

THE ROLE OF THE FREEDOM OF INFORMATION ACT (2011) IN ENHANCING PUBLIC ACCOUNTABILITY IN NIGERIA

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Abstract

Access to information has been recognized as a powerful mechanism of accountability that lifts shrouds off government transactions. In Nigeria, the Freedom of Information Act was enacted in 2011 ostensibly to guarantee citizens' right to public information and enhance transparency and accountability in governance. This discourse examines the role of the Freedom of Information (FoI) Act in enhancing public accountability in Nigeria's Fourth Republic. The study which is analytical and relies on secondary found out that the FoI Act has indeed emboldened the citizens to demand accountability from government officials and it has been used as a tool to expose corruption in the public sector. Among other recommendations, it is suggested that existing extant laws that have conflicted with the enforcement of the FoI Act such as the Official Secrets be repealed. The Legal Aid Council should be mandated to assist litigants in prosecuting cases that may arise in the event of refusal of a government institution's reluctance to disclose information which may warrant court action.

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1. Introduction

In Nigeria like most developing countries, there is discernably poor governance due largely to poor accountability by the political leadership. Nigerian leaders are corrupt, inconsiderate and greedy and have devoted a large chunk of the nation's resources to keep its growing army of political office holders in the lap of luxury and this has undermined the socio-economic transformation of the country (Agbese, 2008). The aftermath of this has been poverty in the midst of plenty as the country's rich human and natural resources, albeit; a population of approximately 197, 686, 977 million, abundant natural gas reserves and a leading exporter of crude oil in the world have not translated to a remarkable improvement in the living standard of the citizens but rather, poverty is palpable. A recent report by the World Poverty Clock

shows that Nigeria has overtaken India as the country with the most extreme poor people in the world. A whopping 86.9 million Nigerians are now living in extreme poverty, representing nearly 50% of its population (Okolie 2021). The country also has the lowest life expectancy in West Africa, which is 54 years (WHO, 2018) and is ranked amongst the lowest out of 178 countries in the world.

Corruption has indeed eaten deep into the fabric of the society to an extent that President Muhammadu Buhari on the 28/9/2020 at the inauguration of the 'National Ethics and Integrity Policy' to mark the 20th anniversary of the Independent Corrupt Practices Commission (ICPC) and Nigeria's 60th independence anniversary declared on *Channels Television* that "if Nigeria does not kill corruption, corruption will kill Nigeria". This underscores the threat corruption poses to the socio-economic development of the country. Corruption flourishes where there is weak accountability and there is the preponderance of monopoly and discretion (Klitgaard,1988). In Nigeria, as observed by Anderson (2007) the country's accountability systems are weaker than those found in most federations. This accounts for why Transparency International (TI) has continually rated the country as one of the most corrupt countries in the world. In the 2020 corruption perception index for instance the country was rated as the 2nd most corrupt country in West Africa after Guinea Bissau.

Corruption poses a developmental challenge to the nation. It undermines democracy and good governance by subverting formal processes; it reduces the rate of investment and scares away foreign investors; slows the rate of growth of the domestic product; it breeds political instability and undermines the legitimacy of government as it hampers the effective delivery of public goods and services to the citizens.

Conscious of the damaging consequences of corruption on the nation's development, the government has churned out a plethora of laws, rules, regulations, customs and conventions meant to check financial leakages in the management of public resources. Some of these as catalogued by Achua (2011) include; the Audit Act No.33, 1956; The Finance (Control and Management) Act No.33,1958; The Finance (Control and Management) Amendment Act No.27, 1987; Public Accounts Committee Act No.8, 1987; Civil Service (Re-organization) Act No.43, 1988; Banks and Other Financial Institutions Act,1991; Failed Banks (Financial and Malpractices in Banks) Act,1994; Money laundering Act,1995; Advance Fee Fraud and Other related Offences Act,1995; Corrupt Practices and Other Related Offences Act, 2000; Economic and Financial Crimes Commission (EFCC) establishment Act, No.5,2002; Monitoring of

Revenue to Local Government Act,2005; Public Procurement Act,2007; Due Process and Contract Certification Act,2007; Fiscal Responsibility Act,2007; Financial Regulations,2000; Financial Instructions; Financial Memoranda and Treasury Circulars.

But these legal instruments as noted by Abada (as cited in Achua 2011, p.5) have not yielded any substantial result to forestall corruption and the attendant waste in the system. This is because; these instruments without their own independent access to information on how the executive runs the government are ineffective (Olowu, 2004). This underscores why considerations of improved and effective accountability have fueled the demand for freedom of information rights. Without information, there are limits to holding governments accountable. Accountability places emphasis on transparency and it underscores that account-giving should be more than mere propaganda or the provision of information to members of the public. But it involves the citizens scrutinizing the account, interrogating the officials as to the adequacy of the conduct (Bovens, 2006). Increasing citizens' access to information about how they are governed is therefore a booster to the accountability process. Freedom of information can guarantee the citizens access to valid and relevant information on how the government is run and it will serve as a shield for a professional and independent media to unravel corruption in the society.

This paper highlights the salient provisions of the FoI Act; it also analyzes its role in ensuring transparent and good governance in Nigeria's Fourth Republic as well as the challenges confronting the implementation of FoI Act in the country.

Public Accountability

The concept accountability is an elastic concept that connotes different meanings to different people. In American scholarly and political discourse, accountability is often used interchangeably with good governance or virtuous behavior (Bovens, 2006). Considine (2002) on the other hand equates it to responsiveness. Krishnan (2008) sees it as involving responsibility, liability, culpability, answerability and chargeability. Though these conceptualizations are indeed broad and all-encompassing but tend to neglect and downplay the issue of commensurability which ought to be an integral component of accountability. Commensurability ensures value for money principle in an organization. It ensures that results are tangent with resources expended. Thus a holistic view of accountability should encapsulate

commensurability with the aforementioned variables. Accountability is present when public services have a high quality at a low cost.

The root of the concept accountability has been traced by Dubnic (Bovens, 2006:6) to the reign of William 1 of England when he requested all the property owners in his domain to render account of what they possessed for purposes of taxation and this later evolved into highly centralized auditing and semi-annual account giving. Since then, accountability has metamorphosed from its traditional bond with book-keeping and financial administration to symbolize fair and equitable governance. The accounting relationships have also completely changed from the sovereign holding their subjects to account. Conversely, today, it is rather the authorities themselves who are being held accountable by their citizens.

Bovens (2006), Scott (2000) have pointed out that public accountability therefore pertains to matters in the public domain such as spending of public funds and the conduct of public agencies/ institutions, However, they reiterated that public accountability is not consigned to public organizations but goes beyond it to embrace private entities that receive public funding. Thus it is accounting in and about the public domain. Public accountability ensures that officials in whose care some resources and duties are entrusted should be answerable. This answerability as noted by Okeke (2003: 97) is anchored on the premise that

- I. There must be an agency to which resources and duties have been allocated
- II. There must be individuals in the agency who must be held responsible and answerable for proper use of the resources or discharge of duties of government
- III. There must be adequate continual environment within the organization which should guarantee honest and accurate use of resources entrusted to the official and that the resources are used for public good

The import of this is that, persons or entities entrusted with the financial, managerial and programme responsibilities should report to those that have conferred these responsibilities on them. The rationale being that public officials usually command much power, expertise, information and resources that can be misapplied (Sorkaa, 2002).

Public accountability underscores the need for those who hold public trust to account for the use of that trust to citizens or their representation on the understanding that governance is a social contract between the ruler and the ruled.

Freedom of Information Act

The Freedom of Information Act was signed into law by President Goodluck Jonathan on the 28th day of May, 2011. In its preamble, it is stated that the Act makes public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes.

The underlying philosophy of Freedom of Information is that public servants are custodians of a public trust on behalf of a population which can be abused and the people who have a right to know what they do (Sorkaa, 2002). The FOIA seeks to remove secrecy and enthrone openness and transparency in government and public institutions. It also seeks to alter the way in which public records and information are managed in the country.

The Act applies to government institutions as well as private institutions that provide public services and perform public functions and utilize public funds.

Section 1 of the FoI Act recognizes the right of any person, group or organization to access or request information from which is in the custody or possession of any public official, agency or institution established.

Section 2 (4) enjoins public institutions to ensure that the information requested is widely disseminated and made readily available to members of the public in print, electronic and online sources

Section 4 stipulates that where information is applied for under this Act, the public institution to which the application is made shall make the information available within 7 days after the application is received. The fees charged should be limited to standard charges for document duplication and fees transcription only (Section, 8).

Section 7 (5) stipulates that where a case of wrongful denial of access is established, the defaulting officer or institution is liable on conviction to a fee of N500, 000; or imprisonment for a minimum term of 1 (one) year.

While the FOIA gives a person, group, association or organization the right to request access to public records; some records are however, exempted from release. Section 14, 15, 16, 17, 18 and 19 specifies some documents that are exempted from release. These documents include but are not limited to

- I. National security records which have been lawfully classified on national security grounds, and remain classified
- II. Records which disclosure will constitute an unwarranted invasion of an individual's personal privacy
- III. Records compiled for law enforcement purposes
- IV. Records protected from release by statutes other than FOIA

2. Theoretical Framework

This study is anchored on Jean Jacques Rousseau's Social Contract theory. The social contract theory has its origin from Thomas Hobbes (1588-1679). The premise of the theory is that the state came to exist as a result of an agreement citizens freely entered into. Prior to the advent of this agreement there was no settled law and executive powers to enforce just decisions. People lived in the 'state of nature,' an imagined state where might is right. The desire for peace necessitated the people to surrender their rights to a third party to obey laws enacted by the third party.

John Locke (1632-1704) and Jean Jacques Rousseau (1712-1778) also wrote and emphasized that it is through the social contract that the state came to be. However, Rousseau's social contract theory differed from that of Thomas Hobbes as he rejected the idea that the social contract involved the surrender of freedom to a third party, rather the rights were surrendered not to an individual but to a body to whom everyone understood. In his contract, individuals surrendered his everything to the society and yet as a member of the society, he retained everything with himself. Rousseau regarded consent as the basis of society and insisted that the community must protect individual freedom since it was created for the benefit of the individual. He believed that the 'General Will' should be the source of all laws. Rousseau emphasized the individual participation in the articulation of the General Will. So government to Rousseau was an agent of the General Will.

Access to information is a key factor in upholding and sustaining any agreement involving two or more parties. In governance, government bodies hold information not for themselves but on

behalf of the public. The members of the public therefore have a right to know how their representatives in government are discharging the public trust given to them – social contract. This contract can only be guaranteed through free flow of information by both the government and the governed. The reason being that information is power and access to information gives people the power to scrutinize those in authority to make them accountable.

3. Freedom of Information Act and Public Accountability in Nigeria

Guaranteeing access to information avails the citizens' access to valid and relevant information needed to judge the propriety and effectiveness of the conduct of the government. Without access to information in an asymmetric social order such as governance there is bound to be confusion, mutual suspicion and distrust between the ruler and the ruled. Hence, Sewant (cited in Nwekeaku, 2010, 207) has pointed out that 'none of the functions which the citizens have to perform in a democracy can be performed by them in the absence of full and truthful information'. This is because access to information infuses transparency which in turn is a panacea to the cloak of darkness under which corruption and abuse hide. Hence, FoI will guarantee access to information to all the stake holders and this will invariably promote voices and participation by the people in governance; it will reduce the incentive for the corporate elite to engage in state capture; and it will foster the rule of law (Jain, 2003). But where the press is imperiled, muzzled and banned, every other freedom will be limited too and democracy threatened, Kofi Annan (cited in Attah, 2005). Ensuring access to information through press freedom avails the citizen information on public policies, government development plans, public laws, decisions, activities, budgets, monetary matters, corruption as well as other social and political issues that bother on nation-building (Nwekeaku, 2010). This awareness will not only erase ignorance and apathy in the society but it will also enhance public accountability and enthrone good governance.

In Nigeria, the realization that the media is a veritable tool that helps to espouse how best society should be organized informed the framers of the 1999 Constitution of Nigeria to insert in Section, 21 that "the press, radio, television, and other agencies of the mass media shall at all times be free to uphold ... the responsibility and accountability of the government to the people". Buoyed by this provision, the Freedom of Information Act was passed by the National Assembly on 24th May 2011 and assented by President Goodluck Jonathan on 28th May, 2011.

The Freedom of information Act is a potent tool to unravel corruption in the public sector. The press and members of the public can rely on the provisions of Section 9, of the Act to fight corruption in society. Section 9(1&2) of the Act stipulates that, (1) Every government or public institution shall ensure that it keeps every information or record about the institution's operations, personnel, activities and other relevant or related information or records. (2) Every government or public institution shall ensure the proper organization and maintenance of all information or record in its custody, in a manner that facilitates public access to such information or record under this Act. This provision can be relied upon by the press and members of the public to inquire whether due process was followed in the award of contracts; and to find out whether the contract sum was inflated. In India for instance, grassroots social activist groups have used the right to know laws to obtain information on local public work projects and reveal the amounts said to have been paid at such meetings where community members are then asked whether the projects have been completed and how much they were paid (Enakoko, 2009). These have revealed that in many instances actual payments were less than what was recorded as payment to the contractors which often have led to abandonment or shoddy execution of the job. In Nigeria, a civil society group, the Public and Private Development Centre (PPDC) had invoked the provisions of the FOI act to apply to the Federal Ministry of Finance to access it with information on a loan agreement executed between the Federal government and the Chinese EXIM Bank on the execution and completion of the Abuja light rail project in the custody of the Federal Government of Nigeria (Madubuike-Ekwe & Mbadugha, 2018). In fact, the Federal Ministry of Finance denied the applicant the right of access to the information but PPDC headed to the Federal High Court and the Court held that the respondent had no justification in denying the applicant the documents sought.

Similarly, a civil society group, Nigerian Contract Monitoring Coalition, in 2012 relied on the provisions of the FoI Act to apply to the Power Holding Company of Nigeria (PHCN) and the Abuja Electricity Distribution Company for copies of procurement documents and information in respect of a World Bank-funded PHCN contract for the supply and installation of High Voltage Distribution System in its facilities. This included information on the needs assessment that preceded the contract, documentation on the design and specific requirements, bidding documents issued to all bidders, a list of all the contractors that submitted bids, copies of the letters of award, as well as the names and addresses of all distribution companies on whose behalf the procurement was undertaken (ICIR, 2012). This request was turned down by PHCN and the Abuja Electricity Distribution Company. However, the Nigerian Contract Monitoring

Coalition approached the Federal High Court in Abuja and it gave ruling in its favour by compelling PHCN, Abuja Electricity Distribution Company and the Attorney-General of the federation to provide it with the details of the contract.

In Ondo State, Martins Alo, a journalist requested from the Auditor –General of the state audited report of Ondo State government between 2012 and 2014 in order to properly find out how funds were utilized in the state. The request was promptly rejected by the Auditor-General. He took approach the Akure High Court to compel the Auditor-General of the state to release the information to him but the court ruled against him saying that the FoI Act was not applicable to states and the request was not in the public interest (Ogundipe, 2018). However, dissatisfied with the judgment of the State High Court, he appealed the judgment at the Court of Appeal in Akure and the Appeal Court ordered the Ondo state government to release the information that he sought.

The FOI Act can also be leveraged on to enforce the ‘Federal Character Principle’ enshrined in Chapter 11, Section 14(3) of the 1999 Constitution of Nigeria so as to expose nepotism in the public service. Applicants can rely on Section 9 of the FOI Act to demand from any federal Ministry, Department, Agency or institution information on its staff recruitment as well as promotions. This will force public officials to justify their actions and stem discrimination and abuse of office. In Thailand for instance, a mother whose daughter was denied admission into an elite state school demanded the School’s entrance examination results. When she was denied this, she appealed to the courts. In the end, she obtained information which revealed that the children from influential families were given admission even with low scores and this forced the Council of State to issue an order that all schools accept students based on merit (Enakoko, 2009).

The FoI Act can also be relied upon by the society, victims and families of victims of human rights abuses in the past to access archival records to learn and understand what happened in the past. In countries that have recently transited to democracy, FoI laws have allowed the government to break with the past and allow society and families of victims of abuses in the past to know and understand what happened in the past (Enakoko,2009). In Mexico for instance, President Fox in 2002 ordered the declassification of all files of previous human rights abuses so that their families could find out what happened to their loved ones who disappeared (Enakoko, 2009). Victims of human rights abuses or families of the victims in Nigeria during

the military era can avail themselves of the FoI Act to obtain information to know what happened in the past and demand for adequate compensation for the wrongs done to them.

Anti- corruption crusaders and civil right activists can also use the FoI Act to obtain accurate and reliable information that can be used to expose corruption as well as prosecute cases in court. Recently in July 2021, a civil rights group, the Socio- Economic Rights and Accountability Project (SERAP) relied on the FoI Act and made a request to Sadia Umar Farouk, Minister of Humanitarian Affairs, disaster Management and Social Development to disclose the details of proposed payments of N729 to 24.3 million poor Nigerians, including the mechanisms and logistics for the payments, list of beneficiaries and how they have been selected, and whether the payments will be made in cash or through Bank Verification Number (BVN) or other means. SERAP insisted that disclosing the details of beneficiaries and selection criteria, as well as the payment plan would promote transparency and accountability and remove the risk of mismanagement and diversion of public funds. This information was not released by the Ministry and SERAP headed to a Federal High Court in Lagos and instituted a case, suit number FHC/L/CS/853/2021 arguing that the Nigerian Constitution 1999 (as amended), UN Convention against Corruption, and African Union Convention on Preventing and Combating Corruption to which Nigeria is a state party requires the government to set the highest standards of transparency, accountability and probity in programmes that it oversees (Premium Times). Bodies such as the Economic and Financial Crimes Commission (EFCC); the Independent Corrupt Practices and Other Related Offences Commission (ICPC); the Code of Conduct Bureau (CCB); the Code of Conduct Tribunal (CCT); and the National Human Rights Commission (NHRC) can avail themselves of the access to information law to obtain accurate and reliable information from government Ministries, Departments and Agencies to effectively discharge their responsibilities. Denial of access to information will impede the effectiveness of these agencies in carrying out their roles.

On the flip side, the implementation of the FoI Act is not without some daunting challenges in the country. Key among these challenges is intransigence of government agencies to release information to members of the public. Many government institutions have exhibited unwillingness to disclose information when demanded and this led to long litigations in the court before such information was released based on the orders of the court. A typical case is the refusal on request by the media for the aides of President Muhammadu Buhari to disclose to the nation the medical bills and health status of the president as a mark of accountability

when he spent almost two months in a London hospital for treatment (Agba, Ogri & Adomi, 2018). In fact the afore mentioned cases relating to the audited accounts of the Ondo State government, PHCN and contract for installation of equipment; and the Federal Ministry of finance and the Abuja Light Railway project have shown that on mere request, government bodies refuse to divulge the information in their custody and only do so under duress by court order. This invariably gives rise to another challenge in the implementation of the FoI Act, the cost of litigation. In a situation whereby government Ministries, Department and Agencies are adamant and refuse to disclose information except when enforced through a court order, many people will find it difficult to avail themselves of the access to information law to demand accountability from public officials because the cost of getting a solicitor to prosecute the case and the time lag involved is much, so many people will be loath to demand for information due to the cost implication and duration of time involved.

Another problem that has hindered the effective implementation of the access to information law is poor record keeping by government institutions. Until recently with the introduction of the computer in government offices in the country, most government documents were kept in files which were often mutilated after several years in dilapidated buildings and this affected record keeping. Besides, the culture of record keeping is generally poor in the country and this can be attested to by the recurring staff audit in the country to ascertain the number of workers in the public sector. Any time such an audit is carried out ghost workers are usually discovered. Also the failure of the government to repeal hitherto existing laws such as the Official Secrets Act, Penal Code, Criminal Code, Public Complaints Commission Act which have conflicted with the access to information law has affected its implementation in the country even though it is stated in the law that its enactment supersedes all other existing laws

4. Conclusion

This study examined the Freedom of Information Act, 2011 in Nigeria via-a-vis public accountability. The premise of the study is that the kernel of good governance is transparency and to the people that the government represents. There should be avenues to promote voices and participation of the people in governance. The rationale being that, no matter the legal and constitutional safeguards to ensure accountability in governance; if citizens do not have independent access to information, they cannot effectively demand accountability. The study argues that FoI Act in Nigeria is a vital tool to strengthen the democratic through as it guarantees the citizens access to valid and relevant information on how the government is run.

Civil society organizations and individuals can invoke the provisions of the law to expose corruption in the society. It can also be used by the society and victim of abuses to dig into the past especially during the military era to unravel the truth of what actually happened and those that were responsible for such dastardly acts. Since the inception of the law, individuals and civil society organizations have taken up the gauntlet to demand information relating to contract awards to determine whether there was value for money in the award of such contracts despite resistance by government officials to disclose such information.

To strengthen the effectiveness of the FoI Act to achieve its desired impact, the following suggestions are made. The provisions of existing extant laws that have conflicted with the enforcement of the FoI Act such as the Official Secrets Act, Penal Code, Criminal Code, and Public Complaints Commission Act should be repealed by the government. The Legal Aid Council should be mandated to take up the challenge of prosecuting cases that may arise in the event of refusal of a government institution's refusal to disclose information on demand emanating from the enforcement of the access to information law. This is because many people shy away from exercising their right to freedom of information when information is denied to them and the next option is to challenge it in court because of legal fee. Massive public awareness campaign should be carried out especially at the grassroots level to educate people on the provisions of the FoI Act to improve governance at the third-tier level by civil society groups, radio programmes, and local newspapers. Above all the immunity clause in the constitution that shields the President and the Vice President, the State Governor and the Deputy Governor of the State should be removed from the constitution as this trigger people to demand for information to expose corruption most especially in the public sector. Where one obtains information and he/she cannot use it against certain public officials covered by the immunity clause, one becomes discouraged to demand for certain information.

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