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Journalism, Gender and Democratic Governance in Nigeria

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Edited by
Joseph Ngu

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**JOURNALISM, GENDER
AND DEMOCRATIC GOVERNANCE
IN NIGERIA**

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MAKING THE FOI ACT WORK BY IMPROVING MEDIA LITERACY

Olayinka .A. Egbokhare

“If it were left to me to decide whether we should have a government without a Free Press or a Free Press without a government, I would prefer the latter”.-
Thomas Jefferson

“...and how shall they hear without a preacher? And how shall they preach except they be sent.”

- The Bible, Romans 10: 14b -15a.

Introduction

The impetus to write a paper on this topic arose out of two different experiences. Sometimes in 2012, at a workshop organised for media educators on the Freedom of Information Act, one of the speakers; a lawyer gave the audience a case study and asked what they would do if faced with such a scenario. The reactions generated by the participants clearly showed that the general understanding of the bill was still vague. The second experience was a scene from the film based on John Grisham’s novel titled *The Pelican Brief*. A female Law undergraduate went to a Government Institution to seek information about some government related issues and the custodian of the documents declined. The young lady simply asked the officer if she had ever heard of the Freedom of Information Bill, without another word, the custodian of the information took the student into the strong room and opened the cabinet containing the information for her use.

It is almost two years since the FOI Bill was passed and from all appearances, not enough has been done through the bill. A journalist writing for the *Guardian Newspaper* called it motion without movement. He quoted Prof. Lai Oso, the Dean of School of Communication, Lagos State University as having said, “one is yet to see any major difference. The media organisations are yet to put the FOI law into use.” The writer of the article also reported that Mr Bayo Atoyebi, the Executive Secretary of the Nigerian Press Council(NPC) observed that there has been a psychological boost in the confidence of journalists with the advent of the

FOI law, though it has not reflected in any considerable level operationally. In the article, Kabir(2012) further quoted Atoyebi as saying

So far, reported instances of testing the law, by invoking it and following it up, some to the courts, have come mainly from civil society organisations. Our experience from the Press Council, from the two occasions of capacity building on the FOI law, shows that familiarity and usage among journalists is tepid.

Certain questions come to mind here knowing that these views were expressed barely a year after the bill was passed. What is the current level of awareness of the media practitioners about the bill? To what extent do people understand what they can do with the bill especially under a democratic dispensation? How are teachers of journalism and communication mainstreaming the bill into the existing curriculum? What role will media literacy play in the implementation of the bill? Whose responsibility is it to educate the Press on laws, ethics and regulations? This paper is an attempt to answer the questions raised knowing full well the role literacy plays in the process of adoption of new laws and regulations. This becomes more important considering all the efforts that went into advocacy for the bill as well as the high expectations at home and abroad about what the passing of the bill portends for Nigeria.

An overview of the Bill.

The bill, named the Freedom of Information Act 2011 has 32 Sections covering the following headings:

1. Rights of access to records.
2. Information about public institution.
3. Request for access to records
4. Time for granting or refusing application.
5. Transfer of application.
6. Extension of time limit for granting or refusing application.
7. Where access is refused.
8. Fees.
9. Record keeping and maintenance of records.
10. Destruction or falsification of records.
11. Exemption of international affairs and defence.
12. Exemption of law enforcement and investigation.
13. Training of officials on the right to information and on the effective implementation of this Act.
14. Exemption of personal information.
15. Exemption of Third party information

16. Exemption of personal or other privileges conferred by law.
17. Exemption of course or research material.
18. Severability.
19. Denial by a public institute to disclose records.
20. Judicial review.
21. Hearing in a summary way.
22. Access to information by the court.
23. Court to take precautions against disclosing information.
24. Burden of proof.
25. Order to disclose information.
26. Exempted Materials.
27. Protection of public officer.
28. Documents under classification.
29. Submission of reports.
30. Complimentary procedures.
31. Interpretation.
32. Citation.

The short title of the bill is “Freedom of Information Bill, 2011” and the long title is

An act to make 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 and; for related matters.

The bill was passed by the Senate and the House of Representatives on 24th May, 2011. It was certified by the Clerk to the National Assembly, Salisu Abubakar Maikasuwa on 27th May, 2011 and assented to by the President of the Federal Republic of Nigeria, Dr. Goodluck Ebele Jonathan on 28th May 2011.

These are some of the operational definitions spelt out in the act:

- Applicant refers to any person, who applies for information under the Act,
- Application refers to any request for information made under the Act
- Information includes all records, documents and information stored in whatever form, including written, electronic, visual images, sound, audio recording, etc.

- Public institution means any legislative, executive, judicial, administrative or advisory body of the government, including boards, bureau, committees or commissions of the state and any subsidiary body of those bodies including but not limited to committees and sub-committees which are supported in whole or in part by public fund or which expends public fund and private bodies providing public services, performing public functions or utilizing public funds;

-Public record or document means a record in any form having been prepared, or having been or being used, received, possessed or under the control of any public or private bodies relating to matters of public interest and includes any-

- (a) Writing on any material;
- (b) Information recorded or stored on other devices; and any material subsequently derived from information so recorded or stored;
- (c) Label, marking, or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;
- (d) Book, card, form, map, plan, graph or drawing;
- (e) Photograph, film, negative, microfilm, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

The bill is written in language that is easy to understand and devoid of unnecessary legalese. The headings and these operationalised terms are reproduced here for easy or quick reference. However, reading a copy of the document will serve a greater purpose for thorough grasp of the contents.

Literature Review

Many writers have written in praise of the Freedom of information Act emphasizing its benefits and relevance. The importance of the bill cannot be over emphasized especially in a democratic environment. Free speech and free press are instruments of self-government by the people because they enable the people to be informed and educated about the affairs of government (Nwabueze, 1981:458). Thus, an informed electorate will demand for fairness and accountability from the government or a public institution. Common Nigerians will be empowered with a capacity to take part in the political process and become active citizens who possess adequate information about issues of governance.(Mmadu,2011). Analysts have identified that the Freedom of Information Act is a vital tool to ensure democracy and responsible governance in Nigeria. This is because it will curb executive, judicial and legislative recklessness.(Afolayan). In addition, "the FOIA has the potential for momentous impact on governance in Nigeria by modifying the dynamics of the interactions between government and public."(Mmadu, 2011, P.118) In a more declarative stance emphasizing the importance of the bill, the resolution of the UN General Assembly obtains that the

Freedom of information is a fundamental human right and is the touchstone of all freedoms to which the United Nations is consecrated. Freedom of information implies the right to gather, transmit and publish news anywhere and everywhere without fetters. As such, it is an essential factor in any serious effort to promote the peace and progress of the world.

The charter sees Freedom of information as a human right and a precursor to world peace. As a process that exposes any wrongdoing, the act “will have a restraining influence on the culture of corruption and make way for a culture of integrity in public life” (Mmaddu, 2011). In essence, this bill is more of the celebration of every man’s right to know and it will enable the governed to see as a right, the need to seek accountability from its rulers. Like Afolayan() observed, “in a country where Freedom of Information Act is in operation, anyone can make a request for information– there are no restrictions on your age, nationality, or where you live.” The reference anyone is noteworthy because many people associate the rights to invoke the FOI Bill with practicing journalists alone. As Arogundade(2012 , P.)says,

Although the media deal in information more than any other segment of the society, the Freedom of Information Act is not a law for the Nigerian media alone. Rather, it is a law that guarantees a right of access to information to everyone in the country as such, places enormous responsibility on those who hold information.

It has in fact been observed that most of the instances where the bill has been invoked in the less than two years of its operation were more from lawyers and members of the civil society and less from journalists. In an online publication, “Monitoring FOI Requests in Nigeria”, groups like Legal Defence and Assistance Project (LEDAP), Socio- Economic Right and Accountability Project (SERAP), Women Advocates Research and Documentation Centre (WARDC) as well as lawyers like Mr. Femi Falana, Esq, Mr. Ojukwu Chikaosolu were cited as having successfully invoked the bill. The information requested surprisingly all had to do with financial records. The institutions concerned involved in the non-release of information were Central Bank of Nigeria(CBN) when asked to provide information on the #191bn asset forfeited by the former Managing Director of Oceanic Bank, Mrs Cecilia Ibru. Another instance of invoking the bill had to do with Legislators being asked to release the details of the salaries,

emoluments and allowances that they collected from 2007 to 2011. Also cited was the case involving the Governor of Central Bank who was taken to court for refusing to release information and documents on the authorisation by the CBN of over #1.26 Trillion as Fuel Subsidy for 2011. Moreover, there is a record of request for information from the government on the spending of stolen funds.

As mentioned earlier, all the cases centre on financial accountability of public officers. This goes to further strengthen the submission of Afolayan() that the FOI Bill is vital to democratic governance because “ it will curb executive, judicial and legislative recklessness. The rot in governance will start to be made known just as we are being duly informed of the rot on mismanagement of fuel subsidy”. Another observer pointed out that the bill will make the government to be more responsible in its accounting and record keeping. If the public and journalist can invoke a law to back up their request for information which could be used to call recalcitrant officers to order, then we are not far from having a corruption free government. The view was succinctly expressed by Enonche (2011) when he said,

With the Information Act in practice, there will be openness, transparency and good governance thereby complementing government's avowed commitment to stamping out corruption in Nigeria, and in particular, will assist various government agencies such as the National Human Rights Commission (NHRC), the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the Economic and Financial Crimes Commission (EFCC), the Code of Conduct Bureau and Code of Conduct Tribunal, as well as security and other law enforcement agencies, in the performance of their duties.

As it appears, many see the bill as another opportunity to improve on Nigeria's image by stamping out corruption and making the government and its numerous agencies more accountable to the electorate. Even though many critics are worried about the number of exemptions in the bill, experts say this still does not make the bill lame or unviable. Applicants may be denied certain information to protect various interests as stated in sections 11, 12, 14,15,16,17 and 26. If this is the case, the public authority must tell the applicant why they have withheld such information. According to Bard (2001), unless there's a good reason, no organisation can withhold information; they must provide the information within seven (7) working days. These two issues have generated much criticism in some

analysis (Mmadu, 2011). First, the ultimatum of 7 days was said to be rather short considering the state of information storage and retrieval in some of Nigeria's public institutions. The other challenge thrown up is that of poor information management. In a study conducted by Aminu, Kagu, Malgwi and Danjuma (2011), 81% of the respondents believe that records management in Nigeria is still poor. In agreement, Coker (2011) observed that the FOI Bill faces enormous challenges in terms of human capital development. This makes relevant the observation by Arogundade(2012),that "the attitude of public administrators is critical to the successful implementation of the Act because public administrators, who are the face of government, will determine the quality of, and access to, information"

One other source of concern about the bill is the low level of awareness among the populace. Writing on the need to improve efforts at creating awareness about the bill, Ojo(2010) observed that the bill will not serve the purpose of the general public unless individuals are conversant with the provisions made available to them by the bill. He cautioned that the bill is not solely about press freedom and that the media can play a pivotal role in educating the general public about what the bill stands for. The point is that "the media must be awakened and enlightened to the fact that access to information is a right which ought to be guaranteed to everyone, including vulnerable members of the population and marginalized groups"(Ojo,2010).

One important reason for literacy empowerment on the bill is the prevalence of misconceptions about what the bill is really about, one observation is that

Even among relatively well educated and otherwise sophisticated members of the society, there s only superficial knowledge of the law, what it seeks to achieve and how they can take advantage of it. Much of the public discussion about freedom of information law gives the impression that it is no more than a guarantee of media freedom. (Ojo, 2010)

The need for advocacy and literacy cannot be downplayed in the success of any campaign. The bill must not end up as "motion without movement" as some have called it. Like Ojo(2010) opines, one major challenge will be how to ensure that ordinary people have a fair knowledge of these laws, the procedures and conditions outlined in them, the remedies available in the event of a denial of access to information, and most importantly, the potential impact of the law on their lives. This can only be achieved through media campaigns. However, the role of the media in this regard can only be enhanced when the media itself is literate about the bill. This becomes more pressing because many people have

expressed the fear that the bill will not be read by many and this was one of the questions posed by this study.

In a bid to support this study with theoretical underpinnings, the researcher reviewed the Social Responsibility Theory. The view postulated in the theory emanated from the submission of the Hutchins Commission on Freedom of the Press set up in the United States in 1947 to re-examine the concept of press freedom as exemplified by the Libertarian theory of press freedom (Folarin, 1998). The Social Responsibility theory is of great significance to this discussion on the FOI Bill because it substantiates the objectives of the act for a press that is free and not under any constraint by government, society or even the media. According to MacQuail (1994, P124), under the social responsibility theory,

the media have obligations to society, and media ownership is a public trust; news media should be truthful, accurate, fair, objective and relevant; the media should provide forum for ideas; the media should be free but self-regulated; media should follow agreed codes of ethics and professional standards; and under some circumstances, society may need to intervene in the public interest..

Of immediate relevance to this study is the clause that defines the need of the society to sometimes intervene while calling on the media to provide a forum for ideas. This view was reiterated by Folarin (1998:27) when he said "the chief duty of the media operating with this theory is to raise conflict to the plane of discussion. In principle, the media can be used by anyone who has an idea to express..." This is what the FOI bill advocates as intoned by Soola (1997:9) who said "the crux of the social responsibility theory is the surveillance and accountability role of the media. The theory seeks to guarantee the freedom of the press and individual rights to seek for, obtain and disseminate information." The aspect of Press freedom is not subject to debate, what is still lacking and underexploited is the individual rights to seek for, obtain and disseminate information

For emphasis sake, Siebert (1979, P.74) defines the functions of the media under the social responsibility model as:

1. Servicing the political system by providing information, discussion and debate on public affairs,
2. Enlightening the public so as to make it capable of self-government,

3. Safeguarding the rights of the individual by serving as a watchdog against government,
4. Servicing the economic system, primarily by bringing together the buyers and sellers of goods and services through the medium of advertising,
5. Providing entertainment,
6. Maintaining its own financial self-sufficiency so as to be free from the pressures of special interests.

The first three objectives of the theory are directly related to the bill under consideration and the second objective: "enlightening the public so as to make it capable of self-government" is imperative if the bill is to be of any effect. This study makes a case for media literacy and the need to increase awareness about the FOI Bill for democracy to draw any benefits from its enactment. The public is ignorant of its human right to demand for information. The media can be made to remove this shroud of secrecy and popularise the public's need to know.

Methodology of Study

A questionnaire containing 12 items (not counting demographic variables) comprising of open and close ended questions was circulated in Ibadan and Lagos. A sample of 120 media practitioners was drawn from Federal Radio Corporation of Nigeria, Nigerian Tribune, Tell Magazine and the Guardian. The choice of the media houses was purposive while the selection of individual respondent was based on a convenience sample. While FRCN was selected to represent Government -owned media, Tribune, Guardian and Tell were selected to represent Private media. Tell's choice was also purposive as it was selected to give a balance between dailies and Magazine. In addition, the choice of media outfits located in cities of Ibadan and Lagos was crucial considering their pacesetter stance in media matters as well as the cosmopolitan nature of the cities. Some journalists were approached in their offices in Lagos and Ibadan while some others were located at the Oyo State Headquarters of Nigerian Union of Journalists in Iyaganku, Ibadan. A total of 109 copies of the questionnaire were found valid for analysis. Findings were calculated using frequency counts and simple percentages. As more of the questionnaire items were open ended, the researcher also generated useful responses which were collated and then summarised on the bases of frequency of occurrence.

Findings

Findings on demographic variables in media studies in Nigeria appear to be generalisable. For instance, there were more males than females in the sample despite the fact that there was no gender bias in the distribution of the questionnaire. The break down in gender is in the ratio of 3:1, with men making up 75% of the sample. This supports the view that journalism in Nigeria is still a male dominated field.

Majority of the respondents are University graduates with 50% having B.A./ B. Sc as their highest educational qualification, this group is closely followed by Polytechnic graduates with Higher National Diploma (H.N.D.) Certificates with 25%, Masters degree holders come next with 10%, the remaining 15% was taken up by Diploma and NIJ certificate holders.

Surprisingly, the most prevalent age group among respondents was between 20-25 with 26% closely followed by respondents within the 41-45 age bracket with 20%, people between ages 31-35 were almost as many as those between 36-40 with 17% and 16% respectively. Only 1 candidate was 55years of age and the oldest respondent was a 70 year old man whose highest Educational qualification is a Diploma Certificate in Journalism. More than a quarter of the sample, 47% have spent between 0-5 years in journalism, 33% have spent between 6 -10 years practising journalism, 15% have spent not less 11-15years. Those who have spent 21-25 years are few and only 1 candidate has spent over 45years in the practice, he also happens to be the oldest respondent.

To measure respondents' level of awareness on the law ,the researcher posed four questions. First, respondents were asked what year the bill was passed. The question which was open ended generated five different responses: 2009, 2010, 2011, and 2012 and "I don't know". Journalists who answered the question correctly were a quarter of the sample, next in frequency was those who said the law was passed in 2010. One may associate the confusion about the date the bill was passed with the time the debate about the bill reached a crescendo in the media. Respondents were then asked what the bill is about. Virtually all the respondents had something to say in response to this open ended question. The responses all had to do with access to information with adjectives like unhindered, unfettered and free to qualify access. More than half of the sample defined the bill in terms of Press Freedom. This fear was expressed by Ojo (2010) when he said "much of the public discussion about freedom of information laws give the impression that it is no more than a guarantee of media freedom. One may need to restate with Kabir(2012) who quoted Arogundade as saying

although the media deal in information more than any other segment of the society, the Freedom of Information Act is not a law for the Nigerian media alone. Rather, it is a law that guarantees a right of access to information to everyone in the country as such, places enormous responsibility on those who hold information

Just about 10% of the sample made any reference to other individuals having this same access to information. Next respondents were asked if they have actually read a copy of the bill, 93% said they had not. One would then understand why when respondents were asked to cite two sections of the bill, not more than 3% knew with exactness two sections, 3% spoke about sections on security, economy and education, these were just broad references, about 7% made guesses all bordering on access to information. A whole 90% of the respondents left the spaces blank. In fact, when respondents were then asked to rate the extent of awareness of most journalists on the law, 73% of the sample submitted that the level of awareness is very low.

Knowing that sitting down to study a legal document may not come easy to many, the researcher asked the respondents two questions on access to training on the bill. A total of 83% of the respondents had not had any training on the bill within their organisation. On the other hand, respondents were asked if they had attended training facilitated by other agencies or civil society organizations, 20% said they had as opposed to the 17% who had enjoyed training on the FOI Bill within their establishment. However, when respondent were asked if they would like to attend a training or sensitization meeting on the bill 87% of them responded in the affirmative. One of the civil society leaders who was at the fore front of the campaign for the FOI bill, Edetaen Ojo, had said "it will be extremely optimistic to expect that up to one percent of the population would read the freedom of information law" (Ojo, 2010). The activist had expressed the view that most ordinary people in Africa do not read legal text and that even among relatively well read people, only a superficial knowledge of the law exists.

Not done in the bid to establish how versed journalists are about the bill and to assess if they were themselves aware of the importance of the bill, respondents were asked to mention two major stories that had broken as a result of the law, not many respondents were able to respond to this question. In fact, only 26% of the respondents knew any story at all in connection with the bill. The most cited case was that of Fakouk Lawan followed by the Cecilia Ibru case. Other cases

cited are the beating of journalists, Femi Falana's invocation of the law and the CBN fuel subsidy story.

On how the FOI law has impacted the practice of journalism in Nigeria, most of the responses were positive and some of them are worth recounting. One respondent expressed the view that "it has raised the awareness that public records and information are freely available". Another said "it gives a free flow of information from the Government to the people and vice versa". One respondent expressed the view that "Journalists can now investigate the government properly without fear, and reveal hidden government activities". Another respondent said it has made the press more liberal. The other group of respondents who have not felt the impact of the bill also had their say "it has not impacted on the press because the act has not been popularised". The law has not been implemented." it is only on paper, nothing has changed since its introduction". There was however one comment which is of direct relevance to this study. A respondent opined that "it has not really impacted on the press because it has not been given the necessary publicity; many journalists have low awareness of its existence." Let us conclude with the submission of one of the respondents that

Reasonably, at least there is a consciousness among journalists that the law exists. I believe that if it is utilised, it will enable journalists gain vital information whenever they need it and this will make our jobs easier and even confer credibility on or reports since the source of the information will be considered genuine.

Conclusions and Recommendation

To echo the general impression given by the respondents, it may be too early to start measuring the impact of the bill on the performance of journalists. However, certain facts are emerging. The most important to this writer is that the level of awareness about the law is abysmally low especially among journalists. The fear is if it is this low among the people popular believed to be the custodians of the bill, how much lower will it be among the general populace? It is also good to note that expectations are high about what the law can do even though there is a wrong perception about how individuals can apply the bill for their individual information seeking purposes. One may want to ask what can be done to further increase awareness about the Act and whose responsibility it is to sensitize the general public on what they can do with the law. It would appear that the same energy that was devoted to the advocacy for the passing of the bill has to be pumped into its implementation.

In addition, the provision of the Act can be further summarised and presented in leaflets or handbills as bullet points for quick access. Broadcast stations can run

jingles and public service announcements featuring bits and pieces of the bill that are of direct relevance to the public. Media houses can themselves organise in-house training for their staff to further improve their knowledge of the bill and its processes. The media can then in turn educate the public and make them to know that the bill is for everyone and not only meant to promote Press Freedom. Journalists in training in the various schools awarding degrees in Mass Communication should be introduced to the Act especially in their Press Law classes. It would be much easier to mainstream the FOI Act as a topic than to ask for a course to be introduced into the curriculum. In fact, mention of the Act can be made in different journalism classes so that the students will be familiar with it and will learn the circumstances under which it can be invoked. Of importance also is the need to emphasize the exemptions so that everyone will know the extent to which the law can be invoked. Again the question in the quotation at the beginning of this paper, "...and how shall they hear without a preacher? And how shall they preach except they be sent."(The Bible, Romans 10: 14b -15a.)

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