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**ENSURING EFFECTIVE IMPLEMENTATION OF THE FREEDOM OF
INFORMATION ACT (2011)**

**ADVISORY PAPER PREPARED FOR THE FEDERAL GOVERNMENT OF
NIGERIA BY THE SPECIAL RAPPORTEUR ON FREEDOM OF
EXPRESSION AND ACCESS TO INFORMATION IN AFRICA**

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Acronyms

CSOs – Civil society organisations

ECONEC- ECOWAS Network of Electoral Commissions

FOIA – Freedom of Information Act (2011)

INEC- Independent National Electoral Commission

Model Law – Model Law on Access to Information for Africa

OGP- Open Government Partnership

PICA - Presidential Initiative of Continuous Audit

I. Introduction

1. The Special Mechanism on Freedom of Expression and Access to Information in Africa (Special Mechanism) was established by the African Commission on Human and Peoples' Rights ('African Commission' or 'Commission') in 2004 to support the realisation of Article 9 of the African Charter on Human and Peoples' Rights (African Charter) which establishes the right to freedom of expression and access to information.
2. The terms of reference of the Special Mechanism include:
 - a) Analysing media legislation, policies and practice within States Parties to the African Charter in relation to their compliance with freedom of expression and access to information standards in general and the Declaration of Principles on Freedom of Expression in Africa in particular;
 - b) Undertaking fact-finding missions to Member States in relation to reports of systemic violations of the right to freedom of expression and denial of access to information and making appropriate recommendations to the African Commission;
 - c) Undertaking promotion Missions and other activities to strengthen the full enjoyment of the right to freedom of expression and the promotion of access to information in Africa;
 - d) Making other interventions regarding violations of the right to freedom of expression and access to information, including by issuing public statements and press releases, and sending appeals to States Parties;
 - e) Keeping a proper record of violations of the right to freedom of expression and denial of access to information; and
 - f) Submitting reports at each Ordinary Session of the African Commission on the status of the enjoyment of the right to freedom of expression and access to information in Africa.
3. This Advisory Paper (Paper) is prepared by the Special Rapporteur on Freedom of Expression and Access to Information in Africa (the Special Rapporteur), Commissioner Lawrence Mute, for the Federal Government of Nigeria (Government).
4. The aim of the Paper is to provide suggestions and recommendations which the Government and other stakeholders should consider implementing with a view to ensuring full implementation of the Freedom of Information Act (2011)(FoIA).

5. The conclusions and recommendations in the Paper are derived from an advocacy visit undertaken by the Special Rapporteur and his delegation to the Federal Republic of Nigeria (Nigeria) between Monday 24 and Thursday 27 September, 2018.
6. The advocacy visit was conceived at the 62nd Ordinary Session of the African Commission, held in Nouakchott, Mauritania, from 25 April- 9 May 2018, when Nigeria's 6th Periodic Report submitted in terms of Article 62 of the African Charter was considered by the Commission. In the Course of the interactive dialogue, the Special Rapporteur offered to undertake an advocacy visit in Nigeria, at an appropriate time, to provide technical support towards the full implementation of the FoIA.
7. The Attorney General and Minister for Justice of Nigeria duly invited the Special Rapporteur to undertake the advocacy visit vide his communication to the African Commission of 28 August 2018.¹
8. The terms of reference of the advocacy visit included:
 - a) To promote Article 9 of the African Charter which enshrines the right to receive information and the right to express and disseminate opinions;
 - b) To provide technical support towards full implementation of the FOIA;
 - c) To raise awareness on the Guidelines on Access to Information and Elections in Africa developed by the African Commission;
 - d) To undertake awareness-raising activities on Article 9 of the African Charter;
 - e) To engage key stakeholders on strengthening the work of the African Commission and supporting/affirming its independence; and
 - f) To meet with relevant departments and institutions of state as well as with relevant non-state actors towards realization of the above terms of reference.
9. The Special Rapporteur's delegation was constituted of the following:
 - a) Commissioner Lawrence Mute, the Special Rapporteur and Vice Chairperson of the African Commission;
 - b) Dr. Ken Nyaundi, Expert;
 - c) Mr. Maxwell Kadiri, Expert;

¹Communication of Note Verbale No: 387/2018 from the Embassy of the Federal Republic of Nigeria in Addis Ababa and the Permanent Mission to the African Union and the United Nations Economic Commission for Africa (UNECA), to the African Commission on Human and Peoples' Rights, dated 28 August 2018.

- d) Ms. Hlengiwe Dube, Centre for Human Rights, University of Pretoria; and
- e) Ms. Winfred Gakii Mbae, Assistant to the Special Rapporteur.

10. The delegation met the following Senior Government Officials and Institutions during the advocacy visit:

- a) The Vice President of Nigeria, Professor Yemi Osinbajo;
- b) The Executive Secretary of the National Human Rights Commission, Mr. Tony Ojukwu;
- c) The Executive Secretary of the Nigeria Extractive Industry Transparency Initiative, Mr. Waziri Adio;
- d) The Director General of the Bureau for Public Service Reforms, Mr. Arabi Dasuki;
- e) The Director General of the Nigeria Institute of Advanced Legal Studies, Professor Deji Adekunle;
- f) The Director, Legal Drafting, Ministry of Justice, Barr. Hamza Aminu Tahir;
- g) The Head of the Freedom of Information Unit of the Ministry of Justice, Barr. Benjamin Okolo;
- h) The Programme Officer of the ECOWAS Network of National Electoral Commissions (ECONEC), Mr. Rauf Salami; and
- i) The Chairman, Mr. Mahmood Yakubu, and members of the Independent National Elections Commission (INEC).

11. The Special Rapporteur also met with representatives of civil society organizations (CSOs) which work on Article 9 issues (see Annex for list of participants), and also delivered a public lecture to Students of the University of Abuja's Faculty of Law.

12. The Special Rapporteur acknowledges and thanks all the individuals and institutions that provided his delegation with the information which enabled him to prepare this Paper.

II. Context for the Nigerian Freedom of Information Act, 2011

13. Section 39 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, provides that 'Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.'

14. The FoIA was enacted on 28 May 2011 after 12 years' of deliberation in the National Assembly and 18 years of concerted advocacy by multiple stakeholders.

15. The FOIA seeks to enable the public to access information in the custody of public institutions and relevant private bodies, with a view to entrenching the culture of transparent and accountable leadership.
16. The aim of the Act is to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest override and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorisation and establish procedures for the achievement of the aforementioned purposes and for related issues/matters.
17. The normative basis for the Commission's work on access to information is anchored on Article 9 of the African Charter which provides every person with the right to information. This norm is concretised in soft-law instruments adopted by the Commission, including the Declaration of Principles on Freedom of Expression in Africa, adopted in October, 2002, the Model law on Access to Information for Africa, adopted in February, 2013, and the Guidelines on Access to Information and Elections in Africa, adopted in November, 2017.
18. Notably, the Model Law on Access to Information for Africa (Model Law) establishes a detailed framework of principles and content which should be included in any access to information legislation on the continent. It gives effect to the right to access information held by public bodies, relevant private bodies and certain types of information held by private bodies.

III. Findings and Recommendations

19. The Special Rapporteur trusts that the Government will take account of the findings and recommendations set out in this Paper following his consultations with various state and non-state actors. This is more so because freedom of information is important in every society as a tool to ensure accountability and transparency in government and to enhance the prospects of effective realisation of other human rights. Freedom of information is also important for achieving the very tenets of participatory democracy as enshrined in Article 13 of the African Charter.
20. The Special Rapporteur notes that the transformative nature of the right to access information has been witnessed in several instances in Nigeria, including through the reports published by the Nigeria Extractive Industry Transparency Initiative, which

have been the basis upon which certain hitherto prevalent bad practices have now been stopped in the extractive sector. Furthermore, during the 2014 Ebola crisis, the Government provided the public with proactive information about the disease (such as its spread and preventive measures), thereby effectively limiting its advance in the country. A similar strategy was also used by the Ministry of Agriculture to contain an outbreak of avian flu on poultry farms.

Official Secrecy premised on provisions of the Official Secrets Act

21. A central principle established in the Model Law is that laws enacting non-disclosure of information or like practices are permitted only in exceptionally justified circumstances (Section 2), and that access to requested information may be refused only if the protected harm demonstrably outweighs the public interest in releasing the information (Section 24). Information is not exempted from access merely on the basis of its classification status (Section 26). As such, access to information may only be declined where such access may cause substantial prejudice to state security or defence (Section 30). The Model Law also establishes the primacy of access to information legislation over legislation prohibiting or restricting disclosure of information (Section 4).
22. The Special Rapporteur notes that the Official Secrets Act, Cap 03, 1962, continues to dominate thinking and practice within the Public Service, and that public officials are reticent to adhere to the information structures established in the FoIA. The Public Service Rules, 2008, which are premised on the provisions of the Official Secrets Act, effectively prohibit public servants from disclosing information under Rule 4, where unauthorized disclosure of official information is categorized as a serious act of misconduct which if proven leads to dismissal.
23. Yet, notably, section 1 of the FoIA provides that ‘Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established’. This confirms the primacy/supremacy of the FoIA in the context of public access to information and also implies the amendment or repeal of any legislation that is either repugnant or inconsistent with the provisions of the Act. The exceptions in the FoIA, which is the far more recent legislation, are construed to amend the Official Secrets Act, which was enacted many years before the FoIA.

24. The Special Rapporteur further notes that civil servants feel bound by the code of secrecy established under both the Official Secrets Act and the Public Service Rules which they interpret as prohibition for providing information to the public.
25. The Special Rapporteur recommends that the Government should:
- a) Amend pertinent sections of the Official Secrets Act, including Sections 1(1) (a), (b), 1(2) and 9(1), to ensure compliance with the letter and spirit of the FoIA in respect of exempted information. Other FoIA non-compliant laws should be identified and similarly either amended or repealed.
 - b) Develop a system-wide process of reviewing and updating existing security classification systems for national security related public service documents under the purview of the existing National Security Agencies Act, to align such security classification systems with the provisions of the FoI.
 - c) Undertake regular and comprehensive training of civil servants about their obligations under the overall freedom of information legislative framework, including the curtailed status of secrecy laws.
 - d) Take concrete steps to update the existing Public Service Rules, to align them with the FoIA.
 - e) Recalibrate the oath of secrecy required of all civil servants to ensure it is not used or perceived as justification for declining requests for information or the proactive disclosure of information as stipulated under the FoIA.
 - f) Revise the Public Service Rules as is the prescribed practice/convention in the Nigerian public service after every 5 years.

Proactive Disclosure

26. The Model Law requires public bodies and relevant private bodies to proactively publish certain categories of information (Section 2) produced by or in relation to such bodies within pre-set timelines (Section 7).
27. The Special Rapporteur notes that Section 2 (3) of the FoIA requires public institutions to proactively publish categories of information such as: a description of the organization and its responsibilities, including details of the programmes and functions of each division, branch and department; a list of records under the control of the institution and manuals used by employees in administering any programme activities; a description of documents containing final opinions including concurring and dissenting opinions; substantive rules of the institution; statements of interpretation of

policy adopted by the institution; final planning policies, recommendations and decisions, factual reports, inspection reports and studies; receipt or expenditure of public or other funds; names, salaries, titles and dates of employment of all employees; right of state, public institution or any other private person; name of every official; files of applications for contract, permit, grants, license or agreements or MOUs; reports from independent contractors; grants of contract; and title and address of the appropriate officer to whom an application for information should be sent.

28. Indeed, some institutions are making notable efforts to proactively disclose some information, including the Independent National Electoral Commission, the Bureau of Public Service Reforms and the Nigerian Extractive Industry Transparency Initiative.
29. Further, under Section 29 of the Act, public institutions are also required to submit annually, a compliance report on or before 1st February of each year, for the preceding year. However, the response rate in this regard has been quite low. In respect of the most recent report for 2017, out of over 900 public institutions, only 73 had complied, which works out at a compliance rate of less than 10%.
30. The Special Rapporteur notes that proactive disclosure of information benefits both the supply and demand sides of the information value-chain. Where an institution packages and pre-provides information, it benefits from economies of scale and it need not respond to questions on a case-by-case basis, which ties down more resources in personnel and reduced efficiencies. Such information, by being readily available, is of far more use to members of the public. Such information may be posted on websites accessible to interested individuals or it may, as is the case under the FoIA, be disseminated through every channel of information dissemination that is available to such institutions.
31. Non-compliance with this statutory requirement for proactive disclosure may also possibly be engendered by institutional failure to appreciate the significance of proactive disclosure within the FoI value chain.
32. The Special Rapporteur recommends that the Government should:
 - a) Resource freedom of information units in all public institutions so that they would have the requisite capacity to execute their proactive disclosure mandate.
 - b) Train organizations on the importance of proactive disclosure and what it entails.
 - c) Cause a service wide circular to be promptly issued by both the Secretary to the Government of the Federation and the Head of Service of the Federation,

directing all public institutions to henceforth take concrete steps to prioritise compliance with their proactive disclosure obligations under the FoIA. This would also be in line with the existing Guidelines on FoIA compliance for public institutions issued by the Minister of Justice in March 2012 and February 2013 which details steps required to be taken by public institutions to enable compliance with their proactive disclosure obligations under the FoIA.

- d) Establish, in the said service-wide circular, robust regimes of incentives and sanctions for public institutions, aimed at facilitating compliance with the proactive disclosure obligation.

Record Keeping

33. The Model Law requires information-holders to create, keep, organise and maintain information in a manner that facilitates the right of access to such information. Accordingly, information must be produced, arranged and organised systematically and kept in good condition (Section 6).
34. The Special Rapporteur notes that Section 2(1), 2(2), 9(1) and 9(2) of the FoIA essentially require a public institution to ensure it records and keeps information about all its activities, operations and businesses. Further, it shall ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information.
35. Every government or public institution is required to ensure that it keeps every information or record about the institutions operations, personnel, activities and other relevant or related information or records. Every government or public institution is also required to ensure the proper organisation and maintenance of all information or records in its custody, in a manner that facilitates public access to such information or record.
36. Effective access to information is pegged on good record management practices. Organizations have a duty to ensure that they keep proper records of all information generated by their activities and operations, on an on-going basis. It is also essential that they manage such information and/or records in a way that ensures that they are easily retrievable and they are also required to ensure proper maintenance and preservation of such records and/or information.
37. The Special Rapporteur notes that some departments/organizations have automated their systems to improve their record keeping practices, which in turn facilitates effective access to information by the public. Furthermore, the Head of the Civil Service

of the Federation is also encouraging public institutions to digitise their records, which would make them more easily accessible and preservable.

38. Many organizations, however, do not have proper record management practices.

Sometimes records are destroyed by natural disasters such as rain. Digitising records is also far more difficult for long-existing institutions which clearly over the years have accumulated millions of paper records.

39. The Special Rapporteur recommends that the Government should:

- a) Ensure that organizations have proper record management systems.
- b) Ensure that organisations are well resourced to undertake this role.

Training

40. The Special Rapporteur notes that there are gaps both on the demand side as well as within the supply side of the public information spectrum.

41. The Special Rapporteur welcomes efforts by organizations such as the Nigeria Extractive Industry Transparency Initiative which are involved in the training of their sector specific institutions on the importance of access to information. The Special Rapporteur further commends the incorporation of freedom of information as a pillar of training by the Bureau of Public Service Reforms.

42. The Special Rapporteur recommends that in line with the statutory obligation outlined in Section 13 of the FoIA, which makes regular capacity building training on FoIA mandatory, the Government should:

- a) Ensure that capacity building training on the Act takes place on a routine basis as opposed to on an ad hoc basis.
- b) Ensure that there are adequate funds for continuous training of all public officials.
- c) Facilitate existing public service training institutions to mainstream modules on FoI capacity building in trainings conducted for public officials and civil servants across the country on an on-going basis.
- d) Encourage all institutions to embrace both their statutory obligation of ensuring proactive disclosure of information and also responding to requests for information, as essential steps for promoting the culture of transparency and accountability.

Creation of Awareness

43. One of the oversight mechanism's mandate under the Model Law is promoting awareness on the education and popularisation of the right of access to information (Section 62). Correspondingly, each public body and relevant private body is required to submit an implementation plan to the oversight mechanism detailing, among others, steps to secure continued capacity building and compulsory training plans for staff, and plans for public consultations, community outreach, information sharing and awareness raising.
44. The Special Rapporteur notes that the importance of access to information by and large remains more understood by educated urban elites as distinct from the general public, and that strategies for explaining and disseminating this idea to the general public are required.
45. Significantly, even where information is made available, the public may not use such information beneficially.
46. Hence, many Nigerians may not know that they have a right to access information, the value of the right to access information and the recourse that is available to them, upon denial of information.
47. The Special Rapporteur commends the Network of University Based Legal Aid Institutions for establishing 13 clinics in 26 communities that continue the task of creating awareness about the Act and its provisions. The Act has also been translated into 17 local languages due to the efforts of the National Orientation Agency, which has also conducted pilot FoIA trainings for its staff and other public officials in 14 States and several Local Government Councils. However, clearly, more such trainings and public sensitisations need to be done to increase knowledge about the Act and its provisions across the whole Federation.
48. The Special Rapporteur recommends that the Government should create more awareness programmes on the Act, and that it should partner with CSOs for this purpose. In line with statutory obligation stipulated in Section 13 of the Act on ensuring greater knowledge and awareness about the Act, adequate resources should be earmarked for this purpose.

Accessibility of Information to the Public

49. The Model Law stipulates that both proactively disclosed information as well as information on-request must be disseminated in a manner that is accessible to users in terms of medium, format and language (Section 65).
50. Accessibility is of particular importance to rural communities, communities in informal settlements and persons with disabilities.
51. Information officers should thus have the requester of information in mind while providing the information. Proactively disclosed information should be in a manner that is easily comprehensible for all categories of persons, taking account of their vulnerabilities or disadvantages. For example, information should be provided in accessible formats for persons with disabilities. Similarly, information should be provided to people taking account of their literacy levels as well as the level of technicality of the information.
52. The Special Rapporteur notes that while proactive disclosure or response to information requests by organizations is commendable, such information sometimes is too technical for the public or given after unreasonable delay.
53. The Special Rapporteur recommends that:
 - a) Information should be provided in accessible formats and in a manner that the public understands. As such, organizations, especially those in the technical sectors, should break down information in a manner that can be easily understood by the public to enable them to use it.
 - b) Responses to information requests should also be expedited since the information is sometimes required for urgent actions.
 - c) Organizations' reports should be standardized to ensure that all important information for the purposes of proactive disclosure is adequately captured.

Resourcing

54. The Model Law provides for the independence of the oversight mechanism. It obligates parliament to appropriate the budget presented by the oversight mechanism annually upon its presentation (Section 53).

55. The FoIA provides that the Attorney General shall submit to the National Assembly an annual report on or before 1st April of each calendar year, which shall include the exemptions involved in the cases, and the cost, fees and penalties assessed. The required content of the annual report are stipulated in the provisions of Section 29(1) of the Act.
56. The Special Rapporteur notes that while implementation of the Act requires both technical and financial support, most organizations do not have clearly earmarked budgetary support for their Freedom of Information units or related work.
57. Both proactive disclosure and responses to information requests rely on technical and financial support. Organizations' websites must be established, maintained and calibrated to ensure full accessibility to the public. Implementing access to information programmes also requires dedicated personnel for effective execution.
58. Training of officials of organizations and creation of awareness to the public about the Act is also a resource intensive undertaking. Good record management requires committed personnel and has financial implications too. Many government services and records remain undigitised and unlinked to the internet. There are also challenges with internet connectivity and bandwidth.
59. The Special Rapporteur recommends that:
 - a) The Government should ensure that the Freedom of Information units in every government organization are adequately resourced to execute their mandate under the Act.
 - b) Organisations should ensure that freedom of information activities are mainstreamed in their mandated core business/activities so that they leverage on the already available funds to do various freedom of information activities as a matter of course.

Institutional Framework for Implementation

60. The Model Law requires the establishment of an independent and impartial mechanism comprising a commissioner(s) to promote, monitor and protect the right of access to information.
61. The Special Rapporteur notes that the Attorney General of the Federation, in his capacity as the coordinating mechanism for ensuring effective realisation of the objectives of the Act, has oversight authority under the FoIA and is mandated, by virtue of section 29, to 'ensure that all institutions to which the Act applies comply with the provisions of the Act.' In that regard, the Ministry of Justice has established a Freedom

of Information Unit that coordinates the implementation of the Act. Its role is to ensure that public institutions comply with the obligations set out under the Act and, in that regard, the Unit also keeps a report card on compliance. The unit trains public institutions on how to respond to information requests and encourages them to proactively disclose information. It also conducts advocacy visits to public institutions and it has published publicity materials such as bill boards to create awareness around the Act.

62. Yet, the Special Rapporteur notes that the Freedom of Information Unit does not, strictly speaking, conform to the oversight mechanism anticipated in the Model Law.
63. The Attorney General, who is the head of the Ministry of Justice, is the government's chief legal adviser and hence defends suits against the government. This situation entails a conflict of interest between the two roles which hinders effective implementation of his function on access to information.
64. There are also no effective mechanisms of appeal when information requests are denied.
65. In this regard, the Special Rapporteur recommends that:
 - a) The Government should strengthen the Freedom of Information Unit in the Ministry of Justice by updating the existing Guidelines on compliance with the Act by all institutions; and providing resourcing to enable it execute its mandate effectively.
 - b) Institutions such as the National Human Rights Commission, the Public Complaints Commission and the relevant Committees of Parliament such as the Committee on Reform of Government Institutions in the House of Representatives and the Committee on Judiciary and Governmental Affairs of the Senate should be strengthened to effectively play their oversight role under the Act.
 - c) The National Human Rights Commission, as Nigeria's premier human rights promotion and protection institution, and the Public Complaints Commission, as Nigeria's premier ombudsman, should enhance their capacity to deliver on their dispute resolution responsibilities on FoI, as required under their enabling legislation.
 - d) In the long-term, to aid effective oversight, amendments to the Act should establish a standalone independent and well-resourced oversight mechanism on FoI.

Applicability of FoIA to states

66. Under Nigeria's 1999 constitution as amended, issues of information and public records are contained in the concurrent legislative lists, thus vesting both the National and State Houses of Assembly with the power to make laws on such issues. Existing constitutional practice and judicial precedents indicate that where states have either not enacted laws on issues in the concurrent legislative list or where the laws that they have enacted are in conflict with the provisions of an existing Federal law on the same issue, then the provisions of that existing Federal law would apply/prevail. This situation applies in the context of the FoIA, a position which has in the past been affirmed by Nigeria's appellate courts. However, this interpretation is presently under contestation in the Supreme Court.
67. Two States, Ekiti in South west Nigeria and Imo in South eastern Nigeria, have enacted freedom of information legislation, which unfortunately is not consistent with the FoIA. At the same time, states such as Kaduna have affirmed their willingness to subscribe to rules or practices on FoI within the context of their commitments to the Open Government Partnership Framework.
68. The Special Rapporteur recommends that states should enact or amend their freedom of information laws to conform with the provisions of the Act for national uniform applicability.

Sanctions

69. The Model Law requires that it should be a criminal offense for a person or entity to: destroy, damage or alter information; conceal information, falsify information or make a false record; obstruct the performance by an information holder of a duty; or interfere with or obstruct the work of oversight mechanisms (Section 83).
70. The Special Rapporteur notes that the FoIA sets out sanctions against public bodies as well as individuals for non-disclosure of information. Section 7 (5) provides that 'where a case of wrongful denial of access is established, the defaulting officer or institution commits an offence and is liable on conviction to a fine of 500, 000 Naira.' Section 10 of the FoIA also makes it a criminal offence punishable on conviction with a minimum of 1 year imprisonment for any officer or head of any government or institution to wilfully destroy any records kept in his custody or attempt to doctor or otherwise alter the same before they are released to any person, entity or community applying for it.

71. The Special Rapporteur notes a number of challenges in the enforcement of statutory sanctions. Sanctioning liable public institutions through fines has the perverse effect of one public institution ‘paying’ another public institution using public funds – a sort of ‘musical coins’. Then again, since many institutional failings are systemic, sanctioning individual officials may not have the desired positive effect, so long as the systemic difficulties remain unaddressed.
72. Parliamentary sanctions against liable institutions, for example through budgetary caps, withholding institutions’ funding requests or making requisite cuts to such funding requests through the process of appropriation, may be more effective. Yet, the Special Rapporteur was made to understand that that Parliament itself is not compliant with the Act’s requirements, and it may not therefore have the moral authority or credibility to enforce compliance in this regard or through this means, like it had threatened doing under the 7th National Assembly (2011-2015).
73. The Special Rapporteur notes that over and above specific legal sanctions, other approaches for ensuring compliance have been explored by some stakeholders – ‘soft-power’ as distinct from ‘hard-power’. These include the CSO-driven hall-and-shame campaign which lists non-complying institutions. Where private corporations are involved, actors have explored the use of dialogue alongside the recognition that such corporations may be bound by other international obligations which may/could be leveraged.
74. The Special Rapporteur recommends that:
- a) The legal sanctions regime should be reviewed following consultations with stakeholders to ensure its better effectiveness.
 - b) The Freedom of Information Unit of the Federal Ministry of Justice should as part of its remit routinely issue and publicise an annual table of compliance with the Act, and managers of non-complying institutions should be required to provide public accounting for their failings.

Streamlining of the law/ Law Review

75. The Special Rapporteur notes that the Bureau of Public Service Reforms has begun the process of reviewing the Public Service Rules and is exploring ways to improve

relationships with the Ministry of Justice in the review of existing laws that are in conflict with the provisions of the FoIA.

76. The Special Rapporteur recommends that the Government should expedite the review of the laws that are inconsistent with the provisions of the FoIA in order to streamline and optimize compliance with the FoIA.

Open Government Partnership

77. The Special Rapporteur commends Nigeria's membership of the Open Governance Partnership (OGP) since 2016 which promotes government transparency and accountability.
78. Nigeria's OGP National Action Plan has four themes and 14 commitments. The thematic areas include: fiscal transparency, anti-corruption and asset disclosure, access to information, and citizen engagement and empowerment. The implementation of this plan will go a long way to improve the relationship between government and citizens.
79. The Special Rapporteur recommends that:
- a) The Government should continue implementing the OGP action plan within the set timelines.
 - b) State governments that sign up to the OGP commitment should enact robust and progressive FoI laws as a measure of the level of their commitment to the realisation of the objectives of the OGP framework.

Adjudication of information requests

80. The Special Rapporteur notes that the general rules of civil procedure may not be sufficient to deal with information requests. This is especially because when requests for information are denied, individuals may not file appeals due to the cumbersome nature of the justice system.
81. Exceptions in the Act are drafted in a manner that allows for broad interpretation by the judiciary; and relatedly, there are gaps in the judiciary concerning understanding of issues of freedom of information and its cross-cutting effect/impact.
82. The Special Rapporteur understands that the Federal Ministry of Justice is liaising with the leadership of the Judiciary to develop practice directions which will hopefully expedite the process of resolving FoI related disputes.
83. The Special Rapporteur recommends that the Government:
- a) Establishes special rules for enforcement under the Act.

- b) Train judicial officers on the interpretation of the Act to ensure they are within the spirit of the law in their determinations.
- c) Extend the said training to sensitizing and increasing the Judiciary's knowledge of their FoI obligations and the need for the Judiciary's effective compliance with the Act.
- d) Ensure that every public institution has freedom of information departments/units that are adequately staffed and resourced which would also offer internal appeal mechanisms.

Whistle blowers and whistle-blower protection regime

84. The Model Law guarantees that 'no one is subject to any sanction for releasing information under this Act in good faith' (Section 2 (g)). In a similar vein, the African Commission has affirmed that persons, who, in good faith and in the public interest, disclose information about wrongdoing by a public or relevant private institution or its employee(s), should be protected from administrative, social, legal, employment-related or other sanctions (Guideline 11 of the ACHPR Guidelines on Access to Information and Elections in Africa).
85. The Special Rapporteur notes that section 27 (2) of the FoIA provides that '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) a violation of any law, rule or regulation; (b) mismanagement, gross waste of funds, fraud, and abuse of authority; or (c) a substantial and specific danger to public health or safety notwithstanding that such information was not disclosed pursuant the provision of this Act.'
86. The Act, however, does not detail substantive protections and necessary mechanisms to facilitate whistle blowing.
87. A number of Whistle-blower Protection Bills have been tabled before Parliament without being finally enacted into law.
88. The Special Rapporteur notes that the Whistleblowing Programme under the Presidential Initiative on Continuous Audit (PICA), which commenced with the Federal Executive Council's adoption of the Whistle-blowing Policy in 2016, still has no robust legal backing. At the same time, PICA is essentially an audit body whose priority focus is beyond access to information. Indeed, the protection contemplated under these policy or administrative interventions is financial in nature and it anticipates situations where

one provides new information that leads to pecuniary benefits for the government under its current anti-corruption campaign.

89. The Special Rapporteur notes that whistle blowing entails more than violations involving money and whistle blowers may in many instances require protections such as job security and protection of themselves, their families and friends.
90. The Special Rapporteur recommends that the Government should:
 - a) Enact legislation to protect whistle blowers fully and that, in this regard, it may learn from other African countries such as Ghana, Uganda and South Africa which have enacted whistle blowing legislation.
 - b) Ensure greater synergies between the provisions of the Federal Executive Councils approved whistleblowing policy and policies on the same subject matter adopted by regulatory institutions, including the Pension Commission for operators within the Pension Industry, the Central Bank of Nigeria on the Financial industry, the National Insurance Commission on the Insurance Industry, and the Securities and Exchange Commission for companies listed on the stock exchange and operators in the Exchange.

Access to information and elections

91. The Guidelines on Access to Information and Elections in Africa require electoral stakeholders to proactively publish key information relating to the whole electoral process, and to organise and manage relevant records in a manner facilitative of the right to access information. Successful exercise of the right to political participation, which is enshrined in Article 13 of the African Charter, relies on effective provision of information to the public during the pre-polling, polling and post-polling periods.
92. The Special Rapporteur notes that the Independent National Electoral Commission (INEC) implements a significant level of proactive disclosure. It publishes the roll of registered voters, and it has released the elections calendar well in advance of the 2019 polls.
93. The Special Rapporteur also notes that the ECOWAS Network of Electoral Commissions (ECONEC) offers technical support to the 15 ECOWAS national election management bodies in the West African sub-region.
94. The Special rapporteur recommends that:

- a) INEC should mainstream the Guidelines on Access to Information and Elections in Africa in its work, and it should invite the Special Rapporteur to support this process.
- b) ECONEC should support electoral management bodies within ECOWAS on ways and means of using the Guidelines to support elections processes in the sub-region. This includes working with the Special rapporteur to undertake advocacy and capacity building programmes for such electoral management bodies.

IV. Conclusion

92. The Special Rapporteur wishes to stress that underlying all the technical proposals made above is the importance of political willingness by the Government to make the FoIA to work. By committing itself to processes such as the OGP and indeed by implementing the FoIA, the Government is already sending the right messages, and it is essential that this political will is backed by technical resources and other necessary wherewithal. The Government must set standards to which it must account to the people.

Annex: Participants at Meeting with Article 9 CSOs

No	Name	Organization
1	Ene Nwaupa	Right to Know Nigeria
2	Laure Arogunelade	IPC International
3	Azu Ishiekwene	The Interview
4	Akin Orimolade	NUJ- The Nigerian News
5	Godwin Chifou	E Law Partnership
6	Ijaopo Ibrahim	Step Up Nigeria
7	Sodiq Arabi	Paradigm Initiative
8	Gbemiga Benudele	NUJ, Liason, Lagos
9	Akubuo Nonye	PPDC
10	Samuel Ofia	PPDC
11	Gladys Edungbola	HEFRON
12	Alysus C Uguru	HEFRON
13	Summola Temitope	HEFRON
14	Mahmud Yusuf	NULAI Nigeria
15	Uruais Abdulrahman	NULAI Nigeria
16	Abdulaziz Abdulaziz	AFRICMIL
17	Blessing Usie	Pen Society Justice Initiative (OSJI)
18	Chidi Odinkalu	Open Society Foundations (OSF)
19	Ann Iyome	FAPR
20	Oyadamela Adedapo	HEFRON
21	Catherine Angai	Open Society Initiative for West Africa (OSIWA)
22	Gladys Calvin	House of Justice

23	Lucy James Abagi	GODE / Follow the Money
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