

CHRI 2009

**STATUS OF THE
RIGHT TO
INFORMATION IN
THE PACIFIC
ISLANDS OF THE
COMMONWEALTH**

A Report



CHRI

Commonwealth Human Rights Initiative

working for the **practical realisation** of human rights in the countries of the Commonwealth

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

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STATUS OF THE RIGHT TO INFORMATION IN THE PACIFIC ISLANDS OF THE COMMONWEALTH

A Report

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Introduction

A tropical beach scene with a person in the water, framed by palm fronds. The image shows a sandy beach curving along a clear blue ocean. A person is standing in the shallow water. The foreground is dominated by the dark, silhouetted fronds of a palm tree, creating a natural frame for the scene. The sky is bright blue with some light clouds.

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Background

Since 1946, the United Nations has recognised that “Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated”.¹ Nonetheless, the importance of the Right to Information (RTI) to participatory development and good governance has only gained importance as a priority for action relatively recently in the Pacific Island Countries of the Commonwealth. Australia and New Zealand enacted freedom of information laws during the 1980s, aimed at guaranteeing their people access to information held by public authorities. However, it took another 25 years before another member of the Pacific Commonwealth took action to pass a right to information law. The Cook Islands, an overseas self-governing State in free association with New Zealand, adopted the Official Information Act in 2008 to guarantee citizens’ rights to seek and obtain information from government bodies. The Act came into force a year later, in March 2009, and work continues towards implement this law in a staggered manner.

Unfortunately, few other countries in the Commonwealth Pacific have effective and reliable mechanisms that people can use to access information from their government. It has only been in recent years that countries like the Solomon Islands, Nauru, Vanuatu and Tonga have taken action to demonstrate support for the international consensus that the human right to information is the cornerstone of democracy. The ever-present debate over the suitability of democracy and human rights as core values of governance in Pacific Island communities, many of which are used to the exercise of authority based on traditions and privilege, may be said to be partly responsible for the reluctance to take action to implement FOI. The Commonwealth history of closed governments, as evidenced by the Official Secrets Acts which were imported from England during the colonial period, may also play a part. Additionally, it is common to many governments throughout the world to resist public transparency and accountability and downplay the fact that in a democracy information is a public good that is created and held by public authorities and functionaries to be used in the public interest.

Many Commonwealth Pacific Island Countries continue to have in place laws, regulations or practices that hinder easy flow of information from the government to the people. Where a policy of information dissemination has been consciously adopted, people

¹ UN General Assembly, (1946) Resolution 59(1), 65th Plenary Meeting, December 14.

are told only what their government thinks they need to know. Despite having small populations, few credible mechanisms have been created which enable people's informed participation in decision-making processes in government. Information about corruption, mismanagement of funds, and poor decision-making is rarely made known, with a view to avoiding embarrassment to Government.

However, it is encouraging that the willingness to move towards institutionalising the practice of transparency in public administration is increasingly visible at the regional level in the policy pronouncements that heads of government make through the Pacific Islands Forum. In recent years, Forum members have on several occasions pronounced their commitment to improving transparency in their governance structures and practices. The Pacific Plan, adopted by Forum leaders in 2005 and reviewed regularly, identifies 'good governance' as one of the four key pillars of the Plan. Improving transparency, accountability, equity and efficiency in the management and use of resources in the Pacific is part of the strategy to achieve good governance, an objective recognised as being indispensable for achieving sustainable development.² In this context, it is particularly notable that Initiative 12.3 of the Good Governance Pillar on participatory governance specifically recognises freedom of information as a key milestone.³

The right to access information is firmly positioned in international human rights law. "It is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR), and made legally binding on States Parties to the International Covenant on Civil and Political Rights (ICCPR)."⁴ Article 19 of the ICCPR states that:⁵

everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The United Nations Convention Against Corruption (UNCAC) also "explicitly recognises the central role that transparency and the right to information can take in ensuring government accountability by

enabling the public to participate in the exposure of corruption."⁶ Article 13 requires states to ensure that: "the public has effective access to information" and to undertake: "public information activities that contribute to non-tolerance of corruption, as well as public education programmes".⁷ Of the Pacific Island Countries in the Commonwealth, few countries have ratified either of these key international treaties.⁸ More have ratified specific human rights treaties concerned with the protection of particular groups of people, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families (CMW) include access to information as a specific right that must be guaranteed for these groups.⁹

In 2004, the Forum Leaders Communiqué "invited members to consider signing and ratifying the UNCAC to strengthen good governance in accordance with the spirit of the Biketawa Declaration."¹⁰ The Forum Principles of Good Leadership adopted by the member countries also outlines the duty of leaders to publicly "disclose fraud, corruption and mal-administration" when they become aware of it.¹¹ In addition, the Forum's Eight Principles of Accountability place emphasis on engendering transparency in budget-making, spending, auditing and reporting processes in the government sector.¹² Transparency in public procurement processes is recognised as another requirement for bringing about greater accountability. Leaders have a duty to ensure that their people have ready "...access to the administrative laws governing access to government benefits, the applications of taxes, duties, and charges, etc." and "executive discretion is at a minimum."¹³

At the national level, many Pacific Island Countries have drawn up specific action plans to promote good governance and accountability. Tonga adopted public consultative processes while drawing up its Strategic Development Plan 8. The feedback received from people in Tonga regarding their perception

2 The Pacific Plan for Strengthening Regional Cooperation and Integration (2007), pp.3 & 7: http://www.forumsec.org/UserFiles/File/Pacific_Plan_Nov_2007_version.pdf as on 25 April 2009.

3 The Pacific Plan for Strengthening Regional Cooperation and Integration (2007), p 18: http://www.forumsec.org/UserFiles/File/Pacific_Plan_Nov_2007_version.pdf as on 25 April 2009.

4 CHRI (2008) Our Rights Our Information p. 30: http://www.humanrightsinitiative.org/publications/rti/our_rights_our_information.pdf as on 11 December 2008

5 International Covenant on Civil and Political Rights (ICCPR): <http://www2.ohchr.org/english/law/ccpr.htm> as on 25 April 2009.

6 CHRI Our Rights Our Information p. 18 op cit.

7 United Nations Convention Against Corruption (UNCAC): <http://www.unodc.org/unodc/en/treaties/CAC/index.html> as on 25 April 2009.

8 Papua New Guinea, Samoa, Vanuatu. Cook Islands has ratified via New Zealand.

9 Only Nauru and Tonga are yet to ratify CEDAW, while all 10 Commonwealth Pacific Island Countries assessed in this report have ratified CRC.

10 35th Pacific Islands Forum, Apia, Samoa, Communiqué 5 – 7 August: <http://www.spc.int/Coastfish/Reports/HOF4/PDF/E-BP8-HOF4.pdf> as on 25 April 2009.

11 Forum Principles of Good Leadership: Principles 1 and 4: <http://www.forumsec.org/fj/pages.cfm/good-governance/forum-principles-of-good-leadership-accountability.html> as on 25 April 2009.

12 Forum Principles of Accountability: Principles 1 and 2, Ibid.

13 Ibid., Principle 5.

of openness in government makes for interesting reading. Community-level interaction revealed high levels of dissatisfaction with the record of transparency and accountability and the degree of predictability in the Tongan Government.¹⁴ Similarly, the private sector raised concerns about lack of openness and consultation on important policies and decisions made by government.¹⁵ As a result of receiving such feedback Tonga has identified increased transparency in the functioning of government bodies, particularly regarding financial and accounting operations, as a strategic activity to improve the governance environment.¹⁶ Samoa plans to include a code of conduct and ethics for its officials to improve transparency and accountability in the administration.¹⁷ Tuvalu has included the goal of 'improving transparency and accountability' in its National Sustainable Development Strategy as a key policy objective.¹⁸ Vanuatu's Strategic Plan recognises the importance of the free flow of information regarding government and its operations in order to increase the accountability of leaders and government institutions.¹⁹ Prior to the 2006 Military coup Fiji had, in its Strategic Development Plan, promised to "provide an institutional, operational and legislative framework for more accountability and transparency in policy making and management of public resources at all levels of Government".²⁰

Yet, what is the record of implementation of these promises and plans made by governments in these and other Pacific Island Countries of the Commonwealth? Is there more openness in the working of public authorities than before? Do people have access to all information regards the laws, by-laws and regulations that govern them, the process of policy making in government, budgets and annual performance reports? Have the strategies formulated by governments to improve the governance environment resulted in a reduction in the levels of secrecy? Has the distance between people and their government receded by any appreciable

degree? CHRI launched an exercise to make an assessment of the nature and extent of people's access to information from their governments in the Commonwealth Pacific.

Contents of the status report

This report captures CHRI's understanding of the status of people's access to information in Commonwealth Pacific Island Countries, at the conclusion of a two-year NZAID funded project to promote access to information in the region. It provides an overview of the current status of access to information in Commonwealth Pacific Island Countries, namely: the Cook Islands, Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.²¹ Each country is dealt with separately starting with a brief background to its governance structure. The report looks at constitutional guarantees of the right to information, and other national commitments made to openness in the functioning of public authorities. A crucial component in realising the right to information includes a duty on the part of governments to proactively disclose information. This report looks at the nature and extent of information voluntarily disclosed by governments and discusses some of the gaps that exist in information dissemination as highlighted by civil society organisations and the media.

This report looks not only at formal channels of communication between citizens and their government, but also at information dissemination that takes place through the channels of the mass media. The extent of media freedoms, enabling newspapers, TV and radio stations to report on the working of government, forms an important focal point for this study. We have also looked at the status of records management and maintenance in government bodies as this is a crucial information supply side issue. If proper information management systems are not put in place then providing people with access to information can become an onerous exercise.

Lastly, this report illustrates the current context within which Commonwealth Pacific Island Countries operate and the challenges to improving people's real time access to information from their government. The report discusses some of the obstacles that have been identified in each Commonwealth PIC in establishing

14 Looking to the Future, Building on the Past: Strategic Development Plan 8, 2006/07-2008/09, Kingdom of Tonga, p. 34: http://www.forumsec.org.fj/_resources/article/files/Tonga%20-%20Strategic%20Development%20Plan%208.pdf as on 25 April 2009.

15 Ibid., p. 31.

16 Ibid., Strategy #16, pp. 42 and 61.

17 Government of Samoa, Strategy for the Development of Samoa, 2005-07, p.42 : [http://www.forumsec.org.fj/_resources/article/files/Strategy%20for%20the%20Development%20of%20Samoa%20\(SDS\)%202005-2007.pdf](http://www.forumsec.org.fj/_resources/article/files/Strategy%20for%20the%20Development%20of%20Samoa%20(SDS)%202005-2007.pdf)

18 Government of Tuvalu, National Strategy for Sustainable Development, 2005-2015, p.15: http://www.forumsec.org.fj/_resources/article/files/Tuvalu%20-%20Te%20Kakeega.pdf as on 25 April 2009.

19 Government of Vanuatu, An Educated Healthy and Wealthy Vanuatu, Priorities and Agenda, 2006-2015, p. 20: [http://www.forumsec.org.fj/_resources/article/files/Vanuatu%20Priority%20Action%20Agenda%20Final%20Draft%202005-2006%20\(2006%20-%202015\).pdf](http://www.forumsec.org.fj/_resources/article/files/Vanuatu%20Priority%20Action%20Agenda%20Final%20Draft%202005-2006%20(2006%20-%202015).pdf) as on 25 April 2009.

20 Government of Fiji (2006) Strategic Development Plan, 2007-2011, p. 105: http://www.forumsec.org.fj/_resources/article/files/Fiji%20Strategic%20Development%20Plan%202007-2011.pdf as on 25 April 2009.

21 While we note that the Cook Islands does not currently qualify as a separate Commonwealth country, as self-governing State in free association with New Zealand, the Cook Islands is the only Pacific Island to have a properly legislated access regime in place, making it a role model in the region. Niue and Tokelau are overseas territories of New Zealand but do not have access regimes. They have therefore not been included in this study.

a right to information legislative regime. Half of the 10 countries included in this study are on the United Nations Least Developed Countries List²² and this alone represents a big obstacle in terms of resources that the Pacific Island Countries have to face while enacting and implementing an access to information regime.

Methodology and challenges

In gathering information for this report, CHRI used a mix of primary and secondary research methods. Primary research methods included conducting face-to-face and telephonic interviews with government officials, media and civil society representatives in the countries visited. CHRI also prepared and distributed electronically questionnaires to representatives of all stakeholder groups, including government. Secondary research included mining information from internet websites and databases, newspapers and previous reports prepared and published by national and international organisations working in the Pacific. CHRI used the opportunities of interacting with government, civil society and media representatives at the sensitisation and awareness-building workshops – the other major focus of its RTI project in the Pacific – to gather more first-hand information about the status of access to information in the Pacific region. CHRI interacted with various stakeholders at workshops on freedom of information in Nauru and the Solomon Islands in collaboration with the Pacific Islands Forum Secretariat and UNDP Pacific Centre, and in the Cook Islands in collaboration with the Office of the Ombudsman and the Pacific Centre for Public Integrity (PCPI). In addition, CHRI and PCPI facilitated a series of FOI Stakeholders meetings in Vanuatu in collaboration with the Media Association Blong Vanuatu and Transparency Vanuatu. These interactions were very helpful in arriving at an understanding about the actual status of people's access to information in these countries.

It is important to note that information gathered about some countries, for example, Vanuatu, the Cook Islands, Nauru and the Solomon Islands, for this report, is more complete in nature than the information presented for others such as Samoa and Kiribati. Although this corresponds to CHRI's ability to visit and work alongside partners from the countries in question, it also corresponds in a large way to how accessible information in these countries is, and how much of a commitment the governments of these countries have made to protecting the right to access

information. For those countries that CHRI has been able to gather the least data about official information disclosure policies, the public and media have reported the same challenges such as the impenetrability of the bureaucracy and their reluctance to respond to questions. The government officials who have the responsibility for providing people access to information about official services and policies were extremely difficult to contact and when we were able to contact them, they were often unsure about which information they were allowed to release and which must be kept secret from the public. Although CHRI initially intended to contact only such departments and public authorities in government that have a high degree of public interface, in the face of the lack of timely responses, the questionnaires were sent to as many other departments and public authorities as could be contacted by email, telephone and personal visits. The criteria for selecting media and civil society representatives included previous work done or interest in promoting access to information. As several respondents requested CHRI to keep their identity confidential, CHRI has not mentioned individual names in many places throughout this report, even though their feedback has been included. CHRI will send a soft copy to all respondents upon completion of the report.

In the majority of cases where the information presented about a country is more thorough in content, this is a reflection of the increased levels of accessibility of government bodies and the

22 Kiribati, Samoa, Solomon Islands, Tuvalu, Vanuatu figure on the UN List of Least Developed Countries: <http://www.un.org/esa/policy/devplan/profile/index.html> as on 25 April 2009.

Country Reports

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61	TUVALU
67	VANUATU

Cook Islands



The Cook Islands is a self-governing State in free association with New Zealand, with a population of just under 20,000 according to the last census.²³ The group of 15 islands is spread over a wide geographical area, and is divided into “the northern Cook Islands (which) are seven low-lying, sparsely populated, coral atolls; (and) the southern Cook Islands, where most of the population lives, consist of eight elevated, fertile, volcanic isles, including the largest, Rarotonga”.²⁴

Parliament is unicameral, but may call upon the House of Ariki, a group which consists of representatives of chiefs or nobles, to provide advice to the Government on traditional matters. Koutu Nui is another Council of hereditary chiefs in the Cook Islands which commands a considerable amount of respect in the Cook Islands community.

The Cook Islands is the first Pacific Island Country to enact right to information legislation, namely the Official Information Act 2008 (OIA). The Office of the Ombudsman hosted workshops in early 2009 on implementation of the OIA for both the public and private sectors in the Cook Islands. There have been initial delays in the implementation of the Act, due to resource issues, but the Government, media and civil society members continue to be committed to making the Act work as effectively as possible.

23 New Zealand Ministry of Foreign Affairs and Trade, Cook Islands Information Paper: <http://www.mfat.govt.nz/Countries/Pacific/Cook-Islands.php> as on 23 April 2009.

24 CIA World Factbook: Cook Islands: <https://www.cia.gov/library/publications/the-world-factbook/geos/cw.html> as on 23 April 2009.

Background

According to reports from local media representatives, the notion of introducing a freedom of information law was raised in the Cook Islands amid backroom political dealings between coalition partners in the late 1990s but was quickly forgotten due to political instability.²⁵

In mid-1999, the then Prime Minister instituted weekly announcements of Cabinet decisions following each Cabinet meeting. These announcements were telecast in the evenings, and were well-received by the public. The media displayed a range of reactions to this initiative. Some criticised these telecasts as “manufactured news” as they put a “political spin” on the actual decisions. Others welcomed the trend towards greater openness in government. In late 1999 this practice ceased under a different coalition government and the focus shifted to more general public relations efforts on behalf of the Government.²⁶

In 2000, the Cook Islands Government established an Anti-Corruption Committee. Unfortunately, public knowledge about the workings of the Committee was said to be limited due to lack of public consultation around its anti-corruption strategy.²⁷ In 2001, the Government, as a member of the ADB-OECD Asia Pacific Anti-Corruption Initiative, endorsed an anti-corruption action plan which included requirements to “develop effective and transparent systems for public service”²⁸. However, according to a Transparency International report on the National Integrity Systems of the Cook Islands, “little information has been shared (on the Initiative) and there has been no consultation with the community.”²⁹

The Prime Minister’s Office launched its website in 2000.³⁰ Discussions with media representatives reveal that the primary aim of this website is to retain control over the publication of media releases. Articles and statements are posted online for the local media to access. One media commentator informed CHRI that it gave the public “the opportunity to digest articles and statements

without the gloss and editing skills of the critical, private media.”

³¹The Prime Minister’s Office also funded the distribution of video-taped television news to the outer islands each week under an arrangement with the Pitt Media Group. Each tape carried five bulletins of local news and a major sports event.

In 2002, the country’s leadership changed and television news distribution to the outer islands was abandoned. One media commentator reported that “access to news and information became clouded, and the government website slid into ineffective obscurity.”³² According to those in the media at that time, media relations and the flow of information “reached an all-time low point.”³³ The print media in particular took a lead role in exposing much of what government was deciding, and how the coalition Government was conducting itself “behind closed doors”.³⁴

In the mid-1990s, much of the government-owned media was privatised as part of the economic reform initiative. The Government retained ownership over the broadcasting infrastructure and charged the new private owners for usage and rental fees. In 1996, the Government privatised stations run by Cook Islands Broadcasting Corporation - Cook Islands Radio and Cook Islands Television – and they remain under private ownership.³⁵ There are two main media groups in the Cook Islands, consisting of the Cook Islands News Ltd, which runs the only daily newspaper in the Cook Islands, and an online news service; and the Pitt Media Group, which operates the national radio and television station, as well as two weekly newspapers and online news services.

There is currently no Government-run radio or TV channel. Due to lack of resources, Pitt Media Group has admitted previously approaching the then Government-run GovMedia to compile news bulletins. They acknowledged the bulletins were “obviously just government slanted news” but overall this was looked upon as a positive move because they “creat(ed) an avenue for people to hear what government is doing.”³⁶

In early 2007 the Government presented a Media Standards Bill to Parliament. This Bill was to impose licensing and regulation

25 Response to CHRI’s questionnaire received from a civil society representative in the Cook Islands on 24 April 2009. Name withheld on request.

26 Response to CHRI’s questionnaire received from a civil society representative in the Cook Islands on 24 April 2009. Name withheld on request.

27 Transparency International (2004) National Integrity Systems Country Study Report: Cook Islands p. 27: www.transparency.org/content/download/1643/8350/file/cookislands.pdf as on 11 December 2008.

28 Ibid. p. 27.

29 Ibid. p. 27.

30 Cook Islands Government Online: www.cook-islands.gov.ck as on 24 April 2009.

31 Response to CHRI’s questionnaire received from a civil society representative in the Cook Islands on 24 April 2009. Name withheld on request.

32 Response to CHRI’s questionnaire received from a civil society representative in the Cook Islands on 24 April 2009. Name withheld on request.

33 Response to CHRI’s questionnaire received from a civil society representative in the Cook Islands on 24 April 2009. Name withheld on request.

34 Response to CHRI’s questionnaire received from a Cook Islands civil society representative on 24 April 2009. Name withheld on request.

35 AusAID, MDI International, MC Media and Associates (2005) Informing Citizens: Opportunities for Media and Communication in the Pacific

36 Ibid. p. 95.

restrictions on Cook Islands media, and drew strong protests from local media in the form of representations to the Select Committee established for public consultations. The media's response was to introduce self-regulation by forming the Cook Islands Media Council, now headed by Justice Tom Weston. The Government's response, led by Minister of Broadcasting and Deputy Prime Minister Sir Terepai Maoate, was to introduce the Official Information Bill.³⁷

It is notable that prior to the enactment of the Official Information Act in 2008 (OIA), there were no formal channels for requesting information in place and no right for the public to access information. The media reported that they would usually approach the Ministry in question and often be refused the information they wanted. They would then go directly to the Minister as a last resort. They could not predict whether or not they would get the information they requested. For example, according to interviews conducted with media personnel, Cabinet documents were nearly always refused, but if they approached a Minister involved with the preparation of the document they would sometimes get it. The media reports that the public would often put their questions for government information through the media in the form of letters to the editor and the media would then try to chase this information up for them.

Legal context: accessing official information

Cook Islands has acceded to some international human rights conventions,³⁸ and has ratified the ICCPR via New Zealand's ratification of the Convention.³⁹ The Government is yet to ratify the UNCAC – which explicitly recognises the importance of freedom of information to ensure transparent and accountable governments.

The Cook Islands 1965 Constitution⁴⁰ does not provide explicit protection to the right of to seek, receive and impart information. However, Section 64 of the Constitution recognises the right to freedom of speech and expression, and it could be argued on the basis of the international human rights discourse that the right

to access information is implicit in the right to freedom of speech and expression.

Cook Islands is the first Pacific Island Country to enact right to information legislation and repeal the law governing official secrets. The OIA was enacted in February 2008, and was closely modelled on the New Zealand law of the same name. The OIA included an implementation provision which delayed the coming into force of the Act for one year. The Act entered into force on 11 February 2009. Notably however, one week later, an amendment was passed by Parliament which purported to stagger its implementation. A small number of agencies volunteered to implement immediately, while the remaining bodies covered by the Act would be made compliant in stages.

Under the OIA, a “qualified person”⁴¹ has the right to request information. A qualified person is defined as either a Cook Islander who is resident in the Cook Islands, any person who has been resident in the Cook Islands for a period of three years or more, permanent residents of the Cook Islands and a corporate body, whenever incorporated, that has had a place of business in the Cook Islands for three years or more and continues to have a place of business in the Cook Islands – this is positive as it extends the right of access to NGOs and media organisations.

The OIA defines the kinds of information that qualified persons are able to access broadly. The definition of “document” is not confined merely to paper records but extends to cover the following categories of government held information: “any writing on any material; any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored; any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means; any book, map, plan, graph, or drawing; any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced.”⁴² Under the New Zealand OIA the definition of document, which is identical to the definition in the Cook Islands OIA, has been interpreted to include “not only recorded data but also knowledge of a particular fact or state of affairs held by officers in a named organisation or Department in their official capacity, when that organisation or Department

37 Email interview with a Cook Islands media representative on 6 August 2009

38 Convention on the Elimination of all Forms of Discrimination Against Women, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities.

39 Confirmed by Cook Islands Crown Law Office via email, 8 August 2009.

40 Constitution of the Cook Islands http://www.pacii.org/cgi-pacii/disp.pl/ck/legis/num_act/cotci327/cotci327.html?query=cotci327 as on 25 April 2009.

41 Cook Islands Official Information Act, Section 2(1): <http://www.cookislandsnews.com/OIA.htm> as on 28 April 2009.

42 Ibid. Section 2(1).

is subject to Official Information legislation.”⁴³ It remains to be seen whether the Cook Islands OIA will be interpreted in this same broad manner.

The OIA covers Government Ministries and Agencies, Islands administrations, councils and corporations 50% owned by government. Section 2(6) of the Act states that the definition of “Ministry” or “Organisation” does not extend to: a Court; a Tribunal in relation to its judicial functions, Commission of Inquiry appointed by an Order in Executive Council made under the Commissions of Inquiry Act 1966, or a Commission of Inquiry or Board of Inquiry or Court of Inquiry or committee of inquiry appointed, pursuant to and not by, any provision of an Act, to inquire into a specified matter. The Office of the Ombudsman is in charge of administering the Act.

Requests for information are to be made to the appropriate Ministry or Minister of the Crown or organisation; and officials have a duty to offer reasonable assistance to people making requests.⁴⁴ If the information sought is more appropriate to the functions of another Ministry, the Ministry that received the request has a duty to transfer the request to the appropriate Ministry within 10 working days and to inform the requester of the transfer.⁴⁵ The OIA does not set out requirements as to the form a request should take, but practice in New Zealand has been to accept both oral and written requests.

Exemptions from providing information in the Act mirror those in the New Zealand Act. Conclusive reasons for withholding information will be found if disclosure of information would: prejudice the national security, defence or international relations of the Cook Islands; prejudice the entrusting of information on the basis of confidence; prejudice the maintenance of law; endanger personal safety; or cause damage to the economy of the Cook Islands.⁴⁶ Additionally, Section 8 lists other non-conclusive reasons for non-disclosure of information which include: the protection of privacy, trade secrets, prejudice to commercial position, supply of information, health and safety, economic interests, prevention of material loss to public, constitutional conventions, free and frank expression of opinion, improper pressure or harassment, legal professional privilege, commercial activities, commercial/industrial negotiations, prevent improper gain from official information. The exemptions under Section 8 are subject to a public interest

override, i.e. that the information should be disclosed if the public interest in disclosure outweighs the public interest in keeping it secret. Special reasons to decline requests exist where they would prejudice New Zealand’s security or defence, relationships between the two Governments, or the international relations of the New Zealand Government.⁴⁷

Later in the Act, an additional set of technical exemptions are included, for example, if disclosure would constitute contempt of court, the information is soon to be publicly available, does not exist or cannot be found, is too hard to collate or is not held, or the request is frivolous or vexatious.⁴⁸ These reasons are not subject to the Section 8 public interest override. A positive point to note is that there is provision for partial disclosure of information where the remainder of the information is exempt from being disclosed.⁴⁹

The Act does not require application fees, but requestors may incur a “reasonable” charge for labour/materials involved in making requested information available. If the request is stated as urgent, any expenses incurred in making the information available urgently can be passed on.⁵⁰ Requestors must provide reasons for the necessary urgency. However, there is some indication that application fees are being charged and are substantial. For example, it has been reported that to apply for information held by the Cook Islands Police Department, “an initial request, requiring one hour of search time and up to 20 pages of photocopying, will cost \$50. Large volume requests will draw an extra \$20 per hour after first hour of search, while photocopying over 20 pages will cost a dollar per page.”⁵¹ CHRI has not been able to locate any fee regulations in the public domain, but it is understood that the Office of the Ombudsman is currently drafting guidelines to regulate fees chargeable across the Ministries.

Following receipt of a request, Ministries must decide, and inform the requester whether they will disclose the requested information as soon as reasonably practicable, and in any case no later than 20 working days from the receipt of the request.⁵² Time extensions are permitted where a large amount of information is requested, or where further consultations are required. In such a case, the time extension must be specified to the requestor with reasons, together with their right to complain and any other

43 Ombudsmen Quarterly Review (1998) Application of Official Information legislation to non-documentary information Volume 4, Issue 3, September 1998: <http://www.ombudsmen.govt.nz/imagelibrary/100198.pdf> as on 23 June 2009.

44 Ibid. Section 12.

45 Ibid. Section 13.

46 Ibid. Section 6

47 Ibid. Section 7.

48 Ibid. Section 18.

49 Ibid. Section 17.

50 Ibid. Section 14(3).

51 Police take lead on new information law, Cook Islands News, 19 January 2009.

52 Ibid. Section 14.

necessary information.⁵³ If the request is refused, reasons must be provided in writing, together with grounds in support of those reasons, unless that is prejudicial to the exemption provisions. The right to complain and seek an investigation or review must also be explained to the requestor.⁵⁴

Every qualified person has the right of appeal to the Ombudsman who can investigate and/or review the following: a refusal to supply information, the way in which information was supplied, any charge for information, conditions imposed on the use of information, a refusal to confirm/deny existence of information, or an extension of the time limit.⁵⁵ Failure to comply with time limits or undue delay is a deemed refusal under the OIA. The Ombudsman reports any contrary opinion with reasons and recommendations to the relevant Ministry, copying the report to the requestor and any other appropriate Minister.

Section 34 states that the Ombudsman is unable to recommend disclosure if the Prime Minister certifies that making available any of the information would be likely to prejudice: (i) the security or defence of the Cook Islands or the international relations of the Government of the Cook Islands; or (ii) any interest protected by Section 7 of this Act; or the Attorney-General in consultation with the Solicitor-General certifies that the making available of any information would be likely to prejudice the prevention, investigation, or detection of offences. Nonetheless, in such cases, the Ombudsman can still recommend that the relevant body undertake further consideration of the request.

If no adequate or appropriate action is taken, the Ombudsman can send a copy of the report and recommendations to the Prime Minister and report to Parliament.⁵⁶ Once the Ombudsman has sent a report of her recommendations to a body covered by the OIA, that body is under a “public duty” to observe the Ombudsman’s recommendations from the 21st working day of the recommendation. The fact that the recommendation becomes a “public duty” means that it becomes legally binding and can be enforced by an order of mandamus. However, Section 35(2) permits the Queen’s Representative by Order in Council to overrule the Ombudsman’s recommendation and reject disclosure.⁵⁷ Any such Order must be gazetted and tabled in Parliament as soon as practicable.⁵⁸ The requestor can apply to the High Court for

review of an Order within 21 days of publication in the Gazette on the grounds that it was wrong in law.⁵⁹ Unlike the New Zealand Act, it is unclear who will bear the costs of the review, which leaves open the possibility that the requestor will be left with the costs. The New Zealand Act, on the other hand, provides that the costs will be met by the Crown unless the request is considered to be unreasonably or improperly brought by the High Court. There is a further right of appeal to the Court of Appeal.

No civil or criminal proceedings will lie against a person who provides information, or the author of that information, where it is made available in good faith. Specific whistleblower protection is not provided under the OIA.⁶⁰

Although the Act is based heavily on the text of New Zealand’s Official information Act, one positive difference between the two countries’ laws is that the Cook Islands OIA provides for the appointment of an Independent Consultant.⁶¹ The Independent Consultant’s duties include: assessing if other Acts protect information in a reasonable and compatible way with the OIA, monitoring the implementation of the Act, listening to the public and Ministries/organisations regarding issues affecting access to or supply of information, recommending changes to the access regime, inquiring and reporting on anything impeding the access to information, consulting and receiving reports regarding problems encountered by officials and publishing information regarding the access to or supply of information.⁶²

It is important to note that in several ways the law still falls short of international best practice and it is hoped that the Independent Consultant will recommend that the access rights protected under the law are broadened in the future. Unlike many recent access laws, the OIA does not require the designation of Information Officers for the purpose of receiving and making decisions on information requests. In practise, this responsibility has fallen to one or more specifically trained officers within a Ministry. There are no sanctions against officials for failure to comply with the Act, such as imposition of penalties. There are also no provisions requiring the government to educate people about their information access rights. The language of the law is very complicated and does not make for easy reading by any person who is not a lawyer. Therefore there is a need for easy language educational materials to be prepared and distributed to people within the community.

53 Ibid. Section 15.

54 Ibid. Section 21.

55 Ibid. Section 30.

56 Ibid. Section 41(5).

57 Ibid. Section 35.

58 Ibid. Section 36(1).

59 Ibid. Section 37.

60 Ibid. Section 48.

61 Ibid. Part 6.

62 Ibid. Section 44.

Proactive disclosure

The requirements for proactive disclosure under the OIA are found in Section 22. They are identical to New Zealand's OIA requirements for proactive disclosure. Each Ministry must proactively disclose information about its structure, functions, and responsibilities; the categories of documents that are available; descriptions of manuals and similar types of documents which contain directions in accordance with which decisions or recommendations are made; and a statement setting out the information which must be available to public. The OIA recognises the utility of publishing this information on the internet, and Ministries must have regard for the need to assist the public to effectively exercise their rights. The information must be updated every 2 years. Notably, the Independent Consultant appointed under the OIA can recommend the enlargement of categories of information which should be available as of right. Thus, the proactive disclosure requirements should constantly be under review.

The previous Government Communications Unit, GovMedia, functioned under the Office of the Prime Minister. Unfortunately the Government has not always made it a top priority to ensure GovMedia is fully equipped to do its job properly. The delay in the appointment of a new GovMedia Director in 2004 resulted in the government website no longer running properly, nor remaining current, and the cessation in the issuing of government press releases.⁶³ GovMedia closed a few years ago. GovMedia consisted of one member of staff responsible for sending out press releases containing various types of government information, from details of officials' trips abroad to proposed new legislation.

GovMedia was responsible for updating the Cook Islands Government website, Cook Islands "Government Online"⁶⁴ which is still in existence. The website does not include information regarding Cook Islands legislation or rules; neither does it include a Parliamentary schedule or information about the Judiciary. However, it does include some useful information such as news releases; a list of Cabinet Members together with a photo of each Member, employment history, political history, and portfolios; a list of Ministries/Departments with contact details; current Members of Parliament; as well as tourist information. Another website, "Government of the Cook Islands", includes information about the structure of the Government and the Constitution, including

the Constitutional establishment of the Executive, Parliament, and the Judiciary, together with other information.⁶⁵

Press releases are posted on Government Online and sent to the media - but according to discussions CHRI had with media representatives in the Cook Islands, this occurs on a very ad hoc basis: sometimes the media will receive three releases a week; sometimes they might hear nothing for a month. Otherwise, the media has traditionally had to rely to an extent on leaks and rumours and then has to chase after the ministries for more information. The Deputy Prime Minister's Office does prepare and send press releases to the media - but no other Ministries do this.⁶⁶ There are no links to the websites of other Ministries on this website.

The Ministry of Finance and Economic Management website contains information about the budget statements, economic updates and forecasts for the years 2008-09.⁶⁷ The website of the Statistics Office attached to this Ministry displays the National Sustainable Development Plan prepared for the years 2007-2011.⁶⁸ This website also hosts a report on the status of achievement of the Millennium Development Goals compiled in 2006 but no updates are available for later years.⁶⁹ The website of the Ministry of Health contains valuable information about public health, water and sanitation issues.⁷⁰ Pamphlets describing the process for applying for development approvals for wastewater management projects, process of obtaining sewage facilities construction permits and tender notices are uploaded on this website. However all ministries do not have websites of their own.

There is a lack of transparency regarding the awarding of government contracts, an issue which had been raised prior to the passing of the OIA⁷¹, as these contracts are not required to be proactively disclosed under the OIA. This may be contrasted with proactive disclosure requirements under other national access laws such as Mexico's Freedom of Information Act.⁷²

65 Government of the Cook Islands website: <http://www.ck/govt.htm#rig> as on 20 April 2009.

66 Telephone interview with Political Reporter, Cook Islands News on 21 April 2009.

67 Website of the Ministry of Finance and Economic Management: http://www.mfem.gov.ck/index.php?option=com_content&view=article&id=28&Itemid=5 as on 20 April 2009.

68 Te Kaveinga Nui: Pathway for Sustainable Development in the Cook Islands: <http://www.stats.gov.ck/NewsEvents/Te%20Kaveinga%20Nui%20NSDP.pdf> as on 20 April 2009.

69 Cook Islands National Millennium Development Goal Report: http://www.stats.gov.ck/Statistics/MDG/CKMDG_RPT.PDF as on 20 April 2009.

70 Ministry of Health website: <http://www.health.gov.ck> as on 20 April 2009.

71 National Integrity Systems Country Study Report: Cook Islands p. 13 op cit.

72 Federal Transparency and Access to Public Government Information Law 2002, Article 7(XIII): <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/laweng.pdf> as on 29 July 2009.

63 Ibid. p. 21. Link to the original article: <http://www.pmw.c2o.org/2005/cooks4664.html> as on 20 April 2009.

64 Cook Islands Government Online: <http://www.cook-islands.gov.ck/> as on 20 April 2009.

Implementing the OIA in practice

Implementation of the OIA was staggered, following amendment of the Act in early 2009. At the time of preparing this report, seven public authorities had volunteered to become the focal points for making preparations to implement this law, namely, the Ministry of Justice, the Ministry of Cultural Development, the Public Service Commission, the National Police Department, the Ministry of Marine Resources, the Ministry of Internal Affairs and the Ministry of Health. By May 2010, all Government Ministries and Agencies Islands administrations, councils and corporations which are 50% owned by government will have completed preparations for implementing this law.

In early 2009, the Ombudsman, who has responsibility for administering the Act, undertook a range of training seminars in preparation for implementation of the Act. The OIA training workshop series included CHRI and the Pacific Centre for Public Integrity (PCPI), who assisted the Office of the Ombudsman with the design and the implementation of a Private Sector OIA Training Programme. In addition, CHRI and PCPI assisted the Ombudsman with three public consultations in the three main districts of Rarotonga in order to give members of the public an opportunity to find out more about the purpose, scope and means of using the Official Information Act.⁷³

The Ombudsman completed a month of sensitisation briefings, reviews and intensive training programs for the Ministries that volunteered to begin preparations for implementing the law in March 2009. The Police Department were amongst the first to volunteer and according to the Office of the Ombudsman “worked hard to get the appropriate systems in place to prepare themselves”.

A representative from Archives New Zealand was invited by the Office of the Ombudsman to conduct a review of the record-keeping practices of the volunteering ministries which was followed by an individual feedback session and a written report.

⁷⁴Two representatives from the Office of the Ombudsmen in New Zealand were also invited to conduct a one day in-house training for staff of the Cook Islands Ombudsman on handling complaints under the OIA. They also briefed all Heads of Ministries, and Chief Executive Officers on the OIA and its implications. This was followed by a two-day intensive training workshop with

⁷³ Email received from the Cook Islands Office of the Ombudsman, Assistant Ombudsman, 24 February 2009.

⁷⁴ The report is not available for public viewing.

operational level staff, including Information Officers of the volunteer ministries.⁷⁵

The Ombudsman also spearheaded a number of public awareness initiatives such as an inter-college OIA Logo competition, and debate on the importance of the right to know, and a Corporate Quiz Night on FOI.⁷⁶

Assessment

At the time of writing, the OIA is currently only in its very early stages of implementation and it is therefore not possible to comment on how well the seven volunteer ministries are coping with their new duties.

Other Pacific Island Countries are likely to look towards the Cook Islands as a model and benchmark when developing their own access to information laws. Unfortunately, the New Zealand OIA on which the Cook Islands OIA is largely based was passed more than 25 years ago and is largely outdated with regards to best practice principles. The Cook Islands has also been criticised for the lack of thorough public consultation conducted before the enactment of the OIA which experience from other countries has shown is an important element of the success of a right to information law in order for it to be “owned” by the people of a country.

Views from the media are that while various governments have spoken the language of transparency and accountability, prior to the OIA, there were very few concrete measures emerging from this rhetoric. Civil society and media representatives fear are that this may continue to be the case even with the OIA in place. One person in the media industry has commented that “the daily flow of information continues to be ad hoc under the OIA, as a result of the absence of a clear, proactive mechanism for releasing central government news and information.”⁷⁷ According to reports, while officials may attend a number of workshops on transparency and accountability they do not necessarily see the link between notions of transparency and the duty to release more information to the public and the media. Up until the introduction of the Official Information Act, in the media’s eyes, government officials did not know what they should release and what they should withhold. It

⁷⁵ Email received from the Cook Islands Office of the Ombudsman, Assistant Ombudsman, 24 February 2009.

⁷⁶ Email received from the Cook Islands Office of the Ombudsman, Assistant Ombudsman, 15 October 2008.

⁷⁷ Response to CHRI’s questionnaire, received on 24 April 2009. Name withheld on request.

has been observed that “(t)here is a generally poor response to media enquiries across all ministries, even when questions are tendered in writing.”⁷⁸

According to some civil society and media representatives, the introduction of an OIA was made in the absence of overt, broad community demands. According to one media representative, much of the call outside of government for the new law appeared to stem from the daily newspaper, the Cook Islands News, which had made similar demands for political reform. Some media workers claim it was unnecessary, and that close working contacts with key government sources are more effective. While the threat of ‘leaks’ has always been present somewhere, recent experience points to Cabinet itself as being vulnerable to information being divulged ‘under the table’ – sometimes immediately following a major meeting.

Transparency of Cabinet decisions continues to be managed to a large degree by the Minister responsible, and is subject to the discretion of the Prime Minister. Publicity and news releases over the activities of government departments, including policy decisions and programmes, are generally the responsibility of the respective Head of Ministry in consultation with the respective Minister. The results are mixed in terms of transparency because some Ministry Heads are more media-shy than others and there is no instituted obligation to be proactive with media relations.

The Cook Islands Ombudsman Act is yet to be amended to include a requirement for the Ombudsman to produce an annual report on the exercise of his/her functions under the Official Information Act, as is required under New Zealand law.⁷⁹

Despite there being room for some improvement, following the introduction of the OIA there has been a perceptible change in the mindset of making information more accessible, as was evident at the implementation workshops held in early 2009. The changes in information disclosure culture will happen over time and it is hoped that greater public awareness of new rights under the law will spur not only the media but the whole population of the Cook Islands to keep on asking questions of their government in order to improve the lives of all people living in the country.

78 *Informing Citizens: Opportunities for Media and Communication in the Pacific* p. 96. *op cit*.

79 Ombudsmen Act 1975
<http://www.legislation.govt.nz/act/public/1975/0009/latest/DLM431189.html#DLM431189> as on 29 July 2009.

REPUBLIC OF THE FIJI ISLANDS



The Republic of the Fiji Islands (Fiji) is the second most populated Commonwealth Pacific Island Country with a population of over 940,000 people, and is comprised of 332 islands, 110 of these being inhabited.⁸⁰ Fiji has a chequered past with regards to democratic governance. Four military coups have occurred since 1987, the latest being in December 2006. These coups have overthrown governments elected by the people in reasonably free and fair elections. A Military Interim Administration headed by Acting President Ratu Epeli Nailatikau and Commodore Frank Bainimarama continues to hold power.

In April 2009, following a High Court ruling which declared the 2006 military takeover to be unlawful⁸¹, the President abrogated the 1997 Constitution and announced that elections would not be held until 2014.⁸² Public Emergency Regulations introduced shortly after have severely restricted human rights, including the freedom of the media in Fiji.⁸³ At the time of preparing this report, severe media censorship is being exercised, seriously limiting the public's right to access information about what is really happening in government and impairing their ability to participate in the decisions that affect their lives. A number of local journalists have been detained and foreign reporters deported, censorship posts have been established in newsrooms and the government has ordered the shutdown of foreign media news outlets in Fiji.⁸⁴

In May 2009, Fiji was suspended from the Pacific Islands Forum, the first time a country has been suspended, in accordance with the Biketawa Declaration of 2000. Fiji was suspended from the Councils of the Commonwealth in 2006.⁸⁵ On 31 July, the Commonwealth Ministerial Action Group met and agreed that Fiji would be fully suspended from the Commonwealth, unless the regime stated its commitment to reactivate the President's Political Dialogue Forum process. This occurred on 1 September.⁸⁶

Due to CHRI's affiliation with the Commonwealth, and NZAID's funding of the CHRI Pacific FOI Programme, CHRI was not able to conduct any interviews with officials of the Fijian Government. This report is therefore a partial reflection of the status of people's access to information in Fiji as it has been written without inputs from the government sector.

80 CIA World Factbook, Fiji: <https://www.cia.gov/library/publications/the-world-factbook/geos/fj.html> as on 27 April 2009.

81 Qarase's removal unlawful, Fiji Court Rules, Fiji Live, 9 April 2009: http://www.fijilive.com/news_new/index.php/news/show_news/15040, as on 25 April 2009.

82 No Elections in Fiji until 2014 as Constitution is Torn Up, Radio Australia, April 2009: <http://www.radioaustralia.net.au/pacbeat/stories/200904/s2540684.htm>, as on 25 April 2009.

83 Fiji Government Decrees website: <http://www.fiji.gov.fj/publish/decrees.shtml> as on 30 April 2009.

84 Bainimarama regime tightens grip on Fiji Media, ABC News, 15 April 2009: <http://www.abc.net.au/news/stories/2009/04/15/2543461.htm>, accessed 25 April 2009.

85 Extraordinary Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration, Commonwealth Secretariat, 8 December 2006: http://www.thecommonwealth.org/document/34293/35144/157597/extraordinary_meeting_of_the_commonwealth_minister.htm, as on 25 April 2009.

86 Fiji Suspended from the Commonwealth, Commonwealth News Release, 1 September 2009: <http://www.thecommonwealth.org/files/213099/FileName/News09-37-FijiSuspendedfromtheCommonwealth.pdf> as on 1 September 2009.

Background

The issue of freedom of information has been under discussion since the 1995 Reeves Commission which reviewed the 1970 Constitution of Fiji and put the issues firmly on the agenda (see following section for detailed discussion on the legal context for FOI in Fiji). In 1998, the Judiciary also supported an FOI regime, and in one case “express(ed) the hope that the clear wish of the new Constitution be fulfilled in this regard at an early date.”⁸⁷

In 2004 at the Asia Pacific Ombudsmen Conference held in New Zealand, former Fijian Ombudsman, Mr. Walter Rigomoto, gave a presentation which highlighted the key ways in which Ombudsmen in the Asia-Pacific region could maximise the effectiveness of their mandates to scrutinise government administration by promoting the right to information.⁸⁸ In the same year, the Law Reform Committee in Fiji called for whistleblower protection and the formation of an Anti-Corruption Agency⁸⁹ (which was eventually established in 2007 under the Interim Military Government).

A Fijian NGO, FemLINKPACIFIC, hosted a series of workshops in mid-2006, which included a focus on freedom of information, and invited representatives from the Fiji Human Rights Commission and the Solicitor General’s Office to make presentations on freedom of information to participants. From the information presented at that workshop, FemLINKPACIFIC went on to produce a series of radio campaigns which emphasised the importance of access to information.⁹⁰

In what could be described as a step towards enhancing public access to information, the Interim Administration introduced an e-government system in 2008 aimed at allowing “government employees and citizens of Fiji to gain access to government information and services.”⁹¹ The Fijian Director of Training at the Public Service Commission also commented at a recent workshop on civic education that, “In the next six months, we need to take civic education seriously because we would like to see us in the

frontline when it comes to dissemination and public awareness on civic education.”⁹²

Since the 2006 coup and prior to the abrogation of the Constitution, the media increasingly witnessed a tightening of controls on what information it was allowed to publish without being reprimanded. When the media or civil society have raised concerns regarding the Interim Administration, the Administration has moved to tighten its control. According to one active civil society member in Fiji who responded to CHRI’s questionnaire, this has had a “cautionary” effect on community media and radio.⁹³

The Fiji Times carried a banner on its newspaper masthead for some time which said “we will uphold media freedom: Cmdr Bainimarama’s promise” but removed it when the publishers of both the Fiji Sun and Fiji Times were deported in early 2008. Editor-in-Chief Netani Rika made the comment that “the banner was dropped because Commodore Bainimarama’s promise to uphold media freedom, first made in December 2006, was ludicrous.”⁹⁴ The Fiji Times published an article on 7 November 2008 where Mr Rika pledged his support for freedom of information legislation, stating that “such an (A)ct will help journalists in the dissemination of relevant, timely and accurate information,”⁹⁵ Conversely, the current Interim Administration is looking to pass a Media Bill which has been criticised from within and outside Fiji as unnecessarily impeding the freedom of the media. The Administration has claimed the Bill will assist in making the media more responsible. On 22 January 2009, Fiji Times was fined \$100,000 by the High Court for publishing a letter that criticised the court’s validation of the 2006 military coup.⁹⁶ Less than a week later, an Australian publisher became the third to be deported by the Interim Administration within the year.⁹⁷

In the Government’s various published statements, one of the areas of focus of the Interim Regime has been on the improvement of transparency and accountability in Fiji, with regards to tackling corruption in particular. To this end, the Interim Government set up

87 Nivis Motors Machinery Company Ltd v Minister for Lands Mineral Resources [1998] FJCA 42 See: <http://www3.pacii.org/fj/cases/FJCA/1998/42.html> as on 27 November 2008.

88 CHRI Newsletter, volume 12 number 1 (2005): http://www.humanrightsinitiative.org/publications/nl/newsletter_spring_2005/article2.htm as on 15 January 2009.

89 Fiji Law Reform Commission: <http://www.lawreform.gov.fj/common/default.aspx?page=briberyLaw> as on 26 March 2009.

90 Response received from FemLINKPACIFIC to CHRI’s questionnaire on 10 February 2009.

91 e-Government Will Allow Easy Access to Information, Fiji Government Press Release, 16 July 2008: <http://www.scoop.co.nz/stories/WO0807/S00477.htm> as on 24 November 2008.

92 Civil Servants Should be Well Informed: Fotofili, Fiji Times Online, 20 January 2009: <http://www.fijitimes.com/story.aspx?id=112239> as on 12 March 2009.

93 Response to CHRI’s questionnaire, received on 10 February 2009. Name withheld on request.

94 PM Deports Aussie Editor, Media Flash, 7 May 2008: http://www.melbourneobserver.com.au/ob_07may08_p31z.pdf as on 2 March 2009.

95 Media bill raises issues of openness, Fiji Times Online, 7 November 2008: <http://www.fijitimes.com/story.aspx?id=105435> as on 2 March 2009.

96 Fiji Paper Fined \$100K Over Article, Fiji Live, 22 January 2009: http://www.fijilive.com/news_new/index.php/news/show_news/12924 as on 2 March 2009.

97 Publisher of the Fiji Times, Rex Gardner. See: Third Publisher Deported from Fiji, ABC News, 27 January 2009: <http://www.abc.net.au/news/stories/2009/01/27/2474814.htm> as on 23 April 2009.

the new Fiji Independent Commission Against Corruption in 2007. However, reports suggest that the processes for establishing and supporting such mechanisms have themselves not been transparent, inviting little participation from the people of Fiji.⁹⁸

After abrogating the Constitution in April 2009, Fiji has witnessed severe crackdowns on the freedom of the press, expression and the people's right to information. The Public Emergency Regulations which came into force on 10 April 2009 ordered media organisations not to broadcast any material which "may give rise to disorder...or may result in a breach of the peace, or promote disaffection or public alarm, or undermine the Government and the State of Fiji."⁹⁹ Failure to comply can result in prohibition of the publication or even shutdown of operations.¹⁰⁰ In some cases, non-compliance can be punishable by fines of up to FJD\$1,000 fine or two years imprisonment.¹⁰¹

In a move that casts further suspicions on the interim regime's real commitment to transparency and accountability, reports from the international media suggest that the regime has started to destroy all documentation relating to the military takeover. The head of Fiji's Law Society has been quoted as saying "I have heard they have shredded all paperwork and files on actions pending against the military regime...They're wrecking it to try to get away with what they've done."¹⁰²

Legal context: accessing official information

Fiji has not acceded to the International Convention on Civil and Political Rights, Article 19 of which explicitly recognises the importance of freedom of information. Following the 2006 coup, Fiji acceded to the UNCAC in May 2008, which includes commitments to greater transparency and accountability. Article 13 in particular places an obligation on state parties to ensure that the public has effective access to information.¹⁰³

98 Interview conducted with a civil society advocate in Fiji, in April 2009. Name withheld on request.

99 Public Emergency Regulations 2009, Section 16(1), http://www.paclii.org/fj/legis/num_act/per2009273/ as on 30 July 2009.

100 Ibid, Section 16(2) and (3).

101 Ibid, Section 25,

102 Tamara McLean, Fiji Regime Shreds Anti-Govt Documents, Sydney Morning Herald, 21 April 2009, as on 25 April 2009.

103 United Nations Convention Against Corruption, http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf as on 23 April 2009

In 1995, the Reeves Commission was appointed to review the 1990 Constitution of the Republic of the Fiji Islands. Although the existing Constitution incorporated the freedom to receive information "within the ambit of an individual's freedom of expression"¹⁰⁴, the Commission pointed out the limitations of this clause, stating that the laws relating to access to information at that time "effectively restrict(ed) public access to official information."¹⁰⁵ The Commission also noted that "the policy underlying the general legislation (statutes and rules introduced during colonial times) assumes that official information is government property which should not be given to anyone without specific reason and authorisation"¹⁰⁶ stating, "we do not believe that secretive policy is appropriate for an independent democratic nation like Fiji."¹⁰⁷ Rather than proposing the inclusion of a revised provision on accessing information, the Commission recommended that the Official Secrets Act be replaced with a new Official Information Act.

The 1997 Fijian Constitution that came into force following the Reeves Commission's findings, guarantees the right to freedom of expression in Section 30, and includes in subsection 1(a) the "freedom to seek, receive and impart information and ideas"¹⁰⁸. Section 174 of the Constitution further provides that:

As soon as practicable after the commencement of this Constitution, the Parliament should enact a law to give members of the public rights of access to official documents of the Government and its agencies.¹⁰⁹

In furtherance of Article 174, in 2000 the Fiji Labour Party Government produced an Exposure Draft Freedom of Information Bill. However, the Bill lapsed following the May 2000 military coup.

In 2004, the Citizens' Constitutional Forum (CCF), an NGO based in Fiji, developed a Model FOI Bill with inputs from CHRI, which they launched in September 2004 at a public workshop on 'A Freedom of Information Law for Fiji' in Suva. CHRI assisted with the facilitation of this workshop. The purpose of the workshop was to "launch a discussion paper and draft Bill, which the CCF had

104 Sir Paul Reeves, Tomasi Vakatora and Brij Lal (1995) Report of the Constitution Review Commission: Towards a United Future p. 555.

105 Ibid., p. 556.

106 Ibid.

107 Ibid.

108 Fiji Constitution 1997, Section 30(1)(a): http://www.servat.unibe.ch/icl/fj00000_.html as on 2 April 2009.

109 Ibid.

prepared earlier in the year, and more broadly to build support for, and attract new participants in, campaigning for the introduction of an Act of Parliament to give members of the public rights of access to information held by the Government and its agencies (and perhaps to certain information held by private bodies).¹¹⁰ That same year CCF also co-hosted, with the University of the South Pacific, a public workshop on FOI in Fiji, which included a presentation on FOI experience from CHRI.

In 2005, the Government started work on another FOI Bill. The Bill was prepared by the Office of the Attorney General and it is understood that it was submitted to Cabinet in early 2006. CHRI reviewed the draft Bill and met with both the Attorney General's Office and Solicitor General to discuss strengthening the Bill. The Fiji Times reported in 2006 that, according to the Attorney General the Freedom of Information Bill would be introduced in the following parliamentary sitting for consideration. In November 2006, just prior to the military coup in December, the Fiji Government online portal stated that the Cabinet had approved the FOI Bill in principle on the recommendation of the then Prime Minister Laisenia Qarase.¹¹¹

Following the December 2006 coup, in January 2007, the Fijian President, Ratu Josefa Iloilo, announced his support for the Military Interim Administration, and issued an 11-point plan that would give a mandate to the new Interim Administration. Part of the Interim Administration's mandate was to "immediately introduce a code of conduct and freedom of information (of) provisions.¹¹² This was endorsed by Interim Prime Minister Bainimarama. The current Interim Administration has made several assurances that it would put in place a freedom of information regime, including prioritising access legislation in its highly controversial initiative, the "People's Charter for Change, Peace and Progress".

At the March 2009 Melanesia Sub-Regional Consultation on the United Nations Convention Against Corruption, which was organised by UNDP Pacific Centre and PIFS, the Fijian delegation identified priorities for combating corruption, including establishing a National Anti-Corruption Taskforce, a National Strategy against corruption, legislating for whistleblower protection, strengthening

the Independent Commission Against Corruption and, within three to five years, formulating a freedom of information Bill.¹¹³

On 17 April 2009, following the abrogation of the Constitution on 10 April 2009, Commodore Bainamarama made a speech to the Public Service where he specifically stated that freedom of information would be introduced by decree as a priority. However, it is not clear what work has been undertaken subsequently to move forward on this commitment.¹¹⁴ The Official Secrets Act (UK) inherited from British colonial rule, also remains in force.

Proactive disclosure

Experience from civil society members currently in Fiji is that the Interim Administration voluntarily releases minimal information outside the spheres of the government website, press releases and paid advertisements. The Interim Administration has also used public meetings to promote its agenda.

Fiji has a Ministry of Information which declares that it is dedicated to "a well-informed and united Fiji"¹¹⁵ Lieutenant Colonel Neumi Leweni was appointed Head of the Ministry following the coup. The predominant focus of the Ministry is on the regulation of internal government information and disseminating press releases promoting the interests of the government. Civil society feedback suggests that the Ministry of Information is little more than a "public relations machine", generating publicity for the government, but with no real effort made to provide accurate data that would benefit the general public of Fiji.

A quick survey of the websites of several Ministries reveals that some information about their activities and programmes has been placed on their websites for people's reference. For example, the website of the Ministry of Finance and National Planning contains live links to budget documents and speeches for the years 2007-09.¹¹⁶ The latest budget speech of the Prime Minister, who is also in charge of the finance portfolio, has been uploaded along with an overview document that provides a comparative picture

110 Reverend Akuila Yabaki, Executive Director, CCF quoted in A Freedom of Information Law for Fiji: A Public Workshop Hosted by the Citizens' Constitutional Forum 30 September 2009.

111 From Fiji Government Online Portal Draft Freedom of Information Bill approved in Principle, 7 November 2006: http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/fiji/draft_foi_bill_approved_in_principle.pdf as on 15 January 2009.

112 Fiji Government Online Portal press release, President Supports Actions of Commander, 5 January 2007: http://www.fiji.gov.fj/publish/page_8142.shtml as on 15 January 2009.

113 Outcomes Statement of the Melanesian sub-regional Consultation on the UN Convention Against Corruption, March 11-12 2009: <http://www.undppc.org.fj/userfiles/file/Outcomes%20Statement%20-%20Final%20for%20circulation.pdf> as on 25 April, 2009.

114 Commodore Bainamarama (2009) Address to Senior Civil Servants, Fiji Sun, 19 April 2009.

115 Ministry of Information website: <http://www.info.gov.fj/> as on 15 January 2009.

116 Ministry of Finance and National Planning website: <http://www.mfnp.gov.fj/> as on 25 April 2009.

of economic development over the years 2007-09 in addition to sector-wise indicators of progress made in the economy.¹¹⁷ The text of the 20-year development plan, the strategic development plan for the period 2007-2011 are available on the main page of the Ministry's website.

The Ministry of Health is one of the few ministries to have uploaded an annual report.¹¹⁸ The report for 2007 provides statistics on the number of hospitals functioning in Fiji, major health indicators such as morbidity and mortality rates, the nature of services they provide, the coverage and performance of the immunization programme, the progress made on the attainment of the Millennium Development Goals and a summary of the budgetary provisions made and actual expenditure incurred. However the annual report for subsequent years has not been uploaded on the website. The website of the Fiji Police displays a code of ethics for police officers and some details about its structure and organisation. More information about the number of police stations and their area of jurisdiction, macro level statistics is provided region-wise.¹¹⁹ However the link to their annual report is inactive.¹²⁰ It appears that this website is also not updated in a timely manner.

The Public Service Commission's website states that it encourages Permanent Secretaries and Heads of Departments to proactively disseminate information on programmes and policies to the public. A circular posted on the website dated August 2008 makes the following statement: "Permanent Secretaries, notwithstanding the condition laid down on press releases and media statements on issues of public service policy and administration, the Public Service Commission encourages you to objectively disseminate information to the public and media concerning notable achievement and progress of community and development programmes undertaken by your Ministry, as part of your wider public relations and community outreach programmes."¹²¹ It is notable, however, that the circular emphasises the need to disseminate only positive information of achievements and progress.

117 Ministry of Finance and National Planning (2008) Raising Economic Growth and Alleviating Poverty, November: http://www.mfnp.gov.fj/Documents/2009_Budget_Supplement.pdf as on 25 April 2009.

118 Ministry of Health (2007) Annual Report: <http://www.health.gov.fj/Annual%20Report/2007/Annual%20Report%202007.pdf> as on 25 April 2009.

119 Fiji Police: http://www.police.gov.fj/index.php?option=com_content&view=category&id=38&Itemid=27 as on 25 April 2009.

120 <http://www.police.gov.fj/> as on 25 April 2009.

121 Media Statements and Releases, Public Service Commission Circular, 26 August 2008: <http://www.psc.gov.fj/Publications/PSCCirculars/2008PSCCirculars/PSCCircular2008-28.pdf>, as on 27 April 2009.

The Fiji Government website includes a directory, news releases, Cabinet releases, speeches, and photos of Ministers. Legislation and links to information on the Constitution or Judiciary do not feature on the website. However, there is a Parliamentary website which, while it is not linked to the primary Government website, includes a "Research and Library" tab with a link to a fact sheet outlining the 1997 amendments to the Constitution and their effect. The website also sets out daily Hansard records, the latest Bills to be introduced to the House, and it is possible to search for Acts, and Members of Parliament.

Fiji has a well stocked National Archives which contain a great deal of information relating to Fiji's history and many of its documents are available for public viewing. The National Archives website states that its aims are to "Ensure the safe custody and proper preservation of public records... [and] ...Make these records available to Government for reference purposes and to members of the public."¹²² The duties and responsibilities of the Archivist defined in the Public Records Act 1970 and Public Records (Amendment) Act 2006. However, according to feedback from civil society, these laws are very poorly understood amongst the public service.

Most of Fiji's legislation is available to the public via the Paclii website, an initiative of the University of the South Pacific.¹²³

Assessment

The current state of affairs in Fiji is one which, in practice, does not appear conducive to freedom of information. Although the Interim Administration has stated its commitment to freedom of expression and information, its actions belie its words. The Interim Administration has placed stringent controls on the media in Fiji and on the people of Fiji's rights to freedom of expression. Not enough has been done to provide updated information about the activities of various ministries and departments in the last two years, despite the apparent adoption of the policy of proactive disclosure by the Interim Government.

From a human rights perspective, the key obstacle in the way of enacting right to information legislation is the absence of a democratically elected government, which could develop a

122 Ministry of Information, National Archives of Fiji, Objectives: <http://www.info.gov.fj/archives.html> as on 27 April 2009.

123 Pacific Islands Legal Information Institute, <http://www.paclii.org/> as on 27 April 2009.

rights based FOI law in a participatory manner. Coupled with the lack of any strong political will to open government within the Military Interim Administration, it appears unlikely that the right to information can be effectively implemented in the short-term. There is a perception that the Administration is reluctant to be

transparent and accountable to the public, and a general feeling of fear in the community that in the current political climate it is unsafe to ask too many questions.

KIRIBATI



The Republic of Kiribati encompasses a very large geographic area, dotted by 33 coral atolls with a population of approximately 112,850.¹²⁴ The atolls are very low-lying, prone to flooding and face significant problems with global warming. Kiribati is on the United Nations list of Least Developed Countries¹²⁵ and is not rich in natural resources.¹²⁶ The island capital of Kiribati, Tarawa, faces ongoing overcrowding and pollution issues so that “a program of migration has been implemented to move nearly 5000 inhabitants to outlying atolls”¹²⁷ Kiribati is one of the more remote countries in the Pacific and has ongoing communication infrastructure difficulties.

Kiribati is a democratic republic with a unicameral Parliament, locally known as Maneaba Ni Maungatabu. While political parties do exist, in practice people vote on personal rather than party connections, usually choosing those with whom they have ties familial or island ties. Political parties are “more similar to informal coalitions.” The immense difficulties encountered in making contact with people in Kiribati is indicative of the obstacles faced in Kiribati in increasing information flow from the Government to all I-Kiribati.

124 CIA World Factbook: Kiribati: <https://www.cia.gov/library/publications/the-world-factbook/geos/kr.html> as on 25 April 2009.

125 United Nations Least Developed Countries Information: Kiribati: http://www.un.org/esa/policy/devplan/profile/country_100.html as on 15 April 2009.

126 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 175, op.cit.

127 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 175, op.cit.

Background

The Government-owned national public service broadcaster, Radio Kiribati, has the primary duty “to provide local sound broadcasting services for disseminating information, education and entertainment.”¹²⁸ Te Uekera is a Government-run newspaper. According to responses to CHRI’s questionnaires, the government information provided on both Radio Kiribati and Te Uekera could be described as “a bit circumspect and careful but (there are) others more willing to report and promote public debate.”¹²⁹ Newair FM is an independent radio station and Newstar was the country’s first independent newspaper. According to one civil society representative in Kiribati, the Government utilises radio stations to cover issues affecting national security, such as the recent food crisis in Kiribati.¹³⁰ Transparency International has noted that “greater coverage is generally given to government views”¹³¹ in the Kiribati media.

Currently, the country is still in the process of establishing a television station in Kiribati, but some i-Kiribati¹³² have televisions in their homes which they use to watch recorded movies. There is an internet service provider, but the internet is accessible only to those who can afford computers and the price of an internet connection - both are extremely expensive and possible only in some urban areas. Some of those who replied to CHRI’s questionnaire believed that Government Ministries have been known to make use of public notice boards but no one was able to provide any examples.

There are also several local newspapers published by Kiribati churches. The influence of both the Catholic and Anglican churches cannot be underestimated, and most i-Kiribati have affiliations with either one. The Churches also publish their own publications and the Catholic Church has its own printing press. The relationship between the Churches and Government has been described as positive but there are some concerns that the growing competition for land, due to the overcrowding on Tarawa, may challenge that as the Churches occupy large areas of land

which may come under question. Deeds storage will be a key focus around this issue, in ensuring that record-keeping promotes accountability.

One project that was recently completed in Kiribati was the digitisation of land records in Tarawa which were then sent to the outer islands.¹³³ This exercise considerably increased transparency regards the ownership of land. An official in the Kiribati Press Liaison Unit stated that ensuring people in the outer islands are able to access information was “a top priority”¹³⁴ for the government. Currently, radio ensures that government news and information is disseminated widely to the scattered islands of Kiribati. The official commented that plans are underway for the future to complement radio as the only means of news/information provider to the outer islands. They also said that at certain times, a government team travels to the outer islands to conduct ministerial tours to fulfill the purpose of informing people in the outer islands.¹³⁵

Legal Context: Accessing Official Information

Kiribati has not acceded to the International Covenant on Civil and Political Rights, Article 19 of which protects the right to freedom of expression and information. Nor has Kiribati acceded to the UN Convention Against Corruption, Article 13 of which calls for the promotion of public access to information.

Section 12 of the 1979 Kiribati Constitution, provides protection for the right to access information as part of the right to freedom of expression. Section 12(1) states that:

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence.¹³⁶

128 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 177. op.cit.

129 Response to CHRI’s questionnaire, received on 23 April 2009. Name withheld on request.

130 Response to CHRI’s questionnaire, received from civil society member on 10 February 2009. Name withheld on request.

131 Transparency International (2004) National Integrity Systems Country Study Report: Kiribati p. 18: www.transparency.org/content/download/1663/8420/file/kiribati.pdf as on 11 December 2008.

132 The term “i-Kiribati” is used to describe someone from Kiribati.

133 Telephone interview with New Zealand archivist who has previously worked in Kiribati, 24 April 2009.

134 Response to CHRI’s questionnaire received by a Government Official on 27 April 2009. Name withheld on request.

135 Ibid.

136 Constitution of Kiribati: <http://www.parliament.gov.ki/constitution.html> as on 27 April 2009.

There is currently no official access to information policy in Kiribati and the Government has not enacted legislation to protect the public's right to access information. However, Kiribati's Public Records Act 1983 provides that "all records deposited in the Archives office shall be available for public reference subject to the provisions of any regulations made under this Act."¹³⁷ 'Public records' includes "all documentary materials of any kind, nature or description which have been drawn up, made, received, acquired or used in the course of legislative, administrative or executive transactions or in proceedings in any court together with all exhibits and other material evidences"¹³⁸ which are related to these documents. However, there are very clear restrictions on the availability of public records, including that the Archivist may, "for good cause withhold access to any specified public record or class of public records in his custody"¹³⁹ and "the Minister may at any time, ... withhold access either generally or by any person or class of persons to any specified public record or to any specified class of public records".¹⁴⁰ There is a right of appeal to the Minister.

One person who responded to CHRI's questionnaire was aware of "one or perhaps two Information Officers of a Government Information Unit... who were easily accessible by the public."¹⁴¹ Another response stated that "they are not accessible to the public."¹⁴² A further response said there was no Information Unit in existence. Unfortunately, no clear and concrete information was available about such a Unit.

An indication that public officials prefer to err on the side of caution with regards to disclosing requested government information is evident from one response to CHRI's questionnaire which stated that "there is an official practice that addresses the purpose of confidentiality which, in some ways, may require official secrecy."¹⁴³

Proactive Disclosure

The Press Liaison Unit within the Office of the President acts as the central government media and information unit. In

137 Public Records Ordinance Act 1983: http://www.paclii.org/ki/legis/num_act/pra1983153/ as on 22 April 2009.

138 Ibid. Section 2.

139 Ibid. Section 14(1)(a).

140 Ibid. Section 14(3).

141 Response to CHRI's questionnaire, received on 27 April 2009. Name withheld on request.

142 Response to CHRI's questionnaire, received on 27 April 2009. Name withheld on request.

143 Response to CHRI's questionnaire received by a Government Official on 27 April 2009. Name withheld on request.

2005, it was also reported that "there are (also) 12 government ministries ... (who) produce media content on a regular basis."¹⁴⁴ The Broadcasting and Publication Authority is responsible for informing people about information released at the lower levels of administration. An employee at the Press Liaison Unit explained that "every now and then particular information is disclosed to the public (by the government) through media agents such as radio, newspapers, television."¹⁴⁵

The Kiribati Parliamentary website includes information about Members of Parliament, legislation, Hansard (written in the Kiribati language and dating up to the end of 2007), information about Parliament (updated in late 2008), and Parliamentary Committees.¹⁴⁶ There is also a public gallery where people are able to go and watch Parliament in action. According to the Parliamentary website, "proceedings of Parliament are broadcast live over Radio Kiribati. Recorded tapes of the Parliamentary sessions are also provided to staff in the Maneaba from which transcripts are made and a publication produced called the Report of the Proceedings of the Maneaba ni Maungatabu (or Hansard). Since Independence the Report has been produced in the Kiribati language."¹⁴⁷

In general, legislation is accessible on request and is also published at public libraries. The government budget is also published and copies are also available on request. According to one government employee, every government office and ministry has a notice board for public viewing. However, accessing official factual information regarding the assets of political leaders and public officials remains difficult. One respondent to CHRI's questionnaire made the candid comment that "Government carefully 'cook' their information before disseminating them."¹⁴⁸

It was not possible to find any other official websites of the Government of Kiribati.

Assessment

Questionnaires received from members of civil society in Kiribati claim that information is generally inaccessible to the public,

144 Informing Citizens: Opportunities for Media and Communication in the Pacific, p. 184, op.cit.

145 Response to questionnaire received from the Press Liaison Unit on 27 April 2009.

146 Parliament of Kiribati website: <http://www.parliament.gov.ki/index.html> as on 27 April 2009.

147 Parliament of Kiribati website – Hansard: <http://www.parliament.gov.ki/hansard.html> as on 27 April 2009.

148 Response to CHRI's questionnaire received by a Government Official on 27 April 2009. Name withheld on request.

unless specifically requested. According to feedback, much government held information is marked as “confidential” and there is a presumption that it should not be disclosed to the public. Some information requires the President’s consent before it is disclosed.¹⁴⁹ However, CHRI’s discussions also revealed that I-Kiribati people have a strong interest in politics and take seriously their right to attend government meetings and court hearings and are likely to visit Parliament when they are interested in the debates and approach Members of Parliament for explanations when they want them. According to one response, when controversial information reaches the opposition members of parliament, and if a great enough demand is made for the information, this can force the Government to publicly release it.¹⁵⁰

According to feedback received from civil society organisations in Kiribati, people usually access government-held information by directly approaching the Ministry concerned. It is common for requestors to face one of the two common “reactions” to such requests. Either there is no response at all or there is too much bureaucracy to wade through before getting access to the required information - both situations tending to result in requestors giving up their search in frustration. Another observation made by one respondent to CHRI’s questionnaire is that it was a lot easier to get access if one were to telephone a high ranking officer in a particular ministry.¹⁵¹ This typifies a bottleneck to accessing information issue which is not uncommon throughout the Pacific Island Countries that do not have an official disclosure policy. Often low-ranking public officers are hesitant to disclose information in case it is frowned upon, and therefore request the consent of their seniors first or deny access straight away. This means that there is no proper procedure for responding to information requests in a formal manner. One response received from a government employee stated that “the Secretary, who is the Head of Administration, is the only person who has the authority to disclose information.”¹⁵² This further illustrates the existing ambiguity surrounding who is authorised to release information.

Other obstacles include a lack of knowledge regarding what people can ask for, and identifying the limitations to disclosure, such as national security concerns. Kiribati culture also appears to discourage whistle-blowing (something that is evident

throughout the Pacific Islands) as it may be seen as a means of self-advancement. One Government representative who responded to CHRI’s questionnaire acknowledged that “efficiency in providing information or services to the public requires more improvement.”¹⁵³

A civil society response to CHRI’s questionnaire stated that the government probably does want to become more transparent and accountable, but that they are ‘risk averse’ in that they are concerned about revealing too much information when it is easier to keep quiet.¹⁵⁴ Another response suggested that an obstacle in the way of realising greater freedom of information in Kiribati was the lack of political will to go in that direction: “if people realised the significance of disseminating the right information then there wouldn’t be any problem at all.”¹⁵⁵

The telephone and internet are not generally reliable means of communication both within and outside of Kiribati. One example given during discussions with an archivist who had spent some time in Kiribati was that coconut trees had grown to such an extent that they blocked satellite coverage, thereby impeding internet use.

According to academic and media commentator, Teweiariki Teaero, journalists in Kiribati may face a dilemma whether to cover a corruption story or look the other way due to the respect of authority in the I-Kiribati culture.¹⁵⁶ In addition to this potential barrier, journalists may be reluctant to expose scams because of the fear of losing their jobs. Teaero believes that investigative journalism is absent in the I-Kiribati press. One of the key obstacles to freedom of information in Kiribati has to do with the size of the community and the strong traditional and cultural ties that people have with each other. As a result, journalists and others who provide relevant information to the public have a job of ‘balancing’ their role as information providers with sensitivities to Kiribati culture.

Transparency International has reported that one issue that connects lack of adequate transparency with a lack of accountability in Kiribati is the failure of Parliament to debate important findings

149 Response to CHRI’s questionnaire by a Government Official in the Attorney General’s Office on 27 April 2009.

150 Response to CHRI’s questionnaire, received on 10 February 2009. Name withheld on request.

151 Response to CHRI’s questionnaire, received on 27 April 2009. Name withheld on request.

152 Response to CHRI’s questionnaire, received on 27 April 2009. Name withheld on request.

153 Response to CHRI’s questionnaire received by a Government Official on 27 April 2009. Name withheld on request.

154 Response to CHRI’s questionnaire, received on 23 April 2009. Name withheld on request.

155 Response to CHRI’s questionnaire received from an employee in the Office of the Attorney General on 27 April 2009.

156 Taberannang Korauaba, State Broadcaster Freedom Just ‘Rhetoric’, says Academic, Pacific Media Centre, 13 September 2007: http://www.pmc.ac.nz/niusbeat/2007/070913_kiribati.shtml as on 20 April 2009.

of the government auditor. For example, in 2004, the Auditor General published a finding that A\$20-30 million was unaccounted for in 2004, but this was not debated in Parliament.¹⁵⁷ The Asia Development Bank has identified some “culturally-derived informal understandings by public servants which are markedly different from formal rules as set out in official publications”¹⁵⁸ including that “information is not to be shared unless asked for, and then only sparingly”.¹⁵⁹ While people are not prevented from requesting information from public bodies, officials have been reported to ask many questions of the requestor, resulting in the requestor feeling he has no right to pry into the goings on of government. Currently donor agencies such as NZAID, AUSAID and ADB have put more information in the public domain about the performance of the social and economic sectors in Kiribati than what is available from any government website.¹⁶⁰

There has been some positive indication from the Government, however, that they are committed to transparency. One person from the Press Liaison Unit stated that the government had committed to good governance during a policy statement delivered by the current President which was “underpinned by the principles of good governance.” He went on to explain that “the term ‘good governance’ reflects the government’s ability and commitment to ensure political transparency and voice for all citizens; as well as fulfilling the obligation of taking responsibilities and being answerable for their actions.”¹⁶¹

157 National Integrity Systems Country Study Report: Kiribati, 2004, p.11, op.cit.

158 Ibid. p.16.

159 Ibid.

160 See <http://www.usaid.gov.au/country/country.cfm?CountryId=20> for AUSAID interventions; <http://www.nzaid.govt.nz/programmes/c-kiribati.html> for NZAID programmes; <http://www.adb.org/kiribati/default.asp> for ADB assistance and <http://www.unicef.org/infobycountry/kiribati.html> for UNICEF basic human development indicator fact-sheet.

161 Response to CHRI’s questionnaire received by a Government Official on 27 April 2009. Name withheld on request.

NAURU



The Republic of Nauru is the world's smallest democratic republic with an estimated population of 14,000 and a landmass of only 21 km sq.¹⁶² The lone island of Nauru is particularly geographically isolated with its closest neighbour, the Island of Banaba in Kiribati, situated 300 kilometres to the east. After experiencing an economic crisis due to over-mining of the country's phosphate resources, Nauru suffers from very limited infrastructural development. Currently the country has no official State capital although Parliament and all government offices are based in Yaren. The population is spread throughout 14 districts, but information tends to be concentrated with the government offices in Yaren. Poverty and lack of infrastructure means that internet and telephone communications are very limited.

Nauru has a unicameral system of Parliament. Candidates usually contest elections independent of any political party affiliation, although in recent elections some candidates have run under a party banner. Nauru is currently in the final stages of a Constitutional review process, and Parliament recently endorsed the right to information for inclusion in the amended Constitution.¹⁶³ The new right to information will have to be endorsed in a public referendum if it is to be included in the final Constitution.

162 CIA World Factbook: Nauru: <https://www.cia.gov/library/publications/the-world-factbook/geos/nr.html> as on 28 April 2009.

163 In February 2009, CHRI along with the Parliament of Nauru, the Pacific Islands Forum Secretariat and UNDP Pacific Centre, held a National Freedom of Information Workshop which led to a number of positive outcomes. Please see below for more information.

Background

For decades, Nauru was one of the wealthiest countries in the Pacific, with revenues from phosphate mining providing strong revenue stream both before and after Independence. Phosphate mining revenues meant that both the government and the people, who were entitled to royalties, were comparatively wealthy. In the decades following Independence, this led to notoriously profligate behaviour. Government expenditures were not subject to close scrutiny by a public who were by and large satisfied with their own incomes.

However, in the new millennium, revenues from mining which were held in trust were found to be substantially diminished and the country was faced with a severe economic crisis. It is against this backdrop that, in 2004, the government of Ludwig Scotty was elected to power on a platform of greater governmental transparency and accountability. People were concerned about corruption surrounding the mining industry under previous governments. Many cabinet members of the Scotty Government continue to hold their positions in the current Government under the presidency of Marcus Stephen. This has allowed for a continuity of commitment to greater transparency in governance and greater public consultation.

Soon after coming to power, the Scotty administration introduced a policy of making government information more accessible to the public and notified all senior public servants of this policy. This was an obvious recognition of the linkages between lack of transparency and corruption, poor economic development and unsustainable exploitation of natural resources. In 2005, the Government launched a National Sustainable Development Strategy - a 20 year plan for improving the quality of life of people living in Nauru. This included several initiatives aimed at addressing the need for a "stable, trustworthy, fiscally responsible government".¹⁶⁴ Measures included increasing transparency and accountability in government practices, establishing an efficient and effective law and order system, and increasing community participation in public affairs.

Much foreign developmental aid to Nauru is tied up closely with strategies for strengthening the processes of good governance. For example, the Australian government donates an average of 26.5 \$AUD a year to Nauru. According to AusAID's website, the

priorities from Australia's aid programme in Nauru are: economic reform and management; the improvement of service delivery and capacity building for Nauru's future."¹⁶⁵

Legal Context: Accessing Official Information

Nauru is a signatory to the International Convention on Civil and Political Rights and is a party to the Convention on the Rights of the Child.¹⁶⁶ Nauru therefore has an obligation under international law to protect its citizens' right to access information.

Article 12 of the Constitution of the Republic of Nauru provides protection for freedom of expression, but there is no explicit protection of the right to access information. The Official Information Act 1976 is still in force but in spite of its name, this law is essentially an Official Secrets Act which protects government information rather than facilitating disclosure.

In 2006, a constitutional review process was launched. A Constitutional Review Commission was established, which consulted widely with the people, holding over thirty public consultation meetings in 2006 on proposed constitutional amendments.¹⁶⁷ In early 2007, the Constitutional Review Commission published a Report which among other things, recommended the inclusion of a specific right to access information. The proposed Article 13 explicitly protects the people's right to access information from the government and its instrumentalities and states that as soon as practicable after the commencement of the Article, Parliament must enact legislation to give effect for this right. The Article also attempts to place an obligation on government to make provisions for the proper and secure retention and storage of official information. This is an important duty, and was included in recognition of Nauru's struggles with effective information management.

Following a national FOI workshop in February 2009, facilitated by CHRI, UNDP Pacific Centre and the Pacific Islands Forum Secretariat, the wording of proposed Article 13 was amended to broaden the right to include a harm-test for information relating to foreign relations and national security, as follows:

¹⁶⁵ Ausaid, 'Nauru' <http://www.ausaid.gov.au/country/country.cfm?CountryId=21> as on 28 April 2009.

¹⁶⁶ United Nations Office of the High Commissioner for Human Rights and Pacific Islands Forum Secretariat (2009) Ratification of International Human Rights Treaties: Added Value for the Pacific Region p. 15: www.transparency.org/content/download/1663/8420/file/kiribati.pdf as on 5 August 2009.

¹⁶⁷ Ibid.

¹⁶⁴ Email from Nauru Parliamentary Counsel to Allen Consult, dated 16 March 2009, shared with CHRI.

Right to Information

- 13B. (1.) Everyone has the right of access to information held by the government and its instrumentalities.
- (2.) As soon as practicable after the commencement of this Article, Parliament shall enact a law to give effect to this right, including provision for the retention and secure storage of information.
- (3.) Nothing contained in or done under the authority of a law passed in accordance with clause (2) of this Article, or any other law, shall be held to be inconsistent with or in contravention of clause (1) of this Article to the extent that that law makes provision:
- (a) for fair and reasonable measures to alleviate the administrative and financial burden of the right to information on the government; or
- (b) for the denial of public access to sensitive Cabinet information and sensitive information the disclosure of which could harm Nauru's foreign relations or national security or would be contrary to the public interest.

The constitutional review process is now in its final stages. Although the Constitutional Review Commission, Constitutional Convention and Nauru Parliamentary Select Committee on Constitutional Amendment Bills have recommended the inclusion of Article 13, two bills must be introduced in Parliament in order to effect these changes toward greater participation and transparency. Parliament is due to vote on these bills in June 2009 and if they are passed, the bill containing the proposed rights guarantees, including the right to information, will go to a public referendum. Both bills will be required to get two thirds majority support in order to become law.¹⁶⁸ The Constitutional Review Committee has also recommended the establishment of an office of the Ombudsman for Nauru which would take responsibility for the implementation of a right to information law, following the example set by the Cook Islands and New Zealand.

Despite broad policy level support for the proposed new rights there is concern by its supporters that the Nauruan public may not vote in favour of all amendments. There is little understanding within the communities about the benefits of the right to information and this may be one of the amendments that may not garner the requisite majority support. In order to pre-empt this rejection, the government is planning to begin a public awareness campaign on the proposed amendments.

¹⁶⁸ Email to CHRI received from Nauru Parliamentary Counsel, dated 20 April 2009.

In practise, access to information initiatives are more effective if they are part of an overall package of proposed improvements aimed at minimising corruption and deepening democracy. Therefore, it is positive that a number of other amendments to the Constitution have been recommended which complement the protection of the right to information. For example, a number of amendments have been proposed which are designed to make managers of public finances more open and accountable. Further proposed measures for increasing government accountability include: a leadership code embedded in the Constitution with enabling legislation to follow; strengthening the independence of various constitutional offices such as Speaker, Clerk of Parliament, and the Director of Audit; and enacting legislation to regulate community sector organisations to ensure that they are democratically constituted and fiscally accountable to their members. It is also proposed to undertake a consolidation of legislation in 2009 to establish more orderly electronic management of all laws. This will enhance the ability of public services to properly administer and comply with law and will enhance the public's ability to access them.

Proactive Disclosure

A Government Information Office ("GIO") and a state-run media corporation – the Nauru Media Bureau (NMB) - are both recent initiatives that try to proactively combat the lack of information reaching the public. The Nauru Media Bureau and the Government Information Office remain independent from each other, although they work in tandem.

The NMB is overseen by foreign media consultant whose role is to train staff in news techniques. All staff are paid by the Government of Nauru. There are currently about 32 employees, 15 of whom are production staff. The NMB publishes the Nauru Bulletin, a fortnightly newsletter containing local and regional news, Presidential and ministerial speeches, letters from foreign governments and some advertising.

The GIO was established in May 2008 and comprises one full-time member of staff, but is poised to increase its staff by one more in the near future.¹⁶⁹ The primary task of the GIO is to source information from other government departments and Ministries and to disseminate it to the public. Methods for information dissemination include: issuing press releases, television broadcasts and the use of the Nauru Media Bureau (see below). Information

¹⁶⁹ Email received from Ms Joanna Olsson, Director, Government Information Office, 22 April 2009.

and news from the Ministries is also published on the Government notice board in front of Parliament House.¹⁷⁰

The GIO predominantly takes a proactive approach to information disclosure in addition to responding to requests for information from people. The categories of information regularly disseminated include: details of government meetings and official visits; the rise and fall of prices of consumables as captured in the Consumer Price Index Report, Presidential speeches, ministerial statements and Bills that have been released in Parliament. The GIO is not empowered to release documents pertaining to the Courts or the Police. These are available from the respective Courts and Police and will be withheld from the public if disclosure is likely to cause harm to a victim or witness, to the proceedings of the investigation, or to national security.

Nauru's ICT department and the Taiwanese International Cooperation and Development Fund are designing an e-government system for Nauru which is planned to take over many of the proactive disclosure duties of the GIO. The GIO will be working with the ICT to manage the uploading of information onto the internet.

The GIO is also responsible for the distribution of the Government Gazette which in the past was distributed in print form but is currently distributed through email. While this has the advantages of cost-saving, the general lack of access to internet in Nauru means that the Gazette is not easily accessible to the general community. The Gazette publishes information regarding: public notices; employment opportunities; births, deaths and marriages; details of estates and beneficiaries and ministerial portfolios. The GIO email list to which the Gazette is distributed consists of all those using a government email account or hospital email account as well as some personal contacts of the Director of the GIO.

Under previous governments, the Parliament of Nauru has sat infrequently, but under the current Government, Parliament sits at least once a month and Ministers proactively provide statements to Parliament on the work of their Ministries. Since February 2009, all bills that are introduced to Parliament are publicised by the Government Information Office on the day they are introduced (before they have been debated and passed). Parliament meetings are broadcast on radio and television, and the public gallery is open to the public. All Ministerial statements are circulated by the GIO. In addition, immediately prior to every general election in

Nauru, all candidates appear at well attended 'platforms' in their constituency, at which voters are able to pose questions.¹⁷¹

The Government seeks input from the public on its budget and in early 2009 issued a budget policy statement to provide information about the direction of the forthcoming budget in order to stimulate public input. Allegations of corruption in government have been discussed in public for several years. In response to people's concern about the mismanagement of public finances, the Director of Audit submitted a report on the accounts of the Republic for the past 10 years to Parliament, and in March 2009, the Government submitted its Final Budget Outcome statement for the financial year 2007-2008.

Assessment

Although the Government has committed itself to increased transparency and information sharing, changes in culture and attitude are occurring slowly and many public servants are hampered by infrastructural limitations. They do not have adequate training in the procedures and methods for giving people access to information in a timely manner. There are also reports of confusion over who is responsible for information dissemination within individual Ministries and this leads to diffusion of responsibility with requesters being continuously referred from one public servant to another.

In the absence of clear guidelines about what information can be given and what will not be disclosed, coupled with the uncertainty of what information actually exists and where it is to be found, information requests often end up at the office of the Chief Secretary which is seen widely as the "central storage house" of government information. However, even here there remains a culture of disseminating information only to those who you know and trust. There is a culture of erring on the side of caution with the information that public servants release and a lack of awareness regarding what information can be legitimately disseminated without fear of punishment.

Public servants are also hampered by lack of systematic categorisation and proper records management systems. For example, the current lack of a legislative database remains a significant barrier to making legal information public. Nauru's Parliamentary Counsel is spearheading an initiative to collate

¹⁷⁰ Presentation given by Ms Joanna Olsson, Director, Government Information Office, at the National Freedom of Information Workshop, 16 February 2009.

¹⁷¹ Response to CHRI's questionnaire received by Nauru Parliamentary Counsel on 15 March 2009.

all post independence legislation and subordinate legislation and make this available on PacLII – the Pacific Legal Gateway. There are no public libraries or official archives in Nauru. Lack of equipment required to reproduce information, such as paper and photocopiers is also a significant problem. The release of documents is consequently often subject to delays.

Though Nauru does not suffer from the traditional “tyranny of distance” experienced by most other Pacific Island Countries, the lack of infrastructure and general poverty means that many families do not have adequate access to transport, radios or televisions. According to reports received from civil society advocates in Nauru, the transmission signal is very weak in districts that are not situated at a distance from Yaren. Reports received from members of civil society in Nauru also suggest that when information is provided it is often priced high. For example, citizens are required to pay \$5 - \$10 for a copy of a birth certificate. These costs can be discouraging for information seekers and is more than many Nauruans are able to afford.

A particular area of concern that is likely to receive a lot of attention when the FOI legislation becomes operational is the perceived unfairness surrounding the allocation and distribution of “Community Development Loans (CDL)”. CDLs are sourced from funds provided by the Government of Taiwan and intended to assist with small community projects. Reports suggest that these loans are provided to Ministers through a non-accountable “cash in hand” policy and are distributed amongst the community on the basis of filial and friendship connections rather than identifying the areas with the most urgent development needs. The lack of transparency surrounding the distribution of these loans contributes to a general distrust of the government’s willingness to stick by its anti-corruption, pro-accountability agenda.

Unfortunately, according to participants at the National Freedom of Information workshop, many people are still not fully aware of the role of the GIO and more work needs to be done to ensure that members of the public know what the GIO does and how to engage with the Unit. Many people assume that it has been

put in place in order to facilitate better communication between Ministries rather than between the people and the Government. However, the terms of reference for GIO were gazetted and made public before the establishment of the office.

Additionally, although the NMB has been given the mandate to report freely and objectively without political bias, Nauruans report a level of anxiety about how critical the NMB are allowed to be of government policy.¹⁷² Very little information is proactively disclosed on the website of the Government of Nauru. Most of the links are inactive. However the webpage of the Nauru Fisheries and Marine Services Authority displays the text of various laws relating to fisheries, recent reports on food security and surveys on reef fisheries.¹⁷³

NGOs are largely responsible for disseminating their own information. The NMB exists primarily for the general public, such that civil society disseminates their own information such as news stories, notices and announcements.¹⁷⁴ The GIO is not mandated to circulate NGO-related information unless a government department or Ministry is directly involved in a particular project being discussed.

Despite the existence of information asymmetries, it is not yet widely perceived by the public as a situation that needs to be remedied. Information access is perceived more as a favour received by the few having the right connections, rather than as a democratic right that can be exercised by every person. Encouraging the development of a culture of formally seeking information as a matter of right by virtue of being a citizen of Nauru is a major challenge as it seeks to replace the traditionally accepted culture of using filial and friendship relationships to access information.

172 Response to CHRI’s questionnaire, received on 19 February 2009. Name withheld on request.

173 <http://www.spc.int/coastfish/countries/nauru/nfmra/index.htm> as on 20 April 2009. This webpage is hosted on the website of the Secretariat of the Pacific Community.

174 Email received from Ms Joanna Olsson, Director, Government Information Office, 22 April 2009.

The Outcomes statement agreed to by all participants at the 2009 National Workshop on Freedom of Information organised by CHRI, PIFS and UNDP Pacific Centre makes the following recommendations for the improvement of the media's role in facilitating access to information in Nauru:

“It is important that the Government support the development of an independent media, which is necessary to more effectively promote public accountability. In this context:

- It is encouraging that the Nauru Media Bureau intends to provide CSOs with regular time slots on the radio and Nauru TV to discuss issues of importance to the
- community;
- Partnerships should be explored between the Government Information Office the Nauru Media Bureau and civil society to promote better information dissemination;
- A clear policy statement should be made that Government censorship of media programmes is not appropriate;
- The media should be supported with training to ensure that they operate professionally and effectively, in order to change the current self-censoring mindset of the media and clarify that the media is entitled to question the Government;
- People should be made more aware of radio and TV programming schedules, so they are aware of when key government programmes are being aired; and
- Options should be explored for developing an independent public broadcaster and/or community radio programmes.”¹⁷⁵

175 Nauru Freedom of Information Workshop Outcomes Statement, 19 February 2009.

PAPUA NEW GUINEA



Papua New Guinea (PNG) is comprised of a main island of New Guinea, which is shared with Indonesia, together with approximately six hundred other islands. With over 6 million people PNG is the largest Commonwealth Pacific Island country by population size. PNG is rich in natural resources and has been described as “the most culturally and linguistically diverse country in the world. It also has one of the most challenging physical environments, with extensive mountainous and heavily forested areas.”¹⁷⁶

PNG is a parliamentary democracy with a unicameral legislature. While the country has made the greatest number of international human rights commitments of the Commonwealth Pacific Island Countries, and its national Constitution explicitly protects the right to information, the Government has not actively taken up the concept of freedom of information on its legislative agenda. Issues of widespread and ongoing corruption plague PNG, and the perceived lack of political momentum towards enacting an access law, together with a lack of general public awareness of the benefits of freedom of information, hinders the realisation of greater transparency and accountability of the Government of PNG.

176 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 227. op.cit.

Background

Corruption is widely acknowledged as a serious problem affecting the quality of governance and the outcomes of the development process in PNG. In June 2007, PNG's Public Accounts Committee revealed that "25-50% of all public money had been misappropriated or misapplied in the previous five years."¹⁷⁷ The PNG Justice Minister, Dr Allan Marat, has stated his commitment to establishing an Independent Commission Against Corruption, and at the 2008 Commonwealth Law Ministers Meeting he indicated a commitment to introducing whistleblowing legislation, as part of the PNG Government's efforts to weed out corruption.¹⁷⁸ It is understood that this work may also include development of complementary FOI legislation.¹⁷⁹

PNG is a member of the ADB-OECD Anti-Corruption Initiative for Asia and the Pacific.¹⁸⁰ In early 2009, the PNG Government collaborated with PIFS and the UNDP Pacific Centre to host a Melanesia Sub-Regional Consultation on the UN Convention Against Corruption in Port Moresby. The Outcomes Statement for that meeting included strong commitments to transparency and access to information, but recognised that "there appears to be a reluctance and/or apathy regarding discussion and dealing with the issue of corruption" together with the "apparent lack of commitment and political will amongst the public service, private sector, the general public and politicians."¹⁸¹ A number of specific national commitments for PNG were included, most notably the development of a National Anti-Corruption Strategy (called a National Integrity Plan in the Statement). The Department of Justice and the Attorney General was endorsed at the Consultation as the lead agency in implementing the UNCAC, and has reportedly been open to involving NGOs and civil society in the process.¹⁸² A priority for the PNG Government is to now establish a National Integrity Taskforce to develop an Action Plan which will be subject to ongoing monitoring to assess its effectiveness.¹⁸³

177 Transparency International (2008) Global Corruption Report 2008: Corruption in the Water Sector, Cambridge University Press, New York, 2008 p. 218.

178 PacNews, "Whistle blowing legislation for PNG – Dr Allan Marat", 11 July 2008.

179 Response to CHRI's questionnaire, received on 1 April 2009. Name withheld on request.

180 ADB-OECD Anti-Corruption Initiative for Asia and the Pacific http://www.oecd.org/document/23/0,3343,en_34982156_35315367_35030743_1_1_1_1,00.html as on 25 April 2009.

181 Outcomes Statement of the Melanesian sub-regional Consultation on the UN Convention Against Corruption, March 11-12 2009, p.3: <http://www.undppc.org.fj/userfiles/file/Outcomes%20Statement%20-%20Final%20for%20circulation.pdf> as on 25 April, 2009.

182 Response to CHRI's questionnaire, received on 1 April 2009. Name withheld on request.

183 Ibid.

The UNHCR reported in 2007 that the Government "generally was not responsive to individual requests, including media requests, for access to government information."¹⁸⁴ However, the Government's relationship with independent media appears to be generally quite cooperative, although there is an acknowledgement by some that the Government could provide information in a more timely and accessible way. Moreover, the media can serve as important storage houses of information. For example, "the Post-Courier newspaper keeps its own database of government information, as the government's website is not updated regularly enough ... (and has)... a running file of the Prime Minister's speeches and major policy statements."¹⁸⁵

Responses to CHRI's questionnaires received from civil society representatives suggest that there is a tendency among citizens of PNG not to request access to official budget information due to the widespread assumption that such requests will be ignored. Instead, the public tend to rely on accountability institutions such as the Ombudsman Commission and the Public Accounts Committee, which have powers to request such documentation as part of an official enquiry or investigation. In PNG, as in many other Pacific Island Countries, there remains a culture of seeking information through filial and friendship connections in government and information is released on an ad hoc basis depending on myriad factors such as political sensitivity or the goodwill of the person they approach for information.

People living in outer island communities who wish to get copies of government-held information usually do so via their provincial government officers who subsequently liaise with national government officers to obtain the information. This is not a straightforward task and can often be fruitless, as communications become poorer with increased distance from the main towns in PNG. In reality, the primary means of accessing information in the outer islands is through the local radio broadcasted programs.

Legal Context: Accessing Official Information

PNG has been active in supporting the international human rights framework, acceding both to the International Convention on Civil and Political Rights, Article 19 of which explicitly recognises the importance of freedom of information, and the United Nations Convention Against Corruption, which includes commitments to

184 UNHCR 2007 Country Report: <http://www.unhcr.org/refworld/country,,,PNG,,47d92c7ec3,0.html> as on 6 January 2009.

185 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 240, op.cit.

greater transparency and accountability. Article 13 in particular places an obligation on state parties to ensure that the public has effective access to information.¹⁸⁶

PNG's Constitution is the strongest of any Pacific Island Country with regards to the protection of the right to information. Article 51 of the 1975 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".¹⁸⁷ The provision lists ten exceptions to the rule, including matters relating to national security, records of meetings and decisions of the National Executive Council, and geological data relating to wells and ore bodies. Aside from Fiji, the PNG Constitution is currently the only one of the Commonwealth Pacific Island Countries to make specific reference to a right to access government documents.

While the Constitutional provision is strong, no legislation has yet been enacted to facilitate the right created by this section.¹⁸⁸ A draft Freedom of Information Bill was developed in 1999 by Transparency International PNG and its partners, but not acted upon by Government. In fact, the Criminal Code (Chapter 262) in Division III.1 (Disclosing Official Secrets) criminalises the disclosure of official secrets.

Additionally, the Organic Law on Duties and Responsibilities of Leadership 1975¹⁸⁹ includes a requirement for elected leaders to annually, and "within three months of assuming office ... submit to the Ombudsman Commission information pertaining to his or her incomes, assets, business connections, liabilities, etc."¹⁹⁰ However, the Act does not include requirements to publicly disseminate this information. According to one civil society member interviewed, information regarding the assets of public officials and politicians is not accessible to individuals and is seldom made public, unless published as part of a media report. Although the Ombudsman Commission collects information relating to the assets of public officials this is not made available to public. When such information

is revealed in the media it is often strongly contested by those who have been reported on, resulting in pressure upon the media not to disclose such information in the future.

Proactive Disclosure

The Department of State Enterprises and Information is responsible for Government information and communication in PNG. Before the establishment of the Department, the Office of Information and Communication had this function. Two of the Department's core functions are to (i) "collect, collate and disseminate Government development information to inform and educate the general public... [and (ii)] research/develop Information and Communication policies."¹⁹¹ There is a tendency for reports produced as a result of official enquiries to be distributed by the media, but not through direct dissemination by Government Departments. This could be due to the fact that such reports often highlight financial mismanagement and inconsistencies in the allocation and usage of official budgets.

There is a Media Unit in the Office of the Prime Minister, "tasked with providing quality advice, information and media coverage to the Prime Minister, Cabinet and the Department of Prime Minister and NEC."¹⁹² The Media Unit is "the first point of contact for journalists, due to the availability of the staff and the efficient manner in which the queries are handled."¹⁹³ There is also a Government Printing Office which publishes the official gazettes and other parliamentary documents, such as proposed legislation, official reports, and policies. However, experience shows that the system of filing within the Office is not managed well and there is no proper system of archiving public documents. This is a common complaint relating to many government departments in PNG.¹⁹⁴

The Government runs a monthly newspaper called Gavamani Sivarai which is printed in three languages - English, Tokpisin and Motu.¹⁹⁵ There has been some criticism of the newspaper, with complaints that the news it prints has "already been printed in

186 United Nations Convention Against Corruption, http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf as on 23 April 2009

187 Constitution of Papua New Guinea 1975: <http://www.igr.gov.pg/constitution.pdf> as on 25 April, 2009.

188 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 42. op.cit.

189 Organic Law on the Duties and Responsibilities of Leadership 1975: <http://www.unhcr.org/refworld/category,LEGAL,,,PNG,3ae6b54d10,0.html> as on 12 February 2009.

190 Transparency International (2003) National Integrity Systems Country Study Report: Papua New Guinea, p. 23: www.transparency.org/content/download/1699/8544/file/pap_new_guinea_25.09.03.pdf as on 11 December 2008.

191 <http://www.communication.gov.pg/> as on 25 April 2009.

192 Department of Prime Minister and NEC website: <http://www.pm.gov.pg/deptofpmandnec> as on 25 April 2009. Note: NEC stands for National Executive Council.

193 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 250, op.cit.

194 Response to CHRI's questionnaire received from civil society representative on 1 April 2009. Name withheld on request.

195 At the time of preparing this report CHRI is unsure whether the newspaper is currently in circulation.

the print media a week or so before"¹⁹⁶ and that therefore the resources used to support Gavamani Sivarai could be better utilised elsewhere. According to recent interviews with residents in Papua New Guinea, the Government uses state-run television and radio stations very proactively to disseminate reliable government information. Government officials from various departments such as the police, agriculture, education, revenue and customs will conduct interviews about policies and programmes and these are aired to the public.

According to reports from civil society in PNG, the radio is the most effective medium by which information in PNG is disseminated throughout towns and especially rural areas, as it is the cheapest and most accessible form of communication. Newspapers are the second most viable and common form of information dissemination due to the relative inexpensiveness involved in circulating them. Yet many remote areas where the majority of the PNG population live do not have access to newspapers, due to poor infrastructure and transport systems. Television is accessible only to people living in major townships, and is considered a luxury. Most of the population, particularly in the rural areas, do not have access to a television. Public notice boards are put up in main townships only, and, according to responses to questionnaires and follow-up interviews, information posted on them is often out-of-date and not translated into local dialects. While public libraries do hold some policy information, it is often outdated and many cannot access and understand the material available in the libraries.

The Parliamentary website is currently under construction and has been so for some years.¹⁹⁷ Some government departments have developed their own websites, although it was not possible to locate the main government website/portal. The Prime Minister's website includes 10 guiding principles for 2005-2010, as well as information relating to the Department of Prime Minister and the National Executive Council, media releases and speeches.¹⁹⁸ The website of the Department of Finance and Treasury has budget documents uploaded for the years 2008-09, in addition to detailed information about the auction of government securities and the plan of action relating to public debt.¹⁹⁹ The website of the Department of Works and Implementation contains some macro-level information about the construction of roads and

bridges along with names of donors and the sums provided for the year 2001.²⁰⁰ The website of the PNG police and several important departments such as health and education are either under construction or simply do not exist.²⁰¹

The website of the Supreme and National Courts of PNG contains some useful information.²⁰² In addition to an overview of the role, functions and some rules relating to court procedures, the website contains downloadable forms for use in the courts for various purposes. Summaries of cases disposed indicating the names of parties and the outcome of the suit are uploaded on the website in addition to the daily and weekly case listing. Court decisions are available to the public as long as individuals are able to pay the appropriate fee and provide the necessary information for the search to be carried out.²⁰³ However, in practice the system is only effective within the capital where the premises of the National and Supreme Court are located. The outer provinces and rural areas have difficulty accessing judgments especially from the local land courts or village courts due to a poor system of recording and filing. When people want to access National Court and Supreme Court judgements, they may approach the court library. However the website of the library states that judges and lawyers who are registered as paid members of the library alone may use its facilities.²⁰⁴ The rates for providing copies of judgements and orders in civil and criminal cases are mentioned on this website. The administration of the judicial system is currently being reviewed including discussions on how to improve preservation of and access to court judgments.

Like many Pacific Island Countries, PNG legislation is available on the internet via www.paclii.org. However, only a very small percentage of the population can access the internet and the remainder of people need to go through public offices such as the Government Printing Office, University libraries, legal public offices or law firms. Therefore while in theory legislation is accessible, the rural majority face significant constraints.

Assessment

Responses to questionnaires received from civil society representatives from PNG indicate that people are able to

196 Post Courier viewpoint "Protect Media Freedom" 7 August 2008: <http://www.postcourier.com.pg/20080807/focus.htm> as on 25 August 2008.

197 <http://www.parliament.gov.pg/> accessed several times between November 2008 and April 2009.

198 <http://www.pm.gov.pg/> as on 25 April 2009.

199 http://www.treasury.gov.pg/html/national_budget/national_budget_2009.htm and http://www.treasury.gov.pg/html/public_debt/public_debt.html as on 25 April, 2009.

200 <http://www.works.gov.pg/> as on 25 April 2009.

201 <http://www.police.gov.pg/> as on 25 April 2009

202 <http://pngjudiciary.gov.pg> as on 25 April 2009.

203 Response to CHRI's questionnaire, received on 1 April 2009. Name withheld on request.

204 <http://www.pngjudiciary.gov.pg/www/html/61-about-the-library.asp> as on 25 April, 2009.

access some information they want through a combination of letters, phone calls and emails to the official concerned, and by filling in a prescribed form when asked. However, information is also often obtained through “connections” with public servants who are willing to provide it, or after long periods of time with continued pressure on the responsible officers to respond to the request. Due to the closed nature of the public service in PNG, people feel forced to “resort to short cut measures by jumping procedures and bending rules to access services, while those who are ignorant about the processes are further isolated and marginalized (sic).”²⁰⁵

Responses to the CHRI questionnaire also indicate that many individuals remain unaware of the mandate of the Department of State Enterprises and Information and what processes they should follow in order to access government information through this department. As Public servants are often required to sign confidentiality statements as part of the terms of their employment, they are also often confused about what information they are, and are not allowed to release meaning that in reality many information requests are rejected.

Another difficulty which was highlighted during interviews with civil society was that public information held by government departments can often not be located, or is difficult to locate. There are known instances where this excuse was given to requesters to induce them to pay an “additional fee” for the officer’s hard work in going out of their way to locate the information for the requester.²⁰⁶

Corruption is a major issue in Papua New Guinea, and it is positive that the Government is taking steps to combat this menace. However the Ombudsman Commission is said to lack the power to penalise and enforce its decisions relating to corrupt officials as, for example, it is unable to “use evidence used by the police to prosecute leaders.”²⁰⁷ According to a response from a civil society representative to CHRI’s questionnaire, another barrier to greater transparency is that inquiries that are the subject of an Ombudsman Commission Report have ‘confidentiality’ privileges attached.²⁰⁸

Responses to the questionnaire also suggest that the internet is one of the least effective methods of information dissemination in PNG, due to the small percentage of the population who can afford internet access. Civil society representatives interviewed by CHRI emphasised the negative impact of the lack of transparency in government affairs on their work, particularly with regards to the endemic issue of corruption and the inability of proving that it is occurring. There are also worries about the possible repercussions that they may have to face when too much information is sought under a future FOI law.

205 National Integrity Systems Country Study Report: Papua New Guinea: p. 27, op.cit.

206 Response to CHRI’s questionnaire, received on 1 April 2009. Name withheld on request.

207 National Integrity Systems Country Study Report: Papua New Guinea: p. 31, op.cit.

208 Response to CHRI’s questionnaire, received on 1 April 2009. Name withheld on request.

SAMOA



Samoa has a 219,998 strong population²⁰⁹ and a land mass that is not as widely dispersed as other Pacific Island Countries. It is comprised of “two main islands (and) several smaller islands and uninhabited islets.”²¹⁰

Samoa is a parliamentary democracy, with “47 of the 49 seats in Parliament being reserved for matai (chiefs) and the remaining 2 earmarked for Samoans of mixed blood.”²¹¹ Samoa’s local governance structure follows a traditional system, wherein each village has a council comprising chiefs from local families. One chief is elected head of the council - a post equivalent to mayor in other countries. The mayor “must be approved by the Ministry of Interior, which has limited fiscal responsibility for village councils.”²¹² Samoa is due to graduate from the United Nations list of Least Developed Countries in 2010.²¹³

The Government has not yet made any moves towards enacting freedom of information legislation. The hesitation of government representatives and the media in Samoa to discuss the accessibility of official information may be indicative of a closed culture around government-held files and documents. Reports suggest that Samoa faces less corruption than many Pacific Island Countries.

209 CIA World Factbook: Samoa <https://www.cia.gov/library/publications/the-world-factbook/geos/ws.html> as on 23 April 2009.

210 Ibid.

211 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 281, op.cit.

212 Thuy Mellor and Jak Jabes (2004) Governance in the Pacific: Focus for Action 2005 – 2009 Asia Development Bank: www.adb.org/documents/books/governance-in-the-pacific/governance-in-the-pacific.pdf as on 4 February 2009.

213 United Nations Least Developed Countries Information: Samoa: http://www.un.org/esa/policy/devplan/profile/country_164.html as on 15 April 2009.

Background

Samoa continues to top the list of Pacific Island Countries in Transparency International's Corruption Perception Index, indicating that it is generally perceived to be open and accountable.²¹⁴ Some top level public functionaries in the Samoan Government have received international recognition for upholding media freedoms and fighting corruption. In 2004, the then Samoan Prime Minister, Tuilaepa Aiono Sailele Malielegaoi, was awarded the World Press Freedom Day award. The award citation hailed the Prime Minister for "his unceasing promotion of and belief in transparency, accountability and good governance"²¹⁵. A former Samoan Auditor General won a Transparency International Integrity Award in 2003 "for his role in fighting illegal government activities in the 1990's."²¹⁶

The Government Press Secretariat is the Government's media unit and falls under the portfolio of the Department of the Prime Minister. A response to CHRI's questionnaire by a government employee stated that it is the policy of the Samoan Government to work towards freedom of information, and that civil society was active in promoting this too.²¹⁷

Ownership of the media in Samoa is spread across the public and private sectors. The Samoan Broadcasting Corporation (SBC) is a state run commercial business with a television and AM and FM radio stations. There is one government-run newspaper – Savali – which is published monthly²¹⁸ in Samoan and English, and four independent newspapers – the Samoa Observer and the Samoa Times (published daily), Le Samoa (published weekly in both Samoan and English) and the Talamua Magazine. There is also one independent television station TV3 and four independent radio FM radio stations.²¹⁹

It has been reported that a weekly program run by SBC TV's Ete Silafia "has been used as a way for the public to access information about certain policy issues, such as education, and for information on departments and services that are important to the public."²²⁰ Unfortunately, it has also been observed that "there is still ... a widely held perception that the SBC's political coverage lacks balance, 'giving disproportionate airtime to the Government view compared with that of the Opposition'."²²¹ Transparency International has commented that the "relatively restricted dissemination of public information by public media organisations is somewhat balanced out by the existence of privately-owned radio and television stations who have the liberty of broadcasting both the government's and its critics point of views (sic)."²²²

According to the British Broadcasting Corporation, Samoa enjoys a "generally free" press, "but officials have sued the main privately-owned newspaper, the Samoa Observer, for reporting on alleged corruption and abuse of public office. The authorities have also withdrawn government advertising from the paper."²²³ In spite of the professed freedom of the media in Samoa, journalists can be imprisoned for refusing to reveal their sources of information, if asked by a government official, although this has not been tested in Court.²²⁴ Transparency International points out that "in other countries, only the judge has the power to order revelation of sources."²²⁵ In October 2008, it was reported that freedom of the media in Samoa took a step towards active censorship, when the Ombudsman, who was acting as Chairman of the Public Commission of Inquiry investigating allegations made against the Commissioner of Police, ordered that the media could report on the inquiry, but subject to strict guidelines. These guidelines restricted the media to publishing excerpts from the official press release released at the end of each day, and banned them from reporting on anything else.²²⁶ An international freedom of expression association, International PEN, noted that the Samoa Observer "boycotted the inquiry's proceedings as a

214 Transparency International 2008 Corruption Perceptions Index: http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table as on 15 April 2009.

215 UNESCO World Press Freedom Award (2004): http://portal.unesco.org/ci/en/ev.php-URL_ID=15685&URL_DO=DO_TOPIC&URL_SECTION=201.html as on 11 December 2008.

216 Former Samoan Auditor Wins TI Integrity Award, Radio New Zealand, 16 May 2003: <http://www.rnzi.com/pages/news.php?op=read&id=4787> as on 28 April 2009.

217 Response to CHRI's questionnaire on 26 March 2009. Name withheld on request.

218 While the BBC website states that Savali is published fortnightly: http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1300802.stm#media as on 28 April 2009, the Government website states it is published monthly: http://www.mcit.gov.ws/savali_eng.cfm as on 2 April 2009.

219 BBC Country Profile: Samoa: http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1300802.stm#media as on 28 April 2009.

220 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 291 op.cit.

221 Ibid.

222 Transparency International (2004) National Integrity Systems Country Study Report: Samoa, p. 23: <http://www.transparency.org.au/nispac.php> as on 7 January 2009.

223 Ibid.

224 UNHCR 2007 Country Report: <http://www.unhcr.org/refworld/country,,,WSM,,47d92c80c,0.html> as on 9 December 2008.

225 National Integrity Systems Country Study Report: Samoa, p. 23 op.cit.

226 Freedom of Press Takes Big Step Back in Samoa, Pacific Islands Report, 19 October 2008: <http://pidp.eastwestcenter.org/pireport/2008/October/10-21-com.htm> as on 9 December 2008.

result of stiff directives handed down on media coverage.”²²⁷ The Ombudsman defended his position, stating that “Members of the Commission of Inquiry are ordinary folks” and that a party to the inquiry had requested that the inquiry be conducted privately so as to “avoid any unnecessary prejudice....and avoid trial by media and rumour-mongering.”²²⁸

The Journalists Association of Western Samoa reportedly receives funding from UNESCO for observing Media Freedom Day so that they can “highlight the role of media freedom in society. The topics vary from year to year and are chosen by UNESCO based on issues that arise during the year that impact on media freedom and freedom of expression.”²²⁹

Legal Context: Accessing Official Information

Samoa has acceded to the International Convention on Civil and Political Rights, Article 19 of which places an explicit duty on the government to protect the right to seek, receive and impart information as part of the broader right to freedom of expression.

Section 13(1)(a) of the 1960 Constitution protects the right to freedom of speech and expression. However, this right, which is generally accepted to include the right to information by implication, is specifically limited by allowing for reasonable restrictions to that right including “preventing the disclosure of information received in confidence, or for preventing contempt of court, defamation or incitement to any offence.”²³⁰

Samoa currently has no freedom of information policy or law in place, and “the provision of information depends very much on each agency.”²³¹ However, laws such as the Public Finance Management Act 2001 lay down transparency and accountability requirements with regards to public expenditure.

Proactive Disclosure

The Ministry of Communication and Information Technology’s function is to “facilitate, lead and implement the Government of Samoa’s vision for Communications development.”²³² The Minister of Communication and Information Technology is also the Chairman of the Board of the Samoan Broadcasting Corporation.²³³ This Ministry is responsible for printing Savali magazine, a Government-owned and printed publication with the purpose of “inform(ing) the general public of Government policies, and creat(ing) awareness of how these policies can improve the quality of life of all Samoan citizens.”²³⁴ Savali is distributed monthly by the pulenuu of each Samoan village (a chief appointed by the Governor from the ranks of chiefs resident in each village).²³⁵ The Editor of Savali has previously said: “We try to show government’s angle in issues that are covered by other media. We find that, when covering the same issues, we tend to have very different angles from that of the private media.”²³⁶

There are laws requiring that “the broadcast of Parliament takes precedence over any other program and is carried live in both Samoan and English on SBC Radio 1 and SBC Radio 2.” Further, “if there is an electricity outage making it impossible for the radio to go on-air, Parliament is adjourned until the radio comes back on-air.”²³⁷ There are also occasions where events such as the opening of Parliament or announcement of the budget are broadcast on television, together with regular television broadcasts of Parliamentary debates.²³⁸

There are ongoing issues in being able to access Samoan governmental websites, which were confirmed during the writing of this report. Transparency International suggested in its 2004 National Integrity Systems Study that greater efforts should go into making information available aside from on the internet.²³⁹ The Government of Samoa website was unable to be accessed for some months, stating “the domain you are trying to reach has

227 PEN Raises Concern With Samoa’s Ombudsman, Samoa Observer, 13 November 2008:http://kauri.aut.ac.nz:8080/dspace/bitstream/123456789/1659/1/PEN%20raises%20concern%20with%20Samoa%E2%80%99s%20Ombud_131108.pdf as on 28 April 2009.

228 Ibid.

229 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 292. op.cit.

230 Constitution of the Independent State of Western Samoa 1960: http://www.paclii.org/ws/legis/consol_act/cotisows1960535/ as on 2 April 2009.

231 National Integrity Systems Country Study Report: Samoa p. 63. op.cit.

232 Ministry of Communication and Information Technology website: <http://www.mcit.gov.ws/> as on 2 April 2009.

233 Informing Citizens: Opportunities for Media and Communication in the Pacific, p. 283. op.cit.

234 Ministry of Communication and Information Technology website: http://www.mcit.gov.ws/savali_eng.cfm as on 2 April 2009.

235 Ibid.

236 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 286. op.cit.

237 Ibid. p. 293.

238 Ibid. p. 293.

239 National Integrity Systems Country Study Report: Samoa, p. 64. op.cit.

been disabled for violations of our TOS/AUP.”²⁴⁰ It is now back online.²⁴¹ The Parliament of Samoa website includes thorough and detailed information about the Constitution, Ministers and Members of Parliament, as well as legislation and reports of various parliamentary committees.²⁴² The ministries of finance, foreign trade, agriculture, education, health, justice and industry and labour do have websites but the links are not always active.²⁴³

Assessment

People in Samoa were generally very reluctant to talk to CHRI about issues concerning access to official information, although we did receive a few responses to questionnaires sent to members of civil society and the media. Most government officers were either unobtainable because their phones were consistently engaged, were out of the office, too busy to talk with us or did not respond to emails.

A civil society representative responding to CHRI's questionnaire said that because there is no law in Samoa safeguarding the public's rights to access information held by the government, “the government will hold any information as they want.”²⁴⁴ Ironically, this also seems to include withholding information about government information disclosure policies. Responses from civil society suggest there is some strong support for freedom of information legislation. One civil society member commented, “I know that Government think that there is freedom of information, but other groups, mainly the media and some civil society groups, would think that their policies might only apply to certain aspects of information.”²⁴⁵ Another stated, “I strongly recommend that there should be one (an FOI law).”²⁴⁶

Some members of the media have reported difficulties in the past at accessing information “from some Ministries and Corporations.”²⁴⁷ Recent telephone conversations with the Editor-in-Chief of the Samoa Observer confirmed that there is no central government information unit in Samoa and that the CEO or Secretary of each

Government Ministry or Department is the person to approach for official information. (This is true for members of the public as it is for the media.) Notably, the names of these officials are not advertised so one needs to go to the Ministry or Department, and ask for the names of the correct people to speak with. If the information is not politically sensitive, it is understood that it is usually easy to obtain. However, if it is politically sensitive, experience is that it will be withheld.²⁴⁸ It is reported that the main ways for the media to access government information is via the “government website, press releases, speeches briefings and background material (which) are circulated by the GPS (Government Press Secretariat) to individual media outlets and journalists' email addresses.”²⁴⁹

The SBC's CEO has previously commented that one particular transparency issue “is the accessibility of views from the Opposition parties on television and radio news programs”. The CEO believed that in reality there was sufficient access, but that opposition parties “are unhappy if the government viewpoint is sought on the same issue.”²⁵⁰ She stated that there has been an improvement in “government opening up these services for Opposition viewpoints on a wide range of issues that have better informed people on issues of interest.”²⁵¹

With regards to traditional village governments, there is a general belief that there should be distance with central government and that “they have more effective ways of combating corruption and bribery in their own jurisdictions than anything the central government could offer.”²⁵² However, “village council decisions and deliberations are not open to the public and the media.”²⁵³

While Samoa can be seen to be relatively impenetrable to outsiders seeking information, CHRI appears to suggest that there is a general commitment to transparency and accountability in Samoa. It is unfortunate that CHRI has not been able to measure how effectively people can access government information due to lack of adequate responses to the questionnaires.

240 Government of Samoa website: <http://www.govt.ws/> as on 18 November 2008.

241 Accessed in April 2009.

242 Parliament of Samoa website: <http://www.parliament.gov.ws/home.cfm> as on 18 November 2008.

243 Accessed throughout March-April 2009.

244 Response to CHRI's questionnaire by civil society representative on 10 February 2009. Name withheld on request.

245 Response to CHRI's questionnaire by civil society representative on 6 February 2009. Name withheld on request.

246 Response to CHRI's questionnaire by civil society representative on 10 February 2009. Name withheld on request.

247 National Integrity Systems Country Study Report: Samoa p. 24. op.cit

248 Telephone interview with Editor-in-Chief of the Samoa Observer, 21 April 2009.

249 Ibid. p. 292.

250 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 291 op.cit

251 Ibid.

252 National Integrity Systems Country Study Report: Samoa p. 66 op.cit

253 Ibid. p. 66.

SOLOMON ISLANDS



The Solomon Islands is a group of 992 islands with a population of just over half a million. It consists of 9 provinces: to the west the Solomon Islands shares a border with the PNG Autonomous Region of Bougainville and to the east it borders with Vanuatu. The country has ranked as a Least Developed Country for over 15 years.²⁵⁴

The Solomon Islands is a parliamentary democracy with a unicameral Parliament of 50 members. The Government is currently very receptive to the concept of freedom of information. In July 2008, at the PIFS/UNDP Pacific Centre Regional FOI Workshop the Prime Minister stated his commitment to FOI legislation. In February 2009, the Deputy Prime Minister reiterated this commitment at the opening of a CHRI, UNDP Pacific Centre and PIFS National Workshop on Freedom of Information. The National Anti-Corruption Taskforce set up in early 2009 has since integrated FOI as one of its priorities in its overall anti-corruption action plan. The media and non-governmental actors also strongly support the initiative for entrenching FOI.

254 United Nations Least Developed Countries Information: Solomon Islands: http://www.un.org/esa/policy/devplan/profile/country_174.html as on 15 April 2009.

Background

From 1998 to 2003, Solomon Islands suffered from ethnic tensions which, at their height, erupted into violent conflict. In 2000, the Townsville Peace Agreement was signed to bring peace to the different factions. However, instability continued for some time until the arrival of the Regional Assistance Mission to Solomon Islands (RAMSI), which was invited by the Prime Minister of Solomon Islands and facilitated by the Pacific Islands Forum Secretariat. Since 2003, the country has largely stabilised, with a range of programmes currently being implemented in the areas of good governance, law and justice and economic development. RAMSI provides ongoing support to a number of pro-transparency and anti-corruption projects in the Solomon Islands, including the Ombudsman, the Leadership Code Commission and the Auditor General's Office.

In late 2007, a new Government headed by Prime Minister Derek Sikua came into power following a vote of no confidence in the previous Sogavare Government. The Sikua Government has made strong commitment to transparency and accountability, through a number of public events and statements. At the start of 2009, the Government established a National Anti-Corruption Taskforce. The Taskforce has been mandated to develop a national anti-corruption strategy, including exploring options for establishing an Independent Commission Against Corruption by 2010.²⁵⁵ Following a national workshop on FOI in February 2009 (see the next section for details), the Co-Chair of the Taskforce recognised that FOI can and should be integrated into the Government's agenda for the Taskforce.²⁵⁶

In March 2009, PIFS and the UNDP Pacific Centre conducted a Melanesia Sub-Regional Consultation on the United Nations Convention Against Corruption in Port Moresby, which was attended by a delegation from Solomon Islands. The Outcomes Statement acknowledged that the Solomon Islands Government has identified a range of key anti-corruption initiatives, to be implemented through the Taskforce²⁵⁷ including establishing a national audit office, strengthening the Public Accounts Committee, and "developing an FOI Bill, via a participatory law-

making process, to be tabled in Parliament by March 2010".²⁵⁸

The Solomon Islands' Auditor-General's 2007 special report on corruption highlighted a number of obstacles to information accessibility such as systemically poor record-keeping, the absence of action plans to strengthen departmental transparency and accountability mechanisms and the need to increase public demand for transparency to ensure the Government has an incentive to improve its accountability.²⁵⁹ RAMSI has also expressed support for any initiatives towards more accountable governance but there is a general belief that poor records management remains a major obstacle to information accessibility in the Solomon Islands. Assessment reports prepared by boards involved in deciding on public procurement contracts are accessible only to the bidders and "not available to third parties or the public."²⁶⁰ The Ombudsman is able to investigate and has received complaints about the tendering process in the past, but his report "holds no binding power over any of the Tender Board decisions."²⁶¹

The Solomon Islands Broadcasting Corporation (SIBC) was established by the Broadcasting Ordinance 1976 in order to "provide a high quality broadcasting service by radio [or television] of a wide range of programs for the information, education and entertainment of all peoples"²⁶² in the Solomon Islands. SIBC broadcasts "Radio Happy Isles" the National Broadcasting radio station, together with WanTok FM, and Radio Happy Lagoon.²⁶³ The printing programme, which has not been updated on the website since 2002, includes time slots for current affairs, "our environment", "our resources", and "calling provinces".²⁶⁴ Programmes are either broadcast in English or Pijin.

As at 2005, there were eight media organisations with ten media outlets, of which only five news outlets were local²⁶⁵ to serve a

258 Ibid. p. 4.

259 Office of the Auditor General (2007) An Auditor General's Insights into Corruption in Solomon Islands Government: <http://www.oag.gov.sb/2007%20PAC%20REPORTS/An%20Auditor%20General%27s%20Insights%20into%20Corruption%20in%20SIG%20-%20October%202007.pdf> as on 11 December 2008.

260 Ibid. p. 23.

261 Ibid. p. 24.

262 Solomon Islands Broadcasting Corporation website: <http://www.sibconline.com.sb/About.htm> as on 3 March 2009.

263 CHRI did not receive any responses from Solomon Islands' media to its questionnaire. CHRI is unable to verify the current state of radio broadcasting in the Solomon Islands.

264 Solomon Islands Broadcasting Corporation programme website: <http://www.sibconline.com.sb/Programmes.htm> as on 3 March 2009.

265 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 316, op.cit.

255 Freedom of Information to Fight Corruption Solomon Times Online, 1 July 2008: <http://www.solomontimes.com/news.aspx?nwID=2027> as on 18 February 2009.

256 Solomon Islands Freedom Of Information Workshop, Outcomes Statement, Honiara, Solomon Islands, 25 February 2009.

257 UNCAC Outcomes Statement of the Melanesian sub-regional Consultation on the UN Convention Against Corruption, p. 3. op.cit.

population of over half a million. Radio has been identified as a key medium not only because of its reach, but also because literacy is not a prerequisite to be a listener. It is notable in this context that “it is estimated that at least 85 percent of the population lives in rural and outer island areas”²⁶⁶ and this geographical isolation means that the widespread dissemination of information will always be a challenge.

Legal Context: Accessing Official Information

Solomon Islands has not yet acceded to the International Covenant on Civil and Political Rights, which enshrines the right to seek, receive and impart information in Article 19. However, in early 2009, the Solomon Islands Cabinet agreed to accede to UNCAC as a priority, a convention which at Article 13 specifically includes an obligation to promote more access to government information.²⁶⁷

Section 12 of Chapter II the Solomon Islands Constitution 1978 guarantees every person the “freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference”²⁶⁸, as part of the “protection of freedom of expression”. In 2004, a draft Constitution was drafted, which sought to establish “a federal system unique to Solomon Islands”.²⁶⁹ The draft Constitution incorporates greater transparency and accountability requirements, including a “guiding principle in public administration” requiring “transparency to be fostered by providing the public with timely, accessible and accurate information”²⁷⁰. However, little progress has been made over the years in finalising a draft Constitution for consideration by Parliament. A new head of the Constitutional Reform Unit was appointed in early 2009, with a mandate to attempt to finalise a draft as a priority. It is understood that it is likely that any updated draft will retain the specific right to access information.

There is no legislation which guarantees people the right to

²⁶⁶ Ibid. p. 313.

²⁶⁷ UNCAC Outcomes Statement of the Melanesian sub-regional Consultation on the UN Convention Against Corruption, March 11-12 2009, p.1: <http://www.undppc.org.fj/userfiles/file/Outcomes%20Statement%20-%20Final%20for%20circulation.pdf> as on 25 April, 2009.

²⁶⁸ Solomon Islands Constitution 1978: http://www.paclii.org/sb/legis/consol_act/c1978167/ as on 27 March 2009.

²⁶⁹ Explanatory Note for Cabinet on the Draft Constitution: http://www.peoplefirst.net.sb/Downloads/SIG_Fed_Const/EXPLANATORY%20NOTE-second.pdf as on 22 January 2009.

²⁷⁰ Draft Federal Constitution of the Solomon Islands, Section 217(g): http://www.peoplefirst.net.sb/Downloads/SIG_Fed_Const/Final%20Draft%20Fed.%20Const.pdf as on 22 January 2009.

access official information in Solomon Islands, and Official Secrets legislation dating from 1922 is still in force.²⁷¹ However, in mid-2008, Solomon Islands hosted the “Regional Freedom of Information Workshop for Pacific Policy Makers”, which was organised by PIFS and the UNDP Pacific Centre. The Solomon Islands Prime Minister, the Hon. Sikua, opened the workshop and acknowledged the need for the region to “better accommodate freedom of information and to realise how its values could contribute to the social and economic development of our countries”.²⁷² In his keynote speech Dr Sikua committed his government to “work closely with the Pacific Islands Forum Secretariat (PIFS) and other stakeholders in considering a possible freedom of information policy and legislation that could give effect to the realisation of freedom of information”.²⁷³

The Prime Minister’s commitment paved the way for a National Workshop on Freedom of Information which took place in Honiara in February 2009. The Solomon Islands Ombudsman, with support from the CHRI, PIFS and UNDP Pacific Centre, hosted the workshop, which was attended by participants from government bodies, NGOs, the churches and the media. The Outcomes Statement agreed upon by participants “recognise(s) the value of the right to information in enhancing good governance and participatory development, participatory democracy, promoting human rights and tackling corruption.”²⁷⁴ The next likely step is the drafting of a freedom of information policy paper and subsequently an FOI bill. However, The Solomon Islands recent tense political history and sparse resources mean that the Government is likely to be dependent on foreign aid to fund and coordinate a freedom of information regime.

The Solomon Islands Leadership Code is contained in the Constitution, and supplemented by the Leadership Code (Further Provisions) Act. Under the Act, leaders (very broadly defined) are required to submit to the Leadership Code Commission a range of information regarding their financial assets and business dealings.²⁷⁵ Notably however, Section 5(6) of the Act specifically prohibits disclosure of any of the information submitted, except in the course of the duties of the Commission; for the purpose of

²⁷¹ Official Secrets Act, 1996 edition: http://www.paclii.org/sb/legis/consol_act/osa156/ as on 23 June 2009.

²⁷² Solomon Islands PM Keynote Address FOI Workshop Pacific Islands Forum Secretariat, 30 June 2008: <http://www.forumsec.org.fj/pages.cfm/newsroom/speeches/2008-1/solomon-islands-pm-keynote-address-foi-workshop.html> as on 25 February 2009.

²⁷³ Ibid.

²⁷⁴ Solomon Islands Freedom Of Information Workshop, Outcomes Statement, op.cit.

²⁷⁵ Leadership Code (Further Provisions) Act, Section 5(1), http://www.paclii.org/sb/legis/consol_act/lcpa366/ as on 29 April 2009.

proceedings or possible proceedings, or under an order of a court of competent jurisdiction.

Proactive Disclosure

Following the 2009 National Freedom of Information Workshop, the agreed Outcomes Statement stated that “the Government should take steps to increase proactive disclosure of government information, including but not limited to, information about the government budget, government expenditures, Ministerial expenses, development activities, public procurement processes and outcomes, penalties imposed on private companies by key Ministries, and key reports and findings produced by national accountability and integrity institutions.”²⁷⁶ Participants commended the Government for its commitment to the voluntary disclosure of information, in particular the National Parliament “for its commitment to proactive disclosure ... through broadcasting parliamentary sessions and committee hearings, maintaining a well-resourced website and library and undertaking a range of public outreach activities.”²⁷⁷ It was noted that the Government should continue to work on improving and utilising methods of proactive disclosure even in the absence of a specific law which protects the people’s right to request information.

The Government Communication Unit (GCU) is the central unit that has been established for the purposes of disclosing and disseminating government-held information and is also responsible for promoting a culture of proactive disclosure of government information. “The Nation” is a newsletter which the GCU planned to publish every fortnight to ensure that “information about the government reaches people in the rural areas.”²⁷⁸ The Government organised distributors within each of the nine provinces. Director of the GCU, George Herming has said that the newsletter is “based on facts and accuracy of events within the government information unit, which is necessary to the people of Solomon Islands.”²⁷⁹ According to some civil society representatives, regularity of production of the newsletter is an issue and is linkable to poor leadership and management.

In 2005, the Ministry of Rural Development together with NGO, Rural Development Volunteer Association, established the People First Network (“PFNet”) “in an effort to build the trust and confidence

of the Solomon Islanders in their government”.²⁸⁰ The objective of PFNet is to “support peace-building and poverty reduction through improved access to information and increased capacity for communications in rural areas”²⁸¹. PFNet consists of rural internet hubs, which can be used by the public to both send and receive emails. In June 2006, the Solomon Islands Government signed a Memorandum of Understanding with PFNet to use its rural email stations to supply a government weekly news bulletin to people. An internet café was also subsequently established in the capital, Honiara, as a way of facilitating access to information to people.

The official Solomon Islands Government website is currently under review and therefore unavailable for viewing.²⁸² More resources need to be dedicated to ensuring the GCU can revive the Government website and continue to expand PFNet. According to the GCU, “the current strategy uses multi-media visualization. Email bulletins for distribution on PFNet and Rural Information Centres (RICs), weekly printed bulletins for distribution to villages, website loading with information from email and printed bulletins and use of radio broadcasting. Once RICs become widespread, it will be possible to deliver video footage to rural communities.”²⁸³ The GCU has also recognised that a key focus also needs to be ensuring that “the information that people need to access the services provided by government”²⁸⁴ is available and accessible.

At present, the Parliamentary website provides some useful information regarding Parliament, legislation, parliamentary committee activities and some Hansard reports (2006 onwards).²⁸⁵ Parliament is also broadcast on the radio and has been working with one of the local TV stations to provide short daily updates of parliamentary sessions, when parliament is sitting. Information outreach is a key strategy for the Parliament.

The website of the Department of Commerce, Industries and Employment has some useful information on government, including press releases.²⁸⁶ With regards to government access

276 Solomon Islands Freedom Of Information Workshop, Outcomes Statement, op.cit.

277 Ibid.

278 Government Launch Newsletter Solomon Times Online, 11 July 2008: <http://www.solomontimes.com/news.aspx?nwID=2064> as on 3 March 2009.

279 Ibid.

280 The Commonwealth Human Rights Initiative, (2008), Our Rights Our Information, p. 43: http://www.humanrightsinitiative.org/publications/rti/our_rights_our_information.pdf as on 22 April 2009.

281 What are PFnet’s Objectives? The Solomon Islands People First Network (PFnet): <http://www.peoplefirst.net.sb/general/PFnet.htm> as on 13 April 2009.

282 <http://www.pmc.gov.sb/> as on 18 November 2008, last checked: 28 April 2009.

283 Brief sent via email to CHRI by Director of the GCU, 21 April 2009.

284 Ibid.

285 National Parliament of Solomon Islands website: <http://www.parliament.gov.sb/> as on 25 April 2009.

286 Department of Commerce, Industries and Employment website: <http://www.commerce.gov.sb/> as on 25 April 2009.

to the internet, it has been reported that, “few government officials have internet access.”²⁸⁷ The Central Bank of Solomon Islands has regularly published annual reports from 1999 which contain a wealth of data on the status of economic growth, balance of payments position and the scenarios for employment growth.²⁸⁸ However no annual report is available for the year 2008-09. There is very little information about other Ministries or their websites.

Every person interviewed by CHRI was in agreement that resource constraints have primarily hindered the work of the GCU and other Government information centres, such as the SIBC.

Assessment

People’s opinion on how much government-held information is currently made available in Solomon Islands is very mixed. According to a 2005 report, “(t)he flow of information from government is generally ad hoc and journalists report that it is difficult to question government about critical issues”²⁸⁹. The general view of the public officials who responded to CHRI’s questionnaire was that information such as legislation, court decisions, official budgets, and assets declarations of public officials are readily available in the public domain. However, Transparency International has found that assets declarations are often not made and when made are not accessible to people.²⁹⁰

Interviews conducted and questionnaires received from a number of civil society representations indicated that information held by the government agencies is not readily available to the public. It appears that large and well-funded international non-governmental organisations have better access to information relating to social development as compared to local civil society organisations. An interview conducted with Save the Children Solomon Islands suggested that Ministries of Health, Education, Women and Youth and Children consult openly and regularly with them in order to avail their expertise on child protection issues in the formulation of new policies.²⁹¹ However, information held by these departments is often shared only on the understanding that Save the Children will keep it confidential and not share it with

any other person. The Government’s willingness to consult with international organisations and experts on key human rights issues such as child protection is to be lauded. However the embargo on sharing information and unequal treatment of local organisations is reflective of the common mindset of treating information as a privileged possession rather than a public good.

Civil society representatives indicated that there was great reluctance to share any information that has the potential to embarrass government. An interview conducted with the Natural Resources and Rights Team of Oxfam Solomon Islands suggests that there is a lot of secrecy surrounding the allocation of funds to public projects and also regarding environmental projects that could potentially be damaged to public health. The Oxfam representative stated that the Government fails to release information of the potential risks and benefits of projects such as hydro-dams, which means that the public is not able to have an informed say on whether they want the project to happen or not. In a number of circumstances, environmental projects such as these have resulted in the relocation of communities from their homes but they do not receive an adequate explanation for why they are being moved away.²⁹²

Both the civil society and government sectors acknowledged that some policies and programs of the Government are not made known to the public. For example, there is very little information put in the public domain about the use of Constituency Development Funds managed by Members of Parliament, and rural development funds held by provincial ministries.²⁹³

As in many other Pacific Island Countries, significant information gaps exist between the capital, Honiara, and other provinces and villages. The 2009 National Freedom of Information Workshop in Honiara acknowledged the importance of bridging this gap, while noting that “the cost of accessing and disseminating information throughout the country remains high” and that “linguistic diversity and illiteracy also pose challenges.”²⁹⁴ The Workshop also highlighted the following issues that need to be addressed when exploring options for a freedom of information regime: recognition of oral traditions in the Solomons and exploring ways to promote face-to-face interactions with the public; more government information to be provided to the public in the vernacular languages of the Solomon Islands, in a user-friendly format;

287 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 323, op.cit.

288 <http://www.cbsi.com.sb/index.php?id=8> as on 3 March 2009.

289 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 323, op.cit

290 Transparency International (2004) National Integrity Systems Country Study Report: Solomon Islands p. 43: www.transparency.org/content/download/1717/8606/file/solomon_islands.pdf as on 11 December 2008.

291 Interview conducted by CHRI with Save the Children Solomon Islands, November 2008.

292 Interview conducted by CHRI with Oxfam Solomon Islands, November 2008.

293 Response to Questionnaire by civil society member, 19 February 2009. Name withheld.

294 Solomon Islands Freedom Of Information Workshop, Outcomes Statement, op.cit.

exploring partnerships between the GCU, NGOs and the churches to promote better information dissemination; and alternative ways of disseminating information to and obtaining feedback from the villages, for example, through health clinic radios to disseminate government information.

Corruption continues to be a significant obstacle to transparency and accountability in the Solomon Islands. Transparency International has previously commented that due to widespread corruption in the Solomon Islands, coupled with the lack of police investigation and incidents of corruption alleged by the media, people have grown to accept the existence of corruption as inevitable.²⁹⁵ According to Transparency International, tolerance levels for corruption in the Solomon Islands is very high. However, the Government is beginning to tackle corruption in a serious manner.

Discussions held at recent workshops and responses to CHRI's questionnaire have all highlighted a need for stronger communication links between the GCU and responsible Ministerial Officials to facilitate better dissemination of information. While the GCU has a good level of communication with some certain Ministries, according to discussions had with those in the public service, there is room for improvement in communications with other Ministries. There is similarly a need to strengthen communications between Government and international development partners and donors, and people would welcome more disclosure by these latter organisations in relation to information of relevance to Solomon Islands.

It appears that the general culture within the public service is to err on the side of caution to maintain confidentiality and inaccessibility of information. It has previously been reported that while there is no official policy against information accessibility, "official information is not consistently available"²⁹⁶ except through official documents such as Hansard and the Gazette. However, "document and information leakages are common."²⁹⁷ All this will hopefully change with the growing momentum in the Solomon Islands towards freedom of information legislation.

295 National Integrity Systems Country Study Report: Solomon Islands p. 9, op.cit

296 Ibid. p. 61.

297 Ibid. p. 61.



TONGA

The Kingdom of Tonga has a population of just over 120,000 and is made up of 169 islands, 39 of which are inhabited.²⁹⁸ Tonga is unique, as the only monarchy in the Pacific Islands. The 32-member Parliament, or Fale Alea, which sits in the capital, Nuku'alofa, consists of only nine elected members who are known as the People's Representatives. The remaining 23 are selected either by the King or the nobles. The Tongan King commands considerable status and power. In 2003, constitutional changes increased the King's powers and imposed strict limits to the levels of political opposition that would be tolerated. In late 2006, a peaceful push for democratic reforms ended in violence, with rioting and looting in the streets of the capital.

In late 2008 the King gave an undertaking that he would "be guided by the recommendations of the Prime Minister of the day in all matters of governance, with the exception of the Monarch's judicial powers."²⁹⁹ The King has endorsed a move towards constitutional and electoral changes, and a Constitutional and Electoral Commission was established under legislation passed in 2008. The Commission produced a Draft Report in June 2009 and is due to submit a final report in November 2009, in anticipation of reforms being implemented before elections, expected in 2010. The Draft Report highlighted the need for greater government transparency, though it did not specifically recommend freedom of information legislation.

298 CIA World Factbook, Tonga: <https://www.cia.gov/library/publications/the-world-factbook/geos/tn.html> as on 20 April 2009.

299 Tonga King Voluntary Surrenders Some Powers Matangi Tonga reprints 2008 Press Release <http://pidp.eastwestcenter.org/pireport/2009/April/04-13-02.htm> as on 25 April 2009.

Background

Against a backdrop of pro-democracy riots, which occurred in Nuku'alofa in 2006, and disagreements on the way forward in democratic reform, the King endorsed a constitutional reform process which is now underway. The Commissioner on Constitutional and Electoral Reform is overseeing the process. In early 2009, consultation meetings were held in most districts and outer islands. The Commission produced a Draft Report in June 2009, calling for further submissions on the issues it raised in the Report, and is due to submit a final report in November 2009, in anticipation of reforms being implemented before elections which are expected in 2010.

Tonga has made a number of commitments to more openness and accountability. The Commissioner for Public Relations, who holds a similar position to that of an Ombudsman, has a key role in dealing with "public complaints on official actions or decisions",³⁰⁰ and operates as an important check on public decision-making. In another positive move towards greater accountability and transparency, Tonga became the first Pacific Island country to take part in the United Nations Human Rights Council's Universal Periodic Review process in May 2008.³⁰¹

Legislation to establish an Independent Anti-Corruption Commission was passed in 2007, but the body was only set up in mid-2008 to investigate instances of corruption and make recommendations for launching appropriate action against those found guilty of corrupt conduct or activities.³⁰² While this is a positive step forward, there has been some criticism of the Commission in that it does not have any powers to investigate the King.³⁰³ All ministers, judges, legislators and police officers have been brought within the ambit of this law. The Anti-Corruption Commissioner stated soon after assuming office that: "It is a modern anti-corruption act that looks widely, it tells us that we must look systematically at widespread and serious corruption."³⁰⁴

Tonga improved by 44 places in Transparency International's 2008 Corruption Perception Index, with its score going rising from 1.7 in 2007 to 2.4 in 2008. According to Transparency International, "(t)he introduction of an anti-corruption law and the establishment of an anticorruption commission ... helped bolster perceptions of a more systematic anticorruption approach in the country."³⁰⁵ However, there are very strong secrecy provisions in this Act that prevent disclosure of information relating to any proceedings except when required by a court of law.³⁰⁶ Disclosure of information relating to any proceedings under the Act without the authorisation of the Anti-Corruption Commissioner is a punishable offence under the Act.³⁰⁷ However the Commissioner may decide to hold public inquiries while investigating a specific corruption-related matter if such a proceeding serves the public interest better.³⁰⁸

The Tonga Broadcasting Commission (TBC) is Government-owned media, which has a television station, an AM/FM radio station, and a weekly newspaper, the Tonga Chronicle. Although the TBC was established as a broadcasting service for the purpose of education, information and entertainment it is dominated by the Government. The Prime Minister chairs its Board and the Minister for Communications is a board member, while the remaining members including the Manager are appointed by the Cabinet.³⁰⁹ This domination has ensured the use of the TBC by the government as a means to impose restraints on media freedoms.³¹⁰ The constituting Act does not provide the TBC with such arbitrary powers to curb other media. As for the Chronicle newspaper, while responsibility for publishing the Chronicle has recently been given to a private company, it is not certain whether this will increase its ability to report independently. According to the Ministry of Information's website, the Government "still controls the Editorial policy and issues as well as the building, vehicles, computers and other assets whose ownership will still

300 Transparency International (2004) National Integrity Systems Country Study Report: Tonga p. 19: www.transparency.org/content/download/1721/8618/file/tonga_nis.pdf as on 11 December 2008.

301 Foreign and Commonwealth Office Country Profile: <http://www.fco.gov.uk/en/about-the-fco/country-profiles/asia-oceania/tonga?profile=politics&pg=7> as on 25 April 2009.

302 Anti-Corruption Commissioner Act 2007: <http://legislation.to/Tonga/DATA/PRIN/2007-013/Anti-CorruptionCommissionerAct2007.pdf> as on 25 April 2009

303 See <http://www.rnzi.com/pages/news.php?op=read&id=41019> for Akilisi Pohiva's critique of the Commission. As on 20 February 2009.

304 Tonga Anti-Corruption Commissioner Says Agency Brief is Modern Radio New Zealand, 22 July 2008: <http://www.rnzi.com/pages/news.php?op=read&id=41025> as on 20 April 2009.

305 Transparency International Press Release (2008): www.transparency.org/content/download/36589/575262 as on 11 December 2009, p. 20.

306 Sections 86 and 87: Anti-Corruption Commissioner Act, op.cit

307 Violation of the secrecy provisions could invite a jail term for one year and a fine of up to Tongan \$2,000. Ibid.

308 S. Ibid.

309 Section 4 Tonga Broadcasting Commission Act, 1961 (as amended last in 2003): <http://legislation.to/Tonga/DATA/PRIN/1988-100/TongaBroadcastingCommissionAct.pdf> and <http://legislation.to/cms/legislation.html> for amendments, as on 24 April 2009.

310 Tonga: Another Media Zimbabwe, Café Pacific: <http://cafepacific.blogspot.com/search/label/tonga%20broadcasting%20commission> and Tonga country report for 2007 issued by the US State Department: <http://www.state.gov/g/drl/rls/hrrpt/2007/100540.htm> as on 10 April 2009.

remain in the hands of Government.”³¹¹ Government officials from various departments such as the police, agriculture, education, revenue and customs will conduct interviews about policies and programmes and these are aired to the public.

Tonga stands out in the Pacific as a country with a strong independent media. There are three independent newspapers - The Taimi 'o Tonga, The Talaki, and the Kele'a, and also Matangi Tonga which is an online news magazine. As at 2007, 8,400 Tongans were Internet users (a little over 1% of the population).³¹² Unfortunately, due to the difficulty in accessing information the media often have to run with leaks, rumours and half stories. Taimi 'o Tonga is published twice weekly out of Auckland, and is focused on Tongan communities in Tonga, New Zealand, Australia and the USA.³¹³

The media “have been charged with libel and defamation for printing information about the Government”³¹⁴ several times. The King has attempted to revoke Taimi 'o Tonga's license due to publishing allegedly defamatory information.³¹⁵ However, a public campaign followed, led by the pro-democracy movement, to take the government to the Supreme Court under clause 7 of the Constitution, which protects freedom of speech and the press. The challenge was successful. Some civil society actors have commented that this success represented one of the first ever movements of the people against the Government. The Kele'a newspaper also reports openly and exposes stories of corruption within Government. The paper has been taken to court by the Government a number of times for doing this, the latest involving its reporting on accusations that the Minister for Tourism was placing public funds into his own personal bank account. In early 2007 the TBC reportedly prohibited staff of Kele'a from working on Sundays. Later when the paper criticised the King, the editor was arrested and charged with sedition. However, he passed away before the trial.³¹⁶ Pressure from the Government also saw the TBC placing a ban on parliamentary debate coverage. The explanation given for the ban was that it related to the fact that

certain articles/programmes in the media could incite further violence after the 2006 riots.³¹⁷

The 2006 riots led to the Government closing the only independent television station in Tonga, the Oceania Broadcasting Network (OBN), known widely as the “People's Television”. OBN (also popular by its call letters- A3M-TV7) had been widely utilised by members of the pro-democracy movement, which conducted public meetings in Tongan communities and broadcast them. While shutting down OBN, the Army allegedly entered its offices and destroyed everything. The owner of OBN has taken the Government to Court but a decision is yet to be made. According to conversations with civil society members, television is a very effective way of disseminating information in Tonga (whether critical or supportive of government activities). Now that there is only one government-run channel, viewer numbers have increased, although previously the People's Television channel was more popular for finding out ‘real news’. The government-run channel does not release much information about government programmes and policies in place for the people of Tonga and it is instead used for political debate which, in the opinion of those we spoke with, often paints the leaders of the pro-democracy movement in bad light. NGOs are able to pay the station for a fortnightly slot to talk about issues that affect the public; however, according to people working in NGOs, these slots are heavily censored and any information which is critical of the government will not be broadcast.

Legal Context: Accessing Official Information

Tonga has not ratified the International Convention on Civil and Political Rights, which is the key international human rights instrument enshrining the right to seek, receive and impart information.

The Tongan Constitution was granted by the King in 1875, and was revised in 1967. It includes the right to freedom of the press and freedom of speech, but does not recognise the right to freedom of expression or the right to seek and receive information from government. In 2003, the Constitution was amended to allow for the enactment of laws to regulate the operation of any media, which “enabled the government to restrict freedom of speech and freedom of the press.” Consequently, Acts were passed “which gave government the powers to licence newspapers for the first

311 After 45 Years, the Chronicle's Management Outsourced Ministry of Information, 18 March 2009: http://www.minfo.gov.to/index.php?option=com_content&view=article&catid=153:ministries-a-departments&id=584:chronicles-management-outsourced&Itemid=441 as on 10 April 2009.

312 CIA World Factbook, Tonga, op.cit.

313 Times of Tonga Website: http://timesoftonga.com/index.php?option=com_content&task=view&id=70&Itemid=88888889 as on 27 March 2009.

314 National Integrity Systems Country Study Report: Tonga, 2004, p. 36, op.cit.

315 Lopeti Senituli, Taimi 'o Tonga and the Future of the Rule of Law in Tonga, Planet Tonga: http://www.planet-tonga.com/HRD/Articles/Law_In_Tonga/Law_In_Tonga.shtml as on 10 April 2009.

316 Tonga country report for 2007 issued by the US State Department: <http://www.state.gov/g/drl/rls/hrrpt/2007/100540.htm> as on 10 April 2009.

317 Ibid.

time,³¹⁸ and some licence applications were refused, for varied reasons such as a too high percentage of foreign ownership, or lack of formal journalism qualifications. The Court declared these Acts void in 2004.³¹⁹ An Official Secrets Act was enacted in 1964, and remains in force.³²⁰

In late 2008, the Commonwealth Parliamentary Association Secretariat and the Parliament of Tonga hosted a “Parliament, the Media and FOI Workshop” in Nuku’alofa. Participants included His Royal Highness Prince Tui Pelehake, Hon. Siaosi ‘Aho, Acting Prime Minister, Nobles of the Realm, Cabinet Ministers, Members of Parliament, government officials, civil society and media representatives. The Outcomes Statement agreed to by participants called on the Tongan Government to implement freedom of information legislation. The Attorney General of Tonga recognised the importance of FOI legislation, and agreed to recommend the drafting of freedom of information legislation if the workshop recommended it.³²¹

The Draft Report of the Constitutional Commission which was released in June 2005 specifically highlighted the need for greater government transparency. However, it did not specifically recommend freedom of information legislation.³²² CHRI subsequently made a submission to the Commission encouraging the inclusion of the right to information in the final report.³²³

Proactive Disclosure

In mid-2008, the Government of Tonga established a Ministry of Information (MOI) to “distribute news and information from the Government and to act as a depository for accessing Government and public documents and other information resources.”³²⁴ Its mandate is as follows:

318 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 336, op.cit.

319 Informing Citizens: Opportunities for Media and Communication in the Pacific p. 337, op.cit.

320 Official Secrets Act, 1988 edition: http://www.paclii.org/to/legis/consol_act/osa156/ as on 23 June 2009.

321 Pesi Fonua, Freedom of Information - A Vital Step Toward Open Government, Matangi Tonga Online, 2 October 2008: http://www.matangitonga.to/article/tonganews/newsmedia/tonga_parliament_cpa_foi-021008.shtml as on 19 January 2009.

322 Anonymous discussions with Tongan civil society member, 24 April 2009.

323 See: http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/tonga/chri_submissions_to_the_tongan_constitutional_&_electoral_commission.pdf as on 6 July 2009.

324 Ministry of Information, About Us section of the website: http://www.minfo.gov.to/index.php?option=com_content&view=category&id=152&layout=blog&Itemid=440 as on 10 April 2009.

The Information Office has now become the Department of Information and it is separate from the Ministry of Public Enterprises. The duties and functions of the Department have not been clearly set out in any Government policy or legislative enactment. Primarily, based on existing expectations, the main functions and duties of the Department are related to coordination and dissemination of information from the Government sector to the media and the public and to provide a point of contact for the media who seek information from the Government.³²⁵

The move to upgrade an Information Office of a Ministry to a Department, acknowledges there is a gap in information access, recognises that there is an unsatisfied demand for information that must be met and goes beyond looking at media as the only stakeholders while also recognising the value of giving information to the public more generally. Whether having a ‘one stop shop’ or ‘a ‘single window’ for accessing information works to restrict information-giving or becomes an institutionalised means of increasing the flow of information into the public will be determined by the level of cooperation there is from those who run it; the degree of accuracy and completeness of the record keeping; and the mindset to give information or to keep it within government and the Cabinet.

From interviews CHRI had with those in Tonga, it appears that, in practice, the MOI nearly always has to consult with the Ministry in question before information is able to be disclosed, which results in seriously long delays in the release of information. There are concerns that perhaps the MOI has taken on an overly burdensome task in attempting to be able to speak on behalf of all other Ministries. The Ministry of Information website states that “each Ministry and Department ha(s) designated one of their staff as their Public Relation Officer (PRO) whose task is to liaise with the Ministry of Information on all matters regarding media releases, press conferences and as the contact person for other media enquiries.” This may facilitate the easier flow of information in time.³²⁶

The Official Website of the Tongan Government provides detailed information about the judiciary, Parliament, local government, Tongan legislation, the Monarchy, and the Constitution.³²⁷ In

325 Ministry of Information, Mandate section of the website: http://www.minfo.gov.to/index.php?option=com_content&view=category&layout=blog&id=150&Itemid=438 as on 10 April 2009.

326 Ministry of Information, About Us section of the website op.cit.

327 Official Kingdom of Tonga website: <http://www.pmo.gov.to/> as on 2 April 2009.

late 2008, the Government of Tonga was “ranked in the top 20 E-Government studies by Brookings Institute from a total of 198 participating nations around the world”.³²⁸ The purpose of the Brookings report is to “review the current condition of electronic government and make practical suggestions for improving the delivery of information and services over the Internet.”³²⁹ The Ministry of Information’s website is interactive and user-friendly for those wanting to find out more information about current events in Tonga, including “the latest government press releases, notices and stories”, a “who’s who” of government, and links to other Ministry websites. It also includes online polls where viewers can vote about what information should be on the site and whether the site is as effective as possible. Much of the website is yet to be developed but it is currently up-to-date.³³⁰ There is also a Tonga Legislation Online website developed with the support of NZAID. The complete text of all laws passed in Tonga can be accessed on this website.³³¹

The website of the Ministry of Finance and planning provides access to budget documents from 2000-2008. Several budget-related documents in Fakatonga are also accessible online.³³² While annual reports of this Ministry are available only up to 2001 economic reviews up to 2009 have been uploaded on this website. The report of the national task force set up to plan, execute and monitor the realisation of the Millennium Development Goals is accessible on the website of the Tonga Department of Statistics website.³³³ Other important information is not as easily available because the websites have not been developed or updated. Illustratively, the Department of Audit does not have a dedicated website yet; the website of the police, prisons and fire services department is under construction and annual reports for the Ministry of Health are available only up to the year 2005.³³⁴ Similarly, the commitment to providing useful, timely information appears to be slipping in other areas, as up until 10 years ago a budget statement was released on the same day that the budget

is passed through the House of Parliament, but now there is at least a two week gap before this information is released, and there is no public consultation in the budget-making process.³³⁵

The Parliament website contains some quite detailed information but has not been updated since 2005.³³⁶ Meetings of Parliament used to be made public and were broadcast on the television but according to one civil society member, this practice stopped last year in 2008. Now the people of Tonga must purchase a copy of the minutes of the meetings. The website of parliament is not always functional.³³⁷

The Government has been known to write to civil society organisations to advise them about certain government initiatives that might be of relevance to their work, and to invite their points of view. This signals an increasing trend towards greater public consultation. For example, recently the Ministry for Trade invited the World Trade Organisation (WTO) to come to Tonga and hold a public consultation about the benefits of joining the WTO. However, according to some civil society members in Tonga, the language used at such public consultations is often pitched at a very academic and theoretical level, which many members of the public are unable to understand fully, and is not effectively translated into Tongan. Another recent public consultation involved gathering public opinions of the Tongan police force. A report is to be drafted and released to the public in due course.

Assessment

In Tonga, there is a general culture of keeping government information secret that is hard to overcome. While a commitment to transparency does appear to exist amongst some working at the senior levels of government, this is not communicated well to other public servants who remain unsure as to what information they may or may not disclose and err on the side of caution. Added to this problem is the fact that the emergency powers put in place following the 2006 riots have not yet been withdrawn and this also means that meetings of more than 5 people at a time are currently illegal.

Experienced civil society activists working in Tonga seldom make efforts to obtain information from government departments to assist in their work, largely because there is an expectation that the

328 Tonga e-Government in World Top 20, Office of the Prime Minister, 13 October 2008: <http://www.pmo.gov.to/releases-mainmenu-29/300-tonga-e-government-in-world-top-20.html> as on 23 April 2009.

329 Darrell M. West, Brookings Institution Report, Improving Technology Utilization in Electronic Government around the World, (2008): http://www.brookings.edu/~media/Files/rc/reports/2008/0817_egovernment_west/0817_egovernment_west.pdf as on 23 April 2009.

330 Ministry of Information website: <http://www.minfo.gov.to/> as on 23 April 2009.

331 Tonga Legislation Online: <http://legislation.to> as on 23 April 2009.

332 Budget Statements prepared by the Ministry of Finance: <http://www.finance.gov.to/publications.html> as on 25 April 2009.

333 The Millennium Development Goals: Today and Tomorrow: Tonga Department of Statistics: <http://www.spc.int/prism/Country/TO/stats/MDG/mdg.htm> as on 25 April 2009.

334 <http://www.audit.gov.to/>; <http://www.police.gov.to/>; http://www.health.gov.to/Annual_Report.html; as on 25 April 2009.

335 Telephone conversation with media representative in Tonga, 8 April 2009.

336 Legislative Assembly of Tonga website, Members of the Legislative Assembly: <http://parliament.gov.to/services.htm> as on 23 April 2009.

337 Parliament of Tonga website: <http://parliament.gov.to> as on 25 April 2009

information will be impossible to obtain so they simply do not try. There is a general expectation of a culture of secrecy in the Tongan Government such that people expect to be brushed off when they approach the Government for information - or else be passed from person to person in search of the required information. When they succeed in getting the contact details of the appropriate person to speak with (which is quite often one of the most senior people in the Ministry or department), they are extremely difficult to get hold of, are often away from the office and do not respond to messages left in their absence. Those who have had experience working within government also acknowledge the general culture of fear of being reprimanded or losing one's job if found giving out information to the public.

Besides the establishment of the office of the Anti-Corruption Commissioner, civil society actors in Tonga advised that there has been no further action towards ensuring greater transparency and accountability by Government. The Anti-Corruption Commissioner was established as a result of considerable media pressure, but its officers are seen as being biased towards protecting the Government's interests. As yet, the Commissioner has not acted upon complaints from the public, and when people make enquiries as to the work that the Commissioner's office is currently doing, those who spoke with CHRI advised that they are often met with responses such as: "we cannot let you know yet" or "we are working on it."³³⁸

In the outer islands, due to the small population size, people's relationships with Government officials tend to be quite personal and open. "People directly meet officials, there is greater transparency, and fewer opportunities for corrupt practice."³³⁹ Nevertheless, people do have difficulty obtaining information about the procedures and criteria used by public authorities to make administrative decisions in Tonga. Public servants find disclosing information risky and would like to avoid getting into trouble at a later date for disclosing information. Therefore, people resort to "seeking relatives in the civil service to help them through the maze through the use of their personal relationships."³⁴⁰

As is the problem in many Commonwealth Pacific Island Countries, departmental reports are often delayed at the printers, and are not produced in large quantities due to the high cost of printing.³⁴¹ Another significant obstacle is the limited knowledge people have

about the role of the Commissioner for Public Relations, and the "general fear... of rocking the boat."³⁴² In the year 2001 – 2002, only 16 complaints were received by the Commissioner, most of them detailing minor incidents.³⁴³

In the light of all this, the preferred mode of information access is through personal relationships and direct access to information holders particularly Ministers who are in general very open will provide the information requested. While bureaucrats are uncertain what information they can and cannot give without risking censure, ministers with more authority are willing to provide information once they are available. However, their availability is itself subject to busy schedules and work commitments and many months may go by before an information seeker gets satisfactory answers. CHRI's interviews do suggest, however, that once a Minister is available to speak to the requestor, they are in general very open will provide the information requested.

The primary problem appears to be that the responsibility for information disclosure lies with people who are too senior to be available. Anyone working below the Ministerial level is anxious about not having the requisite authority to be able to release information that is requested. There are no systems and structures in place to monitor the preparation and the dissemination of information in a systematic manner and no clear guidelines on individual and departmental responsibility. Often the responsibility falls on the Ministers as they are at the top of the hierarchy.

While awaiting more comprehensive legislation, several simple ideas for improving access to information were mooted by participants in the 2008 "Parliament, the Media and FOI Workshop", including: the need to ensure parliamentary proceedings are more open to the public and the media through radio broadcasts; making more government information available proactively; setting up a public notice board with details of House business, and routinely uploading the daily agenda, Bills (including proposed Budget expenditure), Acts, regulations, Hansards, on the Tongan Government website; reviewing current restrictions on media access to the chamber of Parliament and committee meetings; and making provision for a media and public gallery and broadcast facilities in Parliament.³⁴⁴ Taking the necessary steps in this direction can increase open up the working of parliament and the government to people.

338 Interview with civil society representative on 24 March 2009. Name withheld on request.

339 National Integrity Systems Country Study Report: Tonga, 2004, p. 8, op.cit.

340 Ibid. p. 37.

341 Ibid. p. 48.

342 Ibid. p. 37.

343 Ibid. p. 37.

344 Tonga Workshop on Parliament and the Media, Nuku'alofa, October 2008: http://www.cpahq.org/uploadedFiles/Programmes_and_Activities/Professional_Development/Tonga%20Parliament%20&%20the%20Media%20workshop%20Recommendations.pdf as on 25 April 2009.

TUVALU



Tuvalu is a very small country consisting of nine low-lying atolls, with a population of just over 12,000.³⁴⁵ Its geography is similar to that of Kiribati, as the two countries once made up the British colony of the Gilbert and Ellice Islands. Tuvalu faces unique difficulties in relation to rising ocean levels, reliance on imported food and fuel, together with issues that are common to many Pacific Island Countries such as limited natural resources and a correspondingly low annual GDP with a modest annual operating budget. Tuvalu appears in the United Nations list of Least Developed Countries.³⁴⁶

Tuvalu has a democratically elected Parliament which meets in the capital, Funafuti. The 15 Members of Parliament do not belong to political parties, but tend to align informally with each other.³⁴⁷ Each of Tuvalu's eight inhabited islands is also governed by a Kaupule (Local Government Council) and Falekaupule (Traditional Assembly). The Kaupule is the executive arm of the Falekaupule. The passing of the Falekaupule Act 1997, among other things, devolved more powers to these Kaupule to determine local developmental priorities and provide essential services to the people.

Many people in Tuvalu survive just above the subsistence level, particularly in the outer islands. Employment opportunities are limited and only a few people can afford newspapers if there are newspapers available. Apart from the Ekalesia Kelisiano Tuvalu Church's quarterly newsletter, no other newspapers are circulated regularly in Tuvalu.³⁴⁸

345 CIA World Factbook: <https://www.cia.gov/library/publications/the-world-factbook/geos/tv.html> as on 20 April 2009.

346 United Nations Least Developed Country Information: Tuvalu: http://www.un.org/esa/policy/devplan/profile/country_196.html as on 15 April 2009.

347 New Zealand Ministry of Foreign Affairs and Trade website: <http://www.mfat.govt.nz/Countries/Pacific/Tuvalu.php> as on 11 December 2009.

348 Also known as the Church of Tuvalu. Feedback from Tuvaluan peer reviewer. Name withheld on request.

Background

Corruption in Tuvalu is regarded as a minor concern or perhaps is accepted as a background issue that has been around for years and must be tolerated or ignored while the higher priorities of every day existence are worked through. Awareness about the linkages between corruption and the perpetuation of poverty, the delivery of services and the poor levels of human development is lacking amongst people in Tuvalu. Moreover, corruption, especially in the private sector, is rarely reported and the perpetrators rarely prosecuted due to what is seen as a lack of resources, understanding, and competency in stamping out corruption.³⁴⁹

According to Transparency International, the Government has made “little effort to implement an overarching national strategy to deal with corruption.”³⁵⁰ Responses to CHRI’s questionnaires advise that the legislature has been considering the creation of an Ombudsman for some time.³⁵¹ The Government also passed the Leadership Code Act in 2006, which is in line with Tuvalu’s commitments under the Pacific Plan. The purpose of the Act is “to give effect to the Principles of the Constitution and the commitment of the leaders and the people of Tuvalu to the principles of good governance by providing a Leadership Code to guide and govern the conduct of the leaders of the people of Tuvalu.”³⁵² However, there has so far been no budget allocation for the implementation of the Leadership Code and as a result, it is currently lying dormant.³⁵³

The Government has been known to “exert a large amount of control over the media”³⁵⁴ and all local media is currently Government-run. A government-run media organisation Tuvalu Media Corporation was established in 1999 by the Tuvalu Media Corporation Act in order to “provide a national broadcasting service which informs, educates, and entertains the people of Tuvalu.”³⁵⁵ The Tuvalu Media Corporation was previously called the Broadcasting & Information Office until 2000, when it was

corporatised.³⁵⁶ The Government continued to run the Corporation, and at the beginning of 2008 moved to retake control of it, turning it into a government department – the Tuvalu Media Department (TMD) – to ensure its financial survival.³⁵⁷ The news website www.tuvalu-news.tv states in its archives section that it ended on 31 December 2008 due to lack of funding.

TMD falls within the portfolio of the Office of the Prime Minister, and operates Tuvalu’s only radio station, Radio Tuvalu. The flow of government information to TMD is limited and subject to very strict control.³⁵⁸ TMD therefore only broadcasts news and public interest programmes.³⁵⁹ TMD is also responsible for publishing Tuvalu Echoes, “the only newspaper in the country”³⁶⁰ which published somewhat irregularly.³⁶¹ There are plans for TMD to create and manage its own website, but the Government is yet to confirm and approve these plans.³⁶² In Tuvalu, the Secretary to Government is responsible for government–media relations.

While the Constitution allows for private media there are no competing media organisations at present in Tuvalu,³⁶³ although the Tuvalu Association of Non-Government Organisations is said to publish a quarterly newsletter, mostly about its activities, HIV, and information about available funding for their NGO members.³⁶⁴ The small population, and hence the limited client-base, has been identified as a possible reason for the lack of private media.³⁶⁵

People living in the outer islands can generally receive public broadcasts in most places and are also in daily contact with Funafuti (Tuvalu’s main island) via satellite communications links. However, there have been repeated complaints from people living in the outer islands that they could not receive Radio Tuvalu transmissions. While this problem has been solved for most areas

349 Feedback from Tuvaluan peer reviewer. Name withheld on request.

350 Ibid.

351 Response to CHRI’s questionnaire, received on 26 March 2009. Name withheld on request.

352 Leadership Code Act 2006: <http://www.tuvalu-legislation.tv/tuvalu/DATA/PRIN/2006-000/LeadershipCodeAct2006.pdf> as on 22 April 2009.

353 Feedback from Tuvaluan peer reviewer. Name withheld on request.

354 Transparency International (2004) National Integrity Systems Country Study Report: Tuvalu p. 42: www.transparency.org/content/download/1724/8627/file/tuvalu.pdf.

355 National Integrity Systems Country Study Report: Tuvalu, p. 22, op.cit.

356 Tuvalu-News.TV: <http://www.tuvalu-news.tv/tmc/index.html> as on 23 March 2009.

357 This tracing of the trajectory of development of TMC is based on email correspondence with the Chief Engineer of Tuvalu Media Department held on 22 April, 2009, and with email correspondence with others in Tuvalu at that time.

358 Response to CHRI’s questionnaire, received on 22 April 2009. Name withheld on request.

359 Response to CHRI’s questionnaire, received on 22 April 2009. Name withheld on request.

360 Tuvalu Echoes: <http://www.tuvaluislands.com/publications.htm> as on 24 February 2009.

361 Response to CHRI’s questionnaire, received on 22 April 2009. Name withheld on request.

362 Email interview with the Chief Engineer of Tuvalu Media Department held on 22 April, 2009.

363 Response to CHRI’s questionnaire, received on 22 April 2009. Name withheld on request.

364 Feedback from Tuvaluan peer reviewer. Name withheld on request.

365 Feedback from Tuvaluan peer reviewer. Name withheld on request.

in Tuvalu, the island of Nanumaga as late as May 2009 confirmed they could still not receive the transmissions.³⁶⁶ Internet access on the main island of Funafuti has been available for some years, while on the outer islands internet was introduced from late 2008 and early 2009. Some still struggle to familiarise themselves with computer and internet technologies.³⁶⁷

Legal Context: Accessing Official Information

Tuvalu has not ratified the International Convention on Civil and Political Rights, nor the United Nations Convention Against Corruption, the key international human rights instruments which enshrine the right to seek, receive and impart information.

Unlike most Pacific Island Countries, Section 24 of the Constitution of Tuvalu 1978 specifically grants protection to the “freedom to receive ideas and information without interference; and freedom to communicate ideas and information without interference”³⁶⁸ as part of the right to freedom of expression. The Government has not yet moved to develop supplementary legislation to give effect to this fundamental right.

There is no protection given to would-be whistle-blowers, which is a significant disincentive to exposing wrongdoing in government.³⁶⁹

The Public Records Act 1979 requires the archiving of public records that are no longer needed for the purpose of administration but may be preserved for their historical value. The Act states that “all records deposited in the Archives Office shall be available for public reference subject to the provisions of any regulations...”³⁷⁰ ‘Public records’ has a broad definition and includes “all documentary materials of any kind, nature or description which have been drawn up, made, received, acquired or used in the course of legislative, administrative or executive transactions or in proceedings in any court together with all exhibits and other material evidences” that are related to these documents.³⁷¹

366 Feedback from Tuvaluan peer reviewer. Name withheld on request.

367 Feedback from Tuvaluan peer reviewer. Name withheld on request.

368 Constitution of Tuvalu: http://www.tuvaluislands.com/const_tuvalu.htm as on 24 February 2009.

369 Feedback from Tuvaluan peer reviewer. Name withheld on request.

370 Public Records Ordinance (Act 10) 1979, Part III Section 14(1) <http://www.tuvalu-legislation.tv/tuvalu/DATA/PRIN/1990-099/PublicRecordsAct.pdf> as on 16 April 2009.

371 Ibid. Part I, Section 2.

The Public Records Act empowers the Minister to authorise, on the recommendation by the Archivist, “the publication of any public record deposited in the Archives Office and available for public reference which he considers to be of sufficient interest to warrant its publication.”³⁷² There is no provision which relates to automatic release of information without the recommendation of the Archivist. There is an offences and penalties section to deal with those who “wilfully or negligently” destroy public records.³⁷³ There are also provisions relating to the collection and storage of information. However there are also restrictions on the accessibility of archived records. The Archivist may, “for good cause withhold access to any specified public record or class of public records in his custody”³⁷⁴ and “the Minister may at any time, ... withhold access either generally or by any person or class of persons to any specified public record or to any specified class of public records”³⁷⁵. There is no right of appeal against the decision of the Minister.

The Oaths and Statutory Declarations Act also works to restrict the dissemination of some information, for example providing that “(a)ny public officer who having taken the oath relating to Cabinet business subsequently makes any disclosure or revelation contrary thereto shall be liable to disciplinary action.”³⁷⁶ Such requirements invariably create a culture of secrecy amongst public officers and have an inhibiting effect on all other legal measures that may have transparency requirements.

Proactive Disclosure

The Tuvalu Government website unfortunately discloses only very limited information about the Tuvaluan Legislature, Executive, and Judiciary, but does provide some background information outlining the roles of the various Ministries, Members of Parliament, and Cabinet Ministers. A new user-friendly legislation website is also currently being developed which “is expected to form the basis for a new official revised edition of the laws of Tuvalu.”³⁷⁷

According to responses to questionnaires received from Tuvalu, government information is currently generally disseminated through the local newspaper, Tuvalu Echoes, which is often not published regularly. Otherwise information is transmitted orally as has been the culture, historically, in most Pacific Island Countries.

372 Ibid. Part III, Section 15.

373 Ibid. Part III, Section 20.

374 Ibid. Part III, Section 14(1)(a).

375 Ibid. Part III, Section 14(3).

376 Ibid.

377 Tuvalu Legislation online: <http://tuvalu-legislation.tv/cms/> as on 26 March 2009.

There is a perception that information about assets of public officials is widely known despite the absence of a legal disclosure requirement. This is not surprising given the small size of the population and the shared values and cultural practices in Tuvalu.

Assessment

The information collected from interviews and responses to questionnaires indicates that there is no formal procedure established for requesting government-held information. Information is usually accessed by word of mouth through one's contacts, who in turn have other contacts from whom to source the information. People will generally go to someone they know and from there they may have to go on to others until they receive the information they want. The UNHCR website states that while there is no specific law providing for public access to information held by the government, "(i)n practice the government was somewhat cooperative in responding to individual requests for such information."³⁷⁸

The obstacles faced by people seeking information might be reasonably summarised as not knowing where to go to ask; finding the right person to ask; knowing exactly what to ask for; finding the information in documented or recorded form; and being able to access a copy.

As noted earlier, there are no independent media outlets in Tuvalu and it would be safe to say that the flow of information is regulated by the government and approved information provided on a need-to-know basis. TMD was "de-corporatised" in large part due to the financial crisis faced by the Tuvalu Media Corporation, and was included in the Government's budget because it is a service that people demand.³⁷⁹ Questions persist over the desirability of the Government retaining its hold on the media due to perceptions that it believes it has the prerogative to "release information and news to the people on a strictly selective basis".³⁸⁰ Others suggest that journalists need to become more bold and independent in the course of their work.³⁸¹ None of the government officials responded to CHRI's questionnaires, such that these issues could not be discussed to get their views and opinions. However, global experience shows that it is fair to say

that without an independent media there is little chance of truly independent and critical reporting of government actions and demand for greater transparency and accessibility of information.

There are also issues of access to parliamentary information, not only with regards to accessibility to the public, but also to Members of Parliament. For example, there is a considerable delay of at least two sessions between the passing of principle legislation and the tabling of subsidiary legislation, such that "opposition members are deprived of this information until two parliamentary sessions after the law has been presented."³⁸² However, where subsidiary legislation contradicts the Constitution, it can in any case be declared void.³⁸³ While there is no evidence to suggest that documents are deliberately withheld from the public, individuals have advised that they sometimes encounter significant difficulties in even obtaining documents that have been tabled in Parliament.³⁸⁴ Notably however, Tuvalu is known for the special provision in its Constitution which actually specifically requires most Bills to be sent to the islands for consideration before they can be voted upon. Specifically, Section 111 of the Constitution requires that:³⁸⁵

with the exception of (a) Appropriation Bills; and (b) Bills certified by the Head of State, acting in accordance with the advice of the Cabinet, to be (i) urgent; or (ii) not of general public importance, Parliament shall not proceed upon a Bill after its first reading until the next session of Parliament, and after the first reading the Clerk of Parliament shall circulate the Bill to all local governments for consideration and comment.

Transparency International notes that some Government agencies are years behind in their duty to submit reports to Parliament, and that Government Ministries are not even required to submit annual reports.³⁸⁶ Where annual reports are submitted, there is limited publicity of the fact. As such, it is not clear that interested parties will know when or how they can obtain a copy.³⁸⁷

Responses to CHRI's questionnaires suggest that there is an increasing desire for information throughout the community. Some people CHRI spoke with believed that one of the key obstacles to greater information dissemination was the lack of money and resources that would be needed to go towards drafting and

378 UNHCR 2007 Country Report: <http://www.unhcr.org/refworld/country,,,TUV,45b632e02,47d92c83c,0.html> as on 17 December 2008.

379 Feedback from Tuvaluan peer reviewer. Name withheld on request.

380 National Integrity Systems Country Study Report: Tuvalu p. 26, op.cit.

381 Feedback from Tuvaluan peer reviewer. Name withheld on request.

382 National Integrity Systems Country Study Report: Tuvalu p. 17, op.cit.

383 Feedback from Tuvaluan peer reviewer. Name withheld on request.

384 National Integrity Systems Country Study Report: Tuvalu p. 43, op.cit.

385 Constitution of Tuvalu, op.cit.

386 Ibid.

387 Feedback from Tuvaluan peer reviewer. Name withheld on request.

implementing an FOI law, together with very high print production costs (as most goods are imported in Tuvalu) rather than “any desire to keep the public in an uninformed or ignorant state.”³⁸⁸

Popular demand to get government-held information is not as yet perceptible in Tuvalu. However, this may be because while specifics may not be known, there is not much that can be kept secret in a community where most people are connected to each other by ties of kinship. The general view is that very little information remains secret because word of mouth in a small island ensures that it will become public knowledge sooner or later. Official verification is not deemed necessary yet. As such, the Government has not been pressured to enact a full-fledged legislation to support the constitutional pledge to realise access to information.

³⁸⁸ Response to CHRI's questionnaire, received on 22 April 2009. Name withheld on request.

A full-page background image with a blue color cast. It depicts a sky filled with various cloud formations, including wispy cirrus clouds and larger, more textured cumulus clouds. The word 'VANUATU' is printed in a bold, white, sans-serif font in the upper left quadrant.

VANUATU

The Republic of Vanuatu has a population of 218,519³⁸⁹ and is comprised of many small islands, some situated at a considerable distance from the main island of Efate – the location of Vanuatu's capital Port Vila. Vanuatu is a democratic republic, with both a President and a Prime Minister. Vanuatu features on the United Nations list of Least Developed Countries.³⁹⁰ The Government requested in March 2009 that the Committee for Development Policy consider excluding Vanuatu from the current list of LDC countries recommended for graduation from their LDC status “until impacts of the current global economic crises have been assessed.”³⁹¹

Vanuatu has a unicameral Parliament with the Malvatumauri National Council of Chiefs existing alongside Parliament, was set up under the Constitution and is “composed of custom chiefs elected by their peers sitting in District Councils of Chiefs”³⁹².

There is a considerable amount of interest in freedom of information throughout Vanuatu, with civil society and the media enthusiastically supportive of the concept of freedom of information. The Government has also pledged its support to the concept of freedom of information. However, there is some way to go before access legislation will be passed, including the need for a focus on improving information management systems and coordinating the way in which government information is disseminated.

389 CIA World Factbook: Vanuatu: <https://www.cia.gov/library/publications/the-world-factbook/geos/nh.html> as on 23 April 2009.

390 United Nations Least Developed Countries Information: Vanuatu: http://www.un.org/esa/policy/devplan/profile/country_206.html as on 15 April 2009.

391 Written Statement by Vanuatu to CDP Plenary of 9 – 13 March 2009: http://www.un.org/esa/policy/devplan/profile/plen4d_cdp2009.pdf as on 15 April 2009.

392 Constitution of Vanuatu, Section 29(1): http://www.paclii.org/vu/legis/consol_act/cotrov406/ as on 23 April 2009.

Background

Poor governance has been identified as possibly the most important cause of conflict and political instability in Vanuatu.³⁹³ Lack of good governance is held responsible for the poor levels of economic growth during the current decade.³⁹⁴ While several governance reforms have been introduced over the past 10 years,³⁹⁵ there is still more that can be done to improve governance in Vanuatu, including the development of FOI legislation. At an operation level, due to Vanuatu's geographical structure of "mostly mountainous islands of volcanic origin (and) narrow coastal plains"³⁹⁶ there are ongoing issues regarding consistent and accessible radio and television coverage, particularly in rural areas – a common issue in many Pacific Island Countries.

Vanuatu has an Ombudsman who is responsible for inquiring and reporting on those who may have been "the victim of an injustice as a result of particular conduct"³⁹⁷, as well as overseeing the Leadership Code. The Ombudsman functions under the Ministry of Justice, which is currently undertaking a programme on law and justice with the primary aim of improving public confidence in the government. To this end, the Ministry has developed a draft strategy which focuses on 4-5 pillars of good governance, including fighting corruption. There has been acknowledgement from the Ministry that there is a need to include FOI in the strategy.³⁹⁸

The area of transparency in public expenditure is a key issue. Transparency International has reported that the Auditor-General relies on information supplied by the Ministry of Finance, which is generally delivered late. For example, "the 1998 accounts were received in 2001, the draft 2002 accounts were received in November 2003 and no accounts (at the time of writing in 2004) have been received for 2001"³⁹⁹. Furthermore, it was noted that

393 National Security in Vanuatu, SSGM Workshop Report, 2004: http://rspas.anu.edu.au/papers/melanesia/conference_papers/0403_vanuatu_report.pdf as on 25 April 2009.

394 AusAID, Vanuatu: <http://www.ausaid.gov.au/country/country.cfm?CountryId=17> as on 25 April 2009.

395 Such reforms include the introduction of the Leadership Code Act 1998 and downsizing of the public service.

396 CIA World Factbook: Vanuatu: op.cit

397 University of the South Pacific, Ombudsman of Vanuatu Digest of Public Reports 1996 – 2000: http://www.vanuatu.usp.ac.fj/library/Online/ombudsman/Vanuatu/Digest/digest_index.html#Constitution%20-%20Ombudsman as on 4 March 2009.

398 Interview with Director General, Ministry of Justice and Community Services, 4 March 2009.

399 Transparency International (2004) National Integrity Systems Country Study Report: Vanuatu p. 40: www.transparency.org/content/download/1729/8646/file/vanuatu_nis.pdf as on 11 December 2008.

reporting by public bodies was "a slow and haphazard process"⁴⁰⁰ primarily due to the fact that record-keeping and management is very poor, coupled with a lack of resources to improve this state of affairs. Poor records management is a huge obstacle in this regard. The Public Finance and Economic Management Act 1998 also "requires the Government to report annually on its economic and financial policies."⁴⁰¹

The Vanuatu Broadcasting and Television Corporation (VBTC) is owned by the Government and is responsible for the dissemination of government information. There is a Public Relations Officer in the Prime Minister's Office who is in charge of liaising with the media. There is no government-owned newspaper - all of the print media in Vanuatu is currently independent. The Vanuatu Weekly Hebdomadaire, previously owned by the Government, ceased publication in the early 2000s as it was having to contend with more popular independent newspapers and was not making any profit. However, according to local journalists, plans are currently being made to re-launch it.⁴⁰²

During interviews media representatives in Vanuatu have raised concerns about VBTC being largely a propaganda machine for the Government. Another complaint is that the composition of the governing board is almost entirely politicians. VBTC also controls all licenses for the independent media, which in effect allows the government to retain control over who can and cannot publish in Vanuatu. The radio stations tend to broadcast more community-focused programmes such as regular Tokbak (talk back) shows which give the listeners a chance to express their views on particular issues. The media also includes the Daily Post, The Vanuatu Independent, Vanuatu News Online, Ni-Vanuatu and Capitol FM 107 a popular radio station.

Stakeholder discussions in early 2009 facilitated by CHRI, the Pacific Centre for Public Integrity (PCPI), the Media Association of Vanuatu (MAV) and Transparency International Vanuatu included a briefing to approximately 20 Members of Parliament on the value of the freedom of information and the need to have an FOI law. Most of the MPs responded positively, and particular support was raised with regards to the contribution of access to information to responsible media reporting. In 2007, the then Vanuatu Government expressed keen interest in developing a media policy

400 Ibid. p. 45.

401 Vanuatu Public Expenditure and Financial Accountability final report, ECORYS Nederland BV, By Carole Pretorius and Corina Certan (Rotterdam, July 2006) p. 73: http://ec.europa.eu/europeaid/what/economic-support/public-finance/documents/vanuatu_pefa_en.pdf as on 26 February 2008.

402 Email received from Vanuatu media representative, received on 19 April 2009.

that would establish guidelines for the operation and conduct of local media. There has been little progress to date. However, there has been an acknowledgement by MAV and government officials that the media could develop self-regulatory mechanisms to deal with the conduct of its members.

Legal Context: Accessing Official Information

Vanuatu acceded to the ICCPR in 2008, which means they have a legal obligation in accordance with Article 19 to respect the right of people to “seek, receive and impart information”. At the Melanesia Sub-Regional Consultation on the UN Convention Against Corruption (UNCAC) held in March 2009 by PIFS and the UNDP Pacific Centre, there were indications that the Government would consider acceding to UNCAC, Article 13 of which places obligations on governments to promote more information disclosure⁴⁰³.

Part 1, Section 5 of the Constitution of Vanuatu 1980 protects the right to freedom of expression. It appears that there is recognition by officials in the Prime Minister’s Office that this right extends to the right to seek, receive and impart information, in line with Vanuatu’s ICCPR commitment.⁴⁰⁴

In 2005, a civil society Model Freedom of Information Bill was drafted by Transparency International Vanuatu. It drew on Article XIX’s (an international NGO focused on freedom of information and expression) Model FOI Law and was reviewed and received inputs from CHRI before it was finalised. Subsequently, there was some resistance from other local civil society groups and interested parties, who felt they had not been fully consulted in the drafting of the Bill.

Since 2005 civil society organisations, with support from the Pacific Centre for Public Integrity (PCPI), have organised a number of workshops for the media and civil society in Vanuatu to build their knowledge and capacity around issues of freedom of information. In May 2008, in response to a request from the Prime Minister’s Office, MAV and the Vanuatu Association of NGOs (VANGO) developed a policy discussion paper on “An Access to Information Law for Vanuatu” with support from PCPI (who drew on CHRI and UNDP Pacific Centre support). This paper was submitted to the Prime Minister’s Office. A broad based public

consultation around the discussion paper was conducted with NGOs, the media and government officials.

In 2007, MAV agreed to use both the TI-Vanuatu FOI bill and FOI workshop reports as the basis to develop a CSO/media RTI Bill. It was understood that a local lawyer would be brought in to integrate the various documents, but attempts to secure funding in 2008 for a ni-Vanuatu lawyer to incorporate amendments to the draft Bill were unsuccessful.

In early 2009, CHRI, PCPI, MAV and TI Vanuatu organised a series of stakeholder meetings with NGOs, government officials and parliamentarians on the importance and the need to have an effective FOI law in Vanuatu. The main objective of the meetings was to establish a Steering Committee to spearhead the FOI movement in Vanuatu. In recent years, there has been some tension between different groups working to promote the right to information in Vanuatu and it was felt that the establishment of a working group would create a forum through which all organisations’ interests could be voiced. The second objective of establishing the Steering Committee was to ensure a high level of government ownership around the issue of freedom of information. Discussions are still underway between MAV and key government officials on the formation, structure and terms of reference of the Steering Committee. It is envisaged that the secretariat would be based out of a relevant government Ministry.

Low government attendance at the final stakeholders meeting to establish the Steering Committee indicated the need for consistent long-term engagement with the government on FOI. Notably however, at the Melanesia Sub-Regional Consultation on the UN Convention Against Corruption (UNCAC) held in March 2009, the Vanuatu delegation reiterated their commitment to FOI and specifically identified the development of FOI legislation as a key priority for immediate action.⁴⁰⁵

Despite public pressure and political rhetoric backing a freedom of information law in Vanuatu, the government has yet to take any concrete measures in response to the draft policy paper that it requested MAV to develop and submit. To strengthen commitment, plans have been made for long-term FOI public awareness campaigns and for the new Steering Committee, once established, to give the existing draft FOI bill and other relevant documents to a ni-Vanuatu lawyer who will contextualise it and draft a new FOI bill suitable for the population of Vanuatu.

403 Response to CHRI’s questionnaire received from a government representative on 24 February 2009. Name withheld on request.

404 Ibid.

405 UNCAC Outcomes Statement of the Melanesian sub-regional Consultation on the UN Convention Against Corruption. op.cit.

The Government has also indicated that it is in the process of publishing an action agenda which will include principles of transparency and good governance.

The Leadership Code Act also places disclosure duties on leaders in Vanuatu. Section 16 requires that a “leader who has a personal business interest in a matter which he or she has to deal with in his or her official capacity as a leader, or who is likely to have a conflict of interest in relation to the matter, must disclose in writing that interest”⁴⁰⁶. Section 17 also requires disclosure by Ministers where they have an interest in a matter being considered by the Council of Ministers.

In the absence of an FOI law, Vanuatu’s Official Secrets Act 1980 legitimises “...the preservation of the secrets of the Government.”⁴⁰⁷ Feedback received from independent sources in the media suggests that it is extremely difficult for both the media and citizens of Vanuatu to access specifically requested official information due to lack of political will coupled with the non-existence of formal disclosure policies or regulations.

Proactive Disclosure

Vanuatu is a multi-lingual country with three official languages- English, French and Bislama. The dissemination of official information in all three languages is a real challenge for a government with limited resources. In reality, most official information is released in English and Bislama.

While there is no Government Information Unit or Ministry of Information in Vanuatu, there are registrars, records officers and people in charge of archives in different offices. The reason quoted by government officials interviewed by CHRI is that so many different kinds of information exist that it would be preferable for this information to be kept in the respective offices for them to administer separately.

At a minimum, the six Provincial Governments of Vanuatu (Shefa, Tafea, Malampa, Penama, Sanma and Torba) are all required to have notice boards in the front of their head offices where display public notices are displayed. Also, outside some Government Departments and Provincial Governments notice boards are used to disseminate information. Public libraries and National Libraries

hold other information.

Radio is the most popular means of spreading information and knowledge. The National Radio with its outreach in most of the islands is commonly used to spread awareness. According to Government officials interviewed, it is also a policy to invite the Vanuatu media to all important Government functions. Sometimes information on the Council of Ministers’ decisions is disclosed through press releases.

The website of the Government of Vanuatu contains negligible information on governance-related issues,⁴⁰⁸ although the complete text of the Constitution of Vanuatu is available on this website.⁴⁰⁹ For some ministries in the government, the only available information is post box and telephone numbers. In addition to this, information of a very general nature has been displayed on topics such as currency, economic situation, tax incentives and customs duties has been displayed on this website. No information is available about the Vanuatu Parliament or the judiciary. However, recognising that 80% of ni-Vanuatu people live in rural areas with little or no access to internet, there may anyway be limited benefit to be gained from the internet as a means of disseminating government information for now.⁴¹⁰ However, it must be recognised that putting information up on government websites and regularly updating them ensures that it is available in the public domain for anybody to access.

A response to a questionnaire received from an official in the Prime Minister’s Office indicates that legislation, court decisions, and the official budget are accessible to people at minimal cost.⁴¹¹ In a truly transparent and accountable society, this information should be in the public domain and easily accessible to people at no cost as is the practice in many other developing countries. Regarding information about the assets of political leaders, the respondent’s opinion was that it may be accessible in theory but it may be obtained from the Clerk of Parliament only if its disclosure is authorised by an appropriate Court. There is no recollection of any recent instance where access to assets declarations being sought by any person. Most Government meetings are not open to the public. Court hearings are open to the public, subject to

406 Leadership Code Act 1988: http://www.paclii.org/vu/legis/num_act/lca1998131/ as on 26 June 2009.

407 Official Secrets Act 1980: http://www.paclii.org/vu/legis/consol_act/osa156/ as on 25 March 2009.

408 Government of the Republic of Vanuatu website: <http://www.vanuatugovernment.gov.vu/> as on 25 April 2009.

409 Constitution of the Republic of Vanuatu: <http://www.vanuatugovernment.gov.vu/government/library/constitution.html> as on 25 April 2009.

410 Information from Pacific Centre for Public Integrity, 20 April 2009.

411 These have not been uploaded on the government website unlike in some other PICs.

Court rules.⁴¹² Accessing any information from the Malvatumauri National Council of Chiefs can be difficult, and it has been reported that the only way to receive news of the activities and meetings of the Malvatumauri is through “informal contacts or rumours.”⁴¹³

On the other hand, interviews with residents of Vanuatu suggest that informal disclosure channels do exist, and that people are not prevented per se from requesting information. It is unclear how decisions are made as to disclosure due to the absence of any formal guidelines. Interviews with Government officials indicate that there is a general level of acceptance for the ideas of transparency, accountability and good governance at all levels of Government services and for the people’s freedom to obtain any information at minimal cost.⁴¹⁴ Examples given included electoral results, police and medical clearances. However, these examples are relatively non-contentious in many societies and may not be looked upon controversial information. Perhaps this is indicative of the fact that people are not yet fully aware of the importance of the concept of FOI, the value of giving information together with assessing the benefits of giving information against the fear and consequences of not giving it.

Assessment

The Government has indicated that it does not want an FOI Bill handed to them by civil society groups outside Vanuatu and that it must be unique as to the particular needs of the people in Vanuatu. Ensuring that local groups, whether NGOs or media organisations, lead this process is one way of making this happen.

CHRI was advised that in practice, when the media requires access to official information they approach the Director-General of the government department in question or the Minister of the Ministry in question. Whether or not information is disclosed is often linked to the requester’s informal contacts and connections within the department in question and how politically sensitive the information is perceived to be. There are no government information officers, which means that decisions on disclosure are usually made at the highest level. Junior level officers have no authority to release information and being afraid of the consequences of disclosure will generally err on the side of caution, to withhold access. According to reports from media representatives in Vanuatu, the decisions taken in the weekly Council of Ministers are not made

412 Response to CHRI’s questionnaire, received on 24 February 2009. Name withheld on request.

413 National Integrity Systems Country Study Report: Vanuatu p. 58 op cit.

414 Response to CHRI’s questionnaire received from a government representative on 24 February 2009. Name withheld on request.

public although certain decisions which paint the government in a positive light may be released.

Government officials have acknowledged that one obstacle to provide the public with access to information is cost.⁴¹⁵ Other major challenges identified by respondents include a lack of political will “to push the frontiers forward”⁴¹⁶ and corruption which can “hamper free dissemination of information.”⁴¹⁷

Although in recent years there has been support for FOI in principle, Vanuatu has a long way to go towards making it a practical reality. At present, it is primarily the media that is well informed about the importance of accessing government-held information. (in this context it is interesting that in 2004 Transparency International-Vanuatu mentioned a feeling of distrust among some members of the population regarding the information they read in newspapers.⁴¹⁸) Since 2005, some civil society activists have taken up the issue, but there is still a real need for more thorough consultations with society at large. The Malvatumauri who have the ability to spread the message have not taken on FOI as an agenda of singular importance.⁴¹⁹

There is a need for building general awareness about FOI throughout Vanuatu. For example, information relating to public expenditure is valuable for creating public debate, an activity which is essential to democracy. However, interviews with public officials noted that information may be published only if it was “of a public nature” and not information that was “secret” and protected under the Official Secrets Act. This highlights the need for engendering an access regime through legislation. A properly legislated access regime removes the power of discretion regarding information disclosure from the hands of public officials, and places it in the hands of an independent adjudicatory authority, such as the Ombudsman, compelling him/her to make decisions of access based on objective criteria.

While the Government has demonstrated receptiveness in principle to transparency, and with government officials recently interviewed describing the Government’s interest level in freedom

415 Response to CHRI’s questionnaire, received on 24 February 2009. Name withheld on request.

416 Response to CHRI’s questionnaire, received on 24 February 2009. Name withheld on request.

417 Response to CHRI’s questionnaire, received on 24 February 2009. Name withheld on request.

418 Ibid.

419 National Integrity Systems Country Study Report: Vanuatu p. 58, op.cit

of information as “high”⁴²⁰ , a culture of non-disclosure and secrecy is still perceptible. Vanuatu lacks rules and regulations for determining which information can be released, what should be withheld and for what reasons. There is a need to move past political rhetoric towards explicit steps towards greater transparency and accountability.

While there are clear obstacles to be overcome before an effective right to information regime is legislated and properly implemented in Vanuatu, the desire for change from undue secrecy to transparency is visible. Preparing and distributing public education materials in Bislama and local dialects and distributing these widely throughout the country will ensure that members of the public in Vanuatu understand that the concept of FOI is not just a tool for the media to access information, but can benefit everyone in Vanuatu.

⁴²⁰ Response to CHRI's questionnaire received by government representative on 24 February 2009. Name withheld on request.

**Information and
Records**

**Maintenance and
Management**

In Pacific Island Countries the poor state of management of government records and documents is one of the biggest constraints on the information flow to people. In cultures that have historically relied upon oral information storage and dissemination, the move towards adopting modern methods of information categorisation and storage, including an effective file management system, has been a slow one. Often efforts at reform are centred around the countries' capital cities with little or no outreach to offices based in the outlying and far-flung islands. In the past, scarce resources have been channelled primarily into development projects or the reform of public institutions and official procedures but records management has not been a priority with governments.

An efficient records maintenance and management system is a sine qua non for efficiency in administration. The business of government is an ongoing one. Records of decisions taken in previous years should be available to guide future action. Officers and Ministers come and go, but the government as an institution continues to exist. New departments are created and existing ones may be merged or renamed and assigned new tasks. An efficient records maintenance system captures all these developments for the sake of posterity so that officials may learn from past wisdom and build upon it. Without an efficient system of record-keeping to back up the information supply side, meeting the demand for information from people will be an uphill battle.

In each of the Pacific Island Countries that CHRI has covered in this report, poor records management was identified as a major obstacle to information dissemination in general, and to the establishment of a freedom of information regime in particular. The prevalent view in many Pacific Islands Countries is that information storage and management systems must be improved before a freedom of information law could even be considered. If a government department does not even have its records properly in place, what is it that people can access under an FOI law? Experience in other developing countries has shown that establishing an FOI regime to overcome secrecy in government can often be a primary catalyst for the administration to improve its records management systems. Ideally, the two reform initiatives must take place together and complement one another.

The Pacific Regional Branch of the International Council on Archives (PARBICA) was formed over 20 years ago and "is a professional organisation that comprises government archiving units, non-government archival institutions and associations, and individual members representing more than twenty nations,

states and territories in the North and South Pacific."⁴²¹ PARBICA works throughout the Pacific to highlight the link between good governance and good records management. In its latest needs assessment report, PARBICA stated that "(r)ecords and archives management is a fundamental component of accountability, transparency, and good governance around the world."⁴²² PARBICA carried out a study of records management practices in the Pacific Islands in 2003. The findings of the study continue to be of relevance today – an indication of the slowness of progress made towards improving information management systems in the Pacific Islands.

Countries in the Pacific face some unique challenges in government record-keeping and archiving as compared to other countries. Geographical remoteness of many Island communities from the location of their capital city ensures that most reform efforts are concentrated in government offices located on the main islands. Centralised control over resource distribution is another reason for the limited outreach of reform programmes in outlying islands. A lack in the availability of adequate financial resources for investing in modern digital technologies for information storage and for training personnel in records management is another very real constraint in Pacific Island Countries. PARBICA's 2003 study points out that without "basic records and archives management education and training" there is unlikely to be any "improvement of record keeping services throughout the Pacific region, in both the public and private sectors."⁴²³ Natural and human-made disasters also have a hampering effect. For example, a recent earthquake in Vanuatu destroyed many government files, and in the Cook Islands, most of the records in the Ombudsman's Office were destroyed by fire in 2008. These incidents highlight the importance of developing secure record storage systems in the Pacific, where such disasters are common occurrences.

PARBICA has identified three Commonwealth Pacific Island Countries – Kiribati, Nauru and Samoa – as having low level usage of telecommunications and internet technologies both by the government and the general public⁴²⁴ - an impression borne out by the country assessments presented in this report. The increasing usage of such technology in the remainder of the Commonwealth Pacific Islands signals "an even greater need for

421 <http://www.parbica.org/about.htm>

422 Dr Laura Millar (2003) Education and Training for Records and Archives Management in Pacific Island Nations: A Needs Assessment and Report, International Records Management Trust, December, p. 1: <http://www.parbica.org/Documents/PARBICA%20needs%20assessment%20December%202003.doc> as on 27 March 2009.

423 *Ibid.*, p. 7.

424 *Ibid.*, p. 11.

training in the management of the products of such technologies, especially in the public sector.”⁴²⁵

At the 2005 PARBICA conference, ‘Reinventing Archives – Supporting Recordkeeping for Good Governance’ held in Fiji, the then Deputy Auditor-General of Fiji, Mr Kaveni Takalevu, commented that “authentic and trustworthy records – and convenient access to them – provide the fundamental means by which the transparency, accountability and effectiveness of government ... can be accomplished, demonstrated and measured.”⁴²⁶ At the 2007 PARBICA conference, Pacific Island governments called upon PARBICA for assistance to “develop basic templates, guidelines and tools for recordkeeping in Pacific organisations.”⁴²⁷ In response to these requests for assistance, PARBICA developed a toolkit, in consultation with its members, to provide guidelines for effective information management systems in the Pacific Islands. The toolkit also highlighted the many benefits of good records management.⁴²⁸

Some Examples Of Good Practice

There are some examples of very good practice with regards to records management in the Pacific Islands, and governments are rapidly recognising the fundamental importance of effective record-keeping, not only for improving the efficiency of their work but also to improve their overall transparency and accountability. For example, CHRI met with the Public Service Commission in Vanuatu which is currently spearheading a National Working Group on Records Management. The Working Group was established after the Commission attended a regional PARBICA meeting in 2008. The Commission hopes to act as an example to other Government departments as there is currently no uniform code in Vanuatu for records management. The Public Service Commission maintains four key types of records – submissions on decisions of the Commission; minutes of Commission meetings; personal information on current and past staff members; and policy documents. All of these records are now kept either in a secure, air conditioned room in numbered files in a filing cabinet, or in boxes in the archive room. The name, file number and location

425 Ibid.

426 Kaveni Takalevu, “Key Issues for Recordkeeping in Good Governance – Presentation on Assessing the State of Recordkeeping: Measuring Progress Towards Better Systems”, unpublished paper presented at the 11th Conference of the Pacific Regional Branch of the International Council on Archives, Nadi, Fiji, 19 – 23 September 2005, p. 6.

427 Address to the Pacific Regional Public Service Commissioners Conference, The Pacific Recordkeeping For Good Governance Toolkit, Ross Gibbs, Director-General, National Archives of Australia.

428 <http://www.parbica.org/Toolkit%20pages/ToolkitIntropage.htm> as on 24 April 2009.

of each file is kept electronically and facilitates easy retrieval. An E-Government project to scan and have all files available electronically is scheduled to begin in 2009.

The Government of Samoa has “established a Records Task Force which has produced a Code of Best Practice for records management in consultation with archivists and records managers. The Code aims to encourage good records management practice and to improve areas that need strengthening in the administration of Samoan government records.”⁴²⁹

In the Solomon Islands, which have historically experienced significant difficulties surrounding records management, the Government has recently launched official guidelines to promote good record-keeping as an essential element of good governance. At the National Workshop on Freedom of Information in the Solomon Islands in March 2009, one of the key recommendations included in the Outcomes Statement stated that “sustained action needs to be taken to address the assessment that poor records creation and management within the public service is undermining the ability of the Office of the Auditor General and the Office of the Ombudsman to effectively discharge their mandates.”⁴³⁰

Recognising the importance of incorporating the improvement of records management systems with an effective access to information regime, PARBICA was invited to take part in the CHRI, PIFS and UNDP Pacific Centre national freedom of information workshops in Nauru and the Solomon Islands in 2009. A representative from PARBICA gave a presentation and led discussions on how poor records management systems function as an obstacle to an effective freedom of information regime, and gave suggestions for how these could be improved. Poor records management need not be a disincentive for Pacific Island Countries to embrace the idea of freedom of information, and instead the benefits gleaned from improving information management systems and increasing government transparency should be seen as a motivation for both initiatives to begin together, designed around each other and complementing one another. This has been the practice in a number of countries worldwide, including the Cook Islands, which has adopted a “phased” approach to the implementation of an FOI law in order to give government departments and Ministries the time to improve their records storage systems before coming under the ambit of the law.

429 Government of Samoa, Code of Best Practice – Records Management: Foreword, April 2007. From presentation by The Pacific Recordkeeping For Good Governance Toolkit Ross Gibbs Director-General, National Archives of Australia.

430 “Solomon Islands Freedom Of Information Workshop” Outcomes Statement, Honiara, Solomon Islands, 25 February 2009.

The proposed right to information provision for Nauru's Constitutional amendment is progressive as it recognises that an essential part of protecting the people's right to access information is ensuring the secure storage and retention of information. Thus the proposed Article 13B reads "As soon as practicable after the commencement of this Article, Parliament shall enact a law to give effect to this right, including provision for the retention and secure storage of information."⁴³¹

431 Parliament of Nauru, Report of the Select Committee on Constitutional Amendment Bills, 10 March 2009, p.14.

Conclusion

Conclusion

Pacific Island Countries have made considerable progress in the last five years, from a time when absence of the discourse on the right to information was widespread, to a regional recognition that the ability to access information is a key aspect of good governance. There is also some serious momentum behind the issue at the national level in several countries.

Last year the Cook Islands became the first Pacific Island Country to enact an Official Information Act. While it has some flaws that can be easily overcome, the law contains many positive provisions. The Office of the Ombudsman has been incredibly active in raising awareness of the law amongst the public, media, and the government alike. In Nauru, the right to information has been recommended as a new human right to be included in the amended Constitution along with a duty upon the government to enact a law to protect this right as soon as is reasonable after the amendment takes effect. The governments of Tonga and the Solomon Islands have also made public commitments to enact freedom of information legislation and are working with intergovernmental and regional experts in order to make this happen. In Vanuatu, there is a strong civil society and media backed movement for the right to information to be realised in legislation. What is required now is credible action. Here civil society, including the media, has a major role to play to ensure that governments deliver on their promises.

However, there is still some way to go before Pacific Island Countries of the Commonwealth make substantial steps towards greater transparency in governance, in accordance with the commitment made by Pacific Island leaders at the Pacific Islands Forum. Many public authorities continue to treat information as a resource that must be controlled and disseminated amongst people only on a need to know basis. The country-wise findings indicate that some obstacles and challenges to improving information flows to people are common across Pacific island Countries; some are systemic, some geographical and most have a direct relationship with the availability of resources, both financial and technical. In many ways, the preparation of this report provided CHRI with a unique insight into the kinds of difficulties people in the Pacific Islands face when they approach their governments to get some crucial information. In conducting our research we found out for ourselves how opaque some government departments can be. We endured endless waiting on the end of telephone lines; bad reception; lack of willingness to share information on disclosure

policies and practices when we were able to make contact; lack of centralised knowledge about information disclosure policies; lack of information available on government's internet sites; the list goes on. We have bunched below some common problems that hinder greater transparency in government. We have also suggested some low cost practical measures that may be adopted to improve openness in the administration.

Perhaps the single largest obstacle to greater levels of transparency in Pacific Island governments is the mindset which hinges on a shared colonial past. Colonial laws requiring secrecy in government affairs have been in place in some Pacific Islands for several decades. Officials are often uncomfortable with making decisions disclosing information on their own for fear of causing embarrassment to government or inviting negative consequences from one's seniors. The decision to disclose must always come from someone senior in rank so that more junior officials are willing to implement that decision rather than make such a decision alone. The fear of the unknown and the unforeseen consequences of disclosure blocks information flow from governments to the people. This obstacle can be overcome by adopting a two-pronged approach. The first prong is structural in nature: archaic laws which impose undue secrecy must be replaced with information access legislation or clear information disclosure policies based on the principles of maximum disclosure and minimum exemptions. Until restrictive legal regimes are replaced with open access regimes, Pacific Island bureaucracies will continue to work counter to the positive pronouncements made by leaders at the Pacific Islands Forum. The second prong is functional in nature: officials must be sensitised to the value of transparency and accountability and given intensive training on how to make decisions in the public interest on which information to disclose and which to withhold. This two-pronged approach has the potential to replace the fear of saying too much with the ability to make informed decisions about the disclosure of government-held information. Such an approach must emphasise the importance of voluntary disclosure of information even more than disclosure upon request.

Another major obstacle to the dissemination of information is geographic in nature. A common trait of Pacific Island Countries is that populations are often spread out over many islands separated by large distances. Facilities for communication are generally limited. Ensuring that information is disseminated in a manner that does not exclude people living on remote islands is a real challenge. Combined with this difficulty is the problem of scarce resources. The challenge of resource allocation can come down to making choices between importing essential commodities and

purchasing 'luxury' items like computers and internet software. Some Pacific Island Countries do not have public libraries on their main islands, while others may have a single cyber café with poor connectivity and few trained users. The only source of information for people living in outer islands is often the radio. Under such circumstances it is futile to recommend any mode of dissemination that is technology-intensive and resource-heavy.

As an alternative to investment-heavy options, public authorities may elect to fixing 'open records' days every fortnight or month to allow any person free access to all official records and documents.⁴³² These special days may be publicly advertised through mass media channels like radio and television. An index register of all files and documents maintained in every office may be typed out and made available for free inspection on demand at the entrance to the office. This index may also mention the list of files and documents that will not be disclosed if such a move would harm important public interests well-defined in law, such as if disclosure may seriously harm defence, security interests, foreign relations, the legitimate trade secrets of a private company or firm, or unduly invade the privacy of an individual. Rules may be laid down to ensure the security and preservation of records during public inspection. In addition to this, every public authority may make a list of its meetings that people can attend as observers and announce those dates well in advance through the media. All these measures require small amounts of capital and technical investment but a willingness to open up offices and records to public scrutiny. This greater openness will correspondingly do a lot to break the practice of over-protection of information.

A third major difficulty faced by Pacific Island Countries is the overall need for improvement in records maintenance and management systems. There is a need to increase knowledge of modern systems and practices regarding records management in public offices. There is also a lack of training opportunities for staff in records maintenance, and limited investment of resources to ensure that records generated in the course of government work are cared for. Few systematic attempts have been made to declassify old records and make them available through public libraries. Few countries in the region are known to have archives

432 Given the resource constraints faced by Pacific Island Countries, dissemination of information through internet websites is not recommended prominently in this study. However it must be acknowledged that there are distinct advantages to uploading information on the Internet. There can be no doubt that the Internet has democratized access to information the world over. Putting information on websites ensures in theory that the secrecy ordinarily characterizing the maintenance of records in government offices is no longer applicable to such information. Nevertheless investments in improving people's literacy levels including internet-literacy and making available of computer hardware and software along at affordable prices must precede such technological solutions.

legislation and even in these countries the implementation of the archives law could be vastly improved. PARBICA, the Pacific branch of the International Council of Archives, has begun assisting Pacific Island Countries to improve their information management systems and is providing education to governments on how to manage the information they hold and generate. Records management is often seen as a specialist exercise requiring a heavy investment of time, energy and resources. This is generally a misnomer. An inexpensive and effective information management system requires a simple and sensible scheme of categorisation of records (that is not dependent upon the memory of a handful of officials), an uncomplicated mechanism for classifying and declassifying records, trained personnel willing to invest their time and effort in the records-keeping exercise, and most importantly metal or wooden shelves with lots of cardboard boxes and adhesive labels.⁴³³ Low cost options can also achieve results similar to that of digitalised records management systems.

While all these difficulties affect the ability of the supply-side to effectively share information with people, the lack of effective demand for information at the community level must also be addressed in order to improve information flows. Traditionally, information and power has been safeguarded by local leaders on behalf of the people. The democracies of the Commonwealth Pacific Islands strive to strike a balance between retaining traditional governance structures and newer models of democratic governance where information and power is shared equally amongst everyone. The need to strike this balance finds its way into all aspects of the human rights discourse including people's access to information in the Pacific. Articulating the demand for information can be problematic and result in greater resistance from the authorities. Instead, if governments could develop disclosure policies or legislation in consultation with the people in a way that is in tune with the leadership codes agreed upon at the Pacific Islands Forum, considerable progress may be made towards entrenching openness in the public sphere.

All things considered, the tide is turning in Pacific Island Countries towards the institutionalising of greater transparency and accountability. Over the last few years, governments have

433 This is not to argue that digital methods of records management must not be adopted in the Pacific. Governments would do well by finding the resources to digitalize records in a staggered manner by prioritizing ministries and public authorities for this exercise. However the rapid pace at which information technology and storage devices become obsolete in the 21st century, Pacific Island Countries may not always be able to find the resources to keep pace with advancements made in the IT sector. Hence our recommendation of low cost, paper-based alternatives for improving records management as a viable alternative.

significantly increased their interest in improving people's access to information. The concept and philosophy of freedom of information has also caught the imagination of civil society and the media. CHRI can say with conviction that it has been an influence in initiating this interest – by opening up the discussion out of government silos, engaging with civil society and encouraging discussions along the path towards implementing access to information regimes. Several regional and national workshops have explored possible ways and means of improving information accessibility. A number of Pacific Island Countries have also committed to enacting laws that will protect people's rights to information, including a provision for the right to information in the national Constitution, or developing credible information disclosure policies.

Worldwide experience demonstrates the true importance of people's right to access information in making democracy real, tangible and responsive to their evolving needs and concerns. This is especially true in jurisdictions which have faced long and hard struggles with corruption, the effect of which has been to delay and subvert effective development strategies which prioritise the needs of the poor and disenfranchised. There is a new-found willingness in the Pacific to walk the path from secrecy towards more and more openness in government. Greater transparency leads to greater accountability and public resources are more efficiently utilised when government decisions are subject to public scrutiny. By engendering transparency in public administration Pacific Island Countries can take credible steps towards solving some of the major developmental problems with which they are plagued.

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Appendix

Appendix I

Access to Official Information in Commonwealth Pacific Island Countries - Questionnaire

Contact Information

Name:

Contact Details:

A. The Right to Request Information

A.1 Are you aware of any laws or policies that protect the public's right to access information held by the government?

A.2 Are you aware of any government policies or programmes that promote transparency and/or accountability? Has the current government made any statements of commitment to transparency or accountability?

A.3 Are you aware of any laws or policies which promote official secrecy such as an Official Secret's Act?

B. Practicalities of Getting Information

B.1 Do you or have you requested government held information in the course of your work or personal life and if so, what procedures do you follow for obtaining this information? If not, do you know what routes other people take for obtaining official information?

B.2 What difficulties do people encounter when attempting to obtain government held information?

B.3 Are you aware of a Government Information Unit or Information Officer and are they easily accessible to the public?

B.4 Are government meetings and court hearings open to the public?

C. Voluntary Disclosure of Information

C.1 Does the government voluntarily disclose any particular information to the public? If so, how is this disseminated?

C.2 Are any steps taken to ensure that this information reaches people who do not live in urban centres? i.e. Outer Island and rural communities?

C.3 Can you comment on the government's use of any of the following to make information available:

- a) radio
- b) television
- c) newspapers
- d) internet
- e) public notice boards
- f) public libraries

D. Information Gaps

D.1 To what degree are the public able to request and receive the following types of information:

- a) Legislation?
- b) court decisions?
- c) official budgets?
- d) information regarding the assets of political leaders and public officials?

D.2 Are gaps in the available information negatively impacting the work of civil society or the media? Can you comment or give any examples?

E. Interest Levels in Freedom of Information

E.1 Is there general interest in developing a freedom of information law or policy in ...? In particular can you comment on interest levels in:

- a) Government
- b) Civil society
- c) The media

F. Obstacles

F.1 In your opinion, what are the major challenges to the freedom of information in ...? e.g. lack of political will? Corruption? Lack of resources?

Any Further Comments or Recommendations

Appendix II

Statement of Responses to CHRI's Questionnaire sent to and received from Commonwealth Pacific Island Countries*

Country	Government		Civil Society		Media	
	Sent	Received	Sent	Received	Sent	Received
Cook Islands	7	1	3	1	2	2
Fiji	N/A	N/A	13	2	5	1
Kiribati	6	5	4	3	1	0
Nauru	5	2	11	10	1	1
Papua New Guinea	8	0	5	3	3	0
Samoa	3	1	4	2	3	1
Solomon Islands	6	2	7	2	3	0
Tonga	9	1	5	1	3	1
Tuvalu	3	0	4	2	2	0
Vanuatu	7	2	5	1	2	2

* Please note that the number of questionnaires sent do not represent the full amount of questionnaires circulated, as many of our contacts advised us they had circulated the questionnaire amongst their own networks and we do not have access to these numbers.

CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Human Rights Advocacy:

CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

Access to Information:

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy-makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

Access to Justice:

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock on effect on the administration of justice overall.



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