

**People's Access to Information and the Constitution of the Federal Republic of Nigeria**

**Key Provisions**

Article 39(1) of the Constitution includes the right to receive and impart ideas and information without interference as part of the right to freedom of expression. Given below is a quick compilation of various constitutional provisions that –

- a) require public authorities and actors to furnish information to an individual or persons directly or
- b) have a bearing on the constitutional imperatives of transparency and accountability.

#	Chapter / Theme / Article
<b>Preamble:</b>	
1	<p>The Preamble states that the Constitution has been out together in order to promote, among other things, good government. Transparency and accountability are universally recognised as the hall marks of good governance. Providing people with the access to information about government is crucial to the achievement of the constitutional objective.</p> <p><i>"We the people of the Federal Republic of Nigeria...</i></p> <p><i>...to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people</i></p> <p><i>Do hereby make, enact and give to ourselves the following Constitution:-"</i></p>
<b>Chapter 2: Fundamental Objectives and Directive Principles of State Policy</b>	
2	<p>Articles 14(1) and (2) recognise that sovereignty belongs to the people of Nigeria and government derives all its powers and authority from them through the Constitution. The encouragement of people's participation is an imperative of State policy. This formulation clearly implies the recognition of the principle that people are the masters in a democracy and functionaries of the government are but their servants. When this is the basic principle, all laws rules, regulations and practices that create obstacles in the way of people's access to information held by government bodies are violative of the <i>grundnorm</i>. Effective systems and credible processes must be put in place without further delay in order to restore the power of information to people who are its rightful owners.</p> <p><i>"(1) The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice.</i></p> <p><i>(2) It is hereby, accordingly, declared that:</i></p> <ul style="list-style-type: none"><li><i>(a) sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority;</i></li><li><i>(b) the security and welfare of the people shall be the primary purpose of government: and</i></li><li><i>(c) the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution."</i></li></ul>

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3	<p>Article 22 states that the mass media shall have the freedom to uphold the objectives outlined in relation to the directive principles of state policy. They also are required to uphold accountability of the Government to the people. Enforcing accountability requires transparency in matters relating to discussions made and the underlying processes. Systems for providing access to information in a effective manner will have to be set up in order to pursue this constitutional goal.</p> <p><i>"The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the people."</i></p>
<p><b><u>Chapter 4: Fundamental Rights</u></b></p>	
4	<p>Under Article 35(3), any person who is arrested or detained by law enforcement authorities has the right to know the reasons for his/her arrest or detention in writing. He must also be informed about his/her right to legal representation.</p> <p><i>"(3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention."</i></p>
5	<p>Articles 36(3) and (4) guarantee every person charged of a criminal offence the right to be tried in public ordinarily. This means any person could attend the trial and witness the entire proceedings unless the court makes a decision to hold the proceedings behind closed doors.</p> <p><i>"(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.</i></p> <p><i>(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:</i></p> <p><i>Provided that -</i></p> <p><i>(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;</i></p> <p><i>(b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter."</i></p>
6	<p>Article 36(6)(a) guarantees every person the right to know details about the offence for which he/she is charged in a familiar language. Clause (e) of the same Article guarantees every person under trial the right to be assisted by an interpreter free of cost of he is unfamiliar with the language in which court proceedings are conducted.</p> <p><i>"(6) Every person who is charged with a criminal offence shall be entitled to -</i></p> <p><i>(a) be informed promptly in the language that he understands and in detail of the nature of the offence...</i></p> <p><i>(e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.)"</i></p>

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7	<p>Article 36(7) entitles every person tried by a court of law or tribunal to obtain copies of the judgement at the end of the proceedings.</p> <p><i>“(7) When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any persons authorised by him in that behalf shall be entitled to obtain copies of the judgement in the case within seven days of the conclusion of the case.”</i></p>
8	<p>Articles 39(1), and 45(1) guarantees every person the right to free speech and expression including the right to receive and impart information without any interference. However these rights are subject to certain lawful restrictions.</p> <p><i>“39 (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.</i></p> <p><i>(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society –</i></p> <p><i>(a) for the purpose of preventing the disclosure. of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or</i></p> <p><i>(b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.”</i></p> <p><i>45 (1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society</i></p> <p><i>(a) in the interest of defence, public safety, public order, public morality or public health; or</i></p> <p><i>(b) for the purpose of protecting the rights and freedom of other persons</i></p>

**Chapter 5: The Legislature**

**Part I: National Assembly**

9	<p>Articles 52(1) and (2) require Members of the National Assembly to make a declaration of their assets and liabilities before taking the oath of allegiance upon election. A citizen of Nigeria can access these declarations according to Article 3 of Section A of Part I of the 3<sup>rd</sup> Schedule of the Constitution.s</p> <p><i>“(1) Every member of the Senate or the House of Representatives shall, before taking his seat, declare his assets and liabilities as prescribed in this Constitution and subsequently take and subscribe the Oath of Allegiance and the oath of membership as prescribed in the Seventh Schedule to this Constitution before the President of the Senate or, as the case may be, the Speaker of the House of Representatives, but a member may before taking the oaths take part in the election of a President and a Deputy President of the Senate, as the case may be, or a Speaker and a Deputy Speaker of the House of Representatives.</i></p> <p><i>(2) The President and Deputy President of the Senate and the Speaker and the Deputy Speaker of the House of Representative s shall declare their assets and liabilities as prescribed in this Constitution and subsequently take and subscribe the Oath of Allegiance and the oath of membership prescribed as aforesaid before the Clerk of the National Assembly.”</i></p>
10	<p>Article 88(1) requires the National assembly to publish in its journal or in the Official Gazette any resolution relating to the investigation of matters in respect of laws, conduct of affairs of government functionaries or manner of use of public funds.</p>

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	<p><i>“(1) Subject to the provisions of this Constitution, each House of the National Assembly shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed investigation into-</i></p> <ul style="list-style-type: none"><li><i>(a) any matter or thing with respect to which it has power to make laws, and</i></li><li><i>(b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for-</i><ul style="list-style-type: none"><li><i>(i) executing or administering laws enacted by National Assembly, and</i></li><li><i>(ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly.”</i></li></ul></li></ul>
<p><b><u>Chapter 5: The Legislature</u></b></p> <p><b><u>Part II: House of Assembly of a State</u></b></p>	
11	<p>Articles 94(1) and (2) require Members of the House of Assembly of a State to make a declaration of their assets and liabilities before taking the oath of allegiance upon election. A citizen of Nigeria can access these declarations according to Article 3 of Section A of Part I of the 3<sup>rd</sup> Schedule of the Constitution.</p> <p><i>“(1) Every person elected to a House of Assembly shall before taking his seat in that House, declare his assets and liabilities in the manner prescribed in this Constitution and subsequently take and subscribe before the Speaker of the House, the Oath of Allegiance and oath of membership prescribed in the Seventh Schedule to this Constitution, but a member may, before taking the oaths, take part in the election of the Speaker and Deputy Speaker of the House of Assembly.</i></p> <p><i>(2) The Speaker and Deputy Speaker of a House of Assembly shall declare their assets and liabilities in the manner prescribed by this Constitution and subsequently take and subscribe to the Oath of Allegiance and the oath of membership prescribed as aforesaid before the Clerk of the House of Assembly.”</i></p>
12	<p>Article 128(1) requires the House of assembly of a state to publish in its journal or in the Official Gazette any resolution relating to the investigation of matters in respect of laws, conduct of affairs of government functionaries or manner of use of public funds.</p> <p><i>“(1)Subject to the provisions of this Constitution, a House of Assembly shall have power by resolution published in its journal or in the Office Gazette of the Government of the State to direct or cause to be directed an inquiry or investigation into-</i></p> <ul style="list-style-type: none"><li><i>(a) any matter or thing with respect to which it has power to make laws; and</i></li><li><i>(b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for -</i><ul style="list-style-type: none"><li><i>(i) executing or administering laws enacted by that House of Assembly, and</i></li><li><i>(ii) disbursing or administering moneys appropriated or to be appropriated by such House.”</i></li></ul></li></ul>
<p><b><u>Chapter 6: The Executive</u></b></p> <p><b><u>Part I: Federal Executive</u></b></p>	
13	<p>Article 140(1) requires the President to declare his/her assets and liabilities before taking the oath of office. A citizen of Nigeria can access these declarations according to Article 3 of Section A Part I of the 3<sup>rd</sup> Schedule of the Constitution.</p> <p><i>“(1) A person elected to the office of President shall not begin to perform the functions of that office until he has declared his assets and liabilities as prescribed in this Constitution and he has taken and subscribed the Oath of Allegiance and the oath of office prescribed in the Seventh Schedule to this Constitution.”</i></p>

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14	<p>Article 144(2) requires that any notice signed by the presiding officers of the house of the National Assembly regards the disability of the President be published in the Official Gazette so that people many have access to such information.</p> <p><i>“(2) Where the medical panel certifies in the report that in its opinion the President or Vice-President is suffering from such infirmity of body or mind as renders him permanently incapable of discharging the functions of his office, a notice thereof signed by the President of the Senate and the Speaker of the House of Representatives shall be published in the Official Gazette of the Government of the Federation.”</i></p>
15	<p>Article 149 requires the Federal Ministers to declare their assets and liabilities before taking the oath of office. A citizen of Nigeria can access these declarations according to Article 3 of Section A of Part I of the 3<sup>rd</sup> Schedule of the Constitution.</p> <p><i>“A Minister of the Government of the Federation shall not enter upon the duties of his office, unless he has declared his assets and liabilities as prescribed in this Constitution and has subsequently taken and subscribed the Oath of Allegiance and the oath of office for the due execution of the duties of his office prescribed in the Seventh Schedule to this Constitution.”</i></p>
16	<p>Article 152 requires a Special Adviser to declare his/her assets and liabilities before taking the oath of office. A citizen of Nigeria can access these declarations according to Article 3 of Section A of Part I of the 3<sup>rd</sup> Schedule of the Constitution.</p> <p><i>“A person appointed as Special Adviser under section 151 of this Constitution shall not begin to perform the functions of his office until he has declared his assets and liabilities as prescribed in this Constitution and has subsequently taken and subscribed the Oath of Allegiance and oath of office prescribed in the Seventh Schedule to this Constitution.”</i></p>
<b>Part II: State Executive</b>	
17	<p>Article 185(1) requires the Governor of a State to declare his/her assets and liabilities before taking the oath of office. A citizen of Nigeria can access these declarations according to Article 3 of Section A of Part I of the 3<sup>rd</sup> Schedule of the Constitution.</p> <p><i>“(1) A person elected to the office of the Governor of a State shall not begin to perform the functions of that until he has declared his assets and liabilities as prescribed in the Constitution and has subsequently taken and subscribed the Oath of Allegiance and oath of office prescribed in the Seventh Schedule to this Constitution.”</i></p>
18	<p>Article 189(2) requires that any notice signed by the presiding officers of the House of the Assembly regards the disability of the Governor or Deputy Governor be published in the Official Gazette so that people may have access to such information.</p> <p><i>“(2) Where the medical panel certifies in its report that in its opinion the Governor or Deputy Governor is suffering from such infirmity of body or mind as renders him permanently incapable of discharging the functions of his office, a notice thereof signed by the Speaker of the House of Assembly shall be published in the Official Gazette of the Government of the State.”</i></p>
19	<p>Article 194 requires a Commissioner of the Government of a State to declare his/her assets and liabilities before taking the oath of office. A citizen of Nigeria can access these declarations according to Article 3 of Section A of Part I of the 3<sup>rd</sup> Schedule of the Constitution.</p> <p><i>“A Commissioner of the Government of a State shall not enter upon the duties of his office unless he has declared his assets and liabilities as prescribed in this Constitution and has subsequently taken and subscribed the oath of Allegiance and the oath for the due execution of the duties of his office prescribed in the Seventh Schedule to this Constitution.”</i></p>
20	<p>Article 196(4) Special Adviser to declare his/her assets and liabilities before taking the oath of office. A citizen of Nigeria can access these declarations according to Article 3 of Section A of Part I of the 3<sup>rd</sup> Schedule of the Constitution.</p>

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	<p><i>"(4) A person appointed as a Special Adviser under subsection (1) of this section shall not begin to perform the functions of the office unless he has declared his assets and liabilities as prescribed in this Constitution and has subsequently taken and subscribed the Oath of Allegiance and the oath of office prescribed in the Seventh Schedule to this Constitution."</i></p>
<p><b><u>Part III: Supplemental</u></b></p>	
21	<p>Article 213 contemplates reports of the National Population Commission containing the population census. Article 213(4) places an obligation on the President to publish such reports in the Official Gazette so that people may have access to such information.</p> <p><i>"(4) Where the President accept such report and has laid it on the table of each House of the National Assembly he shall publish it in the official Gazette of the Government of the Federation for public information."</i></p>
22	<p>Article 225 requires all political parties to publish a statement of assets and liabilities at such intervals as may be determined by the Electoral Commission. It is not clear as to where such information will be published.</p> <p><i>"(1) Every political party shall, at such times and in such manner as the independent National Electoral Commission and publish a statement of its assets and liabilities."</i></p>
<p><b><u>Chapter 7: The Judicature</u></b></p>	
23	<p>Article 290(1) requires persons entering judicial office to declare his/her assets and liabilities before taking oath of office. A citizen of Nigeria can access these declarations according to Article 3 of Section A of Part I of the 3<sup>rd</sup> Schedule of the Constitution.</p> <p><i>"(1) A person appointed to any judicial office shall not begin to perform the functions of that office until he has declared his assets and liabilities as prescribed under this Constitution and has subsequently taken and subscribed the Oath of Allegiance and the Judicial Oath prescribed in the seventh Schedule to this Constitution."</i></p>
24	<p>Article 294(1) states that all parties involved in a court case are entitled to an authentic copy of its decision within seven days of its delivery. However it is not clear whether people who are not parties to the case also have access rights as is the case in other jurisdictions such as the UK and India.</p> <p><i>"(1) Every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof."</i></p>
<p><b><u>Chapter 8: Federal Capital Territory, Abuja and General Supplementary Provisions</u></b></p>	
25	<p>Articles 305(1) requires the President to publish the Proclamation of a State of Emergency in the Official Gazette for people's information. Similarly a Proclamation revoking the State of Emergency is required to be published in the Official Gazette under Article 305(6) (a).</p> <p><i>"(1) Subject to the provisions of this Constitution, the President may by instrument published in the Official -Gazette of the Government of the Federation issue a Proclamation of a state of emergency in the Federation or any part thereof."</i></p> <p><i>"(6) A Proclamation issued by the President under this section shall cease to have effect –</i></p> <p><i>(a) if it is revoked by the President by instrument published in the Official Gazette of the Government of the Federation..."</i></p>

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**Third Schedule**

**Part I: Federal Executive Bodies**

26	<p>Section A of Part I contemplates the creation of a Code of Conduct Bureau, empowered to receive and examine declarations made under any law of Nigeria. Article 3 requires the Bureau to lay down the procedure and terms and conditions for citizens of Nigeria to inspect declarations of assets made by government functionaries under the government.</p> <p><i>"The Bureau shall have power to:</i></p> <p>...</p> <p><i>(c) retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe..."</i></p>
27	<p>Section F of Part I contemplates the creation of an Independent National Electoral Commission. Article 15(d) requires the Commission to publish a report of the audit of the funds and accounts of political parties every year. It is not clear as to where such reports are required to be published- the Official Gazette or the mass media.</p> <p><i>"15. The Commission shall have power to-</i></p> <p>...</p> <p><i>(d) arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;"</i></p>

**Fifth Schedule**

**Part I: Code of Conduct for Public Officers**

28	<p>Subject to Article 14, Article 11(a) requires every public officer to submit a time bound declarations of assets and liabilities. A citizen of Nigeria can access these declarations according to Article 3 of Section A of Part I of the 3<sup>rd</sup> Schedule of the Constitution.</p> <p><i>"(1) Subject to the provisions of this Constitution, every public officer shall within three months after the coming into force of this Code of Conduct or immediately after taking office and thereafter -</i></p> <p><i>(a) at the end of every four years; and</i></p> <p><i>(b) at the end of his term of office,</i></p> <p><i>submit to the Code of Conduct Bureau a written declaration of all his properties, assets, and liabilities and those of his unmarried children under the age of eighteen years."</i></p>
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**Compiled by James M Ferguson and Venkatesh Nayak for Commonwealth Human Rights Initiative.**