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## INFORMATION NOTE

## United Nations Pacific Regional Anti-Corruption (UN-PRAC) Project

# Right to Information in the Pacific

The Right to Information (RTI) is a powerful anti-corruption tool that gives all persons the right to access information held by public bodies. 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 that are within the public interest.

Commonly referred to as Freedom of Information (FOI) or Access to Information (ATI), RTI is an integral component of the right to freedom of expression, enshrined in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.<sup>1</sup> Additionally, the United Nations Convention Against Corruption (UNCAC) references RTI as a necessary component in the fight against corruption (notably in articles 5 and 10),<sup>2</sup> and Sustainable Development Goal (SDG) 16 includes the target (see sub-target 10) of ensuring public access to information in accordance with national legislation and international agreements.<sup>3</sup>

As at January 2019, 125 countries had adopted RTI laws, with at least 31 countries adopting such laws since 2013.<sup>4</sup> This progress indicates that furtherance of international treaty obligations, as well as an indication by the international community of the key benefits derived from the introduction of RTI regimes. These benefits may include: the increased detection of corruption, as members of the public are able to access key facts and data from governments, which can assist in holding governments to account; greater transparency in the provision and access to social services and opportunities, as RTI laws create greater transparency and accountability in this sphere; enhanced public sector efficiency, through improvements in information and records management; as well as the

strengthening of media reporting through easier access to more accurate and accessible government information.

RTI laws are typically predicated on the primary principle of maximum disclosure and are commonly designed to capture and articulate some key elements. These elements include obligations on the government to: facilitate a process for the public to request access to information, as well as to provide an appeal process where that access is denied; ensure that the scope of documents and information considered exempt from disclosure is limited and subject to harm and public interest tests; and ensure that governments are proactively publishing information, whether subject to an RTI request or otherwise.

The majority of Pacific Island countries (PICs) are parties to the international instruments discussed above and are also further obliged to facilitate RTI under regional instruments such as the Pacific Plan, a multi-country framework agreement,<sup>5</sup> the UN Pacific Strategy<sup>6</sup> and the 2018 Boe Declaration (see Table 1).<sup>7</sup>

## Status of RTI in the Pacific

In the Pacific, the Cook Islands, Fiji (not yet in force), Palau and Vanuatu have formally adopted RTI laws, and it is anticipated that seven additional PICs may adopt RTI laws in the near future. These PICs include: the Federated States of Micronesia that recently developed and is currently reviewing a draft FOI law; the Solomon Islands that has similarly developed a draft FOI policy and law; Papua New Guinea that in 2016 committed to the adoption of an RTI law and a national action plan under the auspices of the Open Government Partnership;<sup>8</sup> Kiribati that developed an

1 *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> 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 5 and 10.

3 Sustainable Development Solutions Network. 2015. Indicators and Monitoring Framework: target 16:10. [online]. Available from: <https://indicators.report/targets/16-10/>.

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

5 Pacific Islands Forum Secretariat. 2005. The Pacific Plan. [online]. Available from: <https://www.adb.org/sites/default/files/linked-documents/robopacific-2013-2015-pacific-plan.pdf>, see Strategic Objective 12.3.

6 United Nations. 2018. United Nations Pacific Strategy 2018-2022. [online]. Available from: [https://reliefweb.int/sites/reliefweb.int/files/resources/UNDP\\_WS\\_FINAL\\_UNPS\\_2018-2022.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/UNDP_WS_FINAL_UNPS_2018-2022.pdf), p. 37 (Outcome 5).

7 Pacific Islands Forum Secretariat. 2018. Boe Declaration on Regional Security. [online]. Available from: <https://www.forumsec.org/boe-declaration-on-regional-security/>.

8 The Open Government Partnership is a multi-lateral initiative that aims to secure concrete commitments from national and subnational governments to promote open government. Further information is available from: <https://www.opengovpartnership.org/>.

**TABLE 1: International agreements and regional partnerships to which PICs are a party**

COUNTRY	UNCAC		ICCPR (Article 19)			SDGs	UN PACIFIC STRATEGY
	Ratified/Acceded		Signed	Ratified/ Acceded	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 Guinea

RTI strategy in 2014; Tonga that has had an Information Disclosure Policy since 2012; Nauru that proposed to appoint an Ombudsman to have oversight of the development of an RTI regime in 2009; and Samoa that is reported to be actively considering the adoption of an RTI law.

## Recommendations

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.

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