

# OPEN ACCESS TO LEGAL INFORMATION: CHALLENGES AND PROSPECTS FOR NIGERIA DEVELOPMENT

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## Abstract

*The intellectual call for knowledge and information dissemination by countless organizations and educational meetings has given birth to a terminology called open access. This initiative is aimed at bringing the knowledge society to a state of free access to all kinds of information and learning materials using the internet and information and communication technology (ICT) tools. Meanwhile, information is an integral part of development; it is an indispensable factor for the development of any society. Development is hinged on the progress and productivity of the citizenry. It is therefore mandatory that the citizens are well informed of their rights, obligations and privileges. Also, legal information is all the published knowledge on the laws and status of a nation and is necessary to maintain peace and settle disputes. In a democratic set up like that of Nigeria, the public is expected to have access to information not only on how they are governed but also on anything that is of interest to the individual or group. The paper discussed the Freedom of Information Act 2011 as a revolutionary piece of legislation. It is revolutionary in the sense that it has made access to legal information and other public records more free and available. The paper further discussed the challenges and prospects of open access to information in Nigeria.*

**Keywords:** Access, Challenges, Development, Information, Legal, Nigeria, Open, Prospects.

## Introduction

The digital age has had profound impacts on the nature, volume and variety of information resources such that no single library alone can provide all the resources for effective service delivery to its users.<sup>1</sup> However, the development of internet technology has provided academic and research Institutions with a very high level of visibility on the web. As a result, teaching, learning and research are widely improved in the global society today. The intellectual call for knowledge and information dissemination by countless organizations and educational meetings has given birth to a terminology called open access. This initiative is aimed at bringing the knowledge society to a state of free access to all kinds of information and learning materials using the internet and information and communication technology (ICT) tools.<sup>2</sup> Meanwhile, information is an integral part of development;

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<sup>1</sup> Stella A & Ali H, *Resources Sharing in the Digital Age. Challenges and prospects in Nigerian Universities Libraries* (Inter-Lending and Documentary Supply, 12<sup>th</sup> Conference 2011. Org/index/php? Show – papers 19 August 2014.

<sup>2</sup> Uzuegbu C P & Mcalbert F U, *Digital Libraries and the Challenges of Open Access to Knowledge: Micheal Okparar University of Agriculture (MOUAU) Library Experience.* www.webpages vidaho. Edu/mbolin/uUzuebu-Mcalbert.htm 20 August 2014.

it is an indispensable factor for the development of any society. Development is hinged on the progress and productivity of the citizenry. It is therefore mandatory that the citizens are well informed of their rights, obligations and privileges. Also, legal information is all the published knowledge on the laws and status of a nation and is necessary to maintain peace and settle disputes.<sup>3</sup> The focal point of this paper is to examine the open access to legal information in Nigeria and further look at some of the problems and prospects towards Nigeria's development.

### **Historical Development of Open Access to Legal Information in Nigeria**

The advent of the internet has provided the necessary technical platform which enhances free access to computerized legal information. Since the middle of 1990, internet's world wide on open access to legal information was expanded. Prior to the web, there were many online legal information systems and numerous legal products distributed on CD Rom, but there was no significant provision of free access to legal information anywhere in the world.<sup>4</sup> It is worthy of note that the first attempt to exploit the advantage of the web for providing legal information in many countries and Nigeria inclusive, came from the academic sector rather than the government. This led to the emergence of what is known today as legal information institutes.<sup>5</sup> The first legal information institute was established in 1992 at the Cornell University Law School and had developed by 1994 a number of database primarily of US federal law i.e. U.S Code and US Supreme Court decision. The legal information institute as it is was the first significant source of free access to law on the internet and demonstrated that a free access could provide both high quality document presentation and very high rate of access.<sup>6</sup>

Further, the Australian legal institutes and *Lexum* played a vital role in developing free access to legal information via the internet. It is noteworthy that from 2000, the Australian legal institute started to use its search engine and other software to assist organizations in other countries such as Britain and Ireland initially limited to those with academic roots to establish legal information institute with similar functionality. Furthermore, the British and Irish legal information institute were formed in the year 2000 and they include eighty database covering six jurisdictions – United Kingdom, England, Wales, Scotland, Northern Ireland and some European Court decision including case law, legislation and law reform reports from all the jurisdictions it covers.<sup>7</sup>

Africa has not been left behind in its effort to enhance free open access to legal information. For example countries like South Africa, Burkina Faso, Zambia, Niger, Sierra Leone and now Nigeria have done so much in this area. The Southern African legal information institute was established in 2003 by the University of the Witwatersand Faculty of Law. It publishes over fifty databases of

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<sup>3</sup> Margeret U U, *Provision and Use of Legal Information Among Civil Rights Groups in the Oil Producing Communities of Nigeria*, [www.webpage.udahi.edu/~mbolum/ugbonehtm](http://www.webpage.udahi.edu/~mbolum/ugbonehtm), 20 August 2014.

<sup>4</sup> Green leaf G. "The Global Development of Free Access to Legal Information", *European Journal of Laws and Technology*, Vol.1, issue, 2010.

<sup>5</sup> Ibid.

<sup>6</sup> D Poulin et al, *Free Access to Law and Open Source Software in Handbook of Research on Open Source Software*, Hershey and New York Information Science Reference 2007.

<sup>7</sup> [http://www. Austlii.edu.au/](http://www.Austlii.edu.au/)20 August 2014.

Superior Courts judgment, sixteen English speaking and Portuguese speaking countries in Southern and Eastern Africa; it is endorsed by the Southern African Judges Commissions and is moving beyond case law to legislative and law reform.<sup>8</sup> However, countries like Burkina Faso, Togo, Senegal and Niger in 2008 worked on a review of their legal information both in digital and paper forms as used by lawyers in the four West African countries. The project was aimed to look into state of legal information in the area with a particular focus on what was available online and for free.<sup>9</sup>

In Nigeria, the idea of Nigeria legal information institute was conceived as a project that is patterned after similar international project such as the British and Irish legal information institutes. It is instructive that the institute provides internet access to Nigerian legal materials. This initiative is designed to make case law of all Nigerian superior courts and other legal information available online free to all users, and to maximize the availability of free legal information via world wide web.<sup>10</sup> The institute also aims at connecting lawyers, judges, academics, students and others with growing collection of legal information available around the globe through the internet. Apart from making judgment of the Nigeria courts available, the database helps promote transparency of the Nigerian legal system. Also obstacles placed by the high cost of production of Nigerian Law reports and other legal materials will be removed.<sup>11</sup>

The world legal information institute launched in 2002 was the largest, free access, legal research facility on the internet because it makes the database provided by the other collaborating legal information institutes simultaneously searchable.<sup>12</sup> However, it comprises nearly eight hundred databases from over hundred countries from all over the continent in 2009. It also includes over seven hundred thousand US circuit Court of Appeal cases republished from public US sources. The collaborating legal information institute that provides its databases are drawn mainly from the Pacific, Asia, Australia, Africa, USA and South America.<sup>13</sup> The legal information institute also made a proactive effort towards free access to legal information in 2002. This institute made a declaration known as the Montreal declaration in 2002 as amended at a meeting in Sydney 2003, Paris 2004 and Montreal 2007. The meeting in Montreal made the following declaration: <sup>14</sup>

- Public legal information from all Countries and International Institute is part of the common heritage of humanity.
- Maximizing access to the information promotes justice and the rule of Law.
- Public legal information is digital common property and should be accessible to all on a nonprofit basis and free of charge.
- Organization such as legal information institutes have the right to publish public legal

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<sup>8</sup> J. Montgomey, *Free Access to Primary Legal Documents in Southern Africa Organization of SA Law Libraries (OSALL) Newsletter*, Nov. 2014.

<sup>9</sup> Isabelle M et al, *Online Legal Information and Lawyers in Western African Paper for the Law via the Internet Conference*, 2014. [www.hk/iii,hk/conference/paper/ID3.pdf/.23/8/2014](http://www.hk/iii,hk/conference/paper/ID3.pdf/.23/8/2014).

<sup>10</sup> Amao O. *Nigeria Legal information Institute*, [www.n/ii.org](http://www.n/ii.org) 23 August 2014.

<sup>11</sup> Ibid.

<sup>12</sup> <http://www.world/ii.org>.

<sup>13</sup> Ibid.

<sup>14</sup> <https://www.can/ii.org/en/info/mt/declarationhtml>, 22 August 2014.

information and the government bodies that create or control that information should provide access to it so that it can be published by other parties.

Furthermore, the Hague conference on private Law in 2008 successfully produced eighteen draft principles on desirable conduct of state parties in relation to free access to legal information. One of the obligations proposed is in principle 1 which provides that:

State parties shall ensure that their primary legal materials, in particular legislation, Court and administrative Tribunal decisions and international agreements are available for free access in an electronic form by any persons, including those in foreign jurisdiction.<sup>15</sup>

In February 2012, a formal international conference in Brussels involving state parties was convened jointly by the Hague conference and the European Commission to consider the next steps in this process. The joint conference unanimously endorsed a set of conclusion and recommendations, which gave implied endorsement to the approach taken by the expert meeting in 2008, and annexed the principles it set out re-titled as guiding principles to be considered in developing a future instrument.<sup>16</sup>

### **Definition of Open Access to Legal Information**

Open access to legal information can be defined as publication of official legal documents on the internet free of charge.<sup>17</sup> It is also defined as those legal information made freely available online to anyone, anywhere, with no charges for access; it also allow users to read, download, copy, distribute, print, search or link to the complete text of the legal information as long as internet access to the material is possible.<sup>18</sup>

Montreal declaration defined public legal information as legal information produced by public bodies that have a duty to produce law and make it public; it includes primary sources of law such as legislation, case law and treaties as well as various secondary public sources such as reports on preparatory work and law reform.<sup>19</sup>

It is worthy to note that the recent freedom of information Act in Nigeria guarantees the right of access to information held by public institutions irrespective of the form in which it is kept and is applicable to private institutions.<sup>20</sup> However, the declaration on free access to law proclaims that independent, non profitable organizations and that government should provide them access to the information so that they can publish it.

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<sup>15</sup> "Greenleaf's Free Access to Legal Information, Liis, and the Free Access to Law Movements", *The All International Handbook of Legal Information Management*, Richard A Danner and M. Jules Western (eds), books.google.com.ng/books ed.

<sup>16</sup> Greenleaf et al, The Meaning of Free Access to Legal Information, a twenty year evolution.

<sup>17</sup> Danne R A, "Open Access to Legal Scholarship: Dropping the Barriers to Discourse and Dialogue", *Journal of International Commercial and Technology*, Vol. 7 Issue 1 (2002) J. clt. Com/index.php/jlclt/article/venfile/148/146.

<sup>18</sup> Albert K M, "Open Access: Implications for Scholarly Publishing and Medical Libraries", *Journal of the Medical Library Association*, July 2006, www.ncbim/m.Alh.gov/pmc/article &pmc 15522, 20 August 2014.

<sup>19</sup> Montreal Declaration on Free Access to Law, www.://www.world/ii.org, 20 August 2014.

<sup>20</sup> Nigeria Freedom of Information Act, Laws of Federation of Nigeria, 2011.

## Sources of Open Access to Legal Information in Nigeria

The Nigerian legal system is based on the English Common Law legal tradition. The sources of open access to legal information in Nigeria can be divided into primary and secondary sources. The primary sources include the Constitutions of the Federal Republic of Nigeria, Statutes made by the National Assembly, the English Common Law, Islamic Law and the Judicial Precedence.<sup>21</sup> Whereas, the secondary sources include Law Reports, Nigerian Law Journal, text books, Nigerian Law publications and International Law and treaties to which Nigeria is a signatory.<sup>22</sup>

However, the free dissemination of Nigerian legal information on the internet not only makes local usage possible but also allows for the regional and international availability of the national laws in question. Therefore, such an endeavor means that Nigeria's contribution to global legal knowledge can be distributed and accessed abroad. In turn, wider availability contributes to treating new points of reference where in legal solutions would not be limited to what the English and American legal systems have to offer. As a result, various legislators, specialists and researchers could locate and understand different types of legal solutions; this would be advantages on a regional level where similar conditions and common cultural context sometimes welcome searching for applicable legal solutions from neighboring jurisdiction.<sup>23</sup>

## Open Access to Legal Information and the Nigerian Freedom of Information Act 2011

The freedom of information Act 2011 is a revolutionary piece of legislation that came into force in 2011. It is revolutionary in the sense that it has made access to legal information and other public records more free and available.<sup>24</sup> In a democratic set up like that of Nigeria, the public is expected to have access to information not only on how they are governed but also on anything that is of interest to the individual or group.<sup>25</sup> The Nigerian version of Freedom of Information Act did not differ much from the ones in other countries. According to its preamble, the Act is to make public records and information more freely available and provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences in disclosing certain kinds of official information without authorization.<sup>26</sup>

It is important to note that the Freedom of Information Act is not just an abstract piece of legislation; its ideas are firmly rooted in the Constitution of the Federal Republic of Nigeria, 1999 (as

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<sup>21</sup> Yemisi et al, *Update: Guide to Nigeria Legal Information*, (House Global Law School Programme, March 2013) [www.inyulawglobal.org/globalex/nigeria/](http://www.inyulawglobal.org/globalex/nigeria/).html, 25 August 2014.

<sup>22</sup> Ibid.

<sup>23</sup> Poulin D, "Open Access to Law in Developing Countries", *Peer Reviewed Journal on the Internet*, Vol.5, No.12, Dec. 2014, first monetary. [Org/OJS/index.php/fm/article/view/1193/1113](http://Org/OJS/index.php/fm/article/view/1193/1113), 25 August 2014.

<sup>24</sup> Obla O O, *Enforcing Right Using the Freedom of Information Act 2011- Legal Perspective*, (Elombali.Com March, 2014), [www.elanboli.com/index.php/reports/21494/-enforcing-rights-using-the-freedom-of-Information](http://www.elanboli.com/index.php/reports/21494/-enforcing-rights-using-the-freedom-of-Information).

<sup>25</sup> Afolayan A, *A Critical Analysis of Freedom of Information Act in Nigeria*, [odmakadotnet.wordpress.com/2012/08/01](http://odmakadotnet.wordpress.com/2012/08/01).

<sup>26</sup> Ladan A S, *Opportunities and Challenges for Journalists*, A paper presented at a Freedom of Information Workshop organized by the Federal Ministry of Information held at the Nicon Luxury Hotel, Abuja 11 Dec., 2012, <https://www.facebook.com/FM/Nigeria/post>.

amended).<sup>27</sup> The Constitution 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”. Therefore, inherent in the freedom of expression, which has been held to be a basic human right is the right to freely access information which the Act promotes. Also apart from the constitutional basis of the Act, a plethora of international legal instruments which Nigeria has ratified provide for the freedom of information.<sup>28</sup> Consequently, section 2(1) of the Act provides that:

Notwithstanding anything contained in any other Act, Laws or Regulations, the right to 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 however described is hereby established.

While subsection 2 states that an applicant herein need not demonstrating any specific interest in the information being applied for.

Subsection 3 provides that “any person entitled to the right to information under this Bill, shall have the right to institute proceedings in a court to compel any public institutions to comply with the provisions of this Act”.

Section 3 (1) states that “a public institution shall ensure it records and keeps information about its activities, operation and business”.

While subsection (2) provides that “a public institution shall ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information.”<sup>29</sup>

It is worthy to note that the Nigerian Freedom of Information Act 2011 has to some extent complied with the famous Montreal declaration of 2002 which makes provision for the free access to public legal information. The meeting provides that public legal information from all countries and international institutions is part of the common heritage of humanity and that maximizing access to this information promotes justice and rule of law and that public legal information is digital common property and should be accessible to all in a non-profit basis and free of charge.

Furthermore, organizations such as legal information institutes have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published by others.<sup>30</sup>

Looking at the provision of sections 2 and 3 of the Act, one can see that it has some elements of resemblance with the above provisions of the Montreal Declaration of 2002. Therefore, the Act is a breakthrough; this is because it is at once a symbolism. It concentrates the civil equality of all Nigerians in knowledge about how and what the law is. As an aspiration, the Act provides

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<sup>27</sup> Samuel D, *Freedom of Information Act (FOIA) and the Challenges of Nigerian Journalist February, 2014*, Makurdi Journalist files [wordpress.com/2014/03](http://wordpress.com/2014/03).

<sup>28</sup> Freedom of Information Act LFN 2011.

<sup>29</sup> Ibid.

<sup>30</sup> Montreal Declaration above n-18.

foundation for realizing the constitutional promise of equality and implements the political declaration in section 14 (2)(a) of the Constitution of the Federal Republic of Nigeria that sovereignty belongs to the people of Nigeria and as command it orders a new way of running public affairs and relating with other citizens in Nigeria.<sup>31</sup>

### **Challenges and Prospects of Open Access to Legal Information in Nigeria**

The denial of access to information and the attendant widespread ignorance in the society does more harm to the society than any harm that could possibly arise from granting access to members of the public.

#### **Challenges**

There are so many challenges attributed to open access to legal information in Nigeria. The greatest of these is the abysmal levels of legal knowledge and basic literacy in Nigeria. Access to legal information requires a literate society.<sup>32</sup> Furthermore, low level of information and communication technology creates a big challenge towards open access to legal information in Nigeria. Since the process requires internet and only few people are computer literate in many communities in Nigeria thereby affecting the country's development.

Another challenge is that of record keeping. For instance, section 10 of the Act makes it mandatory for every government or public institutions to keep proper records or information about their operations, personnel, activities and other relevant information in a manner that facilitates public access to such record.<sup>33</sup>

Lack of constant availability of internet network is also another major challenge in open access to legal information in Nigeria. Disruption and failure in network supply makes it impossible to access legal information on the internet and Nigeria is a country struggling to stabilize its internet network. Therefore, unless there is constant availability of internet network, access to legal materials or information on the net will always be a problem.

Inadequate supply of electricity is also a problem towards free access to legal information on the internet. Lack of electricity has become a daily routine in Nigeria and this can also affect access to legal material on the internet.

Lack of awareness about the Freedom of Information Act remains low in the public service and resistance to its full implementation is high. In some institutions, public officials rather than comply have ordered investigations into the identities, alleged sponsors and suspected motives of the applicant.<sup>34</sup>

Another major fundamental challenge is the capital intensive motive of the project. It is not

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<sup>31</sup> Odunkali C A, *Two Years of the Freedom of Information Act: Challenges and Prospects*, A paper presented at the National Conference on Two Years of the Freedom of Information Act organized by the right to know initiative and the open society initiative for West Africa.

<sup>32</sup> Ibid.

<sup>33</sup> Freedom of Information Act, 2011.

everyone that can set computer or internet centre for accessing free legal information because of cost.

## Prospects

Open access to legal information contributes to the rule of law and the overall ideals of democracy. With the rule of law being one of the principal characteristics of democratic societies, it is of no surprise that Nigerian democracy greatly benefits from better access to legal documents because when better accesses are put in place, the main end results of democratic process are accessible.<sup>35</sup>

In Nigeria, the Act guarantees open access to legal information by making public records and information more freely available and provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and protection of personal privacy, protection of serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and established procedures for the achievement of those purposes.<sup>36</sup>

Open access to legal information strengthens Nigeria judicial system. Openness and transparency form the essential elements of a proper functioning of the judicial system alongside issues of equity and justice, open access to law contributes to efficacy of the legal process.

The possibility of knowledge of the applicable rule of law; this is so because ignorance of the law is not an excuse. Therefore, Nigerians have the right to know the laws governing their conduct and that it is the government obligation to put forth legal knowledge by enabling access to the law using all available and reasonable mediums.

It is informative that free public access to law contributes to equality before the law; everyone has the means to gain knowledge of the law which in turn makes legal system fairer.<sup>37</sup>

Furthermore, the impact of open access to legal information is not limited to legal and political benefits gained by the citizens of the nation since modes of access to law can either deter or stimulate economic development. Therefore, specific projects aimed at the open access of business law further encourage economic development.

Likewise, free and public access law is compliable with the development of a national legal publishing industry. The electronic dissemination of official legal text offers an immediate solution to one of the major problems faced by any actual or potential publishers by allowing for access to primary source materials i.e. the raw or original versions of legal documents put out by the state and its various bodies.<sup>38</sup>

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<sup>34</sup> Odunkali, above n-30.

<sup>35</sup> Poulin, above n-22.

<sup>36</sup> Ugbah, "Library Services and the Freedom of Information Act in Nigeria: Challenges and Prospects", *Journal of Educational and Social Research*, 2012.

<sup>37</sup> Poulin, above n-22.

<sup>38</sup> Ibid.

## **Conclusion**

The free flow of legal information on the internet has greatly helped developing countries including Nigeria. It has equally brought some degree of sanity, transparency and openness in our judicial system. It also exposed Nigerian legal information to the outside world. The several free law movements have actually yielded fruits in providing knowledge on parties' legal information. Therefore, the Freedom of Information Act has a great impact on the free access of not only legal information but also other information on public officers. It serves as weapon in fighting corrupt public officials; as such, the Act is a huge success.