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STATUS OF THE RIGHT TO INFORMATION IN PACIFIC ISLAND COUNTRIES

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Table of contents

| | |
|---|-----------|
| Executive Summary | 3 |
| Background | 7 |
| Section 1 | 9 |
| 1.1 Overview of the Right to Information | 9 |
| 1.2 Giving effect to the Right to Information | 13 |
| Section 2 | 23 |
| 2.1 Global and regional commitments to RTI in the Pacific | 23 |
| 2.2 Adoption of RTI laws in the Pacific | 27 |
| Section 3: Overview of RTI regimes in the Pacific | 29 |
| Section 4: Overview of pics without specific RTI regimes | 48 |
| Section 5: Recommendations | 64 |





List of figures

| | |
|--|----|
| Figure 1: Fundamental principles of an RTI law | 18 |
| Figure 2: Global and Regional Commitments Dashboard | 24 |
| Figure 3: RTI Legislative Frameworks in the Pacific | 27 |
| Figure 4: Quality of RTI Laws Dashboard | 35 |
| Figure 5: RTI Institutional Support Framework Dashboard | 39 |
| Figure 6: Key Implementation Activities Dashboard | 46 |
| Figure 7: Dashboard on PICs without Specific RTI Regimes | 62 |

Executive Summary

The Right to Information (RTI) can be defined as the right of all persons to access information held by public bodies. Also commonly referred to as ‘the right to know’, Freedom of Information (FOI) or Access to Information (ATI), RTI reflects the principle that all information held by governments and other public institutions is public information, and should only be withheld from the public for legitimate reasons (such as personal privacy or national security, subject to harm and public interest tests).

RTI is an integral part of the fundamental right to freedom of expression, as recognized by article 19 of the International Covenant on Civil and Political Rights (ICCPR) and article 19 the Universal Declaration of Human Rights.¹ These articles state that the fundamental right of freedom of expression encompasses the freedom to ‘seek, receive and impart information and ideas through any media and regardless of frontiers’. Additionally, article 10 of the United Nations Convention against Corruption (UNCAC) requires States parties to take measures to enhance transparency in public administration, including information on its organization, functioning and decision-making processes.² Sustainable Development Goal (SDG) 16 includes ensuring public access to information as a key aspect to achieving the overall goal of peace, justice and strong institutions.³ Finally, Pacific Island countries (PICs) are urged under the Pacific Plan 2005,⁴ UN Pacific Strategy⁵

1 *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) Art. 19; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) Art. 19.

2 *United Nations Convention Against Corruption*, GA Res 58/4, UN GAOR, UN Doc A/58/422 (14 December 2005) Art. 10.

3 United Nations. 2019. The Sustainable Development Goals Report 2019. [online]. Available from: <https://unstats.un.org/sdgs/report/2019/>

4 The Pacific Plan was endorsed by Leaders at the Pacific Islands Forum meeting in October 2005, and includes initiative 12.3 to enhance governance mechanisms such as FOI. See: PIFS 2005. The Pacific Plan. [online]. Available from: <https://www.adb.org/sites/default/files/linked-documents/robp-pacific-2013-2015-pacific-plan.pdf>

5 Outcome 5 of the UN Pacific Strategy is that people and communities in the Pacific will contribute to and benefit from inclusive, informed, and transparent decision-making processes. See: United Nations in the Pacific. 2017. United Nations Pacific Strategy 2018 – 2022. [online]. Available from: https://reliefweb.int/sites/reliefweb.int/files/resources/UNDP_WS_FINAL_UNPS_2018-2022.pdf.





and 2018 Boe Declaration⁶ to put strategies in place to implement and/or monitor RTI legislation.

This paper seeks to explore the status of RTI and the adoption of RTI laws in 14 PICs (Cook Islands, Federated States of Micronesia (FSM), Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu). It outlines the primary challenges that they are likely to face in the adoption and implementation of these laws, and proposes recommendations and key best practices in the context of the region.

RTI Laws

RTI laws provide a legal framework for individuals to request access to documents held by public bodies. Effective RTI laws are centered on the principle of maximum disclosure, and should include a clearly articulated request handling process, narrowly drafted exemptions that restrict disclosure in limited circumstances, designated enforcement mechanisms, sanctions for non-compliance and provisions encouraging proactive disclosure. As at January 2019, over 125 countries of vastly different political and socio-economic profiles had adopted RTI laws.⁷

PICs have made their own strides in the recognition of RTI over the past decade. In 2008, the first regional workshop for senior public officials on RTI legislation in the Pacific region was held in Honiara, Solomon Islands.⁸ This discussed the value of RTI to good governance in the region and empowered the senior officials in attendance to entrench RTI in their respective countries. Since then, there has been steady and measurable progress. The Cook Islands, Fiji, Palau and Vanuatu have passed RTI laws (see section 2.2 of this paper), while FSM and the Solomon Islands have both developed draft FOI laws which are now under review.

Upon review of the current RTI laws, some implementation problems have been revealed. For instance, where an element of the recommended RTI legal framework (for example, the appointment of information officers or well-defined oversight mechanisms) has either been omitted or is unclear, greater rates of non-compliance have been observed. Additionally, inadequate budgetary allocations have been shown to constrain effective implementation of even the best designed laws.

⁶ The Boe Declaration Action Plan includes the adoption and implementation of constitutional, statutory and/or policy guarantees for public access to information as a measure for success in ensuring peace and security across the region. See PIFS. 2018. Boe Declaration on Regional Security [online]. Available from: <https://www.forumsec.org/boe-declaration-on-regional-security/>.

⁷ United Nations. 2019. *op.cit.*

⁸ See workshop report: Rodrigues, C. and Valemei, I. 2008. Freedom of Information for Pacific Policy Makers: Regional Workshop Report, 30 June – 2 July 2008, Honiara, Solomon Islands. UNDP and Pacific Island Forum Secretariat. [online]. Available from: https://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/freedom-of-information-for-pacific-policy-makers.html.

Enabling environments

Among the PICs that have not formally adopted RTI laws, there has also been appreciable momentum in the advancement of RTI. For example:

- Nauru proposed the appointment of an Ombudsman to be responsible for the development of an RTI regime in 2009;
- Tonga continues to implement an Information Disclosure Policy that was launched in 2012;
- Kiribati developed an RTI strategy in 2014 and, more recently, a draft RTI law; and
- PNG committed to the adoption of an RTI law and a national action plan under the auspices of the Open Government Partnership in 2016.⁹

More broadly, in the PICs without RTI laws, the environments are generally favourable to the public's exercising of their right to information. For instance, the Constitutions of the large majority of PICs guarantee the right to freedom of expression and therefore by extension, RTI, and public complaints about human rights abuses or mal-administration are accommodated by Ombudsmen Offices or non-ombudsman representatives present in all PICs.

Additionally, all PICs have official government and/or parliamentary websites, which the majority use to proactively publish information and facilitate online access to national laws and parliamentary proceedings. Many have incorporated social media (e.g. Facebook, Twitter) in their public communications strategies and importantly, civil society organizations' (CSOs) and non-governmental organizations' (NGOs) activities in most PICs is moderate to strong.

A number of lessons have emerged:

- While not determinative, the legal design of RTI laws can affect how effectively they can be implemented;
- Notwithstanding a well-designed law, inadequate resources and lack of budgetary support can stymie implementation;
- In general, Constitutional guarantees of RTI, while a significant first step enshrined at the highest legal authority, are not sufficient to stimulate the exercise of the right by the public;
- Early CSO involvement is important for buy-in and ownership by the public of RTI laws; and
- Coordinating bodies and arrangements such as steering committees, nodal agencies oversight mechanisms and national implementation plans underpin the strategic leadership support that is critical for effective RTI implementation.

⁹ The Open Government Partnership is a multi-lateral initiative that aims to secure concrete commitments from national and subnational governments to promote open government. See: Open Government Partnership. 2018. Papua New Guinea Action Plan 2018-2010. [online]. Available from: https://www.opengovpartnership.org/wp-content/uploads/2018/11/Papua-New-Guinea_Action-Plan_2018-2020.pdf.



Key recommendations include:

- PICs with RTI laws should strengthen them, and improve their design by reviewing past challenges to implementation and making appropriate amendments, and ensure that the current laws and any proposed amendments are reflective of the foundational principle of maximum disclosure;
- PICs without RTI laws should advance the plans that are already in place or being developed for their adoption;
- Both groups of PICs should capitalize on regional and international peer-to-peer learning opportunities to avoid common place pitfalls in the adoption and implementation of RTI laws. This could address some of the resource constraints that are typically encountered; and
- PICs should now seek to meet some of the resource needs of RTI implementation.

Background

There is a strong history of collaboration between the UN and PICs on RTI, open government and good governance. In 2008, representatives from ten Pacific Island Forum Countries convened in Honiara, Solomon Islands for the first regional workshop on RTI legislation for Pacific Government officials.¹⁰ This workshop was organized by the Pacific Islands Forum Secretariat with the support of the UNDP Pacific Centre, and was intended to support work under the Pacific Plan. It brought together policy-makers and senior officials to discuss the value of RTI in strengthening and enhancing good governance in the Pacific region, as well as empowering participants to raise RTI awareness in their respective countries, share international best practice and standards in RTI law-making, and identify strategies for addressing some of the key practical issues that arise when implementing information disclosure regimes.¹¹

Most recently in 2012, the UN Pacific Regional Anti-Corruption Project (UN-PRAC), a joint initiative of the UNDP and the United Nations Office on Drugs and Crime (UNODC) was launched and has been working on RTI with PICs.¹² UN-PRAC is supported by the Australian Government. Among UN-PRAC's objectives are both the promotion of accession by PICs to UNCAC and assisting them in their effective implementation of the Convention. More specifically, UN-PRAC aims to assist PICs in meeting their commitments under UNCAC articles 5 and 10 to develop anti-corruption policies, practices and systems, as well as enhance transparency in public administration. In this respect, UN-PRAC provides responsive, demand-driven technical assistance to individual PICs in their development of RTI policies, laws and institutional frameworks, as well as capacity development support to existing national accountability institutions.

An overview of the status of RTI in the Pacific region represents another important component of UN-PRAC's continued support to PICs under the Pacific Plan and their implementation of UNCAC and SDG 16. It facilitates, in some measure, a stock-taking of the RTI advancements over the last

10 Rodrigues and Valemei, *op.cit.*

11 *Ibid.*

12 Pacific Office in Fiji. 2020. United Nations Pacific Regional Anti-Corruption Project II. [online]. Available from: https://www.pacific.undp.org/content/pacific/en/home/boperations/projects/effectivegovernance/Reg_UNPRAC.html





ten years since the workshop in Honiara. This, it is hoped, will further energize the ongoing national and regional efforts to advance RTI laws, policies and strategies, aid decision-making and bolster the implementation efforts currently underway.

The paper is also timely having been prepared against the backdrop of three seminal, related events: the second cycle of the mechanism for the review of implementation of UNCAC (UNCAC Review Mechanism), which includes information on the RTI regimes of States parties;¹³ the meeting of the High-Level Political Forum under the auspices of the Economic and Social Council in July 2019 to review a set of SDGs which included SDG 16;¹⁴ and the SDG Summit, which was a meeting of the High-Level Political Forum under the General Assembly held in September 2019 where Heads of State took stock of the SDGs since their adoption in 2015.¹⁵

13 The UNCAC Review Mechanism is an inter-governmental peer review process that assists States parties to effectively implement UNCAC. In accordance with the Terms of Reference, each State party is reviewed by two peers (with one from the same regional group), which are selected by a drawing of lots at the beginning of each year of the review cycle. See UNODC. 2020. Implementation Review Mechanism [online]. Available from: <https://www.unodc.org/unodc/en/corruption/implementation-review-mechanism.html>.

14 United Nations Department of Economic and Social Affairs. 2019. 2019 Voluntary National Reviews Synthesis Report [online]. Available from: https://sustainabledevelopment.un.org/content/documents/252302019_VNR_Synthesis_Report_DESA.pdf.

15 See summary of the SDG Summit 2019: United Nations. 2019. The Summary of the High-level Political Forum on Sustainable Development, 24-25 September. [online]. Available from: https://sustainabledevelopment.un.org/content/documents/25200SDG_Summary.pdf.

Section 1

1.1 Overview of the Right to Information

A. Global standing

The UN has historically recognized the right of access to information. In its very first session in 1946, the UN General Assembly adopted resolution 59 (I), which states: “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated”¹⁶.

Article 19 of the Universal Declaration of Human Rights and article 19 of the ICCPR include, in the right to freedom of expression, the right to freedom to “seek, receive and impart information and ideas through any media and regardless of frontiers”¹⁷.

Additionally, UNCAC articles 5, 7, 9 10 and 13 detail the obligations of State parties to observe and give effect to RTI in broad areas of governance.¹⁸ This includes the proactive disclosure of information, anti-corruption policies and practices, elections and funding of political parties, public procurement, and the management of public finances. RTI has been included in regional human rights instruments, such as the African Charter on Human and Peoples Rights,¹⁹ American

16 While related to RTI, FOI in the context of this quotation was in relation to the prohibition of propaganda for war and the need to improve the sending of information across national frontiers. For context, see: United Nations General Assembly. 1949. 3rd session 1948-1949: Final Act of the United Nations Conference on Freedom of Information. 5 April – 18 May 1949. Paris. France. [online]. Available from: <https://digitallibrary.un.org/record/666880?ln=en>

17 *Universal Declaration of Human Rights*, Art. 19; *International Covenant on Civil and Political Rights*, Art. 19.

18 *United Nations Convention Against Corruption*, Articles 5 and 10.

19 African Commission on Human and Peoples’ Rights. African (Banjul) Charter on Human and Peoples’ Rights, Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986. [online]. Available from: <https://www.achpr.org/legalinstruments/detail?id=49>, Art. 9.





Convention on Human Rights,²⁰ and European Convention of Human Rights.²¹

In 2015, more than 190 world leaders committed to the attainment of the SDGs by which they are obliged, under Goal 16, to ensure public access to information and the protection of fundamental freedoms.²² Finally, RTI has been recognized by some international human rights courts, such as the Inter-American Court of Human Rights, as an essential component to ensuring transparency and accountability in government activities.²³

B. Value and benefits

RTI is an essential part of the global trend toward more transparent and open government, but its actual impact depends on a number of other enabling factors. These include the effective implementation of RTI laws, guaranteed freedom of the press and association, effective checks and balances, such as the prosecution and dismissal of public officials involved in corruption, and policy responses to problems detected in service delivery. Some of the key values and benefits that could be gained by developing effective RTI frameworks are described below.²⁴

Entrenches Democratic Governance

When an RTI framework is robust, governance is enhanced and becomes increasingly more accountable because people have regular and sustained access to information about their governments. This can empower the public by giving them the power to ask pertinent questions about government policies and actions, which can enable the public to make more informed and better voting decisions. In turn, with more public vigilance, enquiry and demands, governments are obliged to create better and more people-driven policies. For example, in 2002, information obtained under the Delhi RTI Act 2001 by Parivartan, a Delhi-based NGO, as well as subsequent public hearings, revealed massive corruption and embezzlement of funds in 64 of the 68 contracts of the Delhi Municipal Corporation.²⁵ Of the 13 million rupees officially sanctioned

20 Organization of American States. American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32). [online]. Available from: https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf, Art. 13.

21 European Court of Human Rights, Council of Europe. European Convention on Human Rights, entered into force 3 September 1953. [online]. Available from: https://www.echr.coe.int/Documents/Convention_ENG.pdf, art 10.

22 UNDP. 2015. World leaders adopt Sustainable Development Goals. [online]. Available from: <https://www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/09/24/undp-welcomes-adoption-of-sustainable-development-goals-by-world-leaders.html>

23 Claude Reyes and Others v. Chile. 19 September 2006. Series C. No. 151. Inter-American Court of Human Rights.

24 See the following link for a detailed exploration of values and benefits of RTI: Commonwealth Human Rights Initiative (CHRI). 2006. Pacific Information Disclosure Policy Toolkit. [online]. Available from: https://www.humanrightsinitiative.org/programs/ai/rti/international/cw_standards/pacific_info_disclosure_toolkit.pdf

25 Dokeniya, A., 2013. Implementing Right to Information - Lessons from Experience. *The World Bank PREM notes – know*

for improving civic amenities, items worth approximately 7 million rupees were non-existent. The incident prompted the local municipal councilor to offer full transparency in public works programmes, and the Corporation agreed to a series of corrective measures, like displaying information about public works projects at worksites, and in offices and local communities.²⁶

Fosters Public Sector Efficiency

Effective RTI frameworks typically lead to governments improving their records and information management systems, therefore also enabling public officials to operate more efficiently. Additionally, the threat of public oversight tends to improve the quality and documentation of policy advice and development. For example, in Jamaica, the President of the Access to Information Association of Administrators and Director of Documentation Information and Access Services in the Ministry of Finance and the Public Service, highlighted the state of records management prior to the enactment of the law and a consequent obligation to respond to requests for information.²⁷ These included: the lack of an overarching institutionalized records management programme across the Government; disorganized records centers or registries; frequent inability to locate files in a timely manner; a general practice of retaining all records leading to congestion; storing of dormant and obsolete records with current files; and the non-revision of procedural manuals to reflect ongoing changes as they occurred. Importantly, when policies, guidelines and systems changed, these invariably went undocumented, therefore leaving public bodies to rely heavily on verbal/ oral transfer of knowledge. Over time, these verbal instructions became distorted causing a break-down of the established standards and procedures; there were multiple storage locations throughout public bodies and files kept in these locations were not all accounted for in the official system, with only the specific division or unit to which those files related being aware of their existence. This practice was perpetuated by the absence of an overarching records management policy and no sanctions were placed on officers' negligence that led to the loss or careless destruction of official records. The Director enumerated the ways in which the enactment of the Access to Information Act had positively impacted records and information management, and these included:

- Increased accountability for records;
- Capacity strengthening of records management programmes in public bodies;
- Changes to the organizational structures of records departments and alignment with information technology and public relations;
- Better storage facilities; and

what we deliver. p. 62. [online]. Available from: http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/285741-1361973400317/PREMNote-GPSM_RTL_v3.pdf.

²⁶ *Ibid*.

²⁷ Ministry of Finance and the Public Service. 2009. The Impact of the Access to Information Act on Records Management in Jamaica. [online]. Available from: <https://mof.gov.jm/the-impact-of-ati-act-on-records-management.html>.



- An overall greater emphasis on records retention and longevity of archival records.²⁸

It was noted that the Act had forced public bodies to make clear distinctions between official and unofficial records for access. Official documents were increasingly being freely shared as a corporate resource and there was greater reliance on the dissemination of documents through the corporate Internet to lessen the workload when information was not readily available in the public domain.²⁹

Facilitates Participatory and Economic Development

RTI frameworks that succeed in giving citizens access to government information empower citizens to actively engage with their governments on the design, implementation and monitoring of policies, projects and programmes. This encourages a more inclusive approach to development. Additionally, local and foreign investors, and the private sector are also more attracted to and likely to invest in countries where information about the legislative and regulatory environment is more readily available and accurate. For example, in 2002, in Uganda, the environmental NGO Greenwatch Limited used the open government clause in article 41 of the Ugandan Constitution to obtain the release of a key document about a controversial dam project that the Ugandan Government and the World Bank had previously declined to release.³⁰ The Ugandan High Court ordered the release of the document, which was then analyzed by the International Rivers Network that subsequently discovered that Ugandans would pay hundreds of millions of dollars in excessive power payments, if the World Bank financed dam proceeded according to plan. The World Bank consequently put the project on hold. It is unlikely this outcome would have occurred without NGO Greenwatch Limited being able to effectively use Uganda's RTI laws to access this information.³¹

Becomes an Anti-Corruption Tool

A coherent RTI framework for requesting, receiving and accessing information facilitates more open and accountable governments since it enables ordinary citizens, the media and CSOs to easily make requests for information that can lead to the detection of corruption. RTI has been used notably by citizens and the media to counter corruption in all spheres of government, such as the disbursement of social benefits, the delivery of health care, public housing, education and water access. For example, an NGO in Delhi, India helped low-income families obtain access to

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Freedominfo.2002. Ugandan Judge Orders Release of Key Document on Bujagali Dam. *Freedominfo*. 22 November. [online]. Available from: <http://www.freedominfo.org/2002/11/ugandan-judge-orders-release-of-key-document-on-bujagali-dam/#1>

³¹ *Ibid.*

a public school by making RTI requests about the availability of seats for the poor, and eligibility norms.³² The information that was obtained helped prove that the school in question was not making places available for low-income students as mandated by law. As a result, more low-income students were accepted, giving them access to public education.³³ In another case involving municipal water access, South African villagers in Emkhandlwini used South Africa's RTI law, with the help of NGO Open Democracy Advice Centre to request the minutes of council meetings about the provision of water, the municipality's integrated development plan and its budget.³⁴ The documents, which were released after a six-month delay, showed that the village was supposed to receive access to clean water. Villagers were able to apply pressure on the municipality by getting the media to cover the issue. In response, the municipality installed fixed water tanks and delivered mobile ones in the community. When the mobile water tank supply became erratic, villagers utilized the FOI law again, this time to request the service-level agreement between the municipality and the company delivering the water. The request brought to light the fact that there was no such agreement or contract, which was a breach of South Africa's public finance legislation; it resulted in the municipality being reported to the Auditor-General for investigation.³⁵

Improves Media Reporting

Finally, a robust RTI framework inherently encourages and facilitates more factual reporting by the media and can reduce misreporting by giving journalists access to source material. This also enhances the investigative skills of journalists who are often unable to access source material and therefore must rely on potentially unreliable sources.

1.2 Giving Effect to the Right to Information

A. Guiding principles

While there are no internationally established standards on RTI laws, we recommend taking into consideration the following eight principles (see Figure 1). These principles are based on UNCAC article 10, sources such as the Commonwealth's 'Model Freedom of Information Bill' and the Commonwealth Human Rights Initiative's publication, "Information Disclosure Policy: A

32 Dokeniya, A., 2013. Implementing Right to Information - Lessons from Experience. *The World Bank PREM notes – know what we deliver*. p. 61. [online]. Available from: http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/285741-1361973400317/PREMNote-GPSM_RTI_v3.pdf.

33 *Ibid*.

34 Dimba, M., 2008. Access to Information as a Tool for Socio-Economic Justice. *Pambazuka News*. 8 April. [online]. Available from: <https://www.pambazuka.org/security-icts/access-information-tool-socio-economic-justice>.

35 *Ibid*.



Toolkit for Pacific Governments³⁶, as well as general principles noted from jurisdictions around the world.

Principle 1 – Maximum Disclosure

The principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in limited circumstances (see Principle 5). The principle encapsulates the basic rationale underlying the very concept of freedom of information and ideally, it should be provided for in the Constitution to make it clear that access to official information is a basic right. The overriding goal of legislation should be to implement maximum disclosure in practice.

Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. The exercise of this right should not require individuals to demonstrate a specific interest in the information. Where a public body seeks to deny access to information, it should bear the onus of justifying the refusal at each stage of the proceedings. In other words, the public body must show that the information which it wishes to withhold comes within the scope of the limited regime of exceptions.

Principle 2 – Right to access own personal information

Even where there are no RTI laws which provide access to information held by public bodies, every individual should have the right to ascertain whether his or her personal information is held by a public body, or private individual or body, and, if so, for what purpose it is being held.³⁷ Individuals should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If these files contain incorrect personal data or were collected or processed contrary to the provisions of the law under which the data was collected, every individual should have the right to have their records rectified.

Principle 3 - Obligation to Publish Information

Even in the absence of robust RTI laws, governments can improve their accountability and transparency by actively disseminating information to the public. This approach can potentially

³⁶ The Commonwealth. 2017. Model Freedom of Information Bill [online]. Available: https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_12_ROL_Model_Freedom_Information.pdf; Rodrigues, C. 2007. Information Disclosure Policy: A Toolkit for Pacific Governments, Commonwealth Human Rights Initiative. [online]. Available: https://www.humanrightsinitiative.org/programs/ai/rti/international/cw_standards/pacific_info_disclosure_toolkit.pdf.

³⁷ ICCPR, Human Rights Committee. 2011. General Comment No. 34, 12 September 2011, CCPR/C/GC/34. [online]. Available from: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

reduce the volume of requests for information from the public, and the amount of information released should increase over time, particularly as new technologies make it easier to publish and disseminate information.

Governments should also provide access to all information disclosed, in response to an RTI request, on a publicly available website to prevent multiple persons making the same requests. When releasing information, either in response to an RTI request or otherwise, governments should make sure that the information is released in forms and languages that are accessible by all members of the public. In PICs, this means that information may need to be released in languages other than English.³⁸

Principle 4 - Promotion of Open Government

In many countries, there can exist a tradition of non-disclosure and secrecy, and it can be difficult to change long-standing practices and attitudes. To combat this, promotional measures should be facilitated to convince public officials that the right of access is a fundamental human right and not just a mere obligation. Such measures may include: public education and awareness campaigns; development and publication of user guides; the development of minimum standards for proper records and information management; the appointment of a dedicated central body to facilitate the measures; and the allocation of the resources necessary to do so. Additionally, mechanisms need to be made available to deal with cases of wrongdoing. Particularly in the case of countries with entrenched cultures of secrecy, as public officials may require strong incentives arising from penalties to encourage them to take the principles of open government seriously.³⁹

Principle 5 - Limited Scope of Exemptions

Exemptions should be clearly and narrowly drawn, and subject to strict 'harm' and 'public interest' tests. Overly broad exemptions can undermine the right to information and should not be based on the desire to protect governments from embarrassment or the exposure of wrongdoing. However, overly narrow exemptions may require governments to disclose information that may not be in the public interest (especially if the exemptions are not conditional on a public interest test).

To balance both legitimate considerations, exemptions should be narrowly drawn, but only to the extent that they will capture all legitimate concerns regarding public interest.

Rodrigues and Valemei, *op.cit.*

³⁹ *Ibid.*



Additionally, governments may consider putting time-limits on the duration of exemptions to recognize that the value of the non-disclosure might no longer be valid, if the harm being prevented by non-disclosure no longer exists or has been substantially reduced by the effluxion of time.

Principle 6 - Processes to Facilitate Access

Access to Information Request Process: Requests for information should be processed rapidly and fairly, and clear, simple procedures for doing so established.

Appeals: A right of appeal must be available to applicants who wish to have the decisions made by public bodies reviewed. In the absence of independent review, individuals cannot really be said to have a right to access information held by public bodies, but merely a right to have their requests for information 'considered'. Ideally, an independent and impartial review body will be established with the power to compel disclosure. While in some jurisdictions, courts may be an effective alternative to a review body, they can be slow and expensive, and therefore may prevent many people from seeking review.

Principle 7 - Costs

Excessive fees have been shown to pose barriers to access, and therefore undermine the right of access to information. Conversely, public bodies should have some means of recouping some of the costs associated with providing access to information. In principle, governments should ensure that fees for requests to information should not be such as to constitute an unreasonable impediment to access to information. To ensure fees do not constitute an unreasonable impediment, governments should ensure that:

- The cost of access is not so high as to deter potential applicants and negate the intent of the law itself;
- Fees are not used to obstruct access or to make a profit;
- Charges should be limited to the actual costs for processing and providing information;
- Waivers should be allowed if the information in question is in the public interest or where the imposition of fees or charges would cause financial hardship; and
- No fee should be charged for making appeals.

Principle 8 - Protection for RTI Administrators

Governments should ensure that RTI laws protect public agencies and staff against civil and criminal liability, where agencies have released information in good faith as permitted by their RTI legislation. This protection is important in situations where releasing information may be



disallowed by a secrecy law, or where information release could be considered a breach of contract.

In addition, governments should consider what should occur in instances where RTI laws are inconsistent with laws already in place, such as secrecy laws. While it is not currently common for RTI laws to expressly override secrecy provisions, there is discussion on whether an express provision would be required. The Australian Law Reform Commission (ALRC) argues that, with the general right of access set out in section 11 of the Freedom of Information Act 1982 (Australia) (FOI Act), the absence of an express secrecy exemption or another applicable FOI exemption would mean that the FOI Act would be available to a document to which a secrecy provision applies.⁴⁰ However, the ALRC expressed some doubt as to whether their argument would prevail in court, as in a 2001 court case regarding the interaction between the Migration Act 1958 (Australia) (Migration Act) and the FOI Act, Justice Tamberlin considered that the 'comprehensive language' of the Migration Act provision was sufficient to exclude the operation of the FOI Act.⁴¹

Australia and Canada handle these concerns by stating in their RTI legislation that RTI laws will not apply to information protected under provisions of another Act (and therefore preferencing secrecy provisions over RTI legislation).⁴² Some commentators, such as the ALRC, argue that this is not necessary as the other RTI exemptions, such as those dealing with personal information, national security and defence, would already provide sufficient protection for information covered by secrecy provisions.⁴³ There is also the counter-argument that secrecy provisions in other legislation are tailored to the specific requirements of that legislation and may therefore cover situations not covered by RTI legislation.⁴⁴ Therefore, it is recommended that governments consider their specific situation to determine how they will handle conflicts between RTI legislation and secrecy provisions, and ensure that this issue is considered early on in the legislative drafting process.

40 ALRC. 2010. Secrecy Laws and Open Government in Australia, ALRC Report 112, 28 July [online]. Available: <https://www.alrc.gov.au/publication/secrecy-laws-and-open-government-in-australia-alrc-report-112/16-interactions-with-other-laws/freedom-of-information/>, para. 16.7.

41 *Kwok v Minister for Immigration and Multicultural Affairs* (2001) 112 FCR 94 (Australia).

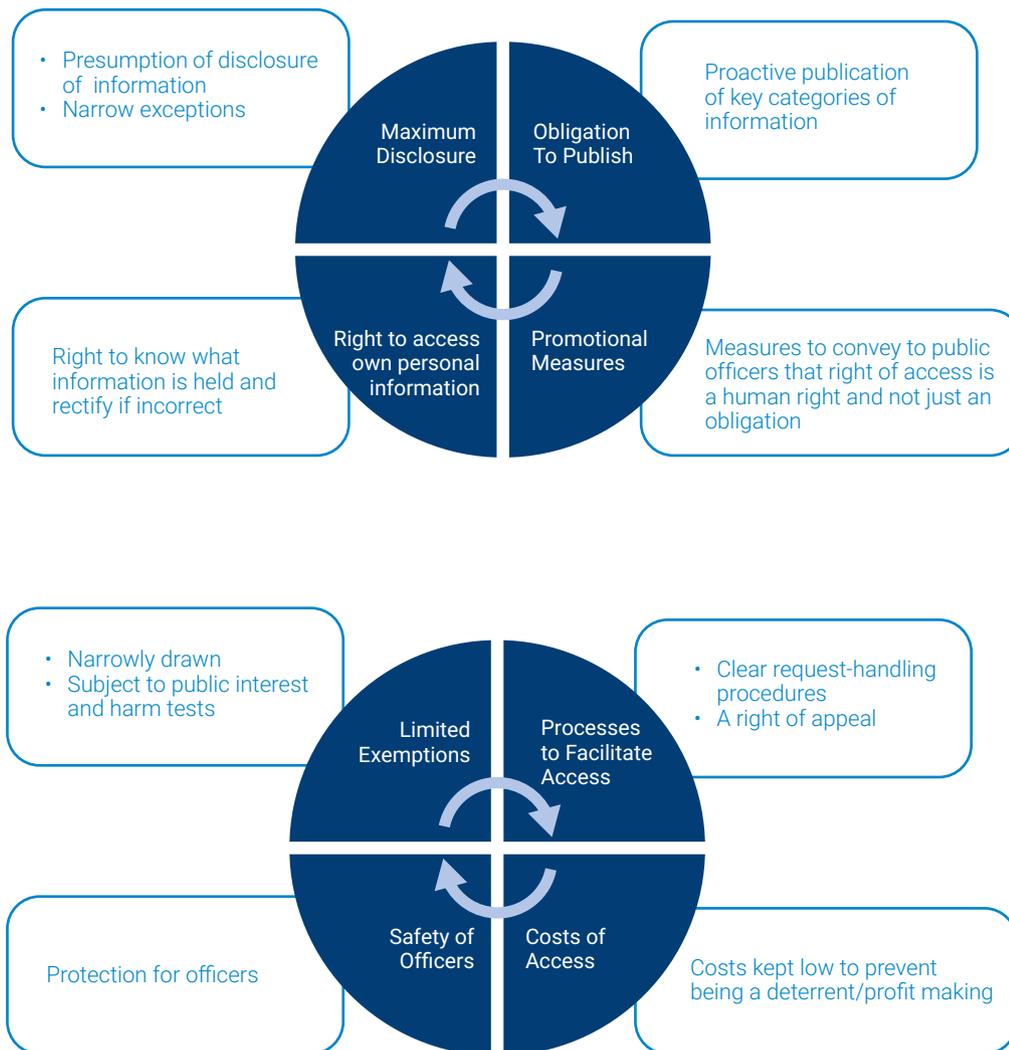
42 *Freedom of Information Act 1982* (Australia), s 38; *Access to Information Act 1985* (Canada), s. 24.

43 ALRC, *op.cit.*, para. 16.41.

44 Senate Legal and Constitutional Legislation Committee, *Inquiry into the Freedom of Information Amendment (Open Government) Bill 2000* (2001) (Australia). [online]. Available from: https://www.aph.gov.au/parliamentary_business/committees/senate/legal_and_constitutional_affairs/completed_inquiries/~media/wopapub/senate/committee/legcon_ctte/completed_inquiries/1999_02/freedom/report/report_pdf.ashx, para. 3.35.



Figure 1: Fundamental principles of an RTI law



B. Basic elements of RTI laws

Based on the eight principles above, effective RTI laws should contain the following common elements:

- **Right of Access** - The right of an individual, organization or legal entity to request information from public bodies without having to show a legal interest. This right should include the right of an individual to access their own personal data, and if that data is incorrect or was collected or processed contrary to the provisions of the law under which it was collected, have the right to have their information rectified.
- **Definitions/Scope** - Laws usually frame the rights and obligations with a set of definitions on who is considered a public body or other liable body, what is meant by public information, who is an information officer and so forth. In order to enable a broad right to information, the definitions should not be restrictive.
- **Duty to Provide Information** - A duty imposed on public bodies to respond and provide information. This includes mechanisms for handling requests and set time-limits for responding to requests.
- **Exemptions** - To allow the withholding of certain categories of information. These typically require that some harm to the interest defined by the category must be shown before it can be withheld. A public interest test may be prescribed to allow access to exempt information for the greater benefit.
- **Appeals** - Internal appeals mechanisms to allow the requestor to challenge refusals to disclose.
- **External Appeals and Oversight** - External review of decisions. Typically, RTI laws either create an external body known as an information commission or allow the complaints to be heard by an existing Ombudsman or the court system. The body also reviews implementation.
- **Proactive Publication** - Requirement for government bodies to affirmatively publish some types of information about their activities.
- **Sanctions** - Sanctions are to be imposed on officials who unlawfully destroy, modify or refuse to release information, and on bodies that fail to comply with the orders of the external review system.



- **Promotional Measures and Reporting** - Some laws envisage a body, competent for promoting RTI. Often, public bodies and/or oversight authorities must (publicly) report on their activities.

C. Enacting RTI laws – Preliminary Considerations

Below are a few preliminary considerations to be taken into account before the introduction of RTI legislation:

Commitment and Partnerships

A high-level commitment from government is required to facilitate the entire process from drafting to implementation. This is likely to increase the odds of effective administration of the laws. For example, after enacting an RTI law in 2016, the Sri Lankan Government, in an initiative aimed at increasing citizens' knowledge of their new right, launched awareness campaigns, targeting social welfare recipients and women, and began broadcasting a weekly television programme that discusses key RTI cases, activists and their accomplishments, and current debates surrounding the new legislation.⁴⁵ Hundreds of citizens across Sri Lanka have used RTI to change their daily lives and their communities – from exposing illegal bribery in Government-run hospitals to processing compensation for the villages hit hardest during the country's 26 year civil war.⁴⁶

In addition, early partnerships between government, CSOs and the public in the legislative development process ensure that the adoption of the laws is inclusive and locally driven. This approach can create a greater sense of ownership, greatly lessen public perceptions of non-inclusion and encourage assistance with implementation. Governments should also consider publishing RTI bills on government portals and giving sufficient notice for full public commentary and feedback in order to provide transparency throughout the legislative process.

Legal Design

The design of RTI laws influences how well they can be implemented and function in practice. It is therefore likely that the implementation of RTI laws and anticipating the challenges likely to be associated therewith should be considered early, notably at the time of their drafting and not when they are passed to avoid a gap between policy and practice. Good legal design may also

⁴⁵ Open Government Partnership. 2018. Sri-Lanka: Empowering Citizens Through the Right to Information. *Citizen-gage*. 26 December. [online]. Available from: https://www.ogpstories.org/impact_story/sri-lanka-empowering-citizens-through-the-right-to-information/.

⁴⁶ *Ibid.*

reduce the burden on public bodies tasked with implementing RTI.⁴⁷ The following are key areas for consideration:

- **Anticipating Implementation Challenges** – Specific provisions should be included in the laws to address issues that may arise, such as bureaucratic resistance or neglect of critical activities such as training, organization of records and public education campaigns. For example, in South Africa, the Open Democracy Campaign Group (which consisted of the Legislative Committee and the South African civil society pressure group) saw the need for a higher level of specificity when drafting provisions relating to procedures and systems to more easily hold Government Departments to account for implementation.⁴⁸ In the Pacific context, special circumstances such as linguistic diversity, illiteracy and general sensory disabilities that could render implementation ineffectual for certain categories of persons should likewise be taken into account at the initial stages.
- **Integrating RTI** – RTI is not likely to be successful if it is not integrated into major planning processes such as budgeting, human resource allocation, and other public sector management systems. Without proper integration, public agencies may be left without information officers/ units to respond to requests and adequate resources to perform their duties. Consideration should also be given to structural features such as the designation of information officers or nodal agencies, their relationship with the rest of the public body, incentives and sanctions. For example, the responsibilities and powers of the information officer, and the obligations of other officers to assist that officer when requested, should be clearly defined.
- **Addressing surrounding legal frameworks** - In many cases, existing regulatory frameworks that surround an RTI law may impose non-disclosure and secrecy obligations that are misaligned with the principle of maximum disclosure. Such pre-existing obligations in employment contracts, civil service rules and procedures, and secrecy laws such as Official Secrets Acts may create confusion for public officers when faced with new RTI responsibilities and potentially result in non-compliance for fear of penalties. Early arrangements should therefore be made to determine how legislation should respond to these concerns (see discussion under Principle 8 above).

47 Mendel, T. 2015. Designing Right to Information Laws for Effective Implementation. Right to Information Series The World Bank. 30 January. [online]. Available from: <http://documents.worldbank.org/curated/en/204481468188355311/pdf/98718-WP-P118353-Box393176B-PUBLIC-Law-and-Implement-FINAL.pdf>.

48 Calland, R. 2003. Turning Right to Information Law into a Living Reality: Access to Information and the Imperative of Effective Implementation. Open Democracy Advice Centre. Cape Town. Africa. [online]. Available from: https://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/southafrica/Calland%20-%20Turning%20FOI%20law%20into%20living%20reality%20-%20Jan-03.pdf.



- **Defining Scope** - Vaguely worded laws create uncertainty about their application and can lead to the greater exercise of discretion by administrators. This, in turn, can result in public bodies applying the law differently and interpreting the laws in favor of non-disclosure. Provisions on definitions and the scope of the laws, regime of exemptions, and the procedures for processing requests, for example, should be well articulated to limit discretionary interpretation.
- **Designating Institutional Support Framework** – How well an RTI law functions in practice greatly depends on the specific designation of internal and external support bodies and roles. These include nodal agencies, which are responsible for coordinating, capacity-building and RTI standard-setting for other agencies, information officers who are responsible for the administration of the laws in public bodies and external support bodies such as independent oversight bodies.
- **Addressing Oversight and Enforcement** – In many jurisdictions, oversight and enforcement provisions related to certain key components of RTI laws are weak or vague. In drafting RTI laws, oversight and enforcement mechanisms for all essential components of RTI regimes should be established, including proactive disclosure of information and records management. In turn, independent oversight bodies, such as information commissioners, could be clearly mandated to enable them, for example, to: undertake independent studies on how certain aspects of the law are functioning in practice; establish binding standards on critical areas such as records management; and issue orders to address non-compliance and implementation gaps.

Section 2

2.1 Global and regional commitments to RTI in the Pacific

On the international stage, PICs have progressively become parties over the years to the pivotal instruments noted earlier on anti-corruption and human rights. All PICs have either ratified or acceded to UNCAC.⁴⁹

The following UNCAC articles are particularly relevant to RTI:

- Article 5. Preventive anti-corruption policies and practices;
- Article 6. Preventive anti-corruption body or bodies;⁵⁰ and
- Article 10. Public reporting (see Figure 2).⁵¹

PICs are also parties to the ICCPR and article 19 enshrines the right of freedom of expression. The scope and limits of the freedom of expression embedded within article 19 were interpreted by the UN Human Rights Committee as including the protection of the right to information held by public bodies.⁵² Additionally, the UN Human Rights Committee found that to give effect to the right of access to information, parties should proactively disseminate information in the public interest and enact necessary procedures, such as legislation.⁵³ PICs have also endorsed the SDGs which, in indicator 16.10.02, calls on all parties to adopt and implement RTI laws.

49 UNODC. 2020. Signature and Ratification Status [online]. Available from: <https://www.unodc.org/unodc/en/corruption/ratification-status.html>.

50 It is to be noted that UNCAC article 36 focuses on specialized authorities, notably the existence of a body or bodies or persons specialized in combating corruption through law enforcement.

51 *United Nations Convention Against Corruption*, Arts. 5, 6 and 10.

52 ICCPR. *op.cit.*, paras. 18-19.

53 *Ibid.*





At regional levels, PICs have also endorsed the UN Pacific Strategy. This is a multi-country framework which aims, in outcome 5, to enhance governance and community engagement so that people and communities in the Pacific will contribute to and benefit from: inclusive, informed and transparent decision-making processes; accountable and responsive institutions; and improved access to justice by 2022.⁵⁴

In 2018, the Boe Declaration, an update to the Biketawa Declaration on regional security, was endorsed by Pacific Islands Forum (PIF) countries and a corollary Action Plan adopted.⁵⁵ The Action Plan highlights corruption in strategic focus areas 4 and 6. Under area 4, action viii on transnational crime, PIF Leaders have undertaken to “support regional initiatives and strengthen national efforts to combat corruption by public officials”⁵⁶. Under area 6 D (iii) on the strengthening of good governance, rule of law and enhancing anti-corruption and electoral processes under the Biketawa Declaration, one of the measures of success is: “Number of Member Countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information”⁵⁷. In line with all of these obligations, PICs have committed to develop and implement RTI policies and laws.

54 United Nations in the Pacific, *op.cit.*

55 PIFS, *op.cit.*

56 PIFS. 2019. The Boe Declaration Action Plan (unpublished).

57 *Ibid.*

Figure 2: Global and Regional Commitments Dashboard

| COUNTRY | UNCAC | | ICCPR (Article 19) | | | SDGs | UN PACIFIC STRATEGY |
|--------------------------------|-------------------|---|--------------------|-------------------|------------------|------|---------------------|
| | Ratified/Acceeded | | Signed | Ratified/Acceeded | Entry into Force | | |
| Cook Islands | 2011 | | - | - | - | ✓ | ✓ |
| Federated States of Micronesia | 2012 | ✓ | - | - | - | ✓ | ✓ |
| Fiji | 2008 | ✓ | - | 2018 | 2018 | ✓ | ✓ |
| Kiribati | 2013 | ✓ | - | - | - | ✓ | ✓ |
| Marshall Islands | 2011 | | - | 2018 | 2018 | ✓ | ✓ |
| Nauru | 2012 | ✓ | 2001 | - | - | ✓ | ✓ |
| Niue | 2017 | ✓ | - | 1978 | - | ✓ | ✓ |
| Palau | 2009 | | 2011 | - | - | ✓ | ✓ |
| Papua New Guinea | 2007 | | - | 2008 | 2008 | ✓ | *3 |
| Samoa | 2018 | ✓ | - | 2008 | 2008 | ✓ | ✓ |
| Solomon Islands | 2012 | ✓ | - | - | - | ✓ | ✓ |
| Tonga | 2019 | ✓ | - | - | - | ✓ | ✓ |
| Tuvalu | 2015 | ✓ | - | - | - | ✓ | ✓ |
| Vanuatu | 2011 | ✓ | 2007 | 2008 | 2009 | ✓ | ✓ |

* UN Development Assistance Framework 2018-2022 for Papua New Guinea⁵⁸

58 United Nations. 2018. Global indicator framework adopted by the General Assembly (A/RES/71/313) including annual refinements contained in E/CN.3/2018/2 (Annex II) and E/CN.3/2019/2 (Annex II) [online]. Available from: https://unstats.un.org/sdgs/indicators/Global%20Indicator%20Framework%20after%202019%20refinement_Eng.pdf.



Figure 2: Global and Regional Commitments Dashboard (part 2)

Sustainable Development Goals (SDGs)⁵⁹

SDG 16 seeks to “...promote peaceful and inclusive societies for sustainable development, to provide access to justice for all and build effective, accountable and inclusive institutions at all level

Sub-target 16:10 - Member states must: “Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements”.

Indicator 16:10. 02 - “number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information”

UN Pacific Strategy 2018-2022⁶⁰

OUTCOME 5 - A multi-country framework which aims to enhance Governance and Community Engagement, elaborating that people and communities in the Pacific will contribute to and benefit from inclusive, informed and transparent decision-making processes; accountable and responsive institutions; and improved access to justice by 2022.

UNCAC

ARTICLE 5 - State parties are to develop and implement or maintain effective, coordinated anti-corruption policies; establish and promote effective practices aimed at the prevention of corruption; periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption; and collaborate with each other and relevant international and regional organizations to promote and develop the measures.

ARTICLE 6 - State parties are to ensure the existence of bodies that prevent corruption by implementing the policies referred to in Article 5 and, where appropriate, overseeing and coordinating their implementation; and increasing and disseminating knowledge about the prevention of corruption. Each State Party must also grant such entities the necessary independence to enable them to carry out their functions effectively and free from any undue influence. The necessary material resources and specialized staff, and the training that such staff may require to carry out their functions, should be provided.

ARTICLE 10 - State parties are to take measures to enhance transparency in their public administration by adopting procedures or regulations allowing members of the general public to obtain information on the organisation, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; and simplifying administrative procedures to facilitate public access to the competent decision.

59 United Nations in the Pacific, *op.cit.*

60 United Nations Papua New Guinea. 2018. Papua New Guinea: United Nations Development Assistance Framework 2018-2022. [online]. Available from: http://pg.one.un.org/content/unct/papua_new_guinea/en/home/publications_top/publication_papua_new_guinea/undaf-2018-2022.html.

2.2 Adoption of RTI Laws in the Pacific

The Cook Islands became the first PIC to adopt an RTI law with the enactment of the Official Information Act in 2008.⁶¹ This seminal achievement was followed in 2014 with the passage of Palau's Open Government Act. Vanuatu passed its Right to Information Act in 2016, and in 2018, Fiji passed the Information Act which, as at the time of this report, had not been enacted. Tonga launched its Information Disclosure Policy in 2012, while the Federated States of Micronesia (FSM) recently developed a draft FOI Law, which is currently under review. The Solomon Islands and Kiribati have also developed draft FOI laws with Solomon Islands' currently in the final stages of review. In addition, PNG, in its National Action Plan under the Open Government Partnership, has indicated its intention to develop an RTI law. For a list of the RTI legislative frameworks in the Pacific, see Figure 3.

Figure 3: RTI Legislative Frameworks in the Pacific

| COUNTRY | RTI LAW/POLICY |
|-----------------------------------|--------------------------------------|
| 1. Cook Islands | Official Information Act 2008 |
| 2. Federated States of Micronesia | Draft Freedom of Information Bill |
| 3. Fiji | Information Act 2018 |
| 4. Kiribati | Draft Freedom of Information Bill |
| 5. Marshall Islands | - |
| 6. Nauru | - |
| 7. Niue | - |
| 8. Palau | Open Government Act 2014 |
| 9. Papua New Guinea | Proposed Freedom of Information Bill |
| 10. Samoa | - |
| 11. Solomon Islands | Draft Freedom of Information Bill |
| 12. Tonga | Information Disclosure Policy 2010 |
| 13. Tuvalu | |
| 14. Vanuatu | Right to Information Act (2016) |

⁶¹ PACMAS. 2013. Cook Islands: State of Media and Communication Report 2013, ABC/Australian AID [online]. Available from: <https://www.abc.net.au/cm/lb/9250226/data/cook-islands-state-of-the-media-report-data.pdf>, p. 6.



In a recent assessment of the progress made by countries in adopting RTI laws and more specifically, on SDG 16, it was noted in the SDG Report 2019 that:

"Binding laws and policies giving individuals the right to access information held by public authorities have been adopted by 125 countries, with at least 31 countries adopting such laws since 2013. Expert assessments, however, suggest that in many cases, the legal framework could be improved. Among the 123 countries for which data on legal frameworks are available, 40 countries do not have adequate provisions on the right to appeal to an independent administrative body, which is considered key for the proper implementation of this right"⁶².

62 Sustainable Development Goals Knowledge Platform. 2019. Progress of Goal 16 in 2019. [online]. Available from: <https://sustainabledevelopment.un.org/sdg16>.

Section 3: Overview of RTI regimes in the Pacific

In this part, an overview of the RTI laws and their implementation in the Cook Islands, Fiji, Palau and Vanuatu is presented with a focus on the areas that could be strengthened in order to better facilitate the public's access to information. Scoring and assessments by Global RTI Rating, the leading global methodology for assessing the strength of RTI legal frameworks, are referenced.⁶³ Seven categories - Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections, Promotional Measures – are rated against 61 indicators for a total score of 150, with higher scores indicating a stronger law. For a more comprehensive review of each law, readers are directed to the Global RTI Rating (also see Figure 4).⁶⁴

A. Rating of RTI laws in PICS

| | | |
|----------------|---|----------------|
| VANUATU | RIGHT TO INFORMATION ACT 2016⁶⁵ | 119/150 |
|----------------|---|----------------|

The enactment of Vanuatu's Right to Information Act 2016 (RTIA) began with the development of an RTI policy, which was spearheaded by a National Media Policy and RTI Committee, which then became the RTI Steering Committee upon passage of the RTIA. The Committee was established by the Prime Minister's Office and was supported in its work by the UN-PRAC Project. Committee membership was inclusive, comprising of representatives from the Government, the Media Association of Vanuatu (MAV) and local NGOs.⁶⁶ This high level of early CSO inclusion and participation resulted in the law

⁶³ The Global RTI Rating was launched in 2011 and is widely used by inter-governmental organizations, RTI advocates, reformers, legislators and others. <https://www.rti-rating.org/>.

⁶⁴ *Ibid.*

⁶⁵ *Right to Information 2016* (Vanuatu).

⁶⁶ Vanuatu Government/Pac News. 2013. Vanuatu National Right to Information Policy. *PINA*. 21 August. [online]. Available from: <http://www.pina.com.fj/?p=pacnews>.





being described, upon its passage and coming into force in 2017, as “a home-grown RTI”⁶⁷. More recently, in 2019, a leading journalist noted that the RTI law had contributed to an air of openness in the country and that Government bodies were more forthcoming with information since the law was enacted.⁶⁸

While the RTI law has been well received by CSOs, a number of areas could be further strengthened. For example, sanctions for public authorities that systematically fail to disclose information or under-perform should be clearer, and public authorities should be required to create, update and make public lists or registers of documents in their possession. The Official Secrets Act remains in effect, and this has the potential of creating confusion for public officers in terms of their non-disclosure obligations under that law and their disclosure responsibilities under the RTIA. The RTIA received 119 points out of a maximum score of 150 by the Global RTI Rating and is therefore regarded as a relatively strong law.

Key areas for review

Requesting procedures – While the law currently prevents denial of access based on a person’s reason for applying,⁶⁹ requesters should not be required to provide reasons for applying for information as it may deter applicants or cause the Government to inadvertently take into account the persons reasons when determining whether or not to disclose the information.

Exceptions & refusals – The reference at section 4 (1)(a) to “the system of custom, traditions and practices generally practiced throughout Vanuatu” needs to be clarified.

Sanctions & protections - There are no clear sanctions for public authorities, which systematically fail to disclose information or underperform.

Promotional measures - There is no clear mention of public authorities being required to create, update and make public lists or registers of documents in their possession.

67 Cullwick, J., 2017. RTI Steering Committee begins public sector consultations. *Vanuatu Daily Post*. 24 February. [online]. Available from: <http://dailypost.vu/>.

68 RNZ. 2019. Vanuatu’s right to information law proving effective. RNZ. 19 June 2019. [online]. Available from: <https://www.rnz.co.nz/international/pacific-news>

69 *Right to Information Act 2016* (Vanuatu), s. 13(3)(a).

| GLOBAL RTI RATING - RTI ACT | | |
|-----------------------------|----------------|----------------|
| Section | Points | Max Score |
| Right of Access | 3 | 6 |
| Scope | 26 | 30 |
| Requesting Procedures | 21 | 30 |
| Exceptions & Refusal | 23 | 30 |
| Appeals | 26 | 30 |
| Sanctions & Protections | 6 | 8 |
| Promotional Measures | 14 | 16 |
| | $\Sigma = 119$ | $\Sigma = 150$ |

FIJI

INFORMATION LAW 2018⁷⁰

64/150

The passage of Fiji's Information Act 2018 (IA) is a positive step for transparency and access to information. However, concerns have been raised by civil society about the lack of consultation prior to its passage, as well as the broad list of information that is exempt from disclosure.⁷¹ Under the IA, only Fijian residents or citizens may make applications for information.⁷² Commendably, information is broadly defined,⁷³ but requests are limited to cases where the information directly affects a decision regarding the requester and only if the information came into existence after the law entered into force.⁷⁴ The procedure for making requests could be simpler and more clearly defined, and exemptions are broad. The law does not address how conflicts with secrecy provisions in other laws will be handled, and the only ground for appeal is where access is denied.⁷⁵ There is no sanction for persons who willfully undermine the law or for public bodies who fail to disclose information or do not meet their obligations. The IA received a score of 64 points out of a maximum score of 150 under the Global RTI Rating.

Key areas for review

Scope - Only Fijian residents or citizens are covered. Information is defined broadly, but is limited to cases where the information directly affects a decision regarding the requester and only if the information came into existence after the law entered into force.

⁷⁰ *Information Act 2018* (Fiji).

⁷¹ Republic of Fiji Joint Submission to the UN Universal Periodic Review 34th Session of the UPR Working Group, p. 9, March 2019

⁷² *Information Act 2018* (Fiji), s. 6(1).

⁷³ *Ibid.*, s. 2.

⁷⁴ *Ibid.*, ss. 6(2)(a)-(b).

⁷⁵ *Ibid.*, s. 22(1).



Requesting procedure – There is no clear, simple procedure for making requests.

Exceptions & refusal – Exemptions are broad and there is ambiguity on how the IA will interact with secrecy provisions in other laws.

Appeals – Grounds for appeal to the oversight body is limited to refusal by a State agency to provide requested information.

Sanctions & protections – There is no sanction for persons who willfully undermine the law or for public bodies who fail to disclose information or who do not meet their obligations.

| GLOBAL RTI RATING - RTI ACT | | |
|-----------------------------|--------|----------------|
| Section | Points | Max Score |
| Right of Access | 4 | 6 |
| Scope | 16 | 30 |
| Requesting Procedures | 11 | 30 |
| Exceptions & Refusal | 10 | 30 |
| Appeals | 11 | 30 |
| Sanctions & Protections | 2 | 8 |
| Promotional Measures | 10 | 16 |
| $\Sigma = 64$ | | $\Sigma = 150$ |

| | | |
|--------------|---|---------------|
| PALAU | OPEN GOVERNMENT ACT⁷⁶ | 33/150 |
|--------------|---|---------------|

Palau’s Open Government Act (OGA) is largely silent on the key legislative elements required to give effect to RTI and facilitate its implementation. For example, the law is silent on the appointment of specially designated officers to administer the law. Additionally, it is unclear whether or not applicants are required to provide a reason for making requests, which therefore potentially leaves it to the discretion of public bodies to decide whether or not a reason is required. The request-making procedure requires greater clarity and was found to be the weakest area of the law. The harm test to be applied to exemptions has limited application and a public interest override is not mentioned. The law is also silent on an appeals procedure and an oversight body to which appeals may be made. There are no provisions for sanctioning persons who willfully undermine the law or public bodies who fail to disclose information or underperform their obligations. Persons who release information in good faith should be specifically protected. A central body to promote the law should be mandated and public awareness measures, minimum standards on records management, training programs and reporting obligations of

⁷⁶ *Open Government Act RPPL No.9-32 2014* (Palau).

agencies provided for. The OGA received a score of 33 points out of a maximum score of 150 under the Global RTI Rating.

Key areas for review

Requesting procedures - This is the weakest area of the law. It is silent on the request-making procedure, assistance to applicants, transfers and details on the grants of access.

Exceptions & refusal – The harm test has limited application and a public interest override is not mentioned.

Appeals – The law is silent on appeals procedures and an oversight body to which appeals may be made.

Sanctions & protections – The law is silent on sanctions for persons who willfully undermine the law or for public bodies who fail to disclose information or underperform their obligations and on protection for persons who release information in good faith or whistleblowers.

Promotional measures – The law is silent on the appointment of specially designated officers to administer the law, a central body to promote the law, public awareness measures, minimum standards on records management, training programs and reporting obligations of agencies.

| GLOBAL RTI RATING - RTI ACT | | |
|-----------------------------|--------|----------------|
| Section | Points | Max Score |
| Right of Access | 4 | 6 |
| Scope | 16 | 30 |
| Requesting Procedures | 2 | 30 |
| Exceptions & Refusal | 5 | 30 |
| Appeals | 5 | 30 |
| Sanctions & Protections | 1 | 8 |
| Promotional Measures | 0 | 16 |
| $\Sigma = 33$ | | $\Sigma = 150$ |

**COOK ISLANDS****OFFICIAL INFORMATION ACT 2008⁷⁷****69/150**

The Cook Islands' Official Information Act 2008 (OIA) was largely modeled on New Zealand's Official Information Act. Under the OIA, the right to request information is limited to residents and some corporations.⁷⁸ A clear procedure for making requests is not set out, fees are not centrally fixed and there is no provision for waivers under special circumstances. Additionally, access may be refused if a grant of access would conflict with the non-disclosure provisions of any other law.⁷⁹ The OIA received a score of 69 points out of a maximum score of 150 under the Global RTI Rating.

Key areas for review

Scope – The right to request information is limited to residents and some corporations.

Requesting procedures – A clear procedure for making requests is not mentioned; fees are not centrally fixed and there is no provision for waivers under special circumstances.

Exceptions & refusals – Some exceptions are overly broad and vague, for example, at section 8 (2) where information requested may be withheld to protect ministers from “improper harassment”; and at section 18 where requests may be refused if the information requested is “trivial” or will “soon be made available”.

Appeals – The law is silent on the procedures governing appeals from the decisions of the Ombudsman.

Sanctions & protections – The law is silent on sanctions for persons who willfully undermine the law, public bodies who fail to disclose information or underperform on their obligations, and the protection of whistleblowers and persons who release information in good faith.

Promotional measures – The law does not mandate the appointment of information officers and is silent on some key aspects, including a central body with responsibility to promote RTI and raise public awareness, minimum standards for records management, training of officials and reporting.

⁷⁷ *Official Information Act 2008* (Cook Islands).

⁷⁸ *Ibid*, s. 2.

⁷⁹ *Ibid*, s. 18(c).

| GLOBAL RTI RATING - RTI ACT | | |
|-----------------------------|--------|----------------|
| Section | Points | Max Score |
| Right of Access | 4 | 6 |
| Scope | 15 | 30 |
| Requesting Procedures | 16 | 30 |
| Exceptions & Refusal | 15 | 30 |
| Appeals | 14 | 30 |
| Sanctions & Protections | 3 | 8 |
| Promotional Measures | 2 | 16 |
| $\Sigma = 69$ | | $\Sigma = 150$ |

Figure 4: Quality of RTI Laws Dashboard

| | Right of Access | Scope | Request Procedure | Exceptions & Refusals | Appeals | Sanctions & Protections | Promotional Measures | |
|-----------|-----------------|--------------|-------------------|-----------------------|--------------|-------------------------|----------------------|-----------|
| Country | Max Score 6 | Max Score 30 | Max Score 30 | Max Score 30 | Max Score 30 | Max Score 8 | Max Score 16 | TOTAL 150 |
| Vanuatu | 3 | 26 | 21 | 23 | 26 | 6 | 14 | 119 (79%) |
| Fiji | 4 | 16 | 11 | 10 | 11 | 2 | 10 | 64 (42%) |
| Palau | 4 | 16 | 2 | 5 | 5 | 1 | 0 | 33 (22%) |
| Cook Isl. | 4 | 15 | 16 | 15 | 14 | 3 | 2 | 69 (46%) |
| ALL PICs | 15/24 | 73/120 | 50/120 | 53/120 | 56/120 | 12/32 | 26/64 | 285/600 |
| TOTAL | 62% | 60% | 41% | 44% | 46% | 37% | 40% | 47% |

The majority of the laws could be improved in their definitions of scope; defining the processes for handling requests; restricting exemptions; defining or providing for an appeals process; adequately sanctioning under-performing or obstructive public bodies; protecting public officers and whistleblowers; and providing for effective or adequate promotional measures.

B. Institutional framework support

In this part, the presence or absence of key institutional supports (that is, internal bodies that coordinate, administer and oversee the administration of the laws and the appeals process) is highlighted. Such bodies include nodal agencies,⁸⁰ designated information officers and oversight mechanisms (whether in the form of an Information Commissioner, Ombudsman or another agency) (see Figure 5).



Nodal Agencies

Vanuatu's RTIA mandates the establishment of a unit to manage the implementation of the law across Government agencies.⁸¹ An RTI Unit was established in 2015 and has since been active.⁸² In its 2018 annual report,⁸³ the central role, which nodal agencies play in facilitating RTI, was clearly demonstrated when the RTI Unit reported on its activities in training public officers, the status of critical publications required under the RTIA and conducting public education events both in the capital, Port Vila and outlying provinces.

Under Fiji's IA, the Accountability and Transparency Commission (ATC), an independent body established by section 121 of the Constitution, will assume overall responsibility for promoting RTI.⁸⁴

The Cook Islands' OIA is silent on a central body with responsibility to promote and administer RTI. However, in practice, this appears to be taken on by the Ombudsman's Office.

Information Officers

Vanuatu's RTIA mandates the Public Service Commission to appoint information officers in each public body.⁸⁵ In recent reports, the RTI Unit noted that some public bodies were still without information officers and that it had suggested the options of either contracting individuals to fill the role or assigning an employee within the office to take on that extra responsibility and be paid an allowance.⁸⁶

Fiji's law similarly mandates public bodies to designate an employee as an information officer to facilitate and process information requests.⁸⁷ The laws of Cook Islands and Palau do not mandate the appointment of information officers and it is not clear what practical arrangements might have been put in place to compensate for this.

81 Right to Information 2016 (Vanuatu), s. 69.

82 Government of the Republic of Vanuatu. 2015. Annual Status Report 2015 - Program Briefing. [online]. Available from: https://rti.gov.vu/images/docs/annual-reports/Annual_Report_FINAL_2015.pdf.

83 Government of the Republic of Vanuatu. 2018. RTI Unit 2018 Annual Report. [online]. Available from: <https://rti.gov.vu/annual-report/2018>

84 *Information Act 2018* (Fiji), s. 38.

85 *Right to Information 2016* (Vanuatu), s. 10.

86 Government of the Republic of Vanuatu, *op.cit.*

87 *Information Act 2018* (Fiji), s. 36.

Oversight Mechanism

Vanuatu's RTIA requires the appointment of an Information Commissioner (IC) by the Judicial Services Commission.⁸⁸ As at the time of this report, the IC was yet to be appointed, but the RTI Unit maintains its efforts to keep the issue at the forefront in its reports to the RTISC.⁸⁹

Under Fiji's IA, the ATC will provide oversight of the administration of the law.⁹⁰ However, the IA does not vest the ATC with the jurisdiction and authority to receive and investigate complaints against holders of public office and to prescribe its functions and responsibilities.⁹¹ In January 2019, a Code of Conduct Bill setting out, among other matters, the rules for the ATC, was made available for public consultation.⁹² Currently, the Code of Conduct Bill has not yet been passed into law, and thereby has not yet operationalized the ATC.⁹³ In its latest Budget Estimates, the Government of Fiji has allocated \$250,000 FJD (\$115,000 USD) to the ATC for 2019-2020.⁹⁴ The Office of the Ombudsman is empowered to investigate abuse and maladministration in Government bodies, but since the abrogation of the Constitution in 2009, the resources allocated to the Ombudsman's Office were drastically reduced and thus its effectivity is limited.⁹⁵

In the Cook Islands, the Office of the Ombudsman is responsible for the administration of the OIA, the Police Act 2012 and the Disability Act 2008.⁹⁶ The Ombudsman is only mandated, however, to investigate complaints about the handling of requests and cannot impose binding

⁸⁸ *Right to Information 2016* (Vanuatu), s. 52.

⁸⁹ Government of the Republic of Vanuatu. 2018. RTI Unit 2018 Annual Report. [online]. Available from: <https://rti.gov.vu/annual-report/2018>

⁹⁰ *Information Act 2018* (Fiji), Pt. 2, Div. 1.

⁹¹ Article 121(9) of the Constitution of the Republic of Fiji provides that authority, functions and responsibilities of the Commission shall be prescribed by written law.

⁹² Parliament of the Republic of Fiji. 2019. Public Submissions on the Code of Conduct Bill. *Parliament of the Republic of Fiji*. 11 January. [online]. Available from: <http://www.parliament.gov.fj/public-submissions-on-the-code-of-conduct-bill/>.

⁹³ According to the Fiji Parliament website, the Code of Conduct Bill has not yet been passed into law; it is currently on the 2019 Pending Bills list following tabling of the Standing Committee on Justice, Law and Human Rights review report on 4 April 2019: "Review Report on the Code of Conduct Bill 2018 (Bill No. 33 of 2018)". The Committee recommended that the Bill be passed with one amendment in Schedule 6 of the Bill. See: Hansard from 4 April 2019, pp. 999-1001. [online]. Available from : <http://www.parliament.gov.fj/wp-content/uploads/2019/04/DH-Thursday-4th-April-2019.pdf>.

⁹⁴ Parliament of the Republic of Fiji, Budget Estimates 2019-2020. [online]. Available from : <http://www.economy.gov.fj/images/Budget/budgetdocuments/estimates/2019-2020-Budget-Estimates-As-Approved-by-Parliament.pdf>.

⁹⁵ Bureau of Democracy, Human Rights and Labor. 2012. 2011 Country Reports on Human Rights Practices - Fiji. United States Department of State. [online]. Available from: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4fc75a9fc&skip=0&query=2011%20Country%20Reports%20on%20Human%20Rights%20Practices%20fiji>.

⁹⁶ *Official Information Act 2008* (Cook Islands), s. 30; *Disability Act 2008* (Cook Islands), s. 16; *Police Act 2012* (Cook Islands), s. 19.



solutions.⁹⁷ Procedures for appealing the findings of the Ombudsman are vague.⁹⁸ Under the OIA, the oversight functions appear to be shared by both the Office of the Ombudsman and an independent consultant who, under section 43, is to be appointed from time-to-time, but not more frequently than every three years, to conduct a review of the administration of the law.⁹⁹

Palau's OGA is silent on an oversight mechanism and no information was immediately accessible as to what arrangements might have been made to facilitate oversight of the administration of the OGA. Historically, the Palau Ombudsman's Office was the only one of its kind in the Pacific that was not established by an Act or enshrined constitutionally, and operated from within the Office of the Executive (the President).¹⁰⁰ In 2015, attempts were made to strengthen the role of the Ombudsman with the development by the Office of the Ombudsman of a draft Bill, which proposed to define the jurisdiction and powers of the Office and give it greater independence.¹⁰¹ In June 2017, this was actualized by Executive Order 400,¹⁰² which declared the Office of the Ombudsman to be independent and reinforced its authority over public agencies. Its investigatory powers were expanded to include entry of premises, compelling the production of documents, interrogation of public officers and the submission of its reports to bodies other than the Office of the President.¹⁰³ At the time of writing this report, the position of the Ombudsman had been vacant for over two years.

97 *Official Information Act 2008* (Cook Islands), s. 94.

98 *Ibid.*, s. 37.

99 *Ibid.*, ss. 30, 43.

100 Palau Ombudsman Seeks More Independence. 2015. [online]. Available from: <http://www.pireport.org/articles/2015/08/25/palau>.

101 *Ibid.*

102 Republic of Palau. Organizing the Office of the Ombudsman, Executive Order No. 400 2017. Palau. Office of the President. [online]. Available from: <https://www.palau.gov.pw/>

103 *Ibid.*

Figure 5: RTI Institutional Support Framework Dashboard

| Country | Nodal Agency | Information Offices | Oversight Mechanism/Appeals |
|-------------|-------------------|----------------------|---|
| Vanuatu | RTI law/Unit | RTI law/Some | RTI law/IC |
| Fiji | *ATC | Art. 36 | ATC (not operational) |
| | | No available data | |
| Palau | No mention in law | No mention in law | No mention in law |
| | No available data | No available data | No available data |
| Cook Island | No mention in law | Discretionary in law | Ombudsman/ independent consultant (every 3 years) |
| | No available data | No available data | |

- Except for Vanuatu, in all other PICs, information on key aspects of RTI institutional support was inaccessible.
- Two of the four laws are silent on the appointment of a nodal agency and there was no available data on what practical arrangements might otherwise be in place.
- Two of the four laws do not have or have inadequate provisions on the appointment/role of information officers and there was no available data on what practical arrangements might otherwise be in place.
- Palau's law makes no provision for an oversight mechanism and there was no available data on what practical arrangements might otherwise be in place.

C. Implementation activities

Unlike the enactment of RTI laws, there tends to be less focus on the quality of implementation and how well RTI laws work in practice to deliver the promise of greater public access to information, more efficient service delivery and improved governance. Consequently, there are far less standardized and recognized methodologies that measure implementation.

This part considers the presence or absence, and the effectiveness, of specific factors in determining the quality of implementation. These are:

- A national implementation plan that uses a whole-of-government approach to coordinate strategies;
- Proactive disclosure;
- RTI regulations;
- Records and information management;
- Training of public officers;



- Reporting and monitoring on the administration of the laws;
- Integration of information, communication and technologies (ICTs)/e-governance to facilitate proactive disclosure and the request process;
- Conduct of public awareness campaigns;
- Public access to the internet and use of social media by both the public and governments for information dissemination; and
- CSO presence and activity in RTI advocacy.

For key details on the implementation activities of Vanuatu, Fiji, Palau and the Cook Islands, see Figure 6.

VANUATU

The RTIA stipulated a phased or sequenced implementation over the course of 30 months.¹⁰⁴ This would be given effect by a series of Ministerial orders bringing public bodies under the operation of the law at different times and in accordance with their respective states of readiness.¹⁰⁵ In September 2019, the Prime Minister signed the third and final Ministerial Order covering all Government agencies and certain private entities delivering public services.¹⁰⁶ As at the time of this report, it appears that regulations required, pursuant to section 87 of the RTIA, have not been developed.

Prior to the enactment of the RTIA, and as required by the RTI policy, the RTI Unit and the RTI Steering Committee (RTISC) were created.¹⁰⁷ In collaboration with the Unit, the RTISC's primary role is to provide direction for the implementation of the RTI Policy and to monitor and evaluate the implementation of the RTIA.¹⁰⁸

The RTI Unit has worked to prepare Government agencies for the administration of the RTIA and develop a time-bound and costed National Implementation Plan to provide structure to the process even beyond the enactment of the law.¹⁰⁹ A National Implementation Plan has since been developed, detailing the prioritized preparatory activities to be undertaken by various bodies,

¹⁰⁴ *Right to Information 2016 (Vanuatu)*, s. 2(4).

¹⁰⁵ *Ibid.*

¹⁰⁶ Willie, G. 2019. PM signs Third and final RTI Order, Daily Post, 12 September [online]. Available from: https://dailypost.vu/news/pm-signs-third-and-final-rti-order/article_0c1b8cd2-0f14-59ed-be8a-a23bd148bf27.html.

¹⁰⁷ Government of the Republic of Vanuatu. 2015. Annual Status Report 2015 - Program Briefing. [online]. Available from: https://rti.gov.vu/images/docs/annual-reports/Annual_Report_FINAL_2015.pdf.

¹⁰⁸ For details on the functions of the RTISC, see: <https://rti.gov.vu/about-us/our-structure>

¹⁰⁹ RTI Unit. 2017. 2017 Annual Report. [online]. Available from: https://rti.gov.vu/annual-reports/2017_RTI_Unit_Annual_Report.pdf.



and the RTI Unit currently uses the National Implementation Plan to guide its implementation activities. In its March 2019 report, the Unit identified a continuing need for additional resources such as extra staff and increased budgetary allocations. In 2017, the RTISC began the process of developing a proactive publication scheme and a Disclosure and Publication Guide on proactive publication, which is now being finalized. A Citizens Budget is also being developed to facilitate a better understanding of the Government's national budget and related processes.

in Vanuatu need improvement. To address this, in November 2018, a National Records and Information Management Policy was launched, and a Code of Practice on Records Management has been developed.¹¹⁰ The Unit maintains an active schedule of training,¹¹¹ and a training manual is being developed. In 2018, with the support of the UN-PRAC Project, 35 RTI officers and the RTI Unit took part in a three-day RTI training, and in 2019, in preparation for the last set of public bodies being brought under the RTI law, the RTI Unit arranged three days of training in collaboration with the Vanuatu Institute for Public Administration and Management.¹¹²

Under the RTIA, RTI officers must submit monthly reports to the RTI Unit, which must, in turn, submit quarterly and other interim reports as may be required to the Information Commissioner.¹¹³

The Information Commissioner must submit annual reports to Parliament.¹¹⁴ The RTISC reports to the Council of Ministers at least twice each year.¹¹⁵ The RTISC is also empowered to receive reports on the administration of the RTIA,¹¹⁶ and the RTI Unit submits reports to it, which are published on the Unit's website.¹¹⁷ Monthly reports from agencies are reported to be infrequent and this has been ascribed by the Unit to the need for more specially appointed RTI officers. As earlier noted, the Information Commissioner has not yet been appointed.¹¹⁸

With the infrequency of reports from public bodies and the non-appointment of the Information Commissioner whose office would be responsible for compiling official data on the numbers of requests received, there is no reliable official data on the use of the law by the public.

110 RTI Unit. 2019. Code of Practice on Records and Information Management. [online]. Available from: https://rti.gov.vu/Code_of_Practice.pdf.

111 RTI Unit. 2018. 2018 Annual Report. [online]. Available from: https://rti.gov.vu/2018_RTI_Unit_Annual_Report.pdf.

112 25 Officers received training on the role of RTI Officers in Vanuatu, see: <http://www.loopvanuatu.com/vanuatu-news/>.

113 *Right to Information 2016* (Vanuatu), s. 62(4).

114 *Ibid*, s 61.

115 *Ibid*, s 80.

116 *Ibid*, s76.

117 Right to Information Unit. 2019. Home-Vanuatu Right to Information Unit. [online]. Available from: <https://rti.gov.vu/>

118 RTI Unit. 2018, *op.cit*.



Launched in 2017, the RTI Unit's website provides details on RTI in Vanuatu.¹¹⁹ The Unit has also been carrying out public awareness-raising activities, such as holding RTI forums in the capital, Port Vila and in the provinces, and participating in the popular "tok-back" shows on the radio.¹²⁰ The RTI Users' Guide is being developed and RTI banners and brochures were acquired with the help of the UN-PRAC Project for use at national events and during consultation sessions with public bodies.¹²¹

The Vanuatu Government has an official website, which provides information on a range of topics, gives access to Government directories and has links to other ministries and agencies.¹²² However, there is limited information on RTI or guidance on complying with the RTIA or making an RTI request (other than news articles and a link to the legislation database). The RTI Unit reports that while some agencies have websites, they are not updated regularly.¹²³ In 2016, the RTI Unit, in collaboration with the Office of the Government Chief Information Officer and the Vanuatu Civil Society Disability Network, developed Web Accessibility Guidelines for Government web developers and content managers to develop websites that are in line with international accessibility standards.¹²⁴ The Government does not appear to have a Facebook account and has an inactive Twitter account. The Ministry of Education and some Departments and agencies (Customs, Police and Meteorology) have Facebook accounts.

As noted earlier, civil society was very active in the lead up to the passage of the RTIA. Community consultations were conducted by Transparency International Vanuatu, Media Association of Vanuatu and other NGOs to inform citizens about the Act and encourage people to ask their Members of Parliament to vote for the Act.¹²⁵ Since the enactment of the law, the Unit reports that its main partner, Transparency International Vanuatu, has helped with public education and awareness initiatives by printing over 5,000 brochures, providing RTI posters for distribution to communities and producing RTI video clips.¹²⁶ The Office of the Ombudsman has also promoted use of the RTIA, including to gather evidence to support complaints to the Ombudsman.¹²⁷

119 RTI Unit. 2019, *op.cit.*

120 RTI Unit, 2018, *op.cit.*

121 *Ibid.*

122 Government of Vanuatu. 2017. Home-Government of Vanuatu. [online]. Available from: <https://www.gov.vu/en/>

123 RTI Unit. 2018, *op.cit.*

124 Government of Vanuatu. 2016. RTI Web Accessibility Guidelines. [online]. Available from: <https://rti.gov.vu/RTI Web Accessibility Guideline.pdf>

125 Cullwick, J., 2017. RTI Steering Committee Begins Public Sector Consultations, 24 February. *Vanuatu Daily Post*. [online]. Available from: <https://dailypost.vu/news/>.

126 RTI Unit. 2017, *op.cit.*

127 Office of the Ombudsman, 'RTI – How it Assists the Work of the Ombudsman', 17 April 2019. [online]. Available from: <https://ombudsman.gov.vu/index.php/media-releases/346-rti-how-it-assists-the-work-of-the-ombudsman>.

In a recent publication, Transparency International Vanuatu reported that as at the end of 2018, the public had not yet started using the RTIA for the purpose of accessing information.¹²⁸

FIJI

In Fiji, information about whether a National Implementation Plan was or is being developed to guide the administration of the IA was not accessible. There was also no available data on whether any training was being undertaken to prepare public agencies on how to process requests. Similarly, no data could be found on whether the records and information management systems of public bodies were being amended to meet the requirements of the anticipated RTI regime.

While the ATC is responsible under section 38 of the IA for raising public awareness, there was no available data on any public awareness campaigns being undertaken by either the Government or civil society in anticipation of the enactment of the law. Commendably, the Government's website is well populated with links to Government ministries and agencies, even though there appears to be no mention of the IA or updates related to its anticipated enactment.¹²⁹ Additionally, the Government has embarked on a four-year programme, DigitalFIJI/ Digital Government Transformation, the stated aim of which is to enhance the Government's overall ICT infrastructure and improve the quality and accessibility of Government online services.¹³⁰ The Government also has very active, up-to-date Facebook and Twitter accounts.¹³¹

In March 2019, CIVICUS (an international non-profit organization and global alliance for the strengthening of citizen action and civil society around the world), the Pacific Islands Association of Non-Government Organizations (PIANGO), the Fiji Women's Rights Movement and the Citizens' Constitutional Forum, called on the Government of Fiji to create an enabling environment for civil society: "in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31. At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect"¹³².

¹²⁸ Transparency International. 2018. Right to Information in Asia Pacific How 11 Countries perform on SDG 16:10. [online]. Available from: https://www.transparency.org/whatwedo/publication/right_to_information_in_asia_pacific.

¹²⁹ Ministry of Communications. 2019. Home-The Fiji Government. [online]. Available from: <https://www.fiji.gov.fj/Home>.

¹³⁰ Ministry of Communications. 2019. Digital Government Transformation. [online]. Available from: <https://www.fiji.gov.fj/digitalFIJI>.

¹³¹ Fijian Government on Facebook: <https://www.facebook.com/FijianGovernment/>; Twitter: <https://twitter.com/fijiangovt>.

¹³² CIVICUS, PIANGO, FWRM and CCF. 2019. Republic of Fiji Joint Submission to the UN Universal Periodic Review



PALAU

There was limited data available to assess Palau's implementation of RTI laws. Palau's OGA is silent on the key institutional and operational aspects for RTI delivery. Additionally, data was not available on whether regulations have been passed, if any instructions or guidance have been given to public bodies on proactive disclosure, if information officers have been appointed and specially trained to administer the law, or if any public awareness programmes have been undertaken by the Government to inform the public of their rights under the law.

Additionally, it has been reported that "government workers at the sub-national level are reported to be hesitant to release information while the national government normally responded promptly to requests"¹³³. Data on the records and information management initiatives to accommodate RTI obligations under the OGA was also not immediately available.

However, there has been some use of the law. In 2018, Government Senators tested the interpretation of the term 'made available' under the OIA when documents that they had requested from the Minister of Public Infrastructure, Industries and Commerce about the renovation and expansion of the Palau International Airport were turned over to the National Congress by the Minister and not to the Senators themselves or their attorneys. The Palau Supreme Court ruled that the Minister had complied with the OGA when he made copies of the requested documents available to the Palau National Congress, instead of delivering them to the individual Senators or their counsel.¹³⁴

Regarding resources available on line, the Palauan Government maintains a website, which provides basic information; no mention is made of the OGA.¹³⁵

34th Session of the UPR Working Group, 27 March. pp.11. [online]. Available from: <https://civicus.org/documents/CIVICUSJointUPRFijiSubmisson.pdf>.

133 Bureau of Democracy, Human Rights and Labor. 2015. 2016 Country Reports on Human Rights Practices - Palau. United States Department of State. [online]. Available from: <https://www.refworld.org/country,,,PLW,,58ec89e8a,0.html>.

134 Kambes Kesolei, O. 2018. 'Palau Court Sides with Administration in Open Government Act case', *Pacific Note*, 4 May [online]. Available from: <https://www.pacificnote.com/single-post/2018/05/04/Palau-Court-sides-with-government-in-airport-expansion-case>.

135 The Government of Palau. 2019. Home-PalauGov.pw Your guide to finding and using Palau National Government services. [online]. Available from: <https://www.palau.gov.pw/>.

COOK ISLANDS

After the passage of the OIA in 2008, a National Implementation Plan was launched.¹³⁶ However, it was reported that there were initial delays in the implementation of the OIA due to resource issues.¹³⁷ At the time of publication of this report, there was no accessible information on whether or not there is a current Implementation Plan. It also appears that regulations, pursuant to section 47 of the OIA, are yet to be developed.

In May 2019, the Ombudsman's Office, which has oversight of the OIA, announced a series of workshops that included training on the rights and responsibilities of the public under the OIA.¹³⁸ Beyond that, it is not immediately apparent what other training activities there have been or are being conducted to provide guidance to persons responsible for the administration of the OIA, particularly in the absence of regulations.

It has been noted that the Government's information storing system is not able to retrieve information, making it more difficult for public officials to respond to requests from the public.¹³⁹

The Government's website has no reference to the OIA or to RTI.¹⁴⁰ Older reports refer to a Government communications unit called Gov-media, which disseminated press releases and was responsible for updating the Government website, 'Government Online'.¹⁴¹ Another website, 'Government of the Cook Islands', is said to have included information about the structure of the Government and Constitution.¹⁴² Neither of these portals currently exist.¹⁴³ In 2016, a Citizens Budget Guide was released by the Government.¹⁴⁴ The Guide was "intended to allow the

136 Newswatch.in. 2009. Cook Islands Launches Official Information Act Implementation Plan. *Newswatch.in*. [online]. Available from: <https://newswatch.in/news/2009/>.

137 CHRI. 2009. Status of the Right to Information in the Pacific Islands of the Commonwealth - A Report. p.8. [online]. Available from: http://status_of_rti_in_pacific_island_of_cw.pdf.

138 Cook Islands News. 2018. Ombudsman to Stage Workshops. *Cook Islands News*. 17 May. [online]. Available from: <http://www.cookislandsnews.com/item/69327-ombudsman-to-stage-workshops/69327-ombudsman-to-stage-workshops>

139 Transparency International. 2013. Corruption and Anti-Corruption in the Cook Islands. p.5. [online]. Available from: <https://knowledgehub.transparency.org/helpdesk/Country-profile-Cook-Islands-2013.pdf>.

140 The Government of Cook Islands. 2019. Home. [online]. Available from: <http://www.ck/govt.htm>

141 CHRI, 2009. *op.cit.*

142 *Ibid.*

143 SCOOP Independent News. 2005. Cook Islands: Govmedia Disappears. *SCOOP Independent News*. 14 March. [online]. Available from: <https://www.scoop.co.nz/stories/W00503/S00229/cook-islands-govmedia-disappears.htm>

144 Press Release 2016/17 Budget Citizens Guide [online]. Available from: http://www.mfem.gov.ck/images/MFEM_Documents/CEO_Docs-from23Aug16/20160822_PS-2016-17_Budget_Citizens_Guide.pdf.



public to easily understand the key components of the Budget” and was stated to be “a further step toward increasing the amount of information publicly available regarding the priorities of government, and where taxpayer funds are spent for the benefit of the Cook Islands people”.¹⁴⁵ The Guide was made available in both English and Cook Islands Maori at specified locations, and on the Ministry of Finance’s website.¹⁴⁶

The Office of the Prime Minister has active Facebook and Twitter accounts,¹⁴⁷ as does the Office of the Ombudsman.¹⁴⁸

Regarding the public’s use of the law, available data suggests that between 2009 and 2013, a total of 297 complaints were received by the Ombudsman’s Office.¹⁴⁹ Reporting by the Ombudsman on the operation of the law would likely yield further data, but the Ombudsman Act will require amendment to mandate annual reporting.

Figure 6: Key Implementation Activities Dashboard

| PIC | Impl. Plan | Regulations | Proactive Disclosure | Records/ Information Management | Training | Reporting / Monitoring |
|--------------|-------------------|-------------|----------------------|---------------------------------|-------------------|------------------------|
| Vanuatu | Imp. Plan | None | Underway | Underway | Ongoing | Some |
| Fiji | No available data | None | No available data | No available data | No available data | Law not in force |
| Palau | No available data | None | No available data | No available data | Law silent | Law silent |
| | | | | | No available data | No available data |
| Cook Islands | Imp. Plan (2009) | None | No available data | No available data | Law silent | Law silent |
| | | | | | No available data | No available data |

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ Office of Prime Minister Facebook: <https://www.facebook.com/pmoffice.gov.ck/>; Twitter : <https://twitter.com/cookislandsgov?lang=en>.

¹⁴⁸ Office of the Ombudsman – Cook Islands. [online]. Available from: https://www.facebook.com/pg/OfficeoftheOmbudsmanCookIslands/photos/?tab=album&album_id=369932693500327&ref=page_internal.

¹⁴⁹ *Ibid.*

| PIC | Public Awareness | ICT/E-Gov | | Internet Access * | Social Media (Pop.) | CSOs |
|--------------|-------------------|--------------------------------------|-------------------------------------|-------------------|---------------------|-------------|
| | | Website | Social Media (Gov't) | | | |
| Vanuatu | Ongoing | Government RTI Unit Some agencies | Facebook (Some agencies) Twitter | 28.7% | Facebook 23% | TI VANGO |
| Fiji | No available data | Government Some agencies | Facebook Twitter | 54.5% | Facebook 51% | CCF FWRM |
| Palau | No available data | Government Some agencies | Facebook Twitter | 35% | Facebook 26% | - |
| Cook Islands | Some | Government Some agencies | Facebook Twitter | 65% | Facebook 49% | CICSO |

| | | | |
|--|---|---|--|
| <i>* per cent of population</i> | <i>CCF – Citizen's Constitutional Forum</i> | <i>CICSO – Cook Islands Civil Society Organizations</i> | <i>FB – Facebook</i> |
| <i>FWRM – Fiji Women's Rights Movement</i> | <i>Pop. – Population</i> | <i>TI – Transparency International</i> | <i>VANGO – Vanuatu Association of NGOs</i> |

- ← Only two PICs developed implementation plans to coordinate the administration of their laws
- ← None of the PICs have developed regulations
- ← In three of the four PICs, there was no available data on efforts to improve proactive disclosure or records and information practices to accommodate RTI
- ← In two of the four PICs, the laws are silent on training for public officers and there is no accessible data suggesting any training notwithstanding
- ← In three PICs, there is no available data on proactive disclosure with RTI in mind
- ← In one of four PICs, there is some monitoring and reporting
- ← Two of four PICs undertake sporadic/moderate public awareness activities
- ← All PICs have official Government and agency websites
- ← Three PICs have official Facebook and Twitter accounts
- ← Public access to the internet is low to medium
- ← Social media use by the public is low to medium
- ← There is CSO presence in 3 PICs while there is no available data on CSO activity in Palau



Section 4: Overview of pics without specific RTI regimes

Enabling environments for RTI

In this part, an exploratory assessment is undertaken of the remaining ten PICs that have not officially adopted specific RTI regimes. Subject to available information, the environment in each that enables or fosters transparency and participation in government and RTI is highlighted. Some indicative factors considered are:

- Constitutional guarantees of RTI or related rights;
- Existing draft RTI laws, policies or any expressed plans for them; the presence, powers and level of activity of an Ombudsman as a public complaints mechanism or equivalent;
- Efforts at proactive disclosure of information; ICTs/e-governance that would enable or enhance proactive disclosure;
- Diversity of the media landscape; and
- The activity of CSOs in advocating for RTI.

For key details on PICs without specific RTI regimes, see Figure 7.

FEDERATED STATES OF MICRONESIA (FSM)

Section 1 of article IV of FSM's Constitution enshrines freedom of expression. There is, however, no explicit protection of RTI.¹⁵⁰ The Department of Justice is mandated to combat corruption and the Secretary of Justice, functioning as the Attorney-General, has the capacity to hear cases that are referred for prosecution.¹⁵¹ The Auditor-General performs the role of Ombudsman, and the Attorney-General's Office collaborates with civil society through a hotline operated by the Office of the National Public Auditor, which encourages reporting of public complaints of corruption.¹⁵² While there is no RTI law or policy in place at the moment, a draft FOI law has been developed.

The Government's website carries the latest news and press releases about the executive and legislature, providing the names and contact information of the Heads of National and State Governments, and contains information about diplomatic relations and international treaties.¹⁵³ The Government also has an active Facebook account.¹⁵⁴

Regarding the involvement of NGOs, the FSM Alliance of NGOs (FANGO), which is made up of approximately 113 NGOs has, as its stated mission, the strengthening of participatory development and responsive governance.¹⁵⁵ FANGO lists capacity-building and acting as an information clearing house among its current activities and key strategic focus areas.¹⁵⁶ It maintains a Twitter account.¹⁵⁷ FANGO faces challenges, such as lack of funding, capacity-building and guidance from external partners.¹⁵⁸ The youth advocacy group called, 'Pohnpei

¹⁵⁰ *Constitution of the Federated States of Micronesia*. [online]. Available from: <http://www.fsmlaw.org/fsm/constitution/>.

¹⁵¹ *Implementation Review Group: Conference of the State Parties to the United Nations Convention against Corruption*, UN Doc CAC/COSP/IRG/1/4/1/Add.5, sixth sessions, Vienna, 1-5 June 2015 [online]. Available from: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1408394e.pdf>.

¹⁵² US Department of State. 2019. 2018 Country Reports on Human Rights Practices: Federated States of Micronesia. [online]. Available from: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/federated-states-of-micronesia/>.

¹⁵³ Government of the Federated States of Micronesia. Home. [online]. Available from: <https://www.fsmgov.org/>.

¹⁵⁴ Office of the President, Federated States of Micronesia Facebook. [online]. Available from: <https://www.facebook.com/piofsm/>.

¹⁵⁵ PIANGO. 2019. Member countries-FSM. [online]. Available from: <http://www.piango.org/our-members/member-countries/fsm/>.

¹⁵⁶ *Ibid*.

¹⁵⁷ FSM Alliance of Non-Governmental Organisations Twitter. [online]. Available from: <https://twitter.com/Fango120402>.

¹⁵⁸ UNDP Pacific Centre. 2009. Capacity Assessment of CSOs in the Pacific-Six Country Profiles, pp.12. [online]. Available from: https://www.undp.org_Research & Publications.pdf.



Youth for Change' advocates against corruption through the initiative, 'Cultivating Creativity Against Corruption', and collaborates with the Audit Office on anti-corruption matters.¹⁵⁹

KIRIBATI

Article 12 of the Kiribati Constitution enshrines the right of freedom of expression. However, there is no explicit protection of RTI¹⁶⁰. In 2013, it was reported that the Kiribati Public Service Office was a non-legislative complaint handling mechanism for complaints about the Government and received approximately ten complaints a week. More complicated and contentious matters are referred to the Secretary to the Cabinet as Head of the public service.¹⁶¹

In 2014, a Communications and Access to Information Strategy (CATIS) was developed by the Communications and Public Relations Unit in the Office of the President. CATIS proposed an improvement in the transparency and responsiveness of the Government and the development of solutions to disseminate Government information to target audiences. It also proposed to clarify what information could be requested and accessed by the public from the Government, and lay the groundwork for an access to information policy, which would implement a process for the public to access information.¹⁶²

Responsibility for the implementation of CATIS lies with the Office of Te Beretitenti (the President) acting through the Communications and Public Relations Unit with direction and advice from a Government-stakeholder Steering Committee known as the KIRICOM.¹⁶³ One of the objectives of KIRICOM is the establishment of a clear process for accessing information, but updates on CATIS or the work of KIRICOM could not be found on the Government website or from other research sources.

Regarding RTI, a draft FOI Bill is being reviewed, and information about the Government is available through the Government's website.¹⁶⁴ The website is interactive and user-friendly with

159 Jaynes, B. 2018. Cultivating creativity against fraud and corruption. *The Kaselehlle Press*. 12 October. [online]. Available from: http://www.kpress.info/index.php?option=com_content&view=article&id=1134:cultivating-creativity-against-fraud-and-corruption&catid=8&Itemid=103.

160 *Constitution of Kiribati*. [online]. Available from: [http://www.paclii.org/ki/constitution/Kiribati Independence Order 1979.pdf](http://www.paclii.org/ki/constitution/Kiribati%20Independence%20Order%201979.pdf).

161 Pacific Ombudsman Alliance Network News Issue 31, 2013. [online]. Available from: <https://www.theioi.org/downloads/1043g/POA%20Network%20News%20Issue%2031.pdf>.

162 Communications & Public relations Unit. 2014. Kiribati Communications & Access to Information Strategy. [online]. Available from: <http://www.president.gov.ki/wp-content/Communications-and-Access-to-Information-Strategy.pdf>.

163 Ibid.

164 Office of Te Beretitenti, Republic of Kiribati. 2019. Ministries. [online]. Available from: <http://www.president.gov.ki/ministries/>



up-to-date press releases, publications and information about Government ministries and their contact information. The Ministry of Finance has an active Facebook account,¹⁶⁵ as does the Ministry of Foreign Affairs and Immigration.¹⁶⁶

CSO activity is relatively strong in Kiribati. There are more than 50 NGOs working in several areas of public interest with many being members of the umbrella group, the Kiribati Association of Non-Government Organisations (KANGO).¹⁶⁷ The majority of KANGO members participate in human rights training. Another CSO specifically involved in anti-corruption is the Kiribati Corruption Kickers Network,¹⁶⁸ an anti-corruption youth group which issues a monthly newsletter that shares information with its members on anti-corruption related work in Kiribati. The group is part of the Pacific Youth Forum Against Corruption, a forum supported by UN-PRAC for young people in the Pacific to share experiences and exchange ideas for advocating against corruption.¹⁶⁹ However, a 2016 publication by the Pacific Community and the United Nations Office of the High Commissioner for Human Rights reported concerns about the lack of freedom of CSOs to participate in Government initiatives in a submission to the UN's Universal Periodic Review.¹⁷⁰

MARSHALL ISLANDS

Section 1 of the Constitution of the Marshall Islands enshrines the right to freedom of speech and freedom of the press.¹⁷¹ There is no explicit protection of RTI. The country has also not appointed an Ombudsman; however, the Auditor General's Office is a primary anti-corruption and complaints mechanism in the country. In 2018, the Auditor General reported a significant increase in reports of Government fraud at local and national levels, as well as at the country's

165 Ministry of Finance Kiribati Facebook. [online] Available from: <https://www.facebook.com/Ministry-of-Finance-Kiribati>.

166 Ministry of Foreign Affairs and Immigration Facebook. [online]. Available from: <https://www.facebook.com/mfa.gov.ki>.

167 Nexus Commonwealth Network. 2019. Find Civil Society expertise in Kiribati. [online]. Available from: http://www.commonwealthofnations.org/sectors-kiribati/civil_society/

168 Bainteiti, R. 2016. A youth from Kiribati's journey to end corruption in the Pacific. [online]. Available from: <https://social.un.org/youth-flash/June2016.html>.

169 Transparency International New Zealand. 2015. Pacific Youth Forum Against Corruption. [online]. Available from: <https://www.transparency.org.nz/pacific-youth-forum-against-corruption/>

170 SPC & UN Human Rights. 2016. Human Rights in the Pacific - A Situational Analysis. p. 57. [online]. Available from: https://rrrt.spc.int/2019-01/Human_Rights_in_the_Pacific_A_situational_Analysis.pdf ; US Department of State. 2019.

2018 Country Reports on Human Rights Practices: Federated States of Micronesia. [online]. Available from: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/federated-states-of-micronesia/>.

171 Republic of Marshall Islands. 2014. Constitution of Republic of Marshall Islands. [online]. Available from: http://www.paclii.org/mh/legis/consol_act/cotrotmi490/.



overseas missions.¹⁷² There is neither an RTI law or policy at the moment nor is there evidence of any plans in the pipeline for their development.

Regarding access to information, both the Government and Parliament have dedicated websites.¹⁷³

NAURU

Section 12 of Nauru's Constitution protects freedom of expression; however, there is no explicit protection of the right to access information.¹⁷⁴ A Constitutional amendment was previously proposed that would specifically guarantee the RTI and mandate the enactment of a law to give effect to it.¹⁷⁵ It appears, however, that this has not yet been achieved. There was also an earlier recommendation to establish an Ombudsman's Office, which would take responsibility for the implementation of an RTI law.¹⁷⁶ An Ombudsman has not yet been appointed.

A secrecy law, the Official Information Act 1976, protects Government information rather than facilitating disclosure.¹⁷⁷

The Government Information Office (GIO)¹⁷⁸ and the State-run Nauru Media Bureau (NMB)¹⁷⁹ are relatively recent initiatives for the dissemination of information to the public. The GIO was established in 2008 and is a section of the Office of the President. It prepares and distributes media releases for the Government, coordinates interviews between the President, Ministers and other official Government spokespersons for local and international media, and receives and responds to enquiries and requests for information from non-government entities, the general public, media and international stakeholders as required.¹⁸⁰ The NMB publishes the Nauru Bulletin, a fortnightly newsletter which contains news and information on Government

172 RNZ. 2018. Marshall Islands Auditor's Office Swamped with Fraud Reports September. *RNZ*. 24 September. [online]. Available from: <https://www.rnz.co.nz/international/pacific-news/>.

173 NITIJELA. 2019. Home- Parliament of the Republic of Marshall Islands. [online]. Available from: <https://rmparliament.org/cms/>

174 *Constitution of Nauru*, s. 12.

175 CHRI. 2009. *op.cit.*, p. 31.

176 *Ibid*, p. 32

177 Republic of Nauru. 1976. Official Information Act 1976. No.16 of 1976. [online]. Available from: http://www.paclii.org/nr/legis/num_act/oia1976197/.

178 The Government of the Republic of Nauru. 2020. Government Information Office [online]. Available from: <http://www.naurugov.nr/government-information-office.aspx>.

179 Nexus: Commonwealth Network. 2020. Nauru: Find Media and Broadcasting expertise in Nauru [online]. Available from: http://www.commonwealthofnations.org/sectors-nauru/business/media_and_broadcasting/.

180 The Government of the Republic of Nauru, *op.cit.*



ministries and its agencies, local and regional news and Presidential and Ministerial speeches.¹⁸¹ The Government has an official website which also hosts the GIO platform,¹⁸² and the GIO has an official active Twitter account.¹⁸³

NIUE

There is no express guarantee of freedom of expression or RTI in Niue's Constitution.¹⁸⁴ A draft Ombudsman Bill was prepared in 2006 by the Crown Law office but not advanced.¹⁸⁵ The National Strategic Plan 2009–2013 contained several strategies to increase good governance, including the establishment of an Ombudsman Office by 2013.¹⁸⁶ While an Ombudsman has not yet been appointed, it was reported in 2011 that a Complaints Handling Ombudsman Backed System (CHOBS) was established within the Department of Justice.¹⁸⁷ After a 12 month trial system with two complaints received, Niue was said to be considering whether to establish an Ombudsman based on a review of CHOBS.¹⁸⁸

Regarding access to information, the Government's website provides basic information on the functions of the three ministries, and their related agencies.¹⁸⁹

PAPUA NEW GUINEA

Section 51 of PNG's Constitution guarantees the right to reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society.¹⁹⁰ A law may regulate or restrict RTI and the "provision shall be made by law to establish procedures by which citizens may obtain ready access to official information"¹⁹¹.

181 The Government of the Republic of Nauru. 2020. Nauru Bulletin [online]. Available from: <http://www.naurugov.nr/government-information-office/nauru-bulletin.aspx>.

182 Government of the Republic of Nauru. 2019. Home. [online]. Available from: <http://nauru-news.com/>.

183 Republic of Nauru Twitter. [online]. Available from: https://twitter.com/republic_nauru.

184 *Constitution of Niue*. [online]. Available from: http://www.paclii.org/nu/legis/consol_act/con231.rtf.

185 Commonwealth Ombudsman. 2009. Complaint Handling in Pacific Island Nations Without an Ombudsman. [online]. Available from: <https://www.ombudsman.gov.au/.pdf>, p. 24.

186 Pakatufono Niue. 2008. Niue National Strategic Plan 2009-2013. [online]. Available from: https://www.preventionweb.net/files/28164_nnsp200920132.pdf, p. 13.

187 Government of Niue Crown Law Office. 2011. Niue Country Report - 30th PILON Meeting -Auckland, New Zealand 5-6 December 2011. [online]. Available from: <http://www.pilonsec.org/CountryReports/30th/niue.pdf>, p.2.

188 *Ibid.*

189 For the Government of Niue website, see: <http://www.gov.nu/wb/>.

190 *Constitution of the Independent State of Papua New Guinea*, s. 51.

191 *Ibid.*, s. 51(2).



In 1993, the Government adopted a National Policy on Information and Communication, which was largely about the technology of communication, with short references to access to information.¹⁹² Older reports indicate that in 1999, Transparency International PNG (TIPNG) and its partners developed a draft RTI Bill, which was based on section 51 of the Constitution; however, it was not acted upon then by the Government.¹⁹³ In 2016, within the framework of the OGP, PNG's Steering Committee (12 Government departments and 10 CSOs) selected four commitment clusters, one of which was RTI.¹⁹⁴ In its National Action Plan submitted to the OGP, PNG indicated an intention to have an Access to Information Bill circulated by April 2019,¹⁹⁵ but this appears to have been delayed.

Although PNG does not currently have an RTI law, the constitutional right to official documents has been exercised and tested in practice by the community group, the Alliance of Solwara Warriors. Solwara Warriors used section 51 of the Constitution to request the public release of an environmental impact assessment on a proposed deep-sea mine. The decision to be handed down will indicate how the courts view this right and whether or not section 51 is sufficient to establish a precedent in the absence of an RTI law.¹⁹⁶ In 2019, the Government announced a moratorium on deep sea mining,¹⁹⁷ although it is not clear if the action taken by Solwara influenced the decision.

The role of the Ombudsman in PNG is carried out by an Ombudsman Commission whose main functions are to: investigate complaints about the administrative actions of Government bodies; administer the Leadership Code by conducting investigations into the actions of Leaders; and investigate discriminatory practices under the Discriminatory Practices Act and the HIV/AIDS Management and Prevention Act.¹⁹⁸

Regarding access to information, there is comprehensive information about PNG's Government departments and agencies available through links hosted on the website of the National Economic and Fiscal Commission, an independent Constitutional advisory body of the State.¹⁹⁹

192 Foldes, A., & Transparency International. 2018. Right to Information in Asia Pacific: How 11 Countries Perform on SDG 16:10. [online]. Available from: https://www.transparency.org/right_to_information_in_asia_pacific, p. 42.

193 CHRI. 2009. *op.cit.*, p.39.

194 Open Government Partnership, 2018, *op.cit.*

195 *Ibid.*

196 Davidson, H and Doherty, B. 2017. Troubled Papua New Guinea deep-sea mine faces environmental challenge, *The Guardian*, 12 December [online]. Available from: <https://www.theguardian.com/world/2017/dec/12/troubled-papua-new-guinea-deep-sea-mine-faces-environmental-challenge>.

197 PACNEWS. 2019. Moratorium on Deep Sea Mining in ONG Welcomed. *Papua New Guinea Mine Watch*. September 4. [online]. Available from: <https://ramumine.wordpress.com/2019/09/06/>.

198 Ombudsman Commission of Papua New Guinea. 2019. Role and Functions. [online]. Available from: <https://www.ombudsman.gov.pg/about-us/rolesfunctions/>.

199 National Economic and Fiscal Commission. 2019. Links to PNG Government websites. [online]. Available from:



There is also a Parliamentary website through which the laws of the country and reports on the performance of Parliament and Members of Parliament are available.²⁰⁰

PNG has many NGOs that are involved in all sectors of national development, including human rights, and which play key roles in PNG's development strategy. For example, in 2019, TIPNG conducted a survey of 24 Government agencies to assess their ability to provide public information both online and over the counter. One of the findings was that over 90% of State agencies surveyed were unable to give public documents when requested over the counter; however, those same documents were already available online for 54% of the agencies.²⁰¹ TIPNG concluded that there was a disconnect between officers and agencies, and called for the creation of an RTI policy and law, outlining the process by which a citizen can obtain information and to establish a dedicated body to assist citizens' requests for information from Government agencies.²⁰²

SAMOA

Section 13 of Samoa's Constitution protects the right to freedom of expression and speech subject to restrictions.²⁰³ There is no explicit protection of RTI. Samoa currently has no RTI policy or law in place, but according to media reports in 2017, an RTI law is being considered.²⁰⁴

In 2013, the Ombudsman Act 1989 was amended to expand the Ombudsman's original mandate to include human rights.²⁰⁵ The Ombudsman is empowered to receive and investigate complaints from the public about administrative actions and non-actions of Government bodies and resolve decisions that are wrong, unjust, unlawful or unfair.²⁰⁶ The Good Governance Unit within the Ombudsman's Office was established to foster good public administration within Government ministries and agencies. The Unit does not investigate complaints against private

<http://www.nefc.gov.pg/links/png-government.html>.

200 National Parliament of Papua New Guinea. 2019. Home. [online]. Available from: <http://www.parliament.gov.pg/>

201 Transparency International, 2019. *Our Right to Know, Their Duty to Tell*. [online]. Available from: <http://www.transparencypng.org.pg/2019/09/TIPNG-RTI-Report-FINAL-1.pdf>

202 *Ibid*.

203 *Constitution of the Independent State of Samoa*. [online]. Available from: <http://extwprlegs1.fao.org/docs/pdf/sam132838.pdf>.

204 Feagaimaali'i, J. 2017. Freedom of information law is being considered. *Samoaobserver*. 4 June. [online]. Available from: <https://www.samoobserver.ws/category/samoa/28908>.

205 The office of the Ombudsman. 2018. What is the Human Rights function of the Office?. [online]. Available from: <https://ombudsman.gov.ws/human-rights-2/>.

206 The office of the Ombudsman. 2018. What is the Good Governance function of the Office?. [online]. Available from: <https://ombudsman.gov.ws/good-governance/>.



individuals, companies or other NGOs, nor decisions of courts or statutory tribunals.²⁰⁷ It may refuse to investigate complaints if there is an existing remedy or appeal available, if the subject matter is more than 12 months old, if there is insufficient personal interest or if it considers further inquiry unnecessary.²⁰⁸

In terms of access to information, the Government's website is well populated with information about the executive, legislature and judiciary, directories to Government bodies, news and cabinet releases.²⁰⁹ The website also has links to the Government's official Facebook and Twitter accounts. The Government Press Secretariat, which is the Government's media arm, maintains a highly interactive, informative website with information about, and working links to, Government ministries and agencies, Parliament and Government publications.²¹⁰ Public access to information was further enhanced in 2012 when the Samoa Legal Information Institute (SamLII) was launched to provide improved and free online access to the laws of Samoa.²¹¹ A 'Recording Project' is also underway to improve access to transcripts in all Courts and facilitate faster, more reliable and accurate information. Another significant achievement has been the commencement of the digitization of the Lands and Titles Court records. Among the principal aims of the Project are the improvement of access and facilitation of document retrieval by the public.²¹²

The Civil Society Support Program is an umbrella organization with the stated purposes of delivering sustainable social and economic benefits to the people of Samoa through strengthened CSOs and achieving measurable social and economic benefits by playing a more active role in national and community affairs.²¹³ The Journalists Association of (Western) Samoa (JAWS) is an independent media association made up of local journalists working in print, online, television and radio media. JAWS promotes the role of a free media in Samoan society, and protects the rights of journalists in Samoa.²¹⁴

207 *Ibid.*

208 *Ibid.*

209 Government of Samoa. 2018. Home-Government of Samoa. [online]. Available from: <http://www.samoagovt.ws/>.

210 Government of Samoa. 2018. Press secretariat. [online]. Available from: <http://www.samoagovt.ws/tag/press-secretariat-samoa/>.

211 For Samoa Legal Information Institute, see: <http://www.samlii.org/>.

212 Ministry of Justice and Courts Administration. 2020. [online]. Available from: <https://www.mjca.gov.ws/>.

213 Samoa Civil Society Support Programme. 2020. [online]. Available from: <http://www.cssp.gov.ws/about-us/>.

214 *Ibid.*

SOLOMON ISLANDS

Section 12 of Solomon Islands' Constitution enshrines freedom of the press and the freedom to receive and communicate ideas and information without interference.²¹⁵ Additionally, RTI was specifically included as a stand-alone provision in the 2009 draft revised Constitution, which has not been brought into effect.²¹⁶

The Government developed a National Anti-Corruption Strategy,²¹⁷ and in 2018, the Whistleblowers Protection Act and the Anti-Corruption Act were passed.²¹⁸ The latter established the Solomon Islands Independent Commission Against Corruption (SIICAC). Commissioners were appointed at the end of 2019. A draft FOI policy and law, previously prepared in 2016 by the UN-PRAC Project, are both being reviewed, a process which was energized and marshalled by the Office of the Ombudsman. The Official Secrets Act 1922 remains in force, and generally prohibits the receipt or communication of information that may be prejudicial to the safety or interest of the State.²¹⁹

The Ombudsman is an independent office and can investigate administrative grievances, including RTI complaints.²²⁰ The Ombudsman has powers to enter the premises of public bodies, request information from public officials and seize documents, access secret or restricted documents and issue recommendations.²²¹ The Ombudsman must give final reports of investigations to the public bodies or officials whose conduct was investigated, as well as to the responsible Minister, Prime Minister and complainant.²²² The Ombudsman can follow up on recommendations and request reports on the measures taken to implement them, and the Ombudsman reports to Parliament annually and can submit ad hoc Parliamentary reports. In 2017, a new Ombudsman Act was enacted to expand the power to investigate Government contractors and agents, specify referral mechanisms and increase penalties. The new Act also provides for increased manpower and resources for the Office, assures its budgetary independence, allows for the establishment of effective arrangements with other bodies, and

²¹⁵ *Constitution of the Solomon Islands Statutory Instrument* s. 12.

²¹⁶ 1st 2009 Draft Federal Constitution of Solomon Islands, Clause 38. [online]. Available from: http://www.sicr.gov.sb/Draft%202009%20Fed_Const%20WebVersion%20%5BCompleted%5D.pdf.

²¹⁷ Solomon Islands Government. 2017. Solomon Islands National Anti-Corruption Strategy. [online]. Available from: <https://devpolicy.org/pdf/Solomon-Islands-National-Anti-Corruption-Strategy-2017scanned.pdf>.

²¹⁸ Freedomhouse. 2019. Freedom in the World-Solomon Islands. [online]. Available from: <https://freedomhouse.org/report/freedom-world/2019/solomon-islands>; Hawkins, K., 2018. What Now For New Solomons Anti-Corruption Law?. RNZ. 2 August. [online]. Available from: <https://www.rnz.co.nz/international/pacific-news/>.

²¹⁹ Solomon Islands. 1922. Official Secrets Act. [online]. Available from: http://www.paclii.org/sb/legis/consol_act/osa156/.

²²⁰ *Ombudsman Act 2017* (Solomon Islands), ss. 7, 13.

²²¹ *Ibid.*, ss. 22-23, 26-27.

²²² *Ibid.*, s. 25(4).



permits the delegation of powers. In March 2018, the Office of the Ombudsman commenced an awareness programme for provincial bodies on the provisions of the new law.²²³

In terms of access to information, the Solomon Islands has an official Government portal that was launched in 2006.²²⁴ Parliament also has a website and access to the laws may be downloaded or obtained as hard copies.²²⁵ A link to the Pacific Islands Legal Information Institute (PACLI) database of laws and other legal materials is also available on the website.

There is a strong NGO presence in the Solomon Islands, with approximately 68 NGOs currently registered with the regional body PIANGO, and most of which address social justice issues and support anti-corruption measures.²²⁶ Transparency Solomon Islands (TSI) is also active in Solomon Islands.²²⁷ TSI is the local chapter of Transparency International, which works with partners in Government, business and civil society to put effective measures in place to tackle corruption.²²⁸

TONGA

Clause 7 of Tonga's Constitution guarantees freedom of expression and freedom of the press, but there is no explicit protection of RTI.²²⁹ In 2012, a Freedom of Information Policy was launched along with a time-bound and costed National Implementation Plan.²³⁰ The Policy was developed following extensive consultations with a broad range of public officials and external stakeholders with the aim of promoting awareness and support.²³¹ Under the Policy, exempt

223 Pacific Integrity Network. 2018. Solomon Islands Ombudsman's Office Commence Awareness Program on the New Ombudsman Act. *Pacific Integrity Network*. 17 April. [online]. Available from: <https://www.pacificintegritynetwork.com/>.

224 Solomon Islands Government – Ministry of Foreign Affairs and External Trade. 2020. [online]. Available from: <http://www.mfaet.gov.sb/>.

225 National Parliament of Solomon Islands. 2020. [online]. Available from: <http://www.parliament.gov.sb/>.

226 UNDP Pacific Office in Fiji. 2016. Solomon Islands Civil Society Supports Anti-Corruption Efforts. UNDP Pacific Office in Fiji. 3 May. [online]. Available from: <http://www.pacific.undp.org/2016/05/03/solomon-islands-civil-society-supports-anti-corruption>.

227 Transparency Solomon Islands. 2020. [online]. Available from: <https://www.transparency.org/whoweare/solomonislands/>.

228 Transparency International. 2019. Overview. [online]. Available from: <https://www.transparency.org/whoweare/organisation>.

229 *Constitution of Tonga*. [online]. Available from: <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga>.

230 Nuku'alofa. 2012. Tonga Launched Its Freedom of Information Policy. *Ministry of Information and Communication*. 4 July. [online]. Available from: <http://www.mic.gov.to/government/initiatives-freedom-of-information/>.

231 *Ibid*. See also the Freedom of Information Policy Consultations with Various Stakeholders pp. 7- 8 [unpublished]. Available upon request from the Ministry of Information and Communications, see: <http://www.mic.gov.to/index.php>.



categories of information are subject to a public interest test and persons can make complaints to the Information Commissioner, if a Government agency refuses to disclose the requested information.²³² The Policy also provides for proactive publication of a wide range of information and free access to other information by request.²³³

Following the introduction of the Policy, an FOI Unit was created with responsibility for coordinating and managing FOI requests, proactive information disclosure, training needs and public educational activities.²³⁴ An FOI Cabinet Steering Committee (FOISC), comprising key portfolio Ministers, was also created to lend Government support and oversight of the policy implementation.²³⁵ Both the FOI Unit and FOISC were responsible for managing a phased process of implementation which began in 2012 with activities such as the development of public education and awareness materials, training manuals and toolkits for public authorities, the conduct of training and sensitization sessions, and the preparation of budgets.²³⁶ In April 2014, a technical legal advisor, through the UN-PRAC Project, conducted a series of meetings and consultations with key FOI stakeholders in order to inform the development of a working draft FOI Bill for public consultation.²³⁷

Originally, the Commissioner for Public Relations was mandated under the Commissioner for Public Relations Act 2001, to carry out duties similar to those of a traditional Ombudsman. In 2016, the title 'Commissioner for Public Relations' was changed to 'Ombudsman', pursuant to the Commissioner for Public Relations (Amendment) Act 2016.²³⁸ An Ombudsman was formally appointed in 2016²³⁹ with powers, under the amended Ombudsman Act,²⁴⁰ to independently investigate areas of Government administration, either initiated by public complaint or by the Ombudsman's own volition.²⁴¹

232 Freedom of Information Policy, s. 19 [unpublished]. Available upon request from the Ministry of Information and Communications.

233 *Ibid*, s. 21.

234 Nuku'alofa, *op.cit*.

235 *Ibid*.

236 Ministry of Information and Communication. 2014. Press Releases. [online]. Available from: <http://www.mic.gov.to/news-today/press-releases/>

237 United Nations General Assembly. 2018. A/HRC/WG.6/29/TON/1. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - Tonga. [online]. Available from: https://www.policinglaw.info/Tonga_2018, p.13.

238 Office of the Ombudsman. 2020. [online]. Available from: <http://ombudsman.we.bs/>

239 Cook Islands News. 2017. Tonga Appoints First Ombudsman. *Cook Islands News*. 21 March. [online]. Available from: <http://www.cookislandsnews.com/item/63568-tonga-appoints-first-ombudsman/63568-tonga-appoints-first-ombudsman>

240 Tonga. 2001. Ombudsman Act 2001. [online]. Available from: <http://ombudsman.we.bs/2017/03/OMBUDSMAN-ACT-2001-1.pdf>

241 *Ibid*, s. 13.



The Ministry of Information and Communications (MIC) acts as the nodal agency that coordinates and disseminates Government information and develops media and information policies.²⁴² The dissemination of certain types of Government information has now shifted to the Prime Minister's Office and the Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications. Under this arrangement, the Prime Minister's Office handles enquiries and releases information related to the Office and its initiatives.²⁴³ In 2016, the Government released a guide on the disclosure of information to the public.²⁴⁴ In 2017, the FOI policy sub-committee arranged Tonga's celebration of International Archives Day with the intention of highlighting Tonga's commitment to improve records and information management systems.²⁴⁵ There is an official Government website hosted by MIC, but it does not mention FOI.²⁴⁶ The website is interactive and user-friendly, and posts the latest Government press releases, notices and links to other Ministry websites. The Office of the Ombudsman also has a website.²⁴⁷ The complete text of all laws passed in Tonga can be accessed at the Tonga Legislation Online website, which is hosted by the Attorney General's Office.²⁴⁸ The Government also has an active official Facebook account.²⁴⁹

NGOs are also active, and many are involved with several human rights issues.²⁵⁰

TUVALU

Section 24 of Tuvalu's Constitution guarantees the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression. There is no explicit protection of RTI.²⁵¹

Tuvalu does not have an RTI law or policy, and no information was available on whether or not there are plans in this regard. In 2014, the Permanent Secretary of the Ministry of Public Utilities was appointed as the country's first Chief Ombudsman for five years. It was noted that the

242 Ministry of Information and Communication. 2020. [online]. Available from: <http://www.mic.gov.to/index.php>.

243 United Nations General Assembly. 2018. *op.cit.*

244 Narayan, R. 2016. Tongan Government Provides a Guide on the Release of Information to the Public, *Loop*, 16 January. [online]. Available from: <http://www.looptonga.com/content/tongan-government-provides-guide-release-information-public>.

245 *Ibid.*

246 Ministry of Information and Communications. 2020, *op.cit.*

247 Office of the Ombudsman. 2020. [online]. Available online: <http://ombudsman.we.bs/>

248 Attorney General's Office. 2020. [online]. Available online: <https://ago.gov.to/cms/>

249 Government of the Kingdom of Tonga. 2020. [online]. Available online: <https://www.facebook.com/TongaGovtPortal/>

250 SPC and UN Human Rights. 2016. Human Rights in the Pacific - A Situational Analysis. p. 125. [online]. Available from: https://rrrt.spc.int/sites/default/files/resources/2019-01/Human_Rights_in_the_Pacific_A_situational_Analysis.pdf

251 *Constitution of Tuvalu*, s. 24.



appointment was part of the country's Leadership Code Act, and was delayed because of a lack of money.²⁵² The primary role of the Chief Ombudsman is to work to achieve good governance through the enforcement of the Leadership Code Act, which it is hoped will eliminate or greatly reduce corrupt practices in Government.²⁵³

In Tuvalu, there are also currently laws which restrict the potential for public access to information. The Oaths and Statutory Declarations Act 1979 restricts the dissemination of certain types of information by providing that public officers who take an oath relating to Cabinet business and who subsequently make any disclosures will be liable to disciplinary action.²⁵⁴

Additionally, while the Public Records Act 1979 makes all records deposited in the archives available to the public,²⁵⁵ this access is subject to regulations and the recommendation of the archivist.²⁵⁶ Both the archivist and the Minister may withhold access to the archives. The Minister may, however, authorize the publication of any public record which he or she considers to be of sufficient public interest.²⁵⁷

There are many NGOs working in Tuvalu. The Tuvalu Association of NGOs (TANGO) is an umbrella organization of 48-member NGOs. TANGO assists NGOs in their developmental work through capacity-building and networking.²⁵⁸ One of the main roles of the NGOs is to heighten environment and health awareness, but there are others such as the Tuvalu National Council of Women and the Tuvalu National Youth Council that work on empowering women and encouraging developmental youth projects respectively.²⁵⁹ It appears that there is not currently a specific focus on RTI.

252 RNZ. 2014. Tuvalu Appoints First Chief Ombudsman. *RNZ*. 12 August. [online]. Available from: <https://www.rnz.co.nz/news/pacific/251919/tuvalu-appoints-first-chief-ombudsman>

253 *Ibid.*

254 *Oaths and Statutory Declarations Act 2008* [Tuvalu].

255 *Public Records Act 1979* [Tuvalu].

256 *Ibid.*, ss. 19, 14(a).

257 *Ibid.*, s. 15.

258 Nexus Commonwealth Network 2019. Find National NGO expertise in Tuvalu. [online]. Available from: http://www.commonwealthofnations.org/sectors-tuvalu/civil_society/.

259 *Ibid.*



Figure 7: Dashboard on PICs without Specific RTI Regimes

| COUNTRY | CONSTITUTION | RTI LAW/POLICY | PROACTIVE DISCLOSURE |
|---------------------|---|---|---|
| 1. FSM | Article V Freedom of expression No explicit right to information | Draft FOI law | Government website |
| 2. Kiribati | Article 12 Freedom of expression No explicit right to information | 2014 - Draft RTI Strategy/ (CATIS) Steering Committee (KIRICOM) | Government website |
| 3. Marshall Islands | Section 1 Freedom of speech/ press | | No official Government website Parliament website |
| 4. Nauru | Article 12 Freedom of expression RTI inclusion proposed | 2009 Proposals: Ombudsman's Office proposed to have oversight of RTI regime development | Government Info Office (GIO) Nauru Media Bureau (NMB) |
| 5. Niue | | | Government website |
| 6. PNG | Section 51 Right of access to information | 1999 - Draft CSO RTI Bill 2016 - RTI Steering Committee/Bill/Action Plan (OGP commitments) | No Government website Parliament website Some agencies |
| 7. Samoa | Section 13 Freedom of expression | Under consideration | Government website SamLII Government Press Secretariat |
| 8. Solomon Islands | Section 12 Freedom of expression/ media RTI inclusion proposed | Draft Law and Policy | No Government website Parliament Some agencies |
| 9. Tonga | Clause 7 Freedom of expression | 2010 FOI Policy/National Imp. Plan Steering Committee (FOISC) | Government website PMO/MEIDECC MIC. Tonga Legislation Online |
| 10. Tuvalu | Section 24 Freedom of expression | | Government website |

| COUNTRY | OMBUDSMAN OR SUBSTITUTE | ICT/E-Gov | | CSOs |
|---------------------|-------------------------|-----------------------|----------------------|---|
| | | Website | Social Media (Gov't) | |
| 1. FSM | Auditor General | Government | Facebook | Active FANGO PY4C |
| 2. Kiribati | Public Service Office | Government | Facebook | Active KANGO Kiribati Corruption Kickers Network |
| 3. Marshall Islands | Auditor General Office | Government Parliament | - | Small number |
| 4. Nauru | Dept. of Audit | Government | Twitter | Limited |
| 5. Niue | Dept. of Lands | Government | - | - |
| 6. PNG | Appointed | NEFC Parliament | - | Active TI Alliance of Solwara Warriors |
| 7. Samoa | Appointed | Government | Facebook Twitter | Active eg. CSSP JAWS |
| 8. Solomon Islands | Appointed | Government Parliament | - | Active TI |
| 9. Tonga | Appointed | Government | Facebook | Active eg. CSFT |
| 10. Tuvalu | Appointed | Government | | Active E.g..TANGO National Council of Women Tuvalu National Youth Council |

| | | | | |
|--|--------------------------------------|---------------------------------------|--|---------------------------------|
| CATIS – Communication & Access to Information Strategy | CSFT – Civil Society Forum of Tonga | CSSP – Civil Society Support Program | FANGO – FSM Association of NGOs | |
| JAWS – Journalists Association of (Western) Samoa | KANGO – Kiribati Association of NGOs | KIRICOM – Kiribati Steering Committee | NEFC – National Economic & Fiscal Commission | PY4C – Pohnpei Youth for Change |
| PYFAC – Pacific Youth Forum Against Corruption | TANGO – Tuvalu Association of NGOs | TI – Transparency International | | |

- ← Except for Niue, all Constitutions guarantee RTI, either as part of freedom of expression or as a stand-alone provision.
- ← Five PICs have made firm commitments or developed strategies or draft RTI laws.
- ← All PICs engage in limited forms of proactive disclosure through Government, Parliamentary or related websites.
- ← All PICs have either appointed an Ombudsman or have established non-Ombudsman representative agencies.
- ← Five PICs have incorporated social media as part of their public outreach strategies in the form of Facebook and/or Twitter.
- ← Except for Niue, there is moderate to strong CSO activity in all PICs.



Section 5: Recommendations

Other than the Guiding Principles (see Section 2.1.A), the following are some non-exhaustive recommendations to consider:

- Review the current RTI laws to address the absence and/ or inadequacies of key provisions and institutional framework arrangements;
- Anticipate implementation challenges by addressing them in the drafting stage (e.g linguistic diversity, cultural norms, designation of nodal agencies, low literacy rates);
- Develop new or update existing implementation plans to provide better coordination and accountability of implementation efforts;
- Refine provisions on request handling and appeals procedures to specify the appointment of information officers in key public bodies and their roles, provide for varied modes of requesting information and establish timelines for the acknowledgment, transfer and disposal of applications for information and for appeals;
- Designate an oversight mechanism in the form of an Information Commissioner, an Ombudsman or other agency such as a Ministry of Justice to monitor, evaluate and guide the implementation of the laws and to act as an external body to which affordable and timely appeals may be made prior to approaching the courts;
- Leverage the role of an existing Ombudsman, as an alternative or interim mechanism, to whom complaints about the implementation of RTI laws may be made where establishing a separate oversight body might be difficult or too costly;
- Establish steering committees to help develop RTI policies and laws in line with the realities, budgetary needs and preparedness of key public bodies;
- Capitalize and draw from the experiences of PICs in the region and other Small Island Developing States in the implementation of RTI laws; and
- Ensure that necessary RTI trainings are provided to designated information officers, as well as outreach and awareness-raising to the public.

