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WHOSE FREEDOM? WHOSE INFORMATION?

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Seyram Avle and Omolade Adunbi

ABSTRACT

Information policymaking in the contemporary global environment is complex and can be a difficult process. The difficulty lies, partly, in the divergent priorities of the state and civil society organizations (CSOs) and their transnational allies that often push specific laws in the global south. This article uses an analysis of the discourse around Freedom of Information (FOI) policies in Ghana and Nigeria to show how such divergent priorities emerge and their impact on the policymaking process. Specifically, it shows the limitations of key assumptions underlying advocacy for FOI and how the hegemony of the state is ultimately preserved.

Keywords: Africa; discourse; Freedom of Information; Ghana; Nigeria; policymaking.

Introduction

In May 2011, Nigeria's National Assembly passed into law a Freedom of Information (FOI) Act that was subsequently assented to by the then-president, Goodluck Ebele Jonathan. The act had been promoted and advocated for by many civil society organizations (CSOs),¹ such as Media Rights Agenda (MRA), Civil Liberties Organisation (CLO), and their transnational partners, for over a decade. Its purpose, according to the legislative document, is "to make public records and information more freely available, provide for public access to public records and information,

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1. CSOs here refer to both nonprofit organizations (NGOs) that focus on civil issues as well as think tanks that have legal and civil matters as the main areas of concern.



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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 of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters.”² The law that the CSOs and other advocates wanted was one that would grant unhindered access to state documents that were hitherto protected by the Official Secrets Act of 1962. However, the government had inserted a clause that protects public officials and some information. Many CSOs chose not to dwell on the clause, and instead focused on the signing of the act into law; they celebrated it as an important milestone in the “struggle to protect the rights of Nigerians, because access to information in this digital age is key to the success of any nation and its citizens.”³

Earlier that year, members of an advocacy coalition in Ghana, Right to Information Coalition (RTIC), marched to Parliament to present a petition demanding to know why an FOI law had not been passed since 2002, when the government first considered it.⁴ According to their spokesperson, the government had “failed to enact the required law that provides the explicit platform for the people of Ghana to enjoy their constitutional guarantee that states that ‘All persons shall have the right to information, subject to such qualifications and laws as are necessary in a democratic society.’”⁵ The coalition, which claims to represent individuals and CSOs in Ghana, further argued, “Access to information offers the key to deepening democracy and quickening development that Ghana is seeking. It lays the foundation upon which to build good governance, transparency, accountability, and eliminate corruption.”⁶

In both Ghana and Nigeria, the state’s position prior to the events described earlier differed from that of the CSOs pressuring them to act. In Nigeria, the campaign focused on getting a law that “will not only bring about access to information but guarantee accountability, transparency and good governance and that it will also have the potential to galvanize

2. National Assembly of the Federal Republic of Nigeria.

3. Tunde Alabi, personal communication, July 10, 2011.

4. Right to Information is used interchangeably with FOI in Ghana. We use FOI for the purposes of consistency with the Nigerian version for this article. That said, we believe the use of the word “Right” emphasizes what advocates in Ghana have argued is essential for its passage—that it is a right of citizens, one that is protected by the constitution.

5. Odoi-Larbi.

6. *Ibid.*

civil society organizations in readiness for any attempt for the military to overthrow the civilian government of Nigeria.”⁷ Having been under military rule for much of the 1980s and 1990s, CSOs had become emboldened during the transition to democracy and felt a need to strengthen institutions that would help them not only make gains in governance, but also strengthen their ability to continue advocating for issues they cared about. After many years of campaigning for FOI by the likes of MRA, the Nigerian state took three years, a relatively short time, to enact a bill. However, the Nigerian state demonstrated its reluctance to embrace many aspects of the law advocated by CSOs by enacting a law that is filled with ambiguous language, which the activists see as unhelpful and potentially detrimental to any gains made for democratic governance. In Ghana, CSOs emphasized constitutional rights in their efforts to get the state to enact a bill. The Ghanaian state, however, has stalled and used a number of reasons or excuses, depending on one’s perspective, to delay meaningful progression on different bills.

FOI laws, in general, aim to improve transparency in governance and turn “access to information” into a “right to information” for citizens, residents, and other interested parties in a country.⁸ Indeed, the *right* to information or *freedom* of information speaks to the underlying principle that public officials are accountable to those who elected them, and access to details of their actions is fundamental to the proper functioning of a democratic society. The spread of liberal democratic practices alongside new challenges owing to technological change in the last two decades account for contestations over what constitutes information, who owns it, and why it is important to nation-states, citizens, and governing authorities.⁹ For those states beginning to embrace such democratic practices, notions of “accountability,” “transparency,” and “good governance” are considered by many socioeconomic and political observers to be in greater deficit.¹⁰ It is suggested that these deficits can be addressed if FOI laws are enacted because FOI laws are “a crucial step” toward strengthening democratic institutions.¹¹ Viewed from such a perspective, FOI appears to be a nonnegotiable aspect of democratic governance, even if it can be challenging to implement in both spirit and letter.

7. Tunde Alabi, personal communication to one of the authors, July 10, 2011.

8. Ackerman and Sandoval-Ballesteros.

9. Ibid.

10. Ackerman and Sandoval-Ballesteros; Linz and Stepan; Schedler, Diamond, and Plattner.

11. Ackerman and Sandoval-Ballesteros, 87.

Our observation is that while FOI can be an important ingredient in the promotion of liberal democratic practices, its applications are not universal and it does not necessarily translate into open or transparent governance. As Lindita Camaj shows in her work on emerging democracies in Eastern Europe, a country can have the “best” FOI law, but the quality of the law does not affect its success or lack thereof.¹² In the Ghanaian and Nigerian cases, transnational institutions may have shaped the promotion of FOI, but their enactment has been driven by very local dynamics. We suggest that it is these local practices anchored on transnational alliances that define the interpretations of FOI—interpretations that can sometimes complicate the process of enactment and implementation of FOI law, thereby making them fraught with conflicts and contradictions. These alliances in the policymaking process range from individual citizens and CSOs and their transnational network of allies (such as nongovernmental organizations [NGOs]), to businesses, political parties, and intergovernmental organizations (IGOs), such as the World Bank and the International Telecommunications Union (ITU), that often set the standards that governments aim to attain with their legislative processes.

Transnational Networks and Freedom of Information Policymaking

Over the last two decades, transnational CSOs and NGOs have been instrumental in shaping policy directions in many countries in the global south. These became more prominent at the end of the Cold War when IGOs and other lending agencies changed their lending and aid policies for such countries.¹³ Such changes include the emphasis on the state’s promotion of “transparency,” “accountability,” and “good governance” in managing the affairs of the nation-state.¹⁴ The new policy direction of these IGOs paved the way for the emergence of CSOs whose intent became, among other things, the promotion of human rights and democratic practices within nation-states deemed to be in need of support from the international community. Ghana and Nigeria are no exceptions.

With support from transnational organizations such as Article 19 and Interights (both based in London), Human Rights Watch (based in New York), Open Society Initiative for West Africa (established by

12. Camaj, “From ‘Window Dressing’ to ‘Door Openers?’”

13. Adunbi; Ferguson, “The Uses of Neoliberalism.”

14. Comaroff and Comaroff; Bratton.

George Soros), and the National Endowment for Democracy (based in Washington, DC), many local CSOs in Nigeria and Ghana have waged a consistent campaign to enact an FOI act, which they consider to be the bedrock of good governance. In Ghana, the RTIC has been a visible interlocutor with the state on the status of FOI law, while the Freedom of Information Coalition (FOIC), set up by MRA and CLO, has been at the forefront in Nigeria. RTIC is a group of associations, professional groups that claim a broad-based membership of Ghanaian citizens, while the FOIC claims membership from other NGOs and many Nigerian citizens. Both have collaborated with representatives of multilateral organizations such as the United Nations Information Center (UNIC), Commonwealth Human Rights Initiative (CHRI), and the African Union (AU) Special Rapporteur on Freedom of Expression and Access to Information, in raising awareness of FOI in their countries.¹⁵ Listing local members for both RITC and FOIC is a way of legitimizing their claims that they represent Ghanaians and Nigerians, respectively, in their advocacy for FOI law. Transnational alliances also bolster their case that FOI is a globally sanctioned necessity for democratic practices.

Individual citizens, including academics, also sometimes call on states to pass specific bills, or comment on proposals via online news pages or op-eds in local newspapers. Other, somewhat invisible stakeholders such as powerful elites and lobbyists also attempt to sway a state's position on a policy in a direction that works best for their interests. This is not to say that individual citizens who have no prominent social status, but who are affected by a proposed policy, may not be speaking or addressing the issue, but rather that those urban-based and formally educated advocates often tend to be heard more in civil advocacy than other grassroots advocates.¹⁶ Likewise IGOs, like the ITU, influence policy decisions either because they set the "global standards" or require specific actions in exchange for membership or financial loans.

As we map out the discursive landscape of FOI in Ghana and Nigeria, it becomes clear that while states articulate specific goals of policies, transnational alliances—particularly those with organizational resources with which to respond publicly to the state—can engage with them in ways that show different areas of concern and, to some degree, distrust of the state.

15. See http://www.rticampaignghana.com/news/index.php?fn_mode=fullnews&fn_id=51 for a list of groups involved in this campaign.

16. Englund.

While campaigning for the enactment of FOI in particular is often championed by local CSOs with support from transnational networks, its implementation is met with hesitation on the part of the state. Whoever is driving the campaign for a policy in some ways can dictate how the policy unfolds, but ultimately the legislative power (i.e., the state) decides what the final law looks like.

Situated within the political and social contexts of Ghana and Nigeria, this article shows that for the CSOs pushing FOI in both countries, openness and transparency in governance is derivative of the assumption that having an FOI law will allow access to important state documents—anything from the sale of oil to the disbursement of official monies and their use by state officials. FOI law is expected to result in the mitigation of perceived corruption, as it could make the concealment of nefarious activity harder. We show that this is indeed not the case. Most crucially, we show that the hegemony of the state is preserved, as it is able to control the content of FOI law and use the legislative process to protect what it views as its right to conceal certain activities *and* to protect the actions of its representatives.

Method

Our argument is based on an analysis of the discourses accompanying FOI that emerge from broader discourses on development and liberal democratic practices. Discourse analysis “oscillates” between a focus on specific texts and a focus on the “order of discourse,” the relatively “durable” social structuring and “networking of social practices.”¹⁷ Textual analysis is a key part of discourse analysis, but, alone, it cannot reveal “meaning-making, the causal effects of texts, and the specifically ideological effects of texts.”¹⁸ The context is important, and it complements the text.¹⁹ Des Gasper and Raymond Apthorpe stress that analyzing policy discourses in a disciplined way allows us to “probe texts, contexts and their interrelations, using more tools, more system and a more open mind than only providing confirming instances for hypotheses about mentalities, ensembles and essential visions.”²⁰ There are social effects of discourse and to understand them, it

17. Fairclough, “Critical Discourse Analysis,” 454, 456, 457.

18. Fairclough, *Analyzing Discourse*, 15.

19. Gasper and Apthorpe.

20. *Ibid.*, 6.

is necessary to look at “what happens when people talk or write.”²¹ Indeed, policy does not end at the “legislative moment;” “it evolves in and through the texts that represent it, [and] texts have to be read in relation to the time and the particular site of their production. They also have to be read with and against one another – intertextuality is important.”²²

In this case, we examined multiple texts within two national contexts to analyze the discourse around FOI law in the policymaking process. This includes an examination of relevant bills and acts of both governments, media coverage, and public debates of FOI, as well as interviews with some stakeholders. In general, we sought to make sense of the available information on what transpired in between the period that policy documents moved from one stage of the policymaking process to the other. We looked at some of the policy documents brought up in discussions of FOI, such as the Data Protections Act (2012) in Ghana and the Secrets Act (1962) in Nigeria. We also used the constitutions of both countries to help us understand the various positions that different stakeholders took to making claims about FOI. In addition, we examined available public speeches, media coverage, citizen commentaries, and so forth, as recommended by *Bowe et al.*²³ Media can do more than disseminate news; they sometimes act as the intermediary between citizens and the state. They can be active participants that foster debate and conversation about regulatory measures. For instance, some radio stations in Ghana often bring experts and policymakers to their studios for in-depth discussions of proposed bills in Parliament.²⁴ While the reasons for the timelines of FOI policymaking in Ghana and Nigeria differ, the process of enacting regulatory instruments are consultative to some degree, and the media covers public opinion on the legislative process somewhat. A number of the popular news websites allow comments from their readers, and we include these comments in our analysis to understand how the text or news about the policy has been received. Another place that we looked to in order to understand responses and contestations of FOI was a public FOI coalition online group that one of the authors participated in between May 2008 and May 2011. Most of the issues raised were transmitted to the group through e-mails circulated to those signed onto the public list on Yahoo!

21. Fairclough, *Analyzing Discourse*, 3.

22. *Ibid.*, 21.

23. *Bowe et al.*

24. *Avle.*

From our analysis of all of the previously discussed outlets, we are able to locate the core values being contested among the state and civil society and discuss how they reflect specific interests as well as what their implications are for the policy process overall. In general, this analysis is presented through a comparative case study approach that will allow readers to connect the various drivers of FOI policy across different contexts. Since sociohistorical context is very important in shaping policy, we include that in our analysis to show the interplay of transnational and local dynamics in the policymaking process. The origins of the clamor for FOI are historically located in local and global events of the last three decades. The changes in global power dynamics following the end of the Cold War and the gradual emergence of NGOs as institutional players in policymaking in the global south are crucial to providing a comparative frame in which to understand how Ghana's and Nigeria's experience with FOI figures in relation to the rest of the world's.

Discourse in/of Policymaking

Policy discourses take place in various contexts. Within the site of production, the policy text is articulated as a public good, and makes claims to common sense and political reason.²⁵ This site of production does not refer to just the policy documents—it includes commentaries, media, public performances, and speeches by officials who try to make a case for the policy, that is, policy-speak.²⁶ This can be, and often is, separated from policymaking, that is, the supposed rational decision-making process that moves talk into action.²⁷ The policy text and the different contexts within which it is made, influenced, read, and interpreted are complementary—they inform our understanding of the positions staked within the policymaking arena.²⁸ Crucial to policymaking is “framing, specifically what and who is actually included, and what and who is ignored and excluded.”²⁹ Moreover, the ways that policymakers and other stakeholders speak about a policy shows their views on the subject matter since “the content of a

25. Bove et al.

26. Gasper and Apthorpe.

27. *Ibid.*

28. *Ibid.*

29. *Ibid.*, 6.

discourse is necessarily ‘displayed’ from a certain *perspective*.³⁰ In other words, what stakeholders say about a policy reveals their position and what inferences one might make about what that policy means to them.

This “expression of policy” can be misunderstood because policy texts “are generalized, written in relation to idealizations of the ‘real world,’ and can never be exhaustive. . . .”³¹ The vitality of discourses can sometimes shape how we perceive reality and “our understanding of reality, the emphases and omissions of policy language can affect our understanding of complex issues.”³² Norman Fairclough argues that discourses represent “how things are and have been, as well as imaginaries – representations of how things might or could or should be.”³³ He adds that “imaginaries may be operationalized as actual (networks of) practices . . . [and] operationalization includes materialization of discourses – economic discourses become materialized for instance in the instruments of economic production. . . .”³⁴ Policy discourses, then, represent stakeholders’ beliefs and expectations, which in turn can influence practices that can have real consequences. For instance, as we will show, sections of Nigeria’s FOI law make CSOs suspicious of the law’s intent, even though on the surface they have won the crucial battle to have an FOI law enacted. People respond based on their reality and this reality is socially constructed.³⁵

Our understanding of discourse follows Nick Stevenson’s definition: “particular ways of talking, writing and thinking that can be organized into identifiable patterns of usage across time and space. Whether we are analyzing a news broadcast or chat show we might be able to identify a number of different codes or ways of speaking that are more prevalent than others.”³⁶ Within what Bowe et al. call the “context of influence”—that is, where discourses are formed—those producing the policy text, as well as other stakeholders, continuously struggle to influence the definition and social purposes of policies. Thus, a policy may be accepted, rejected, or selectively attended to, and the various interests and meanings that people bring to the policy’s interpretation represent various contestations.³⁷

30. Ensink and Sauer.

31. Bowe et al., 21.

32. Monkman and Hoffman, 63.

33. Fairclough, “Critical Discourse Analysis,” 458.

34. *Ibid.*, 459.

35. Berger and Luckmann.

36. Stevenson, 156.

37. Bowe et al.

Examining both text and context then can reveal the values under contestation and, in the critical discourse tradition, the power relations and embedded interests as well.³⁸

Given these, we seek to provide explanations for the ways that information policymaking is actually taking place in Ghana and Nigeria, and specifically how the discourses on a particular issue can shape the outcomes. Instead of simply relying on broad context, however, we provide a careful examination of both FOI policy texts and contexts, mapping observed changes to systems of governance and economy to the discourses on what FOI should be, what should be protected, and what it means to different stakeholders. Examining the discourse engaged in by the state and CSOs, we suggest, can help to understand how complex the processes of law and policymaking can be in global south contexts, such as in Ghana and Nigeria. In the next section, we go into specific details on FOI policymaking in the two countries.

Freedom of Information in Ghana and Nigeria

At the end of 2014, different estimates suggested that the number of countries that have passed some form of FOI law—including Nigeria but excluding Ghana—is between 93 and 100.³⁹ Sweden, Finland, the Netherlands, Denmark, Norway, Canada, the United States, and France are among the countries with an FOI law before the end of the Cold War in 1989.⁴⁰ In the United States, the FOI Act was enacted by the 89th Congress in 1966, and went into effect in 1967.⁴¹ Today, the website foia.gov serves as the space where citizens and other interested parties can access or request information electronically from any governmental agency. The Nigerian FOI Act appears to be modeled after the US version with striking similarities between key features of both laws.⁴² However, there is much

38. White.

39. See, for instance, the website of the charity and NGO Article 19, which has been tracking FOI globally, <http://www.article19.org/pages/en/freedom-of-information.html> (accessed June 9, 2015), as well as <http://www.freedominfo.org>, website of “the global network of freedom of information advocates,” (accessed June 9, 2015).

40. Blanton.

41. For more on this, see, for example, FOIA Legislative History, the National Security Archives, <http://nsarchive.gwu.edu/nsa/foialeghistory/legistfoia.htm> (accessed June 9, 2015).

42. Obebe.

variation in FOI laws, even though FOI in general is understood to contribute to making a country more open and transparent to its citizens, values tied to the democratic functioning of a society.

This variation can be attributable to myriad factors like differences in law making and enforcement systems, the presence or absence of rule of law, and so forth. We add to that different interpretations of the underlying principles of FOI by stakeholders—particularly what kinds of information should be protected and whose rights should be made paramount. Moreover, where the international community plays a large role in adopting FOI in an emerging or transitioning country, they are “less effective on behavioral changes that accommodate the implementation of these laws.”⁴³ This crucial point underscores the importance of the local climates within which FOI advocates work: a government reluctant to adopt FOI will likely find difficulties in implementation if a law is passed through external pressures such as aid donors. Our analysis presents a unique perspective on why the global scale of FOI campaigns can sometimes be differentiated by local applications even if they are greatly influenced by transnational alliances that, in general, seek a unified interpretation of FOI.

Nigeria

The campaign for an FOI law in Nigeria began in the 1990s with the Nigerian Union of Journalists, the CLO, in collaboration with a newly formed media advocacy group, MRA, with support from transnational organizations such as National Endowment for Democracy, Interights, and Article 19. In an interview, Tunde Akanni, the then-head of the Campaigns department of the CLO, explained how the project started during the administration of the military dictator, General Sani Abacha:

When we started the campaign for a Freedom of Information in Nigeria, we knew the Abacha regime was not going to decree it into law but we wanted to use the opportunity to raise awareness about the evils of military rule and the lack of transparency and accountability that the Abacha regime was notorious for. During that time, MRA had just been formed by three journalists who were friends of the CLO – Edetaen Ojo, Eze Anaba and Austin Agbonsuremi.⁴⁴

43. Camaj, “Gatekeeping the Gatekeepers.”

44. Tunde Akanni, in an interview with one of the authors on July 20, 2011 (Lagos, Nigeria).

These journalists, like many others at that time, were victims of human rights violations by the Abacha dictatorship. The *Guardian* newspaper, where two of the journalists worked, was proscribed by the military, and the CLO became a sanctuary for them. This led to the formation of MRA aimed at campaigning for a freer press and FOI in Nigeria. These different media-related organizations would later make up the core of the FOIC, a fact that would not be lost on members of the Nigerian National Assembly and House of Representatives who thought FOI was simply a tool for the media to use against the government.⁴⁵

Abacha's death in June 1998 and the subsequent installation of a democratically elected government on May 29, 1999 changed the face of the campaign for FOI in Nigeria. By then the MRA had become a powerful advocacy group collaborating with other transnational organizations such as Freedom House, IFEX (formerly known as International Freedom of Expression Exchange), and Human Rights Watch, in addition to those mentioned earlier. The emergence of a civilian administration in 1999 and the increase in access to information communication technologies (ICTs) for many of those in CSOs gave vigor to the campaign. Online discussions on places like Yahoo! Groups brought together a coalition of civil society leaders, ordinary citizens, and lawmakers who advocated, variously, for and against the enactment of an FOI bill. The discourse centered around who should have access to official government information and why.

The Obasanjo government, which took power after the transition to liberal democracy in 1999, gave many civil society groups and advocates for FOI hope for change. Olusegun Obasanjo had been jailed by Abacha's military administration in 1997 on the charge that he and others were planning to topple the government. While in prison, many civil society leaders vigorously campaigned locally and internationally for his release from what they considered to be illegal conviction. On his release from prison, after the death of Abacha, Obasanjo joined politics, and many civil society leaders saw him as someone they could rely on to bring about change in Nigeria, particularly since he had been one of the founders of Transparency International, an anticorruption international NGO headquartered in Germany. Unfortunately, Obasanjo, it turned out, was not interested in championing FOI, and no progress was made on that end. Indeed, Ayo Ojebode reports that Obasanjo refused to sign an FOI bill put before him because it gave little space for the president to refuse information and did

45. Media Rights Agenda.

not provide adequate exemptions to defense and state security matters.⁴⁶ In his account, Ojebode “connects the reluctance of the concerned authorities to pass the bill to the age-long struggle in Nigeria (and elsewhere) between the press, citizens and civil society on the one hand and the government on the other, with the former trying to widen the circumference of government activities that should be made public and the latter trying to shrink the same.”⁴⁷

Following this moment, the FOI Coalition intensified its campaigns by organizing workshops, newspaper commentary, and lobbying of national assembly members between 1999 and 2008.⁴⁸ These efforts were aimed at not just gaining support from elected members of the House but also at educating them, as many thought that FOI was merely a tool for the media to use against the government. For those participating in discussions online, advocacy also included posting information and requests from other countries to serve as examples for how FOI was being used elsewhere.

Between 2008 and when the Act was signed into law in 2011, under the administration of Goodluck Jonathan, debates revolved around issues such as immunity for elected officials, intelligence gathering, control of the digital space by the state, and limiting access to what the state considers to be documents that could threaten national security if released to the public. While many who participated in this debate recognized the importance of national security, they would often say that the most important security is the ability of the state to be transparent in all it does with its citizens by allowing free and unhindered access to information. To the state, however, access to government information should be curtailed and controlled because of what it considers to be the “sensitive nature” of the information it deals with and the consequences of such on elected officials’ privacy. Thus, national security became equated with the privacy and personal protection of state officials and made campaigns for transparency in governance overall even more complicated.

The passage and eventual signing of the bill into law by President Jonathan in 2011 heralded a new set of campaigns by CSOs. Specifically,

46. Ojebode, 269.

47. *Ibid.*, 267.

48. See http://www.foicoalition.org/publications/foi_advocacy/advocacy.htm (accessed June 19, 2015) for the FOI Coalition’s detailed account of what transpired between those years, particularly its advocacy activity with the National Assembly and House of Representatives, as well as public and media outreach.

advocacy shifted to implementation and enforcement, as a number of scandals became markers of the law's ineffectiveness. One such highly publicized scandal was the case of \$20 billion of oil money that had allegedly gone "missing" from state coffers. In late 2013, the then-Central Bank of Nigeria Governor, Lamido Sanusi, proclaimed that about \$20 billion was "missing" from the account of the Nigerian National Petroleum Corporation (NNPC). Sanusi was summarily dismissed from his post some months later, but before he left he submitted a dossier to the government that, according to Reuters News Agency, to whom it was leaked, gave "one of the most comprehensive studies of waste, mismanagement and what Sanusi called 'leakages' of cash in Nigeria's oil industry."⁴⁹ The saga unfolded over the year 2014, and CSOs like the MRA saw the events as opportunities for the FOI law to be put into effect.

That is, these organizations hoped to be able to use the law to gain access to details pertaining to the alleged misappropriation of state funds. However, requests for information, such as the letters written by Olanrewaju Suraj of Human and Environmental Development Agenda (HEDA) to the NNPC demanding access to documents relating to the "missing" \$20 billion, were routinely ignored.⁵⁰ The state's lack of cooperation and, arguably, failure to institute a process for responding to FOI requests only raised more doubts about its willingness and ability to implement the FOI law it had passed in 2011. While the US act that it was modeled after gave a year in between enactment and implementation to allow government institutions to put a system in place to grant FOI requests, the Nigerian law did not have that time to mature.⁵¹ The routine ignoring of requests served also to underscore civil society groups' belief that FOI should be about greater transparency in governance, and not about the protection of state officials, as was clearly the perspective of the state.

Ghana

In general, CSOs in Ghana interpreted FOI as an issue of fundamental human rights. According to the Committee to Protect Journalists (CPJ), an international NGO, FOI has been on the Ghanaian state's agenda for 13 years.⁵²

49. Cocks and Brock.

50. Olanrewaju Suraj, personal communication to one of the authors in July 2010.

51. Obebe.

52. Gupta.

Acknowledging that there are questions about the absence of an FOI law, the current president, John Mahama, said at a press conference on March 22, 2013, “I have no fear of the right to information bill . . . it is not a monster and I think Parliament should pass it.”⁵³ Two years earlier, in 2011, when the RTIC—which describes itself as “a group of civil society organisations and human rights activists working to promote good governance and transparency through the mechanism of a freedom of information law”—petitioned the government, both the majority and minority leaders of Parliament, who received the petition on behalf of the state, were more guarded in their response. They claimed they did not want to “rush and pass a law that will not stand the test of time,” and that Parliament could not be “torpedoed” into passing a law that would not last.⁵⁴ The claim being made then was that a more robust bill was needed, although they were not forthcoming about the specifics of such robustness. Moreover, they pointed out, Parliament had 25 other bills to work on in that session, so the bill was not likely to make its way through legislation during that session of Parliament.

It seemed odd, then, that a Data Protection (DP) law, viewed as complementary to FOI,⁵⁵ managed to get through that pile of work and was passed in 2012, ahead of the FOI bill, even though the latter had been in the works years earlier. As the government was trying to popularize DP as a successful and necessary law with claims about protecting citizens’ privacy and their data, members of the general public and interested CSOs deflected attention back to the FOI bill left languishing in Parliament. A feature article on the popular GhanaWeb website posted after the passage of the DP Act stressed that DP and FOI “go together,” and the lack of progress on the FOI bill was a cause for concern. The author, George Berko, wondered if

Parliament was quick to pass this Bill ahead of the FOI Bill only so it can protect its members and other Officials from any Public intrusion to expose their nefarious behaviors. In the same mode, I wouldn’t be surprised to hear some folks regard the Parliament’s passing of the Data Protection Bill as some kind of counter to the repeal of the anti-libel Law and People’s demand for the Freedom of Information (FOI) Bill.⁵⁶

53. Boham.

54. Odoi-Larbi.

55. Berko.

56. *Ibid.*

In other words, the passage of a DP law is merely a delay or avoidance tactic by the state with regards to FOI, and it was an attempt to use data protection as a tool that could be used to protect public officials in place of the antilibel law (a relic of colonial times) that had been repealed.⁵⁷ The suggestion is that the DP law could simply be used by the state to claim to be making pro-democratic choices even as it continued to drag its feet on FOI. Berko then challenged Parliament to pass the FOI Bill if this was not the case.

Later on, the state's refrain would change from "we need time to craft a good bill" to "the people do not want FOI." In 2014 the RTIC claimed that the then-speaker of Parliament, a former minister for Information and Media Relations, and some members of the Committee on Constitutional, Legal and Parliamentary Affairs had told members of a coalition that they believed that the "majority of Ghanaians are not interested in having a law on the Right to Information (RTI)."⁵⁸ The RTIC said various statements had been made to that effect, and the view of the parliamentarians was that FOI was not a priority for Ghanaians. RTIC's counter, as to be expected, was that such a law would be beneficial to all Ghanaians.

The RTIC's campaign for FOI emphasized the constitutionality of the need for such a law, the right of citizens to access information about governance, and the role of access in deepening democracy, as well as its functionality as a tool to make the state accountable, more transparent, and less corrupt. The absence of an FOI, by this argument, cripples citizens' access to basic information about their country and resources that impact their daily lives across a range of needs and issues.⁵⁹ Other vocal civil society stakeholders also mentioned these principles, although their emphasis was often in line with their specific mandates as civil organizations or interest groups. For instance, for Hector Boham, the CEO of the Corruption and Fraud Audit Consortium (CAFAC), the delay in the law's passage is a blow to anticorruption efforts in the country, one that also critically undermines the country's democracy.⁶⁰ The CHRI, for its part, "believes that right to information is fundamental to the realisation of economic and social rights and civil and political rights."⁶¹

57. The Daily Graphic.

58. Public Agenda.

59. Odoi-Larbi.

60. Boham.

61. Commonwealth Human Rights Initiative.

Just as in the Nigerian case where civil society vocalized mistrust of the state, individuals and CSOs in Ghana used a national financial scandal to express doubt that the government had good intentions in its handling of FOI policy. Toward the middle of 2012, it came to light that the Ghanaian government had paid over GHS 600 million (about \$300 million [USD] at the time) to a number of individuals since 2010 as recompense for losses they supposedly incurred from working with the government. This generated uproar as various politicians, pundits, government officials, and the general public took to radio and television to denounce the perceived frivolous use of state money. Questions about the terms under which these monies were distributed and their legality put the (then) Atta Mills administration on the defense. The name of the largest collector, Alfred Woyome (who was given GHS 51 million), became the meme that was used to refer to the so-called “judgment debt” scandal as “Woyomegate.” While the view was that the details of these payments were murky, information about it still managed to get out. In comments by people like Berko, even the DP Act was written in language that they felt could be misapplied to such scandals, and even less information would have been had about “Woyomegate.” Thus, the so-called complementary law that the state was seeking credit for when it passed the DP law became used to express doubts about the state’s willingness to be open and transparent about its activities.

In November 2013, a revised FOI bill was put on Parliament’s agenda for 2014. However, the opinion among CSOs and NGOs interested in FOI was that its content would do more harm than good. The RTIC, which is still the most persistent and active voice in opposition to the state’s slow progress on FOI, focused its rhetoric on “maximum disclosure.” It highlighted vague wording in the text as an insufficient explanation for exemptions to what was covered by the bill, and underscored the point that the law was necessary to meet the fundamental rights of citizens to hold their elected officials accountable.⁶² In a May 2013 press release, the coalition reminded the president of his 2012 campaign promise to pass an FOI law, and urged him to expedite the process and to take into consideration its proposals for amendments.⁶³

When the 2013 FOI bill went before Parliament in November that year, other civil society groups also went on the offensive. For instance, Media Foundation for West Africa (MFWA) was critical of the fact that civil society groups had not been given the opportunity to review the bill before it was

62. Ghana News Agency.

63. Right to Information Coalition.

presented to Parliament. For MFWA, “it is not just about having something to call a law, but really something that opens up the door for people to have access to information.”⁶⁴ In other words, FOI is not to be in name only, but actually to provide avenues for it to be put into effect. Not knowing the status of the law at the time it was sent to Parliament, according to the executive director of MFWA, Sulemana Braimah, made it questionable as to whether it was “a secretive bill or an access to information Bill.”⁶⁵ The lack of transparency at this perceived crucial stage of the bill’s evolution, in which it could be consultative and participatory and shaped by the “will of the people,” so to speak, gave cause to suspect the state’s intentions.

Perhaps in response to such critiques, a more consultative approach was taken and workshops were organized to bring together the government, CSOs, and the general public. In February 2015, a Parliament committee sent an amended FOI bill to Parliament based on recommendations from different stakeholders. At the time of writing (mid-2015), it had yet to be passed into law. Indeed, an independent reviewer of Ghana’s progress on FOI, mandated as part of its membership in the Open Government Partnership (OGP) that it had voluntarily joined in 2011, showed that a public consultative process was one of Ghana’s successes in implementing an “action plan” toward a more open and transparent government. However, the report points out, Ghana had also missed its self-imposed deadlines (in 2013) for enacting an FOI law.⁶⁶ To join the OGP, a multi-lateral initiative that “aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance,”⁶⁷ governments must endorse an Open Government declaration, deliver an action plan, and commit to an independent evaluation of its efforts. In May 2015, the OGP held an Africa regional meeting in which Ghana was conspicuously missing.⁶⁸ The OGP blog raised questions about this, stating that open government is “not an event” but rather a process and that Ghana “must also be seen to be taking part and engaging vigorously with other stakeholders at all levels of the OGP processes.”⁶⁹

64. Nyavor.

65. Ghana News Agency.

66. Adamtey.

67. Open Government Partnership, “What is the Open Government Partnership?”; “Ghana: Overview.”

68. Ukaigwe.

69. *Ibid.*

Discussion

Policies embody “claims to speak with authority[;] they legitimate and initiate practices in the world, and they privilege certain visions and interests.”⁷⁰ They also involve structures of power and human interaction that “differ depending on the context they evolve in and the structures they evolve out of and the discourse which defines them.”⁷¹ These structures involve both domestic and international politics as well as social and economic influences. The state may be responsible for turning a policy into law, but several stakeholders engage with the state and one another during the policymaking process and after the legislative moment to influence, guide, or contest the policy. In each of the aforementioned cases, we detailed the history of the campaign for FOI, how it progressed, and its outcome at the time of writing. We explained the ways that the state’s interpretations stand in opposition to that of the CSOs interacting with them in the policymaking process.

Taken together, these two cases indicate the following: In Ghana and Nigeria, (1) the discourse around FOI centers around the availability of documents on government activity to citizens (or groups that claim to represent them). (2) CSOs have been key driving forces in making progress in some form of FOI. (3) The state’s understanding of the meaning and necessity of FOI stands in contrast to that of the CSOs engaging with them. (4) Transnational networks (whether in the form of CSO support or voluntary membership by the state) yield limited impact on effective passage and implementation of FOI. In fact, the state’s position ends up taking precedence in whatever the outcome is.

On the first point, we identify the assumption on the part of CSOs in both Ghana and Nigeria that access to information makes states more open and transparent. FOI loosely translates into transparency in governance and anticorruption, and, thus, should be viewed as an urgent matter for democracy. We saw that openness and transparency in governance from the lens of CSOs is derivative of the assumption that relevant information pertaining to state action is available in state-managed documents. Documents on the business of governance, financial transactions, and due processes are assumed to be available, and the right to access needs to be granted to make government open. However, given the scandals of recent years, we venture that it is

70. Ball, 22.

71. Lall, 2.

the absence of such paper trails that enables corruption and concealment of state activity in the first place. Therefore, granting a right to access may not necessarily produce any useful information. If a transaction is not recorded, or processes for contract bids are not outlined in a document that is then made public, nepotism and favoritism can lead to billions of dollars being “leaked” or overblown estimates of damages being given for work that was not properly documented in the first place. Where such documentation exists, FOI then has to provide a specific and, more importantly, enforceable process for granting access to those who seek it.

Outside of the CSO apparatus, individual citizens also assumed that FOI passage would automatically translate into good governance as indicated in comments seen on news websites. Since corruption is pervasive in both countries, many citizens perhaps see the possibility of an FOI as an antidote to state officials’ corrupt practices. However, as we have shown through the examples of scandal in both countries, FOI is not a guarantee of transparency in governance. It is possible that what corrupt public officials may see as prying eyes could simply make them more creative and resourceful in hiding misdeeds. In an age where government officials take to social media to ostensibly provide a more direct line with citizens, “without the trappings of office,”⁷² there appears to be quite a bit of information missing on the workings of these very states.

In both cases, we saw that the history of advocacy for FOI shows active work by CSOs that comprise citizen groups and transnational NGOs. Transnational alliances, either in the form of support from larger FOI-focused NGOs (Nigeria) or in voluntarily signing on to multilateral agreements on open governance (Ghana), are a factor in FOI discourse. In both countries, CSOs engaged with policymakers, from prompting them to consider bills to holding public discussions and workshops with and for policymakers on the intricacies of FOI, to educating relevant stakeholders on the importance and need for FOI. But that appears to be the limit to which CSOs and transnational alliances can influence policy on this issue. They can advocate and lobby for bills to move in the legislature, but it is only the state that controls the processes of legislation and gets to determine the final content of the bill, even if it consults with the general public. Even if a state voluntarily joins a multilateral group such as the OGP, it can choose to move slowly on adhering to the standards agreed to, as is the case in Ghana.

72. Facebook, Inc.

State expertise at crafting legislation is also dependent on its knowledge of whatever bill is being crafted. In the specifics of FOI, transnational NGOs appear more knowledgeable about the content of FOI, and their knowledge of the process is transplanted through local NGOs that may or may not be consulted to help shape the content of a bill. Even where lawmakers are familiar with FOI and seem to be working on getting a law passed, such as in the Nigerian case, it can be a “wholesale adoption” of another country’s law, complete with “expressions and references to institutions and procedures . . . alien to the Nigerian legal and government structures.”⁷³ In Ghana, we heard the use of technical terms like “maximum disclosure” from CSOs but nothing but generalized language about FOI from government representatives.

Moreover, it appears that the kind of CSO pushing FOI adds to the perception that the law is for a specific group and not for all citizens. The journalistic backgrounds of the MRA and CLO might have fueled the perception by state representatives, early in advocacy efforts, that FOI is for the media in Nigeria. This “FOI is for the media” interpretation was also implied in Ghana by the AU Special Rapporteur on Freedom of Expression and Access to Information when she said that a “Freedom of Information law is for everyone, and not for journalists alone” during her visit to see some Ghanaian parliamentarians.⁷⁴

Even when it has been made clear that FOI is a law for all citizens, the state can (as it did in Ghana) claim that the majority of citizens have not asked for an FOI law and, therefore, it is not a priority. The Ghanaian government thus far has given a range of reasons, from timing to necessary amendments, to doubt that Ghanaian citizens want a law to explain why it has not passed a law. We interpret these as delay tactics and as an indication of tacit agreement that any law thus passed to meet civil society groups’ standards would indeed make it difficult for the state to conceal certain activities, given the fairly effective rule of law in the country. The state, then, relies on its power to shape legislation and determine when to pass a law.

The Nigerian government, for its part, heeded calls from civil society groups to enact an FOI law, but it has done so in ways that, in our view, protect itself (specifically government officials) while appearing to acquiesce to requests for FOI. Just as in cases around the world, the state can

73. Media Rights Agenda.

74. Public Agenda.

(and does) evoke national security should it seek to keep certain activities private. FOI laws around the world often have exemption clauses that act as fairly effective tools for limiting access to information. For instance, the White House is known to claim immunity against certain government operations, often for military and intelligence operatives. In the Nigerian case, the rights of government officials, as representatives of the state, are protected under a sweeping national security clause that more or less nullifies the point of FOI. Here lies the power of the state to not only control access but also to determine what constitutes information.

The difficulty of getting information in both countries also demonstrates that multilateral initiatives, at least where they are volunteer based, and transnational support through NGOs have a limited impact on the actual realization of FOI law. In Ghana, committing to an OGP has not resulted in meaningful progress on FOI, even though it included it in its “action plan.” In Nigeria, the influences of state officials with international experience with FOI and transnational NGOs that support the efforts of local CSOs may have resulted in a law being passed, but the state has not been able to put infrastructures in place to actually implement the law in an effective manner. Indeed, we saw that, as in other emerging democracies, the influence of international factors is questionable for “democratic consolidation.”⁷⁵ It can be a catalyst where other local partners are able to influence policymaking, but if the state is not resolved to tackle a policy issue, it can effectively ignore international influence or pay lip service to it.

Overall, our analysis of the discourse around FOI shows that for CSOs in both countries, openness and transparency in governance is derivative of the assumption that having an FOI law will allow access to important state documents. Specifically, this means documents on state finances and transactions, from the sale of oil to disbursement of official monies and their use by state officials. By analyzing the discourse around FOI, we are able to say that, in a case like Ghana’s, the increasing inability of the state to hide malfeasance and the fact that the courts work, as well as a decently “armed” civil society, can partly explain why the state has been hesitant to enshrine or commit to an FOI law, even though it signed on to a multilateral initiative on open government. For those vocal citizens that have reacted to the slow progress of FOI, the passage of a law is expected to translate into the mitigation of perceived corruption, as it

75. Camaj, “Gatekeeping the Gatekeepers.”

will make the concealment of nefarious activity harder. We saw that this is indeed not the case. Most crucially, we see that the hegemony of the state is preserved in both countries, as they are able to control the content of FOI and use the legislative process to protect what they view as the right of the state to conceal its activities and to protect the actions of its representatives.

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