

GLOBAL INFORMATION SOCIETY WATCH 2009

*Focus on access to online information and knowledge
– advancing human rights and democracy*



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2009

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*Dedicated to A.K. Mahan - an activist who valued
intellectual rigour and concrete outcomes.*

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Introduction

When a Nigerian delegation went to lobby the United States (US) State Department to allow a state visit by the Nigerian president, the request was turned down. A photo-op with US President Barack Obama would have done a lot to underscore the legitimacy of President Umar Musa Yar'adua's regime. The US government cited the current status of governance in Nigeria, and the several electoral challenges being faced by the Yar'adua administration, as reasons for their decision.

This cold treatment in March 2009 was followed by another disappointment on the international scene when Nigeria was denied an invitation to the G-20 summit: a gathering that was attended by leaders from developing as well as developed countries. Then came the announcement that in July President Obama and First Lady Michelle Obama would visit Accra, Ghana, rather than Nigeria, on Obama's first visit to Africa since becoming president. These incidents, coming so close together, suggest an increasing international isolation of Nigeria, and some observers believe this is a direct result of the levels of corruption in Nigeria, of which the state's failure to pass a recent Freedom of Information Bill is a symptom.

Online public information dissemination is still in its infancy in Nigeria. There are various reasons for this. For instance, the level of internet penetration is still relatively low; although Nigeria has the second largest number of internet users in Africa, internet penetration is only 6.8%.¹ Other factors include the size of the country – 923,768 square kilometres – and its sparse communication and power infrastructure. However, access to online information is critical in the fight against government corruption and the birth of a transparent and accountable Nigerian state.

Policy environment

In theory Nigerians have the constitutional rights of freedom of speech and expression.² Section 36 of the 1999 Nigerian Constitution guarantees citizens the right to freedom of expression and the right to receive information. Nigeria is also bound by the African Union Declaration of Principles on Freedom of Expression in Africa and Article 10 of the African Charter on Human and People's Rights.

Nigeria appears well endowed with policies that can promote an equitable society. The Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices

and Other Related Offences Commission (ICPC), Code of Conduct Bureau (CCB), Budget Monitoring and Price Intelligence Unit (BMPIU), Public Complaints Commission (PCC), and National Human Rights Commission (NHRC) were established for these purposes.³

However, in practice, the overarching Official Secrets Act frequently circumscribes these freedoms. There are no constitutional avenues for citizens to request and access public/government documents, so the reality on the ground is that citizens have limited access to public information. The Secrets Act is complemented by other restrictive measures such as the Evidence Act, the Public Complaints Commission Act, the Statistics Act and the Criminal Code.

The National e-Government Strategy (NeGSt)⁴ was launched in 2004 to "create a practical strategy and a single architecture to guide the evolution of digital government solutions with consistent standards, operating platforms and applications across agencies and government systems." Not much has been achieved in this vital area of intergovernmental information flow.

The pervasive and growing problem of corruption in spite of the plethora of policy instruments available may be due to:

- The absence of political will. The decline in the international stature of the EFCC as an African role model in the fight against corruption happened under the watch of President Yar'adua. An indication of the (non)impact of the government's attempts to rebrand Nigeria was the level of violence, vote rigging and arrests of independent electoral observers by state security agents at the recent local government elections in Ekiti state.
- The failure to pass strategic bills such as the Oil Sector Reform, the Railway Act Amendment Bill, the Whistle Blowers and Freedom of Information Bills, and the failure to establish the Fiscal Responsibility Commission and National Council on Public Procurement, which continues to undermine all efforts to fight corruption within the executive and legislative arms of government.

Legislative environment

One of the existing pieces of legislation designed to curb corruption within government is the requirement for a declaration of assets by civil servants. At the start of the present administration, in 2007, the president raised a lot of hope for

1 Internet World Statistics, Usage and Population Statistics, accessed 30 June 2009. www.internetworldstats.com/africa.htm

2 Freedom House, Freedom in the World 2009 - Nigeria, 16 July 2009. www.unhcr.org/refworld/docid/4a645295c.html

3 Civil Society Legislative Advocacy Centre (CISLAC) (2008) Communiqué issued at the end of the One-Day Dialogue Session on Whistle Blowers Protection, 5 December. cislacnigeria.org/index.php?option=com_content&task=view&id=71&Itemid=36

4 www.negst.com/index.htm

the implementation of the asset declaration policy when he made a public declaration of his own assets. But the momentum he generated has since dissipated because he did not make it mandatory for key members of his administration to follow suit. This may explain the recent call by the Code of Conduct Bureau for an open declaration and verification of assets by public officers. However, to make such a law more effective, a Freedom of Information (FOI) Bill should also be passed into law. The FOI Bill will enable whistle blowers to expose false asset declarations that may be made.

The widespread corruption in the polity was one of the reasons cited by the US Secretary of State for denying an audience to the Nigerian president. The situation has a long history and the military intervention in governance was a major contributing factor. However, it is instructive that in one of the states of Nigeria, significant progress is being made to ensure transparency and public accountability. The Lagos state executive and legislature appear to have found a way to stem the tide of corruption and accelerate economic and social development in the state.

Lagos state probably has the most transparent governance structure in Nigeria. The state also has a user-friendly website⁵ which boasts prompt response to enquiries. Not even federal agencies and ministries have services that can match those offered by Lagos state. The Lagos state website even boasts a Revenue Complaints and Information Unit, with facility for contacting the agency. Lagos may be the only state where the NeGSt⁶ is making progress. Indeed, the Nigerian Communications Commission (NCC)⁷ and the Lagos state government are among the few government bodies to have regularly updated websites.

The Budget Monitoring and Price Intelligence Unit (BMPIU), which operates from the Presidency, also stands out at a significant level as being responsive to the public. Records also show that it has achieved some spectacular results. It was reported that its Due Process Office has saved up to NGN 160 billion for the government since its inception. However, one of its main defects is its lack of a functional website, in addition to its unduly cumbersome bureaucracy.

The Due Process Office was noted for its attempt at ensuring transparency in all government transactions. One of the earliest beneficiaries of this transparency was the auction of the first set of global system for mobile communications (GSM) licences. It is widely believed that the high level of transparency contributed to the massive inflow of foreign investment into the mobile sector.

It has been argued that the BMPIU has usurped the accountability functions of the legislature. But with the legislature mired in a series of financial scandals including receiving a sanction for non-performance from the president, it is difficult to see how it can effectively carry out

this function. Considering that the bulk of corruption within government is related to the procurement of goods and services, there is an urgent need for a body that will enforce accountability and transparency in the various transactions. There is a need to make such a unit more independent and not left to the vagaries of political incumbents.

Apart from the executive and legislative arms of government, the Nigerian media are also experiencing significant levels of corruption. The media already have a code of conduct and its enforcement will also benefit from the FOI Bill when it is passed.

The FOI Bill

Civil society efforts to improve citizens' access to information in Nigeria date back to 1993 when the Media Rights Agenda,⁸ International Press Centre, Civil Liberties Organisation and Nigerian Union of Journalists, joined by large numbers of other media groups, academia, human rights organisations and business interests, formed the Freedom of Information Coalition.⁹ This virtual forum has been very effective in providing its members with timely information on issues of democracy and human rights using various electronic media.

The FOI Bill has become the oldest bill that has yet to be passed into law: the previous administration of President Olusegun Obasanjo turned it down, and now two years into the new government's term, the bill has yet to make any progress. While it is certainly not a panacea, the FOI Bill is generally regarded as a strategic policy that will have a far-reaching and positive impact on Nigeria's democracy and human rights credentials. The spirit of the FOI Bill is that it promotes accountability and good governance through better and timely access to information by citizens.

Cyber Crime Bill

There is no restriction on citizens' access to the internet. But the escalation in computer and internet-based crimes and the way they have tarnished Nigeria's international reputation have been provided as reason enough for a closer scrutiny of the individual's use of internet cafés. The Internet Crime Complaint Centre (IC3) ranked Nigeria among the top ten countries when it comes to internet crimes. In 2004, a Nigerian Cyber Working Group (NCWG) was set up by the government, but it was not until June 2009 that a draft Cyber Security and Information Protection Agency Bill¹⁰ was presented for public hearing.

The speed with which this issue is being addressed does not reflect the urgency it deserves. Before the suspension, demotion and eventual dismissal of its boss, the Economic and Financial Crimes Commission (EFCC) had made headway in stemming the tide of "advance fee" fraud and other cyber crimes in Nigeria. His removal from that post signals

5 www.lagosstate.gov.ng

6 www.negst.com/index.htm

7 www.ncc.gov.ng

8 www.mediarightsagenda.org/foi.html

9 www.foicoalition.org

10 www.cyberschuulnews.com/nass_cybersecurity_draftbill.html

a reversal of a trend that had seen a significant improvement in Nigeria's rating on the global index of corrupt nations.

New legislative trends

Efforts to track miscreants' misuse of the internet for fraudulent activities led the EFCC to propose a measure that would require internet cafés to be registered. The agency is also considering strategic partnerships with mobile phone operators because they provide a significant proportion of internet access to the population. The challenge posed for effective monitoring of internet usage is due to the large number of subscribers and the land area that has to be covered. Nigeria's teledensity has gone from 0.73 in 2001 to 47.98 in April 2009, while there are now 6,349,660 code division multiple access (CDMA) mobile phones and 59,510,629 GSM subscribers.¹¹

A draft Cyber Security Bill has now been released for public comment. When this becomes law, the EFCC would require adequate powers and resources to ensure its efficient implementation.

The National Information Technology Development Agency (NITDA) has developed a new bill, the e-Transaction Bill, that will improve the security of electronic transactions. This bill is particularly important because it reinforces the provisions of Section 37 of the Nigerian Constitution (1999), which states that "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."

Action steps

- Concerted and sustained advocacy by civil society is necessary to force the passing of the various anti-corruption bills, especially the FOI Bill, which is generally recognised as necessary if Nigeria is to attain international best practices. The Freedom of Information Coalition and the Civil Society Legislative Advocacy Centre (CISLAC)¹² have key roles to play in this activity.
- An audit of all global conventions and international agreements that promote probity and transparency to which Nigeria is a signatory needs to be undertaken. This audit needs to be given widespread coverage to ensure that more Nigerians are aware of what the government is expected to be doing on their behalf.

- The Freedom of Information Coalition can also consider undertaking initiatives to further domesticate these various instruments by making translations into major Nigerian languages. This will result in increased awareness raising and structured engagement of the public on anti-corruption issues. The use of the internet needs to be considered here as a dissemination strategy.

- At the moment there is no public record where Nigerians can verify the (non)attendance of their political representatives at the National Assembly. The Assembly will enhance its transparency credentials with a more credible and regularly updated website. Its Policy Analysis and Research Project Unit has to make itself more relevant in providing the National Assembly and the public with its research output.¹³
- The NeGSt, launched in 2004, needs to be revived to deliver on its objectives.

The pervasive level of corruption in Nigeria presents an avoidable hurdle for its development. The presence of a vibrant civil society and the unprecedented success in the governance of Lagos state are beacons of hope. It is obvious that the rapid and ongoing positive changes in Lagos have been facilitated by respect for the rule of law, openness and transparency. The legal instruments to ensure that similar accelerated development happens in the remaining states of the federation are freely available if the necessary political will can be mustered. The use of the internet to facilitate access to those rights provided for in the available legislation should be made a priority. ■

11 Nigerian Communications Commission (2009) Telecoms Subscriber Information (2001-March 2009). www.ncc.gov.ng/index5.htm

12 cislacnigeria.org

13 www.nassnig.org/parp/index.php

GLOBAL INFORMATION SOCIETY WATCH (GISWatch) 2009 is the third in a series of yearly reports critically covering the state of the information society *from the perspectives of civil society organisations across the world.*

GISWatch has three interrelated goals:

- **Surveying** the state of the field of information and communications technology (ICT) policy at the local and global levels
- **Encouraging** critical debate
- **Strengthening** networking and advocacy for a just, inclusive information society.

Each year the report focuses on a particular theme. **GISWatch 2009** focuses on *access to online information and knowledge – advancing human rights and democracy.* It includes several thematic reports dealing with key issues in the field, as well as an institutional overview and a reflection on indicators that track access to information and knowledge. There is also an innovative section on visual mapping of global rights and political crises.

In addition, 48 country reports analyse the status of access to online information and knowledge in countries as diverse as the Democratic Republic of Congo, Mexico, Switzerland and Kazakhstan, while six regional overviews offer a bird's eye perspective on regional trends.

GISWatch is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

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2009 Report

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