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**Center for Media Studies & Peace Building**

# Freedom of Information Demand and Supply Compliance Monitoring:

*A Pilot Study of Post Enactment Implementation Regime of the Liberian Freedom of Information Act 2010*



**National Endowment  
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FREEDOM OF INFORMATION DEMAND AND SUPPLY COMPLIANCE MONITORING:

*A Pilot Study of Post Enactment Implementation Regime of the Liberian Freedom of Information Act 2010*

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*...Data analyzed by Alfred Wreh, edited by Albert Baron Ansu and also project oversight by Malcolm W. Joseph. Graphic design and layout by Kenneth G. Bracewell*

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## PREFACE

It is gratifying to add to our list of publications on Freedom of Information, as a piece of legislation with immense potential to open the space for civic participation in demanding more than political accountability, but even assuring a culture of transparency in Liberia.

This in itself could not have been possible without the critical funding from our partner, the National Endowment for Democracy (NED) that has over the years established a clientele relationship of sort with us-at Center for Media Studies & Peace Building (CEMESP).

We therefore doff our hat to NED for this accomplishment and future engagement in rebuilding Liberia.

We are releasing a research report on the demand and supply trend of FOI in Liberia at a time when the country has made us proud. Liberia FOI Law which had since been considered as the fifth best in the world has now gone fourth place. The fact that this accolade could not be celebrated at home is less surprising; many people are still to appreciate the utility benefit of this law. This attitude is evident amongst all strata of society, from the politicians to the ordinary citizens. Liberia cannot be unique in this circumstance.

The history of access to Information laws from the precursor 200 years ago in Sweden has revealed the implementation of the law requires time to get it fully relevant to all and sundry.

As a lynchpin in the advocacy to get this law passed in Liberia, we at CEMESP knew that having the law was just the beginning of work begun since 2010.

So as an institution, we remain unfazed by the result of this research that has gone beyond presumptions to scientifically establish that much prompting and incentivizing in terms of material and human resources needs to be injected in ministries, departments and agencies (MDAs) for disclosure of information to become the norm at the public realm.

Out of 92 requests our trained monitors that were deployed across MDAs to access information, disclosure responsiveness has been dismally low. Beyond what our monitors delivered, we also captured other forms of FOI requests filed by other persons and NGOs including Liberia Media Center and Action

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for Genuine Democratic Alternatives. Other requests were tracked in newspaper publications.

This is an unacceptable situation. Laws made are not meant to be “paper tigers”. Rather the very rationale that inspires commitment, time and resources in getting these laws on paper must not be betrayed.

It is in this vein we for the umpteenth time call on those who can bring to bear the required pressure and support to public institutions demonstrating weak link in the supply side of the FOI law to arise to their obligations.

1 As part of the lobby process, expert testimonies, one-on-one meetings with influential law-makers, group meetings at high rise cafes, phone calls, letter writing, op-ed, articles, radio talk's shows, etc. These activities were carried out jointly and severally by Civil Society and the Media and aided the passage of the law.

2 The Liberian FOI was passed into law September 15, 2010

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## BACKGROUND

Three years after the passage and endorsement of the Freedom of Information Act 2010 by President Ellen Johnson Sirleaf, Liberia still enjoys immense international acclaim. Many sub regional countries are trying to emulate Liberia's example. But having the law that is beautifully couched is one thing far different from making use of its essence. As a matter of fact there is a slothful responsiveness in the enforcement of the Liberia FOI in terms of demand and supply of information.

Reflecting on the pre FOI enactment advocacy and lobbying process brings to mind the role of civil society and media in coalescing for two years in drafting the bill that was intended to address the aspiration of citizens to hold Government accountable. This bill was meant to give a deeper meaning to citizens right under Article 15 (c) of the Liberian constitution, i.e. the right enshrined in the 1986 constitution that protects access to information.

After two years of lobby , the FOI bill presented to the national Legislature in April 2008, was engrossed and later passed into law . The passage of the FOI law presented an opportunity for citizens to acquire information and data on issues that affect their lives, ranging from social services, energy, governance, infrastructure, national budget, and other related matters. But the efficacy of the law goes beyond the forgoing.

Couched in the freedom of information law was the spirit to make amends for some of the fundamental ills that plagued the Liberian society for years and what is termed as "SECRECY".

For instance the issue of concession agreements, negotiation and documentation and natural resource management has created a constricted space for citizen participation in decision making. This has been a disturbing political mark on the governance framework. Ironically, the Liberian constitution provides for maximum feasible participation around the use of natural resources.

One poignant feature of any FOI or access to information legislation is the Proactive Disclosure clause to make room for access to information even where request is not made. This in itself underwrites the assumption that information is a public property of privilege to citizens.

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3. These terms are interchangeably used—Freedom of Information and Access to Information, in Liberia the latter is operable.

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Evidently, the Liberia FOI infrastructure and related incentive to hold custodians of information accountable are in their formative stage. FOI or access to information law interplays between demand and supply of information.

An enquiry into the working of the Liberian FOI law needs to test who is failing to seek or deliver information. In other words are citizens failing to ask custodians for information or is it the case that public information holders are unwilling to release information?

This question informs the pilot research as it relates to demand and supply compliance of the Liberia Freedom of Information law. At the center of all institutions assessed is the Liberia Anti Corruption Commission and the office of the Independent Information Commissioner, they have direct monitoring oversight responsibility in ensuring transparency and access to information respectively.

Using statutory mode of request filing as provided in section 3.4 of the FOI Act 2010, letters were written and deployed to the targeted institutions by Center for Media Studies and Peacebuilding (CEMESP) trained FOI monitors, to among other things elicit a gamut of information, which details can be traced in succeeding pages of this work.

Desk research, media content survey to for instance ascertain both demand and supply trend of FOI compliance and one-on-one interviews with key informants have been factored into this work.

Recommendations as to what can be done by relevant players including government officials, civil society, donors and the media form a core component of this study.

### *Study objectives*

The following are specific action areas that this study will explore about the Liberia FOI Law implementation:

Identify critical gaps in the FOI implementation process that must be addressed

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4. The Carter Center, Access to Information Program  
5. James Madison

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Provide safeguards to the growing trend of denial of information held by public and relevant private entities

Raise awareness about the challenges and opportunities that the office of the Independent Information Commissioner offers

Flag potential ambiguous areas of the Act such as the exemption clause that might be mitigated by constitutional review process or byelaws

### *Literature Review*

Former US President Richard Nixon once said: "When information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and - eventually - incapable of determining their own destinies." This point of view underscores the potential of Freedom of information, i.e access to information especially as it relates to government and its functionaries.

"Access to public records gives citizens the opportunity to participate in public life, help set priorities, and hold their governments accountable. A free flow of information can be an important tool for building trust between a government and its citizens. It also improves communication within government to make the public administration more efficient and more effective in delivering services to its constituency. But, perhaps most importantly, access to information is a fundamental human right and can be used to help people exercise other critical human rights, such as access to clean water, healthcare, and education. Access to information has been more recently recognized as an instrument that can be utilized to fight poverty in developing nations."

Ensuring that information for public consumption is always available in a timely manner is an excellent democratic safeguard which provides an opportunity for citizens to acquire the relevant data or information that is essential for making informed decision making in a democratic setting. Information makes it possible for citizens to hold their officials accountable. This holds true in the case of a fragile democracy like Liberia.

"A popular Government without popular information or the means of acquiring it is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their



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own Governors, must arm themselves with the power knowledge gives."

Information is vital to good governance as it reflects and captures government activities and processes. Every citizen of the state has right to access information under the control of public authorities consistent with public interest. The main objective of governments providing information to its citizens is not only to promote openness, transparency and accountability in administration, but also to ensure participation of people in all matters related to governance.

Contextually, Transparency in decision-making processes and in institutions has the potential to become a central strategy for engaging stakeholders and improving the quality of overall governance. Transparency is a conscious systemic effort of institutional processes and procedures that stresses openness in fiscal transaction in consonance with rules and regulations. This becomes unalterable under an FOI regime, where information is freely available and directly accessible, albeit with reasonable exemption provisions.

### *FOI Demand and Supply Compliance Monitoring*

This research sampled a total of 92 requests filed to different institutions and individuals. Notably the Center for Media Studies and Peacebuilding, Liberia Media Center, Actions for Genuine democratic Alternatives and other media entities filed these requests to Government bodies, Private Institutions, Local Government and the Court. Of the total requests filed and monitored most were not responded to. The monitoring was done within the framework of the 2010 FOI law which provides citizens with information access rights. The results show that there is still significant government unwillingness to disclose information. We also note that the results from this pilot research reflect widely differing treatment of requestors. Some perceived pro-governmental institutions or close to the power that be institution did very well receiving most of the information they requested, whereas others, such as the ordinary citizens, received much less or no information at all. So, while the overall findings is revealing, it is offering a basis to confront the factors derailing implementation of the law.

### *The Requesting Process:*

Written letters, newspaper publication alerts and oral requests were tracked and monitored. In cases where the requests were not done by CEMESP, we

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monitored it via our face book page titled Liberia Freedom of Information Watch. The shortcoming of request tracking process is that we were unable to monitor oral and written request not made by the center in terms of responses. This has been taken into consideration as one constraint faced in data collection. The written requests were submitted in person by the requestors trained by the center. In many government institutions in Liberia as per the FOI law there should be Information Officers who should be the first line of contacts for the citizens' filing FOI request. However, only seven ministries have appointed Information Officers. Nonetheless, there is an established procedure for registering and handling the letters which is received by either a receptionist or designated security officers. The advantage of hand-delivery is that it eliminates delays for delivery, but apart from that, both methods of submission seemed equally effective. Of course, the fact that an institution has received the request does not guarantee that it will reach the desk of the person responsible for answering it, and this was a problem in some cases.

Out of the 92 FOI request sated in this research; CEMESP filed 23 FOI requests, 19 elapsed statutory periods to respond as provided in the Act. And as at reporting time, no response has been forthcoming with information in spite of several follow up contacts. However four entities acknowledged receipt of request, three via letter and the other by telephone.

Generally, the frequency of responses received has been very negative from the ministries of Finance, Maritime, National Oil Company of Liberia, National Housing Authority and the legislature with specific reference to the Committee on Oil Concession. None of them disclosed partial information requested.

Even as almost all requests filed were greeted with disdainful silence, the few acknowledgements of receipt of FOI requests two were verbal refusal; i.e to even accept the request. The institutions in this category include the Central Bank of Liberia and the Liberia Maritime Authority. The Ministry of Public Works wrote a letter refusing to disclose information on the grounds that the request was vague, without specific time stated. This in itself was deceptive for time was actually stated in the said request.

Buttressing these findings about government institutions disregard of the FOI law as an instrument of transparency in providing information to the public is the disclosure made by the General Auditing Commission (GAC) and reported in the News newspaper vol.24. No. 64. It listed key government ministries and agencies who failed to submit payrolls in line with FOI request filed by GAC.

## Pictogram Illustration of Findings:

In general, the research has found out that three groups are frequently filing FOI request in Liberia. In some cases the reluctance to accept requests was a cover up of denial to disclose.

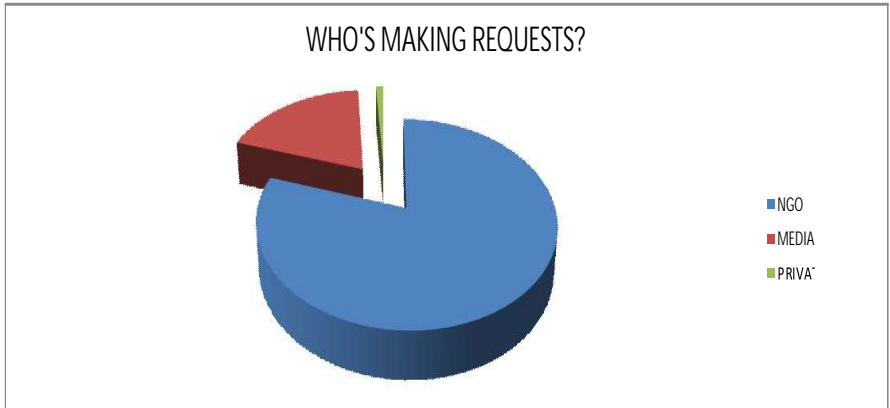
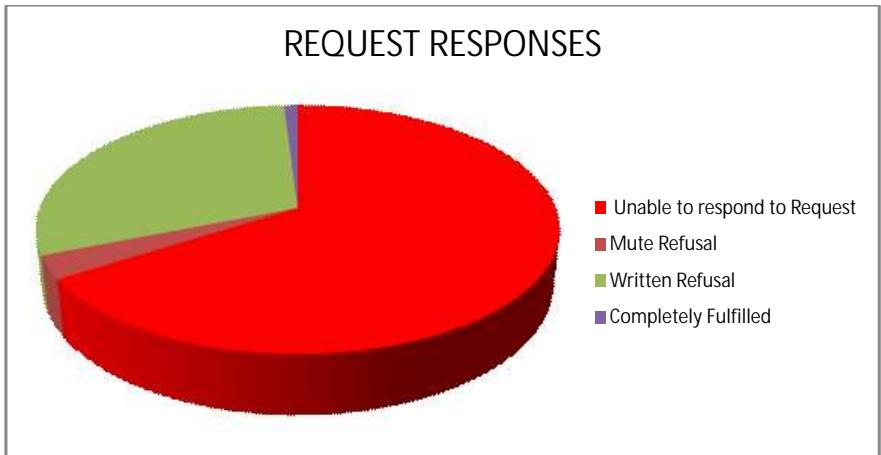


Figure1: The blue color space shows NGO are at the front of filing FOI requests. The brown color represents media comprising both perceived pro and opposition journalists that claimed to have filed requests but could not get such information without authorization from sector heads. The green color indicates private citizens sampled who have made efforts to file FOI requests.



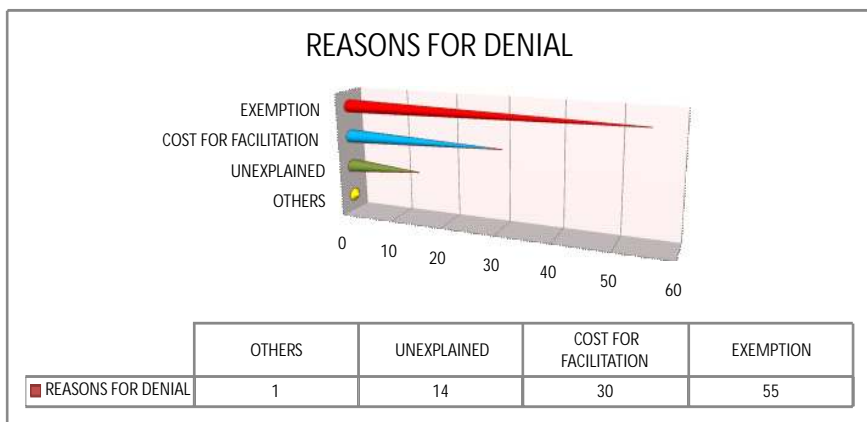
During the monitoring, requestors had to be persistent to succeed in submitting requests. Even with this persistence, responses to these requests were not forthcoming within the time frame of the law. Written requests, nevertheless, resulted in a higher category, and once written request had been submitted it

was unanswered in almost all cases. The likely explanation for this is that once an institution has accepted the request and a relationship has been established with the requestor who was persistent in making follow up on the request, it is more likely that information will be forthcoming.

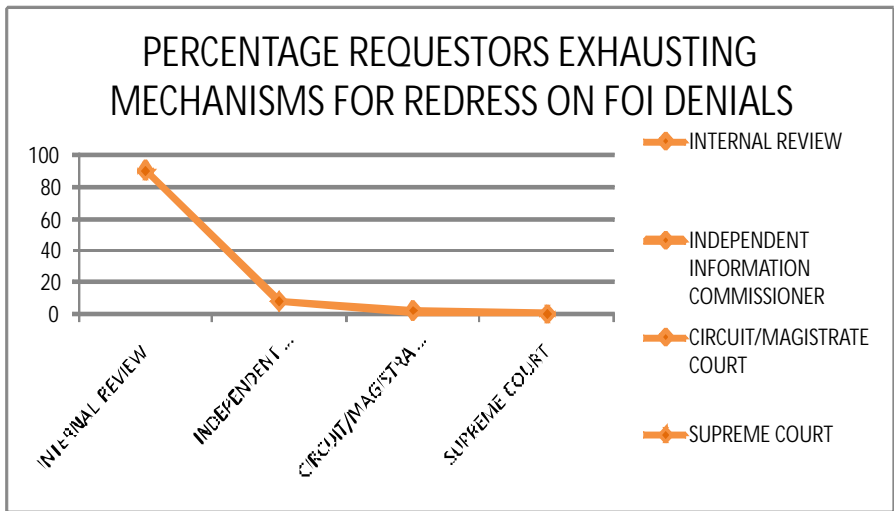
The refusals were a mixture of information on policies, contracts, regulation, assets declaration and budget related issues.

An example of how requests are treated differently comes from the Courts (on seven media outlet closure). In the period, the Press Union of Liberia made request for evidence adduced in court against the media institutions. The Court did not provide the information to Press Union of Liberia. Another critical observation during the monitoring was that perceived pro-governmental journalists and the NGO representative who filed written requests are provided with information, whereas perceived anti government CSOs who filed oral requests were denied information.

Figure 2: The above red color space represents the approach of responding to requests made by institutions monitored during the research. Such refusals are not consistent with requirements as provided in law. The brown color represents mostly mute refusals, indicative of the fact that such pieces of information were available but could not be disclosed when requested. This situation is especially true of National Port Authority. The green represents written refusals. The purple color is indicative of institutions that readily provided information, an example being the Liberia Water and Sewer Corporation.



Requests for policy documents, budgetary information and assets declaration received far more denials than others. It should be noted that some straightforward questions asked in the request but had political and economic sensitivity. These were not questions, which could legitimately, in our best estimation, warrant denial to be construed under exemption provision of the FOI law. In some cases, requests for data pertinent to the working of an institution such as the Ministry of Lands, Mines and Energy to disclose the information on percentage of iron ore mining concession benefits to Putu community transferred since 2010-2012 was denied. The expert interviews backed up this finding that internal information management is still as serious problem for many public bodies in Liberia.



The monitoring results indicate a mixed trend in terms of the working of the redress mechanism for FOI denials. This reinforces the perception that if the requestor is affiliated to the requesting entity as in the case of some journalists and NGOs, or the requester is persistent enough to establish a relationship with the person responsible for handling the request, they are more likely to receive information.

In addition to the foregoing, we noted that the application for Internal Review as a first step of redress was observed by all requestors. Since the appointment of the Independent Information Commissioner, our study uncovered that there is a negligible instances of application for redress filed to the Independent Information Commissioner, as the next point of redress after internal review. CEMESP is so far the only institution in line with the implementation of this project that has applied to the Independent Information Commissioner for

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denial redress but no response, beyond the statutory time to warrant the legal action.

## **INSTITUTIONAL AND INDIVIDUAL RESPONSE RANKING**

The best performing institutions were the Liberia Water and Sewer Corporation which answered all requests; Ministry of Health though didn't response but proactively disclosed relevant information via their website, National Ports Authority, Ministry of Information and the Minister of Information Hon. Lewis G. Brown who constantly responds to requestors regardless of their status.

Institutions which failed to provide answers to any requests at all included the Ministry of Public works, Ministry of Youth & Sport, Ministry of Transport, Justice Ministry, Independent National Human Rights Commission, Monrovia Vocational Training Center, Ministry of Agriculture, Ministry of Lands, Mines & Energy, Governance Commission, National Housing Authority, National Transit Authority, Ministry of Finance, the Liberian Legislature Committee on Concessions, Montserrado Superintendent Grace Kpaan, and the National oil Company of Liberia.

Both the Central Bank of Liberia and the Liberia Maritime Authority failed to accept the FOI requests. The justified their actions on grounds that the requestors did not identify themselves nor stated reasons for which the requests were made. This is a contravention of the intent of the law.

Also captured in the Liberia Media Center Government of Liberia 150 days deliverables report, the Liberia Anti Corruption did not supply the requested information.

Similarly, the Center for Media Studies and Peacebuilding (CEMESP) on November 13, 2012 filed a request with the Liberian Anti-Corruption Commission (LACC) for copies of asset declaration forms filed by cabinet ministers and their deputies. In a first response on November 21, 2012, the Chairperson of the LACC indicated financial constraints for the volume of materials being considered and asked CEMESP to “facilitate the reproduction of the forms.” When CEMESP sought the cost of reproduction, the LACC replied on December 19, 2012, denying the request, with indications that the information so requested “is exempted from public disclosure in which she cited part X section 10.3 of executive order No. 38. With the signing of the

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executive order there is expressed lack of commitment on the part of the National legislature to enact the Code of Conduct Bill; provisions of the Executive Order remains challenging. The cover up terms used are "CLASSIFIED or CONFIDENTIAL" which is used interchangeably attributing no specific reference to the Liberian Freedom of Information Act. The restrictions on disclosure highlighted in the Executive Order closes up the government in SECRECY and discourages citizens in seeking information. Part VI of the order, subdivided into nine sub parts requires public servants to take on the mantle of secrecy, this runs contrary to the FOI Law. It is undisputed that the executive order undermines the FOI law which meets international best practices and actually has primacy over the Executive Order.

Our research indicates that Nine editors who filed requests have had no difficulty obtaining information from government sources, since the passage of the FOI Act but others, including the editor of Concord Times, has expressed dismay over denial of information, and their experience has been one of being told to 'go and come back' on a number of occasions. This type of dillydallying is tantamount to a failure to disclose information .

Additionally two leading newspapers and a journalist have disclosed that they were denied information they requested. They are Abbass Dulleh of New Democrat, and Alphonso Toweh of the New Republic Newspapers.

To be specific the New Democrat asked for information from the Monrovia City Corporation, Liberia Telecommunication Authority and Liberia Maritime Authority, but did not get any answer from any of these public entities, while the New Republic newspaper wrote a letter to the Ministry of Finance formally requesting for a complete listing of Liberian Embassies, a financial breakdown of all payments made to these embassies from 2006 to 2011, bank account numbers that such payments were transferred to and a list of embassy staff members. These information have not been disclosed. During our monitoring it is worth nothing that the paper specifically stated that the request for information was based on the Freedom of Information Act. To this letter the Ministry of Finance responded by asking the paper to refer its request to the Ministry of Foreign Affairs for the most accurate and updated information, this has been the first instance of a transfer request as provided in the FOI Act 2010.

Similarly, on March 26, 2012, the New Republic wrote another letter to the Minister of Foreign Affairs, seeking the same information that it requested from

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the Ministry of Finance, clearly stating that the information was being sought in keeping with the Freedom of Information Act; as at the date of reporting, the letter has not been responded to by the Ministry of Foreign Affairs.

Another instance of failure to disclose information is one that was experienced by the Press Union of Liberia following the General and Presidential Elections of 2011, i.e, how some media institutions were considered by government to be broadcasting hate messages to the public. These institutions were shut down through a court order based on an injunction filed by State Prosecutors in Criminal Court A, Montserrado County. The court verdict was that these media entities were guilty of broadcasting hate messages, but revoked the closure injunction. However, the Court refused to give a copy of the records of the proceedings, even after the Press Union of Liberia filed a written request in accordance with Freedom of Information Act.

While many requestors seem not to be taking advantage of the redress mechanism as a result of financial constraints, they have resulted to notifying the public through the social media outlet Liberia Freedom of Information Watch operated by CEMESP on face book.

### *Conclusion and Recommendations*

One thing that has tangibly emerged from this study is the fact that the pace of demand for information is not matched by disclosure frequency. So the weak link in the demand and supply chain is the latter- public institutions and private bodies receiving funds from the consolidated fund- to perform public functions.

Such a situation has the propensity to discourage members of the public in filing FOI requests, that is, if efforts are not exerted in ensuring that redness mechanism of the law becomes operational to compel disclosure with sanctions, as provided by law.

It must be pointed out that not all denial of requests we filed happened as a demonstration of sheer unwillingness of those custodians of information. Institutional preparation in terms of the requisite logistics and human resources continue to pose limitations to disclosure of information.

There is also the problem with the Independent Information Commissioner, as the hub in the implementation of the FOI. Because the extant office holder was



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lately confirmed by the legislature, budget allocation to get his office was not made in 2013. This in effect means he could hardly perform his role to expedite access to information. But the office is now functional with assurance of Government budget allocation.

CEMESP has within the confines of this study set the pace of testing redress from institutional review, through the office of the Independent Information Commissioner and ultimately the court.

Where the Liberia Anti- Corruption Commission declined to provide information on asset declarations of ministers and deputies, advancing privacy exemption provision in the FOI Act 2010; CEMESP thus reverted to the Independent Information Commissioner who could not act. And subsequently a writ of mandamus was initiated by CEMESP Lawyers. Hearing has commenced at the Supreme Court as at the time of releasing this study findings. The verdict to eventually emerge will represent a groundbreaking case-law precedent to shape FOI law implementation in Liberia.

In the final analysis, it could be said that this research report has confirmed earlier studies undertaken by CEMESP. The fact that not much has changed for the better, compels an intensification of efforts of all stakeholders who should do the following as recommendations arising from this study.

**Media:** It is our considered view that the Liberia media has not fully engaged in the popularization of this law in both print and broadcast channels. Equally so, the media has not fully utilized this law in the area of data or investigative journalism to uncover graft that is widely believed to be undermining growth in Liberia. Certainly, the media needs more training in understanding the Act to be in position to market it to the wider public. There should be an FOI practice manual for journalists, among other needs. This is where both internal and external efforts need to be exerted in getting the media compliant in performing its expected obligations in the Liberia FOI implementation that fosters transparency and accountability.

**CSOs:** We expect more request filing and advocacy to be embarked upon by civil society. The fact that the passage of this law was spearheaded by a multistakeholders grouping of CSOs, media and development partners, the momentum must not be dropped in working to ensure that access to information is not constrained by the gaps that abound. Getting the office of the Independent Information Commissioner and the mainstreaming of

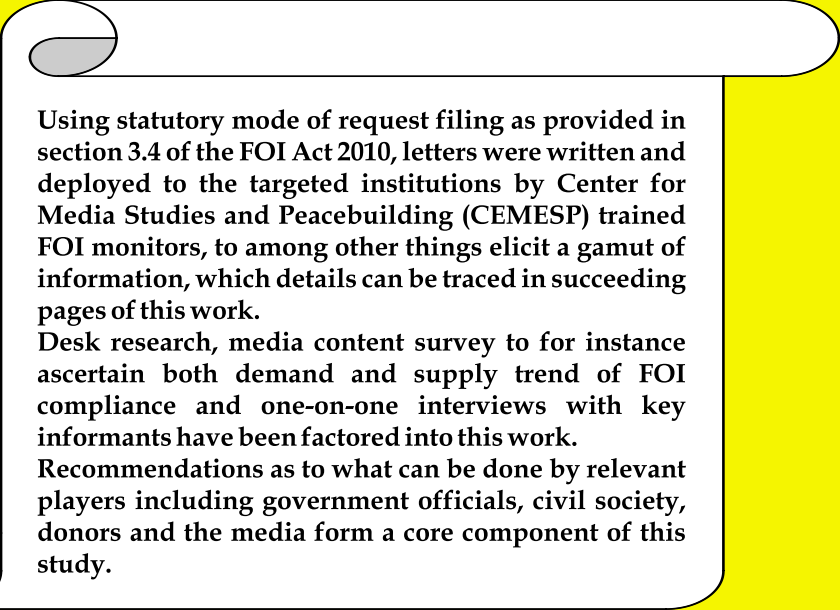
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Information Officers in ministries, departments and agencies must be one advocacy issue for CSOs in getting the law to better serve its intents and purposes. Civil Society as a conscience of society, must engage the media, lawmakers and development partners to bridge the identified gaps in the law. They are to make more requests and pursue redress mechanisms as stipulated in the Act.

**Government:** There is no gainsaying the fact that government of Liberia has not matched its commitment to get this law passed with the practical demonstration to ensure that it serves the rationale and spirit behind it. One proof of this is the somewhat ambivalent attitude towards the Independent Information Commissioner. We look forward to increase commitment to the newly established office. As a matter of urgency, the government should change this posture by duly providing the budget support to the Independent Information Commissioner. In addition all ministries, departments and agencies must have appointed Information Officers who must be trained in records management and provided working tools and free hand to do their work. This process should be decentralized across the country.

**Donor:** Even as support towards ensuring progress in FOI implementation regime is still evident from donor windows, there is the need to sustain the trend and equally harmonize and coordinate interventions. This requires inter donor comparing of notes to appreciate the areas of support that are ongoing and the gaps that exists. This is a means of ensuring that duplication of efforts can be curtailed, whilst identifying and working with efficient partners with capacity to roll out the FOI implementation needs.





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Desk research, media content survey to for instance ascertain both demand and supply trend of FOI compliance and one-on-one interviews with key informants have been factored into this work.

Recommendations as to what can be done by relevant players including government officials, civil society, donors and the media form a core component of this study.