

GLOBAL, CONTINENTAL AND NATIONAL CONTEXT OF FOI DEVELOPMENT AND ESSENTIAL ELEMENTS OF THE FOI ACT, 2011.

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- Legal premise for Fol in Nigeria before the advent of the Fol Act.
- Essential Elements of the Fol Act, 2011

Preamble

- All over the world, with the growth and development of mankind, it is now agreed that democracy is the preferred system of government. This is understandably so because it recognises the fact that sovereignty lies with the people. This fact is expressed not only in the peoples freedom to make choices, but also in their right to demand transparency, accountability and participation in governance.

Preamble (cont;d)

- Dividends of democracy is not necessarily limited to the provision of physical infrastructures which even dictatorships, benevolent or otherwise can sometimes provide much more and possibly better.
- It is more about upholding the much cherished values and tenets or democratic practice, a key part of which is the right of access to information held by public institutions, which strengthens public participation in the governance process.

Preamble (cont'd)

- If in a constitutional democracy like ours sovereignty lies with the people, then citizens must take the centre stage in governance by actively participating, which the FOIA guarantees
- Freedom of information is therefore a critical ingredient that distinguishes democracy from a dictatorship and also defines the authenticity and vibrancy of a democracy.

Preamble (cont'd)

- Since independence, we had experienced a very secretive system of governance. This legacy was handed down by the colonial administration and legitimized by various legislation, policies and practices including the Official Secrets Act, Section 97 of the Criminal Code, the National Security Agencies Act and the various provisions of the extant Civil Service Rules.
- It was also deeply entrenched by successive military regimes.

Implications

- ❑ Closed nature of government, resulted in limited access to information on government transactions and activities
- ❑ Alienation of citizens' participation in governance
- ❑ Suspicion and distrust created between government and citizens
- ❑ Compromised processes, guidelines and procedures for the conduct of official transactions

Implications (cont'd)

- Fertile environment created for corruption and maladministration to thrive
- Stunted development
- Resulted in the impoverishment of citizens
- Discontent, disillusionment, anger crystallizing into various forms of violence
- Age-long communal ties broken
- Promoted political instability, disillusionment amongst the populace and cynicism

Consequences

- Agitation for open and inclusive governance even under military dictatorship.
- This found expression in the production of the very first draft of the FoI Bill under the Abacha administration in 1993.
- With the advent of democracy in 1999, advocacy for the enactment of the FoI Bill gained traction again and was led by a variety of stakeholders including the media and various CSO Groups until its enactment on 28 May 2011

Historical Overview Worldwide

- Sweden under the Swedish Press Freedom Law -1766
- Finland -1951
- U.S.A. -1966
- Norway -1970
- France and Netherlands -1978
- Canada -1981 but took effect in 1983
- New Zealand and Australia -1982
- Columbia and Denmark -1985
- Greece -1986

Historical Overview Worldwide (cont'd)

- Philippines and Austria -1987
- Italy -1990
- Hungary and Ukraine -1992
- Portugal -1993
- Belize -1994
- Hong Kong -1995
- South Korea and Iceland -1996
- Thailand, Uzbekistan and Ireland -1997
- Georgia, Latvia and Israel -1998

Historical Overview Worldwide (cont'd)

- Japan, Trinidad & Tobago, Czech Republic, Liechtenstein and Albania - 1999
- United Kingdom, Bulgaria, Lithuania, Moldova, Estonia, South Africa - 2000
- **Note**
- As at March, 2012 - About 93 countries had enacted several variants of FOI Laws worldwide. Some of them were stand alone FOI laws, while some others were either combined with Media Laws or with Data Protection/Privacy Laws.

Historical Overview: Window on Africa

- 10 African Countries have FoI Laws. These are:
 - South Africa - 2000
 - Angola and Zimbabwe - 2002
 - Uganda - 2005
 - Ethiopia - 2008
 - Liberia and Guinea - 2010
 - Nigeria, Niger and Tunisia – 2011
- Many more have constitutional provisions on FoI e.g. Ghana, Malawi, Mozambique, Burkina Faso, etc.

Legal Premise for the Fol

- Issues of freedom of information have been adequately covered by various International and Regional Conventions, Treaties and Charters, which Nigeria, by virtue of her membership of such institutions, has not only ratified, but in some cases has also specifically domesticated it as part and parcel of her existing legal regime.
- Some of these instruments include Article 19 of the ICCPR, UDHR and Article 9 of ACHPR to name just a few.

Legal Premise for the Fol (cont'd)

- The UN General Assembly in 1964 stated that “freedom of information is a fundamental human right and is the touchstone for all freedoms to which the UN is consecrated”.
- The ACHPR in its Declaration of principles on freedom of expression in Africa Part IV, which is premised on Article 9 of the Charter, firmly asserts that “Public bodies hold information not for themselves but as custodians of the public good and every one has the right to access the information”

Legal Premise for the Fol (cont'd)

- The African Charter on Human and Peoples Rights which came into force in 1986 provides in Article 9(i), that: “ **every individual shall have the right to receive information**”; while
- The ECOWAS Treaty Article 4(g) (Fundamental Principles) upholds the Charter of the AU.

Advocacy for Nigeria's Fol Act.

- Started in 1993 under the administration of General Abacha and continued under the administration of General Abdulsalami and Ernest Shonekan
- Gained traction with the advent of democracy in 1999
- Passed by Parliament in 2007 but failed to get Presidential assent.
- Passed again by Parliament on 24th May, 2011 and got Presidential assent on 28th May, 2011.

Essential Elements of the FOI Act, 2011

- All citizens have right to access information or records held by any public institutions or relevant private institutions, not withstanding the form in which such information or records are held.
- Public institutions and relevant private institutions are statutorily obliged to create, keep organise and maintain records/information about their set up, structure, operations etc. in a manner that makes access to such information, easy.

Essential Elements of the FOI Act, 2011

(cont'd)

- Reasons must not be given for requesting information or records.
- Public institutions are obliged to proactively disclose, through diverse media at least 40 classes of information/records held by them.
- Failure to proactively disclose the categories of records/information required under the Act is actionable in court and could be categorised as wrongful denial of information which attracts a fine of N500,000.

Essential Elements of the FOI Act, 2011 (cont'd)

- The Act applies to all public institutions in all arms of government and private institutions utilizing public funds, performing public functions or providing public services
- Request for information/records are to be dealt with promptly and affordably
- The Act makes provision for the information needs of the illiterate and the physically challenged people

Essential Elements of the FOI Act, 2011 (cont'd)

- It penalises wrongful denial of information, destruction, falsification or alteration of information/records or attempts to do any of these things.
- While wrongful denial attracts N500,000, the others attract a minimum of One year imprisonment without option of fine and no upper limit for sentencing.
- It mandates public institutions to build the capacity of their staff to effectively implement the provisions of the Act

Essential Elements of the FOI Act, 2011

(cont'd)

- It provides a range of Eight, issue based exemptions to the public's right to know.
- The exemptions are however subject to the three part test which includes the public interest over-ride. The details of the three part test are as stated below:
 - a) The issue being exempted must relate to one of the Eight issues that are clearly stated in the Act;
 - b) The harm that the disclosure of the said record /information will cause the specific exemption must be clearly shown;

Essential Elements of the FOI Act, 2011

(cont'd)

- c) Justification must be provided to show that the harm which the disclosure of the said information/record would cause the specific exemption, clearly outweighs the interest of the public in having the information/record being made available to them.
- The Act makes provision for prompt adjudication by the judiciary, of all disputes related to the public's right to know.

Essential Elements of the FOI Act, 2011

(cont'd)

- It grants primacy to the provisions of the Act in instances where other laws are in conflict with its provisions.
- It protects the whistle blower
- It makes annual reporting obligatory for all institutions affected by it.
- Such reports are to be submitted to the office of the Attorney General, which in turn is obliged to transmit such reports to both the parliament and the public.

Essential Elements of the FOI Act, 2011 (cont'd)

- The Act empowers the office of the Attorney General to facilitate and coordinate the effective implementation of the Act.
- He is also required to report annually to Parliament on his discharge of this duty, amongst others.

Essential Elements of the FOI Act, 2011 (cont'd)

- It mandates both Chambers of the National Assembly to create the relevant parliamentary Committees that would serve as oversight authorities in the legislature for monitoring the process of implementing the Act.
- This is part of the framework for ensuring effective compliance with the provisions of the Act by all institutions that are affected by it.

Thank you for listening.



References:

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2. Maxwell, K, “Understanding the Provisions of the Freedom of Information Act, Its Essential Elements and How they affect Public Institutions for Democratic Governance at all levels”, 2012.
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