



Complaint Handling in Pacific Island Nations without an Ombudsman

**REPORT OF THE 2008 STUDY TOUR CO-ORDINATED
BY THE OFFICE OF THE COMMONWEALTH OMBUDSMAN WITH
MEMBERS OF THE
PACIFIC OMBUDSMAN NETWORK**

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INTRODUCTION

The following seven papers cover the situations for complaint handling against government agencies in the seven Pacific Island Forum countries that did not have an ombudsman in 2008. The seven countries covered are Nauru, Kiribati, Tuvalu, Federated States of Micronesia, Republic of the Marshall Islands, Palau and Niue.

The seven papers are part of a process that involves the Commonwealth Ombudsman in conjunction with other Pacific Island Ombudsman working in support of *The Pacific Plan for Strengthening Regional Cooperation and Integration* (the *Pacific Plan*). The *Pacific Plan* is a Pacific Forum 'living document' that forms the basis for ongoing strengthening of regional cooperation and integration efforts for the benefit of the people of the Pacific. The *Pacific Plan* was endorsed by Forum Leaders at their Pacific Islands Forum Meeting in Port Moresby, October 2005. Forum leaders represent Australia, Cook Islands, Fiji, the Federated States of Micronesia, Kiribati, Nauru, Niue, New Zealand, Republic of the Marshall Islands, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

The Commonwealth Ombudsman in conjunction with other Pacific Island, Australian and New Zealand Ombudsmen have played a role in assisting Pacific Island Forum countries to develop a platform for this type of support. These seven papers reflect part of the collegiate process undertaken to that end. The result of the larger process is the Pacific Ombudsman Alliance, established in November 2008.

The Pacific Ombudsman Alliance provides a sustainable vehicle to meet the *Pacific Plan's* call for coordinated regional ombudsman services. The Pacific Ombudsman Alliance serves to strengthen regional cooperation and coordination between Pacific Island ombudsmen, those working to establish ombudsman functions and like agencies.

The Alliance is a service delivery and support initiative based primarily on mutual support, sharing resources, peer review and a possibility of trials for pooling some resources. It builds upon the former Pacific Island Ombudsman Network established by Pacific Ombudsmen at Madang in 2003 and supported by AusAID since 2004. The Alliance enhances the former Network by providing the institutional form, capacity and resources to coordinate and deliver additional services to all Pacific Island Forum Countries, not only those with an existing Ombudsman office. The following papers provided a baseline for further Alliance work as appropriate. To date, this has led to support for an Ombudsman of Palau, exploration of appropriate complaint handling in Niue and a Non-Ombudsman Small Island State Working Group that includes Pacific Island Forum Secretariat participation to further assist the smaller states to improve complaint handling to foster good government administration.

PART 1—KIRIBATI

Study Visit: 15 to 21 February 2008

Study Team:

Mr Maiava Iulai Toma: Ombudsman of Samoa

Dr Stephen Ranck: Director, International Program, Commonwealth Ombudsman

Overview

Kiribati is a small island state. In 2008, the nation's economy was based on fishing royalties, phosphate trust fund interest payments, small industries based on copra and seaweed, other minor industries, remittances from seamen and overseas assistance. The present government priority for complaint handling is to complete and enact a viable Leadership Code with sufficient resources for effective implementation. This requires constitutional change, which is presently in draft form. Attention can be given to the possibility of ombudsman functions once the Leadership Code is in place and operational. The key issue is the limited amount of resources available.

With regard to a sub regional model of one person being shared by two or more island nations to provide a function such as an ombudsman, the present Chief Justice, Hon. Robin Millhouse, provides services to both Kiribati and Nauru. Presently, Kiribati covers all costs on Kiribati and all the Chief Justice's salary costs, while Nauru pays for the airfare, accommodation and a modest per diem when the Chief Justice holds court in Nauru. Generally he visits Nauru for two weeks at a time on a needs basis from his base in Kiribati. Ultimately the Kiribati government would expect Nauru to start contributing to salary costs. That it is not happening for a vital legal function is an indicator of the much longer term it might take to apply the sub-regional model to other functions. However, it should be noted that there is government-to-government discussion between Tuvalu and Kiribati about sharing the Chief Justice.

Current Complaint Handling

Presently there are limited internal complaint handling procedures for the general public to make complaints. By law, a person can complain about a public servant within the framework of the National Conditions of Service. It becomes the responsibility of the Senior Responsible Officer to address the complaint. The focus is on breaches of service and punitive action against the individual public servant. If the finding is against that person, the sanctions can include loss of employment. These investigations can easily take up to two years to complete.

The police have a Professional Standards Unit of two staff to investigate complaints, especially professional misconduct. It has been implemented as part of the Pacific Islands Police Project, funded by AusAID.

To date, two approaches have been used where there have been serious issues of public concern about department or ministry activities:

- The matter is raised in Parliament and a tribunal set up to investigate. This occurred for example where there was public concern about the allocation of scholarships (a report was completed and though it was not made public, the system was overhauled as a result).

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- The complainant approaches their elected representative or a government minister to seek redress for a problem (or grievance). The uninformed, those with less education and other 'grass roots' people have little access to this.

Certain grievances can be addressed by use of the people's lawyer (a free service) or private lawyer. About 90% of the work of private lawyers is in land, with many of the remaining cases dealing with employment issues (for example, a person being terminated from government employment).

Major Areas of Complaint

Interviewees raised various areas of concern regarding past or present issues. This includes immigration and the awarding of citizenship and passports; education (scholarship awards being particularly contentious); health; tax and the police.

Many interviewees referred to the actions of leaders as a cause for complaint.

Progress on Ombudsman or Ombudsman-like Legislation

There is no ombudsman legislation at present. Internal government complaint handling is limited to investigating breaches of the National Conditions of Service. This tends to be a slow process taking one to two years.

There is a Draft Leadership Code and draft changes proposed for the constitution to enable the full conditions of the Code.

Resources Available for Complaint Handling

Presently the resource priority is to enact the Leadership Code legislation and fund its implementation.

Implications of Geography and Population on Complaint Handling

Kiribati consists of 33 inhabited islands. Tarawa Atoll is densely populated with some 40,000 people who could be relatively easily served by a complaint handling function. The outer islands present a greater challenge that would need to rest on some shared communication service utilised by all government agencies on each island. All the inhabited islands have some government services; however external government contact may be limited to once or twice a year in the most isolated instances.

Service to the outer islands is an area of concern and one that generates complaints.

Next steps

- Provide comments on the draft Leadership Code Bill and proposed amendments to the Constitution of Kiribati from the Director of the Commonwealth Ombudsman's Legal Section.
- Await resolution of the present Leadership Code initiative and constitutional changes with particular regard to the ultimate resource implications for Kiribati sustainable governance functions.
- Consider possible leadership code assistance and/or lessons learned from Pacific Island Forum member states that presently have codes for leadership (for example, Vanuatu, Papua New Guinea and/or Solomon Islands).

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- Keep potential Kiribati stakeholders informed through the Pacific Ombudsman Alliance Network *News*.
- Further explore possibilities for ombudsman-type complaint handling activities upon resolution of the Leadership Code initiatives.
- Maintain close communication with Kiribati on developments through the following persons: Secretary to Cabinet through the Forum Secretariat Small Island States Officer.

People Interviewed in Country

Hon Robin Millhouse	Chief Justice of Kiribati
Taam Biribo	Secretary to Cabinet
Wiriki Tooma	Secretary for the Public Service Office
Titabu Tabane	Attorney General
Ioeru Tokantetaake	Chief of Police
Enoka Isopo	Executive Representative, Kiribati Association of NGOs
Del Durrant	Project Officer for the Diocese of Kiribati and Nauru
Martin Tofinga Tabera Peter Tedeua Tarati Linda Ueanteang Teniti Kumkee	Kiribati Chamber of Commerce and Industry (KCCI): President Board member, KCCI Board member, KCCI Board member, KCCI Board member, KCCI

PART 2—NAURU

Study Visit: 8 to 15 February 2008

Study Team:

Dr Geoff Airo-Farulla: State Director, Queensland, Commonwealth Ombudsman

Dr Stephen Ranck: Director, International Program, Commonwealth Ombudsman

Overview

Nauru is a small island state. At present, the economic future for its approximately 11,000 inhabitants is restricted. In 2008, the island's economy is based on the government owned phosphate mine's limited secondary mining activities, fishing royalties and overseas assistance. The vast majority of paid employment for Nauruans is from government owned enterprises or the public service. This makes good governance essential to the best possible use of presently diminishing resources.

Current Complaint Handling

The small base population is divided into 15 districts and this can allow for a very direct relationship between constituents and representatives. People may approach their elected representative directly, and the representative will take up the problem with the authority in question. It is not unusual for a member of the public to approach a Cabinet member with a complaint about one of their ministries. However, Cabinet and the President felt that a number of people may be reluctant to air grievances unless their representative happens to pass by and ask if everything is going well.

Where authorities do not respond and the issue is a major one, the complaint may then be raised in Parliament. The open airing does not necessarily mean it will be resolved. Feedback from community representatives was that complaining to an MP is frequently ineffective. They reported that results strongly correlated with whether the MP complained to was currently sitting on the government side of Parliament.

Departments presently have no formal complaint handling procedures. This is seen as an area that could also be helpfully improved. Community representatives indicated that the police service does not always record or respond to complaints. The Chief Secretary indicated that the departmental officers who support her public service disciplinary function spend most of their time responding the public servants' grievances, although this is not formally part of their duties.

There is no ombudsman or leadership code presently in place. There are two draft bills for both to be instituted separately. The present view is that the leadership code would apply to the top leaders (that is Parliament and the President) and the ombudsman bill would apply to all other public servants.

Major Areas of Complaint

Interviewees were concerned about the failure of government services, with complaints being made about the delivery of government services, the police, the environment, and public service conditions. As in other jurisdictions, complainants were troubled when they had the perception that access to government services was related to access to political power.

Progress on Ombudsman or Ombudsman-like Legislation

There are separate pieces of draft legislation for an Ombudsman Act and for a Leadership Code. President and Cabinet are concerned that the constitution must be amended before this legislation can be passed. However there appears to be no constitutional impediment to enacting enabling legislation for an ombudsman. The same is true of Leadership Code legislation. Constitutional amendments, however, could greatly strengthen such legislation.

Draft constitutional amendments to provide for an ombudsman were included in the Report of the Constitutional Review Commission in February 2007. The intent of the proposed constitutional amendments is clearly to improve good governance. The next step is to ensure that the detail of the proposed provisions is sufficient to allow for this.

It should be possible to assist with a review of this bill as part of the Pacific Ombudsman Alliance activities. The draft ombudsman legislation requires substantial revision in order to tailor it to Nauru's specific context and needs.

The team did not sight a copy of the leadership code legislation. Again it may be possible for ombudsmen within the network who have leadership code responsibilities to offer advice on it.

Resources Available for Complaint Handling

Resource issues would be critical to any model finally agreed on. With reference to a model that shares resources between island states, the Finance Department believes that Nauru could cover:

- the cost of a local salary for a mid-level government employee to act as the ombudsman's permanent representative on Nauru
- a contribution to office running costs in Nauru
- a portion of the ombudsman's costs
- office space that could be made available by the Nauru government (it would require some minor refurbishment)
- access to transport or a transport budget although this may require negotiation

Implications of Geography and Population on Complaint Handling

Nauru is a single uplifted atoll on a volcanic base. It is comprised of communities or districts, each with a president. It is approximately 20 kilometres around the island by a sealed road in good condition. All available government services are accessible. This includes free basic health and education services within reach of all inhabitants. Service reliability is the major concern of islanders rather than access.

Outreach would not face multiple island logistic problems on Nauru. The population is concentrated and accessible, to include access through community leaders.

The priority today is to regain trust in government as cynicism and disillusionment with government and government leaders is a major theme within the population. At the same time, Nauruans remain highly reliant on the government for their livelihoods and services.

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Next steps

- Further review and provide comment on the draft ombudsman legislation. Consider a trial implementation of the legislation on an Instruction from the Chief Secretary to all public servants.
- Consider the practicality of a trial complaint handling exercise. This would involve:
 - Building on the momentum of the constitutional review and present community interest in an ombudsman
 - Signing a simple Memorandum of Understanding for the trial to be sponsored by a willing Australian or New Zealand ombudsman with full Alliance support
 - Appointing a local to take complaints for a specified period (an initial possibility might be a one year appointment) with Alliance staff to assist
 - Having initial backup from the Australian or New Zealand sponsoring ombudsman
 - Seeking grant funding for all external support
 - Ensuring Nauru funding for the local representative
- Ascertain the willingness of Kiribati and Tuvalu to participate in a sub-regional ombudsman service and or leadership code.
 - Note that neither Tuvalu nor Kiribati is presently in a position to move forward on a sub-regional ombudsman and/or sub-regional leadership code initiative. The present Tuvalu focus is on implementation of their leadership code legislation and they would watch a Nauru trial with interest.
- Further explore possibilities for exchanging ideas and lessons-learned about Leadership Code initiatives from present practitioners within the network.
- Maintain close communication with Nauru on developments through designated coordinators.

People Interviewed in Country

Chitra Jeremiah	Director, Aid Management Unit
Iosefa Maiava	Secretary for Foreign Affairs and Trade
Julian Itsimaera	Officer, Foreign Affairs and Trade
George Fraser	Australian High Commissioner
Peter Hatfield	AusAID Representative to Nauru
Adrian Chippindale	Secretary for Finance
Robert Kairua	Acting Secretary for Justice
Katy LeRoy	Constitutional Review UNDP consultant
Angela Baum	Budget Officer
Camilla Solomon	Chief Secretary
Peter Connors	Hong Kong Logistics
Dominic Tabuna	Deputy Speaker
Paula Uluniceva Sam Grundler	DPPD Team
Hon. Marcus Stephen MP Hon. Frederick Pitcher MP	Members of Cabinet Caucus

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<p>Hon. Roland Kun MP Hon. Sprent Dabwido MP Hon. Mathew Batsiua MP Hon. Riddel Akua MP Hon. Dominic Tabuna MP</p>	
<p>Manfred Depaune Vyko Adean Dira Ephraim Angela Aigo Jinnie Jeremiah Handsome Adumur Tracey Denuga Kemp Detenamo Ritchie Halstead Charmi Depaune Madeline</p>	<p>Community leaders: NIANGO Denig community Boe community Yaren community Anibare community Denig community Erateguo Aroeni community Uaboe community Buada community Buada community Aiwo community</p>

PART 3—TUVALU

Study visit: 22 to 29 February 2008

Study Team:

Mr Maiava Iulai Toma: Ombudsman of Samoa

Dr Stephen Ranck: Director, International Program, Commonwealth Ombudsman

Overview

Tuvalu is a small island state. In 2008, the nation's economy was based on fishing licences, Tuvalu Trust Fund interest payments, minor industries, remittances from seamen and overseas assistance.

In 2006, Parliament passed a Leadership Code Act (LCA), which awaits implementation. Section 37 of the LCA states that:

There is established in Tuvalu the office of the Ombudsman Commission which shall consist of: (a) A Chief Ombudsman who shall be the head of the Ombudsman Commission; and (b) two other Ombudsman Commissioners

The LCA also requires that a Leadership Tribunal be set up, consisting of a person qualified to be appointed as a judge and two other members of good standing in the community. To implement both the Ombudsman Commission and the Leadership Tribunal would therefore require six relatively highly qualified persons, a challenge of both human and financial resources in a total population of approximately nine and a half thousand.

The Secretary to Cabinet has discussed the ombudsman concept with the Prime Minister. In their minds, this institution is a must in the next few years. Budgetary constraints have held it back to this point. The first priority is to implement the Leadership Code. Then the government's intention is to pursue an ombudsman service in the next one to two years as their budget resources allow. Their stated intention is a measured approach with a watchful eye to finances.

Current Complaint Handling

There is no single code of conduct for Public Servants. Each department may develop their own code; for example Customs has done so. There are the General Administrative Orders applicable to all public servants that cover appointments, promotion, termination and discipline. The Public Service Commission Rules also provide for complaints by civil servants to be lodged with the Public Service Commission. The PSC issues guidelines in circular form from time to time specifying the code of conduct for civil servants.

The police have a complaint handling procedure where complaints go to the Chief of Police, and he directs the investigation. The focus is on misconduct and disciplinary measures where individuals have over-stepped their authority.

Individuals or organisations with an issue will seek dialogue with the appropriate Departmental Secretary or Minister to attempt to reach a solution. Confrontation is avoided if possible. If consensus cannot be reached, an issue may simply not be

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resolved at all. Status, age, kinship and gender are all factors that also influence the ability and or willingness of an individual to broach a complaint.

Citizens can seek legal redress through the People's Lawyer when the position is filled (which it now is after a considerable lapse of time).

Major Areas of Complaint

Complaints include the perception of a lack of impartiality in service delivery. Difficulties can be compounded when the complainant may have to lodge the complaint directly with the person being complained about. This can lead to a feeling of despondency and, as one of our respondents remarked, 'What's the use?'

Service delivery in general is an issue, as is local governments being clear about their roles.

Progress on Ombudsman or Ombudsman-like Legislation

There is no legislation at present other than the Leadership Code.

Section 66 of the Leadership Code states that 'the Ombudsman shall prosecute any leader who breaches this Code before the Leadership Tribunal'.

Membership of the Leadership Tribunal is provided for in section 48 which must include a 'person qualified to be appointed as a judge and two others....'s. 48 (2). Subsection (5) then provides qualifications for the judge, which probably effectively rules out any Tuvaluan at the moment. Therefore, if the Leadership Tribunal is to be convened soon, the country must face this issue through an overseas appointment or amendment to the Act.

Resources Available for Complaint Handling

Presently there are no resources available. Any future ombudsman service would need to make effective use of very scarce resources. Government is certainly willing to ponder the idea of some form of shared service or shared support service. The Government will look on with great interest if a trial ombudsman service with external support in Nauru is initiated.

Implications of Geography and Population on Complaint Handling

Tuvalu consists of 9 inhabited islands with a total population now estimated at around 9,600. There are seven main outer islands each with a community government; and a smaller eighth island included as part of one of the seven. All have some government services. Internal monitoring depends on ministry budgets with some departments able to visit the outer islands twice a year and others much less frequently.

Service to the outer islands is a priority area for government. Two way communication and health are two of the major issues. Service to the main atoll at Funafuti where some two thirds of the population is now located would not present difficulties for an ombudsman. The larger population at Funafuti Atoll is a result of migration from the outer islands, from Nauru (as expatriate Tuvaluans and I Kiribati had to leave the deteriorating Nauru situation) and from natural population growth. They are concentrated and would be relatively easy to serve.

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Services to the outer islands are more challenging; and meeting this challenge is a government priority. For any ombudsman service, it would entail additional costs and a need for creative thinking to provide cost effective means for complaint handling.

Next steps

- Explore strengthening connections between the varying leadership code practitioners to assist Tuvaluan implementation of their leadership code.
- Consider the steps and possible support for the PSC providing a written code of conduct for the civil service.
- Consider the steps and possible support for the relevant authorities to provide a stand-alone guide for complaint handling procedures for civil servants. (That includes complaints amongst civil servants, departments, and government entities or where an individual raises a complaint against a civil servant, government department or any government entity).
- Keep potential Tuvaluan stakeholders informed through the Pacific Ombudsman Alliance’s electronic editions of *Network News*.
- Maintain close communication with Tuvalu on developments through the following links: Secretary to Cabinet through the Forum Secretariat Desk Officer.
- Explore a staged approach for future ombudsman services to Tuvalu based initially on trial services to Nauru.

People Interviewed in Country

Solofa Uota	Acting Secretary to Government
Kakee P Kaitu	Permanent Secretary Ministry of Health
Eli Lopati	Acting Auditor General
Steve Bonner	Adviser to the Auditor General
Joelle Grover	People’s Lawyer
Pasuna Tuaga	Acting Assistant Secretary Foreign Affairs and Chief of Protocol
Saaga Talu	Crown Council, Acting Attorney General
Daniel Gorman	Legal Adviser to the Attorney General
Afele Kitiona	Senior Magistrate
Annie Homasi	Executive Director Tuvalu Association of NGOs
Enele Sopoaga	Permanent Secretary Ministry of Foreign Affairs
Motulu Pedro	Chief of Police
Eselealofa Apinelu	Attorney General

PART 4—FEDERATED STATES OF MICRONESIA

Study Visit: 3 to 7 March 2008

Study Team:

Mr Ila Geno: Chief Ombudsman of Papua New Guinea

Mr Greg Andrews: Assistant Ombudsman, New South Wales Ombudsman

Dr Stephen Ranck: Director, International Program, Commonwealth Ombudsman

Overview

The Federated States of Micronesia (FSM) consists of four federated states, Pohnpei, Kosrae, Yap and Chuuk. A compact with the United States of America provides some 60 to 70 percent of the individual state's income and 30 to 40 percent of the national government income. Fishing royalties, small industries and remittances from abroad provide further income.

There is neither ombudsman legislation nor any draft material presently. There are five Justice Ombudsmen which is the title given to national court officers responsible for court administration including probation and parole issues. They do not perform any functions of a classic parliamentary Ombudsman.

Current Complaint Handling

There are two formal mechanisms for some types of complaints:

- The FSM Public Auditor conducts ordinary financial audits and is also empowered to conduct three types of performance audits: program results, economy and efficiency, and financial. He has a three-person compliance investigation division that mostly pursues white-collar crime issues such as misuse of government resources. The Public Auditor said he received about 15-20 complaints a year from members of the public and they were usually about serious matters. His annual report for the fiscal years 2002 to 2005, published in December 2007, listed 14 audit and inspection reports over those four years. There are also state auditors but they have no power to conduct performance investigations.
- Citizens can seek legal redress through the Micronesian Legal Service Ltd. The services are principally those of an attorney for individuals without the means to make payment. The bulk of the work is non-adversarial such as assisting with passports, birth certificates and the like for entry to the USA under the tightened anti-terrorism regulations. A smaller number of cases deal with grievances against government, some of which would fall directly within the ambit of an ombudsman. (The Micronesian Legal Service receives some 70% of its funding from Legal Services USA, and is thus very heavily reliant on this funding source which comes with a set of restrictions on services provided.)

Most complaints are handled informally through social networks where the complainant has channels to government decision-makers. Where this is not the case, complaints generally do not appear to be raised. This raises implications for women and others who are marginal to decision making processes.

There is very little public media for airing complaints. An expatriate editor provides a newsheet fortnightly.

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The Micronesian Seminar, a Jesuit community education service, regularly publishes essays under the banner of the Micronesian Councillor, which aim to raise public awareness of issues of concern. Editions have addressed many health and community development related topics as well as issues relating to good governance. The Seminar also provides an Internet discussion forum that allows anonymous complaints and comment and this attracts considerable interest. Comments and complaints can be posted anonymously without any means to verify the truth or otherwise. Use of an Internet forum again is presently restricted to a limited, more privileged group. There are no Internet cafes in Pohnpei for public access for example. Even so, the forum has a large following with a reported 13,000 unique visitors a month.

There is a small NGO sector, which is still in a developing stage. This includes Transparency Micronesia which aims to assist the development of a just and equitable FSM society based on the principles of good governance and respect for democracy, human rights and the law. It appears to have no active programs due to limited resources.

Major Areas of Complaint

The team can only comment from a national perspective where the principal areas of complaint revolve around a lack of transparency in government decision-making, the misuse of government funds and abuse of employment procedures in hiring, promoting and dismissing staff.

Progress on Ombudsman or Ombudsman-like Legislation

There is no ombudsman legislation at present. In the mid 1960s, ombudsman legislation was introduced to the Micronesian Congress (the precursor to independent rule for the various Micronesian Compact Nations). United States officials stopped the legislation from passing, citing other priorities as more pressing needs.

In 1980 at the national level, the name Justice Ombudsman was given to parole officers; the change was not made at the state level in the Federated States of Micronesia. The Rules of Criminal Procedure give the Justice Ombudsman a role in pre-sentence investigation on the order of the Court, and in the absence of a judicial officer to order confinement, can issue an order of confinement for any person who has violated conditions established by the Court.

The FSM government has a *National Strategic Development Plan 2004-2023* which includes some proposals to strengthen accountability institutions. For example, the aim of activity 3.1 is to improve the environment for domestic and foreign investment in private enterprises. This includes output 3.1.9 which is to conduct an external review of the corporate governance regime at the national and state levels. Another activity 4.4 is to improve corporate governance of public enterprises, which has an output 4.4.1 of establishing mechanisms to ensure transparency and accountability of the activities of boards of directors of public enterprises. A one-stop centre for receipt and handling of complaints from the business community is a further relevant aim of this plan.

Resources Available for Complaint Handling

Presently resources are comparatively limited; there are no resources immediately available. The present priorities are the *National Strategic Development Plan*, the

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Infrastructure Development Plan in association with meeting Compact requirements. The *Pacific Plan* is secondary to these and best supported where priorities coalesce.

Implications of Geography and Population on Complaint Handling

Federated States of Micronesia consists of four island states with a total population of about 120,000. Services are provided at a state level with national linkages and support. Thus, state and federal services add a degree of complexity to any complaint management system that would require additional consideration.

At the same time, the Federated States of Micronesia work at a Compact and at Sub-Compact levels. The Micronesian President Summits entail Palau, FSM and the Marshall Islands in discussions of areas of mutual interest and cooperation. Similarly these three nations with Guam and the Commonwealth of the Northern Mariana Islands (CNMI) participate in the Micronesian Chief Executive summit with efforts to standardise areas such as immigration procedures and quarantine. They have worked to develop a subregional Public Defender's Network (the public defender being the equivalent of a public prosecutor) and maritime arrangements. In the longer term, they could be key forums to generate interest and support for improved mechanisms for public complaint handling on a sub regional basis.

Next steps

- Exploration for the means to promulgate information about the role and functions of an Ombudsman to key stakeholders and generation of public discussion about whether there is a need for better complaint handling mechanisms in FSM and what form they should take.
- Keep potential FSM stakeholders informed through the Pacific Ombudsman Alliance's electronic editions of *Network News*.
- Explore a staged approach for future ombudsman services to FSM based initially on trial services to other Pacific island states that have ombudsman support as a priority.

People Interviewed in Country

Tina Takashy	Pacific Plan desk officer, Department of Foreign Affairs
Ricky Cantero	Deputy Assistant Secretary for Pacific Affairs, Department of Foreign Affairs
Susan Cox	Australian Ambassador
Fr Francis Hezel	Director, Micronesian Seminar
Haser Hainrick	National Public Auditor
Tino Donre	Directing Attorney Micronesian Legal Service Pohnpei
Erwine Hadley	Counsellor, Micronesian Legal Service Pohnpei
Martin Mix	Staff Attorney, Micronesian Legal Service Pohnpei
Vincent Kallop	Counsellor, Micronesian Legal Service Pohnpei
Susan Anson Winnona Dixon	Secretaries, Micronesian Legal Service Pohnpei
Herman Semes	President, Transparency Micronesia Inc. and President, FSM Association of Non Government Organisations (FANGO)
Finley Perman	Secretary, Department of Finance and Administration, FSM

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Noel Pascua	Chief Accountant, Department of Finance and Administration, FSM
Maketo Robert	Attorney General
Andon Amaraich	Chief Justice
Hon. Denise K. Yamase	Judge
Craig Refner	General Counsel
John William	Justice Ombudsman
Lorin Robert	Secretary, Department of Foreign Affairs

PART 5—REPUBLIC OF THE MARSHALL ISLANDS

Study Visit: 7 to 11 March 2008

Study Team:

Mr Ila Geno: Chief Ombudsman of Papua New Guinea

Mr Greg Andrews: Assistant Ombudsman, New South Wales Ombudsman

Dr Stephen Ranck: Director, International Program, Commonwealth Ombudsman

Overview

The Republic of the Marshall Islands (RMI) consists of a set of 29 atolls and another five separate islands with a total of approximately 60,000 inhabitants. A new government came to power in January 2008 with the mandate: 'people first'. The idea of some form of ombudsman service is consistent with this mandate.

Current Complaint Handling

While there is no one service to receive and investigate complaints, there are a variety of existing complaint mechanisms in the RMI.

- Some specific legislative Acts provide for the making of complaints eg. the Labour (Non Resident Workers) Act 2006 provides that any person may complain to the Minister in writing about the exercise of functions or duties of officers under the Act and empowers the Minister and the Public Service Commission, on the Ministers request, to discipline an officer where there is evidence of various misconduct offences.
- An individual can complain directly to the departmental secretary or the responsible minister (this is the most commonly used method of raising complaints –often through personal third party contacts).
- The Public Service Commission has processes for dealing with grievances by public servants concerning employee rights.
- The Administrative Procedures Act 1979 provides for administrative reviews at departmental level and judicial review of decisions relating to adoption of rules and licensing that are contested.
- The President of the Marshall Islands can appoint a Commission of Enquiry under the Commissions of Enquiry Act 1986 (note: there was a current enquiry underway relating to the December 2006 elections during the consultative mission and two previous commissions reported).
- The Attorney General in the exercise of his general powers and duties may conduct investigations of alleged violations of law where deemed advisable or in the public interest.
- There is an Auditor General, although the performance of that office has reportedly been affected for some years by the ill health of the officer. It is also worth noting that a US General Accounting Office has been established under the US Office of Insular Affairs in Hawaii, to monitor the assistance the US is providing to RMI under the new Compact (2003-2023) which provides approximately 70% of RMI's income.

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- The Ethics in Government Act creates an Ethics Board and deals with conflict of interests and other principles of good administrative conduct by leaders and public servants.
- Citizens can seek legal redress through private attorneys or the Micronesian Legal Service.
- The Chief Justice anticipates adopting a Code of Conduct for the Judiciary in the near future (currently in consultation stage with legal community) that will include a mechanism for enforcing the code.

Major Areas of Complaint

Employment issues and land disputes are currently the main areas of reported complaints.

Progress on Ombudsman or Ombudsman-like Legislation

Several years ago a draft proposal for an ombudsman was circulated for consultation among members of the Nitijela (the RMI Parliament) but did not progress further. The reasons for that appear to be that existing laws were considered to be adequate and there were concerns about the potential impact of a leadership code that was included which also applied to traditional leaders.

The US Government rents Kwajalein Atoll from the Republic of the Marshall Islands for use as a military base. This enterprise has been the second largest employer of Marshallese. Previously there was a person appointed as an ombudsman on Kwajalein to take complaints from Marshallese employees about working conditions. That position has lapsed.

Presently an opposition member has indicated an intention to introduce a new conventional ombudsman bill that excludes any leadership code function. His plan is to have it drafted soon. Government members have questioned the timing of the legislation, noting that the opposition had eight years to introduce such an act while previously in power.

Resources Available for Complaint Handling

The population of the RMI is youthful (about 50% are under the age of 22) and a quarter of the national budget is targeted to education, both formal and informal. Resources for other services are therefore constrained. One idea suggested for consideration is that the ombudsman role could also cover selected aspects of employment conditions in the private sector to maximise efficiencies. Also mentioned was the consolidation of some existing ad hoc mechanisms into an on-going ombudsman investigation body.

Implications of Geography and Population on Complaint Handling

The islands and atolls of the RMI are stretched across some two million square kilometres of ocean. Approximately 40% of the population is resident on the outer islands beyond the reaches of the two main urban centres of Majuro and Kwajalein. This makes the provision of services and transport a huge logistical problem for the government. The population on the outer islands have severely reduced access to information as well. It appears that awareness of complaint handling services and concerns about government integrity and accountability are limited for a large

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percentage of the population by factors of isolation and day-to-day concerns about economic survival.

Next steps

- Keep potential RMI stakeholders informed through the Pacific Ombudsman Alliance electronic editions of *Network News*.
- Provide advice through the Pacific Ombudsman Alliance on any request for comment or information associated with the development of the proposed Ombudsman Bill or other alternative arrangements proposed by the government.
- Maintain close communication with RMI on developments through Acting Secretary, Ministry of Foreign Affairs, Ms Kino S Kabua
- Explore a staged approach for future ombudsman services to RMI based initially on the trial of the proposed external ombudsman service to Nauru.

People Interviewed in Country

Ms Kino Kabua	Acting Secretary, Ministry of Foreign Affairs
Mr Casten Nemra	Chief Secretary, Office of the President
Ms Sela Tupou	Deputy Attorney General
Mr Philimon Manoni	Legal Counsel to the Nitijela
Mr Cent Langidrik	Chair, Public Service Commission
Mr Raynard Gideon	Commissioner for Personnel, Public Service Commission
Mr Lomes McKay	Commissioner for Administration, Public Service Commission
Mr Lorest Lanki	Deputy Commissioner, Public Service Commission
Mr Amran Mejbon	Acting Secretary, Ministry of Internal Affairs
Mr Monono Dawoj	Deputy Secretary, Ministry of Internal Affairs
Hon Judge Carl Ingram	Chief Justice
Judge James Plasman	Associate Justice, High Court
Ms Asima Muller	Staff Attorney, High Court
Ms Alison Lemoine	Secretary, Marshall Islands Council of NGOs (MICNGOS)

PART 6—PALAU

Study Visit: 12 to 15 March 2008

Study Team:

Mr Greg Andrews: Assistant Ombudsman, New South Wales Ombudsman

Dr Stephen Ranck: Director, International Program, Commonwealth Ombudsman

Overview

The Republic of Palau consists of approximately 20,000 inhabitants with a federal and state system of government. There are 16 states closely interlinked with federal services. A federal election is due in November 2008. The new administration will set policy priorities for the following four years and this will probably include a review of the National Strategic Development Plan that sets directions to 2020.

Palau has a form of ombudsman. The Fourth Addendum to Executive Order Number 116 established an Ombudsman on the fifth of December 1994. The position resides within the Office of the President, with responsibilities among which is “to receive grievances regarding services, programs and activities provided by the Government and its agencies; to review the merit(s) of each grievance and promptly seek to resolve and assist in the resolution of said grievances” The Ombudsman was not contactable during the time of the team’s visit, but we have been given to understand that he will retire soon. The office has not been active recently with most interviewees surprised to learn that there was in fact an Ombudsman in Palau.

Current Complaint Handling

- Complaints about government services can be made to the head of the department; however, it is more likely that the complaint will be made to the minister-in-charge (in a small island system where a minister tends to be very much hands-on).
- There is a Special Prosecutor created by legislation. He is appointed by the President and confirmed by the Senate to investigate issues of public concern. He has power to receive complaints and investigate and prosecute any allegations of violations of the Constitution and laws of the Republic, Trust Territory and Districts or failure to implement such laws. A number of interviewees saw this person as a near equivalent to an ombudsman. The Special Prosecutor and Public Auditor are supported from Compact funds. (The present Special Prosecutor resigned in 2008, quoting health concerns.)
- The President can also appoint a Special Investigator (on an as needs basis) as has been done for an on-going investigation into a recent bank failure that has severely affected many Palauans.
- There is a Code of Ethics Act 1999 applying to public officials, public employees and candidates for state and national elective offices. It is similar to leadership codes operating in Papua New Guinea, Vanuatu, Solomon Islands and Tonga (pending). The Code requires the annual disclosure of financial interests by public officials and campaign donation statements from candidates for elective office. The Act establishes an Ethics Commission to implement and enforce the management of conflicts of interest and other provisions of the Code. It has power “to initiate, receive, and consider charges concerning alleged violations

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of the Act, initiate or make investigations, and hold hearings” among others. The Commission can bring civil actions to enforce the provisions of the Act and has an ongoing function of educating public officials and employees about their duties under the Act.

- There is a Public Auditor appointed by the President and confirmed by the Senate who can audit all Federal bodies and all other public legal entities or non-profit organisations receiving public funds from the national government. The Public Auditor has some auditing responsibilities with regard to campaign statements and financial disclosure statements under the Code of Ethics Act.
- Workers from abroad (of whom there are some 6,000) can complain about contractual conditions to the Department of Immigration who can refer employers (or employees) to the Attorney General for prosecution.
- A Government Accountability Office to assist Congress with investigations has been formulated on paper but has not been budgeted for.
- Citizens can seek legal redress through private attorneys or the Micronesian Legal Service, which is a service external to government. At present it faces serious human resource constraints.
- There are informal mechanisms to lodge complaints at family ceremonies, letters to newspapers and anonymously to the radio. One Senator has a radio station where people are able to anonymously air complaints in a daily talk back program; however, it seems doubtful as to whether the issues raised are resolved.

Major Areas of Complaint

The overriding concerns reported to the team were in regard to government effectiveness in adhering to best practice procedures for the delivery and allocation of all goods, services and employment within its scope and adherence to the Code of Ethics legislation by public officials and employees responsible for implementation of its various components.

There is concern for those who lack access to the corridors of power with regard to their ability to be heard or to find resolution for their complaints. The small population and complex web of social relationships makes both complaining and reporting improper practices extremely difficult.

Progress on Ombudsman or Ombudsman-like Legislation

The Fourth Addendum to Executive Order Number 116 established an Ombudsman on the fifth of December 1994. Few people are aware of this service and it does not appear to presently function with regard to receiving and solving grievances from the public.

Resources Available for Complaint Handling

Currently the resource issue is moot. Reorganisation or strengthening ombudsman facilities within the present resources would appear to be the most logical approach.

Implications of Geography and Population on Complaint Handling

Physical geography is not a major factor for service delivery at the moment. Fourteen of the sixteen states are linked by road to the national centre. The other two states are served by regular boat transport, with the furthest journey being a day away from central services.

With regard to population, it is the relatively small size of the total population that requires special attention in seeking means to ensure unbiased accountability compliance.

Next steps

- Keep potential Palauan stakeholders informed through the Pacific Ombudsman Alliance’s electronic editions of *Network News*.
- Maintain close communication with Palauans on developments through the following links: Forum Secretariat Representative and Bureau of Foreign Affairs.
- Build further strengthening options for consideration amongst the new government priorities:
 - Possibility of rationalising the present system and strengthening independence
 - Possibility of re-locating and strengthening the Ombudsman function to become more independent, accessible and effective.
 - Possibility of an efficiency and effectiveness audit of the Ethics Commission by an appropriate peer panel external to Palau.
- Ascertain the new government’s commitment to improved ombudsman services and legislation and support as appropriate.

People Interviewed in Country

Mr Isaac Soaladaob	Director, Bureau of Foreign Affairs
Ms Hila Asannma	Foreign Services Officer
Mr Raakook Singeeo	Foreign Services Officer
Mr Francis Remengesau	Pacific Plan SIS Officer
Mr Benito Thomas	Director, Bureau of Immigration, Ministry of Justice
Mr Rinsang Rechirei	Director, Bureau of Human Resources Development, Ministry of Commerce and Trade
Mr Russell Masayos	Chief, Division of Labour, Ministry of Commerce and Trade
Ms Lori Zucco	Acting Attorney General
Mr Christopher Hale	Assistant Attorney General
Mr Salvatore Tellames	Director, Bureau of Domestic Affairs
Ms Eunice Akiwo	Administrative Assistant, Bureau of Domestic Bureau of Public Safety, Affairs
Mr Ben Yobech	Radio Station Manager, Bureau of Domestic Affairs
Mr Dorothea Negata	Executive Director, Palau Community Action Agency
Mr Norvert Olegeral	Acting Director, Bureau of Public Safety
Mr Julio Ringang	Chief, Division of Corrections, Bureau of Public Safety
Mr Thomas Tulu	Chief, Division of Marine Enforcement, Bureau of Public Safety
Mr Xavier Ngirameong	Chief, Criminal Investigation and Drug Enforcement, Bureau of Public Safety

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Mr Kammen Chin	Chief, Division of Fish and Wildlife Protection, Bureau of Public Safety
Mr Benhart Baulechorg	Chief, Division of Fire and Rescue, Bureau of Public Safety
Mr Ismael Aguon	Chief, Division of Patrol, Bureau of Public Safety
Ms Jenifer Olegeral	Administrative Officer, Bureau of Public Safety
Ms Julie Tellei	Human Resource Development Officer, Ministry of Health
Ms Margaret Chin	Administrative Officer, Ethics Commission of Palau
Mr Francis Matsutaro	Chief of Staff, Vice President of Palau

PART 7—NIUE

Study Visit: 12 to 18 April 2008

Study Team:

Ms Janet Maki: Ombudsman of the Cook Islands

Mr Peter Brocklehurst: General Manager Office of the Ombudsmen New Zealand

Dr Stephen Ranck: Director, International Program, Commonwealth Ombudsman

Overview

Niue consists of some 1,400 inhabitants with a Parliament of 20 representatives elected every three years from which the Premier and 3 Ministers are chosen. Niue is an independent state in free association with New Zealand. A new government was elected in June 2008. The new administration is now setting its policy priorities. This includes a review of the Niue Integrated Strategic Plan (NISP).

Government is the primary employer and source of income for the population with 403 public service employees. Tourism and agriculture presently offer very limited alternative sources of employment and income.

Current Complaint Handling

- Complaints about government services can be made to the head of the department concerned. The view from all parties interviewed is that because of the small population and ease of access to the upper echelon of government, people go directly to the minister-in-charge. The minister in turn may then become involved in operational matters of the department pertinent to the complaint. Heads of departments may find themselves disempowered by this methodology.
- The Public Service Commission which is the employing authority, has internal complaint handling procedures for employer-employee disputes within the public service and can also receive complaints from the private sector, but both have been rare over the past 6 years.
- The Public Service and Public Service Regulations are established under the Niue Constitution. There is no Public Service Act. The powers for the regulations come from the Constitution.
- There was a common reference to the informal mechanisms to lodge complaints, in particular the Monday night radio talkback and biweekly newspapers which are published in New Zealand.

Major Areas of Complaint

Areas of complaint covered a wide range of issues from a lack of explanation on how government decisions were made, to issues of health, education, policing, government employment, public works and immigration.

A very large majority of persons interviewed felt there was a need for some form of complaint handling independent from Government, with many stating directly that there is a need for an independent ombudsman service.

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Another area of concern related to the issue of human rights. There has been previous government-level discussion of human rights and their protection. A possibility is that human rights are an area that could be included in the jurisdiction of a Niue ombudsman.

Progress on Ombudsman or Ombudsman-like Legislation

A draft Ombudsman Bill was prepared in 2006 by the Crown Law office. The Bill currently states for example:

3. Ombudsman

There shall be an Ombudsman who shall be appointed after consultation with the Premier.

27. Regulations

(1) Cabinet may from time to time make regulations for the purposes of this Act.

(2) Cabinet may by regulation to amend the Schedules.

In 2006, the Premier had in mind an individual for appointment to the role of ombudsman. This person briefly consulted with the former New Zealand Chief Ombudsman John Belgrave on issues about the role and responsibilities such a position might entail. Nothing more came of this, and one notes that a standard benchmark of ombudsman appointment procedures would be some level of independence from government in the appointment and other processes. Similarly, other legislative changes to the draft would appear necessary to ensure the independence of any ombudsman role in Niue.

Resources Available for Complaint Handling

Currently there is pressure from the New Zealand Agency for International Development (NZAID) on the government of Niue to reduce the Public Service and more effectively use the budget assistance from New Zealand that forms the bulk of public expenditure. (NZ AID provides approximately \$20 million of the \$24 million budget annually). This indicates that initially, at least, the bulk of resources for an ombudsman initiative would need to be external.

Various opinions emerged regarding the human resource required for an ombudsman. The bulk of persons interviewed felt that the ombudsman should be Niuean. However people also noted the difficulty that everyone of Niuean descent on the island is related either directly or by marriage or is a friend or has some other relationship with everyone else. Thus there is general agreement that whoever fulfilled this role would have to be able to put aside family and community associations to exercise the jurisdiction evenly. This could be very hard in a population of some 1,400 people.

There was considerable concern on the impact of the position on a person fulfilling the ombudsman role who 'would need the hide of a rhino' as various interviewees opined. Certainly some forms of external human support would be as important to the incumbent as financial support in making the operation viable. A minority view was that the position should be open to external candidates. (It should be noted that the appointees to the roles of Chief of Police and Tax Commissioner are both non-Niueans in order to overcome problems of clan and family pressures in both fields).

Implications of Geography and Population on Complaint Handling

Geography is not a major factor for service delivery at the moment. The small size of the total population requires special attention in seeking means to ensure unbiased accountability compliance.

Services, for example health and education, are presently of a high standard by comparison to many of the Pacific island small states, and readily accessible to the general population. Accessibility to government services is not a problem on the single island of Niue.

Next steps

- Keep potential Niuean stakeholders informed through the Pacific Ombudsman Alliance's electronic editions of *Network News*.
- Maintain close communication with Niueans on developments through the Niue contact point.
- Explore the following for consideration within the priorities of the new government:
 - Redrafting of the 2006 Ombudsman Bill.
 - Explore the potential cost of a part time or full time ombudsman position funded directly by NZAID.
 - Possibility of support from the New Zealand Ombudsmen and the Cook Islands Ombudsman in the implementation and operations of a Niuean Ombudsman.

People Interviewed in Country

Hon Young Vivian	Premier of Niue and Minister for Health, Crown Law and Niue Public Service Commission
Hon Fisa I Pihigia	Deputy Premier and Minister for the Department of Community
Crossley Tatui	Secretary to Government
Justin Kamupala	Deputy Secretary to Government Affairs, NGOs and Police and Prisons
Sinahemana Hekau	Crown Counsel
Julie Talagi	Pacific Plan Officer
Terry Coe	Common Roll Assembly Member
Patrick Lino	General Manager Broadcasting Corporation
Lose Siakimotu	Director of Education
Kennedy Tukutama	Manager of the Department of Education
Bryan Smythe	New Zealand High Commissioner
Dr Asu Pulu	Acting Director of Health
Bob Talagi	Health Manager
Malua Jackson	Chairperson, Niue Public Service Commission
Ross Ardern	Chief of Police and Director of Immigration
Fapoi Akesi	Director of Community Affairs
Sioneheke Leolahi	Secretary, Niue Island Umbrella Association of NGOs (NIUANGO)
Tutuli Heka	Chairperson, Alofi North Community
Rev Hawea Jackson	Vice Chair, NIUANGO
Hinemoa Makaia	Chair, Avatele Community

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Fakahula Funaki	Member NIUANGO/Civil Society
Epsy Puheke	Chair, Tamakautoga Community
Logopasi Seumanu	Chair, Liku Community
Robin Hekau	President, National Youth Council
Frank Sioneholo	Chairman, Public Service Association (PSA)
KimRay Vaha	PSA
Organ Viliko	Assembly Member for Alofi South
Charlie Tohovaka	Administration Department and Executive member of the PSA
Ketiligi Fereti	PSA and Health Dept Officer
Laga Lavini	Civil Aviation Officer
Ernie Welsh	Member of the public

Niue Population 1900 to 2006

