

Nigeria: a challenging case

by Ayo Obe

Introduction

‘In my village, Enugwu-Uku, whenever anything was to be done, the *ekwe* [a wooden drum] would be beaten by the designated person. When it is beaten, people know that there is something to be done, and that people should come to the village square for information. To the extent that people were to be affected by actions to be taken, they had to be involved in the decision, there was nothing like just ordering them.’<sup>1</sup>

The idea that members of a community should be involved in informed decision-making was not unknown in pre-colonial times as the above quote shows. But 19<sup>th</sup> century European colonizers brought a different approach – one of government secrecy – to ruling the peoples of the area that came to be known as Nigeria.

Dismantling that apparatus and making government open to even those whose pre-colonial experience was less transparent is throwing up a number of challenges for today’s Nigerians. This chapter examines how different aspects of Nigeria’s history and political and socio-economic make-up encapsulate several of the factors that make attaining and sustaining a viable transparency regime particularly difficult in many countries. These range from the

effects of colonial cobbling together of numerous ethnic groups and a colonial heritage of secrecy, to the corrosive and corrupting effect of long years of unaccountable military dictatorship against a background of increasing economic dependence on income from petroleum resources. It is in this challenging environment that a campaign for greater transparency is being waged.

### Background

In many ways Nigeria – from arid deserts in the far north to petroleum-rich mangrove swamps on the Atlantic coast – is a microcosm of Africa itself. A former British colony with an inherited colonial administrative infrastructure, the country has several ethnic groups with diverse cultures, the competition amongst whom is barely contained within unwritten conventions dictated by *realpolitik* and written constitutional requirements to ‘reflect the federal character’ of the country in public and private life. Although it returned to civilian rule in May 1999, Nigeria has spent most of its post-independence years under military dictatorship. And since the early 1970s, an economy based on agriculture and an infant industrial sector has dwindled into one which depends on a petroleum industry (that is itself heavily dependent on overseas-based multinational oil corporations) for over 90% of its income.

Nigeria’s experience of access to information therefore illustrates a number of factors that have militated against, and may continue to militate against an orderly transition from a

system where governments hoard information to one where they release information, and where citizens make effective use of such information to challenge and to change government actions and policies.

#### Military rule/Civilian rule: from idealistic revolution to corrupt kleptocracy

One major factor that has shaped Nigeria's access to information experience is the fact that 29 of the country's 44 years since independence have been spent under military dictatorship. Although most of Nigeria's military rulers have been careful to describe military rule as 'an aberration', its length and depth has been such as to make civilian rule seem like the aberration. The signs are that having gained a hold on the country's oil wealth, Nigeria's soldiers will not easily relinquish their grip, as their shadow hangs over even the country's most recent return to civilian rule. While Nigeria's last but one military dictator died in the course of attempting to 'succeed himself' as a civilian president<sup>2</sup>, the winner of the presidential elections which heralded the return to civilian rule in 1999, General Olusegun Obasanjo, had previously ruled the country as a military dictator<sup>3</sup>. The leading contestants in the 2003 presidential elections were both former military dictators<sup>4</sup> and to cap it all, Nigerians are faced with the prospect of yet another former military dictator joining the contest for the 2007 presidential elections!<sup>5</sup>

The original coup-makers of 1966 may have had idealistic motives for what they termed their 'revolution', but by 1979 when Obasanjo handed power to elected civilians, easy

access to the wealth from the oil industry, shielded from public scrutiny by civil service traditions and military autocracy, had thoroughly perverted whatever idealism there had been. Even 'corrective' military regimes, by arbitrarily sacking and retiring numerous public officers without due process<sup>6</sup> only ended up teaching the survivors to ensure their own future financial security by fair means or foul.

The four-year civilian interregnum of 1979 to 1983 came with a hugely expensive system: 19 states<sup>7</sup>, each with its own executive and legislature, a bi-cameral national legislature and a federal executive headed by a President, as well as an army of federal and state appointees. The increased numbers of those with access to the nation's treasuries meant even more pressure to conceal what was being done with its oil income. During this period an estimated US\$5-7 billion left the country for overseas bank accounts.

The introduction of a Structural Adjustment Programme by the 1985-1993 military dictatorship of General Ibrahim Babangida caused a plunge in living standards for all salaried workers, with a consequent leap in corruption as those in a position to do so recouped their losses by extorting money from anybody whose misfortune it was to have to transact any business of any kind whatsoever with government. For Babangida, oil wealth was both the path and the prize, particularly when the increased income following the first Gulf War provided him with even more money. The Nigerian people barely knew enough to realise that they were being robbed, and although questions were raised by *Financial Times* journalist William Keeling, as he was a non-Nigerian, the problem was easily dealt with by his

deportation<sup>8</sup>. Babangida therefore had both the funds and the freedom to continue to ‘settle’ his critics, and this, coupled with his eight year ‘transition to civil rule’ programme during which he continually changed the rules, the goalposts and the players, led to his being described as a ruler who had both corrupted democracy<sup>9</sup> and democratized corruption.

### The Resource Curse

The next factor is petroleum, discovered in the Niger Delta in 1956. Income from oil had increased to such an extent in the wake of the 1973 Arab-Israeli war<sup>10</sup> that the then military ruler, General Yakubu Gowon, declared that his problem was not finding money, but how to spend it: a problem ‘solved’ by distributing it among those with access to power – mainly unelected military dictators or their chosen civilian successors<sup>11</sup>. Despite increased demands for resource control by the peoples on whose land or off whose shores the oil is mined, the general perception – of not only the rulers, but crucially for the prospects of accountability, also the ruled – is that the money the government realises from this mineral wealth does not come from tax-paying voters, and thus that it does not come from those to whom account must be rendered. Rather, the money accrues from rents and joint venture proceeds paid or earned by huge foreign corporations or government agencies. This sense of lack of ownership means that on one hand, conditions which might foster demands for openness and accountability about government spending failed to develop, and on the other, that the income from that mineral wealth has virtually disappeared in a cloud of secrecy, waste and

theft. For the most part, it is impossible to say where the billions of dollars earned from oil since 1970 have all gone. There is no reconciling the lack of development on the ground and the steep dive in living standards with the huge amounts received, while the per capita gross national product is less in real terms today than it was at independence in 1960.<sup>12</sup>

The unhappy coincidence that oil revenues began to constitute a major part of the country's income at the same time that it was under the grip of military rule had adverse effects for democracy and human rights and of course, for transparency and good governance since the fatal combination of dictatorial authority and stupendous oil wealth proved a lure too powerful to resist. Nigeria was subjected to either broken promises to relinquish power or plots and schemes to seize or retain control by direct means or indirect.

### Ethnic Diversity

The next crucial factor which interplays with the first two to further obscure transparency in Nigeria is ethnicity. The country is an artificial colonial creation which officially came into existence in 1914. Borrowing Winston Churchill's description of India, a leading Nigerian politician<sup>13</sup> said that Nigeria was not a nation, but 'a mere geographical expression': that there were no Nigerians as such, rather, a myriad of ethnic groups<sup>14</sup>. One solution to this diversity was the federal system of government. However, the existence of so many different nationalities and ethnic groups meant that not only was there competition and conflict amongst the groups, but that loyalty to one's particular group often superseded any

commitment to the national project. Apart from competition among the different ethnic groups for their 'share' of the oil wealth, this created a climate in which issues such as transparency and openness and the converse qualities of corruption and secrecy were viewed and judged through ethnic-tinted glasses, so that any attempt to call treasury looters to account was usually drowned in a welter of accusations of selective tribal witch-hunting.

#### The Civil Service: Colonial traditions of secrecy and self-preservation

Another factor is Nigeria's inheritance of the colonial government's culture of blanket official secrecy encapsulated in a series of Official Secrets Acts, which was enthusiastically embraced by post-Independence rulers and their civil servants. Although all Nigeria's Constitutions since independence in 1960 have paid lip service to the right to 'receive and impart ideas and information without interference'<sup>15</sup> within the context of a right to freedom of expression, what is given with one hand is hobbled by the other. Section 39(3) of the 1999 Constitution for example, preserves laws that are:

'... 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 ...
- (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.’

This ambivalence reflects Nigeria’s history as a former British colony. Not only did the colonial government not recognize any duty to make information generally available to the colonized people<sup>16</sup>, it had its own tradition of secrecy characterized by Official Secrets Acts dating back to 1911. Independent Nigeria in turn passed its own Official Secrets Act in 1962<sup>17</sup> which prohibits the transmission of ‘any classified matter’, itself defined in so nebulous a fashion<sup>18</sup> that it is hardly surprising that almost any government document can be stamped ‘Secret’ for one reason or another.<sup>19</sup>

It is these habits of secrecy that have held sway rather than constitutional provisions and international and regional agreements<sup>20</sup> by which Nigeria purported to guarantee freedom of information and which it not surprisingly took no concrete steps to actualize.

While one might hope to find some safeguard or counterpart to the civil service culture of secrecy in civil service traditions of loyal patriotism, the corrosive effect of years of military dictatorship all but destroyed the latter. And as noted above, arbitrary attempts at reform through wholesale sackings and forced retirements in which the innocent were punished along with the guilty taught that there was neither security for a public servant’s old age nor safety in honesty and probity.



### Corruption and Lack of Accountability

These factors combined to bring about a high rate of corruption<sup>21</sup>, and even after the return to expensive<sup>22</sup> civilian rule in 1979, this fatal factor had to be added to the already debilitating combination of a collapse in oil prices, and an increasing debt profile. This reversed the nation's economic fortunes to such an extent that by 1986 the country was groaning under a Structural Adjustment Programme which decimated the middle class and caused an explosion in corruption without any economic improvement.

Certainly structural adjustment policies created havoc and poverty across the continent as many African countries were buried beneath mountains of debt. Yet Nigeria ought to have been shielded to some extent from the harsh world economic climate and the even harsher World Bank/IMF solutions by its position as the eighth-largest exporter of petroleum in the world. But since the early 1970s and Gowon's infamous description of the surplus oil revenue as a problem, Nigeria's rulers had preferred to treat oil revenue – not as necessary resources from which to meet the rising expectations and minimum requirements of an increasing population – but as a surplus to be deployed in the quest for political power or distributed for private enjoyment. As a result, Nigeria sank lower on all indices measuring the quality of life, while the determination of public officials (whose salaries remained fixed while inflation rocketed) to maintain their standard of living ensured that it performed execrably on issues of accountability, moving for example, from bottom to second from

bottom on the Transparency International Corruption Perception Index with monotonous and depressing regularity.

The 1999 return to civilian rule under the leadership of a President who, in the years since 1979 when he had voluntarily relinquished power to an elected civilian government, had not only founded the African Leadership Forum at which problems and solutions in governance issues were dissected and studied, but had also been on Transparency International's board, did not produce much improvement in this position. Although Obasanjo recognized corruption as a critical issue and, at his inauguration on the 29<sup>th</sup> of May 1999, promised to make its eradication a cornerstone of his administration, nearly six years after he assumed power, Nigeria has done little more than exchange its 'gold' medal in corruption for 'silver' and 'bronze'.<sup>23</sup>

### Challenging Secrecy

The struggle to control oil wealth, colonial traditions of civil service secrecy, together with long years of unaccountable military rule, particularly as dictators sought to silence opposition in order to remain in power and continue to bleed the nation dry, and the protective ethnic cordon thrown around any erring member, all combined to create a climate of corruption that has been extremely unfavourable to ideas of transparency or freedom of access to information. Despite this, the campaign by Nigerians for specific legislation guaranteeing their right to access public information is over twelve years old. At the same

time, a combination of political competition at home and pressures from outside has begun to open aspects of government to public scrutiny.

Yet it was not corruption as such that led to the first demands for access to government information. Even Babangida had insufficient resources to fill the mouth of every critic with enough honey to shut them all up. In any case, the cost of settling powerful critics meant fewer resources for other government duties. The unfortunate result in the case of the Nigeria Police Force was that the police were forced to ‘live off the land’ through a combination of extortion and bribes<sup>24</sup>. Coupled with a return to and increase in coercion and oppression as Babangida struggled to hold on to power, human rights abuses increased enormously. Nigeria’s first human rights organisations<sup>25</sup> were formed at this time, and it was from this burgeoning civil society that the first demands for a systematic right of access to government information came.

At the same time, other seeds of non-partisan responses to government were being sewn. As the succession of one military dictator after another saw increased human rights violations and corrupt looting of the nation’s oil income, newspapers and magazines that were independent of both government and vested political interests began to provide Nigerians with criticism and comment that could not simply be dismissed as the ranting of frustrated politicians.

### The Human Rights Momentum

When pastoral visits revealed that most of those in Nigerian prisons were still awaiting trial, in some cases for over ten years for vague offences like ‘wandering’, for which the maximum punishment would have been a sentence of a few months<sup>26</sup>, the Civil Liberties Organisation (CLO), Nigeria’s first indigenous human rights group, was founded to provide systematic assistance to those who lacked means to secure the enforcement of the fundamental rights guaranteed by the unsuspending parts of the 1979 Constitution. Although the CLO secured the release of many of these prisoners through court actions to enforce fundamental rights, it was clear that the problem was both deep and widespread. Sympathetic prison warders might unofficially disclose details of detainees, but any attempt to obtain a clear overall picture was met with the wall of official secrecy.

The haphazard nature of the system into which such unfortunates were thrown meant severe overcrowding in all Nigerian prisons, while the fate of those who had no friend or relative to bring them additional food and supplies was grim. Between the overcrowding and poor nutritional status of many prisoners, it is hardly surprising that disease was rife or that there was a high rate of mortality inside the prisons. But again, the CLO’s attempt to get facts and figures upon which to build a campaign for better treatment for prisoners was frustrated by the refusal of prison authorities to release details of prison deaths. In the event, the CLO was able to circumvent prison secrecy by gaining access to the mortuary records where long and deeply disturbing lists showed that by far the greatest number of corpses came from

nearby prisons, with disease and sickness aggravated by poor nutritional status being the primary causes of death.

Any attempt to get a nationwide statistics would obviously require details of the number and location of prisons, lock-ups and other detention facilities in the country. But this was classified information: a matter of national security! And while it was clear to the CLO that prison conditions were a matter of national disgrace rather than national security, it was also clear that no useful official information would be released, or indeed, because of the Official Secrets Act, *could* (lawfully) be released.

At the same time, the Babangida regime became more and more repressive as it ran out of tricks in its long drawn out transition to civil rule programme and public criticism heightened. The State Security Service detention cells, so ostentatiously emptied when Babangida had seized power in 1985, began to fill up again. Because, apart from the failed coup plotters of April 1990, there was little that critics could be actually charged with, the junta resorted to administrative detention into which the courts had no jurisdiction to inquire, creating another wall of secrecy that human rights activists needed to breach.

### Campaigning for FOI Laws Under Military Dictatorship

#### A specific campaign for access to information

The first calls for freedom of information legislation arose therefore because it was clear to human rights activists that they could not do their work properly without access to

government records and information. So in 1992 the CLO began seeking solutions to the government wall of secrecy. Because journalists were facing the same problems as human rights groups, it was natural for the CLO and the Nigeria Union of Journalists (NUJ) to collaborate on the issue. It soon became clear that there was room for an NGO specifically devoted to the rights of journalists and freedom of the press<sup>27</sup>, and this led to the formation of Media Rights Agenda (MRA) which then prepared a consultation paper on access to publicly held information.

Despite the fact that the massive corruption of the Babangida junta was a matter of public concern because it was clear that oil money was being used to buy off critics or to secure the loyalty of those who could assist in repressing the people, this was the first time that specific remedies for the problem had been considered. FOI legislation was conceived along with an Ethics in Government Act as part of a twin structure designed to make government honest and accountable, but in the event, the latter proved stillborn.

#### Preparation of a Draft FOI Law

In 1992, when it was agreed that MRA should spearhead the drive for freedom of information legislation, it was anticipated that Babangida would at last hand over to a democratic civilian government, and that the climate for the establishment of a more open government would be more sympathetic. In the event, the Babangida transition was aborted the following year, and Nigeria was plunged into an even deeper abyss of corruption and human rights abuse under

the Abacha regime, although – like Babangida’s 1985 seizure of power – it was sugar-coated at first.

Despite the now much less favourable climate, the three organisations pressed ahead and a draft FOI bill based on consultations among themselves, suggestions made in questionnaires administered to practising journalists, and the experiences of other countries was produced. A series of workshops, conferences and seminars was then held to bring in more stakeholders, widen the circle of consultation and refine the draft for eventual enactment.

The next step was to press for enactment, but rather than present the Bill to the Constituent Assembly which Abacha had set up to draw up a new constitution for Nigeria which they had condemned as lacking credibility, the three organisations instead sent it to the Federal Ministries of Justice and Information. It was always recognized that the chances of enactment under the Abacha dictatorship were slim, but because the Minister of Justice, Dr. Olu Onagoruwa, had been an activist of sorts, and always showed sympathy for human rights issues, the Committee met him to press the issue. Unfortunately, the Constituent Assembly departed from Abacha’s script when it passed a resolution demanding the end of military rule by January 1996, and this washed away the remnants of the regime’s sugar-coating with a new wave of repressiveness. In such circumstances, Onagoruwa’s influence within the dictatorship (such as it was) evaporated, and with it any chance of his pushing the enactment of the Bill as a military government decree.

In any case, shortly after the Constituent Assembly vote, the phantom coup plot which led to the jailing of several serving and retired soldiers, including Olusegun Obasanjo, as well as civilians burst on the national scene. Amongst the victims was the CLO's own Executive Director, Abdul Oroh<sup>28</sup> who, as a professional journalist, had been an energetic advocate of FOI legislation. Although Oroh was released after a year in detention towards the end of 1996, when it became clear that Abacha too had no genuine intention of relinquishing power, but had determined to succeed himself as a civilian president<sup>29</sup>, the struggle to end military rule necessarily took precedence.

#### A Shift from Human Rights to Accountability

In June 1998 however, Abacha died of a heart attack amid an increasing wave of civil dissent, and the regime of General Abdulsalami Abubakar which took over recognized that it had no choice but to return the country to civilian rule without delay. Elections were therefore held into various levels of government between December 1998 and February 1999<sup>30</sup>, and this provided the necessary climate in which to revive the FOI issue, and to review draft FOI legislation with which to meet the incoming civilian administration. A March 1999 conference organized by MRA with participants from both inside and outside Nigeria discussed the draft Bill prepared by the MRA, CLO and NUJ, and with the draft then further revised in the light of the conference's recommendations, civil society was ready to hit the ground running with the return to civil rule.



The focus of the campaign however, had changed. Abubakar had gradually released all Abacha's political prisoners, and relaxed restrictions on freedom of expression and other civil and political freedoms. But the revelation of the staggering amounts allegedly stolen by the Abacha family meant that transparency concerns shifted from human rights to corruption and lack of accountability.

### Campaigning for FOI Legislation Under Civilian Rule

#### Civil Society: a Proactive Approach

Obasanjo's declaration of an all-out war on corruption at his inauguration on the 29<sup>th</sup> of May 1999 therefore caught and reflected the national mood of disgust at the extent of government corruption, particularly when placed against the increasing poverty of most citizens. Civil society organisations felt that their draft FOI legislation fitted perfectly with Obasanjo's objectives. Their position was that rather than preserve the climate of secrecy in which corruption could flourish and then pick off only some of the wrongdoers whose crime might or might not be punished at the end of a very long day, it would be more effective to make the right to receive and impart information real. It was felt that a FOI law would provide the necessary 'disinfectant of sunshine' that would not only deter much would-be corrupt activity, but would also make the detection of any that remained a great deal easier.

MRA therefore sent the newly-revised draft Bill to President Obasanjo a few days after his inauguration, both to express support for his declared commitment to fighting

corruption and to ask him to present the draft FOI bill to the National Assembly as an Executive Bill along with his proposed anti-corruption legislation. Such support would have been extremely helpful since, as in many other legislative systems, it is bills sponsored by the executive that stand the most chance of being enacted.<sup>31</sup> Similar letters were addressed to the Ministers of Justice and of Information. But the President declined to present the FOI bill and instead advised MRA to send the draft directly to the National Assembly.<sup>32</sup> Meanwhile, several months later the Ministry of Justice got round to advising MRA to:

‘... properly channel your cause through the Federal Ministry of Information which is the relevant governmental body that regulates the practice and dissemination of information. Your case will be duly considered if it originates from the relevant Ministry.’<sup>33</sup>

### Obasanjo: Reaction and Control

Unlike civil society’s proactive approach, the solution proposed by President Obasanjo to the tide of corruption then threatening to engulf Nigeria was reactive. He established a completely new anti-corruption machinery in the form of an ‘Independent’ Corrupt Practices Commission (ICPC). While few new offences were actually created, the accompanying legislation gave the Commission sweeping powers with which it could delve into a person’s

life, financial affairs, telephone conversations and correspondence etc. in order to determine whether corrupt activity or enrichment was taking place.

By the end of the Obasanjo administration's first term in office in 2003 however, there had been announcements of investigations and arrests, workshops and seminars, slogans and campaigns, but no convictions. On the one hand the constitutionality of the law was challenged by the few people who were actually charged with offences<sup>34</sup>, and on the other, it was soon perceived as a weapon with which the executive branch of the federal government was undermining and threatening political opponents both in the federal legislature, and in the state governments, but resolutely failing to pluck the beam from its own eye, despite reports by both Britain and the United States which were said to have concluded that 55% of corrupt activity within Nigeria was traceable to the executive branch of government.

The selectively blind Presidential eye that was turned to repeated calls to investigate allegations of corruption against one of his predecessors, Ibrahim Babangida, was particularly glaring. As with other cases brought to his attention which he had not himself initiated, the President's response was to demand that complainants bring him proof. Given that he controlled the entire machinery of state, the police and security services, as well as the ICPC, with its extensive powers, this was 'holding the knife and the yam', but demanding a dish of cooked fufu! The saga of the Okigbo Panel report underlined continuing government determination to keep a tight hold on information that it did not want in the public domain.

(See Box 1). **[Insert Box 1 around here]**

### Legislative Advocacy: Lobbying for FOI Legislation

Fortunately, after receiving the President's discouraging July 1999 letter, MRA had not waited but immediately set about introducing the FOI bill at the National Assembly. Copies of the draft were distributed to some of the legislators, and one of them, Tony Anyanwu, agreed to act as sponsor of the FOI bill. Anyanwu secured cross-party support from a further 24 members who volunteered to be co-sponsors of the bill which was then sent to the legal drafting department of the National Assembly.

Copies of the FOI bill were sent to all 469 members of the National Assembly, and although only one response was received, it was an important one. Jerry Ugokwe replied that he was himself planning to present his own FOI bill to the House, as he had become interested in the subject when he found himself able to access public documents under the American Freedom of Information Act during his studies in the United States. As his draft was more or less a wholesale lifting of the US legislation with expressions and references to institutions and procedures that had no place in the Nigerian system of law or government, harmonization of the two drafts meant that the civil society draft survived largely intact. With this, the bill was gazetted<sup>35</sup> and had its first reading in the House on the 22<sup>nd</sup> of February 2000; the first civil society bill to be presented to the National Assembly.

At first there was speedy progress, with the House Information Committee undertaking a study tour of the United States and the United Kingdom in order, as they put it,

to see how freedom of information legislation functioned in more advanced democracies before submitting a report on the 25<sup>th</sup> of July.<sup>36</sup> Even the executive appeared to be coming round as the third reading approached, when the Minister of Information made the first public declaration of support for the FOI bill by any member of the executive:

‘No state, especially a democratic state, can achieve any meaningful development if the citizens do not have access to information about matters that affect their everyday life. It is indeed fundamental in any democratic governance.’

Although coming at that late stage such support tended only to recall Dr. Johnson’s warning on patronage<sup>37</sup>, in retrospect this belated embrace by the executive presaged stagnation and ultimate failure as the entire project fell victim to external politics which, despite spirited efforts by a coalition of groups and organisations interested in FOI legislation – particularly in the run-up to the 2003 general elections – failed to secure the all-important third reading in the House, let alone begin its passage through the Senate. Members who had previously appeared supportive now seemed either indifferent to its enactment, or worse, determined to prevent it from proceeding further<sup>38</sup>. They complained that there had been no public hearing, and although when the National Assembly continued to delay because of an alleged ‘lack of money’, the MRA raised funds for what turned out to be a well-attended public hearing, no further progress was made.

### A Renewed and Continuing Campaign for FOI Legislation

Although the subject failed to catch as an election issue, the new session saw the FOI Coalition renewing its energy and commitment to the passage of the legislation. The coalition was expanded to include the National Human Rights Commission which undertook extensive advocacy with different government departments to sensitize them to the importance of FOI legislation, and to answer some of their concerns.

Fortunately, the new House of Representatives which was sworn in in June 2003 had as one of its new members Abdul Oroh, the former journalist who had been Executive Director of the Civil Liberties Organisation and a key advocate of FOI legislation from the human rights side of the national discourse. Now he was a key mover in the renewed drive for the enactment of the FOI bill, and at the time of writing, the FOI bill had successfully completed its passage through the House of Representatives and by February 2005, had had its first second reading before the Senate. Indications there are largely favourable, with some real enthusiasm and interest being shown by several key members.

### Executive Ambivalence

There is therefore reason for optimism regarding the prospects for the FOI bill's passage through the National Assembly. The question facing advocates of the bill after that is the attitude of the executive. Disturbing signs suggest that despite rhetoric about fighting

corruption, the Presidency is in reality lukewarm if not actually opposed to the enactment of any genuine freedom of information law in Nigeria. As the third reading approached, President Obasanjo gave interviews in which he claimed (wrongly) that the FOI bill was mostly imported from foreign countries and failed to take account of Nigeria's 'peculiar local situation'.<sup>39</sup> Obasanjo also complained at the lack of restriction on release of information to non-Nigerians, claiming (again, wrongly) that allowing non-citizens access to information 'is not done anywhere else in the world.' In an attempt to cut this objection off at the pass, the bill was amended so that only Nigerian citizens have the right to access information, but in practice, there is no limitation on what citizens can do with such information once they have obtained it.<sup>40</sup> Although the President would be spared the embarrassment of having to reject the bill if it failed in the National Assembly, his consent is required before a bill can become law, and a presidential veto can only be overcome by a two-thirds majority. The President's comments however, presage a deep reluctance to let control of information slip into the public domain.

At the same time however, the Presidency has been releasing information about government income and expenditure in a way that might suggest a genuine desire to run an open and transparent administration. But closer examination shows that only selected information has been revealed, and in a manner suggestive of a desire to give the *appearance* rather than the reality of open government or to achieve specific political aims.

### Lessons Learned

It is difficult at this stage – with no legislation yet in place – to offer any final thoughts on lessons learned. The present campaign is to have FOI legislation enacted in Nigeria and it has not yet been won. While indications from the Senate appear favourable, the experience during the 1999-2003 session of the National Assembly, when previously supportive or neutral members withdrew their support or even became actively hostile, shows that nothing should be taken for granted. Having one of the prime motivators of the FOI legislation as a member of the National Assembly has proved of immense value, but the question of Presidential/executive opposition is one that will have to be faced sooner or later, since not only is Presidential consent required to complete the legislative process, it is ultimately the executive that must implement the Act.

Planning a strategy is not the same as learning from experience, yet the latter must necessarily influence the former. Civil society's experience to date has been that no expectations should be built on the President's history as a former trustee of Transparency International, or the founder of the African Leadership Forum. Rather, it is his history as a former soldier, accustomed to command and control, as a military dictator and as a key actor in the system by which military rulers gained access to Nigeria's wealth and by which they maintained control over that wealth, that appears to be shaping his responses. To overcome this, the FOI coalition must be prepared to campaign not only at home, but also abroad. Of course, organisations such as Transparency International whose regular placing of Nigeria at



the bottom of its Corruption Perception Index causes the executive such deep humiliation will be important. But with President Obasanjo's recent emergence as Chairperson of the African Union, coupled with Nigeria's declaration of an intention to submit itself for evaluation under the Peer Review Mechanism of the New Economic Partnership for African Development (NEPAD), the FOI coalition may have an even more potent lever of persuasion to hand, as the existence of FOI legislation in Nigeria would allow the country to present a more desirable profile for review.

#### Prospects for the Future

At present, only the Evidence Act in Nigeria gives the public access to government documents, and even then, this is limited to the context of ongoing litigation. But even if the obstacles to the enactment of the FOI Bill can be overcome, that will not be the end of the story. Indeed, there are already signs that the passage of any such legislation will only expose more of the problems which citizens of the Nigerian state and others like it face in their quest for a truly transparent and open government. The tools by which a FOI regime can be made effective will still remain in the hands of the executive. And while the Obasanjo administration has established some pro-transparency bodies and mechanisms that play well on the national and international stages, experience has shown that any departure from the presidentially approved script can result in the crippling of such initiatives.<sup>41</sup>

It is true that since the return to civilian rule in 1999 quite a few windows (or should one say ‘peepholes’) have been opened on aspects of the Nigerian government in its attempt to appear genuinely open. The Federal Government has, for example, been publishing the amounts paid to state governments for themselves and their local governments, is participating in the Extractive Industries Transparency Initiative, and publishes details of large foreign exchange purchases. Some State governments have also made a show of publishing their own audited accounts.

But the light thrown on some selected areas only casts those where no voluntary disclosure has been made into deeper darkness. For example, when the Federal Government started releasing details of the amounts paid to State Governments for themselves and their local governments in paid advertisements, some State Governors protested:

‘There is no justification whatsoever for the Federal Government to continue to publish the monthly statutory allocations to states and local governments whereas Nigerians do not even know how much the Presidency receives.’<sup>42</sup>

Certainly the openness about the money paid to other tiers of government is not matched by disclosures about the amount collected by the Federal Government, even though this is by far the lion’s share of federally collected revenue. Although the protests were met with advice to consult the audited accounts submitted to the National Assembly,<sup>43</sup> the reality

is that even legislators find it difficult to obtain the information they need to carry out their duties. Moreover, given that such information as they were able to glean resulted in a May 2004 report of the House Committee on Public Accounts that was a damning indictment of the waste and corruption within the Federal Government, it is hardly surprising that many dismiss the Federal Government's much-touted openness as peculiarly and hypocritically one-sided.

No figures are published about how much each of the Federal Government's many ministries, parastatals, departments, units and other agencies receive. An 'impenetrable fog',<sup>44</sup> shrouds the accounts of the Federal Government and the public can only speculate about the billions allegedly spent on federal roads, the National Electric Power Authority and the oil refineries with not only no discernible improvement, but in many cases, visible deterioration.

The proposed FOI legislation will certainly provide more rights than the Evidence Act. But although the FOI bill requires public institutions to keep records, it is here that the potential for the most sabotage of the bill's intentions lies. At present, there is hardly any systematic approach to keeping records and statistics. The population of the country itself is a matter of guesswork, projection and conjecture. Some junior government officials survive on the income they get from being encouraged to 'find' files which naturally, are otherwise 'lost'. As one commentator observed, one has to engage in 'virtual espionage' to secure even the most basic information.<sup>45</sup>

Despite the show of openness made by the Obasanjo administration about the financial affairs of others, it shows little appetite for the loss of control over which facts become public that a genuine freedom of information regime would entail, as the furore over the release by the Acting Auditor-General of the interim audit report for 2001 revealed. (See Box 2). [Insert Box 2 around here]

Notwithstanding the evident conviction of some key members of President Obasanjo's team about the need for transparency in their individual spheres of government, doubts persist about the genuineness of the overall commitment of the federal government to relinquishing control over information. For example, while Nigeria has subscribed to the global initiative for transparency in the extractive industries, and established a Nigerian Extractive Industries Transparency initiative (NEITI) in February 2004, of the 28-person National Stakeholders Working Group set up to oversee its implementation, fully half are Federal Government employees. The publicity about this Working Group as 'composed of individuals from Civil Society, Media, Government, Indigenous, National and Multi-National companies'<sup>46</sup> – implies that civil society is a major player in the group, but in fact there are just two civil society representatives and only one from the media out of the 28.

As a result, there is some feeling that the Nigerian end of the initiative exists because of external pressures, and that its purpose is to satisfy those external interests: the advertisement in foreign newspapers for an independent auditor will not only perhaps produce the best auditor, but will also look good in the eyes of the international community: a

welcome harmony – from the government’s point of view – between the appearance and the reality.

### Attitudes and Habits that Must Change

Freedom of Information legislation, if it is to be effective when passed, will require a sea change in attitude on the part of government. At a crucial moment during the journey of the FOI bill through the House of Representatives – which was presenting itself as a champion of open government – even a member of the House was refused access to information about how the Speaker was spending its budget. The attitude of the executive is hardly better: rather there is a deeply ingrained resistance to the release of information to ordinary members of the public on demand. (See Box 3). **[Insert Box 3 around here]**

The Okigbo Panel report saga (Box 2) also highlights the effect that a failure or refusal to keep proper records can have on any access to information regime.

But attitudes outside government equally need to change. The campaign for the enactment of FOI legislation has not been a grass roots campaign in Nigeria. While proponents of the legislation have mounted a sustained campaign to overcome executive resistance to the enactment of the legislation, the inability of federal and state governments and law enforcement agencies to secure conviction or punishment in even well-exposed cases of wrongdoing has created levels of apathy and cynicism over whether such legislation will bring about much change in the culture of impunity and/or immunity.

Much will depend on civil society if FOI legislation is to be transformed from a privilege for the elite few to a tool of real accountability in the hands of many. But the performance of civil society in using government information remains patchy, and the reality is that in all but a few cases Nigerian NGOs have been unable or unwilling to take the benefits of free access to information to communities directly affected. The expressway from Lagos to Benin becomes well-nigh impassable despite billions voted in annual budgets for road maintenance; a newspaper columnist finds a wide gap between claims in the website of the Jigawa State Government and the reality on the ground, yet beyond generalized complaining, little is done.<sup>48</sup>

Indeed, beyond campaigning for the right of access to information, the extent to which civil society has the will or the capacity to make effective use of such information is open to question. Although the civil society representatives involved in the NEITI for example, have established a wider support group of CSOs in furtherance of a ‘grass roots approach’ there are internal concerns about the lack of commitment and political will within civil society to make the best use of even what may be a less-than-perfect system for transparency within the petroleum industry.

Similar fears must exist to a lesser extent, for the hoped-for more all-embracing Freedom of Information legislation. The slightly higher expectations stem from the fact that – unlike the extractive industries initiative – the FOI bill is the result of a local initiative, and it is therefore hoped that civil society and the media will make more use of it. Also, while the

FOI bill makes it a criminal offence to withhold or destroy information properly requested by members of the public, criminal offences under the legislation proposed in support of the extractive industries initiative are only for giving false information to the government<sup>49</sup>; the only requirement on the NEITI itself is to publish the auditor's report on the income from the extractive industries. This situation is bound to create more sense of ownership of the FOI bill among Nigerians than of the NEITI.

While stories of MKSS in India are repeated to spur FOI advocates on to victory, replication on Nigerian soil is as yet rare, although there are a few instances of grass roots campaigns, such as that conducted by the Justice Development and Peace Committee of the Roman Catholic church which, with its publication of the details of the payments to States and Local Governments as revealed by the Federal Ministry of Finance, and its 'People's Parley', by which it calls officials to render public account of their stewardship, is trying to create a demand for accountability.

A great deal remains to be done however, and while it is important to require government and its organs to rise to the challenge of making information available to citizens, it is equally important to empower citizens to make use of that information.

#### Overcoming the Military-Civilian Continuum

As noted above, military dictators who presided over the dissipation and disappearance of Nigeria's oil income continue to cast a long shadow over current attempts to build a

democratic government and a functioning and effective transparency regime in the country. The current head of state, Obasanjo, is of course a product of the military-in-government establishment which has continued to increase in power since 1966.

What this means in practice as regards the struggle to secure the passage of FOI legislation and its full implementation when passed, is the imperative of recognizing that the underlying authoritarian nature of government in the country has not changed simply because the key actors now wear *agbada*<sup>50</sup> instead of khaki. Despite its multiplicity of media outlets – many of them independent – Nigeria remains an illiberal closed society with an extremely fragile democracy. Tightly controlled or brazenly rigged elections are a microcosm of the true condition of all the apparatus necessary for a properly and freely functioning democracy, whether as regards the legislature, the judiciary or the rule of law: the form and appearance are there, but the substance is lacking.

Though ridiculed by Fela Anikulapo-Kuti in his song *Zombie*, military discipline does not envisage questions being asked by subordinates. Their duty is to obey orders. To the military mind, the debate and argument that are the hallmark of a vibrant democracy seem unruly and disorderly. In contrast to pre-colonial Igboland, the ‘other ranks’, or ‘bloody civilians’ are neither required nor expected to do other than comply with the instructions of the wiser and better heads who have all the necessary information to make the correct decisions.



In such a culture, the hostile reaction of the Obasanjo administration to the idea of fighting corruption by throwing open everything about government should not be surprising. Putting the fight into the hands of the ICPC, which decides what *it* wants to investigate and who *it* intends to prosecute leaves the executive in absolute control. Given the numbers of former military officers and others who have benefited from their stay in power to win office in the present ‘democratic’ system, it may be optimistic to expect any sudden change from a closed to an open society. Although in an age of globalisation, a government in a country like Nigeria may be unable to prevent all its secrets from being revealed in more open countries, it would be naïve to imagine that the openness of such countries within their own borders necessarily translates to openness about their dealings with other countries. It does not. Moreover, huge amounts of information are not in the international public domain. Oil companies for example, may face pressure in their home countries and as a result of the global extractive industries transparency initiative of which the NEITI is a part, to reveal exactly how much they pay to governments in oil-producing countries. But what records would they have of those with direct access to Nigeria’s oilfields and its oil wealth?

Beyond even this not inconsiderable last hurdle on the road to the enactment of FOI legislation, a little vignette from a letter written to Obasanjo in April 1990 by the man who had served him and his assassinated predecessor, Murtala Muhammed, as Secretary to the Federal Military Government, Allison Ayida, underlines that the civil service is more than

practised at not producing information that the powers-that-be have determined should remain hidden. (See Box 4) [Insert Box 4 around here]

### Challenges for the Future

Perhaps the most important lessons will be learned in the future, when the Access to Public Information – the FOI – bill has become law in Nigeria. Obvious logistical hurdles are likely to present themselves during implementation. But beyond these hurdles lies the battle to inspire the people to use FOI as a tool in their own emancipation. In a country where few are seen to have been punished for breaches of the law, FOI legislation cannot succeed where there exists a civil service determined to resist it and where the citizenry neither feel confident that they are entitled to demand accountability from their governments nor that there will be any positive outcome from fledgling attempts to call their rulers to account.

The challenge before Nigerians in general, and civil society in particular however, is to begin to practise using and disseminating information. Even before FOI legislation is enacted in the country, CSOs need to cultivate the habit of requesting information from government, accessing even information disseminated by government ... and using it.

Box 1

Gulf War Oil Windfall: Vanished Windfall, Vanishing Report

The gap between increased oil revenues and results on the ground was highlighted in June 1991, when *Financial Times* journalist William Keeling was deported from Nigeria by Babangida's regime for suggesting that the windfall from the increase in oil prices caused by the 1991 Gulf War had been largely pocketed by top government functionaries.

In 1994, the Abacha regime set up a Panel of Inquiry under Pius Okigbo, to probe how the windfall had been spent. A summary of the panel's report revealed that the Babangida regime had conspired with top officials of the Central Bank and squandered the entire fortune on unproductive or dubious projects. Out of the \$12.4 billion Gulf War windfall, \$12.2 billion had been disbursed, leaving a balance of only \$206.037 million. The money was frittered away through 'Dedicated Accounts' which were not accessible to auditors. No further action was taken by the Abacha regime, and the full details of the Okigbo Report were not publicized.

Almost immediately after Obasanjo was re-elected in 2003, jostling for position in the 2007 elections commenced. To the consternation of many, Babangida emerged as a key contender for the distant contest. His record in office therefore became a legitimate subject of concern, and *The Punch* newspaper sought to obtain a copy of the Okigbo Report. Astonishingly, it could not be found anywhere. In November, the newspaper reported that it had conducted a two month-long search in all relevant quarters, including the office of the

Secretary to the Government of the Federation (SGF), the Department of National Archives and the Federal Ministry of Information. None of them could provide a clue as to the whereabouts of the report, even though the current SGF had been a member of the Okigbo panel.

The SGF's office responded that it was searching for the report, claiming: 'The report is not lost. It is with the Federal Government.' When journalists asked Obasanjo about the report, he claimed to have contacted Okigbo's widow for a copy. But Mrs. Okigbo denied this. She had neither spoken to the President nor had she any copy of the report. The President's spokesperson thereupon denied that the President would have had any cause to contact Mrs. Okigbo, maintaining that the report was with the government. But *The Punch* was passed from one section of government to another in its continued efforts to secure the report – rounded off by the assertion that 'those who had authority to see the report had access to it'.

As the newspaper noted in an editorial published on the 18<sup>th</sup> of November 2003, the Okigbo Panel Report was one of a long line of reports in which public figures had been indicted, without anything being done:

'Not a few Nigerians implicated by these probes still walk tall in the streets as free men, while some of them are holding or eyeing sensitive public offices.

The non-availability of a document of such profound importance as the Okigbo Panel report is a tell tale clue on the contempt with which officialdom holds the anti-corruption campaign. It is tragic that probes in the country scarcely lead to punishment for culprits or the furtherance of justice and transparency in public life. The fate of past probes and the reports therefrom confirm the painful fact that inquiries have become tools used to divert public attention from official corruption, ineptitude and other crimes, or to intimidate and blackmail political opponents.’

For Nigerians the Gulf war oil windfall highlighted once again the fact that as far as those in government were concerned, not only would there never be any ‘surplus’ for the Nigerian people to enjoy however much increase there might be in oil prices, but that the vanished surplus was likely to be applied to maintain in office those who had little concept of government beyond personal profit, thus perpetuating the vicious cycle.

## Box 2

### The Vincent Azie Saga

At the beginning of 2003, Vincent Azie, the acting Auditor-General, published an interim audit report for 2001. Many thought that at last, here was the first sign that the Federal Government was serious about the quest for accountability in government, and consequently, about the fight against corruption. Rather than unspecific generalisations about corruption

and misappropriation of government funds and property, the report gave specific facts and figures about how government money was being misspent, misapplied and misappropriated. By making open its insistence on compliance with the rules and regulations regarding government expenditure, the report began creating a climate of accountability in government circles.

The report was particularly welcomed because unlike all previous reports which – in so far as the public was aware that the nation’s accounts had been audited at all – would come out several years after the funds to which they related had been spent, and the major actors possibly long since departed from office, this one covered 2001 and the actions of people appointed and still working under the Obasanjo administration. Unsurprisingly therefore, the interim report was hailed, with several newspaper opinions and editorials commending Mr. Azie’s actions and calling for his confirmation as substantive Auditor-General.

Equally unsurprisingly, what had been received with astonishment and delight by most Nigerians, caused shock and consternation elsewhere. The Minister of Information berated Azie for releasing the interim report before the queries that it raised had been answered. But while Nigerians appreciated that such reticence might be appropriate in a private company, what they sought from their government was openness and transparency. They wanted to see not only the result, but also the process.

What Nigerians wanted or commended however, proved irrelevant to the Obasanjo

government. Having refused to submit Azie's name to the Senate for confirmation, Government wrote to him terminating his appointment as acting Auditor-General of the Federation on the excuse that an acting appointment could not be held for more than six months. Nothing further has been heard either about the Audit report for 2001, or indeed, for any year since, and Azie has since retired.

### Box 3

#### Declarations of Assets – Another Government Secret

Section 140(1) of the 1999 Constitution provides:

A person elected to the office of President shall not begin to perform the functions of that office until he has declared his assets as prescribed in the Constitution ...

Relying on this provision, MRA and the Human Rights Law Service (HURILAWS) wrote to the Code of Conduct Bureau pointing out that Obasanjo ought not to have been sworn in as President until he had made the relevant declaration. Receiving the reply of the Bureau that the President had indeed declared his assets before a Commissioner for Oaths, the two organisations requested a copy of the declaration. But the Bureau responded that there was no law requiring the President to make a public declaration of his assets, unless the National Assembly were to prescribe such. Upon receiving details of this correspondence, the National

Assembly claimed (amongst other reasons) that it was bound by the Official Secrets Act and that it could not make a law that derogated from this Act. This of course was an absurdity, because the Official Secrets Act is deemed to be an act of the National Assembly, and since it was not entrenched in the Constitution<sup>47</sup> there was nothing to prevent the National Assembly making a law that declarations of assets should be made public, or available to the public. In fact in 1999 only one of the hundreds of public officers who took office made the declaration of his assets public: the Governor of Katsina State. Meanwhile, when a U.S. estate agent's website revealed Governor Abubakar Audu of Kogi State as the owner of a multi-million dollar mansion in the U.S., the value of the property naturally prompted speculation about how and when the Governor acquired the property. If after becoming Governor, from what funds, given that even a Governor's salary was insufficient to provide for the purchase of such a property? If before, had he mentioned it on his Declaration of Assets Form? True to form, the Code of Conduct Bureau refused to disclose whether the property had been declared by the Governor on assuming office. Even when Audu was not re-elected in the April 2003 election and therefore lost his constitutional immunity on the 29<sup>th</sup> of May 2003, the Code of Conduct Bureau continued to protect his secrets.

Box 4

Allison Ayida writes Obasanjo



*In 1990, General Obasanjo published a book of recollections of his 1976-79 military administration under the title 'Not My Will'. In a letter dated 1<sup>st</sup> April 1990 written in response to some of the comments in the book, Mr. Allison Ayida, who had served both Obasanjo as Secretary to the Federal Military Government [SFMG] exposed the civil service capacity for 'not finding' documents that might embarrass those in power, even – as in this case – for fellow-members of the ruling Supreme Military Council:*

'When the white paper on the Adeosun Indigenisation Panel report was drafted ... you gave me the draft white paper and report for my comment ... your specific instructions included, 'where a Nigerian had acquired the bulk of the shares in any enterprises outside Schedule I, the shares should be confiscated' and forfeited to the Federal Government and the names of the 'moneybags' publicized. Apparently, you had not studied Volume III of the report where names of such shareholders were listed. When I drew your attention to the pages where your name appeared, you readily agreed that the panel's recommendations should be rejected. ... When eventually the council memorandum was circulated, we agreed that Volume III should not be circulated or published but that you should mention that any member interested in the particulars of those who 'cornered' the indigenisation shares, should see the SFMG. Several members [of the Supreme Military Council] contacted me for the list but no member saw the list of names!'<sup>51</sup>

## Footnotes

<sup>1</sup> Nicholas Peter-Okoye, describing the situation in pre-colonial Igboland in an interview with the writer.

<sup>2</sup> General Sani Abacha, who had been adopted by each of the then five registered political parties as their presidential candidate for the forthcoming presidential elections, died on the 6<sup>th</sup> of June 1998 before these elections could be held.

<sup>3</sup> General Olusegun Obasanjo who ruled from February 1976 to October 1979, was elected President and took office in May 1999.

<sup>4</sup> General – now President Obasanjo – and General Buhari, whose action challenging the result of the 2003 Presidential elections was failed by a 4-1 majority, but with the results from the President's home state, Ogun State, being annulled.

<sup>5</sup> General Ibrahim Babangida, who ruled from August 1985 to August 1993.

<sup>6</sup> Or indeed, any process at all: a bald announcement over the national news was often the first time many public officers heard that they were no longer in service.

<sup>7</sup> Now 36 States and one Federal Capital Territory

<sup>8</sup> For more on this episode, see Box 1 below.

<sup>9</sup> He commenced a transition to civil rule programme, but continually changed the rules and postponed the handover until his cancellation of the presidential election of June 12<sup>th</sup> 1993

led to civil protests which forced him to make what he called the ‘personal sacrifice’ of ‘stepping aside’ in 1993.

<sup>10</sup> Together with the four-fold increase in the price of petrol by the Organisation of Petroleum Exporting Countries (OPEC) to levels which – in real terms – have not been seen even thirty years later.

<sup>11</sup> Leaders of the National Party of Nigeria, NPN, which held power under President Shehu Shagari from 1979 to 1983 often said that there were ‘only two parties in Nigeria: the NPN and the Army.’ General Ibrahim Babangida, who ruled Nigeria from 1985 to 1993 bluntly declared that while the Armed Forces might not know who was going to succeed them, they definitely knew who was *not* going to succeed them. And one leading member of the present ruling People’s Democratic Party (PDP) has warned that it is current President Obasanjo who will ‘choose his successor’.

<sup>12</sup> World Bank Website.

<sup>13</sup> Chief Obafemi Awolowo, ‘Leader of the Yoruba’, Premier of the Western Region from 1954-59, Vice Chairman of the Federal Executive Council and Federal Minister of Finance from 1966-70

<sup>14</sup> Nigerians can claim anything from 250 to 450 ethnic groups, but most expert opinion agrees that there are approximately 45 – 60 main groups.

<sup>15</sup> Section 24(1) 1960 Constitution; Section 25(1) 1963 Constitution; Section 36(1) Constitution of the Federal Republic of Nigeria 1979; and Section 39(1) 1999 Constitution

<sup>16</sup> Despite romantic notions back at ‘Home’ about ‘the white man’s burden’, the purpose of the British colonial empire was primarily extractive; the amalgamation of 1914 came about because although the northern part of the country had to be occupied (to keep the French out in accordance with the 1884 Berlin carve-up if for no other reason), the costs of administering it outweighed the income, while the income from the southern part exceeded the costs of administration.

<sup>17</sup> Official Secrets Act, Chapter 335, Laws of the Federation of Nigeria 1990.

<sup>18</sup> Section 9(1) of the Official Secrets Act [Cap. 335] defines classified matter as ‘any information or thing which, under *any system of security classification* from time to time in use by or by any branch of the 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.’

<sup>19</sup> For example, the Federal Ministry of Justice might decide to stamp as ‘Secret’ papers which it was also filing in court, even though under the Evidence Act, such filed papers thereby became public documents of which members of the public could (in theory) obtain certified true copies.

<sup>20</sup> At their meeting in Barbados in 1980, Commonwealth Law Ministers declared: ‘public participation in the democratic and governmental process is at its most meaningful when citizens had adequate access to official information.’

Article 9 Clause 1 of the African Charter on Human and People’s Rights makes the following provision: ‘Every individual shall have the right to receive information.’ Nigeria

enacted the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act in March 1983, but without any enforcement mechanism.

As recently as March 2003, Nigeria signed the African Union Convention on Preventing and Combating Corruption which *inter alia* guarantees access to information.

<sup>21</sup> Just the re-introduction of elected legislatures at the federal and state levels alone meant that there were quite simply many more people who now had access to the national cake, and it was unofficially estimated by Western diplomats that between US\$5 billion and US\$7 billion was transferred abroad by corrupt politicians during the four year period that Shagari was in power (1979-1983).

<sup>22</sup> At independence in 1960 Nigeria had inherited the parliamentary system of government, in which the executive was picked from the elected members of parliament. Military dictatorship of course, had no legislators to pay, but in 1979, Nigeria adopted the Presidential system of government where the executive was a separate expense, while the increase from 3 Regions to 19 (and presently 36) states would in itself have represented a massive increase, quite apart from the fact that each state also had its own separate legislature and executive to pay for.

<sup>23</sup> Out of 133 countries surveyed by Transparency International, Nigeria ranked 132 on the Corruption Perception Index for 2003 with a score of 1.4 out of 10; just one point and one place above bottom-ranked Bangladesh. In 2004, Nigeria ranked third from bottom, above Bangladesh and Haiti.

<sup>24</sup> e.g. by arresting people for spurious reasons and releasing them only when they paid ‘bail’, extraction of bribes for every service provided to detainees, accepting money from civil creditors to detain civil debtors until payment was completed and extortion at road blocks etc.

<sup>25</sup> The Civil Liberties Organisation (of which the writer was President from 1995 to 2003) was the first, formed in October 1987. The following year by the Committee for the Defence of Human Rights was formed.

<sup>26</sup> In a country with extremely poor communications and low levels of literacy, arrested persons who could not contact relations to ‘bail’ them out from the police station could simply disappear – especially against a background of poor record keeping. Those who had travelled from one part of the country to another were particularly vulnerable. Once forgotten inside the system, they often remained there.

<sup>27</sup> The NUJ was primarily a trade union for journalists, while the CLO was a membership organisation with members drawn from all walks of life, concerned with the full range of civil and political human rights guaranteed by the Nigerian Constitution, African Charter of Human and People’s Rights and other regional and international instruments.

<sup>28</sup> Oroh was arrested and detained without trial in July 1995 under Decree 2 after the human rights community had held a press conference in which it stated its belief that there had been no coup plot.

<sup>29</sup> The five registered political parties had all adopted Abacha as their sole presidential candidate, even though he was not a member of any of them.

<sup>30</sup> Formal handover was on 29<sup>th</sup> May 1999

<sup>31</sup> Letter dated 10<sup>th</sup> June 1999 from MRA to President Olusegun Obasanjo

<sup>32</sup> Letter dated 19<sup>th</sup> July 1999 from Mr. Ojo A. Taiwo, personal assistant to President Obasanjo, to MRA

<sup>33</sup> Letter dated 20<sup>th</sup> January 2000 (not received until 29<sup>th</sup> March 2000) from Mrs. Christie Ekweonu on behalf of the Minister of Justice to MRA.

<sup>34</sup> Under Nigeria's federal constitution, prosecution of most criminal offences fell within the competence of the States, rather than the Federal Government, while provisions which allowed tapping of telephones, inspection of mail or access to bank records appeared to conflict with constitutional guarantees of the right to privacy.

<sup>35</sup> Federal Government Official Gazette No. 91, Volume 86.

<sup>36</sup> The major result of the tour was that the Committee recommended that the actual cost of making the information available should be borne by the applicant except in certain special cases, instead of being either free or subsidized, as the original civil society draft had proposed. FOI legislation had not come into force in the UK at that time.

<sup>37</sup> 'Is not a Patron ... one who looks unconcerned on a man struggling for life in the water, and, when he has reached ground, encumbers him with help?'

<sup>38</sup> *Campaigning for Access to Information in Nigeria: A Report of the Legislative Advocacy Programme for the Enactment of a Freedom of Information Act*, Media Rights Agenda, June 2003, p. 33

<sup>39</sup> Although this was a criticism which might have been levelled at Rep. Jerry Ugokwe's original bill, this was not the case with the civil society-produced bill then passing through the House.

<sup>40</sup> There are some concerns on the part of civil society that applicants for information may be required to demonstrate their citizenship before being given the information that they seek.

<sup>41</sup> For example, the administration established a Human Rights Violations Investigation Commission (the 'Oputa Panel') in 1999, but when public pressure extended the period into which it was to inquire beyond 1983 back to 1966, thereby encompassing the period during which President Obasanjo ruled as military dictator, the administration simply starved it of funds. The Ford Foundation eventually provided funds for the Oputa Panel to work, but its report has remained in the cooler since it was submitted to the Federal Government. Civil society organisations decided to publish its Executive Summary in January 2005.

<sup>42</sup> Governor Ahmed Makarfi of Kaduna State; reported in *ThisDay on Sunday* of 28<sup>th</sup> June 2004.

<sup>43</sup> This advice from Presidential spokesperson Femi Fani-Kayode was disingenuous to say the least, as audited accounts were published well after the money had been received and spent, whereas what the State and Local Governments were getting was made public as or even before it was paid. Moreover, Nigerians had seen how Acting Auditor-General Vincent Azie was treated when he published an interim report on Federal Government income and expenditure. (See Box 4)



<sup>44</sup> *ThisDay on Sunday* editorial, 28<sup>th</sup> June 2004.

<sup>45</sup> Odi Ofeimun: Proposal made to the National Assembly for a Freedom of Information Act, published in *The Guardian* 8<sup>th</sup> December 2003.

<sup>46</sup> EITI Nigeria Group Update of Activities, 11<sup>th</sup> October 2004; NEITI Advertisement for Independent Auditor in *The Punch* of 20<sup>th</sup> December 2004

<sup>47</sup> i.e. the Constitution did not contain any provision that the Official Secrets Act could only be amended in the manner provided for the amendment of the Constitution itself – that is by a two-thirds majority in each house of the National Assembly and a two-thirds majority in two-thirds of the State Houses of Assembly.

<sup>48</sup> When the outcry over the condition of roads in the South-East became deafening, Odi Agbakoba (founding President of the CLO) made specific attempts to find out why CCC Ltd. had been awarded the contract to repair the Onitsha-Owerri road, rather than the well-known ones that were building roads in Abuja and elsewhere. He discovered through the Internet that CCC was a Middle-Eastern company, brand new in Nigeria, with no local presence beyond an Abuja office. But as he himself asked: How did local advocacy challenge government's decision to make that award?

<sup>49</sup> The proposed Extractive Industries Bill only requires the audited report on the total monies paid to the Federal Government from the extractive industries to be made available to the general public.

<sup>50</sup> Indigenous civilian clothes

<sup>51</sup> It should be noted that it was in no way illegal for public officers to have purchased shares.