State of Access To Information in Liberia

November 2020
Executive Summary

An inquiry into the state of access to information in Liberia must not be reduced to a praise and blame apportioning exercise. For no one person or institution has the sole responsibility of ensuring access to information. It should rather be seen as a call to action of all stakeholders.

This truth is not unique to Liberia, success stories in societies where access to information has wrought positive change and transformation in the lives of people, has been all hands-on deck with and without government.

The country’s passage of the Freedom of Information Act 2010 was an epoch-making event as it signaled a clean break from the past that had entrenched a culture of opacity in dealing with public resources. At least this was the spirit behind the crafting of a law to serve as a tool of empowerment for the citizenry to participate in the governance of the country.

From its global derivation when Sweden in 1766 first enacted the right to information law followed by Finland in 1951 and America in 1965 the basis of using the law to demand accountability and promote transparency in public realm has become a valid assumption. The countries cited that have enacted the law and ensured that it is working for them have shown marked evidence of development and national stability.

However, in the case of Liberia as the first country in West Africa that enacted the law, the analogy of the law being a catalyst for development cannot be applicable. For starters, it is safe to say that there exists more weak links in the face of absence of political will to make access to information as a cardinal hallmark of the governance framework.

This begs the question what is peculiar about the country’s FOI ecosystem? The report is thus attempting to provide the answer by looking at a broad spectrum of factors and actor’s-their role play and the lack of it. This approach is the logical way to proceed to have an insight into the state of affairs with access to information in the country.

Certainly, the approach here employed in this report cannot be restricted to doing a diagnostic and evaluative exercise. On the contrary, it is work designed to find solutions based on best practice approaches of how FOI law has worked well in other context and the possibility of replicating some of the good things that are missing in Liberia.
Evolution of the Liberia FOI Law 2010

Development partners that served as moral guarantors of Liberia’s reconstruction process including World Bank, USAID, UNDP, OSIWA SIDA, among others, where very keen about good governance, security sector reforms, capacity building and structural reforms and long-term development.

There was therefore a progressive move towards rebuilding state structures that can deepen the democratic trajectory. This meant setting up integrity institutions and creating space for a vibrant independent media for citizens to hold public officials accountable. It started with the Anti-Corruption Act 2008 that could not exist in isolation but must for instance have supportive legislations such as an access to information and the public procurement and concession laws for it to fully serve the purpose for which it was enacted, fight corruption.

Within the same period of the setting up of the Anti-Corruption Act and the setting up of the Liberia Anti-Corruption Commission in 2008, the Liberia Media Law and Policy Reform Group as an outgrowth of the internationally sanctioned partnership for Development and Conflict Prevention submitted, three bills inclusive of the Freedom of Information Act to the legislature. The three bills included the Public Service Broadcaster, the Community Radio Sustainability Act and the Freedom of Information Act. It was the latter that took pre-eminence for legislative action in 2010.

Why this was the case can be explained in the broad stakeholders’ lobby strategy that was employed. Media and civil society were very much involved in the process, ensuring that the impression created about the law as media oriented was dispelled.

In all of these it is important to also note the critical roles of some development partners including the Internews Access to Information Project, OSIWA, UNESCO and others. In that formative stages of the law enactment, these donor partners found traction with the work of media-civil society coalition that operated under the banner of the Liberia Freedom of Information Coalition. They therefore share in the credit to have an access to information law and even remain steadfast in ensuring that it meets popular expectation not only in principle but also in practice.

Overview of the FOI Act 2010

It is important to have a panoramic view about the Liberian FOI Act 2010 and intersperse few comments about key sections. Understanding key provision of the law is logical way to appreciate the implementation environment of the law.

There are eight chapters in the FOI Law and accompanying sections. The preamble precedes that chapters and make the lofty claim to recognizing ‘fundamental right guaranteed by the Constitution of Liberia and the Universal Declaration of Human Rights as well as the African Charter on Human and Peoples’ Rights. 
It defines the right of access to information to entail the right to request and receive information, especially information involving public interest. It reaffirms Article 15c of the constitution of Liberia that states: “no limitation shall be placed on the public right to be informed about government and its functionaries. On this point the framers of the law intended to provide sufficient safeguard for people centered democratic governance.

Section 1.3.2 further elucidates the practical application of access to information to mean the “right of the public to request, receive, review, reproduce and retain records and documents held by public bodies and private entities performing public functions or receiving public funding.”

The oversight role of the Independent Information Commission (IIC) is provided under Section 1.3.6 that it shall be autonomous with responsibility to effectively implement this law.

Among its wide-ranging power, the IIC is charged under Section 1.3.1.1 to embark on a publication scheme to update the public on its activities. This is a cardinal responsibility that we have to pay attention to in evaluating the work of the critical structure in the access to information ecosystem in Liberia.

The Act was crafted based on four objectives that must be discussed to better understand its deeper essence. This starts with promoting effective, equitable and inexpensive exercise of the right of access to information; establishing clear and concise procedures for requesting and providing of information held by (i) public bodies and (ii) private bodies receiving public benefits or performing public functions or providing public service; establishing and providing for the exercise of a right to appeal any decision denying a request for information or infringing on the right of access to information; and providing appropriate penalties and other sanctions for wrongful failure to keep and or provide information.

Here we see the roles created for different actors in the fulfilment these objectives. For instance, the role of Public Information Officers as the first public point of contact to facilitate disclosure of requested information from custodians of such information in all public and relevant private entities. Provisions of internal review panels in Ministries, departments and agencies to show a practical demonstration of sincerity in handling cases where a requester feels dissatisfied and seeks redress at that institutional level before taking the next step if still not satisfied.

That next step is the arbitration of complaints filed to the IIC. The IIC can hold hearings and come out with decisions mostly looking at the merit of the request denied and authorize disclosure or rule against the application. In that case the next and final recourse is the court system where a requester denied information, can apply. We have not witnessed any significant court action in handling access to information matters and this major challenge to surmount.
Certainly, the beauty about the Liberian Law that makes it one of the finest on the continent is the provision of Section 3.2 Request for Information: “Every person, irrespective of their nationality or residence, may request, receive, reproduce and retain any information held by (1) a public authority or (2) private entity that receives public funds or engage in public functions or provision of public service; provided that in respect of private entities, the information shall relate to the public funds, benefit, functions or service.”

Liberia is clearly very magnanimous on this note- to open to all citizens of the world in the utilization of this law. This is unlike what is contained in other countries.

Another important provision to consider is the exemption clause for access to information. Chapter 4 Sections 4.1 running through 4.4, outlines the nature of exemptions including security, criminal investigation, trade secret, privileged information between heads of state. These could be genuine safeguards but the interpretations of such can be prone to abuse as our experience had shown in some instances in Liberia.

**The Independent Information Commission**

It took almost three years after the ATI law was passed for the office of the Independent Information Commission, IIC in Liberia to be set up. The delay was attributed to funding allocation, which many observers were predisposed to jibing as the beginning of the low-level political will to implement the Act. Howbeit, the appointed Commissioner Cllr. Bedor-Wla Freeman prided himself in the fact that he was the first to occupied that office on the continent.

The office has its range of specified functions in enforcement, compliance and outreach. Some of these functions have been highlighted in passing, for instance: the periodic reporting and arbitration of complaints by people who are denied requested information. The commission also has responsibility to raise awareness across the country so that citizens can understand the intrinsic benefit of the law and make use of its by requesting information from relevant duty bearers.

One tangible deliverable attributed to the ICC is the development of a five-year strategic plan since 2013. That document was a product of inclusive stakeholders’ engagement with support from donors. There is yet to be conducted an independent evaluation to assess the work of the IIC against targets set in strategic plan. There is also the IIC procedure booklet. All of these documents are supposed to be tools to guide the commission’s relationship with the public in dealing with complaints filed and outreach campaigns that are supposed to raise public trust in the application of the law.

We have followed the perennial complaints about budget inadequacies to especially do effective rural engagements. The Commission has been holding several hearings
and handing decisions but the enforcement of such decisions remains the bottle-neck. The commission has been networking with continental and global affiliates in the access to information arena. These include Africa Freedom of Information Center, AFIC.

Also, resident international partners including Internews, OSIWA and others have been providing technical support to the ICC.

It is noteworthy to state that in spite of the challenges that abound, the IIC has been forthcoming in its annual and periodic reporting obligations.

**Actions of State and Non-State Actors in Promoting Access to Information**

After passing the law, the issue of implementing it has become the next challenge for both state and non-state actors. One area that became very compelling to address was the sharing of knowledge about the law. In the context of Liberia where illiteracy level is high it was important to design messages that could be aired on community radios for folks to understand what the law is all about. There was also the need to train people to appreciate their roles from both demand and supply side of the law.

These two areas constituted civic society interface with state actors. Civil society driven radio messages in local dialects that were created targeted not only the general public but also duty bearers in ministries, department and agencies about issues that border on FOI architecture in terms of material and personnel. The issue of the deploying Public Information Officers (PIOs), the archiving and retrieving of information were all training and messaging areas that CSOs under the umbrella body Liberia Freedom of Information Coalition have been engaged with. Other civil society organizations have been involved with these actions.

Hundreds of journalists and civil society actors were especially trained to make use of the law as a way of testing the system and even embarking on investigative reporting.

Citizens Guides of the law have been published and circulated to aid the process of raising the level of public understanding by reducing the works of the Act into simple and less legalistic jargons. There is need to reproduce these booklets and shared in schools so that students can internalize and be agents of change in promoting an access to information regime.

The disappointment is that there has been more request filed than disclosure responses. The record shows that journalists have filed more request for information than any other sector of the society.

How this truth has become uncontested can be attributed to the use of technology along the line in tracking FOI application and responses. FOI digital tracking
application that USAID commissioned in 2014 was short-lived. It is a lost opportunity for innovation in the architecture that must be revamped.

The dossier of cases compiled and released by the IIC has also been pointing to the demand and supply trend including institutions of relative compliance among vast array of defaulting ministries, departments and agencies.

### FOI Request Filing Patterns and Status

The table is based on an analysis done by Center for Media Studies and Peacebuilding based on INTERNEWS supported project for the center to provide technical support to the IIC. This table clearly buttress the claim that journalists have taken lead in request filling followed women under the auspices of the NGO secretariat. The data is summary running since 2013 to 2020. It is reflective of the weak disclosure situation, which is dampening the resolve to the populace to access information.

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<thead>
<tr>
<th>Stats and case source</th>
<th>FOI document type</th>
<th>Action and Comments</th>
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<tbody>
<tr>
<td>Fourteen from media groups and journalists</td>
<td>Relating to accountability of funds and other resources</td>
<td>Mostly unresolved with IIC promising to follow up</td>
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<tr>
<td>Twelve cases reported by the Women NGO secretariat</td>
<td>Gender related accountability issue</td>
<td>Cases were validated but not heard. The IIC asked for resubmission of complaints because of change of leadership</td>
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<tr>
<td>Seven County based FOI networks filed complaints</td>
<td>Ebola prevention and control resources</td>
<td>Mostly respondents and complainants could not attend the hearings</td>
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<tr>
<td>Seven respondents mostly from government entities failed to appear</td>
<td>Accountability related on funds and expenses</td>
<td>IIC promised to follow up and in some of the cases no explanation was provided as to why enforcement of decisions was delayed</td>
</tr>
<tr>
<td>Four cases were enforced</td>
<td>Budget and procurement related</td>
<td>Documents requested were provided with fines paid</td>
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Trends in Access to Information in Liberia

What has been happening around the application of the law that remains fraught reflect the actions of state actors, international partners and civil society. We have witnessed collaborative engagement where some ministries have partnered with ICC in programs that were designed to promote the usage of the law. Such engagement could not be many to take stock of but suffice it to state that these collaborative actions have the tendency of sending out the message that government line ministers have obligations under this law. It is therefore a means of inspiring less compliant entities to rise to the occasion in embracing access to information.

Grassroot FOI networks were created by CSOs and the Carter Center across the country. These networks were provided with tools including request filing templates and resources to hold local authorities accountable. But the truth is most of these structures have gone defunct because the result of their evidence-based advocacy has not been sufficient to sustain the passion in pursuing evidence-based advocacy.

During Ebola, USAID provided capacity building trainings for good governance promoting NGOs. The NGOs in turn trained local communities in the same approach to follow up on funds that were allocated for Ebola containment. The local communities filed request filing that yielded considerable data about how resources were misapplied. There was little or less penalties accorded to the findings bordering on corruption and embezzlement. Such a situation has contributed to the whittling down of the momentum among the citizenry about efficacy of the law in fighting corruption.

Lots of requests have over the years been filed for information around county social development funds but very little responses were received.

Where complaints have been filed to the Independent Information Commission, IIC, recommendations made to the judiciary for prosecution of non-compliant disclosing parties have been the weakest link. The report card of institutional performance relative to supporting access to information as released by the IIC last year showed that out of 72 ministries, departments and agencies, only 56 have functional websites. The report also indicated that only forty-two appointed Public Information Officers (PIOs), forty-one of them have internal review body as first point of redress before transferring cases to the ICC and sadly only eight of them had uploaded their annual reports of their websites.

In the 2020 report, there is slight increment in the number of appointed PIOs 47 as compared to 40 last year. There are 63 functional websites among the 72 institutions profiled. This represents a big leap compared to last year’s 56. There is, however, still a poor showing in the usage of the websites especially the upload of the mandatory institutional annual report that only eight institutions have uploaded. This figure is the same as last year and represents a stagnation. Forty-seven institutions have internal review bodies, slight increase from last year forty-one.
There is key message contained in IIC report card. It is saying that institutional compliance in engendering an access to information regime based on the four parameters of functional websites, appointment of public information officers, setting up of internal review body and upload of annual reports reflects slow progress and stagnation. Whilst the number of compliant institutions is encouraging and shows sign of progress but the pace of filling gaps noticeable at snail pace as the figure shows over the past two years.

The good news is that we have seen increased deployment of PIOs in ministries and the Center for Media Studies and Peacebuilding (CEMESP) and other institutions have been providing specialized trainings for them to aid the roles in proactive disclosure using online and offline channels. But still we are faced with inadequacy of most of the websites in upload of pertinent information. Clearly, we are still expecting much from the PIOs to restore eroding public confidence in the law.

The stunning details can be spotted about the consistent failure of strategic institutions such as the House of Representative and Senate without appointed Public Information Officers (PIO), functional websites, no means to access their annual report and no internal review body set. The lawmakers are therefore not supportive of the access to information regime even as they passed the Law. This contrast with Ministry of Justice that has met most of the FOI compliance requirements but only failing in the upload of the annual reports. The Ministry of State for Presidential Affairs has not appointed a PIO but its website is functional with annual reports uploaded thereon. The Ministry of Information, Culture and Tourism meets the three criteria of having appointed a PIO, maintains a functional website, instituted a review panel but has not uploaded its annual report.

The consistent dismal picture of public institutions failure to release their annual reports is a grave disservice to accountability and Transparency. And here, we are appalled to note that the biggest champion accountability and transparency as provided in law, the Liberia Anti-Corruption Commission that is ought to lead by example has not uploaded its annual report.
## Barriers, Enablers and Barriers to Access to Information

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<th>Drivers to access to information</th>
<th>Enablers to access to information</th>
<th>Barriers to access to information</th>
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<tr>
<td>Projects that promote FOI Law usage as a tool in fighting corruption</td>
<td>Actions from duty bearers that act on information that inspire requesters</td>
<td>Unavailability of request information owing to institutional logistical gaps in reproducing requested information</td>
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<td>Political will to support the ICC adequately to reach out in the counties and exert influence over non-compliant local authorities</td>
<td>Increased media content on access to information law application can help restore public confidence whilst creating apprehension among defaulter public officials about the legal obligations of the law</td>
<td>The inaction of the judiciary to hand one case precedent for FOI Law violations</td>
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<td>Synergies from integrity institutions such Anti-Corruption Commission, Independent Human Rights Commission, the Open Budget Initiatives, Open Government Partnership, LEITI etc</td>
<td>Improved and affordable internet connectivity</td>
<td>High cost of voice and data calls especially for those who live in rural areas that may want to follow up on requests filed or want to take advantage of available uploaded information on websites</td>
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<tr>
<td>Enhanced Independent Information Commission that can innovate to navigate the difficult ecosystem by networking, extra resource mobilization to reach out rural areas</td>
<td>Decentralization of services to the counties</td>
<td>Concentration of state institutions in the capital and poor road network that discourage extension and sustenance of FOI supportive projects in some remote areas in the counties</td>
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Conclusion and Recommendations

Talking about access to information in Liberia will take us to the issue of fake news and disinformation that has become very rife especially in the COVID-19 context. Considering the consequences of fake news on national stability, the importance of access to information cannot over-emphasized.

The record shows that from 2013 to date, the IIC has documented forty-eight cases of complaints filed by various members of the public. This is very small number and it means that the IIC has to exert itself in building public trust for more people to find recourse to its oversight structure. The ICC must take a project driven approach rather than being reliant on low budget allocations. There remains high donor good will for FOI related projects to tap into.

Journalists are under moral obligation to help build up the waning momentum in implementing the Law. Granted that the record shows they are making use of the Law and getting less response, they should be inspired by that fact to push the agenda of raising the bar in asserting the right to information. The media needs to continue asking using the Law and putting pressure on duty bearers to ensure an effective implementation of the Law.

The court system has to rise above the reproach in helping the work of the IIC. Clearly, Liberia needs case precedent in penalties for those who unlawfully deny requested information. When the public starts hearing about the Law biting those violating the FOI Law, it will serve as a deterrent measure to the pervasive trend that has made the FOI Act something of paper tiger.

Having identified some specific lapses, the mistake must not be made to thrash all efforts that have gone into entrenching access to information. It is not a lost cause in Liberia. There are a lot of issues revolving around access to information that must be celebrated even as much needs to be done to fully maximize the inherent power in the Law.

The increasing appointment of PIOs is one such good news. The increasing hosting of websites. Institutions are showing some level of preparedness to guarantee citizens right to relevant information. But information uploaded must not be based on cherry picking, statistics and data that shed light on performance and underperformance. Information that the people can use to make good decisions and investment must be proactively disclosed in forms that user friendly.

This paper has illustrated the strength, opportunities, and threats in FOI ecosystem and the tried and tested collective action that led to the enactment of the law must be marshalled to make up for the gaps.
It is safe to conclude on the compelling caution that all stakeholders must assume their roles and responsibilities in earnest in promoting an FOI regime. Consolidate the gains and fill the gaps. But undeniably, the government must take the lead in protecting this right as there are benefits to trickle down in political legitimacy when the culture of transparency is guaranteed beyond lip service.