 refers to Candidates qualified for examination under the Act (i.e. registered medical practitioner, holder of certificate in a prescribed course, from a recognised institution).

**Comments:**

Comments on ‘Computer Professionals (Registration Council of Nigeria) Act of 1993’ refer.

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**67. NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION ACT**

**Purpose:**

“An Act to establish the National Office for Technology Acquisition and Promotion, to monitor on a continued basis, the transfer of foreign technology to Nigeria and to provide for other related matters.”

**Relevant Provision:**

Section 14 empowers the Director or any other staff of the National Office requires information from anybody carrying on an industrial or commercial undertaking.

**Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

**68. NATIONAL SALARIES, INCOME AND WAGES COMMISSION ACT**

**Purpose:**

“An Act to establish the National Salaries, Income and Wages Commission to, among other things, advise the Federal and State Governments on National income policy.

**Relevant Provision:**

Section 10-

(1) The Commission may from time to time and shall when so directed by the president, prepare guideline on any question relating to wages or other forms of income or to prices, charges or other sums payable under transaction of any description relating to any form of property, rights, services of any description or to returns in capital invested in any form of property, including dividends in relation to any of its functions under or pursuant to this Act.

(2) Guidelines prepared pursuant to subsection (1) of this section shall be submitted to the president who may direct such action thereon as he may consider fit in the circumstance.

(3) Where the president directs the enforcement of any restraint or any other matter, then it shall be the duty of the Commission to implement any such direction and if it thinks fit, through any of its operational arms. (2) Guidelines prepared pursuant to subsection (1) of this section shall be submitted to the president who may direct such action thereon as he may consider fit in the circumstance.

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(3) Where the president directs the enforcement of any restraint or any other matter, then it shall be the duty of the Commission to implement any such direction and if it thinks fit, through any of its operational arms.

(4) The Commission shall give public notice, in any manner as it may determine, of any restraint or any other matter requiring to be enforced pursuant to this section.(4)

The Commission shall give public notice, in any manner as it may determine, of any restraint or any other matter requiring to be enforced pursuant to this section.

Section 14 empowered the secretary or any other officer of the Commission to obtain from any person in charge of any undertaking, all information relevant for the efficient dispatch of its duties under the Act. Section 14 empowered the secretary or any other officer of the Commission to obtain from any person in charge of any undertaking, all information relevant for the efficient dispatch of its duties under the Act.

#### **Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

#### **69. NATIONAL UNIVERSITIES COMMISSION ACT**

##### **Purpose:**

“An Act to set up the National Universities Commission as a body corporate charged with the responsibility of advising the Federal and State Governments of all aspects of university education and the general development of universities in Nigeria.”

##### **Relevant Provision:**

Section 13 gave the Executive Secretary of the Commission or any officer so authorised, access to all records of any institution to which this Act applies.

#### **Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

#### **70. NIGERIAN COMMUNICATIONS ACT**

##### **Purpose:**

“An Act to establish the National Frequency Management Council and the Universal Access Fund and to reform the Nigerian Communications Commission and repeal the Nigerian Communications Commission Act, 1992; and for related matters”

**Relevant Provision:**

**Part II - Inquiry**

57. –(1) The Commission may hold a public inquiry on any matter of a general nature that relates to the administration of this Act or its subsidiary legislation which will serve the objects of this Act.

58. –(1) Subject to section 57 of this Act, if the Commission decides to hold a public inquiry, the Commission shall publish, in the manner that it deems appropriate, notice of –

the fact that it is holding the inquiry;

the period during which the inquiry is to be held;

the nature of the matter to which the inquiry relates;

the period, of at least 21 days, within which, and the form in which, members of the public are invited to make submissions to the Commission about the subject - matter of the inquiry;

the matters that the Commission would like the submissions to deal with; and

the address or addresses to which the submissions may be sent.

60- (1) The Commission shall publish a report setting out its findings as a result of any inquiry it conducts and the report shall be published within 45 days of the conclusion of the inquiry.

(2) The Commission shall not include in the report any material – that is in the Commission's opinion, of a confidential nature; and the disclosure of which is likely to prejudice the fair trial of a person; and which would involve the unreasonable disclosure of personal information about any individual (including a deceased individual)

(3) Civil proceedings shall not lie against a person in respect of any loss, damage or injury of any kind suffered by another person because of any of the following acts -

the making of a request under section 57 of this Act; or the making of a statement or giving of a document or information, to the Commission in relation to an inquiry under this Chapter.

**Part III - Investigation for purposes of administration, inquiry, etc.**

61. Notwithstanding the provisions of any other written law, the Commission may investigate any matter pertaining to the administration of this Act or its subsidiary legislation if the Commission has grounds to believe that an infringement, civil or criminal, of the provisions of this Act or its subsidiary legislation was, is or will be committed.

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63 (6) The Commission may, after concluding an investigation, prepare and publish a report which shall cover –

the conduct of the investigation concerned;

any findings that the Commission has made as a result of the investigation;

the evidence and other material on which those findings were based; and

such other matters relating to, or arising out of, the investigation as the Commission thinks fit.

**Part IV - Information-gathering Powers**

64. –(1) This section applies to any person who is subject to this Act and who the Commission has reason to believe –

has any information including but not limited to accounts and records or any document that is relevant to the exercise of the Commission's powers and functions under this Act or its subsidiary legislation; or

is capable of giving any evidence which the Commission has reason to believe is relevant to the exercise of the Commission's powers and functions under this Act or its subsidiary legislation.

(2) The Commission may, by a written notice, direct any person who is subject to this Act to –

give the Commission, within the period and in the manner and form specified in the notice, any such information;

produce to the Commission, within the period and in the manner specified in the notice, any such documents, whether in a physical form or in an electronic media; or

make copies of any such documents and to produce those copies to the Commission within the period and in the manner specified in the notice;

(3) The Commission shall allow the person so directed under subsection (2) of this section a reasonable time to give and to produce any information or documents specified in the notice.

(4) Any person who is subject to this Act and who is required to provide information under subsection (2) of this section shall ensure that the information provided is true, accurate and complete and such person shall provide a representation to that effect, including a representation that he is not aware of any other information which would make the information provided untrue or misleading.

65. –(1) Notwithstanding the provisions of section 55 of this Act, a person who is subject to this Act and who fails to comply with a direction of the Commission under this Part shall be liable to the payment of fine



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to the Commission in such amount as the Commission may at its discretion impose.

(2) Notwithstanding the provisions of sections 55 of this Act and subsection (1) of this section, a person who is subject to this Act and who fails to disclose or omits to give any relevant information or evidence or document, or provides information or evidence or document that he knows or has reason to believe is false or misleading, in response to a direction issued by the Commission commits an offence and on conviction is liable to a fine not exceeding N100,000.00 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

66. –(1) A person who is subject to this Act shall, if at any time called upon in writing by the Commission to do so, produce to the Commission all such evidence and provide all such information as the person may have relating to his compliance with any of the provisions of this Act or its subsidiary legislation, as the Commission may generally, or in relation to any particular case, require.

(2) The Commission may take, and retain for as long as is necessary, possession of a document produced under this Chapter and the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission to be a true copy.

(3) Notwithstanding the provisions of any other written law, all courts and tribunals shall receive the certified copy as evidence as if it were the original.

(4) Until a certified copy is supplied, the Commission shall, at such times and places as the Commission thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from the document.

67. –(1) The Commission shall maintain a record of all information, evidence or documents received pursuant to the directions given under section 64(2) of this Act.

(2) The Commission may publish information received in the course of exercising its powers and functions under this Chapter if it is satisfied that the publication is consistent with the objects of this Act Provided that the Commission shall consider the commercial interests of the parties to whom the information relates before publishing the information.

**Part V - Register**

68. –(1) The Commission shall maintain a register, in both physical

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form and electronic media, of all matters that are required to be registered under this Act and its subsidiary legislation.

69. –(1) A person may, on payment of the charge, if any, to be decided by the Commission –

Inspect the register; and make a copy of, or take extracts from, the Register.

(2) If a person requests that a copy be provided in an electronic media, the Commission may provide the relevant information -

on a data processing device; or

by way of electronic transmission.

(4) The Commission shall from time to time publish guidelines in regard to its various registers giving details of the registers and indicating, amongst others, access processes and procedures for members of the public.

### **Comments:**

The Nigerian Communication Commission is a Commission established to regulate the Communication industry and so exchange of information between the Commission and other agencies of the Government and the public at large is very necessary.

Section 58 refers to publication of details of any public inquiry intended by the Commission; section 60 refers to publication of the findings of the Commission; section 51 and 53 refers to further provisions on publication of details of investigation and publication of the report respectively; section 64 refers to the power of the Commission to get information from anybody for the purpose of carrying out its functions under the Act; section 64 makes it an offence to withhold information requested by the Commission or to give the Commission false information; section 66 empowers the Commission to request for and retain any document or evidence in possession of another person and issue the person Certified True Copy (CTC) of the document, where it is necessary for the Commission to keep the said document for the purposes of its duties under the Act; section 57 and 58 of refers to the obligation imposed on the Commission to maintain a register of all the information received under the Act and of all the registers required to be kept by the Act respectively and section 69 allows the public to inspect such documents or register.

In all, the provisions are aimed at giving the Commission all the necessary information it might need to carry out its functions under the Act while also compelling the Commission to avail the public information within its knowledge and to make its proceedings and activities open to the public.

Thus the comments on Economic and Financial Crimes Commission of 2004 and that of 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

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**71. NIGERIAN INSTITUTE OF PUBLIC RELATIONS PRACTITIONERS ACT**

**Purpose:**

“An Act to establish the Nigerian Institute of Public Relations Practitioners and to make provisions, amongst other things, for membership, for the membership and the control of the profession of public relations and for matters connected therewith.

**Relevant Provision:**

Section 8 provides for the appointment of Registrar, etc., and preparation of the register.

(3)- It shall be the duty of the Registrar to prepare and maintain in accordance with rules made by the Council, a register of the names, addresses, approved qualifications, and of such other qualifications and particulars, as may be specified in the rules, of all persons who are entitled in accordance with the provisions of this Act to be enrolled as fellows, members or associates or registered as public relations practitioners and who, in the manner prescribed by such rules, apply to be so registered.

Section 9- Publication of register and list of correction:

(1) ‘It shall be the duty of the Registrar-

(a) To cause the register to be printed, published and put on sale to members of the public, not later than two years from the commencement of this Act; and

(b) In each year after that in which the register is first published under paragraph (a) of this subsection, to cause to be printed, published and put on sale as aforesaid, either a corrected edition of the register or a list of corrections made to the register, since it was last printed; and

(c) To cause a print of each edition of the register and of each list of corrections to be deposited at the principal offices of the institute.

(2) It shall be the duty of the registrar to keep the register and lists so deposited, to be made available to members of the public at all reasonable times for inspection.

By section 16, a public relations practitioner includes one who renders professional service or assistance, in or about matters of public relations.

**Comments:**

Comments on ‘Computer Professionals (Registration Council of Nigeria) Act of 1993’ refer.

**72. NIGERIAN RAILWAY CORPORATION ACT**

**Purpose:**

‘An Act to provide for the establishment of a corporation to be known as the Nigerian Railway Corporation, for the transfer to the Corporation of the railway undertaking of the Government of the Federation, for the functions of the Corporation, and for purposes connected therewith.’

**Relevant Provision:**

Section 53-‘The Minister may cause the whole or any part of any report made to him under this part, to be made public in such manner as he thinks fit’.

Section 80-Publication of tariffs-

‘Subject to subsection (3) of this section, the following matters shall be embodied in printed tariffs and published by the Corporation-

- (a) Rates, fares, other charges and conditions fixed or imposed under section 18 ... of this Act.
- (b) The upper limits of rates and fares determined by the Minister under section 18 of this Act.

(2) Subject to the provisions of subsection (3) of this section, every amendment made to any of the matters mentioned in subsection (1) of this section, shall be printed and published by the Corporation, and shall take effect upon such date, not being a date earlier than the date of publication, as may be specified in the amendment; and for the purposes of this subsection, an amendment shall be deemed to be published upon a notice containing particulars of the amendment, or stating that a printed copy of the amendment may be inspected at any station of the railway, being published in the Gazette or in any newspaper circulating in Nigeria.

(3) Notwithstanding the foregoing provisions of this section, the Corporation shall not be obliged to print or publish the following matters-

- (a) a remission of any rate, fare or other charge printed under the powers conferred by paragraph (e) of section 18 of this Act;
- (b) an amendment reducing any rate, fare or other charge;
- (c) the fixing of charges other than rates and fares;
- (d) the fixing, under the powers conferred by paragraph (f) of section 18 of this Act, of a rate or charge higher than the upper limit determined in respect thereof by the Minister.

And any such remission or amendment or fixing of a rate, fare or other charge shall take effect at such time, or for such period, or in such circumstance and subject to such conditions as the Corporation may specify.

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### **Comments:**

Section 53 (supra) gave the minister a wide discretion to publish or not to publish information and how to do same. It is hoped that this discretion will be used judiciously in the interest of the public. However, this access to information is restricted by section 80 and it is not clear why the law placed these restrictions. It would have been ideal to inform the public of any increase in the existing rate or charge and also the reason for such increase.

### **73. NIGERIAN URBAN AND REGIONAL PLANNING ACT.**

#### **Purpose:**

This Act provides the practice and procedure for urban and regional planning.

#### **Relevant Provision:**

Section 13- Procedure for preparation of National Physical Development Plans

(1) For the purpose of securing integration, consistency and coherence within and between all levels of the National Physical Development Plans in Nigeria, the Commission shall during the preparation of the National Physical Development Plan, call for submissions from all relevant government organisations, non-governmental organisations and interested members of the public whose contribution shall serve as part of the input towards the preparation of a draft National Physical Development Plan.

(2) The Minister may make rules as to the manner and method of notice and method of submission of inputs referred to in subsection (1) of this section.

(3) The secretary to the Commission shall collate all the submissions made in compliance with the provisions of this section

Section 15-Submission of Objections to draft plans by members of the public to the Commission

(1) Any member of the public, federal, state, local governments, governmental and non-governmental organisations and professional bodies during the period of exhibition of the draft National Physical Development Plan may submit to the Commission written statements of their objections to anything appearing in the said plan and these shall –

(a) Define the nature and reasons for the objections; and

(b) Suggest alterations and amendments to be made to remove the objections.

(2) The Commission shall acknowledge receipt of all such written statement of objection

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**Section 16- Commission to prepare summary of objections and comments-**

- (1) The Commission shall prepare schedules of summaries of the objections and comments submitted to it.
- (2) The Secretary of the Commission shall submit such schedules within a period of two months after the final day after exhibiting the draft National Physical Development Plan to the technical committee which shall review the objections and comments and prepare a revised draft plan which takes account of these objections and comments

**Section 17-Scrutiny of comments and objections**

The Commission shall within a period of two months, meet to consider the revised draft National Physical Development Plan together with the accompanying schedule of comments and objections.

**Section 19- Approval of plan by the legislative body**

- (1) Upon the receipt of the final draft plan, the legislative body may-
  - (a) Approve it wholly
  - (b) Approve part of it; or
  - (c) Refer it to the Commission for further consideration and amendment of the whole or part thereof.
- (2) A plan approved under subsection (1) of this section shall be referred to as an “Operative National Physical Development Plan” and a notice to this effect shall be published in the Gazette and in at least two widely read National Newspapers.

**Section 20- Deposit of the Operative National Physical Development Plan**

- (1) Copies of the Operative National Physical Development Plan, certified by the appropriate officer of the legislative body, shall be deposited with the Commission, the State and local government counterpart for the purpose of safe keeping.
  - (2) Copies of the plan shall be made available for sale to members of the public at a price to be determined by the Commission
- Section 21 provides that the plan shall be reviewed every 5 years following the same procedure and by section 25, same procedure applies for the making of regional, sub-regional plans, rural plan, etc.

**Section 81- Consultation and co-operation in improvement areas**

- (1) The appropriate authority shall before declaring any part of an area to be an improvement area-
  - (a) Use its best endeavour to inform, by such means as it deems fit, the residents of the proposed improvement area of-
    - (i) The purpose and contents of the proposed improvement

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- (ii) The powers vested in the authority; and
  - (iii) The facilities which would be made available and benefits to be derived in the area;
  - (b) Hold meetings with the local government of the area or any other associations in the area to-
    - (i) Ascertain the views of the residents on the proposed improvement area and the exercise of power relating thereto;
    - (ii) Set up liaison or consultative committees between the authority and the representatives of the resident to monitor the progress of the rehabilitation, renovation or upgrading in the area;
  - (c) Inform other relevant statutory authorities of the proposed improvement area and invite their views and comments thereon;
  - (d) Take into accounts the views and comments made under paragraph (b) and (c) of this subsection and from other interested parties on the proposed improvement area.
4. Urban and Regional Planning Tribunal (Federal Capital Territory, Abuja) Procedure) Rules, (A subsidiary Legislation made pursuant to section 89 of the Act, which empowered the AG to make rules of procedure for the tribunal.

Section 9- The proceedings of the tribunal shall be held, and its findings and directions shall be pronounced, in public.

**Section 20-Record of Proceedings**

- (1) Shorthand notes of proceedings may be taken by a person appointed by the tribunal and any party who appeared at the proceedings shall be entitled to inspect the transcript thereof.
- (2) The secretary shall supply to any person entitled to be heard upon an appeal against the direction of the Tribunal and to the High Court of the Federal Capital Territory, Abuja, but to no other person, a copy of the transcript of such notes on payment of such charges as may be determined by the secretary.
- (3) If no shorthand notes be taken, the chairman of the tribunal shall take a note of the proceedings and the provisions of these rules as to inspection and taking of copies shall apply to such notes accordingly.

**Comments:**

This is an Act designated for the physical planning of the nation. This is an exercise that affect the social and cultural life of the people to a great extent, thus the Act deemed it expedient to involve the public in the decision-making process of the Commission.

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Section 13 demands that in preparing the National Physical Development Plans in Nigeria, the Commission shall call for submissions from all relevant government and non-governmental organisations and interested members of the public; section 15 allows for objections to be made by members of the public to the draft plan; section 16 mandates the Commission to prepare schedules of the submissions and objections submitted to it; by section 17, same submissions and objections are to be scrutinised and put into consideration before taking any decision; by section 19, upon approval of any plan, notice of same shall be published in the Gazette and in at least two widely read National Newspapers; section 20 mandates the Commission to make copies of the plan available upon payment of fee, to the public. Finally, section 81 demands that before declaring any area an improvement target, the Commission must consult and corporate with residents and Local Government Authority of the area.

All these measures are to ensure fairness and justice in the entire exercise. Any attempt to impose the decision of the Commission on the people will defeat the whole essence of the Act which includes integration of the people. This Act should be applauded for putting into consideration, the social-cultural differences of the Nigerian peoples.

Under the Subsidiary legislation, with respect to section 9, Comments on 'Registered Engineers (Disciplinary Tribunal and Assessors) Rules (a subsidiary legislation to 'Engineers (Registration etc.) Act of 1970' refers; and with respect to Section 20, Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

#### **74. NURSING AND MIDWIFERY ACT**

##### **Purpose:**

"An Act to establish the Nursing and Midwifery Council of Nigeria for the registration of nurses and midwives in Nigeria and State Nursing and Midwifery Committees and to provide for the discipline of nurses and midwives and other ancillary matters"

##### **Relevant Provision:**

Section 6 requires the Registrar to keep a register of the names, addresses, qualifications and other particulars of persons who are qualified as nurses and midwives and who applied in the specified manner to be registered.

Section 7-

(1) The registrar shall –

(a) Cause a list of persons whose names and qualifications are contained in the register to be printed, published and put on sale to members of the public not later than six months from the beginning of the year in which this subsection comes into force.

(b) In each year after that in which a register is first published under paragraph (a) of this subsection, cause to be printed, published and



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put on sale as aforesaid either a corrected edition of the register or a list of corrections made to the register since it was last printed; and

(c) Cause a print of each edition of the register and each list of corrections to be deposited at all offices of the Council,

And the Council shall cause the register or keep the register and lists so deposited to remain open at all reasonable time for inspection by members of the public.

**Comments:**

Comments on 'Computer Professionals (Registration Council of Nigeria) Act of 1993' refer.

**75. SUBSIDIARY LEGISLATIONS-**

i. "Nurses (Disciplinary Tribunal and Assessors) Rules

Section 7- Proceedings and pronouncement of directions shall be in public.

Section 11- Direction of the tribunal to be published in the Federal Gazette as soon as may be, after the direction takes effect.

Section 12- Records of the proceedings to be kept and made available only to those who wants to appeal.

ii. Midwives (Disciplinary Tribunal and Assessors) Rules;

**Relevant Provision:**

Section 6- proceedings and directions to be in public unless the AGF directs otherwise in the interest of public morality or the assessors acting with the tribunal advises to the like effect.

Section 10- Publication of the findings and directions to be published in the Federal Gazette.

Section 11- records of proceedings to be kept open for inspection by any party appearing at the tribunal and supplied to any person appealing on the direction.

**Comments:**

Comments on 'Registered Engineers (Disciplinary Tribunal and Assessors) Rules refer.

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**76. NIGERIAN INSTITUTE OF SCIENCE LABORATORY TECHNOLOGY ACT**

**Purpose:**

“An Act to establish the Nigerian Institute of Science Laboratory Technology; and charged with, the responsibility amongst other things, of advancing Science Laboratory Technology Profession; and for related matters”

**Relevant Provision:**

Section 9- Preparation of Register of names, addresses and particulars of persons entitled to be registered as members and those who have applied in the manner prescribed.

Section 10- Publication of the register within two years; publication of corrections etc.

**Comments:**

Comments on ‘Computer Professionals (Registration Council of Nigeria) Act of 1993’ refer.

**77. NATIONAL IDENTITY MANAGEMENT COMMISSION ACT**

**Purpose**

“An Act to provide for the establishment of the National Identity Database and the National Identity Management Commission to be charged with the responsibilities for maintenance of the National Database, the registration of individuals, and the issuance of Multi-Purpose Identity Card; and for related matters”

**Relevant Provision:**

Section 20 on the power of the Commission to require information from any person for purposes of its duties under the Act

Section 26 prohibits a person or body corporate from having access to information contained in Database of a registered individual except with the consent of the person.

However, by subsection (2), the Commission may allow access without the consent of a registered individual if-

- (a) It is in the interest of national security
- (b) It is necessary for purposes connected with the prevention or detection of crime; or
- (c) It is for any other purpose as may be specified by the commission in a regulation

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### **COMMENTS:**

Comments on Economic and Financial Crimes Commission of 2004 refer. The restrictions and the limitation to the restriction are well thought out to protect the right to privacy of individuals and to protect the security of the nation, respectively.

### **78. NIGERIAN SECURITY AND CIVIL DEFENCE CORPS ACT**

#### **Purpose:**

“An Act to establish the Nigerian Security and Civil Defence Corps; and for related purposes”.

#### **Relevant Provision:**

Section 25 empowered the Commandant-General to obtain information needed for the performance of the provisions of the Act from anybody or premises.

#### **Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

### **79. NIGERIAN TELEVISION AUTHORITY ACT**

#### **Purpose:**

“An Act to establish the Nigerian Television Authority to be charged with the responsibility for the provision of television broadcasting in Nigeria and other matters related thereto.”

#### **Relevant Provision:**

Section 8- Duty of the Authority as to Programmes and Publications-

- (1) The Authority shall satisfy itself that the programmes broadcast by the Authority or on its behalf comply with the following requirements-
  - (a) That nothing is included in the programme which is likely to offend against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling, or to contain any offensive representation of, or reference to, a living person;
  - (b) That the programme maintain a proper balance in their subject matter and a generally high standard of quality;
  - (c) That any news given in the programmes (in whatever manner) is presented with accuracy, impartiality and objectivity;
  - (d) That due impartiality is preserved in respect of matters of political or industrial controversy or relating to current public policy; and
  - (e) That, subject to the provisions of subsection (2) of this section, no matter designed to serve the interests of any political party is included in the programmes.

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(2) Nothing in paragraph (e) of subsection (1) of this section shall prevent-

(a) The inclusion in the programmes of properly balanced discussions or debates in which the person taking part express opinions and put forward arguments of a political character; and

(b) The inclusion in the programmes of party political broadcasts which seek to explain the views and policies of the various political parties in accordance with a scheme of such broadcasts which apportions the facilities and time allowed between representatives of the political parties in such manner as appears to the authority equitably to represent their respective claims to the interest of the public.

(3) The Authority shall secure the exclusion from any publication which may be issued by it, or on its behalf, and without prejudice to the generality of the provisions of this section, from the programmes broadcast by it or on its behalf, of all expressions of its own opinion as to the matters referred to in paragraph (d) of subsection (1) of this section, or as to any matters of any of its members or officers, or of the opinion of any such matters of any director or officer or agent of the Authority.

#### **Section 9- Broadcasting of Matters**

Without prejudice to the generality of section 6 of this Act, the Authority shall provide such facilities as may appear to the Authority to be desirable in the public interest for the broadcasting of-

(a) Ministerial speeches, that is any speeches of the members of the National Assembly, Council of State, the President, Vice-President and Ministers of the Government of the Federation or members of the Houses of Assembly, the Governor and Deputy Governor and the Commissioners of a State which consist wholly of statements of facts or which explains the policy and actions of the Government concerned; and

(b) Matters of any kind (including religious services and ceremonies) relating to or representing the main stream of religious thought or belief in Nigeria.

#### **Comments:**

Section 8 imposed a number of restrictions on the Authority in the exercise of its statutory duty, but it is considered under this segment because it nevertheless allowed the authority to broadcast. These restrictions seem appropriate and in order, subject to caution so that it is not stretched too far.

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**80. POLICE ACT**

**Purpose:**

“An Act to make provision for the organisation, discipline, powers and duties of the police, the special constabulary and the traffic wardens.”

**Relevant Provision:**

Subsidiary Legislation- The Nigeria Police Regulations.

Section 10- Police Territorial Boundaries to be published in the Gazette

The Inspector-General shall publish the description of the territorial boundaries of the police divisions, police districts and police stations in the Federal Gazette.

Section 24- Regrading of Formation to be published in the Federal Gazette

The setting up of, the regrading of, the closure of any of the formation mentioned in regulation 23, shall be published in the Federal Gazette.

The formations referred to under regulation 23 are - new police area commands, districts and divisions; new police stations, new police posts.

**Comments:**

Comments on ‘Computer Professionals (Registration Council of Nigeria) Act of 1993’ refer.

**81. PUBLIC ENTERPRISES (PRIVATISATION AND COMMERCIALISATION) ACT**

**Purpose:**

“An Act to provide for privatisation and commercialisation of certain public enterprises and to establish the National Council on Privatisation and the Bureau for for Public Enterprises; and for matters relating thereto.”

**Relevant Provision:**

Section 16 (Powers of the Bureau)

‘The Bureau shall, subject to the overall supervision of the council, have power to request for and obtain from any public enterprise

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statistical and other information including reports memorandum and audited accounts and other information relevant to its functions under this Act;”

### **Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

## **82. PUBLIC ENTERPRISES REGULATORY COMMISSION ACT**

### **Purpose:**

“An Act to establish the Public Enterprises Regulatory Commission (in this Act referred to as “the Commission”)

### **Relevant Provision:**

Section 8- Powers of the Commission

- (1) The Commission shall have power to-
  - (a) Invite any director or officer of a public enterprise or any director or officer of the public enterprise;
  - (b) Call for memorandum from any public enterprise or any director or officer of the public enterprise;
  - (c) Ask for and receive from a public enterprise, reports, audited accounts or such other information relating to the public enterprise as may be required for the purposes of the Commission and in whatever manner it deems fit;
  - (d) Monitor any matter to the extent that it affects the functions of the Commission;
  - (e) Enter and inspect premises, projects and such other places as may be necessary for the purposes of carrying out its functions under this Act.

### **Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

## **83. STAMP DUTIES ACT**

### **Purpose:**

“An Act to provide for the regulation of stamp duties on certain matters”

### **Relevant Provision:**

Section 24- Certain Rolls and Books to be open for Inspection

- (1) Every person having in his custody any rolls, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission

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in relation to any duty, shall at all reasonable times permit any person thereto authorised by the Commissioner to inspect the rolls, books, records, papers, documents and proceedings, and to take such notes and extracts as he deems necessary, without fee or reward, and in case of refusal, shall for every such refusal be guilty of an offence and be liable on conviction to a fine of N20

(2) Where such rolls, books, records, papers, documents or proceedings are in the custody of any bank, such inspection shall first be made by a Commissioner unaccompanied by any other person unless the Commission decides that it is necessary for him to have assistance in determining whether any fraud or omission in relation to any duty has taken place.

#### **Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

#### **84. STANDARD ORGANISATION OF NIGERIA (SON) ACT**

##### **Purpose:**

“An Act to establish the SON, to standardise methods and products in Nigerian Industries and to provide for other matters connected thereto”

##### **Relevant Provision:**

Section 18- Power to enter premises and obtain information

(1) For the purposes of carrying out the functions of the organisation under this Act, the Director General and any other officer or servant of the Organisation authorised by the director in writing-

(a) Shall have the right of access at all times to any building or other premises where an Industrial or commercial undertaking is being carried on; and

(b) May by notice in writing served on any person carrying on an industrial or commercial undertaking require that person to furnish in such form as he may direct, information on such matters as may be specified by him.

Section 21- Report

(1) The Council shall as soon as possible after the end of each year submit to the Minister a report on the activities of the Council and the Organisation during the last preceding year.

(2) The Organisation may from time to time publish report on any of its activities and when such reports are published, the organisation shall-

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- (a) distribute copies thereof free to department of Government of the Federation or a state and to such other bodies as may be approved by the Council; and
- (b) where appropriate, make copies available for sale to the public and other interested parties, and such report shall be in addition to any other publication made by it under this Act.

**Comments:**

With respect to section 18, comments on Economic and Financial Crimes Commission Act of 2004 refer while with respect to section 21, comments on Computer Professionals (Registration Council of Nigeria) Act of 1993 refer'.

**85. SMALL AND MEDIUM SCALE ENTERPRISES DEVELOPMENT AGENCY OF NIGERIA ACT.**

**Purpose:**

“An Act to establish the Small and Medium Scale Enterprises Development Agency to be charged with the responsibility for promoting and facilitating the development programmes in the Small and Medium Scale Industries sub-sectors and for connected purposes.”

**Relevant Provision:**

Section 9- Powers of the Agency

- (1) In pursuance of section 8 of this Act, the Agency shall have power to –
  - (a) Demand and obtain relevant information, data and report on activities relating to the promotion and dev of small and medium scale industries from banks, research and development institutions and other support organisation.

**Comments:**

Comments on Economic and Financial Crimes Commission of 2004 refer.

**86. Trade Disputes Act**

**Purpose:**

An Act to make provisions for the settlement of Trade Dispute and other matters ancillary thereto.

**Relevant Provision:**

Section 34- Report of Board of Inquiry

- (1) A Board of Inquiry appointed under section 33 of this Act may if it thinks fit, make interim reports.



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- (2) Every report of such a Board of Inquiry including any interim report and any minority report shall be submitted to the minister.
- (3) Subject to subsection (4) of this section, the minister may cause to be published at such time or times and in such manner as he may think fit, any information obtained or conclusively reached in the course of or as a result of its inquiry.
- (4) Except with the consent required by this subsection, there shall not be included in any report made by such a Board of Inquiry, or in any publication authorised by the minister under this section, any information obtained by the Board in the course of its inquiry-
- (a) With respect to any trade dispute; or
  - (b) With respect to any particular business or undertaking, whether carried on by a particular individual, a firm or a company or other body corporate,
- Being in either case, information which is not available than through evidence given at the enquiry.
- (5) The consent required by subsection (4) of this section is, in the case of information with respect to a trade union, consent given on behalf of the union by an official thereof authorised by the union to give that consent and, in the case of information with respect to any business or undertaking, consent given by or on behalf of the individual, firm, company or other body corporate carrying on the business or undertaking.
- (6) If any individual member of a Board of Inquiry appointed under section 33 of this Act, or any other person concerned in the inquiry, discloses any such information as is mentioned in subsection (4) of this section without the consent required by the subsection, he shall be guilty of an offence and be liable on conviction to a fine of N200.

**Comment:**

Section 34 gives the minister discretion to publish or not to publish the report of the Board of inquiry constituted under this Act. It is considered under this segment because there is likelihood that the public will have access to the information. Nevertheless, it must be pointed out that the discretion given to the minister could be interpreted as a restriction to access to information because the discretion could be exercised to the contrary.

**87. TRADE MARKS ACT**

**Purpose:**

“An Act to repeal the Trade Marks Act and make new provisions with respect to Trade Marks in place thereof and for connected purposes”.

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### **Relevant Provision:**

Section 2- The Register:

- (1) There shall continue to be kept the record called the register of trademarks, in which shall be entered all registered trademarks with the names and addresses of their proprietors, the date on which applications were made for their registration, notifications of assignments and transmissions, the names and addresses of all registered users and such other matters relating to registered trademarks as may be prescribed.
- (2) The register shall continue to be kept under the control and management of the Registrar at the Registrar's office.
- (3) The register shall continue to be divided into two parts called respectively Part A and Part B;
- (4) The register shall at all convenient times be open to the inspection of the public, subject to such rules as may be prescribed

### **Comments:**

Comments on Computer Professionals (Registration Council of Nigeria) Act of 1993 refer'.

## **88. TREATIES (MAKING PROCEDURES ETC.) ACT**

### **Purpose:**

"An Act to provide, amongst other things, for treaty-making procedure and the designation of the Federal Ministry of Justice as the depository of all treaties, entered into between the Federation and any other country".

### **Relevant Provision:**

Section 5- Register of Treaties:

- (1) It shall be the duty of the Federal Ministry of Justice to prepare and maintain a register of treaties (in this Act referred to as "the register") for the purposes of this Act.

The register maintained under subsection (1) of this section shall be open at all reasonable time for inspection by members of the public on the payment of such token as, may be determined from time to time.

### **Comments:**

Comments on Computer Professionals (Registration Council of Nigeria) Act of 1993 refer'.

# *Laws That Hinder Access to Information/ Freedom of Information In Nigeria*

## INTRODUCTION

In this part of the report, particular attention is given to every provision in the Laws of the Federation of Nigeria that hinders freedom of information.

Some of the provisions are mere oath of secrecy required of some professions in order to protect the parties involved and to preserve the profession.

Furthermore, some of the laws that establish agencies and institutions of the government have provisions mandating the employees and officers of the agency or institution to desist from making personal use of the information that came to their knowledge by virtue of their employment in the agency or institution.

There are other provisions that classify information as either official, secret or qualified, with either condition for dissemination of same or outright prohibition of such dissemination. These laws culminated in the Official Secrets Act, Criminal Code and the evidence Act etc.

The relevance of these provisions to the Government was highlighted in the Constitution by section 39 which though recognised right to freedom of information nevertheless provides thus-

(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -

(a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or

(b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

In other words, though the Constitution recognised freedom of information, provisions hindering same in laws like the Criminal Code Act, Official Secrets Act etc, which impose restrictions upon officers of the Government, are equally constitutionally recognised and validated once they are said to be 'reasonably justified in a democratic setting'.

The mischief that the Constitution set out to cure could be protecting the sovereignty and security of the nation; unfortunately, it has been manifested that giving the government the discretion to determine whether a restriction is reasonably justified in a democratic setting is a huge risk and a big threat to freedom of information. Thus

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most times, these laws are invoked to cover the corrupt practices of the individuals in government and a few elite, and to confer on them, a reputation that they do not deserve.

State interest tends to be more subjective and often invokes emotive interests, easily exploited by public officials who regard free access to information as unnecessary interference to the orderly working of government; criticisms of government actions are sometimes looked upon as prejudiced and one may easily be labelled as an enemy of the state. Most of these laws have done more harm than good and requires a total appraisal.

Nigerian government has a characteristic penchant for abuse of discretion; it could be blamed on the level of democracy of the government, the fact remains that the government is not matured enough to exercise certain discretions or determine judiciously and transparently, what is reasonable.

To highlight the views expressed above, a quick review of the laws that hinder access to information are hereunder considered.

#### **1. BORDER COMMUNITIES DEVELOPMENT AGENCY (ESTABLISHMENT, ETC) ACT OF 2003**

##### **Purpose:**

An Act to establish the Border Communities Development Agency and for related matters.

##### **Relevant Provision:**

Section 22- Secrecy:

- (1) A member of the Board of the executive secretary or any other officer or employee of the agency shall-
  - (a) Not for his personal gain, make use of any information which has come to his knowledge in exercise of his powers or as obtained by him in the ordinary course of his duty as a member of the Board or as the Executive Secretary, officer or employee of the Agency;
  - (b) Treat as confidential, any information which has come to his knowledge in the exercise of his duties under this Act.

##### **Comments:**

While there may be germane reasons for the above provisions, especially the fact that paragraph (a) emphasises “Not for his personal gain....”, it remains unclear what parameter would be used to determine when an individual makes use of information at

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his disposal for his personal gain. There is no doubt that a blanket power to use information at one's disposal obtained in the cause of duty would be subject to predictable abuse, it still stands to reason that such power should not be taken away but rather limited through some democratic checks enshrined in the enabling laws.

The Courts has a duty when confronted with interpretations bordering on the proper or improper exercise of such powers by an official charged for improper use of information at his disposal especially where the denial of such information cannot be reasonably justified in a democratic society. While the courts are saddled with this onerous task, the Legislature should also make things easy for both the Courts and the masses by making laws that state in much more clear terms the extent for which such information may be used.

The provision of paragraph (b) beats one's imagination considering its attendant consequence(s). Suffice it to say that this ordinarily implies that while paragraph (b) was not made subject to paragraph (a), the former has become a case of giving with the right hand and taking it back with the left as is the case in paragraph (b). No doubt paragraph (b) clearly without ambiguity states that "ANY INFORMATION...." coming to one's knowledge in the cause of his duty should be treated as CONFIDENTIAL. The implication of this is that any such information cannot be made available to the public or to a third-party without proper authorisation of the head of the agency/board; this no doubt beclouds the provision of paragraph (a) wherein an employee/board member could make such information available but with a caveat "NOT FOR PERSONAL GAIN"

These provisions are no doubt not justified in a democratic society and should be revisited to reflect the yearning of the majority regarding access to information that are said to be within the domain of the government.

## **2. BORSTAL INSTITUTION AND REMAND CENTRES REGULATION (MADE UNDER SECTION 48 OF BORSTAL INSTITUTION AND REMAND CENTRES)- RULE 93.**

### **Purpose:**

An Act to provide for the establishment of Borstal Institutions and Remand Centres and for regulating the government thereof"

### **Relevant Provision:**

Rule 93- Communications to Press etc.

- (1) No public Officer shall directly or indirectly make any unauthorised communication to representatives of press or other persons in reference to matters which have become to him in the course of his duty.
- (2) No public officer shall without authority publish any matter or make any public pronouncement relating to the administration of the inmates of a prison or borstal.

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### **Comments:**

The above provisions which regulate and clearly limit access to information to the press are no doubt antithetical to any democratic growth. While it could be conceded that extremes are always dangerous, that is to say, a blanket access to information without ANY limits may not be permissible even in well advanced democracies; on the other hand a total or blanket denial of access will be more dangerous.

The above provisions (particularly Paragraph (2)) which relate to the administration of a prison or borstal are indeed susceptible. The question that would come to mind is 'what does the government stand to lose if these information are released' and the only likely answer is 'protection of reputation'. Cases are replete of abuse of prison inmates (especially female inmates) by prison officials which in many cases have either gone unreported or unpunished. Indeed the situation can not be the same where the public are given access to information including those regarding how they are administered.

The situation in our various prisons are not only pathetic but regrettable even in a democratic dispensation; this is no less a time when our democratic structures (which includes our laws) should be seen to reflect recognised democratic tenets and norms, hence the need to subject these provisions to amendments.

If the government wants the praises and commendation of the citizens and international community, then the time and resources spent in restricting information that could be derogatory to its policies should be channelled to activities that can earn it the reputation it so much seek.

### **3. CIVIL AVIATION ACT:**

#### **Purpose:**

An Act to repeal the Civil Aviation Act, Cap 51, Laws of the Federation of Nigeria, 1990 as amended and to re-enact the Civil Aviation Act to provide for the regulation of Civil Aviation, and for related Matters."

#### **Relevant Provisions**

Section 20- Restriction on Disclosure of Information.

(1) No estimates, return or information relating to an air transport undertaking obtained under the foregoing provisions of this Act shall without the prior consent of the person carrying on the undertaking which is the subject of the estimates, returns or information, be disclosed except-

(a) In accordance with directions given by the authority for the purpose of the exercise of any of its functions under this Act; or

(b) For the purposes of any proceedings under this Act.

(2) Any person who discloses any estimates, returns or any information in contravention of subsection (1) of this section commits an offence

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and is liable on conviction to imprisonment to term not less than 1 month or a fine not less than N25,000.00 or both.

### **Comments:**

Section 20 (1) is made subject to paragraphs (a) and (b) while Section 20(2) criminalise it. The question to ponder on is-what harm would be occasioned if people are allowed unfettered access to information relating to an air transport undertaking; why must this be shrouded in secrecy? This again points to the damning fact that almost every provision limiting access to information are made to advance the glut of the bourgeoisies who are bent on holding the masses to ransom. In almost all the cases where limited access is allowed, they are made subject to the DIRECTIVE/CONSENT of the AUTHORITY/RELEVANT AUTHORITY. Who then is/are the AUTHORITY? It is ironic to note that these same people whose acts are to be subjected to scrutiny by the people are the same people whose consent are required by Law to make such information accessible. It is a cardinal principle of Law that “NO ONE CAN BE A JUDGE IN HIS/HER OWN CASE”. These should be points of reflection for our law makers. Laws should be made to impact the lives of the citizens positively and not merely to show the citizens that the legislatures are in existence, making laws.

## **4. CRIMINAL CODE ACT**

### **Purpose:**

An Act to establish a code of criminal law.

### **Relevant Provisions:**

Chapter 7 of the Act- Sedition and the Importation of Seditious or Undesirable Publications

Section 50

(1) In this Chapter unless the context otherwise requires- “import” includes-

(a) to bring into Nigeria; and

(b) to bring within the inland waters of Nigeria whether or not the publication is brought ashore, and whether or not there is an intention to bring the same ashore;

“periodical publication” includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

“publication” includes all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable of suggesting words or ideas, and every copy and reproduction of any publication;

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“seditious publication” means a publication having a seditious intention; “seditious words” means words having a seditious intention.

(2) A “seditious intention” is an intention-

(a) to bring into hatred or contempt or excite disaffection against the person of the President or of the Governor of a State or the Government of the Federation; or

(b) to excite the citizens or other inhabitants of Nigeria to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Nigeria as by law established; or

(c) to raise discontent or disaffection amongst the citizens or other inhabitants of Nigeria; or

(d) to promote feelings of ill-will and hostility between different classes of the population of Nigeria.

But an act, speech or publication is not seditious by reason only that it intends-

(i) to show that the President or the Governor of a State has been misled or mistaken in any measure in the Federation or a State, as the case may be; or

(ii) to point out errors or defects in the Government or constitution of Nigeria, or of any State thereof, as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or

(iii) to persuade the citizens or other inhabitants of Nigeria to attempt to procure by lawful means the alteration of any matter in Nigeria as by law established; or

(iv) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Nigeria.

(3) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

51 (1) Any person who-

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

(b) utters any seditious words;

(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;



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(d) imports any seditious publication, unless he has no reason to believe that it is seditious;

shall be guilty of an offence and liable on conviction for a first offence to imprisonment for two years or to a fine of two hundred naira or to both such imprisonment and fine and for a subsequent offence to imprisonment for three years and any seditious publication shall be forfeited to the State.

(3) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and liable on conviction, for a first offence to imprisonment for one year or to a fine of one hundred naira or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication shall be forfeited to the State.

58. (1) If the appropriate Minister is of opinion that the importation of any publication or series of publications would be contrary to the public interest he may by order prohibit the importation of such publication or series of publications.

(2) If the appropriate Minister is of opinion that it would be in the public interest to do so he may by order prohibit the importation of all publications published by or on behalf of any organisation or association of persons specified in the order.

(3) An order made under the provisions of subsection (1) of this section shall, unless a contrary intention is expressed therein, have effect-

(a) with respect to all subsequent issues of such publication; and

(b) not only with respect to any publication under the name specified in relation thereto in the order, but also with respect to any publication published under any other name if the publishing thereof is in any respect in continuation of, or in substitution for, the publishing of the publication named in the order.

(4) An order made under the provisions of subsection (2) of this section shall, unless a contrary intention is expressed therein, have effect not only with respect to all publications published by or on behalf of the organisation or association of persons named therein before the date of the order but also with respect to all publications so published on or after such date.

(5) An order made under the provisions of subsection (1) or subsection (2) of this section shall, unless a contrary intention is expressed therein, apply to any translation into any language whatsoever of the publication specified in the order.

(6) Any person who imports, publishes, sells, offers for sale, distributes or reproduces any publication, the importation of which has been

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prohibited under subsection (1) or subsection (2), or any extract therefrom, shall be guilty of an offence and liable, on conviction, for a first offence to imprisonment for two years or to a fine of two hundred naira or to both such imprisonment and fine and for a subsequent offence to imprisonment for three years; and such publication or extract therefrom shall be forfeited to the State.

(7) Any person who without lawful excuse has in his possession any publication the importation of which has been prohibited under subsection (1) or subsection (2), or any extract therefrom, shall be guilty of an offence and liable, on conviction, for a first offence to imprisonment for one year or to a fine of one hundred naira or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication or extract therefrom shall be forfeited to the State.

(8) (a) Any person to whom any publication the importation of which has been prohibited under subsection (1) or subsection (2) or any extract therefrom, is sent without his knowledge or privity or in response to a request made before the prohibition of the importation of such publication came into effect, or who has such a publication or extract therefrom in his possession at the time when the prohibition of its importation comes into effect, shall forthwith if or as soon as the nature of its contents has become known to him, or in the case of a publication or extract therefrom coming into the possession of such person before an order prohibiting its importation has been made, forthwith upon the coming into effect of an order prohibiting the importation of such publication deliver such publication or extract therefrom to the officer in charge of the nearest police station or to the nearest administrative officer, and in default thereof shall be guilty of an offence and liable, on conviction, to imprisonment for one year or to a fine of one hundred naira or to both such imprisonment and fine; and such publication or extract therefrom shall be forfeited to the State.

(b) A person who complies with the provisions of paragraph (a) of this subsection or is convicted of an offence under that subsection shall not be liable to be convicted for having imported or having in his possession the same publication or extract therefrom.

(9) (a) Any of the following officers, that is to say-

- (i) any officer of the Nigerian Postal Services Department not below the rank of assistant surveyor;
- (ii) any officer of the Customs and Excise Department not below the rank of collector;
- (iii) any police officer not below the rank of assistant superintendent of police;

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(iv) any other official authorised in that behalf by the President, may detain, open and examine any package or article which he suspects to contain any publication or extract therefrom which it is an offence under the provisions of subsection (6) to import, publish, sell, offer for sale, distribute, reproduce or possess, and during such examination may detain any person importing, distributing, or posting such package or article or in whose possession such package or article is found.

(b) If any such publication or extract therefrom is found in such package or article, the whole package or article may be impounded and retained by the officer and the person importing, distributing, or posting it, or in whose possession it is found, may forthwith be arrested and proceeded against for the commission of an offence under subsection (6) or subsection (8) as the case may be

59. (1) Any person who publishes or reproduces any statement rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false shall be guilty of a misdemeanour and liable, on conviction, to imprisonment for three years.

(2) It shall be no defence to a charge under the last preceding subsection that he did not know or did not have reason to believe that the statement, rumour or report was false unless he proves that, prior to publication, he took reasonable measures to verify the accuracy of such statement, rumour or report.

60. Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to expose to hatred or contempt in the estimation of the people of any foreign State any person exercising sovereign authority over that State is guilty of a misdemeanour, and is liable to imprisonment for two years.

### **Comments:**

For ease of understanding, below is a summary of the above cited provisions on sedition.

Section 50 defined in detail what amounts to sedition; this can generally be summarised as incitement of discontent or rebellion against the government.

Section 51- makes it criminal to publish or possess a seditious fact; section 58 provides for the power of the minister to prohibit importation, publication, distribution or possession of seditious material if it is in the interest of the public to do, duty to report such seditious material and duty on certain officers to examine any package that it suspects to be seditious and impound same if it is seditious; section 59 makes it criminal

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to publish or reproduce statement rumour or report, the only defence is where the publisher can show that he took reasonable measures to verify the accuracy; section 60 makes it a crime to defame any person exercising a sovereign authority in Nigeria. Note that section 60 recognises the defence of justification applicable to defamation of a private person and defamation is defined as any representation that exposes the person to contempt or hatred in the estimation of people of a foreign state. Thus where for instance, Vanguard Newspaper writes anything that would present a governor of a state as corrupt in the eyes of Americans or Britons without any justification, then same can be considered crime under section 60.

It is no doubt that sedition is a very delicate issue for it poses a big threat to the sovereignty, unity and the existence of a state, thus it is expected that every government will impose strict codes to checkmate its possibility. The provisions of Nigerian Criminal Code on sedition are therefore expected. However, from the above provisions, determination of what is and what is not seditious is left in the hands of the government. This defeats the true intents of separation of power which is one of the core principles of democracy. Nevertheless, delays associated with Nigeria judiciary might defeat the above observation since matters relating to sedition are such that would demand urgent and critical attention; thus special tribunals might be the best option. The Criminal Code has not been amended for ages, it is hoped that this lacuna would be taken care of when amendment is considered.

#### **5. CHAPTER 11: DISCLOSURE OF OFFICIAL SECRETS AND ABSTRACTING DOCUMENT**

97(1) Any person who, being employed in the public service, publishes or communicates any fact which comes to his knowledge by virtue of his office, and which it is his duty to keep secret, or any document which comes to his possession by virtue of his office and which it is his duty to keep secret, except to some person to whom he is bound to publish or communicate it, is guilty of a misdemeanour, and is liable to imprisonment for two years. (2) Any person who, being employed in the public service, without, proper authority abstracts, or makes a copy of, any document the property of his employer is guilty of a misdemeanour and is liable to imprisonment for one year.

#### **Comments**

Having made similar observations in other laws, the provisions of this law is no doubt harsh as it sounds undemocratic in its content. It has earlier been emphasised that the idea of keeping most governmental information secret and also giving the government the power to determine when or when not to make such information available to the public is unjustified in a democratic society; the above provision is in all fours. Looking at the provision, it is clear that Sub-section 1 relates to only those "....WHICH IS HIS DUTY TO KEEP SECRET OR DOCUMENT WHICH COMES..." while Sub-section 2 goes a step further to include "ANY DOCUMENT THE PROPERTY OF

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HIS EMPLOYER...”, whether or not it is his duty to keep it secret! Indeed for any/ every discerning mind, there is no doubt that Sub-section 2 is a dangerous provision that can be used at any time by the employer (government) against the unsuspecting employee at the slightest impulse.

It could be conceded that either deliberately or by oversight, the draftsmen do not foresee the possible implication(s), connotations and denotations of the laws they make and its applicability, hence the need to revisit such laws by way of amendment whenever the need(as in this case) comes knocking/begging.

### **6. CHAPTER 21A- OBSCENE PUBLICATIONS**

233B. In this Chapter-

“article” means anything capable of being or likely to be looked at and read or looked at or read, and includes any film or record of a picture or pictures, and any sound records;

“distributes” includes circulates, lends, sells, lets on hire or offers for sale or on hire;

233C. (1) An article shall be deemed to be obscene for the purposes of this Chapter if its effects taken as a whole is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) The provisions of this section shall extend to any article of two or more distinct items the effect of any one of which is such as to tend to deprave and corrupt; but nothing in this section shall apply to exhibitions in private houses to which the public are not admitted or to anything done in the course of television or sound broadcasting.

233D. (1) Subject to the provisions of this Chapter, any person who, whether for gain or not, distributes or projects any article deemed to be obscene for the purposes of this Chapter, commits an offence punishable on conviction by a fine not exceeding four hundred naira or by imprisonment for a term not exceeding three years or by both.

(2) A person shall not be convicted of an offence against this section if he proves that he had not examined the article in respect of which he is charged and had no reasonable cause to suspect that it was such that his publication of it would make him liable to be convicted of an offence against this section.

(3) In any proceedings against a person under this section, the question whether an article is obscene shall be determined without regard to any publication by another person unless it could reasonably have been expected that the publication by the other person would follow from publication by the person charged.

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(4) No prosecution for an offence against this section shall be commenced more than two years after the commission of the offence.

233E. (1) Subject to the provisions of this Chapter, if a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that articles deemed to be obscene for the purposes of this Chapter are from time to time kept for publication for gain in any premises or on any stall or vehicle in the State, the magistrate may issue a warrant under his hand empowering any constable to enter (if need be by force) and search the premises, or to search the stall or vehicle, within fourteen days -from the date of the warrant, and to seize and remove any articles found therein or thereon which the constable has reason to believe to be obscene articles for the purposes of this Chapter and to be kept for publication for gain.

(2) A warrant under subsection (1) of this section shall, if any obscene articles are seized under the warrant, also empower the seizure and removal of any documents found in the premises or, as the case may be, on the stall or vehicle which relate to a trade or business carried on at the premises or from the stall or vehicle.

(3) Articles seized under subsection (1) of, this section may be brought before the magistrate who issued the warrant or before any other magistrate, and the magistrate before whom the articles are brought may thereupon issue a summons to the occupier of the premises, or, as the case may be, the user of the stall or vehicle to appear on a day specified in the summons before a magistrate's court to show cause why the articles or any of them should not be, forfeited. If the court is satisfied, as respects any of the articles, that at the time when they were seized they were obscene articles kept for publication for gain, the court shall order those articles to be forfeited; but no order shall be made under this subsection in default of appearance by the person summoned unless service of the summons is proved.

(4) In addition to the person summoned, any other person being the owner, author or maker of any of the articles brought before the court, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.

(5) Where an order is made under this section for the forfeiture of any articles, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to the High Court; and no such order shall take effect until the expiration of fourteen days after the day on which the order is made, or, if before the expiration thereof notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

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(6) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for the seizure of the articles was issued to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why those articles should not be forfeited; and costs ordered to be paid under this subsection shall be enforceable as a civil debt.

(7) For the purposes of this section, the question whether an article is obscene shall be determined on the assumption that copies of it would be published in any manner likely having regard to the circumstances in which it was found, but in no other manner.

(8) Nothing in this section shall be construed to preclude the making of any order for the purposes of section 263 of the Criminal Procedure Act (which relates to disposal of property produced before a court).

233F.(1) No person shall be convicted of an offence against this Chapter, and no order for forfeiture shall be made if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern.

(3) It is hereby declared that the opinion of experts as to the literary, artistic, scientific or other merits of an article may be admitted in any proceedings under this Chapter either to establish or to negative the said ground.

### **Comments:**

In view of the socio-cultural values of Nigeria as an African nation and the negative impact of western culture in the society, this seems like a very positive restriction on access to information. Strict human rights activists might want to view this as an infringement on right to liberty, freedom; however, it must be pointed out that the right of one stops where that of another commences thus in the exercise of right, caution must be applied to avoid jeopardising the sensitivities of others. Furthermore, the adverse effect of such publications must also be considered, especially as it affects teenagers who might find it difficult to control the sexual emotions that can be incited by such publications.

The above provisions have provided numerous ways to escape culpability for the offence of obscene publication to wit-

- i. In determining whether an article is obscene, it has to be considered in its entirety, not in bits, giving room to escape culpability where some parts cannot be considered obscene;
- ii. The article should be able to corrupt the readers to make the publisher culpable

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- iii. Exhibition in private home is not an offence.
- iv. It is a defence for the accused to show that he did not examine the article in question and has no reasonable cause to suspect that such publication is criminal.

It is indeed very obvious that the law is very liberal with respect to the offence of obscene publication; it is hoped that this broad-minded approach could be applied to other areas of the law where it is needed most.

Though a very good measure to protect the social heritage of the people, the applicability or otherwise of the above provisions is totally a different issue.

#### **7. SUBSIDIARY LEGISLATION - PROHIBITED PUBLICATIONS ORDERS PURSUANT TO SECTION 58 SUPRA.**

1. This Order may be cited as the Prohibited Publication ("For a Pan-African Trade Union Conference") Order.

2. The importation into Nigeria of a publication purporting to be issued by the World Federation of Trade Unions and entitled "For a Pan-African Trade Union Conference" is hereby prohibited.

1. This Order may be cited as the Prohibition of Publications (Film: "The Road to Peace") Order.

2. The importation into Nigeria of a publication purporting to be issued by the World Peace Council and entitled "The Road to Peace" is hereby prohibited.

1. This Order may be cited as the Criminal Code (Prohibited Publication) Order.

2. The importation into Nigeria of the following publication, that is to say, the cinematograph film entitled "Song of the Rivers" is hereby prohibited.

1. This Order may be cited as the Criminal Code (Prohibited Importations) Order.

2. The importation into Nigeria of-

(a) any of the publications specified in Part A of the Schedule to this Order; and

(c) any past or future issue of the periodical publications specified in Part B of the Schedule to this Order, is hereby prohibited.



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### **Part A**

<i><b>Publication</b></i>	<i><b>Publisher</b></i>
This I.U.S., 1953.	International Union of Students.
For Real Social Security.	World Federation of Trade Unions.
Terror in Kenya.	W.F.T.U. Publications Ltd., London.
For Peace and Friendship: The Work of the Third "World Youth" Magazine, Organ of the World	
World Youth Congress	Federation of Democratic Youth.
The Colonies. The Way Forward.	The Communist Party, London- November, 1944.
Work with the Masses.	W.F.T.U. Publications Ltd., London, W.C.2.
Under the Banner of Unity and International Solidarity	W.F.T.U. Publications Ltd., London, W.C.2.
Defend Trade Union Rights.	Published in September, 1952, by W.F.T.U. Publications Ltd., London, W.C.2.
Report of the Commission of the Women's Women's International Democratic Federation, International Democratic Federation in Korea, Berlin, Germany. May 16th to 27th, 1951.	
The Mask is Off.	Thames Publications Ltd., England.
The Right to Live.	Kenya Committee, 86 Rochester Row, London, S.W. I.
Kenya under the Iron Heel.	Movement for a Democracy of Content, Contemporary Press, 26 Heber Road, London, N.W.2.

### **Part B**

World Youth.	World Federation of Democratic Youth/World Youth, Budapest, Hungary.
Information Service, World Federation of Democratic Youth	World Federation of Democratic Youth/World Youth, Budapest, Hungary.
Press Communique, World Federation of Democratic Youth.	World Federation of Democratic Youth/World Youth, Budapest, Hungary.
Annual Diary.	World Federation of Democratic Youth/World Youth, Budapest, Hungary.
News Service, International Union of Students.	Press and Information Department, International Union of Students, Prague, Czechoslovakia.
Information Service, International Union of Students.	International Union of Students, Prague, Czechoslovakia.

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<b><i>Publication</i></b>	<b><i>Publisher</i></b>
Press Communique, International Union of Students.	International Union of Students, Prague, Czechoslovakia.
World Student News.	International Union of Students, Prague, Czechoslovakia.
Annual Diary.	International Union of Students, Prague, Czechoslovakia.
Czechoslovakia Information Bulletin.	Central Council of Trade Unions, Prague, Czechoslovakia.
World Trade Union Movement.	World Federation of Trade Unions Publications Ltd., London, W.C.2.
Information Bulletin.	International of Agricultural and Forestry Workers Trade Unions and Working Peasants Organisations, Rome, Italy.
Special Information Bulletin published by Women's International Democratic Federation. Women's International Democratic Federation, Berlin, Germany.	
Women of the Whole World.	Women's International Democratic Federation, Berlin, Germany.
Africa News Letter.	Africa Committee of the Communist Party, London, W.C.2.
Africa Bulletin.	M. Basset, London, N.W.3.
21st February (Special Newspaper for the 21st February).	World Federation of Democratic Youth, Budapest, Hungary.
Article Service, World Federation of Democratic Youth.	World Federation of Democratic Youth, Budapest, Hungary.
For a Lasting Peace for a People's Democracy.	Information Bureau of the Communist and Workers' Parties, Bucharest, Rumania.
Information Bulletin of the Hungarian Trade Unions.	The Central Council of Hungarian Trade Unions, Budapest, Hungary.
Festival.	Newspaper of the International Preparatory Committee.
1. The importation into Nigeria of the magazine entitled the "Peking Review", a weekly magazine of Chinese news and views, is hereby prohibited.	
1. This Order may be cited as the Criminal Code (Prohibited Importations) Order.	

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### **Comments:**

Can it be said simply that this law limits access to information? The answer is yes, but it must be emphasised that certain publications could be justifiably prohibited from circulation in a democratic society. This is usually the case where the said publication offends the sensitivity of the majority of the citizens either in terms of their Religious, Political, Social or Economic orientations, or where it may lead to acrimony among different sections of the populace or result in unrest. For instance, after the Nigeria/Biafra Civil War, the government prohibited the circulation of films showing the events of the 30 Months war; this is aimed at avoiding the spread of feeling of revenge/acrimony etc among the various sections that make up Nigeria.

It is in this regard that such prohibitions can be considered justified. Nevertheless, it must be noted that some of these publications or films might have been prohibited because they contradict the negative policies adopted by the government at that particular period or because it awakens the people to the lacunas, injustices, abuse of power etc in the government. The latter case calls for review of the code to align it with the present democracy purportedly practiced by the present government and as mandated by the international conventions to which Nigeria voluntarily yielded its signature.

### **8. CRIMINAL PROCEDURE ACT.**

#### **Purpose:**

“An Act to make provision for the procedure to be followed in criminal cases in the High Court and Magistrates’ Courts”

#### **Relevant Provisions:**

##### **Section 310- Place of Inquiry not Open Court**

The room or place in which a preliminary inquiry is held or in which a statement under section 319 of this Act is taken is not an open or public court for that purpose, and the court may if it thinks that the ends of justice shall be best answered by so doing, order that no person have access to or be or remain in that room or place without the express permission of the court.

Section 319 provides that where a proposed witness cannot attend the court due to illness, the court may go to where he is and take his deposition.

#### **Comments:**

Though this has no doubt restricted access to information, it is a necessary provision permitted/justified in a democratic society especially as it might be required to protect

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the sick person and help him go through the proceeding without distraction. Furthermore, the law left the decision at the discretion of the court, which discretion may or may not be exercised; in whichever way, the interest of justice is paramount. In most cases, it will not be in the interest of justice to subject a sick person to the scrutiny of the public; he might pass out before the end of the proceeding. Caution must however be applied to avoid abuse of this provision and to ensure that the discretion of the court is not fettered. One calls to mind There are several instances of Nigerian politicians who live and lavish in wealth and then fall very ill the moment they are brought before the court to defend the atrocities committed during their tenure.

#### **9. CUSTOMS AND EXCISE MANAGEMENT ACT OF 2003.**

##### **Purpose:**

“An Act to regulate the management and collection of duties of customs and excise, and for purposes ancillary thereto.”

##### **Relevant Provision:**

Section 7-Information and documents to be confidential:

(1) Without prejudice to the provisions of any other Act concerning official secrets, all information and documents supplied or produced in pursuance of any requirement of the customs and excise laws shall be treated as confidential, and if any person who is or has been a member of the Board or who is or has been employed in the Ministry, communicates or attempts to communicate any such information or the contents of any such document to any person except-

- (a) For the purpose of the custom and excise laws; or
- (b) As required by any other enactment; or
- (c) As otherwise authorised by the Minister,

He shall be liable to a fine of two hundred naira or to imprisonment for six months or to both.

(3). A person who is or has been a member of the Board or who is or has been employed by the Ministry may, except with the consent of the Minister be required to divulge to any court any such information or to produce in any court any such document as is referred to in subsection (1) of this section, except as may be necessary for the purpose of carrying into effect any provision of the custom and excise laws or in order to institute a prosecution or other legal proceedings, or in the course of a prosecution or other legal proceedings under the customs and excise laws.”

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### **Comments:**

Confidentiality is an inevitable requirement in every organisation, especially on issues pertaining to economic procedures and patents thus companies in business transaction enter into and execute a confidentiality agreement before discussing or disclosing details of the business. In government, confidentiality is as relevant (and probably more relevant) as it is in corporate world more often for security reasons. Problem arises when confidentiality is used as an assto violate the rights against of the people it should be protecting. Thus the question that should be borne in mind when drafting laws that restrict information should be-"what does the restriction tend to achieve, what harm will be done if the information is disclosed" This will help in determining when and when not to restrict access to information.

### **10. Evidence Act. of 1945**

#### **Purpose:**

This is an Act to provide for the rules of evidence in both civil and criminal procedures.

#### **Relevant Provision:**

Official and Privileged Communications

165. No Judge and, except upon the special order of the High Court of the State, or of the Federal Capital Territory, Abuja or the Federal High Court, no magistrate shall be compelled to answer any questions as to his own conduct in court as such Judge or magistrate, or as to anything which came to his knowledge in court as such Judge or magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

166. No magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no officer employed in or about the business of any branch of the public revenue shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

167. Subject to any directions of the President in any particular case, or of the Governor where the records are in the custody of a state, no one shall be permitted to produce any unpublished official records relating to affairs of State, or to give any evidence derived therefrom, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

168. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

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169. A juror may not give evidence as to what passed between the jurymen in the discharge of their duties, except as to matters taking place in open court.

170. (1) No legal practitioner shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure -

- (a) any such communication made in furtherance of any illegal purpose;
  - (b) any fact observed by any legal practitioner in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.
- (2) It is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client.
- (3) The obligation stated in this section continues after the employment has ceased.

171. The provision of section 170 of this Act shall apply to interpreters, and the clerks and agents of legal practitioners.

172. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 170 of this Act, and, if any party to a suit or proceedings calls any such legal practitioner as a witness, he shall be deemed to have consented to such disclosure only if he questions such legal practitioner on matters, which, but for such question, he would not be at liberty to disclose.

173. No one shall be compelled to disclose to the court any confidential communication which has taken place between him and a legal practitioner consulted by him, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.

174. No witness who is not a party to a suit shall be compelled to produce his title deeds to any property or any document in virtue of which he holds any property as pledge or mortgagee or any document the production of which might tend to incriminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

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175. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

176. No one is bound to answer any question if the answer thereto would, in the opinion of the court, have a tendency to expose the witness or the wife or husband of the witness to any criminal charge, or to any penalty or forfeiture which the judge regards as reasonably likely to be preferred to sued for:

Provided that -

(a) a person charged with an offence, and being a witness in pursuance of section 160 of this Act, may be asked and is bound to answer any question in cross examination notwithstanding that it would tend to criminate him as to the offence charged;

(b) no one is excused from answering any question only because the answer may establish or tend to establish that he owes a debt or is otherwise liable to any civil suit either at the instance of the State or any other person;

(c) nothing in this section contained shall excuse a witness at any inquiry by direction of the Attorney General of the Federation, or of the Attorney-General of a State, under part 49 of the Criminal Procedure Act, from answered under the provisions of section 458 of that Act.

Note:

a. Section 160 refers to the competence of any person charged with an offence to give evidence;

b. Part 49 of the CPA refers to inquiries by the direction of the Attorney General;

c. Section 458 of the CPA provides that a witness examined at an inquiry directed by the AG under part 49, shall not to be excused from answering any question on the ground that the answer thereto may incriminate or tend to incriminate him but any confession or answer by a person to a question put at such examination shall not, except in the case of any criminal proceeding for perjury committed at or after the holding of such inquiry, be in any proceeding admissible in evidence against him.

### **Comments:**

The essence of confidentiality in the judiciary can never be over-emphasised; the courts come across information with various degrees of implications. Thus most of the above cited provisions cited above are merely trying to protect the judiciary and to

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foster the confidence required in this arm of government. There is need to protect both the authorities and the citizens' right to privacy. The legal practitioner owes the client a fiduciary duty to respect information which ordinarily should not be in the domain of the public, unless where the client consents to that or where such information is disclosed in the normal course of trial.

Interestingly, there is a different dimension in section 167 which prohibits publication of official records relating to the affairs of the government. One would have thought that the affairs of the government should be the business of the governed and thus such information should not be regarded as unofficial. When the people gave the government their will/mandate to rule, they would expect to be informed of the affairs of the government and be able to redirect the government when it strays from the collective wills. Though the preceding limb of the section recognised that such information could be produced, it is unfortunate that it is made subject to the consent of the government, a discretion that could easily be abused. For the repeated reasons supra, to this effect, this lacuna renders this provision undemocratic.

Section 167 prohibits disclosure only where it would be against public interest. Instances abound where disclosure could cause dissatisfaction, rebellion, unrest etc; this should therefore be commended.

A summary of the provisions are to wit-

Section 165 provides that no judge or magistrate shall be compelled to answer questions as to his conduct or as to any information he acquired in the course of his duty; section 166 provides that magistrates, police officers or public officers dealing with public revenue shall not be compelled to disclose source of information relating to the commission of a crime; section 167 provides that subject to the directives of the government or consent of the head of department where the information emanates, unpublished official records relating to the affairs of the government shall not be produced; section 168 provides that no public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure; section 169 provides that a juror may not give evidence as to what passed between the jurymen in the discharge of their duties, except as to matters taking place in open court; section 170 and 171 prohibits legal practitioners, their clerks or agents from disclosing confidential communications with client except with the consent of the client or where it involves illegality, crime or fraud; section 172 further provides that evidence given by such client in the course of proceeding shall not amount to giving consent for disclosure except where he questions such legal practitioner on matters, which, but for such question, he would not be at liberty to disclose; section 173 protects clients from disclosing communications with their legal practitioner, to the court, except where such client is a witness, in which case he shall answer questions necessary to establish his case; section 174 provides that no witness who is not a party to a suit shall be compelled to produce documents relating to his title in land or to disclose information that might incriminate him; section 175 provides that no one shall be compelled to produce a document where some other might not be



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subjected to such compulsion while section 176 provides that a witness is not bound to answers that can incriminate him/her or his/her spouse except in the circumstances provided in subsections a-c.

### **11. FIRE SERVICE ACT**

#### **Purpose:**

An act to make provision for the organization, discipline, powers and duties of the federal fire service and for matter related therewith.

#### **Relevant Provision**

Section 31- communication of confidential or secret information:

- (1) Any member of the fire service who at any time communicate any confidential or secret information obtained by him in the course of his duties as a member of the fire service to any unauthorised person shall be guilty of an offence and on summary conviction thereof shall be liable to a fine not exceeding one hundred naira or to a term of imprisonment not exceeding three month or to both such fine and imprisonment shall further be liable to dismissal by the fire service.
- (2) For the purposes of this section, an 'unauthorised person' means any person other than a person to whom a member of the fire service is authorised by the minister to communicate such information.

#### **Comments:**

Comments on Customs and Excise Management Act of 2003 refer.

### **12. FOOD, DRUGS AND RELATED PRODUCTS (REGISTRATION, ETC.) ACT OF 1993**

#### **Purpose:**

An Act to regulate the manufacture, importation, exportation, advertisement, sale and distribution of processed food, drugs and related products and registration thereof.

#### **Relevant Provision:**

Section 3- Disclosure of information supplied by applicant

No person shall disclose an information supplied to the agency in pursuance of section 2 of this Act except-

- (a) with the written consent of the person who supplied the information; or
- (b) in accordance with the directives of the agency; or
- (c) for the purpose of a proceeding under this Act.

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Section 2 refers to proceedings for registration by the agency.

### **Comments:**

Comments on Customs and Excise Management Act of 2003 refer. Here, the law is very considerate in the conditions provided in paragraphs a-c.

### **13. FOREIGN EXCHANGE (MONITORING AND MISCELLANEOUS PROVISIONS) ACT OF 1995**

#### **Purpose:**

An Act to establish an autonomous foreign exchange market and to provide for the monitoring and supervision of the transactions conducted in the market and for matters connected therewith.

#### **Relevant Provision:**

Section 3- Non –Disclosure of source of imported foreign currency

2. Except as required under any enactment or law, a person executing a transaction in the market shall not be required and if required shall not be obliged to disclose the source of any foreign currency to be sold in the market.

#### **Comments:**

In the light the present government's fight against corruption, this law might not pass the litmus test. This is because restriction on source of foreign currency will rather protect the marketer from the regulatory measures of the Central Bank and other regulators in the industry, thereby opening up lacunas that can affect the economy adversely. It is not clear why a marketer should withhold source of the foreign currency. The only consolation is that where any other enactment requires such disclosure, then the latter law prevails.

### **14. FEDERAL INLAND REVENUE SERVICES (ESTABLISHMENT) ACT OF 2007**

#### **Purpose:**

An Act to provide for the establishment of the Federal Inland Revenue Service charged with the powers of assessment, collection of and accounting for revenues accruable to the Government of the Federation and for related matters.

#### **Relevant Provision:**

Section 39- Information and Documents to be Confidential

- (1) Without prejudice to the provisions of any other Act concerning official secrets, all information and documents supplied or produced in pursuance of any requirement of the Act or the laws listed in the first schedule to this Act shall be treated as confidential.

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(2) Except as otherwise provided under this Act or as otherwise authorised by the minister, any member or former member of the Board or employee or former employee of the service or ministry who communicates or attempts to communicate any confidential information or the content of any such document to any person, commits an offence and shall be liable on conviction to a fine not exceeding N200, 000.00 or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

**Section 50- Official Secrecy and Confidentiality**

(1) Every person in an official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment list and copies of such list relating to the profits or items of profits of any company, as secret and confidential.

(2) A person in possession of or control of any document, information, return or assessment list or copy of such list relating to the income or profits or losses of any person, who at any time communicates or attempts to communicate such information or anything contained in such document, return, list or copy to any person

(a) to any person other than a person to whom is authorised by the service to communicate it;

(b) Otherwise than for the purpose of this Act or of any enactment in Nigeria imposing tax on the income of persons;

Commits an offence under this Act.

(3) A person appointed or employed under this Act shall not be required to produce any return, document or assessment, or to divulge or communicate any information that comes into his possession in the performance of his duties except as may be necessary in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to any tax in Nigeria.

(4) Where under any law in force in respect of any double taxation treaty with any country, provision is made for the allowance of relief from income tax in respect of the payment of income tax in Nigeria, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government in that country of such facts as may be necessary to enable proper relief to be given in cases where relief is claimed from the tax in Nigeria or from income tax in that country.

(5) Where any agreement or arrangement with any other country with respect to relief for double taxation of income profits includes provisions for the exchange of information with that country for the purpose of implementing that relief or preventing avoidance of tax, the obligation as to secrecy imposed by this section shall not prevent the disclosure of such information to the authorised officers or the government of such country.

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### **Comments:**

Comments on Customs and Excise Management Act of 2003 refer.

### **15. FEDERAL ROADS MAINTENANCE AGENCY (ESTABLISHMENT ETC.) ACT OF 2002**

#### **Purpose:**

An Act to establish the Federal Roads Maintenance Agency and for matters connected therewith.

#### **Relevant Provision:**

Section 27- Secrecy

(1) A member of the Board or the Managing Director or any other officer or employee of the Agency shall-

(a) not for personal gain, make use of any information which has come to his knowledge in the exercise of his powers or is obtained by him in the ordinary course of his duty as a member of the Board or as the Managing Director, officer or employee of the Agency.

(b) Treat as confidential any information which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under this Act;

(c) Not disclose any information referred to under paragraph (b) of this subsection, except where required to do so by a court or in such other circumstances as may be prescribed by the Board, from time to time.

(2) Any person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine of not less than N20,000 or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

### **Comments:**

Comments on Customs and Excise Management Act of 2003 refer.

### **16. LEGISLATIVE HOUSES POWERS AND PRIVILEGES ACT**

#### **Purpose:**

“An Act to declare and define certain powers, privileges and immunities of the Legislative Houses established under the Constitution of the Federal Republic of Nigeria; and of the members of such legislative Houses; to regulate the conduct of the members and other persons connected with the proceedings thereof and for matters connected therewith”

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### **Relevant Provision:**

Section 24- Publication of Certain Statements and Writings an Offence

(1) Any person who-

(a) Publishes any statement, whether in writing or otherwise, which falsely or scandalously defames a Legislative House or any committee thereof; or

(b) Publishes any writing reflecting on the character of the president or speaker, as the case may be, of a Legislative House or the Chairman of a Committee of a Legislative House in the conduct of his duty as such president, speaker or chairman; or

(c) Publishes any writing containing a gross, wilful or scandalous misrepresentation of the proceedings of a Legislative House or of the speech of any member in the proceedings of a Legislative House,

Shall be guilty of an offence and shall be liable on conviction to a fine of two hundred naira or to imprisonment for twelve months, or to both such fine and imprisonment.

### **Comments:**

The above provisions seem fair and appropriate. It can be likened to the civil/criminal wrong of defamation, necessary to preserve reputation.

## **17. MATRIMONIAL CAUSES ACT**

### **Purpose:**

“An Act to make provision for Matrimonial Causes”

### **Relevant Provision:**

Section 108:

Except as provided by this section, a person shall not in relation to any proceedings under this Act print or publish, or cause to be printed or published, any account of evidence in the proceedings, or any other account or particulars of the proceedings, other than-

(a) the names, addresses and occupations of the parties and witnesses, and the name or names of the member or members of the court and of the legal advisers of the parties;

(b) a concise statement of the nature and grounds of the proceedings and of the charges, defences and counter-charges in support of which evidence has been given;

(c) submissions on any points of law arising in the course of the proceedings, and the decision of the court on those points; or

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- (d) the judgment of the court and observations made by the court in giving judgment.
- (2) The court may, if it thinks fit in any particular proceedings, order that none of the matters referred to in subsection (1) (a) to (d) of this section shall be printed or published, or that any matter or part of a matter so referred to shall not be printed or published.
- (3) Any person who contravenes subsection (1) of this section, or prints or publishes, or causes to be printed or published, any matter, or part of a matter, in contravention of an order of a court under subsection (2) of this section shall be guilty of an offence punishable on conviction.

### **Comments:**

Matrimonial Causes Act is an Act that provides the practice and procedure in matrimonial causes. Matrimonial causes includes divorce, judicial separation, custody of children etc, thus a lot of intimate, personal details are revealed. It is therefore wise to restrict publicity of such details especially where a child is involved.

## **18. NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION ACT**

### **Purpose:**

“An Act to establish the National Office for Technology Acquisition and Promotion, to monitor on a continued basis the transfer of foreign technology to Nigeria and to provide for other related matters.”

### **Relevant Provision:**

Section 14 empowers the Director or any other staff of the National Office to require information from anybody carrying on an industrial or commercial undertaking.

Section 16-

(1) Any person appointed or employed for the due administration of this Act who communicates to any other person (not being a member of the council or another employee of the National Office authorised to receive such communication) any document, drawing, photograph, plan, model or other information whatsoever which to his knowledge describes, represents or illustrates-

- (a) Any existing or proposed machinery, plant, installation or other structure whatsoever; or
- (b) Any patent, process or any design,

Submitted by any person to the National Office under this section, shall on conviction be liable to a fine of N2, 000 or to imprisonment for a term of two years or to both such fine and imprisonment.

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### **Comments**

Comments on Customs and Excise Management Act of 2003 refer.

#### **19. NATIONAL BANK FOR COMMERCE AND INDUSTRY ACT**

##### **Purpose:**

“An Act to establish the Nigerian Bank for Commerce and industry to provide capital for medium and long-term investments to indigenous bodies and persons engaged in industry and commerce and for matters connected therewith.

##### **Relevant Provision:**

Section 16-Restriction as to publication of instruments

“For the avoidance of doubt, it shall be necessary for any instrument made under this Act to be published in the Federal or any other Gazette, but where provisions of any instrument may affect the interest of any person or group of persons, the Board shall bring any information contained thereunder to the notice of the persons affected in such manner (including publication thereof in the Federal or any State Gazette) as the Board may direct.

### **Comments**

Comments on Customs and Excise Management Act of 2003 refer.

#### **20. NIGERIA DEPOSIT INSURANCE CORPORATION ACT**

##### **Purpose:**

“An Act to repeal the Nigeria Deposit Insurance Corporation Act, 1988 and to enact the Nigeria Deposit Insurance Corporation Act, 2006, and for related matters”

##### **Relevant Provision:**

Section 34-Obligation in respect of unauthorised disclosure:

(1) ‘The members of the board, staff and agents of an insured institution shall keep strictly confidential and make no unauthorised disclosure or use of any information which they may either directly or indirectly receive in such capacity of the activities of an insured institution and the result thereof of the Corporation and of the circumstance of the participating insured institution and their customers, even after they cease to be members or staff or agents of that insured institution.

(2) ‘The obligation specified in subsection (1) of this section is also imposed upon directors, employees of, and any agent or other persons engaged by the Corporation.

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(3) The provisions of subsection (1) of this section shall not apply to communications made to the Corporation, Central Bank of Nigeria, external auditors of the insured institutions, the Bankers' Committee or the Federal Ministry of Finance in connection with the purpose of the Corporation.

(4) The provisions of subsection (1) of this section shall not apply to communications in connection with the admission or exclusion of an insured institution from the Deposit Insurance Fund (DIF).

### **Comments**

Comments on Customs and Excise Management Act of 2003 refer; and the exclusion in subsection (3) is well thought out because these are sensitive institutions in the finance sector, and restriction on information might hinder performance of their duty.

## **21. NUCLEAR SAFETY AND RADIATION PROTECTION ACT**

### **Purpose:**

"An act to establish the Nigerian Nuclear Regulatory Authority whose functions shall include the control and regulation of the use of radioactive substances, material, equipment, emitting and generating ionising radiation.

### **Relevant Provision:**

Section 44- "Except for the purposes of this Act or any order or proceeding thereunder, no person shall disclose any information obtained under this Act.

### **Comments:**

This is one of such strict rules with dictatorial undertone, leaving no exception or conditions. It could be justified on the grounds that matters considered in the Act are such that relate to the safety of the state, against foreign countries. Moreso, such information has little effect to the everyday lives of majority of the people, thus its restriction could go unnoticed.

## **22. NIGERIAN SECURITY AND CIVIL DEFENCE CORPS ACT**

### **Purpose:**

"An Act to establish the Nigerian Security and Civil Defence Corps; and for related purposes".

### **Relevant Provision:**

Section 24-

A member of the Board or the Commandant-General or any other officer or employee of the Corps shall



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(b ) Treat as confidential any information which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under this Act; or

(c) Not disclose any information referred to under paragraph (b) of this subsection except when required to do so by any court or in such other circumstance as may be prescribed by the Board, from time to time.

### **Comments**

Comments on Customs and Excise Management Act of 2003 refer.

### **23. OFFICIAL SECRETS ACT**

#### **Purpose:**

‘An Act to make further provision for securing public safety and for purposes connected therewith’

#### **Relevant Provision**

Sec-1- Protection of Official Information.

(1) Subject to (3) of this section, a person who

(a) transmits any classified matter to a person to whom he is not authorised on behalf of the government to transmit it; or

(b) obtains, reproduces or retains any classified matter which he is not authorised on behalf of the government to obtain, reproduce or retain, as the case may be,

Is guilty of an offence.

(2) A public officer who fails to comply with any instructions given to him on behalf of the government to the safeguarding of any classified matter which by virtue of his office is obtained by him under his control is guilty of an offence.

(3) In proceedings for an offence under subsection (1) of this section relating to any classified matter, it shall be a defence to prove that –

(a) when the accused transmitted, obtained, reproduced or retained the matter, as the case may be, he did not know and could not reasonably have been expected to believe that it was classified matter; and

(b) When he knew or could reasonably have been expected to believe that the matter was classified matter, he forthwith placed his knowledge of the case at the disposal of the Nigerian Police Force.

2 Protection of Defence Establishments, etc

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- (1) A person who, for any purpose prejudicial to the security of Nigeria-
    - (a) Enters or is in the vicinity of or inspects a protected place; or
    - (b) Photographs, sketches or in any other manner whatsoever makes a record of the description of, or of anything situated in a protected place; or
    - (c) Obstructs, misleads or otherwise interferes with a person engaged in guarding a protected place; or
    - (d) Obtains, reproduces or retains any photograph, sketch, plan, model or document relating to, or to anything situated in a protected place,
    - (e) Is guilty of an offence.
  - (2) A person charged with an offence under the foregoing subsection shall unless the contrary is proved, be deemed to have acted for a purpose prejudicial to the security of Nigeria if from his character or general conduct and from all the circumstances of the case, it appears that he acted for such a purpose; nothing in this subsection shall be construed as precluding the giving in evidence of matters tending to show that the accused acted for such a purpose.
3. Restrictions on photography etc, during periods of emergency.
- (1) The president may during any period of emergency within the meaning of section 305 of the constitution of Federal Republic of Nigeria, by order provide that during the continuance of that period no person shall, without the permission in writing given by the president, photograph, sketch, or in any other manner whatsoever make a record of the description of, such things designed or adapted for use for defence purposes as may be specified by order.
  - (2) A person who contravenes the provision of this section is guilty of an offence.

#### Section 4-Control of Mail Forwarding Agencies, etc

- (1) The Minister may make regulations-
  - (a) For controlling the manner in which any person conducts any organisation for receiving letters, telegrams, packages or other matter for delivery or forwarding to any other person; and
  - (b) Without prejudice to the generality of the foregoing paragraph, providing for the furnishing of information and the keeping of records by persons having or ceasing to have the conduct of such an organisation.
- (2) Regulations under this section may contain such incidental or supplementary provisions as the Minister considers expedient for the purposes of the regulations, including in particular provisions imposing penalties (not exceeding imprisonment for a term of three months or fine of N100 or both) for any failure to comply with the regulations; and the regulations may make different provisions for different circumstances.

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(3) Regulations under this section shall not come into force until they are approved by resolution of each of the National Assembly.

Section 7 provides for Penalties for commission of the offences outlined above.

Section 8- Interpretation, etc.

Classified Matter means any information or thing which, under any system of security classification, from time to time, in use by or for any branch of the government, is not to be disclosed to the public and of which the disclosure to the public would be prejudicial to the security of Nigeria;

Protected Place means

(a) Any naval, military or airforce establishment in Nigeria, any other place in Nigeria used for or in connection with the production, storage or testing, by or on behalf of the government, of equipment designed or adapted for use for defence purposes, and any other building, structure or work in Nigeria used by the government for defence purposes; and

(b) Any area in Nigeria or elsewhere for the time being designated by an order made by the Minister as being an area from which the public should be excluded in the interest of the security of Nigeria,

And includes a part of a protected place within the meaning of paragraph (a) & (b) of this definition.

Public Officer means a person who exercises or formerly exercised, for the purposes of the government, the function of any officer or employer under the state.

For purposes of this Act, classified matter remains classified matter notwithstanding that it is properly transmitted to, or obtained from, or otherwise dealt with, by a person acting on behalf of the Government or State.

### **Comments:**

The Official Secret Act seem to be the major Act considered in this research that seem to have been enacted to prohibit access to information. The whole essence of the Act is to procure public safety and it is not in doubt that every provision cited above tend to prohibit access to information. The question rather is whether such water-tight restriction is justified. While it is conceded that even in widely acclaimed democratic societies like the Western world, provisions dealing on OFFICIAL SECRET OF THE STATE exist to protect the security and integrity of the State, it has to be noted that such provisions are not as water-tight as ours. Thus, in most of these jurisdictions, provisions still exist to protect what is widely known as "WHISTLE BLOWERS" (Insiders who divulge information beneficial to the society for the advancement of transparency and accountability irrespective of the fact that it may be sealed /classified).

### **Laws That Hinder Access To Information/Freedom of Information In Nigeria**

While there is no doubt that it is necessary to protect the State, there should be a balance with the general interest of the masses to a right to know and the obligation of those in authority to be transparent and accountable. This is even more compelling with the RULE OF LAW MANTRA of the present administration and the rebranding crusade. The provisions of this Act particularly section 1 supra, are most suited in a dictatorial/military administration where the rights of the people are usually circumscribed.

#### **24. PUBLIC COMPLAINTS COMMISSION ACT**

##### **Purpose:**

‘An Act to establish the Public Complaints Commission with wide powers to inquire into complaints by members of the public concerning the administrative action of any public authority and companies or their officials, and other matters ancillary thereto’.

##### **Relevant Provision:**

Section 20 (3) (b)- “For the purpose of this Act, any Commissioner may decide in his absolute discretion whether, and if so, in what manner, he should notify the public of his action or intended action in any particular case.”

(5) All Commissioners and all the staff of the Commission shall maintain secrecy in respect of matters so designated by reason of source or content, so however that a Commissioner may, in any report made by him, disclose such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.”

##### **Comments:**

Public Complaints Commission Act is enacted to establish a Commission that will entertain complaints of the public with respect to the administrative activities of any public authority and companies or their officials. The Act then turns around to give the Commissioner, such wide discretion to determine when and manner to disclose his actions. This seems ridiculous and a defeat of the whole essence of the Commission which should be connected to the need to promote transparency in governance and corporate practice.

#### **25. PETROLEUM PRODUCTS PRICING REGULATORY AGENCY (ESTABLISHMENT ETC.) ACT**

##### **Purpose:**

“An Act to establish the Petroleum Products Pricing Regulatory Agency; and for related matters”

## **Laws That Hinder Access To Information / Freedom of Information In Nigeria**

### **Relevant Provision:**

#### Section 22- Secrecy

A member of the Board or executive secretary or any other officer or employee of the Agency shall-

- (a) Not, for his personal gain, make use of any information which has come to his knowledge in the exercise of his powers or is obtained by him in the ordinary course of his duty as a member of the Board or as the Executive Secretary, officer or employee of the Board;
- (b) Treat as confidential any information which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under this Act; and
- (c) Not disclose any information referred to under paragraph (a) of this subsection, except when required to do so by a court or in such other circumstance as may be prescribed by the Board from time to time.

(2)- Make failure to comply with the above provision, an offence.

### **Comments**

Comments on Customs and Excise Management Act of 2003 refer.

## **26. SMALL AND MEDIUM SCALE ENTERPRISES DEVELOPMENT AGENCY OF NIGERIA ACT.**

### **Purpose:**

“An Act to establish the Small and Medium Scale Enterprises Development Agency to be charged with the responsibility for promoting and facilitating the development programmes in the Small and Medium Scale Industries sub-sectors and for connected purposes.”

### **Relevant Provision:**

#### Section 25- Secrecy

(1) A member of the Board or the DG or any officer or employee of the Agency shall-

- (a) Not for his personal gain, make use of any information, which has come to his knowledge in the exercise or is obtained by him in the ordinary course of his duty as a member of the Board or as the DG, officer or employee of the Agency;
- (d) Treat as confidential any information which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under this Act; and

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(e) Not disclose any information referred to under paragraph (b) of this subsection, except when required to do so by a court or in such other circumstance as may be prescribed by the Board, from time to time.

(2)- Make failure to comply with the above provision, an offence.

### **Comments**

Comments on Customs and Excise Management Act of 2003 refer.

### **27. TRIBUNALS OF INQUIRY ACT**

#### **Purpose:**

An Act to empower the president to constitute tribunals of enquiry and other matters ancillary thereto

#### **Relevant Provision:**

Section 3- Oath of Members:

Every member of a tribunal shall, before entering upon his duties, make, and subscribe to, an oath that he will faithfully and impartially and to the best of his ability discharge the duties devolving upon him under the inquiry, and if the inquiry is not to be held in public, that he will not divulge the proceedings or the vote or opinion of the members or any other matter relevant to the inquiry.

### **Comments**

Comments on Customs and Excise Management Act of 2003 refer.

### **28. TRADE DISPUTES ACT**

#### **Purpose:**

“An Act to make provisions for the settlement of Trade Dispute and other matters ancillary thereto”.

#### **Relevant Provision:**

Section 36-Powers of Such Bodies

(1) For the purpose of dealing with any trade dispute or other matter referred to it under this Act, a body to which this part of the Act applies may-

(e) admit or exclude the public or the press or both from any of its sittings.

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(3) If any person on being required by virtue of this section to furnish any particulars, answer any question or produce any book, paper, document or other thing, objects to doing so on the ground that to do so would tend to incriminate him or on any other lawful ground, he shall not be bound to comply with the requirement and shall not be liable to any punishment for refusing to do so.

#### **Comments:**

The presence of parties to a dispute is what is most relevant to the proceeding, thus where the body decides to exclude the public from the proceedings, it might not occasion injustice. However, where such dispute has attracted public interest, especially where it would affect the lives of others who are not parties to the dispute, then the discretion of the body should be used appropriately to address the curiosity of the people and to show that justice is done.

#### **Section 39- Restriction on Publication of Report of Proceedings:**

(1) Where in the case of any sitting or part of a sitting of a body to which this part of this Act applies, the press has been admitted thereto, but not otherwise, a fair and accurate report or summary of the proceeding during that sitting or part (including any evidence heard in the course thereof) may be published, but until the award of the court or tribunal or the result of the inquiry has been officially published, no comment shall be published in respect of the proceedings or the evidence.

(2) Any person who contravenes subsection (1) of this section shall be guilty of an offence and be liable to a fine of N200.

#### **Comments:**

The above provision seems inordinate and would require a review. First, it is understandable that the press has an obligation to report accurately but the obligation to report fairly is arguable. It creates an impression that the press is obligated to give a fair report even where it is not so. Secondly, it is difficult to identify the harm in reporting proceedings of the body. The final award might take ages to come, while the public would like to follow the case when it is still fresh in memory. Moreover, it has been observed that giving the public access to the proceedings of a court/tribunal/judicial inquiry acts as a caution for the court to ensure that justice is done, to avoid the criticisms of the public.

### **29. WIRELESS TELEGRAPHY ACT OF 1966.**

#### **Purpose:**

An Act to make provision for the regulation of wireless telegraphy.

#### **Relevant Provision:**

Section 10- Misleading Messages and Interception and Disclosure of Messages:

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(1) No person shall-

Otherwise than under the authority of the Commission in the course of his duty as a servant of the state, either –

(i) Use any wireless telegraphy apparatus with intent to obtain information as to the contents, sender or addresses of any message (whether sent by means of wireless telegraphy or not) which neither the person using the apparatus nor any person on whose behalf it is acting is authorised by the Commission to receive; or

(ii) Except in the course of legal proceeding or for the purpose of any report thereof, disclose any information as to the contents, sender addressee of any such message, being information which would not have come to his knowledge but for the use of wireless telegraphy apparatus by him or another person.

Any person who contravenes the provision of subsection (1) of this section shall be guilty of an offence.

### **Comments**

Comments on Customs and Excise Management Act of 2003 refer.

### **30. WIRELESS TELEGRAPHY REGULATIONS (MADE PURSUANT TO SECTION 28 OF THE ABOVE ACT).**

#### **Purpose:**

This Regulation is merely making provisions for the guideline and procedures to be followed by the Commission established under the above mentioned Act, in exercise of its duties under the Act.

#### **Relevant Provision:**

Regulation 5- Declaration of Secrecy

All persons having access to wireless communications or actually operating licensed installations (other than broadcast receiving installations) shall make a declaration of secrecy as in the third schedule to these regulations in respect of commercial, naval, military or airforce wireless communications.

Regulation 18- No licensee to divulge message received by him as licensee; secrecy of Communication:

No person other than the holder of a broadcast receiving license, nor any person acting on his behalf or by his permission shall divulge to any person other than an authorised officer of the Government or a legal tribunal or make any use whatsoever of any message coming to the knowledge of such licensee or any person by virtue of the license.



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#### **Regulation 42- Censor of Messages:**

The master of a ship registered in Nigeria may censor all message addressed to or transmitted by a station on Board the vessel under his control, but he shall not divulge to any person (other than the properly authorised officers of the Government or a competent legal tribunal) coming to his knowledge and not intended for the said station.

#### **Comments**

Comments on Customs and Excise Management Act of 2003 refer.

## *Conclusion*

**T**his research have reviewed the existing laws in Nigeria for the purpose of identifying clauses that give citizens or members of the public access to information held by government bodies as well as those laws and regulations which specifically prohibit and constrain access to information.

There are numerous provisions that seem to promote access to information and some others where restriction seem justified, but when critically analysed, it was obvious that the few provisions/ clause that hinder access to information far outweigh the former in terms of the implication of the clause. Thus a reconsideration of a central law that would guarantee right to information in true sense should be welcomed.

However, it must be noted that information infrastructure system in Nigeria is inadequate and this is a fact which could affect the legislation when it is finally passed.

Information institutions like libraries, archival institutions, documentation centres, research centres and universities; and information professionals in Nigeria should participate in formulating the nation's freedom of information legislation and in implementing mechanisms of public access to government-held information.

Furthermore, there are both social and infrastructural preconditions that are necessary for the successful implementation of free access to information. The preconditions include:

Political stability - rulers of a stable state enjoy sufficient confidence that they are not averse to openness nor citizen involvement in governmental decision-making;

Independent judiciary - that is, a judiciary that is independent, impartial and informed is expected to ensure the realisation of a just, honest, open and accountable government and are more likely to make a ruling that may be contrary to the interests of the government;

Communications infrastructure - does not only refer to physical needs to be established and maintained by the state for both the travel and telecommunications set-up, but also personal development that takes the form of information literacy;

Library and information services - that encourage free access to information through their open-for-all policy and the organisation of official documentation in a manner that enhances easy access to them.

Political stability and the independence of the judiciary, arguably, have a symbiotic effect on free access to information. A spin-off of open government is political stability, just as a judiciary that is independent encourages openness in governance and thus, contributes to political stability. The role played by library and information

### *Conclusion*

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services in promoting free access to information, though remarkable, is usually neglected, especially in developing countries, such as Nigeria, but it still remains essential to the functioning of a democratic society.

Finally, Nigerians look at freedom of information as a luxury due to the attitude of the Government. It is hope that the Nigerian government would fully realize that the vast information resources which it generate constitute an important 'national wealth' which must be properly disseminated to enhance economic, cultural, scientific and technological progress. A more rationalized and coordinated national information policy for the production, organization and dissemination of these national resources is in the interest of the nation, an urgent necessity.



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

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

The Aims and Objectives of Media Rights Agenda are:

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

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

## **Executive Committee**

**Edetaen Ojo**, Executive Director  
**Tunde Fagbohunlu**, Director of Legal Services  
**Morenike Ransome-Kuti**, Director of Research  
**Austin Agbonsuremi**, Director of Publications  
**Eze Anaba**, Director of Projects  
**Tive Denedo**, Director of Campaigns  
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**Ibim Semenitari**, Member

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## **Secretariat**

**Edetaen Ojo**, Executive Director  
**Ayode Longe**, Senior Programme Officer  
**Joseph Izibili**, Programme Officer  
**Ekemini Francis**, Programme Officer  
**Kingsley Aisagbonhi**, Accountant  
**Oluwabunmi Bamilolu**, Admin. Manager  
**Ronke Akogun**, Secretary  
**John Gbadamosi**, Administrative Assistant  
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