

## **NIGERIA'S SENATE PASSES FOI BILL**

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15 November 2006*

Nigeria's Senate today unanimously passed the Freedom of Information Bill following a clause by clause consideration of the bill and the conclusion of the third reading at its plenary session.

Senate President, Senator Ken Nnamani, said shortly after the Senate voted to pass the Bill with only slight amendments that he was pleased that the "bill which has been pending for a very long time has now seen the light of day." The Bill has been pending before the National Assembly since the beginning of this political dispensation in 1999.

At the commencement of the proceedings, as is the tradition in the Senate, Senator Dalhatu Tafida, the Senate Majority leader, moved a motion for the Chairman of the Senate Ad Hoc Committee on the Freedom of Information Bill, Senator Victor Ndoma-Egba (SAN) to present of the report of the Committee. The motion was carried, whereupon Senator Ndoma-Egba presented the report.

In his presentation, Senator Ndoma-Egba noted that the Bill emanated from the House of Representatives, which has previously passed it, and recalled that the bill was referred to the Ad Hoc Committee during the Senate plenary session on Tuesday, March 14, 2006. Prior to this, the bill had been considered by the Senate Committee on Information.

He stated that the main purpose of the Bill was to guarantee members of the public a right of access to information held by government institutions and stressed the benefits of the bill, one of which was to enable the active participation of members of the public in public discourse on issues of governance.

Senator Ndoma-Egba also explained the Committee's method of work. He said on Wednesday, April 12, 2006, the Ad Hoc Committee met to discuss the Bill and the work so far done on it by the Committee on Information, which was previously handling the Bill. He said during the meeting, members of the Ad Hoc Committee agreed that not all the critical stakeholders participated, either by making presentations or submissions, during the public hearing held by the Information Committee on April 26, 2005, especially government institutions. He said the Ad Hoc Committee therefore decided to invite memoranda and hold a public hearing for these critical stakeholders as the Bill is about information held by public institutions.

The Ad Hoc Committee therefore invited comments from the following agencies:

The Secretary to the Government of the Federation;

The Head of Service of the Federation;

The Nigerian Police Force;

The State Security Service (SSS);

The Independent Corrupt Practices and Other Related Offences Commission (ICPC);

The Economic and Financial Crimes Commission (EFCC);

The Nigerian Stock Exchange;

The Corporate Affairs Commission (CAC);

The Nigerian Intelligence Agency (NIA);

The Securities and Exchange Commission (SEC);

The Directorate of Military Intelligence (DMI);

The Immigrations Service;

The National Drug Law Enforcement Agency (NDLEA);

The Nigerian Customs Service;

The Defence Intelligence Agency; and

The National Agency for Food, Drug Administration and Control (NAFDAC).

Senator Ndoma-Egba said on April 28, 2006, some of the agencies met with the Ad Hoc Committee to present their provisions on the Bill. The agencies which met with the Committee were: the Nigerian Police Force, the SSS, the NIA, the Immigration Service, the EFCC, the NDLEA, the Nigerian Customs, the CAC, and the Defence Intelligence Agency.

He stated that some of the agencies supported the Bill wholeheartedly, while some of them had some reservations on certain clauses in the bill but nonetheless supported its passage. He added that it was only the NDLEA which wanted the Bill rejected in its entirety.

Senator Ndoma-Egba said the Committee also made reference and comparisons to similar laws in other parts of the world, including the United States Freedom of Information Act; the South African Promotion of Access to Information Act; and the United Kingdom's Freedom of Information Act in preparing its report.

At the end of his presentation, he said the Ad Hoc Committee was recommending that the bill be passed by the Senate.

Senator Tafida then moved a motion for the adoption of the Committee's report and was seconded by Senator Daniel Saror. The motion was unanimously carried, following which the Senate accepted the report for consideration. Senator Tafida then moved another motion that the Senate dissolves into a 'Committee of the Whole' house to consider the bill clause by clause. The motion was again unanimously carried.

Chairing the 'Committee of the Whole' house, Senator Nnamani noted that the bill has 34 clauses and one long title and no schedule. He then proceeded to call out the clauses one by one.

On Section 2 of the bill, Senator Mohammed Aji, suggested that the right of access to information granted by the bill should be amended to apply only to "declassified public" record, instead of to "any" record, as stated in the Bill. He said this was necessary to protect national security information, which would be endangered if access was allowed to all records and documents of the Government. This, he said, was particularly important because the Ad Hoc Committee had not invited the Ministry of Defence to present a memorandum on the Bill, even though it invited security and intelligence agencies.

Besides, he argued, it was also necessary to protect the personal information of citizens as government institutions hold a lot of private information and it would be undesirable for citizens to be able access the personal information of private citizens held by the government.

He was immediately opposed by Senator Abubakar Danso Sodangi, who argued that although he agreed that all government records should not be opened to the public, Senator Aji's concerns had already been taken care of by other provisions in the Bill which exempt defence and national security information from public access.

Senator Sodangi was supported by Senator Olusola Ogunbanjo who pointed out that Sections 13 and 17 of the Bill had already taken care of those issues.

Also opposing Senator Aji's suggestion, the Chairman of the Senate Committee on Information, Senator Tawar Wada, argued that the amended sought by Senator Aji was unnecessary. He stressed that public institutions hold information as custodians for the public and that the purpose of the Bill was to declassify government information and make them available to members of the public, adding that if the right of access was limited to declassified information, government institutions would just keep classifying their records and documents and the purpose of the Bill would be defeated.

When the Senate President put the section to vote, the Senators unanimously voted that the original provision in the bill should be retained.

There were also extensive debates on the issue of fees payable by members of the public for access to records and documents. Senator Sodangi, who flagged off the issue, argued that section 9 of the Bill, which deals with fees, should set a maximum amount payable as fees so that the issue would not be left to the discretion of the government organization involved. Such an approach, he said, would make it possible for an average Nigerian and journalists who use the information in the public interest to obtain records and documents without paying.

Senator Wada also supported the view, arguing that if the issue was left to the "whims and caprices" of the public institutions concerned, they could make the fees payable for access so high that it would be impossible for a lot of people to access records and information and in this way, they would be denying members of the public access.

He said the Committee on Information, in its earlier report, had suggested that there should be an agency to regulate the issue of fees and urged the Senate not to leave the issue to the discretion of the government institutions.

But Senator Ndoma-Egba noted that it would be difficult to specify fees for all types of records across board for all government institutions and that the Senate was not the appropriate institution to undertake such an exercise. He noted that under the Bill, records

and documents could be given in various forms, which would affect the fees payable, while search and duplication of records and documents would also vary from one organization to another. Owing to these institutional differences, he suggested that the setting of fees should be left to the government institutions.

He also noted all government institutions were required under the bill to make regulations to prescribe the fees to be payable for access to various types of records and documents and that once this was done at the onset, it would forestall any arbitrary imposition of fees. He urged his colleagues to trust public institutions to do the right thing.

The Senate President agreed that public institutions should be trusted to do the right thing and suggested that the provision should be left as it was.

Senator Daniel Saror sparked off another controversy over the provisions of Section 10 of the bill which prescribes a 3-year jail-term for the destruction or falsification of public record, arguing that the proposed law should make provision for the option of a fine.

But Senator Ndoma-Egba disagreed saying that the Committee was of the view that and that destruction or falsification of public records was such a serious offence that there should be no option of a fine. He insisted that such "criminal breach of trust" should be visited with the highest sanction possible.

Senator Tafida agreed the punishment for destruction or falsification of public records should be imprisonment but suggested that the court should be given discretion on the term of imprisonment to be imposed. He therefore recommended that the provision should be amended to prescribe a maximum term of three years imprisonment so that a judge would have the discretion to impose a lesser term. His suggestion was supported by Senator Ogunbanjo, Senator Wada and Senator Ndoma-Egba.

When the Senate President put the issue to vote, the Senators unanimously voted that the provision be amended to prescribe a maximum term of 3 years imprisonment. He then put the question to the Senators whether they agreed that all the clauses of the bill, including Section 10 as amended, be allowed to remain part of the bill and they all chorused "aye" .

At the end of the debates, Senator Tafida thanked the Senate for considering the bill and moved for the adoption of the recommendations in the report of the Ad Hoc Committee. The motion was seconded by Senator Saror and carried by the entire House.

At this point, Senator Ken Nnamani observed that the bill which has been pending for a long time has finally seen the light of day.

Reconvening in plenary, the Senate President recounted the agreements on the Bill during the proceedings of the "Committee of the Whole" house and asked his colleagues if his account reflected what happened. The entire Senate chorused "aye".

After this, Senator Tafida moved another motion for the bill to be formally read the third time, which was again seconded by Senator Saror and carried. The clerk of the Senate then read the long title of the Bill. The Senate President thereafter ruled that the bill has been read a third time and passed.

The bill still has to go through a harmonization process for the versions passed by the House of Representatives and the Senate to be harmonized before an agreed version is sent to the President for assent. The President will thereafter have 30 days to assent to the bill, failing which it will come back to the National Assembly where it be passed into law by two-thirds majority of the members, regardless of any presidential veto.