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Challenges Confronting the Implementation of the Freedom of Information Act (FOIA) in Nigeria

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Abstract

The Freedom of Information Act (FOIA) was enacted to make information accessible to persons and organizations throughout the Federal Republic of Nigeria. Despite the importance of this piece of legislation in enhancing and facilitating access to government records and information, which hitherto were shrouded in secrecy, the smooth implementation of FOIA has been constrained by a number of factors. This study examines some of these challenges and underscores the need for education and public enlightenment as a panacea that could potentially address some of the challenges highlighted in this study.

Keywords: Access to information, accountability, government records, transparency and openness, FOIA, Nigeria

Introduction

The development of freedom of information law in Nigeria has been an age-long struggle. For example, since 1859, when modern journalism began in what is now Nigeria, access to necessary materials, including government information, has been a major challenge.[1] Upon the establishment of the British authority in Nigeria as its colonial master, the British government, which was uneasy about press activities in the early 1900s, introduced a number of repressive laws[2] targeted at curbing what was considered the excesses of the press.[3]

Upon the attainment of Nigeria's independence in 1960, it was expected that the government would abrogate the Official Secrecy Act, a law that prohibited public access to government records, and in its place, enact legislation that could help empower citizen engagement in political decisions and other government activities. However, it appears that the ruling class took advantage of the Official Secrecy Act's provisions, which prevented public servants from disclosing public records or information except with authorization.[4] Indeed, the possibility of having a law that

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[1] James Dada Mohammed et al., "Uses and Challenges of Freedom of Information Act among Journalists in Kogi State, Nigeria," *Cogent Arts & Humanities* 10, no. 2 (2023).

[2] Some of these laws were specifically promulgated with the intention of limiting press freedom. These laws also affected the rights of private citizens to access government records and information. Examples of these laws include the Newspaper Ordinance of 1901 and the Seditious Offences Ordinance of 1909.

[3] A.R. Yusuf, *Knowledge and Use of Freedom of Information Act among Journalists in North West Nigeria* (Doctoral Thesis, Bayero University, 2015).

[4] Some laws in Nigeria prevent civil servants from disclosing government information to the general public. The only exception to this provision is when authorization is granted for the release of that information. See generally the Newspaper

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would liberalize access to government information was dashed with the military's truncation of the polity. The experience of the repression of press freedom prompted three organizations to champion Nigeria's Freedom of Information Act (FOIA).[5]

The activism leading to the enactment of FOIA began in 1993.[6] These efforts were championed by the Nigeria Union of Journalists (NUJ), the Media Rights Agenda (MRA), and the Civil Liberties Organization (CLO), which promoted the draft of a freedom of information act and forwarded it to the National Assembly. The National Assembly successfully passed the bill, which was then sent to the Nigerian President in 2007 for assent. However, President Olusegun Obasanjo, then President of the Federal Republic of Nigeria, refused to assent to the bill before leaving office. In May 2007, when Umaru Musa Yar'Adua became president, he promised to pass the FOIA bill, but then he became ill and died while in office, leaving Vice President Goodluck Jonathan to take over the leadership of the country. However, when Dr. Jonathan assumed leadership, the FOIA bill became the oldest and longest-standing bill in Nigerian history, as members of the House of Representatives stood down the bill for the tenth time.[7] With increased media and civil society organization (CSO) advocacy, FOIA was eventually passed into law in May 2011 under the regime of President Goodluck Jonathan,[8] thereby providing the legal framework for Nigerians to demand access to government information.

BODIES SADDLED WITH THE RESPONSIBILITY TO IMPLEMENT FOIA IN NIGERIA

The implementation of the provisions of FOIA is hinged on several institutions, including ministries, departments, and agencies (MDAs) across the three organs of government. These are, by law, obligated to keep records of their activities. FOIA expressly provides the following:

> Public institutions are all authorities whether executive, legislative or judicial agencies, ministries, and extra-ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions.[9]

These bodies must publish government information so that it will be accessible to citizens without having to demand this information.[10] FOIA also provides that a "public institution shall ensure the proper organization and maintenance of all information in its custody, in a manner that facilitates public access to such information […]."[11] By law, MDAs are required to designate officers who respond to applicants' information requests. Such trained officers must ensure that the requested information is made available if it is within the scope of the information that the MDA can release.[12] Meanwhile, sometimes an information request may be declined by an officer in certain instances. The refusal or denial of public information requests from individuals or corporate bodies on the workings of the government is often justified by public authorities under the cover that the release of some sensitive information about the government's workings may actually not be in the country's best interest when released to

Seditious Act of 1961, the Defamation Act of 1962, the Official Secrets Act of 1962, the Newspaper Amendment Act of 1964, the State Security (Detention of Persons) Decree No. 2 of 1982, and the Public Officers (Protection Against False Accusation) Decree No. 4 of 1984, among others.

[5] As stated in the next paragraph, these organizations were the Nigeria Union of Journalists (NUJ), the Media Rights Agenda (MRA), and the Civil Liberties Organization (CLO).

[6] Philip Teniola David, Sanyaolu Oluwaseyi, and Emmanuel O. Sijuade, "10 Years of Freedom of Information Act in Nigeria: The Journey so Far, Prospects and Challenges among Media Practitioners," *International Journal of Social Relevance & Concern* 9 (2021): 150.

[7] Ibid.

[8] Iyabode Ogunniran, "The Freedom of Information Act 2011: An Unwieldy Piece of Legislation for the Nigerian Courts?," *Commonwealth Law Bulletin* 42 (2016): 425.

[9] Freedom of Information Act, Laws of the Federation of Nigeria 2010, s 2(7).

[10] By implication, where information and records have been proactively well disclosed, access to such records will be enhanced.

[11] Freedom of Information Act, Laws of the Federation of Nigeria 2010, s 2(2).

[12] By law, the disclosure of some information is prohibited.

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the public.[13] Equally, information relating to a third party or trade secret may not be disclosed to persons seeking to obtain such information. This is provided for as follows:

> A public institution shall deny an application for information that contains- (a) trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause harm to the interests of the third party provided that nothing contained in this subsection shall be construed as preventing a person or business from consenting to disclosure.[14]

Besides personal information, trade secrets, and commercial information, as provided for above, the act equally recognizes that some information pertaining to ongoing investigations, student academic records, and records of doctor-patient relationships are also off limits.

Courts of Competent Jurisdiction

The courts are another body saddled with the responsibility to implement FOIA. Both the High Court of the States and the Federal High Court have original jurisdiction over any matter relating to FOIA implementation. The courts are empowered to consider applications brought by persons who feel that their requests for disclosure of information have been unlawfully denied:

> Any applicant who has been denied access to information, or a apart [sic] thereof, may apply to the Court for a review of the matter within 30 days after the public institution denies or is deemed to have denied the application, or within such further time as the Court may either before or after the expiration of the 30 days fix or allow.[15]

The powers of the courts are indeed wide, and the courts may deem the denial of access to government information to be illegal. Appeals arising from the High Court go to the Court of Appeal and the Supreme Court. The roles that courts play are indeed key—for example, how courts interpret how binding the FOIA provisions are on the component states of the federation.

Office of the Attorney General of the Federation

The Office of the Attorney General of the Federation also plays a critical role in the implementation of FOIA in Nigeria. The Attorney General is required by law to receive a yearly report[16] from each public institution not later than the first day of February, detailing the number of determinations and rejections made by the public institution,[17] the number of and reasons for appeals by dissatisfied applicants,[18] whether or not the court upheld the decision of the public institution to withhold the information,[19] the number of information requests pending at the public institution as of the thirty-first of October of the preceding year,[20] the number of applications received and processed,[21] the median number of days taken to process the information requested,[22] the fees collected from the applicant,[23] and the total number of staff involved in processing the information request.[24] The act further directs the Attorney General to

[13] Section 12 of the Freedom of Information Act enumerates instances where an information request may be declined and the conditions that must be fulfilled before such decline could be valid in the eyes of the law.

[14] Freedom of Information Act, Laws of the Federation of Nigeria 2010, s 15(1)(a). Other categories of prohibited information are contained generally in the Freedom of Information Act, ss 15 and 19.

[15] Freedom of Information Act, Laws of the Federation of Nigeria 2010, s 20.

[16] Ibid., s 29(1).

[17] Ibid., s 29(1)(a).

[18] Ibid., s 29(1)(b).

[19] Ibid., s 29(1)(c).

[20] Ibid., s 29(1)(d).

[21] Ibid., s 29(1)(e).

[22] Ibid., s 29(1)(f).

[23] Ibid., s 29(1)(g).

[24] Ibid., s 29(1)(h).

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publicly disclose the reports submitted by the public institutions by making them available in both hard and soft copies.

Public Complaints Commission (PCC)

Another relevant body is the Public Complaints Commission (PCC),[25] which is empowered by law to entertain grievances on sundry issues pertaining to, but not limited to, the conduct of public officials. The PCC has the jurisdiction to investigate the alleged deliberate decline or denial of the release of information or records to an applicant. The PCC's scope of work includes investigating all persons and authorities throughout the Federal Republic of Nigeria, including the Office of the President. The PCC might be a viable option to citizens who do not have the financial resources to engage the services of legal practitioners, considering that its operations and activities are actually free to citizens.

On the rationale for the Ombudsman, R.O. Ugbe[26] posited that it affords the government a much-needed regular and smooth-running mechanism to assess disgruntled customers/workers' reactions to its actions and inactions, and correct what may have gone wrong. The Ombudsman's investigative power was designed to protect workers' rights—not to be unfairly dismissed, to be treated with dignity and respect, to be paid the agreed wage on the agreed date, to be provided with appropriate resources and equipment to enable him/her to do the job, and to have safe working conditions and fair labor practices devoid of victimization.[27]

Nigerian Human Rights Commission (NHRC)

The Nigerian Human Rights Commission (NHRC) is another institution established under the law to address abuses of office and denials of rights. Generally, national human rights institutions (NHRIs) are established to ensure the promotion and protection of human rights, which is a growing global concern. Although the foundation for establishing NHRIs was laid out at the second session of the UN Economic and Social Council (ECOSOC) in 1946,[28] the NHRC was established in 1995.[29] Tabiu[30] aptly captured the essence of the NHRC, writing that the mandate of the rights-based organization is to ensure the protection of fundamental rights as enshrined in the Nigerian Constitution, while also acknowledging other international instruments that cover a wide range of Nigerian citizens' civil and political rights.

The NHRC was created by the National Human Rights Commission Decree 1995 (now codified as the National Human Rights Commission Act, Chapter no. 46, *Laws of the Federation of Nigeria* 2004). The preamble to the NHRC Act asserts that the purpose of the NHRC is to, *inter alia*, facilitate the implementation of treaty obligations and create an enabling environment for the recognition, promotion, and enforcement of all recognized rights. In addition, the NHRC provides a platform for public enlightenment and dialogue, limiting controversy and confrontation over allegations of human rights violations and reaffirming the sacred and inviolable nature of human and other fundamental rights.

[25] The origin of the Public Complaints Commission dates back to the military regime in Nigeria. Prior to the 1974 report of the Public Service Review, which was set up by the federal military government to look into the conditions of service of public workers in the federation, there were recommendations made for the institution of the Ombudsman in Nigeria. As a result of the recommendation of the Udoji Public Service Review Commission of 1974, the General Murtala Mohammed administration established the Public Complaints Commission in 1975 under Decree 31 of 1975.

[26] R.O. Ugbe, *Perspective on Nigerian Administrative Law* (French Publishers, 2004).

[27] Ugochukwu T. Okoro, "Public Complaints Commission (Ombudsman) and Worker's Rights in Akwa Ibom State Public Service," *International Journal of Advances in Management and Economics* 12 (2023): 23.

[28] B. Lindsnaes and L. Lindholt, "National Human Rights Institutions: Standard Settings and Achievement," in *National Human Rights Institutions: Articles and Working Papers*, eds. B. Lindsnaes et al. (Danish Centre for Human Rights, 2000).

[29] Nobuntu Mbelle, "The National Human Rights Commission of Nigeria: Valuable, but Struggling to Enhance Relevance," in *Defenders of Human Rights, Managers of Conflict, Builders of Peace? National Human Rights Institutions in Africa*, eds. Michelle Parlevliet, Guy Lamb, and Victoria Maloka (Centre for Conflict Resolution, 2005).

[30] Muhammed Tabiu, "National Human Rights Commission of Nigeria," in *Human Rights Commissions and Ombudsman Offices*, eds. Kamel Hossain et al. (Kluwer Law International, 2001).

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Section 2 of the NHRC Act creates a governing council responsible for the discharge of the NHRC's functions. Sections 3 and 4, respectively, provide for the tenure of office and cessation of membership for persons constituted under section 2 of the act. For present purposes, it is useful to state the NHRC's functions, which are stipulated in section 5:

> [to] deal with all matters relating to the protection of human rights as guaranteed by the Constitution of the Federal Republic of Nigeria, the African Charter on Human and Peoples' Rights, the United Nations Charter, the Universal Declaration on Human Rights, and other international treaties on human rights to which Nigeria is a signatory.

Historically, the doctrine of "covering the field"[31] is believed to have originated in the United States (US), and later, it fully developed into a concept that is now internationally recognized.[32] Within the US context, the doctrine was introduced in *Houston v. Moore*,[33] which eventually became the *locus classicus* on the subject matter. The phrase "covering the same ground"[34] was first introduced in the *Houston* case. Over the years, the concept has evolved into what is now globally recognized and accepted, including in the developing economies. The Nigerian Constitution,[35] being the *grundnorm*[36] that was fashioned after the US Constitution, clearly enumerates the items and issues about which each level of government may legislate. Conceptually, the doctrine of "covering the field" can be considered from the Constitution's viewpoint. With regard to the importance of constitutional supremacy in the doctrine of "covering the field" context, the Supreme Court of Nigeria, in *Saraki v. FRN*,[37] asserted that where the provisions of any legislation promulgated by the federal or state governments are in opposition to the content of the Constitution, the provision(s) of that federal/state law will be set aside for being inconsistent with the Constitution.

In the same vein, the Supreme Court, in *INEC v. Balarabe Musa*,[38] noted that where the Constitution has a provision for governing conduct, the constitutional provision overrides all other laws that may have legislative competencies in the same area of law. This assertion is in tandem with the provision of the Constitution, which directs that any law that conflicts with the Constitution shall be null and void.[39] Usually, in any federation with different layers of government, powers are shared between the center and the component units.[40] Speaking within the context of the Nigerian legal system, Great;[41] Abada, Okafor, and Omeh;[42] Chukwuemeka and Iloanya;[43] Pillah;[44]

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[31] Sometimes, the Constitution grants legislative competency to both the federal parliament and the state legislatures to enact laws on the same subject matter. The doctrine of "covering the field" is a constitutional provision that ranks as superior the content of federal legislation where this provision conflicts with the provision of another law on the same subject matter created and passed by a state legislature.

[32] A. Sketch, "Doctrine of Covering-the-Field in Federal Constitutional Theory," accessed Sep. 11, 2025, https://tnaidike.wordpress.com/doctrine-of-covering-the-field-in-federal-constitutional-theory.

[33] *Houston v. Moore,* 18 U.S. 1 (1820).

[34] Ibid.

[35] Constitution of the Federal Republic of Nigeria 1999 (as amended).

[36] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 1(1) and s (3) clearly state the place of the Constitution as a law that is binding on all other laws throughout the Federal Republic of Nigeria.

[37] *Saraki v. FRN* (2016) LPELR-40013 (SC).

[38] *INEC v. Balarabe Musa* (2003) 3 NWLR, part 806, 72.

[39] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 1(3).

[40] C. Branham-Paul, "The Doctrine of Covering the Field has the Endorsements of Nigeria's Constitution and the Supreme Court of Nigeria. Explain how the Doctrine Operates," Medium, Jan. 16, 2020, https://piparchima.medium.com/the-doctrine-of-covering-the-field-has-the-endorsements-of-nigerias-constitution-and-the-supreme-7a1cd3419255.

[41] A. Great, "Redefining the Nigerian System of Government: The Error of a Copied Democracy without True Federalism," *Open Journal of Political Science* 14 (2024): 177.

[42] I.M. Abada, N.L. Okafor, and P.H. Omeh, "Nigerian Morbid Federalism and Demand for Political Restructuring," *African Journal of Political Science and International Relations* 14 (2020): 13.

[43] E.O. Chukwuemeka and K.O. Iloanya, "Interrogating the Politics of Fiscal Federalism and Performance of Local Government: A Focus on Udi Local Government Council of Nigeria," *Journal of Policy and Development Studies* 13 (2023): 100.

[44] Tyodzer Patrick Pillah, "Fiscal Federalism in Nigeria: Empirical Review," *International Journal of Public Administration and Management Research* 8 (2023): 136.

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Abada et al.;[45] Egobueze, Ojirika, and Ikuinyi;[46] and Sharma,[47] aver that government powers in a federation are compartmentalized such that each level of government is aware of its legislative competencies; otherwise, the legislative efforts of a particular legislative house could be seen as *ultra vires.*

Conceptually, Duru, Oyebode, and Mudele[48] have succinctly discussed the doctrine of "covering the field," opining that the National Assembly will always have its way where a law passed by that body contradicts a law subsequently enacted by the state assembly on the subject matter that falls under the concurrent legislative list. The trio has further asserted that "the law passed by the State House of Assembly on the same matter, would be void to the extent of its inconsistency with the law passed by the National Assembly."[49]

"Covering the field" exists in a federal system where both the central government and the federating units have the power to legislate on the same issues as laid down within the nation's legal framework to the extent that the central government and the components share the powers to legislate on the items listed within the concurrent legislative list.[50] However, the laws made by the center are regarded as having a dominant impact on the component units. Simply put, the doctrine provides that the powers of the center, notwithstanding the powers of the component units, are wide and sufficient to cover "all fields" as far as laws are concerned.

CHALLENGES OF IMPLEMENTING FOIA IN NIGERIA

Lack of Political Will

A major obstacle to implementing FOIA has been the lack of the ruling class's political will, which resulted in FOIA having the longest enactment period in the history of Nigerian legislation.[51] This lack of political will derives from several factors, including government officials' fear that greater public access to information will make them vulnerable to political opponents and laws that could expose their misconduct, misappropriation, or mismanagement of public funds.[52] Government officials also fear that FOIA will put their personal interests at risk by exposing the failure of government programs and policies. This is why efforts to access information from government offices are always greeted with resistance. For example, in *SERAP v. Attorney General of the Federation*,[53] the applicant requested information about how General Ibrahim Babangida's administration managed US$12 billion in designated Central Bank accounts. At the trial court, the applicant's lawyer, Femi Falana, in his submission before the court, argued that it would have been helpful if the Nigerian government had released the Okigbo's panel report to the public. This is because the Okigbo's report itself contained sufficient answers to the question before the court on how General Babangida's administration managed the US$12 billion.[54] Therefore, the disclosure of the report itself could have prevented parties from coming to court to institute the action.

[45] I.M. Abada et al., "Fiscal Federalism and Challenges of National Development in Nigeria," *European Journal of Social Sciences* 5 (2020): 73.

[46] A. Egobueze, C.U. Ojirika, and O. Ikuinyi, "Fiscal Federalism, Sub-national revolts and Internal Colonialism in Nigeria," *African Journal of Political Science and International Relations* 15 (2022): 54.

[47] C.K. Sharma, 'The Federal Approach to Fiscal Decentralization: Conceptual Contours for Policy Makers," *Journal of Social Sciences* 19 (2005): 169.

[48] Stella Duru, Akindeji Oyebode, and Oluwatosin Mudele, "The Constitutional Amendment Heralding the Decentralization of the Nigerian Electricity Supply Industry ('NESI')," Banwo & Ighodalo (law firm), Apr. 3, 2023, https://banwo-ighodalo.com/grey-matter/the-constitutional-amendment-heralding-the-decentralization-of-the-nigerian-electricity-supply-industry-nesi.

[49] Ibid.

[50] "Concurrent legislative list" refers to the areas of legislative competencies shared by federal and state legislative houses.

[51] L.A. Oluwasemilore, "A Critical Analysis of Nigeria's Freedom of Information Act," *Gravitas Review of Business and Property Law* 9 (2018): 18.

[52] Ibid.

[53] Suit No: HC/ABJ/CS/640/2011.

[54] The Okigbo Report inquired into the manner the government of General Ibrahim Babangida handled US$12.4 bn in oil windfall revenues accumulated during his tenure. As reported by *ThisDay* newspaper, "[T]he Okigbo Panel Report has become a metaphor for Nigeria's notoriety for poor record keeping. Nearly ten years after the report was submitted to the then Sani Abacha administration, neither the government nor any member of the panel appears to know where a copy of it can be obtained. If that is

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Furthermore, in *Legal Assistance and Aid Project v. National Assembly*, the petitioner asked for information regarding the National Assembly members' enormous wages and benefits.[55] The National Assembly denied the petitioner access to the records. The applicant then went to the Federal High Court, which granted its motion and ordered the defendant to comply.[56] It was only through the court's intervention that the records were released.[57]

Subsisting Laws that Conflict with FOIA

Other laws that inhibit the implementation of FOIA present another challenge. Laws such as the Evidence Act, Security Agencies Act, Official Secrets Act, and the *Penal Code* all have provisions that tend to impede FOIA's applicability. In addition, FOIA's duties are at odds with its loopholes. For example, nefarious public servants and organizations take advantage of gaps in the system to discriminate against applicants who request documents and data. According to Falana, the National Assembly is one organization that discriminates against applicants who want documents and details, particularly about the members' enormous incomes.[58]

Although sections 27 and 28 of FOIA override provisions on the disclosure of information in the *Criminal Code* (covering the southern part of the country), the *Penal Code* (covering the northern part), the Official Secrets Act, and various other laws, the National Assembly has not repealed or amended them.[59] Until they are repealed or amended, these laws will continue to adversely affect the implementation of FOIA. Equally, the individual thirty-six states in Nigeria have their own laws that still subsist in spite of the provisions of sections 27 and 28 of FOIA. This further suggests that FOIA is only applicable at the federal government level.

Inherent Deficiencies in FOIA

Another major challenge to the implementation of FOIA is that the law contains some inherent deficiencies. Specifically, the act contains more exemption sections and clauses than sections that actually grant access to information. Some public officers have exploited this situation for nefarious purposes. For example, only sections 1 and 3 of FOIA grant access to information, while as many as ten sections (i.e., sections 7, 11, 12, 14, 15, 16, 17, 18, 19, and 28) deny the public access to information. Some civil liberty advocates argue that the final draft of FOIA was watered down by legislators to reduce the law's effectiveness. Exceptions should ordinarily be clearly and narrowly drawn and subject to strict "harm" and public interest tests.[60] Curiously, throughout the gamut of FOIA, the phrase "public interest" is not defined.[61]

Culture of Secrecy in Government Institutions

The culture of secrecy in Nigerian government institutions has become entrenched among both public servants and citizens. Many former British colonies, including Nigeria, have official secrecy laws and civil service rules that have guided government operations for years. This phenomenon has impeded the effective implementation of FOIA. Nigeria's culture of secrecy makes the notion of public scrutiny an alien concept. Government public officials in Nigeria, like those in most other African countries, are obliged upon appointment to be guided by some codes that estop them from disclosing government information in their custody during the course of the performance

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not a national scandal, we wonder what then is." See generally J.H. Boer, "Still on the Okigbo Report," *ThisDay* (Nigeria, Feb. 4, 2007), https://www.socialtheology.com/docs/app44.pdf.

[55] FHC/ABJ./CS/805/2011.

[56] F. Falana, "Access to Information and the Law," Whistleblowing International Network, Mar. 15, 2019, https://corruptionanonymous.org/blog/access-to-information-and-the-law/.

[57] Vanguard, "SERAP berates Buhari over Comment on NASS being highly Overpaid," *Vanguard* (Nigeria, Feb. 20, 2020), https://www.vanguardngr.com/2020/02/serap-berates-buhari-over-comment-on-nass-being-highly-overpaid/.

[58] F. Falana, 'Access to Information and the Law."

[59] Jude Madubuike-Ekwe and Uchechukwu Mnadugha, "Obstacles to the Implementation of the Freedom of Information Act, 2011 in Nigeria," *NAUJILJ* 9, no. 2 (2018): 96–109.

[60] P.K. Inokoba, "Freedom of Information Act and Democratic Consolidation in Nigeria: Prospects and Challenges," *International Journal of Development and Sustainability* 3 (2014): 226.

[61] On the meaning of public interest, see *Re Stephane Peatling and Department of Employment and Workplace Relations* (2007) AATA 1011.

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of their official duties.[62] As a result, changing the mindset of public officers and even private sector managers from a culture of secrecy to openness is a great challenge to the implementation of FOIA.

Low Level of Public Awareness of FOIA

There is a low level of awareness within the populace about FOIA and how to use it to obtain information. Most ordinary Nigerians do not readily see a link between FOIA and their daily struggles to make a living. They do not see FOIA as a platform that could contribute to their well-being. Therefore, the public does not pay a lot of attention to the law. Even among the well-educated and enlightened members of society, there exists very low awareness and knowledge of the act. In general, a law can only be tested by citizens who are aware of their rights under that law.

Poor Recordkeeping and Infrastructure

Other challenges to the full implementation of FOIA are inadequate (or a complete absence of) recordkeeping and the organization and maintenance of documents. Nigerian public sector employees typically believe that government work and offices are no one's concern, and thus, they do not believe there is a necessity to preserve documents,[63] which precludes easy retrieval of public records when needed or desired.[64] Equally, recordkeeping in most Nigerian MDAs is still manual-based.[65] The provisions of FOIA addressing access to information can be ineffectual when good-quality records are not created, access to them is difficult, and procedures are lacking for records disposal. For example, FOIA[66] provides for a public institution to respond to requests for information within seven days. However, many MDAs in Nigeria cannot meet this target because information and records in many public institutions are still paper-based and tied up in bundles of files. In some instances, needed documents have been torn and eaten by insects and rodents.

States of the Federation's Non-Domestication of FOIA

In certain Nigerian states, the non-domestication of FOIA's provisions presents another difficulty. Falana points out that, although the act grants citizens the right to hold their government responsible, it has proven challenging to advance public accountability in many of Nigeria's states. This is due to the unwillingness of states to enact FOIA at the state level.

Conflicting Court Decisions

It is noteworthy that the implementation of FOIA has been largely affected by conflicting court decisions—particularly, by courts of coordinate jurisdictions that release conflicting opinions on issues of the same subject

[62] Emmanuel C. Nwachukwu and Okechukwu Innocent Eme, "Oath of Secrecy in the Nigerian Public Service," *Arabian Journal of Business and Management Review* 2, no. 8 (2014): 98–116.

[63] A. Epelle, *Issues in Nigerian Public Administration* (Pearl Publishers International, 2020).

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[66] Freedom of Information Act, Laws of the Federation of Nigeria 2010, s 4.

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matter. One of the major areas affected is FOIA's scope—that is, whether the law applies to the Nigerian states. This challenge of conflicting court decisions has negated the common law principle of consistency and predictability of court decisions.

Implications of *Austin Osaku v. Edo State Agency for the Control of AIDS*

The *Osaku* case commenced on January 6, 2014, following the refusal of the Edo State Agency for the Control of AIDS (EDOSACA) to oblige the request of a coalition of CSOs for the state government's detailed records relating to the HIV/AIDS Programme Development Project (HPDP II) and EDOSACA's records on financial expenditures, grants, donor partnerships, contract awards, and criteria for grant allocations covering 2011 through 2014. The coalition's request was declined, thus compelling the applicants to seek redress through the courts. The Supreme Court, in a unanimous decision on April 11, 2025, held that FOIA is now applicable to all states in Nigeria. In view of the decision of the Supreme Court, the position is that FOIA is now applicable to all thirty-six states in Nigeria, notwithstanding that thirty-five have yet to enact FOIA-related laws.[67]

Before delving into the implications of this decision, it is essential to consider the powers and jurisdiction of the Supreme Court of Nigeria. The Supreme Court had declared that, being the nation's apex court, decisions from the Supreme Court are in every sense binding on all courts and authorities in any part of the federation.[68] This implies that a Supreme Court decision[69] will apply throughout the country and be binding on the Court of Appeal, notwithstanding the appellate court's reservation on the correctness of the Supreme Court's decision.[70] Once the Supreme Court has effectively decided on a matter, and there is no ambiguity or slip opinion to be corrected, it becomes *functus officio.*[71] In the same vein, no appeal can be brought nor can a review be undertaken, except by virtue of section 235 of the Constitution, which empowers the President of Nigeria or a state governor to exercise the power of the prerogative of mercy.[72]

Pending the time when the Supreme Court of Nigeria departs from its holding on FOIA, or if the law is amended to clearly articulate that it is not binding on the states, it will be essential to pay close attention to the modalities of FOIA's operation, particularly as they pertain to the workability of its provisions at the state level. With due respect to the Court's decision in *Osaku*,[73] it would appear that the judgment paid little attention to the expected roles of the MDAs, state officials (such as the Honorable Attorney General and Commissioner of Justice), and others who are expected to play some role in ensuring the smooth operation of the laws.

Conclusion and Recommendation

In addressing the challenges stated above, there is a need for increased awareness of the operations of public servants across government MDAs as they relate to FOIA. This awareness could help address a number of these aforementioned challenges regarding access to information, including a lack of political will, a low level of public awareness of FOIA, a culture of secrecy, and a host of other factors that impede the smooth release of government records.

Similarly, following the Supreme Court's decision of *Austin Osaku v. Edo State Agency for the Control of AIDS*, it is essential to repeal some of the state laws that still prescribe punishment for the release of unauthorized government records. Until this is done, the fruits of the decision in *Osaku* may not be ripe for the thirty-six states of the Nigerian federation to enjoy.

[67] Ibid.
[68] Supreme Act, s 8(2).
[69] *Kanawa v. I.N.E.C* (2022) 1 NWLR (Pt. 1812) 393.
[70] *Yusuff v. Dada* (1990) 4 NWLR (Pt. 146) 657.
[71] *Adigun v. The Sec., Iwo Local Govt.* (1999) 8 NWLR (Pt. 613) 30.
[72] *Iteogu v. L.D.P.C.* (2018) 11 NWLR (Pt. 1630) 375.
[73] *Austin Osaku v. Edo State Agency for the Control of AIDS (EDOSACA)*, SC/614/2014.

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