

# National Integrity Systems

## Country Study Report

**Fiji 2001**

## **Report Authors**

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# Fiji

## Introduction

In the case of Fiji it is important to note that during the conduct of the research for this exercise there was no elected government. [Elected government was removed from office in an attempted coup in May of 2000.] However the research was conducted on the assumption that whilst there was no national elected government, all components of the Integrity System existed as in the 1997 Constitution, which was supposedly abrogated by the Military on 29<sup>th</sup> May 2000. [At the time of writing this report the issue of the validity of abrogation of the 1997 Constitution was before the Courts. Existing laws relating to the Judiciary, the Public Service and other institutions were decreed back by the Military to allow the Interim Government to function and bring about law, order and public safety in the country. All the institutions of government, apart from the legislature are functioning]. The Court of Appeal ruled on the 1<sup>st</sup> March 2001 in a landmark decision that the 1997 Constitution is still the Supreme Law of Fiji Islands.

Questionnaires were sent to 26 organizations. Some organizations were very cooperative in providing answers. Some did not wish to meet with the Researchers but provided written answers. There were also some who did not answer our calls and showed lethargy towards this exercise either out of ignorance or fear of saying something when in reality something else existed. One of the most important components of the National Integrity System, the Director of Public Prosecutions Office showed absolutely no interest in the exercise. There were others who did not wish to talk about corruption openly for fear of victimization.

The General Elections in Fiji were held under the provisions of the 1997 Constitution from August 25th to 1st September 2001. these were supervised by International Observers from the United Nations, European Union and the Commonwealth Secretariat. These Observers have declared that the elections have been held fairly and there was no evidence of vote rigging.

The 1997 Constitution provides for a multi-party Cabinet and the single largest party which represents the majority of the Indo-Fijian population and which was entitled to be invited to join the ruling majority party is not part of the Cabinet. That party has instituted court proceedings against the Government for excluding it from the Cabinet. The decision on this expected some time in February 2002.

## Components of Fiji's National Integrity System

### Executive

The executive is made up of a Prime Minister and Cabinet under the Presidents Office. Prior to 1987, Fiji was headed by a Governor General (local appointee) who represented the Queen as Head of State. The title for Head of State has since been changed to President after the country became a republic. The interim administration now in control was appointed by the Acting President in July 2000 and is headed by a Prime Minister. The cabinet comprises both elected and non- elected members, some of whom were members of the illegally seized parliament.

### Legislature

Fiji's parliament follows the procedures and customs of the Westminster system of Government. There are two houses of Parliament: the Lower House and the Upper House. The Upper House or the Senate consists of 34 members appointed by the President in accordance with Constitution, of which 24 are appointed on the advice of the Bose Levu Vakaturaga [Great Council of Chiefs], nine appointed from other communities, and one from Rotuma on the advice of the Rotuma Island Council.

In the Lower House there are 23 Fijian provincial seats, 19 Indo Fijians, 3 for General Voters and 1 for the people of Rotuma and 25 open seats. The nature of politics in Fiji has followed a racial trend as early as 1970 when the country gained its independence from Britain. There were only two major political parties then and its membership and support were on the basis of ethnicity – indigenous or indo Fijian. Since then other political parties have emerged with more polarized membership

composition in terms of race but there is still strong evidence of politics of race in existence. The total number of major political parties at present is seven and all but one had representatives elected into parliament in the 1999 general elections.

The legislature has not been in session since the illegal takeover of government in May 2000 and the country is currently being run by an interim administration. At the time of writing this report the country was handed a landmark decision by the Appeals Court on the validity of the 1997 constitution. The court ruled that the 1997 constitution was still in force and parliament rather than dissolved was prorogued from May 2000. [On Thursday 15<sup>th</sup> March the parliament was dissolved and an interim Caretaker Government was appointed and date for fresh general elections set for August 2001 in compliance with the Appeals court decision.

## **Auditor General**

The Auditor General operates under the Audit Amendment Act No 7 1998 and Audit Act (Cap 70), the Principal Act. The Audit Amendment Act No 7 1998 specifies provisions outlining the powers of the Auditor General, duties of the office, secrecy, notification of serious irregularities, annual accounts, annual report, test audits, defective vouchers, audit of other bodies and staff of the department. The Auditor General is appointed by the Constitutional Offices Commission, a three-member committee which was first introduced in 1998 as per the provisions of the 1997 constitution to appoint personnel to the positions categorised as constitutional offices. Section 6 (1) of the Audit Amendment Act 1998 states that the Auditor General on behalf of Parliament and in such manner as he deems necessary, examine, inquire into and audit the accounts of all accounting officers. Section 12 (2) further states that the Minister responsible for Finance shall lay such report on the table of Parliament within thirty days of its receipt by him if parliament is not in session at its next meeting.

## **Judiciary**

The court structure of Fiji has four levels. The Magistrates Courts - established under the Magistrates Court Act 1944, the High Court in line with Section 102–105 of the 1990 constitution, the Fiji Court of Appeal - under Section 106 and the Supreme Court of Fiji under Section 118.

Section 28 of the Magistrates Act directs magistrates to promote reconciliation among litigants and to encourage and facilitate amicable settlement of disputes without proceeding to a judicial determination of the case, unless amicable settlement is clearly impossible. The High Court under Section 111 of the 1990 constitution has general jurisdiction to hear and determine at first instance any civil or criminal proceedings. Section 19 and 113 also authorize the Court to hear proceedings by any person claiming that the protection of fundamental rights and freedoms have been contravened and that such person's interest are likely to be affected by such contravention. The Fiji Court of Appeal has jurisdiction, under Section 115 of the Constitution and the Court of Appeal Act, to hear appeals as of right as specified in the Constitution and the Court of Appeal Act. The Supreme Court of Fiji is the final appellate court replacing the Judicial Committee of the Privy Council. Appeals to the Supreme Court from the Court of Appeal may be taken as of right from decisions on any constitutional questions and in such other cases as may be prescribed by law. Appeals may also be brought to the Supreme Court from the Court of Appeal, with the leave of the Supreme Court, from decisions in civil proceedings. This is when the question is one which, by reason of its great general public importance or interest, ought to be submitted to the Supreme Court and in such other cases as may be prescribed by law.

## **Public Service**

The Civil Service operates under the Public Service Act 1999. The Act is divided into 8 parts. Part 2 describes public service values, ground for discipline and responsibilities of chief executives etc. Part 3 mentions inquiries by the public service commission, annual reports and directions of Ministers etc. Part 4 specifies additional powers of the commission, protection of members of Commission, reports of Commissions, Commission's directions etc. Part 5 talks of the Public Service Appeal Board, Part 6 describes the binding nature of the Act and its extensions outside Fiji while Part 7 and 8 specify the transitional provisions and repeals and amendments respectively. In addition to the Public Service Act are the Public Service Regulations 1999 which specify conditions for promotion, appointment, transfer, probation, retirement, conduct, discipline, grievances, annual reports, corporate plans and performance improvement programs. Both the Act and the Regulation have been in force since 13 May 1999.

## Government procurement department

The Government Supplies Department is charged with the general control of supplies and services and operates under the Government of Fiji Finance (Supplies and Services) (General) Regulations 1982. These Regulations clearly specify the powers of the Department. Part II, 3 (1) and (2) state that no tender for the supply of goods and services, or for the purchase of public stores, shall be called for, considered or accepted otherwise than in accordance with these Regulations. In addition, no indent or order for the supply of goods or services shall be issued or approved otherwise than in accordance with the same. The 'Controller' (person in charge of the Government Supplies Department) shall:

- subject to the provisions of these Regulations, be generally responsible for the supply of all goods and services and for the custody and disposal of all public stores;
- ensure that the two provisions of regulation 3 stated above are complied with;
- ensure that instructions required to be issued to Heads of Departments under regulation 9 are issued by them;
- periodically carry out the inspection and audit of all stock balances and inventories and report thereon to the Head of Department concerned

The Controller may appoint any person to act as his agent for the purpose of discharging any of his functions outside Fiji. He may also appoint a 'Board of Survey' to inquire into whether or not the public stores under the control of any Head of Department are serviceable, surplus to the requirement of that Department, or obsolete having regard to those requirements.

Additional regulations governing the Government Supplies Department are the Supplies and Services Instructions and Government Stores Instructions 1982, Finance Instructions 1982, Government Tenders – General Conditions, and Fiji Government General Conditions of Contract.

## Ombudsman

The Ombudsman is appointed by the Constitutional Offices Commission and operates under the Ombudsman Act 1998. The Ombudsman Act 1998 specifies all the legislation relating to the Ombudsman's role including powers to require information and investigate, secrecy and protection from suit etc. During our interview with the Senior Investigation Officer, it was disclosed that the Ombudsman Act 1998 was amended by Decree No. 9 of 2000 which had in some way limited their investigating powers. It is anticipated however that the Appeals court decision to uphold the 1997 constitution will have other legal follow-ups and one such adjustment is the reinstatement of the powers of the Ombudsman. Arrangement of sections of the Ombudsman Act 1998 are as follows:

### *Part 1 – Preliminary*

- Section 1. Short Title and Commencement
2. Interpretation
3. Application of Act

### *Part 2 – Investigations*

- Section 4. Investigations
5. Power to require information to be provided
6. Certificate of Attorney-General
7. Discretion not to investigate

### *Part 3 - Miscellaneous*

- Section 8. Ombudsman and members of staff to maintain secrecy
9. Protection from suit
10. Offences
11. Expenses and allowances
12. Repeal of Ombudsman Act

### 13. Regulations

#### **Media**

All media, broadcasting and television entities in Fiji are affiliates of the Fiji Media Council the umbrella organisation for all media, television and broadcasting. Freedom of the press has been enjoyed to a high degree in Fiji as this has been enshrined in the 1970, 1990 and 1997 constitutions. The Fiji Broadcasting Corporation which is totally government owned and Fiji Television, which is partly government owned have however been restrained on certain occasions from airing news items by the government depending on how the news are perceived to impact government. The act of restraining the media is more so seen as a precautionary step to avoid the type of destructive reporting that threatens the stability of the country.

The Media Council has a general code of ethics and practice, which was enforced after wide consultation with public and private sector bodies. The code of conduct acts as a self-regulating mechanism and specifies all the regulations relating to the activities of media organisations and personnel.

Fiji has three daily Newspapers, one weekly Fijian and one Hindi Newspaper, one Government owned Radio Station and one commercial Radio Station, one national TV Station giving one free to air channel, and three pay channels, and one Community TV station.

#### **Civil Society**

Fiji has civil society organisations which play important roles in not only performing watch-dog functions but more importantly in educating people through promoting ethical values and sense for civic duty. Some of the major bodies are the church and religious organisations, social service institutions, professional organisations and cultural societies. The Civil Society organisations have also figured prominently in nation building programs and have vocally participated in current recovery work carried out by the interim government. They have also been able to act as the bridge between the well educated and the less educated, the rich and the poor, the rural dwellers and the urban dwellers and as well as between the different racial groups in the country.

#### **Private Sector**

Private sector organisations include affiliates of the Fiji Employers Federation, the Chambers of Commerce, the Fiji Trade Union Congress or other Professional bodies like the Fiji Institute of Accountants and the Fiji Law Society. Most bodies are governed by legislation such as the Legal Practitioners Act for lawyers, Trade Union Act for Trade Unions and Fiji Institute of Accountant's Act for accountants etc. The majority, also have code of ethics and/or self-regulating mechanisms within the individual umbrella-bodies to deal with unethical conduct of their members. Whilst most of these organisations do not condone corruption they are like 'toothless tigers' in terms of their powers to fight corruption at a national level.

## **Alleged/Perceived Types of Corruption in Existence in Fiji**

#### **Public Sector**

##### *Kick Backs*

Public officials imposing/demanding extra levies for provision of services which they are expected to deliver in the normal course of their duties. This is prevalent in government bodies with powers to issue permits and licenses such as issuance of passports, work permits, driving licenses, vehicles certifications, etc. A culture is fast filtering into the public officials' work ethics that their powers as sole agents for such services may be abused at will without recourse from applicants. Whilst this is widely known to exist, applicants for permits and licenses are normally reluctant to come forward for fear that future requests for similar services will face even more stringent obstacles.

In the case of Immigration Department an inquiry showed that certain officials who were allegedly involved in corrupt practices were suspended. However, in the absence of any evidence found by the police to press charges, they were reinstated recently. The same officers are perceived to be engaged

in similar practices again. Tactics used include demanding unreasonable/irrelevant types of information from applicants, intentionally delaying issues of documents and sending vibes through “agents” that passports, licenses and permits can be expedited if payments of extra monies are made. Recently the department reviewed its charges to accommodate applicants wishing to obtain their documents in a shorter time frame against the normal processing time. It is unclear at this point whether the revision of charges will efficiently address incidences of kickbacks. In discussions with the head of the department it was confirmed that the practices identified above exist within his Department and his written requests to have the concerned officers removed or dealt with are being ignored by the Public Service Commission. He has sought help from his superiors but without success.

### *Greasing the Palms*

Public officials are enticed by companies or powerful individuals through the offer of financial incentives to provide or facilitate the provision of goods and/or services. Breach of instructions and procedures seem a regular occurrence as public officials succumb to extraordinary offers of bribers. This has resulted in compromising the standard of professionalism and decline in the quality of service. A commonly talked about corrupt practice is that of customs officials who accept under-valuations of goods for duty purposes after accepting bribes from importers thus depriving government of revenue and enriching themselves.

In the case of the recently formed Land Transport Authority it is believed that there are instances where certifications of motor vehicles are issued without proper inspection of these vehicles, and sometimes for vehicles which are not fit to be on the roads. Improperly certified vehicles have become lethal weapons as well as death traps since many of these vehicles are used in the public transport sector. Although the increasing number of road accidents in the past years has always been blamed on the quality of driving, a study may prove that another major contributor is the poor condition of vehicles.

In the Fiji Islands Revenue and Customs Authority a recent case was reportedly discovered, unfortunately after the accidental death of the officer concerned, of that officer having a large amount of cash in his car. It was also alleged that the deceased had a large bank balance in his name and led a luxurious life-style on a relatively small salary. Given that the deceased did not have any other form of income, the obvious conclusion is that some public servants supplement their income through bribes and kickbacks. Fiji does not have a system to monitor life styles of government officials during their term in office or afterwards. There are also alleged instances where officials the Income Tax Office extort money from defaulting taxpayers by sending veiled threats of prosecution if bribes are not paid.

Although mainly prevalent in permits and licensing agencies, greasing the palms and kickbacks are also seen to exist in other government bodies that hold regulatory and enforcement powers.

### *Nepotism/Cronyism*

This prevails in selection processes that involve the recruitment or appointment of officers, appointment of management/directors to public owned entities, awarding of contracts for government projects and outsourcing of particular public services. The introduction of public sector reforms in the mid 90s by the then government of Fiji were made with the intention of bringing about efficiency and economy in the civil service and government owned commercial entities. Part of the reform involved the delegation of such authorities as hiring and firing from the Public Service Commission to heads of Ministries. Certain instances where the selection criteria on appointments was not followed have been publicly reported, bringing concern over the delegation of that authority to Heads of Departments who are perceived to see it as an opportunity to recruit their own friends and relatives. Similar trends are being seen in some statutory bodies and government owned companies. “Whom you know and not what you know” seems to be the code becoming the norm in both the public and private sectors. Given the importance of not confusing the act of nepotism/cronyism with that of discriminating positively for marginalized sections of the population, it has been difficult to determine the extent of nepotism and cronyism in the backdrop of existing policies on affirmative action. However, if nepotism and cronyism are not quickly identified and addressed, they could easily become part of the system in the closely-knit society as exists in Fiji.

*Rank Pulling*

Alleged instances were reported where individuals, made powerful by virtue of their social or political status, exert undue influence over decision-makers to provide a service in their favor. This normally happens when the obtaining of certain good or service is not possible under normal circumstances or if processes required for the provision of such services are lengthy. Increased occurrences of this type of conduct has resulted in declining compliance with established procedures as breaking rules and taking shortcuts become a regular practice.

*Unfair and Unethical Decisions on Public Procurement*

This is not only said to exist in the domain of the Government Supplies Department and other government ministries which control the purse strings but also with the supplier or contractor who make unsolicited offers. Inquiries have been undertaken into the operations of the Government Supplies Dept in the past, and officials removed as public procurement decisions were seen not to be transparent, economical, fair and impartial. The established machinery for large procurements is perceived to have been compromised in the past as political maneuvering and interference plague the process. Rather than allowing the established mechanism to function, politicians at both national and local government levels influence the decision-makers to assist their friends and achieve other ends.

The case involving the awarding of a contract for over F\$200,000 to a computer software company to ensure Y2K compliance was publicly reported. The contract was cancelled by the subsequent government in 1999, and renegotiated with another supplier at a fixed price of F\$80,000. It was strongly contented that the original tender could have been lower if the tender process had been strictly adhered to.

*Misuse/Abuse of Public Funds*

This relates to the misuse or abuse of budgetary authority vested with Ministers, public officials and heads of government commercial enterprises. This unethical conduct prevails in instances where delegation and devolution of administrative and financial authority have not been clearly communicated and are not closely monitored.

Allegations are that there has been massive abuse of authority in the case involving a major scandal in the country's national bank where several hundred million dollars were lost. Following investigations, several people were charged but there have been no convictions for fraud or abuse of authority. One reason for the inability to have successful convictions has been the purported lack of expertise in investigating white-collar crimes in Fiji – both in the Public Prosecution Office and the Police. Other charges and resulting convictions were however made from separate investigations undertaken by the police on the fraudulent activities of former bank employees. The bank was owed millions of dollars, significant debts were not sufficiently covered by security/collateral. The bank ended up being bailed out by the government - a very costly undertaking from which the country is still recovering. The bank has now been sold to a foreign financial institution with government being the minor shareholder.

The insufficient attention given to addressing the issues of misuse and abuse of public funds is a growing concern. Efficient and timely investigation of problems is lacking. Reports of the Auditor General are presented to Parliament and examined by the Public Accounts Committee but in the end very little action is taken by the ministry/department concerned to surcharge the controlling officials to recover the funds.

**Private Sector**

The Private Sector is also alleged to be engaged in corrupt practices the cost of which has to be borne by the society. For the sake of presenting a balanced report, it is worthwhile mentioning some of these.

*Over Pricing by Importers*

Some good examples are those companies in Fiji that are exempted from payment of taxes and duties. These companies have interposed buying houses offshore that purchase goods on behalf of the Fiji companies with common shareholders. These buying houses export the goods by re-invoicing and increasing the price of goods to the Fiji Company. There are three downsides of this activity. First, there is an illegal transfer of capital; second, consumers of those goods and services have to pay higher prices to profit the importer, and third, the purpose for which the concessions granted, ie to reduce prices, is defeated.



The worrying fact is that the authorities seem to be aware of such practices but there is little political will to bring the culprits to justice.

### *Bribery of Supervising Officials*

Another common complaint against the private sector is where contractors bribe the officials supervising major road or housing contracts. They use substandard material in the construction instead of those specified in the contract and the maintenance begins soon after the construction is complete.

## **Perceived Causes/Factors Contributing to Corruption**

There are weak enforcement and sanctions on the illegal/unethical practices of public servants. This is evident in most public sector, private sector and civil society organizations. For example, the Code of Conduct within the Fiji Law Society is provided for in the legislation but it takes significant time to discipline a member against whom a complaint has been brought. Thus the aggrieved member of the public does not get justice quickly, if ever. There have been cases where complaints have been lodged against lawyers and the Fiji Law Society has not taken any action or, if action has been taken, the complainant is not kept informed. It is a case of protecting one's professional colleague. Such laxity is a disaster when a culture is simultaneously cultivated that bribery will facilitate delivery of public goods and services. It is worrying that 'greasing the palms of public servants' is fast becoming an accepted way of life in Fiji.

Fiji is a close-knit society with strong cultural ties and there is tendency to recruit and promote one's own colleague or relative when making selections and appointments against perhaps better qualified people. This close knit or 'smallness' is also a dilemma: everyone knowing each other makes the act of ignoring illegal practices easier than "blowing the whistle."

Ministers/Parliamentarians are not confining themselves to their role as legislators and holding people to account but involving themselves in the day to day running of government thus usurping the role of the public servants. Relationships between Ministers and senior government officials have also been a worry as the independence of the bureaucracy and upholding of its public duty are compromised when the two work together to protect each other's vested interests.

In more than three of the constitutional offices interviewed there was a common problem of either lack of staff, lack of funds or insufficient logistics. The office incumbents highlighted that the insufficient resources impinged on their efficiency and effectiveness. The notion that public servants earned lower salaries compared to their counterparts in the private sector was also an important element that promoted the tendency to be corrupt.

There is a lag in reviews of procedures and codes in work ethics of public officials to keep abreast with changing styles in the management and delivery of public goods and services. This is apparent from the slow implementation of transparency and accountability measures in the wake of the Civil Service and Public Sector Reform programs that brought about the delegation of authority and more autonomy to government departments and government owned commercial entities in the mid 90's.

There is laxity in the public service where sense of public duty is eroded by complacency and apathy. Fiji has traditionally carried a wider and bigger public sector with government as the biggest employer. Recent attempts to re-organize (corporatize/privatize) the public service and its associate bodies to make them more efficient have come up against strong opposition from the public sector unions, which have been powerful players for years. Unions play a 'wait until informed stance' with regards to mal-practices of civil servants and terminating employee's services must be correctly instituted at all costs. A powerful and over-protective union promotes the thinking of lifetime employ in the service and also encourages some to sail 'close to the wind'.

The cultural dilemma whereby the official role of public servants are interwoven with and often compromised by their traditional obligations is another problem. The impact of culture on public duty strikes both ways but it is more worrying when the tendency is for the official to exercise his/her influence or use his/her position for personal or family gain. This is evident from the unclear guideline on the receiving of public/traditional gifts by civil servants. Monitoring of gift registers are left to the various department's accounting officers and are not closely scrutinized in the mistaken belief that good will and high sense of moral duty prevail amongst all public officials.

Poor role models and insufficient commitment at the management or leadership levels to combat corruption has also been a contributing factor to corruption. There has been public outcry about the abuse of office of senior public officials and no remedial action taken to rectify mal-practices. Equally the insignificant emphasis placed by previous governments on attacking mal-administration at various levels of the bureaucracy has resulted in some half-hearted attempts to overhaul government procedures and systems to promote good governance and accountability.

Discretionary powers are often used to favor former colleagues, friends or relatives as it is not always necessary to provide reasonable grounds to justify the decision. This is alleged to be persisting in the areas of the judiciary where the final authority for judgement is exercised in an institutional capacity.

There is a marked misunderstanding or ignoring of whatever exists by way of a code of conduct, regulations and rules on the issue of conflict of interest of legislators. Parliament refrained from passing a bill in 1999 dealing with the conflict of interest of legislators. It was argued that most of the requirements would be inapplicable in Fiji. The bill has been returned for a review to be conducted in line with Fiji's systems and norms. It remains to be seen whether the next elected government will reintroduce it.

## The Costs of Corruption

The costs vary from a personal level to the national level.

### *Personal losses*

Personal losses are in the form of extra monies spent to obtain services in addition to the time spent to have things done. It is also suspected that bribes will become normal expenditure in company budgets as such payments become necessary in the normal running of business.

### *Loss of Time*

The complacency and the lackadaisical attitudes of departments, which do not ensure that they produce goods and services on time, have caused enormous losses to individuals and organizations. Amount of losses cannot be measured in monetary terms but it is apparent that the cost is detrimental to the nation as a whole as it affects other productive areas of the economy.

### *Development Cost*

The need to be accountable for public spending cannot be overemphasized. Development is retarded at the cost of a few selfish politicians/officials who use public resources and positions for their personal gain. The country is still trying to come to grips with the National Bank scandal and society having to meet the losses because players are either too powerful to be prosecuted or that prosecuting authorities lack the capacity to press charges on people who may have been involved.

### *Political Cost*

The recent political turmoil and the resultant instability and economic hardship that followed can be attributed to the style of leadership and governance that Fiji had undergone post independence in 1970. The Dissatisfaction with management of public affairs has always been publicly voiced and reported. It has been argued that a major reason behind the uprising of the people and the overthrow of the elected government was the lack of transparency, accountability, fairness and justice in the management of government affairs. The aggrieved, who claim they were being marginalized, are now fighting for more transparency, accountability and fairness in government.

### *Decline in Work Ethics and Degradation of Values*

Decline in work ethics and degradation of values are social costs of corruption which are becoming accepted practice. Added to this is the general decline in moral standards. Fiji has increasingly become a victim of drug trafficking, child pornography and import of other illegal products. It is envisaged that investigations will reveal the intensity of corruption that have allowed these unlawful activities to start.

### *Cost to the Economy*

As explained in the above cases the amount of time lost in obtaining services and the cash that needs to pass through and the potential loss of lives from using uncertified vehicles can be enormous and indeed difficult to quantify in monetary terms. These costs are passed down to the society, as eventually someone has to pay for the illegal gains of those who profit from the weaknesses of the public at large. Trade and investment decline because of the high demands on the resources. The correlation between political instability and investment is evident. Decline in investor confidence flows down to affect employment and causes social problems- Fiji is experiencing the taste of this environment at the present time.

## **Impact of Democratization and Decentralization on Corruption**

The government prior to the deposed Government had embarked on a Civil Service Reform Program, which involved the devolving of certain functions normally performed by the Public Service Commission and the Minister of Finance to respective ministerial/departmental levels. This came with the Financial Management Program, and delegated budgetary authority and accountability to each ministry. The program was intended to bringing about efficiency and accountability in the service eliminating wasteful and unprofessional conduct in public service duty.

However this reform was rolled back by the now deposed government, as certain weaknesses were discovered in the reform system. There were signs of abuse of the delegated powers in the recruitment and promotion of staff as staff advancements were perceived to be curtailed at departmental levels as they became more specialists in their job assignments and could not be moved sideways.

Purchasing of goods and service also became a suspicious affair. It was perceived that contracting and outsourcing of particular services were going to follow a crony trend or arranged through bribes and greasing of palms. Unless tender processes were transparent, fully adhered to and closely monitored, corruption could not be taken care of.

The Government's public sector reform program was closely scrutinized as it was already evident that a number of sales of public enterprises were not carried out with proper due diligence. The losses and the financial problems plaguing the restructured government owned commercial entities have raised a lot of questions about involvement of certain government ministers in the bidding process. Although on the face it appeared that the procedures fulfilled transparency requirements these were subjected to political influences, as there is no legislation to prohibit government ministers from influencing the tendering and bidding process. Democratizing such mechanisms by involving professional firms in the tender process would have proven more effective.

It is worthwhile to mention some of the ways Fiji could guard against corruption as they have a bearing on the democratization and decentralization of power. These include:

- Education towards zero tolerance i.e. not even the slightest amount of corruption is acceptable
- Promoting a 'watch' and 'be watched' environment
- Reinforcing transparency, fairness and accountability
- Committing more resources to strengthen 'watchdog institutions'
- Making Government procurement procedures more transparent and open to scrutiny
- Devolving authority and sharing/delegating decision-making powers. This is not to disregard the fact that devolving authority from the center will not derail corruption. It is noted that new avenues for petty corruption open up as the grand mal-practice of the central authority is reduced. It is also currently evident that offices or parties that assume authorities are not completely versed with their powers hence their exercise is either ineffective or abused.

## Key Issues Concerning Fiji's National Integrity System

Components of the NIS exist but the effectiveness of the system is very weak because certain elements [Government institutions] have not been appropriately reviewed upgraded and strengthened to take on the demands with changing times. Some of the key issues are:

The independence of the pillars of Fiji's Integrity System are threatened as whilst the appointments of the post holders are independent their functions are comprised and rendered ineffective as the administrative support is controlled by those providing the funds for the operations of their offices. Common concerns were expressed by the offices of the Auditor General, the Ombudsman and the Commissioner of Police on this issue.

The dilemma concerning independence of the office also appears to be evident in the awkward situation of enforcing the law where it gets tainted or used with some degree of reluctance whenever a culturally sensitive personality or senior official is subjected to an investigation. Commissions of inquires were established to investigate mal-practices of various officials and appropriate action are either pending or deemed inappropriate as evidence is found to be lacking.

Whilst the media and civil society organizations have modified and strengthened their roles through the provisions of the Constitution, the public sector has not carried out sufficient necessary institutional strengthening programs to enhance their enforcement roles. The shortage of qualified people in the enforcement arm of the government has been an on going concern. The Director of Public Prosecution's (DPP) office for instance is staffed with some of the most junior legal practitioners in the country but is expected to deliver tasks and responsibilities of high standards. This has caused lapses in prosecutions- recently the Chief Magistrate acquitted a person charged with the attempted mutiny at the Army Barracks in November 2000 because the prosecution staff failed to make an appearance on behalf of the state. A local newspaper editorial highlighted the lapses of the DPP's office again in another case where the prosecutors failed to make an appearance resulting in the accused being released without hearing. Public concern about the strength and ability of the DPP's office to deliver its functions has been growing and confidence in the DPP's Office is eroding.

One of the reasons argued for such incapability in the office is the low salary level in the civil service. The DPP's office has in the past been a training ground for lawyers who eventually make their way into the private sector. Staff turnover is high because resources to retain qualified staff are not available. As a result a group of newly trained legal officers of government have to stand up against the more experienced private practitioners, with obvious results.

The lack of technical expertise of the required level to investigate, bring charges and convict offenders is a disturbing trend in Fiji and it brings a lot of doubt over the government's resolve of upholding law, order and justice. Several times recently prosecution have had their cases thrown out of courts for lack of evidence and for not making an appearance on behalf of the state! This has triggered serious signals within the community and to potential investors on the law and order situation in the country and the types of trends to expect if situation is not corrected.

The Government owned companies still hold the civil service mentality and are not aggressively enforcing legislation.

The size of the public sector has been traditionally larger compared to the private sector and current reforms to transfer revenue generating functions of the government to the private sector is met with strong opposition from the unions for the fear of job losses and thus decline in membership.

Accountability of civil servants and politicians has been lagging because specific regulations to promote good ethical conduct of public officials and politicians are not in place. For rules that are already in place enforcement is either nil or very weak. Registers to record gifts and hospitality received by government officials are non-existent. In the case of the legislature, policing of conduct is not considered necessary as those in the position of authority are perceived to be of high caliber and expected to display a high standard of moral duty.

Cultural influences and smallness of the Fiji society can be detriment to the effectiveness of NIS. Promoting a 'watch' and 'watched' environment is bound to face obstacles because everyone knows everyone else. The friendly forgiving nature and extreme tolerance inherent in the culture will not be easily surrendered. If both parties to an unlawful act have profited from their engagement, why should that benefit be divulged to the law enforcer or a third party? Setting up a 'whistle blowing' mechanism will also be difficult for the above reasons. The people will not come forward for fear of victimization. A

judge in the High Court admitted in our interview with him that anonymity does not exist in Fiji hence protection for whistle blowers cannot be guaranteed. This claim was made after gauging the public's response to a call for submissions on illegal practices. This is also perceived to be one of the reasons why there is insufficient evidence from the DPP's office in numerous cases.

## **Trends Observed in Other Countries**

- Promoting the idea that 'Fighting Corruption' is a national concern and there must be a commitment of the whole nation driven by a political will to fight and stop corruption. There should be a role for everyone - from the highest office in the land to all the civil societies to raise their voice against corruption. Provisions should be included in the highest law of the land to that effect.
- Establishing independent commissions to investigate into corruption e.g. ICAC of Australia, Hong Kong.
- Formulation and enforcement of National Anti-corruption Strategies. Many developing countries have worked on such a document following global acceptance of the OECD report of 1998. This report gives a lot of integrity to the countries in their bids to contain corruption domestically as well as externally.
- Treaties and agreements with other countries to combat international corruption. Globalisation if not controlled could lead to drastic consequences in international equity. Corruption could become the rule of the game if ethics is not introduced to check the ills of the market forces.

## Index

### A

Abuse of office, 8, 10  
 Anonymity, 13  
 Anti-corruption strategy. *See* Government anti-corruption strategy  
 Assets, declaration of. *See* Disclosure provisions  
 Auditor General, 4, 8. *See also* Supreme audit institution

### B

Banking, 8, 10  
 Bose Levu Vakaturaga (Great Council of Chiefs), 3  
 Breach of contract, 9  
 Bribery, 7, 9, 11  
 Broadcasting. *See* Media

### C

Chambers of Commerce, 6  
 Child pornography, 10  
 Civil service. *See* Public sector  
 Civil society, 6  
   Level of activity, 6  
   Role in anti-corruption, 6  
 Codes of conduct, 4, 6, 9, 10, 12  
 Commonwealth Secretariat, 3  
 Complaints mechanisms, 9  
 Conflict of interest, 10. *See also* Disclosure provisions  
 Constitution. *See* Law; Laws  
 Constitutional Offices Commission, 4  
 Conventions, international. *See* International law  
 Corrupt relationships, 7, 11  
 Corruption, causes of, 9–10  
 Corruption, cost of. *See* Corruption, impact of  
 Corruption, culture of, 9  
 Corruption, impact of, 10–11  
 Corruption, presence of, 6–9  
   Banking, 8, 10  
   Customs, 7  
   Executive, 8  
   Immigration, 6  
   Judiciary, 10  
   Licensing/permits, 6  
   Private sector, 7, 8–9  
   Public procurement, 7, 8  
   Public sector, 7, 6–8, 9  
   Revenue collection, 7  
   Transport, 7  
 Corruption, types of  
   Grand corruption, 11  
   Petty corruption, 11  
 Cronyism, 7, 11. *See also* Corrupt relationships  
 Customs, 7

### D

Decentralisation  
   Impact on corruption, 11  
 Democratisation  
   Impact on corruption, 11  
 Disclosure provisions, 9, 10, 12  
 Drug trafficking, 10

### E

Economic crime  
   Fraud, 8  
   Illegal capital transfers, 8  
 Economy  
   Investor confidence, 11  
   Performance, 10  
 Education  
   Recommendation, 11  
   Role of civil society, 6  
 Election monitoring, 3  
 Elections, 3  
 Ethics  
   Moral values, 10  
   Public service, 4, 9, 10  
   Traditional values, 9, 12  
 European Union (EU), 3  
 Executive, 3  
 Extortion, 7

### F

Fiji Broadcasting Corporation, 6  
 Fiji Court of Appeal, 4  
 Fiji Employers Federation, 6  
 Fiji Institute of Accountants, 6  
 Fiji Islands Revenue and Customs Authority, 7  
 Fiji Law Society, 6, 9  
 Fiji Media Council, 6  
 Fiji Television, 6  
 Fiji Trade Union Congress, 6  
 Fraud, 8. *See also* Economic crime  
 Freedom of the press, 6

### G

Gifts. *See* Disclosure provisions  
 Globalisation, 13  
 Government anti-corruption strategy, 13  
 Government procurement. *See* Public procurement  
 Government Supplies Department, 5, 8  
 Grand corruption, 11. *See also* Corruption, types of

### H

High Court, 4, 13  
 Hospitality. *See* Disclosure provisions

- I**  
 Immigration Department, 6  
 Income Tax Office, 7  
 International law, 13  
 Investigative/watchdog agencies, 11, 13
- J**  
 Judicial Committee of the Privy Council, 4  
 Judiciary, 4
- K**  
 Kick backs, 6
- L**  
 Land Transport Authority, 7  
 Law  
   Civil society, 12  
   Effectiveness, 3, 4, 12  
   Elections, 3  
   Judiciary, 3  
   Legislature, 4  
   Media, 12  
   Ombudsman, 5  
   Private sector, 6  
   Privatisation, 11  
   Public procurement, 5  
   Public sector, 3, 4  
 Laws, Fiji  
   Audit Act (Cap 70), 4  
   Audit Amendment Act No 7, 1998, 4  
     Section 12 (2), 4  
     Section 6 (1), 4  
   Constitution, 1970, 6  
   Constitution, 1990, 6  
     Section 102-5, 4  
     Section 106, 4  
     Section 111, 4  
     Section 113, 4  
     Section 115, 4  
     Section 118, 4  
     Section 19, 4  
   Constitution, 1997, 3, 4, 6  
   Court of Appeal Act, 4  
   Decree No 9, 2000, 5  
   Fiji Government General Conditions of Contract, 5  
   Fiji Institute of Accountant's Act, 6  
   Finance Instructions, 1982, 5  
   Government of Fiji Finance (Supplies and Services) (General) Regulations, 1982  
     Part II, 3 (1-2), 5  
   Government Stores Instructions, 1982, 5  
   Government Tenders – General Conditions, 5  
   Legal Practitioners Act, 6  
   Magistrates Court Act, 1944  
     Section 28, 4  
   Ombudsman Act, 1998, 5  
   Public Service Act, 1999, 4  
   Public Service Regulations, 1999, 4  
   Supplies and Services Instructions, 1982, 5  
   Trade Union Act, 6  
 Legislature, 3–4  
   Rules and procedures, 10, 12
- M**  
 Magistrates Courts, 4  
 Media, 6  
   Ownership, 6  
   Restrictions, 6  
   Rules and procedures, 6  
 Military rule, 3, 4  
 Misuse of public funds, 8  
 Monitoring of lifestyles, 7
- N**  
 National anti-corruption strategy. *See* Government anti-corruption strategy  
 National integrity systems, discussion of, 12–13  
 Nepotism, 7  
 Newspapers. *See* Media  
 NGOs. *See* Civil society
- O**  
 Ombudsman, 5–6  
   Effectiveness, 12  
   Independence, 12  
   Rules and procedures, 5  
 Organisations, Fiji  
   Bose Levu Vakaturaga (Great Council of Chiefs), 3  
   Chambers of Commerce, 6  
   Constitutional Offices Commission, 4  
   Fiji Broadcasting Corporation, 6  
   Fiji Court of Appeal, 4  
   Fiji Employers Federation, 6  
   Fiji Institute of Accountants, 6  
   Fiji Islands Revenue and Customs Authority, 7  
   Fiji Law Society, 6, 9  
   Fiji Media Council, 6  
   Fiji Television, 6  
   Fiji Trade Union Congress, 6  
   Government Supplies Department, 5, 8  
   High Court, 4, 13  
   Immigration Department, 6  
   Income Tax Office, 7  
   Judicial Committee of the Privy Council, 4  
   Land Transport Authority, 7  
   Magistrates Courts, 4  
   President's Office, 3  
   Public Accounts Committee, 8  
   Public Prosecution Office, 3, 8  
   Public Service Appeal Board, 4  
   Public Service Commission, 7, 11  
   Rotuma Island Council, 3

Supreme Court of Fiji, 4  
 Organisations, international  
   Commonwealth Secretariat, 3  
   European Union (EU), 3  
   United Nations (UN), 3  
 Overview, country, 3

## P

Parliament. *See* Legislature  
 Petty corruption, 11. *See also* Corruption, types of  
 Police and prosecutors  
   Capacity, 8, 12  
   Effectiveness, 12  
   Independence, 12  
   Prosecutions, 8  
   Salaries, 12  
 Political parties. *See* Politics, Political parties  
 Politics  
   Mistrust in politics, 10  
   Partisan politics, 3  
   Political parties, 3  
   Political stability, 10  
   Political will, 13  
 President's Office, 3  
 Private sector, 6  
   Role in anti-corruption, 6  
   Rules and procedures, 6  
 Privatisation, 9, 11, 12  
 Public Accounts Committee, 8  
 Public awareness campaigns, 13  
 Public procurement, 5  
   Recommendations, 11  
   Rules and procedures, 5  
 Public Prosecution Office, 3, 8  
 Public sector, 4  
   Capacity, 12  
   Effectiveness, 9  
   Independence, 9  
   Recruitment and career development, 4

Reforms, 7, 9, 10, 11  
 Rules and procedures, 4, 9  
 Salaries, 9, 12  
 Sanctions, 9  
 Public sector reform, 7, 9, 11  
 Public service. *See* Public sector  
 Public Service Appeal Board, 4  
 Public Service Commission, 7, 11

## R

Recommendations, 11  
 Registers. *See* Disclosure provisions; Conflict of interest  
 Rotuma Island Council, 3

## S

Size of community/country, 9, 12  
 Standards of conduct. *See* Codes of conduct  
 Supreme audit institution, 4  
   Effectiveness, 12  
   Independence, 12  
   Reporting, 4, 8  
   Rules and procedures, 4  
 Supreme Court of Fiji, 4

## T

Trade unions, 9, 12  
 Treaties. *See* International law

## U

United Nations (UN), 3

## W

Whistle-blowing, 12  
 White collar crime. *See* Economic crime