

How can governments entrench the right to information?

Ideally, effective implementation of the right to information requires governments to develop legislation which sets out:

- the specific content of the right - such as who can access information and from whom, within how much time and at what cost;
- the duties of relevant government bodies to provide information - including when they can legitimately refuse to provide information.

Proactive Disclosure potential of PFNET system in the Solomons

Proactive disclosure recognises that if the right to information is really to be of assistance to the poorest and most disadvantaged, information should be provided by public bodies voluntarily so that they may engage with them to secure their entitlements in an informed manner. Even in the absence of legislation, governments can start proactively publishing more information. For example, in the Solomon Islands, the Government recently reached an agreement with the People First Network (PFNet), which operates computer-based "information kiosks" in rural areas to disseminate a weekly news bulletin on its activities. The scheme will help to empower the rural population by keeping them better informed about government activities, while also giving them a means to provide feedback to the Government.

A number of best practice basic principles have evolved over time, which have been consistently endorsed by the UN. These should be incorporated into all information access laws:

- (1) **Maximum Disclosure:** All arms of government – for example, the legislature, the executive, the courts, police and the armed services - should be covered by the law. Even the private sector should be covered, at least where it is spending public money and/or performing public functions. All bodies should be required to release as much information as possible, including emails, internal deliberations of officials and ministers, contracts and materials used in public works. Bodies should also regularly publish and disseminate documents of general relevance to the public.
- (2) **Minimum Exceptions:** Exceptions to disclosure should be included only to protect and promote the public interest and should be kept to a minimum. The law should not permit non-disclosure to protect government from embarrassment or the exposure of wrongdoing. Exemptions should ALL be subject to a harm test and blanket 'public interest override', whereby a document which could be exempt should still be disclosed if the public interest in the specific case requires it.
- (3) **Simple Access Procedures:** The law should include clear and uncomplicated access procedures so that people can obtain information quickly and simply. Application processes should be user friendly for the illiterate and the poor. Any fees for access should be kept to an absolute minimum because the tax payer already funds the information creation and maintenance process.
- (4) **Independent Appeals Mechanisms:** A powerful independent, impartial body - such as an Information Commission, Ombudsman or Human Rights Commission - must be given the power to review refusals to disclose information and compel release. The fear of independent scrutiny ensures that exemption clauses are interpreted responsibly and citizens' requests are not unduly obstructed.
- (5) **Penalties:** The powers of oversight bodies should include a power to impose penalties for non-compliance with the law. Without sanctions, such as fines for delay or imprisonment for wilful destruction of documents, there is little compulsion on government officials to comply with the law.
- (6) **Monitoring Reporting and Training:** The law should mandate a body to monitor and support the implementation of the Act by developing codes of practice and submitting annual reports to Parliament. The law should also require

training for officials and public education programmes to be held.

How can people campaign for the right to information?

The demand for open government has most often come from civil society. Civil society organisations have been very effective at raising public awareness about the value of the right, lobbying with governments to enact a law, and supporting implementation. Access campaigners come from a range of backgrounds, such as human rights advocates, the media, anti-corruption campaigners, environmental organisations and committed Members of Parliament (MPs). This diversity recognises that the right is useful for people working on any issue.

Work together with like-minded groups

Campaigners working together have shown that there is strength in numbers. Solidarity amplifies voice, brings in diversity, harnesses a breadth of expertise and increases audience reach. Efforts have been organised as formal coalitions and sometimes as loose networks. In the Pacific, numerous groups are working on this issue, from local chapters of Transparency International to regional rights organisations, and donors such as the UNDP and intergovernmental bodies like the Pacific Forum Secretariat.

Engage politicians

Successful advocacy relies on a willingness to bring about change within political circles and the bureaucracy. Campaigners need to work hard to develop relationships of trust and reliance with as many policy-makers as possible.

- Election time is a good opportunity to get MPs to think about the value of access legislation. Advocates can work to get commitments to enact access to information laws into election manifestos. Voters are likely to favour a politician who is committed to open government, tackling corruption, and reining in bureaucrats.
- Where governments are slow or disinterested, a private member's bill introduced by an individual or small group of parliamentarians can help create an opportunity for debate. Although these bills do not often succeed in becoming law, if the issue catches the public imagination, the government may still decide to take it forward.

Get involved in the drafting process

Even when governments commit to enacting a law, people need to ensure that the law-making process is open and participatory. Involvement at this stage will ensure that when the law is passed, the public will understand it and use it. However, invitations from government to participate in the drafting process are rare. But campaigners should be alert to opportunities, and can actively support consultations on the law, by organising public meetings and workshops to discuss it.

Use all forms of communication to get the message across

Information and communication technologies bring many opportunities for advocates. In the Pacific, radio, local television and newspapers can also be useful. In particular, radio is an excellent advocacy and awareness-raising tool. Coverage can extend to the remotest regions, which has made it popular in the Pacific where communication infrastructure can be poor.

Engage the media as your ally

Journalists and the media can be crucial partners in any campaign because they have such a broad reach into the community. For example, the Pacific Islands News Association has recognised the importance of the right in recent resolutions. In Fiji, groups concerned with proposed government restrictions on the media included a demand for freedom of information legislation as part of their advocacy efforts. In Papua New Guinea, the Media Council has also discussed this issue.

"The great democratising power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task...is to make that change real for those in need, wherever they may be. With information on our side, with knowledge a potential for all, the path to poverty can be reversed."

Kofi Annan, Secretary-General, United Nations

ACCESS TO INFORMATION



**When you pay for things you buy at a shop,
do you not ask for accounts and a receipt?**

Then

**Why do you not seek an account
from your government?**

**The government spends your money.
You have a right to hold it to account.**

**The right to seek and receive
information is your basic human right**

**Tell your government -
You have the right to know**



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Do you want to know?

- How much money was sanctioned and actually spent on laying or repairing roads in your neighbourhood?
- Which officials are responsible for making decisions that affect your day -to-day life?
- How to put an end to corruption in public offices?
- How to improve the services provided by schools and hospitals that receive grants from the Govt?

Your vote elects the government to power. The government runs on funds gathered from the taxes you pay.

Taxpayers' money is used to fund and carry out a range of public welfare schemes and activities.

So, when your government is elected by you and run on your money, should it not be accountable to you?

What is the right to information?

It can be a tool in the hands of citizens for scrutinising the policies & actions of government, fixing accountability of officials and promoting their participation in the decision-making process. Different terms are used - freedom of information, access to information, the right to know. But at the heart of the Right to Information are three key principles:

- the right of every citizen to request access to information from the government about its decisions and activities;
- the duty on all government bodies to provide information, unless releasing it would genuinely cause serious harm to public interest;
- the additional duty on the government to routinely publish key information even in the absence of a request

The right to information was recognised by the United Nations General Assembly as far back as in 1946, when it declared:

"Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated" .

The human right to information was later given international legal status when it was enshrined in Article 19 of the International Covenant on Civil and Political Rights.

Why is the right to information so important?

Democracy requires the government to be open to public scrutiny, instead of operating in secrecy. The right to information can be a tool in the hands of citizens for scrutinising the government's policies and actions, fixing accountability of officials and promoting people's participation in the decision making process.

1. Promotes democratic governance

Democracy only truly works when:

- Informed citizens are able to thoughtfully choose their representatives on the basis of the strength of their record and performance, rather than on rumours or ethnic/geographic/religious affiliations; and
- Citizens can hold their elected representatives and officials to account for their policies, decisions, and actions while in power.

The right to information enables citizens to check whether government acts according to democratic values and constitutional norms.

2. Supports participatory development

Experience shows, development strategies in the Pacific have too often been designed and implemented in a closed environment - between governments and donors and without the active involvement of the public. However if governments are obliged to provide information, citizens can participate in the planning, implementation, monitoring and evaluation of development programmes.

Information empowers citizens and NGOs

The right to information offers a very practical means for citizens to engage more effectively in development projects that directly affect their lives. For example, in 2002 in Uganda, an environmental NGO used the open government clause in their Constitution to get the courts to order the release of a document about a controversial dam project that the Government and the World Bank had refused to release. A subsequent analysis of the document found that "Ugandans will pay hundreds of millions of dollars in excessive power payments if the World-Bank-financed Bujagali Dam proceeds according to plan." The project was consequently put on hold by the World Bank.

3. Supports effective (decentralised) service delivery

Proactive publication of information by the government can be used to promote more effective service delivery. Such disclosure supports more informed participation of communities in the operation and oversight of public services.

Information should be regularly published at all levels about how much public money is being spent, what the money is being spent on, over what period of time, and by which department(s) and to what norms of service delivery are citizens entitled. Citizens can use the information to demand more effective service delivery from the various levels of governments.

Proactive disclosure supports oversight of public services

Many Pacific countries are trying to implement a decentralised approach to service delivery. Monthly or quarterly grants are sent from the central government to the local/provincial government, which is then required to administer it. Unfortunately, there has often been considerable leakage of funds. The public has difficulty knowing who to hold responsible because they do not know whether or when the grant was to be released, how much was sanctioned, and what services they were entitled to receive.

Proactive information disclosure would empower communities to better oversee local spending. In Uganda, despite massive increases in education expenditure, a survey found that 87% of all funds meant for primary schools were being siphoned off. Shocked by these findings, the national government publicised details of monthly grants to districts in the newspapers and on the radio. Primary schools were also required to display public notices of funds received. Empowered with this information, parents were able to monitor the education programme and hold local officials accountable for spending. In five years, the diversion of funds dropped massively from 80% to 20%, while enrolment almost doubled from 3.6 million to 6.9 million children.

4. Promotes national stability

Democracy and national stability are enhanced by policies of openness which promote greater public trust in government. Enhancing people's trust in their government can help minimise the likelihood of conflict and support more effective post-conflict state-building efforts.

- Information seeking and sharing establishes a two-way dialogue between citizens and the state which can combat feelings of alienation and powerlessness.
- Open government addresses issues of exclusion or unfair advantage of one group over another.

5. Exposes corruption

In many Pacific states, corruption has eaten away at people's trust in government and has greatly hindered social and economic development. When citizens can access information about government activities and decisions, it is much harder for officials to cover up their corrupt practices and hide poor policymaking. The right to information improves public administration by acting as a powerful deterrent to corruption in government.

6. Supports equitable economic development

In recent years, Pacific Island states have struggled to attract investment required to accelerate economic growth and development. The benefits from economic development have often not been equitably enjoyed by all citizens. Uneven

Promoting more effective administration of government schemes

In India, poor citizens are given a ration card which entitles them to buy rice and wheat at subsidised prices. In the capital city Delhi, citizens used their right to information law to access records held by the ration shop owners responsible for selling grains at subsidised prices. They found that the shop owners had been siphoning off more than 90% of the rations, whilst providing false records to the Department of Food and Civil Supplies. When citizens compared the entries in their ration cards with the government records numerous false entries were revealed. Bowing down to the demands of citizens & NGOs, the government has ordered all ration shops to open up their records. Citizens can now inspect these records free of cost once a week to check any wrong doing.

economic growth precipitates tension in society.

- A transparent government with good information systems can collect and publish good-quality economic and social data which will better inform policy formulation & decision-making in the public & private sectors.
- Openness about licensing regimes, regulatory requirements, and the proper award of contracts, concessions and permits will bolster private and foreign investor confidence, encouraging long-term investment and thereby boosting growth. Simple, cheap access to information will empower smaller stakeholders to more effectively participate in the economy, ensuring equitable economic growth.

Is the Right to Information in operation anywhere in the Pacific Islands?

The Pacific Media and Communications Facility report, *Opportunities for Media and Communications in the Pacific*, summarised the state of the entrenchment of the right to information in the Pacific region.¹ Most notably:

- Papua New Guinea's Constitution specifically entrenches the right to information,² although the Government has yet to develop separate right to information legislation.
- In The Fiji Islands, the Constitution explicitly requires the Government to enact legislation on freedom of information³, the current Government intends to table a Bill⁴ as a priority, but the draft legislation has yet to be officially released.
- The Cook Islands is the only other Pacific Islands country which has made moves to enact a right to information law. In early 2005, the drafting of an Official Information Bill was completed and forwarded to the Cabinet for consideration.

¹ For more information visit the Pacific Media and Communications Facility website at <http://pmcf.muprivate.edu.au/index.php?id=798>. Also visit CHRI's website at www.humanrightsinitiative.org (click on Right to Information, International, Member States Laws & Papers).

² Article 51 of the Constitution explicitly recognises the right of reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society.

³ Article 30(1) of the Constitution includes the freedom to seek, receive and impart information and ideas as part of the right to freedom of expression. Article 174 explicitly requires that Parliament should enact a law to give members of the public rights of access to official documents of the Government and its agencies, as soon as practicable after the commencement of the Constitution.

⁴ Minister for Information Marieta Rigamoto announced at the end of September that the Government is drafting a Freedom of Information Bill which, along with the Public Records Act, would give citizens wider access to information held by the Government and its agencies. See <http://www.fijitimes.com/story.aspx?id=29425> for more details.