

THE RIGHT OF ACCESS TO INFORMATION AND NATIONAL SECURITY LIMITATIONS UNDER NIGERIA'S FREEDOM OF INFORMATION ACT: IMPLICATIONS FOR DEMOCRATIC GOVERNANCE

By

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Abstract

Public access to information and the protection of national security are usually thought to be pulling in opposite directions though the two values are components of a stable democracy. But expanding statutory powers for the protection of national security at the expense of accountability pose grave dangers to democracy. Accordingly, this paper analyzes the statutory provisions which authorize the exemption of national security information under the Nigerian Freedom of Information Act 2011, which guarantees access to official information and records against transparency principles embedded in human rights treaties and international soft law. The provisions of the FOI Act 2011 are commendable, but fall short of engendering a decisive shift from secrecy in national security matters to transparency in Nigeria as envisaged. This lacuna requires urgent legislative reforms and democratic oversight to countermand unjustifiable national security restrictions and enable Nigeria discharge its human rights obligations under relevant treaties.

1.1 Introduction

The fundamental right of access to government-held information is the cornerstone of a democracy based on freedom and human dignity.¹ Democracy envisions societal progress, improving human conditions and the development of individual personality through public decision-making based on popular knowledge.² The government and citizens in a democratic society can only make democracy meaningful by gaining control and making use of public information in their respective domains of responsibility: for government – for the exercise of political will to execute policies; and for citizens – for full participation in public life, hold public officers accountable, and exercise other basic rights.³ Thus transparency for good governance and secrecy are antithetical. In the immortal words of James Madison, A popular Government, without

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¹ Laura Neuman (ed.) *Access To Information: A Key To Democracy* The Carter Center (2002) p. 6.

² Josiah Ober *Democracy and Knowledge: Innovation and Learning in Classical Athens* Princeton (2008) p. 1, 92-3.

³ Because of the humongous amount of information which the State holds in performance of its executive functions, the enjoyment of the whole body of rights guaranteed to citizens in internationally and nationally is often dependent on timely access to State-held information. Thus the United Nations General Assembly Resolution 59 (1) 1946 ("freedom of information is the bedrock of all rights to which the United Nations is consecrated"). See also the Constitution of the Republic of South Africa 1996, Section 23.

popular information, or the means of acquiring it, is but prologue to a farce or tragedy; or perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.⁴

Transparency experts have also argued that access to information is a vital tool in the 'war' against corruption. Alasdair Roberts agrees that constant exposure of policy documents and information on the inner workings of government to the light of public scrutiny including informed debate thereon will checkmate wasteful spending, inefficiency, etc.⁵ The right of access to information has gained international recognition as a component of freedom of expression,⁶ as fostering, inter alia, 'an efficient marketplace of ideas in products', good government and the rule of law based on the principle of proactive disclosure.⁷ However, the global transparency movement makes salient the complex interplay between transparency and national security, which, as critics have argued, often serves as smokescreen for human rights abuses, corruption and other official improprieties.⁸ In Nigeria, the enactment of the Freedom of Information Act 2011⁹ notwithstanding, national security agencies and other public institutions still withhold information deemed 'prejudicial to the security of the Federation of Nigeria'. Unfortunately, what constitutes 'national security' is nowhere defined in Nigerian law, but has provided a haven for corruption and egregious violations of human rights especially freedom of expression and information.

This paper therefore argues that the Nigeria FOI Act 2011, which guarantees access to official information and records, fall short of engendering a decisive shift from secrecy in national security matters to transparency. Part II hereof analyzes the interplay between global transparency principles embedded in international human rights treaties and soft law and national security concerns. Part III analyzes the FOI Act's national security exemptions, current official practices and judicial interpretations thereof against transparency principles analyzed in part II. Though commendable, the FOI Act detracts

⁴ James Madison Letter to William T. Barry of 4 August 1822, available at http://www.constitution.org/jm/18220804_barry.htm (last accessed 20 July 2016, referred to by Colin Darch & Peter G. Underwood, *Freedom of information and the developing world: The citizen, the state and models of openness* Chandos Publishing: London (2010) pp. 31–32.

⁵ Alasdair Roberts 'Access To Government Information: An Overview of Issues' in Laura Neuman (ed.) *Access To Information: A Key To Democracy* The Carter Center (2002) p. 9.

⁶ Toby Mendel *Freedom of Information: A Comparative Legal Survey* UNESCO (2008, available at: http://portal.unesco.org/ci/en/file_download.php/fa422efc11c9f9b15f9374a5eac31c7efreedom_info_laws.pdf (last accessed 27 March 2010).

⁷ Darbishire *Proactive Transparency: The future of the right to information? A review of standards, challenges and opportunities* (1994)p..22.

⁸ Information that forms the core minimum of proactive disclosure includes institutional information on functions and powers, operational information including modus operandi, budgetary information. For instance, the Council of Europe Convention on Access to Official Documents, adopted on 18 June 2009, Art 10 states that: 'At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest'.

⁹ Laws of the Federation of Nigeria (LFN) 2011 (FOI Act 2011).

from the analysis made in part II. Part IV concludes and recommends appropriate reforms.

1.2 International Transparency Principles as Analytical Framework

The first wave of the global 'transparency movement' which took off when the first access to information statute in the world, the Swedish Freedom of the Press Act 1766,¹⁰ was passed, followed a century later by the signing into law of the United States of America's Freedom of Information Act 1966, which ushered in the second wave has since crystallized into a global recognition of the right of citizens to have access to government information. The 'trend towards greater transparency' since the early 1990s witnessed the snowballing of countries of the former Soviet Union, former Latin American dictatorships and in Africa joining the international bandwagon of transparency or access to information law motivated by activist human rights organizations.¹¹ Several international, multilateral finance institutions¹² and regional bodies have either incorporated access to information clauses within their respective constitutional¹³ frameworks, or insisted on greater transparency by governments. These developments are part of the growing insistence that 'wholesale secrecy in government is no longer acceptable', hence openness became the norm.¹⁴ The acceptable practice worldwide in giving effect to the right is through a legally enforceable access to information statute based on the presumption in favour of citizens' access to information held by public institutions.¹⁵ ATI laws embody mechanisms for requesting public information based on the principle of maximum disclosure except where countervailing state interest dictates otherwise. As far back as 1998, the UN Special Rapporteur on Freedom of Opinion and Expression, while elaborating on Article 19(1) of the International Covenant on Civil and Political Rights 1966,¹⁶ in his Annual Report to the UN Commission on Human Rights, had stated:

The right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems.¹⁷

¹⁰ Article 1 of Chapter 2 of the Act provides:

"Every citizen shall be guaranteed the following rights and freedoms in relations with the public institutions:

...

(2) freedom of information: that is, the freedom to procure and receive information and otherwise acquaint oneself with the interests of others".

¹¹ Such as Article 19, Transparency International, Open Society Democracy Initiative, Privacy International, etc. See Colin Darch & Peter G. Underwood *Freedom of information and the developing world* (n 4 above).

¹² E. g. the World Bank Group.

¹³ Over 100 countries have constitutionally entrenched access to information.

¹⁴ Aladair Roberts 'Access to Government Information: An Overview of the Issues' (n 8 above).

¹⁵ Laura Neuman (ed.) *Access To Information: A Key To Democracy* (n 1 above).

¹⁶ (n 26 below).

¹⁷ Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN 4/1998/40 (28 January 1998), para 14.

Later in 2004, by virtue of a Joint Declaration, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Organization of American States' (OAS) Special Rapporteur on Freedom of Expression, elaborated further –

The right to access information held by public authorities is a fundamental right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.¹⁸

The principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only where there is an overriding risk of harm to a legitimate interest.¹⁹

Unfortunately, the people's ability to access such information is often impeded by the traditional reluctance of government agencies to release information in their possession. This may be to protect commercial confidentiality, individual privacy, government efficiency, etc. However, greater controversy exists concerning access exemptions based on the exigencies of national security, which critics often argue, is a government ploy to evade accountability and deny citizens' participation rights.²⁰ As Sandra Coliver and other leading experts on human rights and security argue:

While there is at times a tension between a government's desire to keep information secret on national security grounds and the public's right to information held by public authorities, a clear-eyed review of recent history suggests that legitimate national security interests are, in practice, best protected when the public is well informed about the state's activities, including those undertaken to protect national security.²¹

¹⁸ Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression of 6 December 2004, available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/0/9A56F80984C8BD5EC1256F6B005C47F0?opendocument> (last accessed 20 July 2016).

¹⁹ Toby Mendel *Freedom of Information: A Comparative Legal Survey* (2008), available at: http://www.portal.unesco.org/ci/en/file_download.php/fa422efc11c9f9b15f9374a5eac31c7efreedom_info_laws.pdf (last accessed 14 February 2018) ("The principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only where there is an overriding risk of harm to a legitimate interest.") (International FOI standards require ATI laws to enshrine the principle).

²⁰ Alasdair Roberts 'An Overview of Issues' in *Access To Information: A Key To Democracy* 11.

²¹ 'The Tshwane Principles', 'Background and Rationale' (n 30 below).

States must therefore put in place effective judicial review to remedy unreasonable access denials²² and strictly define the criteria for existential threats to count as national security threats. National security covers

Measures to prevent or respond to serious threats to the country as a whole, whether from an external source, such as military threat, or an internal source, such as incitement to violent overthrow of the government.²³

Ultimately, States carry the primary burden for national security protection. But national security excludes restrictions on harm national economy, 'restrictions in the sole interest of a government, regime or power group' and limitations set only to avoid riots or other troubles those do not threaten the life of a whole nation.²⁴ Considering that national security is the weightiest ground, among others, for restricting the right to information; then, to be strong and effective in practice, an access to information law must meet certain key principles.²⁵ These emerging principles have a chequered history and scattered throughout the international and regional human rights covenants,²⁶ interpretive jurisprudence of thereon by authoritative bodies.²⁷ The principles have also found in

²² Communications No. 2202/2012, *Rafael Rodríguez Castañeda v Mexico*, Views adopted on 18 July 2013, paras 7.3, 7.4 and 7.5. (Pronouncing that access to the ballot papers used in the presidential election must be ensured to enable disputes relating thereto to be resolved).

²³ Elizabeth Evatt 'The International Covenant on Civil and Political Rights' in Sandra Coliver, Paul Hoffman, Joan Fitzpatrick, et al (eds) *Secrecy and Liberty* Netherland, Brill/Martinus Nijhoff (1994) 84; Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Principle 29, U. N. Doc. E/CN.4/ 1985/ 4, Annex, para 30 (1985).

²⁴ Alexandre Kiss 'Commentary by the Rapporteur on the Limitation Provisions' (1985) 7 *Hum. Rts. Q.* 15 at 21.

²⁵ Richard Calland 'Access To Information: How Is It Useful And How Is It Used?' (n 4 above) p. 15.

²⁶ Universal Declaration of Human Rights, General Assembly Resolution 217 (III) (UN Doc. A/810) (1948), art 19 ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"); International Covenant on Civil and Political Rights 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976, art 19(2) ("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")); European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953), art 10(1) ("Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers"); American Convention on Human Rights, opened for signature Nov. 22, 1969, 1144 U.N.T.S. 143 (entered into force July 18, 1978), art 13(1) ("Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice"); Organization of African Unity (now 'AU') Banjul Charter of Human and Peoples' Rights, adopted June 27, 1981, entered into force October 21, 1986, 21 I.L.M. 58 (1982) (hereinafter Banjul Charter), art 9(2) ("Every individual shall have the right to express and disseminate his opinions within the law").

²⁷ For instance, the UN Human Rights Committee's Communication No. 1470/2006, *Toktakunov v Kyrgyzstan* CCPR/C/101/D/1470/2006, Views adopted 28 March 2011 at its One hundredth and first session

international soft law.²⁸ Others have been synthesized from access to information provisions on and the interpretative gloss thereon. The work of Western activist non-governmental organisations and independent experts,²⁹ decisions of national courts, States' practice and general principles of international law. These principles have been commented upon with approval by notable writers in the field of human rights and national security.³⁰ The principles aim, inter alia, to balance 'defence and national security' exemptions against transparency and accountability. These bodies of principles are beginning to gain wider national and international acceptance in the decisions of authoritative international human rights bodies.³¹

The general principle of international human rights law is that public authorities bear the burden to justify every refusal of access to public information.³² Except in narrow exceptions specified in law, to protect legitimate national security interests, States may not withhold access to information of public interest.³³ As the Special Representative

14 March - 1 April 2011 (inaccessible secret by-law which classified information on number of individuals on death row as 'confidential' and 'top secret' with no negative effects on defence, economic or political interests not a 'law' under art 19(3) and unnecessary to protect defence); the Inter-American Court of Human Rights' decision (*Claude Reyes et al. v Chile*. Available at

http://www.opensocietyfoundations.org/sites/default/files/d_decision-en_20060919.pdf (last accessed 30 May 2017) (freedom of expression encompasses access to information and should be protected by statute).

²⁸ E.g. Declaration of Principles on Freedom of Expression in Africa, Adopted by The African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, in Banjul, The Gambia, from 17th to 23rd October 2002. Available at <http://www.achpr.org/sessions/32nd/resolutions/62/> (last accessed 5 October 2016); African Commission on Human and Peoples' Rights *Model Law on Access to Information* African Commission on Human and Peoples' Rights The Gambia (2013), etc.

²⁹ Article 19's *The Public's Right to Know Principles On Freedom of Information Legislation* (1999); Global Principles On National Security And The Right To Information finalized in Tshwane, South Africa issued on 12 June 2013, available at <http://www.opensocietyfoundations.org/publications/global-principlesnational-security-and-freedom-information-tshwane-principles> (last accessed 29 January 2018) ("The Tshwane Principles").

³⁰ For more detailed analysis, see Aaron O Salau 'The right of access to information and national security in the African regional human rights system' *African Human Rights Law Journal* (2017) 17 367-390 (analyzing in part, the African Model Law on Access to Information, Article 19's *The Public's Right to Know Principles On Freedom of Information Legislation* 1999, "the Tshwane Principles" and 'the Johannesburg Principles'); Sandra Coliver, 'Commentary to: The Johannesburg Principles on National Security, Freedom of Expression and Access to information' (1998) 20 *Human Rights Quarterly* pp. 12-18.

³¹ 'The Johannesburg Principles' have gained some measure of international and national recognition, see, for example, *Gamini Athukoral "Sirikotha" and Ors v. Attorney-General*, 5 May 1997, S. D. Nos. 115/97 (Supreme Court of Sri Lanka) and *Secretary of State for the Home Department v. Rehman* [2001] UKHL 47 (House of Lords).

³² Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, U. N. Doc. CCPR/C/GC/34, para 19 (2011).

³³ Sandra Coliver 'Commentary to: Johannesburg Principles'; Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression of 6 December 2004, available at <http://www.unhchr.ch/huricane/hurricane.nsf/0/9A56F80984C8BD5EC1256F6B005C47F0?opendocument> (last accessed 20 July 2016); Article 19 'The Public's Right To Know Principles On Freedom Of Information Legislation'; Tshwane Principles, Principle I.

on the Media of the Organisation for Security and Cooperation in Europe (OSCE) recommends:

Government bodies should be required by law affirmatively to publish information about their structures, personnel, activities, rules, guidance, decisions, procurement, and other information of public interest on a regular basis in formats including the use of ICTs and in public reading rooms or libraries to ensure easy and widespread access.³⁴

For instance, For instance, the African Commission's Declaration of Principles state that: "Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law".³⁵

Hence, among the general principles upheld by international experts relate to a 'narrow designation of security exemption' such that

A state may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest.³⁶

Furthermore, the Johannesburg's Principle 11 on 'General Rule on Access to Information' states that

Everyone has the right to obtain information from public authorities, including information relating to national security. No restriction on this right may be imposed on the ground of national security unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest

Therefore, 'in all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration'.³⁷ Similarly, the burden for establishing that information is withheld due to a national security risk lies with the State. The foregoing relieves public servants, independent contractors, and to a large measure, persons working in defence and national security establishments from punishment on national security grounds for disclosing public

³⁴ Organization for Security and Cooperation in Europe, *Access to information by the media in the OSCE region: trends and recommendations*, 30 April 2007, p 1, http://www.osce.org/documents/rfm/2007/05/24250_en.pdf (last accessed 12 January 2018).

³⁵ Principle IV (1).

³⁶ The Johannesburg Principles, Principle 12; the Tshwane Principles, Principle 3(c).

³⁷ "The Johannesburg Principles", Principle 13.

interest information on two conditions: no actual harm and no likely harm to a legitimate national security interest ensues.³⁸ For the foregoing purpose, Principle 2 of the Johannesburg Principles is very explicit, and says:

- (a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.
- (b) In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.

In addition, Principle 5 of the Tshwane Principles states as follows:

- (a) No public authority—including the judiciary, the legislature, oversight institutions, intelligence agencies, the armed forces, police, other security agencies, the offices of the head of state and government, and any component offices of the foregoing—may be exempted from disclosure requirements.
- (b) Information may not be withheld on national security grounds simply on the basis that it was generated by, or shared with, a foreign state or inter-governmental body, or a particular public authority or unit within an authority.

Permissible non-disclosure must therefore relate to a risk of substantial harm to the protected interest and where the harm is greater than the overall public interest in access to the information. As such, overriding public interest dictates that publicly-held

³⁸ 'The Johannesburg Principles on National Security, Freedom of Expression and Access to Information', principle 15. See *Human Rights Quarterly*, Vol. 20(1) (1998), 1-11 at 7.

information including information on human rights violation, crimes against humanity, etc., should never be withheld on national security grounds.³⁹

1.3 Nigeria's Legal Framework on Access to Information and National Security Limitation

Arrange in this Section is that Nigeria's political history has negatively influenced the formulation of scope and content of the right of access to information. National security restrictions trumps on access to information in Nigeria's legislative frameworks fall short of requisite constitutional and international standards.

On the eve of Nigeria's return to constitutional democracy on 29 May 1999, the outgoing military regime repealed some of its draconian laws. In addition, the newly sworn-in government initiated policies and passed some sectoral transparency laws.⁴⁰ The Constitution⁴¹ provides the basis for pieces of legislation,⁴² which permit limited access to public records for specified purposes and the Freedom of Information Act enacted in May 2011, which gives a public right of access to official records and information.⁴³ The specific enactment of these laws may presuppose that there is no positive right of access to government-held information under the Constitution. The counterpoint being that the express constitutional and statutory curtailment of access to certain kinds of official information in fact presumes the very existence of the right.

Latest scholarly research establishes that the right to access government-held information is encapsulated within the right to freedom of expression and the press enshrined in Section 39(1) of the 1999 Constitution,⁴⁴ which states as follows: "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference". Section 39(1) protects the right to freedom of information beyond individual and free speech without official censorship, intimidation or harassment, is cornerstone of a vibrant democratic culture.⁴⁵ Section 39(1) enables the press to receive information of various public interests from private and official sources without being compellable to reveal their sources, except in circumstances of grave and exceptional harm to national security, public order

³⁹ "The Tshwane Principles", Principle 10.

⁴⁰ The Evidence Act, Laws of the Federation of Nigeria (LFN) 2011, the Public Procurement Act 2007, the Nigerian Extractive Industries Transparency Initiative (NEITI) Act 2004, etc.

⁴¹ The Constitution of the Federal Republic of Nigeria (Promulgation) Act 24 1999, Cap. C 23 (LFN) 2004.

⁴² Other examples include the Statistics Act Cap S10 (LFN) 2004, the Criminal Code Act Cap. 38 (LFN) 2004, the Environmental Impact Assessment Act 1992 and the National Archives Act of 1992, Sections 12(1) and 27(2) permit free public access to archival state documents that are 25 years old or more. However, under Section 12(2) of the Decree, confidential or secret records are to remain secret even when transferred to the Archives. See Toyin Falola & Saheed Aderinto *Nigeria, Nationalism, and Writing History* (2010) 35.

⁴³ The Explanatory Memorandum, FOI Act 2011.

⁴⁴ Aaron O Salau *The Rights of Access to Information and Its Limitation By National Security Considerations in Nigeria* (Unpublished PhD Thesis, University of Cape Town, July 2017).

⁴⁵ I Bayo Oloyede *Freedom of Expression and National Security in Nigeria: An Appraisal of State Security (Detention of Persons) Decree (Decree No. 2) 1984* LAP Lambert Academic Publishing: Hamburg (2012) p. 166.

or safety.⁴⁶ Section 39(3) together with Section 45(1) of the 1999 Constitution qualify the right to information and impose restrictions on how public officials handle government-held information. Section 39(3) provides that:

Nothing in this Section shall invalidate any law that is reasonably justifiable in a democratic society

- (a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or
- (b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

Section 45 is the omnibus fundamental rights' limiting provision. It states that

- 1. Nothing in Sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society –
 - (a) in the interest of defence, public safety, public order, public morality or public health, or
 - (b) for the purpose of protecting the rights and freedom of other persons.

Contrary to the principle of maxim disclosure of information, Sections 39(3) and 45(1) validate laws that excessively restrict disclosure of official information by state officials for several reasons including defence and public safety.⁴⁷ Thus, the State may rely on Sections 39(3) and 45(1) to assert the constitutionality of many statutes that severely restrict access to 'sensitive' and national security information such as the Criminal Code Act,⁴⁸ the Official Secrets Act 1962⁴⁹ and the National Security Agencies Act (NSA Act) 1986.⁵⁰

⁴⁶See the following: *Tony Momoh v Senate of the National Assembly* [1981] 1 NCLR 105 (HC); *Olusola Oyegbemi & Others v Attorney-General of the Federation & Others* [1982] 3 NCLR 895 (HC); *Innocent Adiukwu & Ors v Speaker, House of Representatives* (1982) 3 NCLR 394–418 (HC).

⁴⁷ See the Casino Tax Act Cap 45 Vol II (LFN) 1999 and Statistics Act Cap 416 Vol XXII (LFN) 1990.

⁴⁸ Cap. C38, Laws of the Federation of Nigeria. Section 97 of the Criminal Code makes the disclosure, publishing or communicating of official secrets by a public official to an unauthorized person or who copies, abstracts any document an offence.

⁴⁹ Cap O3 (LFN) 2004.

⁵⁰ Cap N7 (LFN) 2004; Section 97 of the Criminal Code (it criminalizes the disclosure, publishing or communicating of official secrets by a public official to an unauthorized person).

Official Secrets Acts are traditionally designed to prevent and punish espionage.⁵¹ Section 1 of the Official Secrets Act criminalizes the unauthorized transmission, leakage, reproduction and retention of classified matter by anyone with maximum of fourteen years' imprisonment.⁵² Section 2 thereof prohibits entering, making record of or obstructing guards at and access to 'protected places' such as defence establishments to prevent information concerning armaments, weapon designs, etc., for any purpose prejudicial to the security of Nigeria.⁵³ Even no public interest defence such that the classified matter was already within the public domain when it was obtained, reproduced or transmitted. Subsection 1(3) affords the defence of lack of reasonable belief that the transmitted matter was classified to a public officer, provided the officer had reported the matter and delivered the material to the police. Unfortunately, this affords no real defence at all in cases where the official matter was disclosed to expose official wrongdoing.

The National Security Agencies Act establishes three national security agencies:⁵⁴ the Defence Intelligence Agency (DIA), responsible for military intelligence, securing Nigeria internally and externally against crimes of a military nature and the preservation of military classified matters;⁵⁵ the National Intelligence Agency (NIA), responsible for national intelligence both internally and externally;⁵⁶ while the State Security Service (SSS) is responsible for curbing crimes against Nigeria's internal security including the protection of non-military classified matters relating thereto.⁵⁷

The NSA Act suffers from many defects: First, it relies on the nebulous description of 'classified matter' provided by Section 9 of the Official Secrets Act;⁵⁸ Second, beyond creating three national security agencies, the NSA Act neither specifies the criteria nor procedure for classifying information prejudicial to national security. Third, it neither defines 'national security' or the crimes against national security. Unlike the public interest test available under the FOI Act 2011,⁵⁹ public officers cannot disclose information related to security, defence intelligence and other sensitive state information under the NSA Act or for any reason whatsoever.⁶⁰

By the combined effect of Sections 9(2) and 315(1), (4)(b)(5)(c) of the 1999 Constitution the NSA Act cannot be amended like ordinary statutes, but only by two-

⁵¹ See for example history of Official Secrets Acts in England; see David Williams *Not in the Public Interest: the Problem of Security in Democracy* (1965).

⁵² Official Secrets Act 1962, Section 7.

⁵³ Section 2(a)(b)(c).

⁵⁴ Section 1(a)(b)(c).

⁵⁵ Section 2(1)(a)(b).

⁵⁶ Section 2(2)(a)(b).

⁵⁷ Section 2(3)(a)(b).

⁵⁸ Section 9 of the Official Secrets Act defines it as 'any information or thing which, under any system of security classification, from time to time, in use by or by any branch of government, is not to be disclosed to the public and of which the disclosure to the public would be prejudicial to the security of Nigeria' (sic).

⁵⁹ FOI Act, Sections 11(2), 12(2), 15(4) and 19(2).

⁶⁰ Section 7(2) of the Act provides:

'If any other law is inconsistent with the provisions of this Act, the provisions of this Act shall prevail and that other law, shall to the extent of the inconsistency, be void.'

thirds majority of the elected Assemblies of the 36 States of Nigeria.⁶¹ To make abundantly clear, the above provisions are hereby set out fully.

9(2) An Act of the National Assembly for the alteration of this Constitution, not being an Act to which Section 8 of this Constitution applies, shall not be passed in either House of the National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two-thirds of all the States.

315(4) In this Section, the following expressions have the meanings assigned to them, respectively -

(b) "existing law" means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this Section comes into force or which having been passed or made before that date comes into force after that date

(5) Nothing in this Constitution shall invalidate the following [enactment], that is to say -

(c) the National Security Agencies Act; and the provisions of [the enactment] shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of Section 9 (2) of this Constitution.

In view of the above constitutional provisions, the challenge that often arises is when information is restricted, either on general grounds of public interest under the FOI Act 2011, or on the more specific basis of national security under the NSA Act, or for some other reasons permitted by other statutes. Both the law-makers in their drafting, and public officials in construing their duties when administering access restricting statutes, such as the NSA Act hardly have regard to the public interest test. This gives room for indiscriminate and unsubstantiated assertions of harm to national security by public officials to cover official misconduct, ineptitude and outright misrule when ordinarily construing their public duties under the law.⁶²

The background history of freedom of information legislation in Nigeria shows that since the earliest days when the idea for such a law was first broached:⁶³

⁶¹ 1999 Constitution, Sections 9 & 315.

⁶² Constitutional Rights Project *The Press and Military Dictatorship in Nigeria* Constitutional Rights Project: Lagos (1994).

⁶³ Freedom of Information Coalition, 'Origins of the Freedom of Information Campaign', available at: http://www.foicoalition.org/publications/foi_advocacy/background.htm (last accessed 17 December 2016).

There was a common understanding among the various interest groups represented at the workshop that the legal regime governing access to government held information in Nigeria must undergo a structural transformation. Their conclusion was that since statutes which permit access to official information in Nigeria were few, the overall effect is that a culture of secrecy prevails in all government institutions, nurtured and given legal effect to by such laws as the Official Secrets Act and some provisions in the Criminal Code which make it an offence to disclose certain types of government held information.

1.4 Background to Nigeria's FOI Act 2011

The FOI Act 2011 came into effect on 28 May 2011. The Act was enacted to do away with administrative secrecy of the past;⁶⁴ enable the people effectively participate in the making of laws and public policy and hold government accountable;⁶⁵ enhance transparency and public participation in government through access to official records and information.⁶⁶ Idris J confirmed the importance of the FOI Act when His Lordship held as follows:

The Freedom of Information Act is meant to enhance and promote democracy, transparency, justice and development. It is designed to change how government works, because we have all resolved that it will no longer be business as usual. Therefore, all public institutions must ensure that they prepare themselves for the effective implementation of the Freedom of Information Act.⁶⁷

Thus, contrary to the Official Secrets Act which makes all unauthorized disclosure of state information illegal, the FOI Act legalizes the disclosure of official information unless specifically exempted. The FOI Acts specified objectives are to protect access to and protect public records and information to the extent consistent with the public interest including personal privacy and protect serving public officers from

⁶⁴ *Boniface Okezie v EFCC*; available at: http://www.right2info.org/resources/publications/case-pdfs/nigeria_okezie-v.-attorney-general-of-the-federation-and-the-economic-and-financial-crimes-commission_2013_summary-of-judgment (last accessed 5 December 2016).

⁶⁵ R2K Nigeria 'Understanding the FOIA 2011', available at: <http://www.r2knigeria.org/index.php/component/content/article/2-uncategorised/218-understandingthefoia2011> (last accessed 5 December 2016).

⁶⁶ See *The FOI Act Should Be the Envy of Any Democracy*, Says Judge (FOI Law Report 9), available at <https://lawyersalert.wordpress.com/2013/09/25/the-foi-act-should-be-the-envy-of-any-democracy-says-judgefoi-law-report-9/> (last accessed 5 December 2016).

⁶⁷ (n 66 above).

adverse consequences of disclosing public interest information without authorization.⁶⁸ The Act is designed to achieve these objectives through various provisions. These are discussed below.

a. Access To Information as an Individual Right

The Act extends to *any person* (emphasis supplied) a legal right of access to information under the control of all public institutions⁶⁹ and 'private bodies providing public services, performing public functions or utilizing public funds' irrespective of the form in which it is kept.⁷⁰ In Section 31 of the FOI Act 'public institution' 'means legislative, executive, judicial, administrative or advisory body of the government, including boards, bureau, committees or commissions of the State, and 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'. But a requester needs not demonstrate any specific interest in the information requested for,⁷¹ and is entitled to institute legal action to compel the performance of positive obligations imposed by the Act.⁷²

b. Duties Of Public Institutions To Release Information

The Act incorporates good corporate practices and the ethics of public record-keeping. It imposes mandatory recording keeping of operations, businesses and activities in a manner that facilitates access on public institutions.⁷³ In *Rommy Mom v The Executive Secretary Benue State Emergency Management Agency and The Attorney-General of Benue State*, it was held that

Section 2 of the Act particularly imposes a duty on every public institution to keep account of its stewardship and so to ensure that the records of all its activities, operations and businesses are properly available for

⁶⁸FOI Act 2011, 'Explanatory Memorandum'.

⁶⁹ These include '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'. See FOI Act 2011, Section 2(7).

⁷⁰ FOI Act 2011, Section 1(1), Section 29(9)(a).

⁷¹FOI Act 2011, Section 1(2). Confirmed in Suit No. MHC/137/2013 *Rommy Mom v The Executive Secretary Benue State Emergency Management Agency and The Attorney-General of Benue State* (High Court Markudi judgement of 15 July 2013), available at: <https://lawyersalert.wordpress.com/2013/09/25/the-foi-act-should-be-the-envy-of-any-democracy-says-judge-foi-law-report-9/> (last accessed 5 December 2016); Suit No. FHC/L/CS/514/2012, *Boniface Ekezie v Attorney-General of the Federation & the Economic and Financial Crimes Commission* (Federal High Court Lagos Judgement of 22 February 2013), available at: <http://www.right2info.org/cases/allcases/r2i-boniface-okezie-v.-attorney-general-of-the-federation-and-the-economic-and-financial-crimes-commission> (last accessed 5 December 2016).

⁷²FOI Act 2011, Sections 1(3), 2(6).

⁷³ FOI Act 2011, Sections 2(1) (2), 9(1) (2).

purposes of meeting prospective demands of those who may seek for such information.⁷⁴

Nonetheless, the Act is not restricted to existing printed information or records, but extends to public interest information obtainable through any retrieval system whatsoever.⁷⁵ Public institutions are mandated to proactively publish, update and widely disseminate their organograms, employment records, rules and records of proceedings, financial statements, and other public interest information through manuals, electronic formats, official websites, etc.⁷⁶ Hence, the Act 'is intended to act as a catalyst for change in the way public authorities approach and manage their records'.⁷⁷ Requests for information can be made either orally or in writing, and by disabled or illiterate applicants with the help of a third party.⁷⁸

A public institution must within seven days of receiving a request for access release the information, transfer the request to an appropriate institution or by written notice extend the time for another 14 days if the request cannot reasonably be attended to within the statutorily stipulated time.⁷⁹ The Act provides for training of public officials in mechanics of the right to know as a way of weaning them from the endemic secrecy in public administration and promote the objectives of the law.⁸⁰

c. Exemptions To Public Disclosure

The Act permits exemptions from disclosure of twelve broad categories of information to protect specified interests, some are absolute while others are qualified. These include international affairs and defence,⁸¹ security, law enforcement and criminal investigation,⁸² privacy,⁸³ commercial confidentiality,⁸⁴ professional and other privileges including legal practitioner-client privilege,⁸⁵ etc.⁸⁶ But to fulfil the public interest,

⁷⁴ High Court of Markudi, judgement, delivered 15 July 2013), available at: <https://lawyersalert.wordpress.com/2013/09/25/the-foi-act-should-be-the-envy-of-any-democracy-says-judge-foi-law-report-9/> (last accessed 5 December 2017).

⁷⁵ FOI Act 2011, Sections 3(2), 31.

⁷⁶ FOI Act 2011, Section 2(3)(a)(b)(c)(d)(e)(f), (4), (5).

⁷⁷ See Media Rights Agenda 'Public Institutions Have No Power under the Law to Keep Mute when an FOI Request is Made to Them, says Judge', available at: http://www.right2info.org/resources/publications/case-pdfs/nigeria_okezie-v.-attorney-general-of-the-federation-and-the-economic-and-financial-crimescommission_2013_summary-of-judgment (last accessed 5 December 2016).

⁷⁸ FOI Act 2011, Section 3(3), (4).

⁷⁹ FOI Act, Sections 3, 4, 5 & 6. See Suit No. FHC/L/CS/514/2012, *Boniface Okezie v. Attorney-General of the Federation and The Economic and Financial Crimes Commission*. (Unreported Federal High Nigeria, Lagos judgement of 22 February 2013), available at <http://www.right2info.org/exceptions-to-access/national-security> (last accessed 27 October 2016) (Public institutions must comply with requests for information within seven days. If they refuse to comply, they must supply specific bases for refusal under the FOI Act in a notice to the applicant within seven days of the request.).

⁸⁰ FOI Act 2011, Section 13.

⁸¹ FOI Act 2011, Section 11(1).

⁸² FOI Act 2011, Section 12(1).

⁸³ FOI Act 2011, Section 14(1).

⁸⁴ FOI Act 2011, Section 15(1)(a)(b)(c).

⁸⁵ FOI Act 2011, Section 16.

the Act permits 'redaction' whereby a public institution must disclose any part of an exempted information not otherwise exempted.⁸⁷ However, national security and defence-related exemptions remain the most difficult to reconcile with the Act's objective.

Defence-Related Information Exemption

The FOI Act 2011, as exemplified by many of its provisions, claims primacy over other inconsistent and secrecy laws. For instance, Section 11(1) permits public institutions to withhold information the disclosure of which may be injurious to the conduct of international affairs and the defence of the Federal Republic of Nigeria. Though in fulfillment of the public interest, the Act permits 'redaction' relevant agencies may still easily sidetrack this provision since the law does not specify the categories of information that fit the description of 'the conduct of international affairs and the defence of the Federal Republic of Nigeria'.

Classified Information Exemption

Section 28 of the FOI Act 2011 is of great importance to ensuring the often touted reason for administrative secrecy – 'classified information' – is stripped of its esoteric garb, but not so quite! It provides:

- (1) The fact that any information in the custody of a public institution is kept by that institution under security classification or is classified document within the meaning of the Official Secrets Act does not preclude it from being disclosed pursuant to an application for disclosure thereof under the provisions of this Act, but in every case the public institution to which the application is made shall decide whether such information is of a type referred to in Sections 11,12,14,15,16,17,19,20 or 21 of this Act.
- (2) If the public institution to which the application in Subsection (1) is made decides that such information is not a type mentioned in the Sections referred to in Subsection (1), access to such information shall be given to the applicant.
- (3) if the public institution, to which the application mentioned in Subsection (1) is made, decides that such information is of a type mentioned in

ayo & Akinyinka Akinyoade, 'Access to information and transparency: Opportunities and Nigeria's FOI Act 2011' in Fatima Diallo & Richard Calland (eds) *Access to information in literature and practice* Netherlands: Brill (2013) p. 282, Section 18.

Sections referred to in Subsection (1), it shall give notice to the applicant.

Section 28 draws from art 26 of the Model Law, and attempts to whittle down Section 9 of the Official Secrets Act and relevant provisions of the National Security Agencies Act which allow indiscriminate classification of official records by mere stamping with markers such as 'top secrets', 'secret', etc., regardless of content or effect of disclosure on national security. This is in consonance with FOI Laws which to varying degrees exempt information prejudicial to military defence and national security.⁸⁸

Similarly, Section 27 of the FOI Act limits the scope of Section 1 of the Official Secrets and aims to protect serving officials from the adverse consequences of unauthorized disclosure of information for legitimate purposes. Section 27 states:

- (1) Notwithstanding anything contained in the Criminal Code, Penal Code, the Official Secrets Act, or any other enactment, no civil or criminal proceedings shall lie against an officer of any public institution, or against any person acting on behalf of a public institution, and no proceedings shall lie against such persons thereof, for the disclosure in good faith of any information, or any part thereof pursuant to this Act, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Act, if care is taken to give the required notice.
- (2) Nothing contained in the Criminal Code or Official Secrets Act shall prejudicially affect any public officer who, without authorization, discloses to any person, an information which he reasonably believes to show-
 - (a) mismanagement, gross waste of funds, fraud, and abuse of authority; or
 - (b) a substantial and specific danger to public health or safety notwithstanding that such information was not disclosed pursuant to the provision of this Act.
- (3) No civil or criminal proceeding shall lie against any person receiving the information or further disclosing it.

But it is arguable whether the provision adequately serves its intended purpose of 'bringing the restrictive provisions of the Official Secrets and Criminal Code acts, albeit

⁸⁸ A Abioye 'Confidentiality and protection of official records in the freedom of information era: Nigeria's situation' (2010) 20 *Afr. J. Lib, Arch. & Inf. Sc.* 29-39.

under the supervisory institutional frameworks that a FOI law normally provides'.⁸⁹ This is because aside not going far enough to clarify the categories of information that may be classified under the Official Secrets Act, it unexplainably side-stepped the NSA Act, which voids all statutes inconsistent with it.⁹⁰ The implication is that the military and national security agencies are still completely shielded from accountability.

f. Public Interest And Harm Tests

Whereas classification is the test of unauthorised disclosure under Section 1 of the Official Secrets Act, a harm test is the specific determinant of authorization to grant or deny request for access to classified information under the FOI Act. The Act explicitly provides for both an intertwining harm (and 'injury-based')⁹¹ and public interest tests of non-disclosure or exemptions to access to certain types of information, including international affairs and defence.⁹² First, for a limitation to be justifiable, the harm test requires proof of a direct and substantial risk of harm to a legitimate interest from a public body that withholds information. Secondly, the public body that withholds information is expected to weigh the potential harm to a legitimate interest that disclosure may occasion as against the good to the public interest that disclosure will do. Where risk of harm exists, albeit minimal, but the public interest predominates, then access should be granted.⁹³ A public body must give due consideration to the public interest in making a refusal decision by balancing the potential harm of disclosure to the protected interest against the public interest served by disclosure.

The Act neither defines nor gives any guidance as to relevant matters that may favour the 'public interest'. For instance, in accessing the risk of harm to defence and international affairs under Section 11(1), the Act provides:

- (2) Notwithstanding Subsection (1), an application for information *shall not be denied* where the public interest in disclosing the information outweighs whatever injury that disclosure would cause. (Emphasis supplied).

The Section still leaves much the discretion to the authority concerned who might actually shift the duty to grant access to the courts. The appropriate language should have been, 'shall be granted'. Again, in Section 11(1), the terms 'defence and international affairs' are nowhere defined in the Act. But the Attorney-General of the Federation

⁸⁹ A Abioye (2010) (n 88 above).

⁹⁰ FOI Act 2011, Section 7.

⁹¹ The Honourable Attorney-General of the Federation and Minister of Justice *Guidelines on the Implementation of the Freedom of Information Act 2011 (Revised Edition 2013)*, chapter 4 ('FOI Act Guidelines 2013').

⁹² FOI Act 2011, Sections 11(2), 12(2), 15(1)(a), 19(2).

⁹³ Model Law on Access to information for Africa, arts 38(a)(b), 75(1) (2).

(AGF) offer some guidance by listing 9 matters that may fall under the category.⁹⁴ Concerning 'defence', the AGF says:

It is important to understand that, this exemption is not for defense information but for information whose disclosure may harm the defence of the FRN. Therefore, information about weaponry, troop deployments, the state of alert of the Armed Forces, etc might be expected to be covered by the exemption.⁹⁵

It would make the law more certain and assist the relevant institutions in making reasonable decisions if these heads of exemptions are specifically identified and incorporated into the FOI Act itself.

1.6 Judicial Review

The principle of judicial review under the Act must involve a *de novo* appraisal of the merits of the application of a specific harm test by a public institution which refused an access request. A refusal to give access shall be by written notice specifying the grounds therefore, the Section of the Act pursuant to which the request was refused, and informing the applicant of her right to judicial review.⁹⁶ Failure to give access within the statutory stipulated seven days turn-around time amounts to a 'deemed refusal'.⁹⁷ The Act does not explicitly provide for a right to internal review. The AGF's Guidelines suggests there should be internal review. A party refused access to information has a right to challenge the decision and have it reviewed by a competent court within 30 days of the refusal or such period as may be extended by the court.⁹⁸ The burden of proof that the public institution is authorized to deny access to the particular information sought lies with the public institution.⁹⁹

Monitoring and implementation challenges

The FOI Act suffers from many enforcement and effective oversight related problems. A clear-eyed view of history and current social and political realities in Nigeria does not paint a rosy picture of fully-functional transparent governance. The Attorney-General of the Federation (AGF) is mandated to monitor and ensure compliance with the FOIA, and receive and publish annual reports on FOI requests received and responded which every public institutions must submit on or before every 1 February to the AGF's

⁹⁴FOI Act Guidelines 2013 (n 91 above) p. 26.

⁹⁵FOI Act Guidelines 2013 (n 91 above) pp. 27-28.

⁹⁶FOI Act 2011, Section 7(1).

⁹⁷FOI Act 2011, Section 7(4).

⁹⁸FOI Act 2011, Section 20. See further Suit No. ID/211/2009 *Incorporated Trustees of the Citizens Assistance Centre v Honourable S. Adeyemi Ikuforiji & Lagos State House of Assembly* (Unreported High Court, Lagos judgment of 14th March 2012).

⁹⁹FOI Act 2011, Section 23.

Office.¹⁰⁰ Between 2011 and 2016, there were 3 submissions of annual reports by public institutions to the AGF's Office for 2014, 2015 and 2016 respectively, each covering the preceding year.¹⁰¹ But significant non-compliance by public institutions with their proactive disclosure obligations and reporting obligations persists.¹⁰² Ironically, the National Assembly has never submitted an annual report to the AGF's Office.¹⁰³

1.7 Conclusion

This article has demonstrated that inordinate secrecy in the name of national security is antithetical to a participatory democracy. But in Nigeria, an attitude of resistance to access requests to publicly-held information grounded in the practice of institutionalized secrecy premised on the provisions of the Official Secrets Act still persists among Nigerian public officials despite the enactment of a FOI Act in 2011. This attitude also reveals a lack of knowledge by many public officials of the existence and/or workings of the Act.¹⁰⁴ Also, systematic information-keeping, electronic retrieval and online systems – the backbone of a functional access to information – are largely non-existent. But where put in place by public institutions, according to surveys conducted in 2014 and 2015, are grossly underutilized for disclosing information of real public interest.¹⁰⁵ It is observed that the enforcement regime of the FOI Act 2011, which makes the Courts the only enforcement institution and not say, an ombudsman, could discourage effective use of the law by ordinary citizens considering the time, energy and monetary costs of litigation. Also, the provisions of Section 7, which provides that where a public institution denies a request for access it shall state in the refusal notice the names of persons responsible therefore may actually encourage mute refusals. The coming into effect of the FOI Act 2011 is an important milestone in bringing about open government in Nigeria, but it would have to be fine-tuned to dissuade deliberate attempts by the executive to withhold information. The law is not able to effectively counteract the unsatisfactory state of Nigerian law as regards the State's power to withhold undefined categories of 'national security' information. Hence, urgent legislative reform of the Official Secrets and National Security Agencies Acts to bring them in line of democratic oversight is required to countermand unjustifiable national security restrictions in Nigerian law. This would be in conformity with Nigeria's human rights obligations under relevant treaties like the African Charter, the ICCPR, etc, to which it is signatory.

¹⁰⁰ FOI Act, Section 29 (1)(2) & (3).

¹⁰¹ Right To Know (R2K), Nigeria *Nigeria's Freedom of Information Act (2011): Compliance Assessment Report 2016* (2016) 7.

¹⁰² Right To Know (R2K), Nigeria *Report on the Status of Public Institutions' Compliance with the Obligation to Proactively Disclose Information under Section 2(3) & (4) of the Freedom of Information (FOI) Act, 2011* (2015) available at PDA report 28-09-15.pdf; Right To Know (R2K), Nigeria *Nigeria's Freedom of Information Act (2011): Compliance Assessment Report 2016*.

¹⁰³ R2K (2016) (n 101 above).

¹⁰⁴ R2K (2015) (n 102 above).

¹⁰⁵ R2K (2016) (n 101 above).