

FREEDOM OF INFORMATION AND DIGITAL RIGHTS

A legislative advocacy guide for civil society advocates



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Why this toolkit?

Nigeria has seen a rise in attempts to shut down civic space in the last decade. There have been several crackdowns on the journalists, social critics, bloggers, and activists who have dared to challenge Nigeria's culture of impunity, corruption, and human rights abuses. The Nigerian government has responded with restrictions on free speech, freedom of association, and religious and assembly rights by introducing several bills such as the NGO Bill, the Cyberterrorism Act, and the Hate Speech Bill, among others. Freedom of expression, free press and uncensored media access remain sacrosanct for any democratic society that wants to thrive and should thus be adequately protected.

Therefore, this toolkit is aimed at increasing public support and stakeholder awareness of some of the threats posed by the Nigerian government to the civic space. Particularly, this toolkit focuses on the Digital Rights and Freedom Bill and the Freedom of Information Act, which are two legislations that have the potential to transform the Nigerian civic space positively.

This toolkit will help stakeholders understand the issues, landscape, actions and key messages to achieve the goal of increasing public support for the Digital Rights and Freedom Bill and the Freedom of Information Act.

Who is the toolkit for?

This toolkit has been designed for various stakeholders, including members of the SCALE Cluster, Civil Society Organizations, political

appointees and civil servants, especially those in federal and state MDAs, federal and state legislators; the media; citizens and advocates.

How to use this toolkit

The toolkit has been organized to present relevant data about the Digital Rights and Freedom Bill and the Freedom of Information Act in an accessible way that is easy to understand. It contains background information and contextual analysis for both legislations. Additionally, it includes key

messages for stakeholders who wish to take action and advocate for both legislation. This toolkit should be used for information sharing, stakeholder engagement and capacity building on key issues.



An overview of Digital Rights and the Digital Rights and Freedom Bill

Background

In the age of information, digital rights are fundamental human rights. The freedom of expression and the right to privacy online are part of the basic human rights enshrined in the Universal Declaration of Human Rights. Similarly, according to the United Nations, disconnecting people from the internet violates their rights and thus contravenes international law.

More than half of the Nigerian population are connected to the internet. According to reports from Data Reportal, Nigeria had 104.4 million internet users as at January 2021 and 187.9 million mobile connections¹. With much of modern life now being lived online, the protection of digital rights is crucial for the safety of the Nigerian civic space.

The use of the internet comes with its own unique challenges and emerging issues. Some of these challenges and issues are: citizens' data protection, freedom of expression online, internet governance, regulation, and shutdown, as well as the issue of online privacy and surveillance technology². Most recently, Nigeria has experienced censorship and restrictions online. These issues presented the necessity of the Digital Rights and Freedom Bill.

The Digital Rights and Freedom Bill (DRFB) passed in the National Assembly in 2019 but was not assented to by the President (it was not signed into law). The Presidential assent was declined on the basis that the bill covers too many technical subjects and fails to address any of them extensively³.

The Bill seeks to enact laws that protect digital rights, including the right to online privacy, anonymity, freedom of expression and opinion, freedom of information, the right to peaceful assembly and association online, freedom to learn, protection of privacy of students online, the right to create public knowledge, e-governance and financial transparency.

The passage of the DRFB will guarantee a safe digital space for Nigerians. In addition, it requires transparency and the disclosure of how our data is collected and used by companies, governments and other web giants, including Facebook, Twitter, Google. The DRFB is also important because it tackles important issues such as censorship, the prohibition of hate speech, content blocking, filtering and moderation, intellectual property in public work, and the protection of people with disabilities.

Freedom of information in Nigeria

The Freedom of Information (FoI) Act is important legislation requiring public authorities to provide information proactively and on demand by citizens. The FoI requires public authorities to publish certain information about their activities and also entitles the public to request information from these authorities.

A Brief History of the FoI Act

In the late 1990s, a network of over 180 civil society organizations in Nigeria, comprising civil rights, grassroots and community-based Non-Governmental Organizations campaigned for a Freedom of Information (FoI) Act to ensure accountability and transparency in public institutions in Nigeria⁴. The FOI Act was presented at the National Assembly in 1999. After a 12-year-long

debate, it was finally signed into law on 28 May 2011 by President Goodluck Jonathan. The Freedom of Information Act is intended to make public information, records and documents more freely available. Built on the premise of openness and transparency of the government, it enables citizens to access information that is of public interest.

The Act also protects public officers from harsh and adverse consequences of revealing information without prior authorisation.

The FOI has a special overriding law feature to regulate conflicts between its provisions and those of other laws; for instance, the Criminal Code, Penal Code and the Official Secrets Act that prescribe criminal penalties for actions connected to the disclosure of Information⁵.

Footnotes

1 <https://datareportal.com/reports/digital-2021-nigeria>

2 <https://luminategroup.com/posts/blog/digital-rights-in-nigeria-emerging-issues-and-opportunities>

3 <https://www.premiumtimesng.com/news/headlines/321189-buhari-declines-assent-to-digital-rights-bill-four-others.html>

4 <https://pdfs.semanticscholar.org/d6a2/535b02c06be6876ff26e62b3c5ab19bdf751.pdf>

5 <https://gravitasreview.com.ng/shop/nigerias-freedom-of-information-act/#:~:text=Nigeria's%20Freedom%20of%20>

(FOI,to%20ensure%20transparency%20and%20accountability.

The act is based on the idea of full disclosure and open government data. Open government data is a philosophy and set of policies that promote transparency, accountability and value creation by making government data available to all⁶. Public agencies and bodies commission a great amount of data/information on budgets, projects etc. Making their information available allows for citizen scrutiny and oversight, which makes public agencies and institutions more accountable to citizens in government decision making and appropriation of funds.

The non domestication and operationalization of the Fol Act across states enables a system where citizens' public demand for accountability is low. This diminishes public trust, accountability and cooperation which are crucial to maintaining the legitimacy of public institutions and a functioning democratic system.

According to the Organization for Economic Co-operation and Development (OECD), trust is important for the success of a wide range of public policies that depend on behavioral responses from the public. For example, public trust leads to greater compliance with regulations and the tax system⁷. The Fol Act encourages full disclosure, encouraging the use and republishing of information for effective public oversight. It applies to both public and private institutions in Nigeria.

However, even though the Fol is important for ensuring transparency and accountability, it is yet to be adopted by 34 states in the federation, making transparency and accountability from the government almost non-existent.

Status of FOI Domestication of the Fol Act in Nigeria

As of May 2022, only two states (Imo and Ekiti)⁸ out of 36 Nigerian states have domesticated the FOI. Over ten years after its passage, many states have failed to domesticate the Freedom of Information Act. Poor access to information leads to weak government accountability which, in turn, increases corruption.

Our advocacy is focused on the domestication of the FOI act in Adamawa, Edo and Kaduna. These states have indicated some level of interest and political will to domesticate the act.

Adamawa

In May 2021, the National Orientation Agency (NOA) in Adamawa State championed the advocacy for the domestication of the Act, highlighting its importance in improving democratic process. Also in May 2018, then Attorney General and Commissioner for Justice expressed its willingness to adopt the FOI act.

Edo

Edo is signed on to open government partnership - a multilateral initiative that aims to secure concrete commitments from national and sub-national governments to promote open government. Despite this recognisable step and commitment towards openness, the Fol Act has still not been domesticated in Edo. In August 2020, the State government, via its former Attorney General, stated that it was committed to supporting mechanisms to enhance openness and transparency in government. However, the Fol bill, which had been drafted at the time, has still not been passed into law. Hence the Fol Act has still not been domesticated in Edo State. However, there is high stakeholder interest and willingness to domesticate the act.

Kaduna

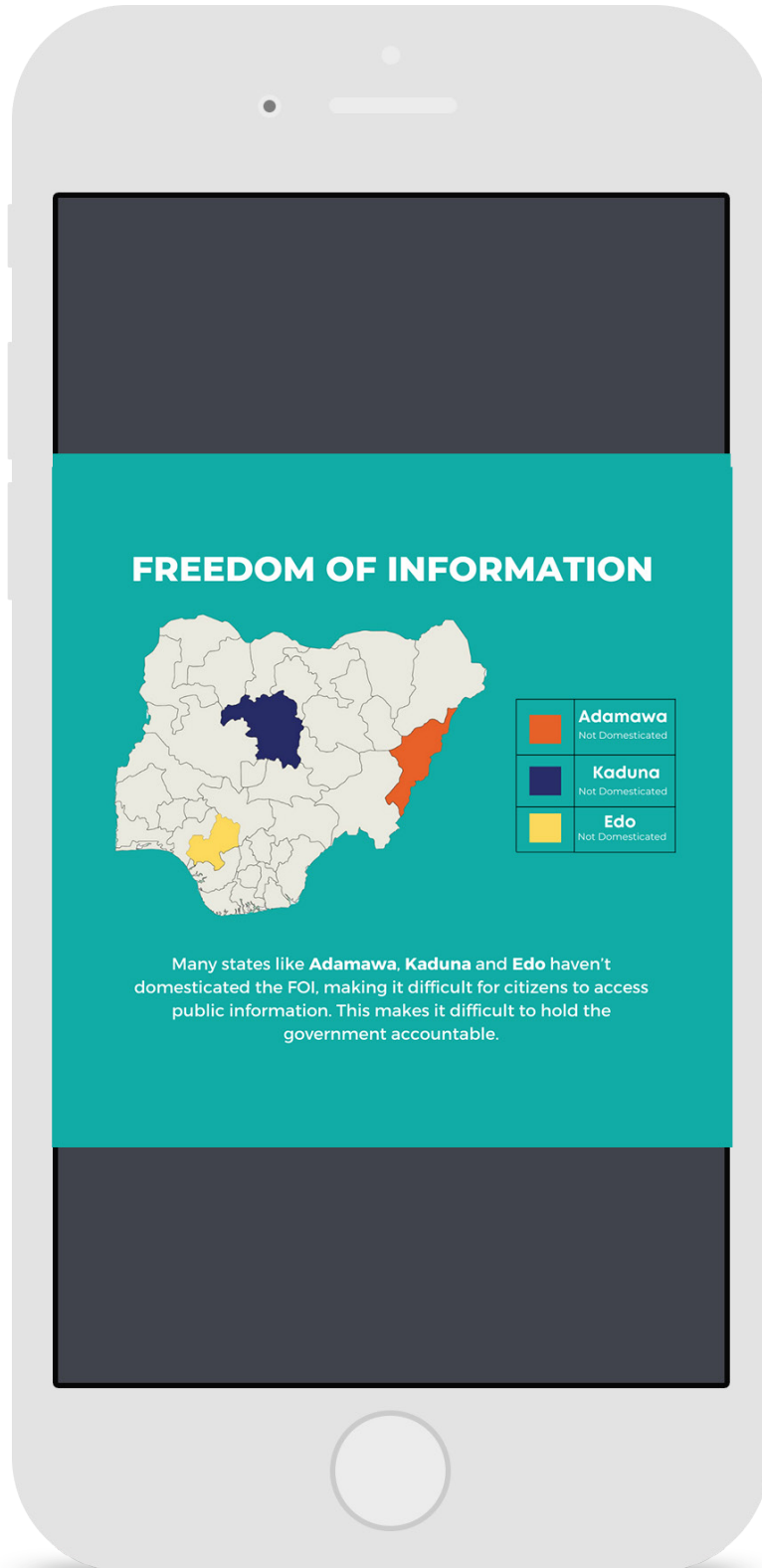
Kaduna joined the open government partnership as part of its commitment to promote accountability, transparency and citizen engagement in governance. However, a legal framework that mandates the disclosure of information held by publicly funded institutions and agencies does not exist. In 2017, Kaduna State executives drafted a FOI bill⁹. The bill was sent to the State House of Assembly but has not yet been passed into law.

6 <https://www.oecd.org/gov/digital-government/open-government-data.htm>

7 <https://www.oecd.org/governance/trust-in-government/>

8 <https://guardian.ng/saturday-magazine/cover/no-cheers-for-freedom-of-information-act-10-years-on/>

9 <https://www.opengovpartnership.org/members/any/commitments/KAD0004/>



What is Proactive Disclosure?

Proactive disclosure is the act of providing relevant public information without any inquiry or request. Under the FoI Act, agencies must routinely publish certain types of information. This mandate or obligation is distinct from the duty to respond to requests for information under the FoI.

Certain categories of non-exempt records should be made available to the public without formal requests. These records typically should be of public interest; proactive disclosure ensures that they are readily available to the public.

What information should the government or agencies proactively disclose?

There are four categories of information that should be proactively disclosed:

1 DESCRIPTIVE INFORMATION

This category refers to information or records that should be described. Descriptive information includes:

- » Information about what the institution does and its responsibilities
- » Branch and departments of the institution or agency
- » Organogram and the functions of each unit in the organogram
- » Details of various programmes and projects of each unit or division

2 LIST OF RECORDS

» The FoI Act mandates that classes of different records of the institution or agency that should be listed are disclosed in sufficient detail to advance and facilitate the process of requesting information under the FOI Act.

- » Procedures, policies and manuals used by the employees in carrying out activities, programs or projects of the institution.
- » List of folders that contain applications for permits, contracts, licenses and agreements of the institutions with other public or private institutions or agencies
- » Studies, reports and publications prepared by an independent contractor

3 ORDERS AND OPINIONS

This refers to documents that entail the orders and differing opinions made about the judgment/resolution of matters of the institution. This includes the following:

- » Rules of the institution
- » Statements and interpretations of policy which have been adopted by the institution
- » The final records of voting in all proceedings of the institution

4 DESCRIPTIVE INFORMATION

Actual data and records ought to be proactively disclosed by the institution. Some examples of these are:

- » Information or documentation regarding the management and appropriation of public funds, including the receipt and expenditure of funds of the institution
- » Employment records (names, titles, salaries, date of employment etc.) of all employees
- » The right of the state, public institutions, or any private person.
- » Final planning policies or documents with recommendations.

Why state governments should proactively disclose

Providing information without inquiry is a public governance driver that plays an important role in building public trust. The following are benefits of proactive disclosure

- » It promotes citizen-government relationships
- » It builds citizens' confidence and trust in the government
- » It increases public awareness and support for policy
- » It improves constructive dialogue
- » It promotes the culture of public accountability

Proactive disclosure is a positive step toward open government, transparency, and accountability which are critical and fundamental aspects of governance. The non-disclosure leads to unchecked management of state resources and weakens citizen-government relationships.

Policy, processes and fiscal transparency will generate an opportunity for openness as the public will have insights into the responsibilities, structures and financial status of the public account of the government. Gaining insights into these key areas will increase citizens' trust and also aid in the understanding of the current economic and social situation of the state and country at large.

Pathways to Domestication/Operationalization in the Target States

These pathways would lead to an alignment with the Government of Nigeria's commitment and milestones related to FoI.

1 STAKEHOLDER CAPACITY BUILDING

Building the capacity of key stakeholders such as the media, civil society organizations, policymakers and the general public on the benefits of the FoI, the need for domestication, and the citizens' rights and responsibilities to request information under the law.

2 STAKEHOLDER ENGAGEMENT

Build relationships with stakeholders with high interest or influence on the domestication of the FoI Act in the state.

3 ESTABLISHING ADMINISTRATIVE STRUCTURES

State governments could establish certain administrative structures that will allow for the domestication or operationalization of the Freedom of Information Act. Such structures could include hiring a dedicated FoI Act Unit staffed with trained officers and governed by associated procedures.



Digital rights and the elections

In Nigeria, the Internet has become a tool that cannot do without empowering states and individuals with facts and figures, information, and knowledge for personal, social and economic development. Yet, according to a study, deliberate internet shutdowns by governments throughout the world are becoming increasingly common and sophisticated. In 2021, five states across Nigeria shut down the Internet at different points¹⁰.

We are only a few months away from Nigeria's upcoming general elections. Many Nigerians fear that there will be internet shutdowns, which will restrict freedom of expression, information and civic space engagement at a critical and monumental time.

Social media platforms and the internet play a crucial role in enhancing participatory governance in Nigeria. They provide a space for debating, communicating, information sharing on election processes and candidates, reporting and documenting election events and outcomes. Civil society actors, journalists, election observers and the general public rely on the internet and social media to monitor and report on elections. Social media and the internet enhance openness and transparency. It is particularly precious to election campaigners who need to know about voters' tendencies and their potential to swing them into the desired political camp¹¹.

Internet shutdowns are detrimental to democracy. The digital rights and freedom bill protects the civic space from unlawful shutdown. It guarantees freedom of expression, opinion and assembly online.

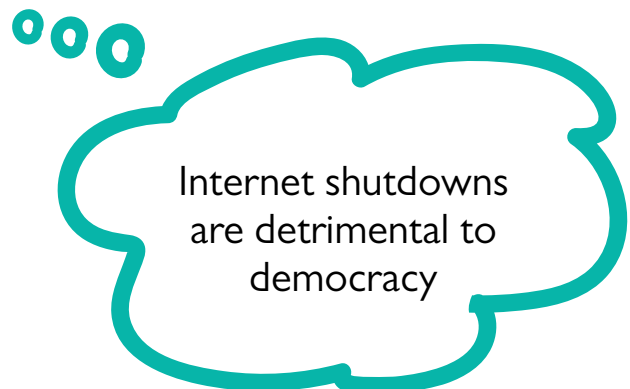
Closing online civic space poses a serious threat to the safety of both offline and online digital public spaces.

The digital space is an extension of the physical civic space. When governments stop civic space offline, civil society and the public go online to have important discussions, engage with each other and galvanize action.

Despite the digital space being an extension of the offline physical space, legislation exists that diminishes the right to access, freedom of information and expression. These legislation are also capable of abridging the right of access to online civic space as they do with geographical spaces.

Lack of government transparency and accountability diminishes equitable social and economic development and threatens human rights.

State governments' transparency and accountability are almost non-existent due to the lack of laws and systems that drive government accountability and transparency. As a result, state governments and agencies continue to manage state resources unchecked. The lack of transparency encourages corruption and increases inequality and socioeconomic injustice. The Freedom of Information Act addresses this. It is a means for citizens to know what the government is up to, as citizens will be able to request information that affects the public interest. Adopting the Freedom of Information Act will thus improve accountability and transparency. Targeted advocacy for the domestication of the act is critical to building an informed citizenry.



10 <https://paradigmhq.org/wp-content/uploads/2022/06/Londa-Nigeria-Report-2021-lr.pdf>

11 https://www.skeyesmedia.org/documents/bo_filemanager/Digital_Rights_Online_Media_and_Electoral_Campaigns.pdf



Five reasons to pass the Digital Rights and Freedom Bill

- 1** The Bill seeks to enact laws that protect digital rights, such as the right to online privacy, freedom of expression, information and opinion online
- 2** The passage of the DRFB in the federation is important for protecting the fundamental human rights to information, freedom of expression, and the right to privacy online. These are important features of any civic space and ought to be honored by Nigeria's federal and state governments.
- 3** The assent of this bill is sacrosanct to the preservation of the rights of Nigerian citizens online and, consequently, the civic space.
- 4** It prohibits unlawful, unauthorised, and undue restrictions on press freedom.
- 5** The Bill mandates for government-held data to be made available publicly for free or after payment has been made, in appropriate circumstances.



Five reasons to domesticate the Freedom of Information (Fol) Act

- 1** Nigerian citizens will have open access to information on key issues such as public procurement, health and social development projects, public budgeting, asset declaration of serving public officials etc
- 2** It encourages journalists and the media to conduct factual reporting which will lead to the reduction in false reporting, misinformation and disinformation
- 3** The Fol promotes transparency and accountability of public resources; the government and the public will be able to monitor the allocation and flow of funds to ensure that there is equitable allocation of funds for development across the country
- 4** The Fol will allow stakeholders such as CSOs and communities to have knowledge of government policies and projects that affect their socio-economic livelihood.
- 5** Access to relevant information of public interest will enable citizens to monitor the effectiveness and efficiency of their service delivery in critical areas such as health care services, education, development plans/projects, poverty alleviation programmes etc.¹²

Advocacy Guide: campaigning for the laws

Basic elements of advocacy include clearly defined goals and objectives, which will help determine who the target will be, activities and how to frame the message. Data and research are used to inform advocacy activities; Good data can be the most persuasive argument in the advocacy strategies and policy presentations, Key audiences/targets selected, clear message and messages should be shaped to the interest and needs of a particular audience.

Stakeholders including CSOs and the media can use the following guides and tactics to advocate for the passage and domestication of the DRFB and The Fol.

Guide to Engage the Government

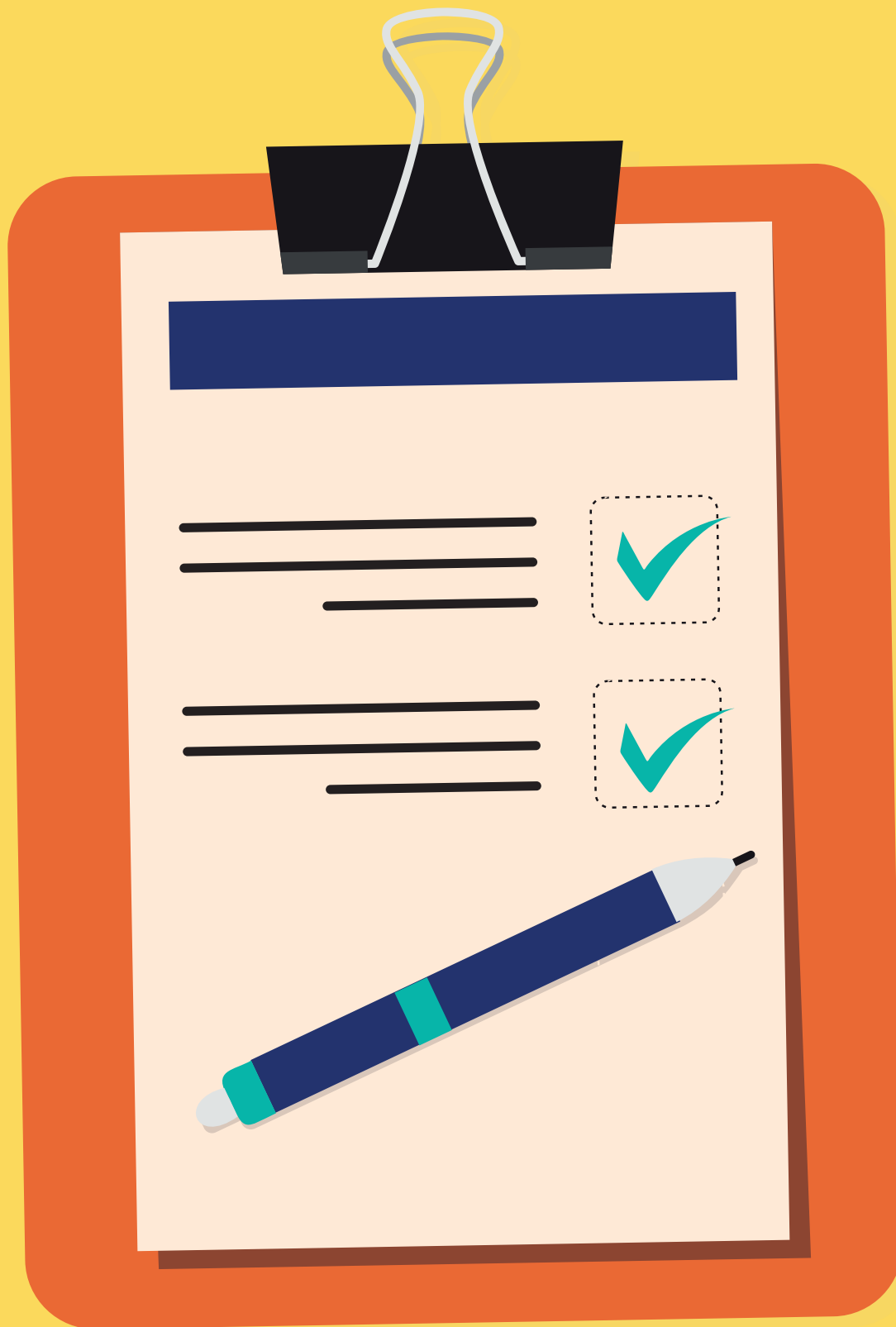
- » Map out key stakeholders relevant to the context and agenda of the advocacy
- » Develop targeted, strategic actions and messages based on convincing evidence
- » Go on advocacy visits equipped with knowledge, important facts and specific asks.
- » Document minutes of meetings to keep track of the salient points raised during the visit or consultation as well as outlined next steps
- » Develop key tools such as advocacy briefs and policy briefs to increase knowledge, awareness and benefits of the laws
- » Provide technical assistance for government to proactively disclose

Guide to Engaging with Stakeholders

- » Identify partners and form alliances with groups or organizations that will bring unique skills and contributions to your advocacy. Collaborative efforts are necessary to bring together the resources, time, energy and talent of many different people and organizations.
- » Build relationships with influential stakeholders
- » Organize roundtables, conferences or town hall meetings for agenda-setter increase awareness, have consultations
- » Work with CSOs to develop and release a position statement

Media Advocacy Tactics

- » Conduct media training on the issues to aid their reporting
- » Press conference
- » Press release
- » Increase media coverage and demand
- » Organize a media roundtable
- » Leverage social media
- » WhatsApp campaign to spread awareness



A democratic society requires access to information and freedom of expression. The Digital Rights and Freedom Bill and the Freedom of Information Act are two pieces of legislation that impact the fundamental human rights of Nigerian citizens.

With Nigeria's 2023 elections in view, free speech, freedom of information, and expression will enrich civic engagement and participatory government. Digital rights are an extension of human rights, and it has become crucial to legislate on them.

The Digital Rights and Freedom Bill is critical to preserving our online civic space and will drive

inclusive decision-making and governance.

Likewise, the Freedom of Information Act will advance state governments' openness. If domesticated and operationalized, it will establish and promote the right of citizens to request and receive information about government activities and functions. This will build citizens' confidence and participation in governance.

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- » [https://gravitasreview.com.ng/shop/nigerias-freedom-of-information-act/#:~:text=Nigeria's%20Freedom%20of%20Information%20\(FOI,to%20ensure%20transparency%20and%20accountability](https://gravitasreview.com.ng/shop/nigerias-freedom-of-information-act/#:~:text=Nigeria's%20Freedom%20of%20Information%20(FOI,to%20ensure%20transparency%20and%20accountability)
- » <https://www.oecd.org/gov/digital-government/open-government-data.htm>
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Good data can be the
MOST
persuasive argument

