

Freedom of Information for Pacific Policy Makers

2008 Regional Workshop Report

Honiara, Solomon Islands
30 June – 2 July 2008



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PACIFIC ISLANDS FORUM SECRETARIAT



Pacific Centre



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Disclaimer:

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I. MEETING SUMMARY

On 30 June 2008, representatives from ten Forum Island Countries (FICs) convened in Honiara, Solomon Islands for the first regional meeting on freedom of information legislation for Pacific government officials. The meeting was organised by the Pacific Islands Forum Secretariat (PIFS) with support from the UNDP Pacific Centre. The meeting supports work under the Pacific Plan, the instrument which provides guidance to the work of the Pacific Islands Forum Secretariat as well as of relevant development partners. Under Initiative 12.3 on enhancing governance mechanisms, Freedom of Information (FOI) is identified as a milestone in support of the Plan's Good Governance Pillar.

FOI is still a relatively new concept in the Pacific. In 2005, the Commonwealth Parliamentary Association and Commonwealth Human Rights Initiative held a meeting on FOI for Pacific members of parliament.¹ In 2006, the UNDP Pacific Centre held a FOI workshop for Pacific Civil Society Organisations (CSOs). Most notably, in February 2008, the Cook Islands Government became the first FIC to pass a FOI law. This achievement by Cook Islands is a very positive and encouraging sign for the region. PIFS and the UNDP Pacific Centre were keen to build on this breakthrough, by organising a regional workshop to bring together policy makers and senior officials from the Pacific to discuss the value of freedom of information as an important tool for strengthening and enhancing good governance in national governance and the Pacific region.

Officials who attended the workshop were from key agencies such as the Prime Minister's Office, Attorney General's Office, Information Ministry, Leadership Commission and Ombudsman offices. It was envisaged that the workshop would encourage and empower participants to raise awareness in their countries in support of FOI. The workshop also aimed to build participants' capacities to recognise international best practice and standards in FOI law-making and to identify strategies for tackling some of the key practical issues that will have to be addressed if and when Governments begin implementing a new information disclosure regime.


Solomon Islands Prime Minister, the Honorable Dr Derek Sikua, opened the meeting, acknowledging the need for the region to "better accommodate freedom of information and to realize how its values could contribute to the social and economic development of our countries". The Prime Minister



recognised that the tyranny of distance, especially for countries with a scattered 'geographical spread' like Solomon Islands, would always present a challenge to the goals of an FOI regime, but technological advances in the form of internet and mobile phones were slowly easing this burden. It was very encouraging that the Prime Minister committed his Government to "work closely with the Pacific Islands Forum Secretariat and other stakeholders in considering a possible freedom of information policy and legislation that could give effect to the realization of freedom of information".

Status of FOI in the Pacific – current to June 2008

- ◆ Australia and New Zealand enacted FOI laws in 1982 and Cook Islands enacted the Official Information Act in February 2008. (NB: One year has been given for implementation preparation, such that the Act will come into force on 7 February 2009.)
- ◆ Article 51 of the PNG Constitution explicitly recognises the right of reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society. In 1999, civil society developed a draft FOI Bill.
- ◆ Article 174 of the Fiji Constitution requires Parliament to enact an FOI law. In 2000, an Exposure Draft FOI Bill was released by the Government but lapsed after the 2000 coup. In 2004, civil society launched a model FOI Bill. An FOI Bill was developed by the Government in 2005/06, but no progress has been made since the December 2006 coup. The Interim Government listed passage of an FOI law in its 11-point plan.
- ◆ Article 12 of the Kiribati Constitution and Article 24 Tuvalu Constitution include the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.
- ◆ In Nauru, Article 12 of the Constitution recognises the right to freedom of expression, but there is no reference to the right to information. However, during the 2006/7 review of the Constitution, it was proposed to introduce a specific right to information.
- ◆ Solomon Islands has included a specific Right to Information in their draft Constitution developed in 2003/04.
- ◆ In Vanuatu, Transparency International developed a model FOI Bill and a civil society coalition is now working to develop model legislation.



In summary, in addition to important context setting discussions to ensure that all participants were aware of the many unique challenges of the Pacific, the meeting was divided into three main parts aimed at providing policy-makers with information on whether FOI legislation is useful for their country context and if so, to provide them with a grounding on the basic legal principles and implementation issues for consideration, which they could then take back and discuss with their government colleagues:

- ◆ **Context setting to discuss the Pacific challenges in accessing information:** Ms. Angie Heffernan from the Pacific Centre for Public Integrity facilitated discussions to draw out the key issues for participants in terms of practically implementing FOI in the Pacific.
- ◆ **Day 1 – The Value of the Right to Information to the Pacific:** Ms. Charmaine Rodrigues, the Pacific Centre Regional Legislative Strengthening Expert discussed the usefulness of freedom of information in the Pacific, with a special focus on its value of participatory democracy and development.
- ◆ **Day 2 – International best practice in FOI law-making:** Mr. Andrew Ecclestone of the New Zealand Ombudsman office discussed the core principles that should be considered and enshrined in an effective FOI law, noting however that there is no “one size fits all” approach and each country should develop a law suitable to its domestic context.
- ◆ **Day 3 – The Practical Challenges of Implementation:** Ms. Janet Maki, the Cook Islands Ombudswoman, discussed the process of enacting Cook Islands’ new FOI law and some of the early implementation issues they are managing. Ms. Natasha Bodden, the Policy Analyst at the Cayman Islands Freedom of Information Unit, discussed the implementation challenges and strategies the Unit has developed to implement the country’s new FOI law, which was passed in October 2007 and comes into force in January 2009.



II. OBJECTIVE, EXPECTATIONS AND DESIRED OUTCOMES

At the outset of the workshop, FIC representatives discussed their expectations of the three-day meeting. Issues raised fell into the following themes:

Benefits of FOI

- ◆ Learn about freedom of information concepts, benefits and challenges of FOI legislation, particularly taking account of country contexts;
- ◆ Learn about the implications of an FOI regime on the private sector; and
- ◆ Unpack the gender dimensions of FOI and how to ensure access for men and women.

Legal issues

- ◆ Learn about model FOI legislation and its adaptability to Pacific countries;
- ◆ Unpack how FOI interacts with privacy laws; and,
- ◆ Review legal frameworks and guidelines, and find out about the resources and technical assistance available from and through the PIFS and UNDP for in-country FOI awareness programmes and legislation development.

Challenges of implementation in the Pacific

- ◆ How can FOI work within the Pacific cultural context?
- ◆ How can Governments raise public awareness and get public buy-in for FOI?
- ◆ What strategies have been effective in breaking down the “culture of secrecy” within bureaucracies?
- ◆ How can Governments make FOI work in the context of their local administrative structures (e.g. Ombudsman’s offices);
- ◆ How can existing accountability institutions be engaged in progressing FOI? Should and could they take the lead in implementing FOI?
- ◆ How can current government communication strategies usefully integrate FOI objectives?
- ◆ How can an information dissemination strategy be developed in a rural or outlying island setting?
- ◆ How can the media play a role in partnership with government?



Need to share experiences and technical expertise

- ◆ Gain lessons from the experience of other countries on the implementation of FOI;
- ◆ Identify technical expertise and resources available from donors and development agencies in the development and implementation of FOI.




III. THE VALUE OF THE RIGHT TO INFORMATION TO THE PACIFIC

At the outset, participants were informed that there are three main components that underpin the right to information:

- ◆ **The right to request information.** Every person has the right to request information from public authorities, and from private bodies at least where the information is needed for the exercise or protection of a right. Applicants should not have to justify why they need information from public bodies.
- ◆ **Duty on the government to meet the request, subject to key exemptions in the public interest.** Governments should have systems in place to process requests for information, including effective records management systems so that release of information is systematic, structured and managed. When assessing applications, exemptions to disclosure may be necessary to prevent 'harm' to the public interest from releasing information. An independent 'official' should be mandated to oversee decisions and ensure that information requests are being appropriately handled.
- ◆ **Duty on the Government to provide certain baseline information proactively, on a routine basis without request.** Proactive disclosure greatly reduces the burden of releasing the same information repeatedly. More broadly, it creates an atmosphere of trust between the public and government and enables people to more effectively engage with the government.


Discussions focused on the value of the right to information for Pacific Governments. The UN has long recognised the right to information as a fundamental human right and which underpins all other freedoms. The Pacific Information Disclosure Policy Toolkit² which was distributed to participants discusses the reasons why the right to information is valuable to the Pacific in more detail, but in summary, the right to information:

- ◆ **Promotes democratic governance.** Having an informed constituency that is engaging with government regularly, rather than only every 3-4 years when elections are held, contributes to more effective governance. When people can access real information, as opposed to propaganda,



they can make better choices about who to vote for. Having an informed public shifts the balance of power from the government to the public, as the public can ask questions about what is happening around them and therefore hold the government to account.

- ◆ **Facilitates public sector efficiency.** An access to information regime requires strong information management systems. Improved information management will enable public officials to operate more efficiently. The idea that the decisions they make may become public will also encourage public officials to ensure their policy advice and decisions are defensible and the arguments are well-considered. The threat of public oversight will improve overall policy advice, and ensure that decisions and advice are properly documented and based on high quality advice.
- ◆ **Supports decentralization.** This is particularly relevant in terms of service delivery in the Pacific. Throughout the region, many governments are pursuing decentralisation policies to bring accountability for services closer to the people, but money and effort is leaking through the system. Providing information to the public enables them to clarify the responsibilities of the different levels of government which in turn enables the general public to act as ‘watchdogs’ to ensure services are being properly provided and to hold agencies accountable.
- ◆ **Supports participatory development.** Allows for a more inclusive approach to development. With information in hand, the public are empowered to engage with their governments to provide inputs into the design of development activities and to continue to be involved in implementation and monitoring of projects, programs and policy decisions.
- ◆ **Fosters economic development.** Transparency and open government has long been seen as a key to strong economic development and international competitiveness. The private sector – particularly in terms of foreign investors – is more likely to invest in countries where they can easily access information about the legislative and regulatory environment, investment guidelines for setting up a business venture and how to obtain relevant permits and licenses etc.

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- ◆ **Exposes corruption.** Access to information legislation is an effective tool to empower the public to hold governments, public servants and the private sector (in certain circumstances) accountable. By opening up information held by governments, people can see for themselves that the government is doing what it says it is doing.
 - ◆ **Strengthens state-building.** Depending on the sensitivity of issues, making information accessible to the public can mitigate conflicts by reducing the circulation of misinformation. Misinformation and the grinding of the Pacific’s “coconut wireless” could result in unnecessary tensions between communities, whereas armed with relevant information people can understand the issues confronting them and may be less likely to feel disempowered and distrustful of government. In this context, information disclosure helps to build and gain trust in governments and could even facilitate dialogue between divided communities and between the government and communities.
 - ◆ **Improves media reporting.** Access to information encourages fact-based reporting, significantly reduces misreporting, and may improve the investigative skills of journalists who are often unable to access hard data. There should be no excuses for journalists not to be fully informed and to report with greater accuracy and fact. By reducing the media’s reliance on rumors, a higher benchmark of reporting can be set and met.

At the end of the session, participants were shown a short DVD from the Mazdoor Kisan Shakti Sangathan (MKSS) about the usefulness of the right to information to accountable and participatory development at the grassroots level of society in India. For copies of the DVD, contact the UNDP Pacific Centre.



IV. INTERNATIONAL BEST PRACTICE IN FREEDOM OF INFORMATION LAW-MAKING

Mr. Andrew Ecclestone, an official from the New Zealand Ombudsman's Office, presented a range of best principles that have been developed based on national FOI legislations throughout the world. Participants were encouraged to keep these principles in mind when consideration is given to drafting national FOI legislation. Notably, the principles were drawn heavily from "9 FOI Principles" framework developed by Article 19, an international NGO which works to promote FOI globally.

At a general level, participants were encouraged to recognise that the golden thread which binds a good FOI law is that access to information that is held by public authorities is a human right. Everyone is entitled to information held by government. Exemptions should be limited, narrowly drawn and focused on protecting the public interest. In general, enactment of laws 'forces' compliance from people and organisations under its jurisdiction. In countries where it may be difficult to enact legislation, as a first step, governments should be encouraged to develop information disclosure policies, either for the whole of government or on a sectoral basis. This alternative approach still supports the government machinery to disclose information and encourage better maintenance of records.

For the wider Pacific, it was recognised that a key challenge will be for FOI legislation to be seen as being locally driven and developed. It will be important to develop partnerships and buy-in from all stakeholders, including governments, Members of Parliaments, officials, the public and civil society groups. In the Cayman Islands, the FOI lawmaking process was very participatory in nature, with the FOI Bill published on the Government's website and made open to the general public for their comments and views. Many comments and suggestions were received from the public and civil society organisations locally and worldwide. By contrast, Cook Islands had a different strategy, with the development of their FOI legislation being led by the Government.




Good practice principles underpinning a Freedom of Information regime:

1. Maximum Disclosure

The fundamental principle underpinning a good FOI law is that all information held by public bodies should be open for disclosure, subject to very limited exemptions. Within this broad principle however, some key issues need to be considered and answered taking into account the domestic context:

- ◆ **What type of information:** A practical definition needs to be agreed on as to what types of information are covered by the law. In New Zealand for example, even where information is not written down, if an official has knowledge of something and gained that knowledge during his or her official duties, he or she can be required to write it down and provide it to a requester. In India, people can request samples of materials under the law, so that they can check for example, whether public roads and buildings have been constructed using proper materials.
- ◆ **Who must provide information:** Countries need to decide which bodies will be covered by the law. At the very least, a wide range of public authorities should be covered – recognising that any sensitive information they hold will be protected by exemptions. In this context, coverage could include the Courts (e.g. information relating to administrative processes, budgets etc), the legislature (though there is the issue of parliamentary privileges, so disclosure could be limited), the Office of the Head of State (at least for administrative information) and the security and intelligence services. Consideration should also be given to including private bodies, for example, companies providing public services like water, electricity, gas or telecommunications. Participants also raised the issue of whether NGO's should be covered, at least where they are performing a public service function on behalf of the state or receive public funds.
- ◆ **Who can request information:** Countries need to decide who is eligible to request information, i.e., only citizens, residents in a country, or all persons irrespective of immigration or residential status. In many countries in the Pacific, many people are permanent residents and not citizens, so this is an important issue. Under Cayman Islands' FOI law, the right to access information is applicable to everyone, anywhere in the world.



In Cayman Islands, it is an interesting feature of their FOI law that unless the information being requested is for personal information, applicants must only supply a name and a mode to be contacted - but the name they supply does not necessarily have to be their own! In a small island scenario where ‘everyone knows everybody’, understandably, requesting information about an issue that involved a relative or a neighbour could have social repercussions. This clause recognises this issue and allows for the possibility of ‘anonymous’ requests.


2. Obligation to publish

Public bodies should be under an obligation to publish and update key information, in an easily accessible medium and format. For example, information about government departments (including contact details), government programmes and services being provided to the public, relevant forms/fliers/paperwork, departmental budgets and expenditure information, opportunities for the public to engage in government initiatives and the details of the award of licenses/permits/subsidies and contracts could all be regularly disclosed and published.

Proactive disclosure is particularly useful in the Pacific where the ‘tyranny of distance’ has made it difficult for many people, particularly in rural areas, to find out about what the government does. Proactively disseminating information out to communities could help bridge this divide. In this context, participants were very clear that it will be important to harness available technology to address information access, especially for the disadvantaged rural communities.

Most outer-lying Island communities have access to community notice boards which could be utilized in the dissemination of information. For example, information about the budgets of local schools and health clinics could be pinned to notice boards so that communities could then ask more informed questions about service provision. Public announcements could be made, particularly on the radio, which is a key medium for most Pacific Islanders.

However, outreach continues to be a problem. For example, in Tonga, town officers are the main government contact points in villages. The challenge is to get information out to town officers to disseminate to the villages, including




those in outer islands. In Vanuatu, it was reported that there is a disconnect between communities living in remote islands and the central Government that is perceived to exist due to the lack of information that reaches them about the Government. Radio transmission from the capital, Port Vila, to the remote islands is poor but where these islands are closer to neighbouring Pacific states like New Caledonia, Solomon Islands and Papua New Guinea the people are well-informed about political, social and economic issues in these countries as the radio signals are far superior. In Tuvalu, radio is the only means of communication to the outer islands. Currently radio is serviced through FM which limits access, and is affected by poor satellite services. As a short-term remedy, important radio sessions are recorded by tape and distributed to outer islands via the Government's shipping services.

In Solomon Islands, the Government and UNDP collaborated on the development of the People First Network (PFNet), a network of 20 computers located throughout Solomon Islands, with email and internet services for remote island stations. The Government has entered into an MOU with PFNet and uses their stations to make vital information readily available to the public. Each fortnight, Government newsletters are sent through the email stations and are then printed and distributed around the centres. The Government also has a free feedback service, where members of the public can write to the government at no charge to report back on problems.

3. Limited exemptions based on the public interest

It is a well-accepted FOI principle that not all information can be released to the public because some information is so sensitive that its release might actually harm the national interest. To protect against such disclosures, FOI laws have a section on "exemption", which describe the circumstances in which information can be withheld. Global good practice suggests that Forum Island Countries need to be careful to avoid blanket exemption for whole institutions, such as the military, or for entire classes of information, such as Cabinet documents. Rather exemptions need to be issues-based, and premised on whether releasing the information will serve or harm the greater public interest.




Article 19's Model Law suggests that every test for exemptions should therefore be considered in 3 parts:

- (i) Is the information covered by a legitimate exemption?
- (ii) Will disclosure cause substantial harm?
- (iii) Is the likely harm greater than the public interest in disclosure?

Some common exemptions were discussed to highlight the principle that a good exemption will be drafted to focus on the HARM potentially caused by disclosure, rather than the type of information. Sensitivity is also time-bound, such that release should be considered 'at the time of request'. A few exemptions were discussed in more detail to highlight these issues:

- ◆ **Information that would harm national security, defense or law enforcement:** Instead of imposing a blanket exemption for all information held by the police, intelligence services or military, the focus should be on the potential harm caused to the investigation of offences, collection of evidence, apprehension of criminals, a fair trial, etc.
- ◆ **Information that would harm international relations:** Instead of applying a blanket exemption for information given by another country or body in confidence, the issue should be whether disclosure would harm the national interest. For example, if a donor, development partner or other inter-governmental organisation wants something kept secret, the question should be whether withholding the information is in the national interest, not just the interest of that body.
- ◆ **Information that would harm national financial and economic interests:** For example, premature disclosure of new interest rates or monetary policy. But note the time issue. For example, during trade negotiations at the WTO or during the ACP talks, the position of governments may not be released as it may undermine its negotiating position. But once a trade agreement is reached, it might be appropriate to release information about the negotiations, for example, to help interested stakeholders to understand the basis of the agreement.
- ◆ **Premature disclosure of a government policy:** Sometimes, the early release of a new government policy could actually undermine its efficacy, such that the information should be withheld. Nonetheless, information about policy development and the advice provided by officials to Ministers should not necessarily be withheld because key stakeholders have a right to know whether Ministers are getting proper advice and then whether they are making sound decisions.

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- ◆ **Commercially confidential information:** Some commercial information, most notably trade secrets, must be protected. However, while other commercial information may be sensitive it may still be in the public interest to disclose it, for example, information about environmental hazards or threats to public health or safety.
 - ◆ **Unwarranted invasion of personal privacy:** An FOI law should not be used to spy or invade the privacy of individuals. An exemption is therefore necessary to protect personal information. However, this exemption may not necessarily apply to public officials because the public has a great right to know about what they do in their official capacity as public officials and as it relates to their public duties.

4. Cheap, timely independent oversight

A strong FOI regime needs to include an effective, independent appeals body which has the power to review refusal to disclose information and order disclosure if it appears that the law has not been properly complied with. For example, information requests cannot be refused simply because its release could cause public embarrassment for government officials. An oversight body – which ideally sits outside the bureaucracy – needs to have powers to investigate appeals, make decisions and enforce them. In some jurisdictions, independent oversight bodies can also impose penalties where the law has not been complied with.

In terms of independence, the courts are an obvious appeal route, but they are usually very costly and time-consuming. Internationally, different models have been used, for example, Ombudsman's office, a dedicated Information Commissioner or a tribunal. In New Zealand and the Cook Islands, the Ombudsman office has powers to review information decisions.

In the Pacific, considering the special challenges of Small Island States in terms of limited human and financial resources, it is important to consider carefully what institution is best placed to handle this role. For example, in Cook Islands, instead of setting up a new body, the Government tasked the existing Ombudsman with FOI. This will maximise limited resources. As countries like Solomon Islands, Kiribati, Tuvalu and Palau consider setting up an anti-corruption commission, Leadership Code Commission or Tribunal and an integrity institution respectively, it will be important for governments to consider which of these organizations can implement FOI. Clearly, additional responsibilities for oversight of an FOI law require additional resources to ensure effect implementation of the law.



5. Simple, cost-effective, timely processes for facilitating access

It is important that the law clearly sets out the procedures on how to deal with requests. This also helps public bodies to have a clear understanding of their new responsibilities. Ideally, requests for information should be processed within a reasonable amount of time by an appropriately designated official charged with the specific responsibility for processing requests. It is recommended that agencies could appoint an Information Officer to be responsible for deciding on the release of information. The Information Officer should be a relatively senior official in the organization, who has the confidence of the head of the organization. Information Officers can be supported with training to familiarize themselves with the law and their specific role and responsibilities. Notably, the Information Officer should not necessarily be the departmental media officer. Public relations and media work require different skills to dealing with information disclosure requests. Information Officers have a role in releasing information in addition to the processes of information release that every official is responsible for normally.

Under a user-friendly FOI regime, public bodies have a duty to assist individuals requesting information. In the Pacific, this duty should explicitly cover people who are illiterate or do not speak the official language. Requests for information should be able to be made by telephone, so that people in outlying islands do not have to rely on the post. It should also be possible to make requests in local languages, rather than just the official language, as many Pacific countries have a large number of local languages and dialects.

Ideally, the procedures for processing requests for information include:

- ◆ Acknowledgement of requests within a reasonable time;
- ◆ Processing requests within a set deadline, usually between 5-20 working days;
- ◆ Requests transferred as soon as possible if they are submitted to the wrong government body;
- ◆ Costs for accessing information should not be so high as to deter requesters. In the Cayman Islands, to make a request is free of charge. However, costs may be incurred in the actual processing or delivery of the information requested;
- ◆ Information to be provided in its original format or alternative form if requested;
- ◆ Where information is refused, a written notice provided which includes a justification and information about appeal rights.



6. Monitoring and promoting open government

Experience from elsewhere demonstrates that it is important to constantly monitor the implementation of FOI laws to ensure that the law is being properly applied and that government departments are meeting their statutory obligations. In this context, most FOI laws include a provision which requires that an annual report is produced – either by the independent oversight body or the Department responsible for administration of the Act. The report should be tabled in Parliament. Some Acts also allow the independent oversight body to start their own investigations and table ad hoc reports and recommendations where they believe there is a problem with implementation (e.g. by a particularly agency or regarding a particular provision).

Increasingly, FOI laws are now enshrining obligations on the Government to engage in:

- (1) training for public officials; and,
- (2) public education programmes on the legislation.

In South Africa and India, specific clauses were included on education and awareness, with special mention of the need to undertake programmes for disadvantaged groups. In Cayman Islands, they have already held an Annual Sunshine Week, to educate the public as to their rights under the FOI law. In fact, 28 September each year is celebrated by many FOI advocates as Right to Know Day.



V. PRACTICAL CHALLENGES OF IMPLEMENTATION


Participants felt that FICs need to evaluate for themselves the costs and benefits of having FOI legislation. In this context, FICs will need to consider the bureaucratic and administrative capacities of the governments before committing to enacting FOI legislation. For an FOI regime to work, awareness and buy-in from both government as well as the public is essential. High level commitment from heads of agencies and Ministers will help. Ms Natasha Bodden, Policy Analyst from the Cayman Islands FOI Unit shared many lessons learned from Cayman Islands implementation work, drawing on their own experiences as a small island state. Ms Bodden highlighted at the outset that starting partnerships with government, CSOs and the public from the very early stages of legislative development will help with implementation. The more aware people are of the legislation, the more likely it is to be properly implemented and effectively utilised.

Coordinating implementation

Both Cook Islands and Cayman Islands passed legislation which included a “grace period” of 12-14 months respectively between enactment of the law and the date the law will come into force. This time lag was intended to give the bureaucracy time to prepare for implementation. This strategy has been increasingly utilised in FOI laws around the world, because it recognises that bureaucracies need time to organise themselves to ensure that when requests start coming in, officials are prepared to deal with them.

In Cayman Islands, during the current preparation period (starting October 2007 and ending on 1 January 2009), a FOI Unit was set up to guide implementation. This recognises that it is vital to identify an FOI ‘champion’ that has the respect of government officials as well as that of the public to pursue implementation. The Cayman Islands FOI Unit consists of two staff and a secretary.

The Cayman Islands FOI Unit developed a clear vision for their work, identifying as a priority that they wanted a participatory and transparent implementation process. They were very focused on planning, and prioritised the development of 2 key documents:


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- ◆ **A Global Implementation Plan** for the entire Government, with time lines and milestones for government at large. This would immediately identify, in some detail, key implementation tasks and the agencies responsible for them with strict deadlines for completion. The idea is that the whole of Government would adhere to the plan to ensure consistency across Government which would be monitored by an Implementation Steering Committee and the FOI Unit.
 - ◆ **A Model Action Plan** for individual authorities to guide implementation, which would include prioritised actions/tasks and realistic time lines, based on the Global Implementation Plan. This would allow strategies to be tailored to agencies' particular needs and requirements. To begin with, a Baseline Assessment Sheet was sent to all authorities for completion, to identify their strengths, weaknesses, gaps and needs. This Sheet was then used to inform the individual Agency FOI Action Plans. In a practical sense, the development of the Action Plans made it vital for agencies to appoint persons in the agency to take the lead in getting things ready, which also kick-started the implementation process.

To guide implementation, an early initiative was to set up an FOI Steering Committee (FOISC), approved by Cabinet, which comprised a senior member from each Ministry and Portfolio. This Committee was set up to facilitate participation of the bureaucracy in implementation. Senior officials know their own agencies and are more able to effectively ensure that the requirements that need to be adhered to under an FOI regime are met.

At a more operational level, the Cayman Islands FOI Unit also initiated the establishment of an Information Mangers Network to facilitate communication between the FOI Unit and all departmental Information Managers and between all Information Managers, so they could share their experiences, challenges and lessons learned. The FOI Unit has also been developing a detailed FOI Guidance Manual which can be used by Information Managers to help guide them as they process information requests. It is hoped that this will promote more consistency in decision-making by different officials.

Breaking down public service cultures of secrecy

Many participants identified that within their bureaucracies there exists a strong bureaucratic culture of secrecy. Public servants are not used to sharing information with the public, and many are likely to (at least initially) be resistant to more openness. In Cayman Islands too, it was recognised early



on that a key challenge would be to make public servants realize that FOI is a core part of the functions of every public authority rather than an “add-on”. Changing the innate culture of secrecy that exists within Government is important to ensure that FOI legislation will not result in bureaucrats trying to retain procedures that make access difficult or in officials applying the law improperly.

At the outset, the FOI Unit identified that they needed to develop a training strategy to include sensitisation of all levels of the bureaucracy, including Ministers; Chief Officers; Heads of Agencies; Information Managers and Officers; Records Officers; and other key individuals within Government. It was recognised that while some officials, most notably Information Managers, would need intensive training to ensure they understood the technical details of the entire Act. Other officials could then get more basic training, to ensure that they knew the Act existed, their basic duties and who to refer people to for more information.

The FOI Training Strategy identified:


- (i) Public servants in need of training and the skills necessary for each person;
- (ii) Ways to ensure sensitization of all staff of public authorities, e.g. from receptionists and file clerks to heads of department;
- (iii) Ways to evaluate the training and ensure its continuity when there is a change of staff; and
- (iv) Ways to ensure a process and network of support for Information Managers and training of trainers.

An intensive awareness and training programme has been launched by the Cayman Islands FOI Unit to try to change the mindset of secrecy within Government staff. A total of 3,500 public servants require sensitization by December 2008. With an FOI Unit staffed by 2 active officials, by July 2008, 1,000 having been sensitized already!

Two main training programmes have been developed by the Cayman Islands FOI Unit:

For all public servants:

- ◆ An open call session is sent with staff from all public authorities invited to attend;


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- ◆ Approximately 100 public servants attend each session which is 2 hours in length;
 - ◆ Officials are taught the basics of the FOI Law, including ways to assist their Information Managers
 - ◆ Use of 2 video clips, a PowerPoint Presentation and a Quick Quiz at the end.

Information Managers Training Course:

- ◆ 3-day detailed, intensive course on the FOI Law, Regulations, timelines, procedures;
- ◆ Participants are provided with a Guidance Manual, FOI Workbook (practical examples), other reference material for the use of the FOI Law;
- ◆ Participants are also provided with the sensitization material so they can sensitize their own staff who are unable to attend general sensitization sessions;
- ◆ A Certificate is awarded upon completion of the course for future accreditation.

Records management

For administrative, legal and business reasons, official records are at the heart of any information regime. Without records, people cannot reconstruct what happened and what was decided, which undermines public accountability and efficiency. However, throughout the Pacific it was identified that information and records management will be a key challenge to implementation of FOI. Specific resources will need to be dedicated to cleaning up records and putting systems in place to ensure better record-keeping and information management. In Cayman Islands, it was recognised early on that information and records management was going to be a key issue. Prior to the enactment of the FOI Act, as in the Pacific, records had not been well-kept. In addition, in 2004, a massive hurricane hit Cayman Islands which destroyed many records. Unfortunately, the hurricane appears to also be a useful excuse for continuing poor records management.




Cayman Islands has a National Archives and Public Records Law 2007, which mandates record keeping within Government. The Cayman Islands National Archive (“CINA”) provides records management training to all Information Managers and Records Officers. This is an ongoing process. The Cayman Islands FOI Unit and CINA are working closely to ensure all training is in accordance with the FOI Law and the FOI Unit provides training in accordance with the CINA Guidelines. CINA has published Guidelines which set out the absolute minimum requirements for authorities regarding record-keeping which must be met by January 2009. They have also developed a File Plan template for agencies and a ‘Retention and Disposal Schedule’ has been drafted. Under the FOI Act, the new FOI Publication Schemes requires the File Plan to be available for access by the public, so that people can know what types of documents are held by agencies, which will help them when they make requests.

Public education

Participants identified that currently in the Pacific there is a significant lack of public awareness on how to access government information, and more importantly, how to use it to affect government policies. FIC representatives noted a general lack of resources in improving the dissemination of information to the smaller islands. The effectiveness of most civil services in reaching out to rural and outer-lying Islands is relatively under-developed, and this includes dissemination of information. In the Cook Islands, despite limited resources, the Ombudsman’s office still tries to identify two or three islands per year for awareness programmes about role of Ombudsman. Islands have an Island secretary, and a Mayor who are contact points for Government ministries.

Participants also recognised that there were real cultural dimensions faced within Pacific Islands around how people could access information. In some countries, there will be issues around ordinary people questioning officials who may be prominent figures with a chiefly status, or who are even respected family members. Questioning community elders or senior government officials is a challenge in the current Pacific context. In that sense, a FOI regime ideally will need to provide an enabling environment where citizens feel a sense of empowerment and security to request for information. Ms Natasha Bodden from Cayman Islands noted in this context, that this was one of the reasons why they do not require people to put their names on applications. In a small country like Cayman Islands, which has only 50,000 people, there was real concern that people would be nervous to submit applications if officials could know who they were.




In Cayman Islands, the FOI Unit has a limited public education role because public education has been designated to the Information Commissioner (the independent oversight body which is also responsible for handling complaints from requesters). Nonetheless, the FOI Unit has made sure to proactively bring the public into their work. Public focus groups have been used where members of the public are asked standard questions so the FOI Unit can judge whether and what additional public awareness may be required. To date, the FOI Unit has used its new FOI website as a key medium for reaching the public. For example, FOI Implementation Plans are available at all public libraries and on the website, inviting comment from the public. Minutes of all FOI Committee meetings are published on the FOI website and a Consultation Paper on the proposed FOI Regulations was published on the website and comments invited from the public for a 1 month period.

The Cayman Islands FOI Unit has also used the media actively. They issue press releases on all FOI events and training and regularly do interviews to the press. A Quarterly Newsletter is also circulated in hardcopy, softcopy and published on the website. In 2007, the first Annual Sunshine Week was held which included informative public education events, giveaways, and the like.

Information dissemination

Participants recognised that Governments need to have a greater commitment to improving and enhancing their communications strategies and infrastructure if they are to be more effective in disclosing basic information to the public. This is particularly important because of the scattered nature of the Pacific Islands. New ICT could help, but currently there is a lack of resources in improving existing infrastructure and developing new ones to enhance access. It may be useful for Government to develop more integrated and comprehensive Information Policies, which not only deal with the legal and operational issues around FOI but also the broader information environment, such as internet access, the media, government communications facilities and the like. In this context, it was noted that public broadcasting bodies could be more effectively supported and utilised.

The issue of language will also be a challenge, as many Pacific countries have numerous local dialects which will mean information will need to be calibrated for local needs. Participants noted that information provided and presentations made to communities are more effective when government officials use the local dialect. Even more simply, government information is



often very complex, such that it will be a key challenge for government not only to disseminate more information – but to disseminate information that is useful and can be understood by ordinary members of the public. Notably though, even if Governments provide information in official language, they could look to partnering with churches, NGOs and the media to disseminate the information in a more “digestible” format.


However, there will be challenges to be overcome. For example, in Tuvalu’s experience, while they have one outer lying island which now has internet access, they have had a problem that there is a lack of trained personnel to use the technology. Notably, the relatively high cost of ICT connections is a huge factor, especially with the cost of acquiring and setting up communication satellites. The issue of monopolies providing essential ICT services also adds another dimension in terms of whose interest is being served and costs involved in delivering services. Throughout the Pacific, over time IT systems need to be utilized more effectively to reach the people. There is a need to be creative in the dissemination of information to the public.



VI. WHERE TO FROM HERE?

At the conclusion of the Workshop, participants endorsed an Outcomes Statement which endorsed freedom of information as an important tool for empowering Pacific people to engage in their own development as equal partners with their governments (see Annex 1). FIC participants were also requested to complete Feedback & Follow-up Forms to identify their ongoing needs. The Workshop discussions and subsequent feedback identified the following key priorities for follow up:

- ◆ The majority of participants identified that further awareness-raising and capacity development activities would need to be run at the national level with policy-makers and/or the public, most likely through local or national workshops. It will be important to bring in key line ministries and integrity agencies, as well as civil society to broaden domestic commitment to FOI in principle, in order to strengthen support for the development, implementation and utilization of an FOI law;
- ◆ It was suggested that the Workshop participants themselves, as well as other Pacific or even international FOI advocates could be used to build and develop a cadre of FOI champions within the Pacific who can advocate for FOI to other Pacific island countries. Pacific-Pacific exchanges would also be valuable helping each other.
- ◆ Some participants identified that they were already keen to draw on technical assistance to support the development of Cabinet submissions and/or FOI legislation. Specific national requests for assistance will be directed to PIFS;
- ◆ All participants commented very favourably on the useful contribution from the resource person from Cayman Islands, as they found her practical experiences from a Small Island State particularly relevant to their own settings. Consideration could be given to utilising similar types of resource people in future, from the Caribbean and/or other small island states to support the regional experts;

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- ◆ As the only FIC to enact an FOI law, Cook Islands identified that they could utilise external technical assistance to support implementation, but it was important that such assistance was coordinated if it was to be effective. It was suggested that consideration could be given to PIFS undertaking such a coordination role;
 - ◆ It was suggested that to keep momentum strong and to capture lessons learned regarding the practicalities of developing and implementing FOI legislation, a ‘Pacific FOI information-sharing network’ and/or other such experience-sharing mechanisms could be developed, perhaps facilitated by PIFS. In the meantime, the UNDP Pacific Centre Legislative Strengthening Expert has already started an informal email network to share FOI information which may develop into something stronger over time;

PIFS and the UNDP Pacific Centre are committed to responding to FIC participants’ feedback and identified needs, and will develop an ongoing programme of support and technical assistance to FICs in support of the Pacific Plan to promote the development of effective freedom of information regimes in the region.

Endnotes

¹ See (1) *FOI Conclusions by Pacific Parliamentarians* at http://www.humanrightsinitiative.org/programs/ai/rti/news/pacific_foi_2005_wshp_conclusions.pdf and (2) *Report and Recommendations from Regional Workshop with Pacific Parliamentarians* at http://www.humanrightsinitiative.org/programs/ai/rti/news/2006/pacific_mps_wkshp_foi_booklet_jan06.pdf

² <http://www.undppc.org.fj/userfiles/file/Pacific%20-%20Info%20Disclosure%20Toolkit%20-%20Jul-06.pdf>

Annex 1: Outcomes Statement



PACIFIC ISLANDS FORUM SECRETARIAT



“REGIONAL FREEDOM OF INFORMATION WORKSHOP FOR PACIFIC POLICY-MAKERS”


30 June – 2 July 2008

Final Outcomes Statement

Official representatives from Cook Islands, Kiribati, Nauru, Niue, Palau, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu, gathered in Honiara, Solomons Islands for a three-day meeting to discuss the value and relevance of freedom of information for Forum Island Countries, a milestone for implementation in the Pacific Plan endorsed by Pacific Islands Forum Leaders in 2005. The meeting was hosted by the Pacific Islands Forum Secretariat in partnership with the UNDP Pacific Centre.


The workshop was designed for Pacific senior officials to identify arguments in favour of freedom of information, good practice standards on freedom of information law-making and practical issues for consideration when implementing freedom of information and to promote the development of freedom of information regimes in the region. This workshop complements other activities which support Initiatives 12.1 (support to key integrity institutions), 12.2 (Forum Principles of Good Leadership and Accountability), 12.3 (enhancing governance mechanisms) and 12.6 (supporting participatory democracy) of the Good Governance Pillar of the Pacific Plan.

Participants noted the Opening Statement by the Honourable Prime Minister, Dr. Derek Sikua in support of freedom of information and how its value could contribute to the social and economic development in the region. Participants specifically noted that the Prime Minister’s statement committed the Government of the Solomon Islands to “work closely with the Pacific Islands Forum Secretariat and other stakeholders in considering a possible freedom of information policy and legislation that could give effect to the realisation of freedom of information – one of our fundamental human rights”.



Participants acknowledged that taking steps towards freedom of information is a key milestone for enhancing good governance in the region. In supporting the implementation of freedom of information participants recognised that:

- ◆ Freedom of information is an important tool for empowering Pacific people to engage in their own development as equal partners with their governments. In the Pacific, freedom of information can be harnessed as a tool for promoting participatory development, strengthening democratic governance, facilitating better government service delivery, supporting decentralisation, fostering economic development, promoting public accountability and transparency, supporting responsible and effective media reporting, and promoting and protecting human rights.
- ◆ Governments should be encouraged to consider developing freedom of information policies, laws or regulations. Access to information policies, laws or regulations and processes need to be designed to serve the public, in urban, rural and outlying island areas and should be simple, cost-effective and user-friendly.
- ◆ In the absence of legislation, Governments bodies and members of the legislature should proactively and routinely disclose and disseminate more information to the public that would enhance their transparency.
- ◆ Governments should recognise and work with the media and non state actors as partners in developing and implementing access to information.
- ◆ Development partners should work with Governments and other non state actors to ensure that legislative drafting assistance is available, upon request, to support Governments that wish to develop an access to information policy, law or regulation.
- ◆ Development partners should work with Governments to ensure that technical assistance, funding and/or other needed resources are available, upon request, to support Governments and other national implementing bodies who are working to implement an access to information policy, law or regulation.

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- ◆ Efforts should be made to harness information and communication technologies to promote access to information for Pacific peoples, including the radio, internet and television. Initiatives like the information partnership being implemented by the Solomon Islands Government and People First Network provide good models for consideration by Pacific Governments.
 - ◆ The important role that public service broadcasters can play in promoting freedom of information to the public should be recognised and supported with political will and financial resources.
The Pacific Islands Forum Secretariat in partnership with development partners such as the UNDP Pacific Centre and other organisations should continue to work with Forum Islands Countries to support work on developing freedom of information in the region.

Honiara, Solomon Islands

2 July 2008

