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## **Making the FoI Act work**

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NIGERIANS eager to use the Freedom of Information Act to expand the frontiers of free speech, the right to information and real transparency in government have received a rude awakening. They have been jolted out of their reverie by the Head of Service of the Federation, Folasade Yemi-Esan, who has ordered civil servants to “stop the unauthorised circulation of official documents on social media.” In a new regime legislated by Yemi-Esan, she threatened workers who leaked government documents with dismissal by invoking extant civil service rules. This is an unnecessary show of power. Rather than advance the cause of openness and good governance philosophy, it rolls it back.

Without doubt, the directive by the HoS is a direct contradiction of the tenets that underpin the FoI law. Remarkably, the FoI, which came to fruition in 2011 after 17 years of filibustering, takes precedence over the Official Secrets Act. That law is repugnant to democratic ethos. It promoted secrecy and non-disclosure of information, even non-sensitive ones. A relic of the colonial overlords, the HoS should not recreate that better-forgotten epoch.

The threat to levy sanctions on civil servants in a 21st Century democracy is dictatorial. It is open to debate that the regime of the President, Major General Muhammadu Buhari (retd.), is not too comfortable with the era that social media has brought upon practically everything in the world.

The FoI Act has adequate provisions to counter the manipulations in government. Fortunately, Nigeria has ratified a similar international treaty on openness – the UN Human Rights Covenant on Civil and Political Rights, a 1966 document. The 19th article states partly, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” In this era, this comes in handy against mischief by the government.

The dismissal threat from the regime, however, has stark coincidences. The dire warning came just after a query from the HoS to a permanent secretary over a controversial N7 billion building acquisition for a ministry, which she described as “uncompleted carcass,” made headlines. The robust social media not only picked that up, it also went to town with the reply of the PS to the query. It seems that the HoS is at a loss as to why these exchanges at the top level of government are finding their way to the social media, but the power of the digital age is in its ability to dig deep and challenge the old order of opacity in government.

The Presidency acted similarly a few weeks ago when the draft of the President's speech to the nation on COVID-19 emerged in the social media hours before he made the broadcast. Expressing their shock, the media managers of Buhari threatened to investigate the source of the leak and punish the offender. This, too, is contentious since governments and multinationals regularly release embargoed speeches to the media well ahead of broadcast or publication.

Normally, openness is assumed in a democracy. But after years of military rule, where civil institutions existed at the mercy of despots, successive governments in Nigeria are finding it hard to adapt to openness. There is no justification for this. Indeed, it is among the strong elements that have rendered the FoI law otiose.

As such, federal ministries, departments and agencies treat it with disdain. Armed with excuses, they reject FoI requests from citizens and the media. A recent request by the Socio-Economic Rights and Accountability Project to the Ministry of Justice to give the details of the total of the public fund looted by the late dictator, Sani Abacha, and how it was spent met with the usual obstruction. The Minister of Justice and Attorney-General of the Federation, Abubakar Malami, tersely replied that it "has no records of the exact amount of public funds stolen by a former military head of state, Sani Abacha, and no records of the spending of about \$5 billion recovered loot for the period between 1999 and 2015."

Not surprisingly, Nigeria ranked a woeful 132 out of 162 countries in the 2018 Human Freedom Index, which is annually co-published by the Cato Institute, the Fraser Institute, and the Liberales Institut at the Friedrich Naumann Foundation for Freedom. The think tanks see a strong link between open government and economic and political advancement, with New Zealand, Switzerland, Hong Kong, Australia, Denmark and the Netherlands occupying the top six positions.

Despite the challenges of developments traced to murkiness, state governments are as guilty as the centre. Many of them use the law as a cover, claiming that the FoI is a federal law, though they delay in domesticating it at the sub-national level. The Federal Government, states and local governments should de-emphasise their obsession with military era opacity. Nigerians should have express access to information about the process in government.

Across the world, governments try as much as possible to democratise information access. The FoI law helps in this way, having been enacted by between 90 and 100 countries, according to the Global Investigative Journalism Network and *Wikipedia.org*. Exceptionally, Sweden was the first to enact the Freedom of the Press Act in 1776. It is in this line that the Scandinavian country ranked 11th in the 2018 HFI.

The media, civil society organisations and citizens should not relent until the system is made open. The judiciary should continue to play its part. The Buhari regime should deepen the Open Treasury Portal, which seemingly exists nominally, in order to demonstrate transparency and build trust with the public.