

RESEARCH ISSUE Brief

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Appraisal of FOI Act: Need for Legislative Amendment

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Executive Summary

This brief seeks to review the FOI Act with a view to propose an amendment to the Act thereby strengthening and make it complementary to other strategies designed to reinforce accountability and transparency in the public sector. Presently, the major drawback to FOI act is its “demand driven” nature which has made it to be less effective in ensuring transparency and accountability in public institutions. Also, the Act does not encourage public participation in the budget process and implementation thereby heightening tax avoidance and evasion.

The Brief therefore, recommends that the National Assembly may need to amend the FOI Act such that the Act becomes “supply driven”. By so doing, public institutions, MDAs and government agencies would be mandated to provide information quarterly on the utilization of funds, challenges of meeting some set goals and practical efforts that will be put in place to achieve the goals set for the next quarter. It should also be required of all the MDAs to support proposed capital projects with the consultant evaluation reports which will be presented to the public.

Based on the information supplied, interested members of the public could request for further explanations and documents for verification. This will ensure transparency in the polity, dispel rumors and encourage public trust in government actions. There is need for the National Assembly to amend the FOI Act or possibly enact e-governance law that would make it mandatory for MDAs to provide information about their non-classified activities by uploading on websites, digital and e-governance platforms.

I. Introduction

1. Several laws had been enacted to ensure that public institutions are transparent and accountable in their dealings thereby curbing wastage and corrupt practices thus boosting people's (public) confidence and trust in government institutions and their activities. One of such laws is the Freedom of Information (FOI) Act enacted in 2011. However, the major drawback to this act is its "demand driving" nature which has made it to be less effective in ensuring transparency and accountability in public institutions.

II. Issues

2. FOI act (2011) was ideally enacted to make information accessible and involve the people in the budget making process and implementation thus ensuring some level of fiscal prudence. However, without prejudice to this Act, it is observed that the Act basically provides that information is given on request which has made it to be largely ineffective as there is no incentive on the part of the populace to seek information on

public institutions' activities, as such most public institutions still operate in some level of secrecy. However, certain matters and issues that can compromise national security should be classified.

3. In the ranking of countries on transparency by the Transparency International, Nigeria is ranked 136 out of 174 countries with a score of 28 out of 100. Also, Nigeria is classified by the U.S. Department of State Fiscal Transparency (2017) among the countries that have made no significant progress in meeting minimum requirements for fiscal transparency unlike South Africa, South Sudan and Ukraine which are adjudged to be making significant progress. This, indeed, is a testimony of the ineffectiveness of FOI Act in promoting transparency and accountability. The countries that are making progress are so assessed because they provide the public with timely, accessible and accurate information, not on demand but as a matter of obligation as provided for by their constitutions¹.
4. There are several countries that do organise well-publicised "open days"² where a more personalised

¹ Constitution of the Republic of South Africa, 1996, Chapter 10, Article 195 (g)

²

<http://unpan1.un.org/intradoc/groups/public/documents/UN-DPADM/UNPAN038789.pdf>

and more direct dialogue do take place between government agency and the citizens. In this regard, Sweden and Republic of Island have proved particularly

active by setting up such open days and this has reflected in their ranking by the Transparency International as shown in Table 1.

Table 1: Score and Ranking of Countries on Transparency

Country (176)	Algeria	Angola	Bahrain	Island	Nigeria	Saudi Arabia	South Africa	Sweden	Ukraine
Score	34	18	43	73	28	46	45	88	29
Rank	108	164	70	19	136	62	64	4	131

Source:

https://www.transparency.org/news/feature/corruption_perceptions_index_2016

- Moreover, Article 12 of the Charter for the Public Service in Africa demands that: “Administrative decisions shall always be taken in accordance with transparent, simple and understandable procedures, while ensuring accountability”.

The article also encourage that all draft documents, all arguments for and against a proposal, the decision making process and all final decisions are made publicly and remain publicly archived.

Table 2: Assessment of Governments on Meeting Minimum Requirements of Fiscal Transparency

Assessment	Algeria	Angola	Bahrain	Nigeria	Saudi Arabia	South Africa	South Sudan	Ukraine
Significant Progress	x					x	x	x
No Significant Progress		x	X	x	x			

Source: U.S. Department of State 2017 Fiscal Transparency Report

<https://www.state.gov/e/eb/ifd/oma/fiscaltransparency/273700.htm>

- As a way of giving teeth to FOI act and making it more effective, there is need to amend the Act to make it “supply” driven. Government Ministries, Departments and Agencies (MDAs) should be mandated to give quarterly account of

utilization of fund, challenges of meeting some set goals and practical efforts that will be put in place to achieve the goals set for the next quarter. It should be required of all the MDAs to support proposed capital projects with the consultant evaluation

reports which will be presented to the public. The public audience should include the relevant committees of the National Assembly, NGOs, academia, relevant trade unions and the general public. The listeners and the general public will evaluate the process to see if the concerned government agency discloses key budget documents, including expenditures and revenues broken down by source and type. The presentation of the report for the fourth quarter will then form the basis for the budget for the next fiscal year. Based on the information supplied and the reports provided, further information can then be sought for clarification and verification by any interested member of the public. This will greatly ensure transparency in the polity, dispel rumour and encourage public trust in government actions. It will also encourage the involvement of people in the budget making process and implementation thereby improving people's willingness to pay tax.

III Challenges to the effective implementation of FOI Act

The FOI Act have a lot of exemptions that hinder access to information. Some ill-intentioned public officers can use these exemptions for unjust and mischievous purposes. However,

considering the omnibus proviso against denial of information that says "where the interest of the public would be better served by having such record being made available, this exemption to disclosure shall not apply," it will be very difficult for such public officers to use the exemptions unjustly. The effectiveness of the FOIA also depends largely on a vibrant and active judiciary, being the final body that has the responsibility of determining what kind of information should be made available to the public. Another fundamental issue that might affect the FOI Act is some existing laws which are still operational. For example, the Evidence Act, the Public Complaints Commission Act, the National Securities Agencies Act; that all have some sections that are aimed at suppressing the free flow of information in the country. All these laws may affect the effectiveness of the FOI Act in the long run as they are loopholes that can be utilised to avoid obligations under the FOI Act. Some mischievous public officers may also use such laws for their selfish purposes.

IV. Conclusion and Issues for Legislative Actions

7. FOI Act (2011) was designed to ensure accountability and transparency in public institutions dealings with the aim of fostering public support for development policies. However, the act appears ineffective in combating corrupt practices in the public institutions as observed in the country's rating on the fiscal transparency reports. There is need to improve

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on the act to make it proactive and effective. A way of doing this is to amend the act to make it mandatory for all government agencies to have a quarterly session with the appropriate National Assembly Committees with invitation extended to relevant NGOs and trade unions, academia and the general public, under the full glare of the media.

8. The demand for accountability as required and envisaged by FOI Act (2001) depends first and foremost on the information at the disposal of the public. People will only demand for information if agencies bring to the fore the issues at stake. The demand for accountability also depends on scrutinizing the activities of MDAs by a range of actors capable of

exchanging information and mobilising public opinion. Promoting information demand supposes therefore that collective external actors with critical capabilities are presented with details of public institutions' activities. This is necessary to strengthen the FOI Act and make it complementary to other strategies designed to reinforce accountability and transparency in the public sector.

9. There is need for the National Assembly to amend the FOI Act or possibly enact e-governance law that would make it mandatory for MDAs to provide information about their non-classified activities by uploading on websites, digital and e-governance platforms.

The views expressed in this Research Issue Brief are those of the author(s) and do not necessarily represent the views of the Institute and its Management.

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