

Socioeconomic Effects of Nigeria's 2011 Freedom of Information Act

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Abstract

This paper examines the socioeconomic effects or implications of the Freedom of Information Act (FOIA) 2011 in Nigeria. It applies a simple supply-demand driven approach to examine the externality effects on the social and economic issues prevalent in Nigeria prior to (ex ante) and subsequent to (ex post) the enactment of the FOIA 2011. It concludes that the potential positive externalities of the FOIA 2011 exceed the negative externalities with respect to Nigeria.

Keywords: Agency problem, Asymmetric information, Externalities, FOIA, Socioeconomic effects, Supply-demand.

1. Introduction

Good governance and socioeconomic viability are not mutually exclusive in the pursuit of a better standard of living. As for Nigeria since the return to civilian rule in 1999, the living standards have somewhat declined over the subsequent years as indicated by the socio-economic variables and human development indices shown in Tables 1 and 2, respectively. Thus, in the quest for good governance via enhancement of democratic ideals and socio-economic development, a cross-section of Nigerians and other stakeholders prompted the National Assembly (NASS) to enact the Freedom of Information Act (FOIA) 2011 which posits:

“To make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters.”

The central question is whether FOIA provisions would stimulate the necessary social and economic change for sustainable development and better life. Following this thought, this paper therefore focuses on the socioeconomic implications of the FOIA 2011. It employs the supply-demand driven approach within the confines of the cost-benefit principle to examine the socioeconomic implications of the FOIA 2011 with respect to its stipulated aforementioned objectives. The rest of the paper is as follows: section 2 is overview of Nigeria FOIA 2011, section 3 is socio-economic implications of the FOIA 2011, section 4 concludes, while references are in section 5.

Table 1: Nigeria Selected Socio-Economic Indicators, 2000-2008

Indicator	2000	2005	2007	2008
Population, total (millions)	124.8	141.4	145.0	151.3
Population growth (annual %)	2.6	2.4	2.2	2.2
GNI per capita, PPP (\$)	1,130	1,520	1,850	1,940
Life expectancy at birth (years)	47	47	47	--
Fertility rate (births per woman)	6.0	5.5	5.3	--
Mortality rate, under 5 (per 1000)	207	194	189	--
School ratio of girls to boys (K-12)	80	83		
GDP (current US \$) (billions)	45.98	112.25	165.92	212.08
GDP growth (annual %)	5.4	5.4	6.4	5.3
Inflation, GDP deflator (annual %)	38.2	19.8	4.8	14.4

Source: World Bank Development Indicators Database, April 2009

Table 2: Nigeria Key Indicator Statistics of Human Development, 2007

HDI value	0.511	Adult Literacy Rate (% ages 15 and above)	72.0
HPI	36.2	Adult Illiteracy Rate (% ages 15 and above)	28.0
GDP per capita	1969	Combined gross enrolment ratio (%)	53.0
GDI as % of HDI	97.7	People not using an improved water source (%)	53.0
Life Expectancy (yrs.)	47.7	Children underweight for age (% aged under 5)	29.0

Source: Derived from UNDP Human Development Report, 2009

2. Overview of Nigeria's FOIA 2011

The demand for an FOIA gathered momentum during the advent of the legislative session of 1999-2003. As Arogundade (2003) asserted, the International Press Center (IPC) held five round tables/public hearings on the FOIA in five Nigerian cities with the support of the Democracy and Governance Program of the U.S. Embassy in Nigeria from December 2001 to June 2002 – although the media would be the main users of the FOIA, nevertheless, access to information is a legal right of all citizens irrespective of their occupation. In 2011, the NASS passed into law the Freedom of Information bill, namely, the FOIA 2011.

Specifically, the following is a summary of the provisions contained in the FOIA 2011:

- Right of access to records is a legal right of any citizen.
- Information about public institutions comprising the three branches of government together with all corporations established by law and any organization that utilizes public funds has to be recorded and kept in a manner that facilitates public access to such information.
- Request or an application for access to records is in line with section 1 of the FOIA. Thus, any information that is in print or otherwise used by the government or public institution shall be deemed a record under the control of government or public institution and shall be made available to any citizen upon request. However if access is wrongfully denied, the culprit is liable to a fine of N500,000.
- Fees are not to exceed standard charges for document duplication and transcription if necessary.
- Destruction or falsification of records is deemed a criminal offence punishable on conviction by a Court with a minimum of one year imprisonment.
- Exemption of International Affairs and Defense in any matter that may be detrimental to the conduct of international affairs and defense of the nation.
- Exemption of law enforcement and investigation in matters concerning law enforcement purposes or internal matters of a public institution to the extent that disclosure would potentially jeopardize fairness and due process.
- Training of officials on the right to information and on the effective implementation of this Act.
- Exemption of personal information with respect to clients, patients, residents, students, or persons receiving services directly or indirectly from public institutions. Conversely, disclosure is allowed given the consent of the individual concerned and where the information is available to the public as well as if the public interest in the disclosure significantly outweighs the protection of personal privacy.
- Exemption of third party information in matters relating to trade secrets and commercial or financial information obtained from a person or business where such information is proprietary, privileged or confidential or injurious to the third party. Nonetheless, disclosure may be denied in cases involving environmental information that is in the public interest with respect to public health, safety, or protection of the environment.
- Exemption of professional or other privileges conferred by law include: attorney-client, doctor-patient, journalism confidentiality, and any course or research materials prepared by faculty as well as other professional privileges.

- Exempted materials include: published material or material available for purchase by the public, library or museum material, or non-public section of the national archive on behalf of any person or organization other than the public sector.
- Judicial review for denial of access to information can be sought through a court review of the matter within 30 days after denial and said application shall be heard and determined summarily by the court.
- Access to information by the Court is granted for examination of information under the control of a public institution to which this Act applies. However, the Court should avoid unnecessary or illegal disclosure.
- Burden of proof in any proceeding before the Court for denial of access rests with the public institution and the Court reserves the right to decide in favor or against.
- Protection of public officers for the disclosure of information in good faith.
- Documents under classification are not necessarily exempted from disclosure.
- Submission of reports to the Attorney General (AG) is on or before February 1 of each year which covers the preceding fiscal year and shall include among other matters the number of denials and reasons, appeals by individuals, number of pending applications, the time period for processing applications, processing fees, and personnel involved. Furthermore, the AG would follow through with an annual report to the legislature on or before April 1 of each year.
- Complimentary procedures imply that this Act complements all other existing procedures before it and not intended to limit their accessibility or availability.
- Interpretations of terms within the provisions are as cited in the FOIA 2011.

3. Socioeconomic Implications of the FOIA 2011 in Nigeria

Despite its abundance of natural and human resources including oil and gas deposits, Nigeria's economy has been fraught with agency problem, inefficiency, corruption, rent seeking behavior, poverty, insecurity, joblessness, inadequate human capital, overpopulation, low per capita income, increasing debt burden and weak financial and legal institutions among others. All other things considered, the question aptly is whether the FOIA 2011 weaken or strengthen the overall welfare of Nigerians or simply raising expectations that cannot be met. As such, this paper focuses on the socioeconomic implications of the FOIA 2011 to address this question.

Yes, the FOIA 2011 will increase access to information to all sectors and therefore contribute to the growth and development of the economy. Nevertheless, the accessibility and availability of the information as well as the timing, quality of information, and the inherent risk involved in obtaining the information impact on social and economic factors that affect economic growth and development. If some parties have more information than the other, namely, asymmetric information, whereby only the suppliers of the information know more about the information than the demanders or vice versa, then the potential for market failure and/or government failure exist(s). For example, Pindyck and Rubinfeld (2009) suggest that most times the seller of a good or service knows more about its quality than the buyer does; employees know more about their own skills than their employers; business managers know more about their firm's costs, competitive positions, and investment opportunities than the firm's owners or shareholders; and the authorities or government officials know more about the ability and willingness of the state to deliver on its promises than the general public or ordinary citizen.

In the case of Nigeria, firstly, we have seen evidence of the agency problem and rent seeking behavior in matters of privatization of state owned enterprises such as Nigeria Airways, NITEL, Transcorp Hilton, and others that have resulted in government failure. Information was mainly available to the rich and powerful government officials and their affiliates such that these state properties were privatized with little or no accountability and transparency. No wonder these matters remain controversial till present. Secondly, the financial crises emanating from the 1990s that beset the financial institutions such as banks, finance houses, insurance companies, pension fund administration, et cetera have led to market failures of which the Nigerian government is grappling to correct today. Thirdly, lack of transparency in private and public education has resulted in the decline in quality education and rising unemployment among graduates. Fourthly, the integrity of political elections and due process in public appointments remains dubious as evidenced by the majority of past elections and court rulings in favor of most incumbents as well as public disagreements between the Chief Justice of the Supreme Court and the President of Appeals Court. Finally, the recent corruption cases, notably, oil subsidy debacle, pension scandal, and the collapse of the capital market and the various attempts to probe these government and market

failures by the respective Senate and House committees of the NASS further eroded consumers and producers (investors) confidence.

Albeit the inefficiency, corruption, and bureaucratic red tape inherent in the Nigerian system, the FOIA 2011 is useful in reducing the spillover costs of these government and market failures and their impact on social issues like leadership, values, attitudes, education, healthcare, life expectancy, culture, religion, age, gender, overpopulation, corruption, and environment. Similarly, the FOIA 2011 by enabling access to information will enhance the viability of the Nigerian economy to attain economic successes in forms of efficiency, price stability, equity, economic growth, full employment and favorable balance of trade and payments. The FOIA 2011 significantly ensures that necessary information will be provided to positively impact on these social and economic issues and thereby improve the standard of living of the Nigerian populace. In addition to managing our scarce resources efficiently, the key to sustainable growth and development with respect to the FOIA 2011 will depend on the equilibrium between the suppliers of information and the demanders of information. In other words, supply and demand for information are mutually inclusive. Although emphasis seems more on the supply side via government responsibility, however, to maximize utility the demand side has to be equally involved through greater participations by citizens, civil society organizations, non-governmental organizations, community-based organizations, media, and the private sector in monitoring and evaluating information access and availability by the public sector and utilizing the act. The quality of information depends on the equilibrium between supply of and demand for information which enhances efficiency in the public and the private sectors and their attendant positive externalities on the aforementioned socioeconomic variables, growth and development.

5. Conclusion

This study concludes that the FOIA 2011 will reduce the real cost (difference between actual cost and socioeconomic cost) of information accessibility, availability, accountability, timing, transparency, and probity in line with the cost-benefit principle. Furthermore, asymmetric information will be decreased via the supply-demand driven approach that improves efficacy and efficiency of information usage and policymaking. Both approaches culminate to stimulate real growth in socioeconomic indices and hence transform the society through sustainable growth and development. Finally, the FOIA 2011 engenders positive externalities through effective public sector participation – antitrust legislation, effective legal framework, pro-citizen legislation, and equity (fairness or socioeconomic justice in resource allocation and environmental preservation). Similarly, the FOIA 2011 is helpful as a tool of private sector participation in the affairs of state as evidenced by individuals, businesses, civil society organizations, non-governmental organizations, community based organizations and media groups involvement in requesting disclosure and due process by elected public officials.

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