



National Integrity Systems

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Country Study Report

Republic of the

Marshall Islands 2004

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Abbreviations

ADB	Asian Development Bank
EPSSO	Environment Protection, Statistics Service Office
GAO	US General Accounting Office
MALgov	Majuro Local Government
MISSA	Marshall Islands Social Security Association
RMI	Republic of Marshall Islands
USGAO	United States Government Audit Office

Executive Summary

A near fiscal collapse in 1996 forced an urgent review of systems of accountability and transparency within the Republic of the Marshall Islands (RMI). With the aid of the Asian Development Bank (ADB), the RMI government has gone on to implement several steps towards greater accountability, and the new government of 1999 has been re-elected in 2003 with a public mandate to continue its work on increasing transparency within the country.

Within RMI, accountability has been addressed specifically in terms of financial accounting. Inadequate planning, failures to meet budget requirements, and lack of reporting of fiscal matters to the Nitijela (Parliament) have been widespread problems that have reached across both central government agencies and local government. Poor investments, an inadequate taxation system and foreign business licensing all contribute to 'missing money'. These matters have been targeted as a result of the recommendations of the Task Force on Accountability (2001). The new audit system that commences in 2004 will be run by the US Government Audit Office, and will assist in rectifying these discrepancies.

In undertaking an analysis of transparency and corruption issues within the RMI context, it quickly becomes apparent that decisions made by top level officials have contributed to the apparent fiscal mismanagement. Poor investments, challenges from overseas contractors, and the shared currency with the US have enabled finances to remain under-reported. A customary structure of not challenging superiors has led to inaction to counteract poor decisions –rather officials have been moved to other offices, and the problem has persisted.

This report therefore argues that strengthening the human resource sector is vital if the accountability and decisions required are to be of high standard. Work force capabilities need urgent development. By strengthening the role of the Public Service Commission to attract qualified Marshallese back from overseas, together with training programmes on an ongoing basis the work force will be drawn into discussions of how to improve transparency. Staff morale has been severely lowered following the 'reduction in force' programme in 2000, and thus needs an injection of trust and support. Career development programmes with incentives for work contributions, and channels for discussing dissatisfactions must be put in place.

In terms of the important issue of the future of culture and accountability with the RMI, traditional mores and values remain an integral part of today's decision making. Leadership is charged with setting standards which currently are very variable, and changing to accommodate outside pressures. The voice of the people is important to the current government which is charged with devising new means to ensure information is shared and widely debated. The media reaches mainly the urban population where Marshallese custom is diversifying. The next level of accountability must examine traditional governance systems and leadership, as exemplified by the Iroj (chiefs), and their contributions through the Council of Iroj to today's issues. Land as collateral for bank loans is one such issue.

Lastly, this report argues that the meaning of 'ethical government' as laid down in the Ethics in Government Act 1993 must be addressed if accountability is to be based on firm foundations. Then the meaning of corruption in the Marshallese setting may be clarified and more comprehensively countered.

Country Overview

The Marshall Islands' political system consists of a President and Cabinet integrated with the Legislature (Nitijela or Parliament). A Council of Iroij has been created within the Nitijela. This and other pillars of a new political structure were put in place by means of a Constitution adopted in 1979, and the Republic of the Marshall Islands became fully autonomous in 1983. This overview briefly introduces the political and judicial structures in RMI, sketches historical accountability issues, and points to the importance of understanding the current social context in RMI to understand how the concepts of accountability and corruption are changing.

The Constitution of 1983 sets out the structure for the political system in the new Republic of Marshall Islands. The President is elected by the Cabinet with six supporters at least. The President combines the roles of head of a cabinet government, Head of State under the Marshallese Constitution, and traditional title as a preeminent paramount chief or Irojlablab. The parliament, known as the Nitijela consists of all elected Congressmen and the Council of Iroij of 12 members. Elections are held every 3 years. The other major components itemised in the Constitution are the Judiciary, the Public Service, Finance, Local Government and the Council of Iroij. A Bill of Rights, and Traditional Rights, as well as rules of Citizenship are all established.

The first President elected was also a senior Iroij, and had been a Congressman in the Congress of Micronesia. He was well versed in the political affairs of the nation as well as in dealings with the US Congress. He was a highly respected member of Marshallese society, experienced in both traditional and modern politics. When he died in office in 1996, he was succeeded by a cousin, but the financial troubles of 1996 remained unresolved, leading to opposition to the government's moves to patch up the problem by selling passports, trying to make gambling legal, and offering to accept the dumping New York waste in the Marshalls. These and other issues swung the electorate towards the opposition party. At the 1999 elections, a major upset occurred when a commoner, the former Speaker of the House, was elected as President. Thus the Iroij were no longer prominent in the Executive.

That opposition party campaigned on a platform of combating corruption and increasing accountability. It proved a popular platform for the new government. The same government was reelected in November 2003 for a further three years, with President Note and his Cabinet returned to continue their mandate for accountability.

With regards the factor of traditional organizations in governance, the Council of Iroij, is a segment of the Nitijela, is charged with receiving all legislation that passes through the Nitijela in order to consider its effect on customary law. It consists of 7 eligible persons from Ratak chain, and 5 eligible persons from districts of the Ralik chain; one atoll may have 4 or 6 or just 2 Iroij who have inherited their relationship to lands there. The question of eligibility to Iroij status is increasingly under scrutiny. The Council of Iroij is part of a unicameral house, the Nitijela (Lynch 1984), rather than an Upper House (as Fraenkel 2002 labels it). Lynch further describes it as "an advisory and consultative body" (p.8). Cabinet has no authority over it, nor does it have authority over the Cabinet. The main concern facing Iroij is their relation to land holdings, and their role in governance is in need of review.

Within this political context one political party has dominated the political scene though it has no particular name – one elected Senator referred to the two today as the Traditional party, and the Non-Traditional. In the 1970s the Ainiken Dri-Majol was the dominant affiliation for most elected officials, but it faded away, even though the Opposition had only a handful of members. Opposition to the break up of the Trust Territory merged into opposition to the Compact of Free Association with the US. The number of opponents has further increased with opposition to certain clauses in the Second Compact recently negotiated. Kwajalein landowners could be considered a third party, as they have consolidated their concerns about certain clauses of the new Compact. They want to receive directly the rent money from the US for use of Kwajalein atoll for defense interests, rather than that money being paid through RMI government. Their objection to the 80 year lease as prescribed within the new Compact is also a particular concern. Party

funding is drawn either from 'family' money, or from commercial interests, mostly from the US, though Taiwan money is increasingly influential. No accounting has been called for thus far. Nor are the upcoming elections to be monitored.

The judiciary in RMI currently consists of a Supreme Court, a High Court, a Traditional Rights Court, and such District and Community courts as have been created by law. These courts are independent of the legislative and executive sectors. Appointments to the office of judge of the Supreme Court and High Court are made by Cabinet, acting on the recommendation of the Judicial Service Commission (Article VI of the Constitution). The judges appointed to the Supreme Court and High Court have been drawn from the US. Cases against two of these judges have resulted in dismissal by Cabinet in 2003. The lack of Marshallese with legal training and better conditions overseas for those so trained is a serious concern for maintenance of the judiciary.

During the 1950s and 1960s the US was charged with inadequate inputs into both funding and training for its TT states, and with inadequate provision of programmes for political, economic and social development (Report of UN Trusteeship Council Visiting Mission to the Trust Territory of the Pacific Islands 1961). The Marshalls, along with the other Trust Territories, were suddenly swamped by US funds (see Hanlon 1999 for a full account of this 'development' period in Trust Territory /Micronesian history). The US also became involved in paying for health, education, communications, and much infrastructure, and the major task of government departments was to "manage" whatever funds the US provided. Within this context a few Marshallese were placed in management positions with no prior training, for example when they were elevated to District Administrator posts or Congressmen in the Congress of Micronesia to replace former US appointments. The Marshallese therefore had to learn to handle large sums of money 'on the job'.

Then when the country became an independent Republic in 1983, the people of the Marshall Islands opted by referendum to continue their relations with the United States, and a Compact of Free Association was signed in November 1986. This Compact was to last for 15 years, with the option of renewal by both parties. The Marshallese gained power over their own affairs while securing an income from the US that includes rent for continuing exclusive use of Kwajalein atoll for military activities. The US nuclear testing programme, considered vital for national security, was also assured. In exchange for these benefits, the US guaranteed defense of the Marshall Islands, access to Federal programmes such as Head Start, EPA and disaster relief, and the right of Marshallese to live and work in the United States. US 'grants' to the RMI amounted to a total of \$48 million in 1987, diminishing to \$40 m in 1995/6 and \$34.7 m in 2001/2. The majority of the RMI's annual income post-1983 therefore came from "Compact money" while a small portion came from other US grants. This US money provided some 70 per cent of the total annual income of the RMI over the 15 year period (1987-2002). An additional sum of about \$12 million was paid by US to landowners for access and use of Kwajalein by US military authorities, though the precise sums were not clearly specified (Hughes 2001:206).

It is therefore vital to recognize the fact that no accountability for expenditure of this grant money was furnished, or required for the first thirteen years. Indeed, in May 2000 the US Government Audit Office criticised its own officials for failing to monitor the use of Compact funds. Their report noted deficiencies in accounting for disbursed funds in the Marshalls, and thus "bad habits in financial management that are proving hard to eradicate" (quoted in Hughes 2001:11). A major ADB report also drew attention to the lack of economic growth resulting from use of the funds. The ADB Report (2001) therefore noted that spending, particularly on an overly large civil service, together with poor management, led to "wasteful and corrupt contracting practices, environmental damage, and an unsustainable fiscal position (Hughes 2001:11).

In 1996, then, the RMI was facing financial collapse. An overall balance of payments was recorded at \$0.6 million, and government salaries were past due (Hughes 2001). Accountability for that near disaster must lie with the US for failing to monitor annual use of Compact funds in terms of Marshallese 'big spending.' The US GAO call for retro-active accountability has been resented by Marshallese and has proved a near impossibility to achieve.

In an attempt to save the RMI from economic collapse, a second Compact has been negotiated. This was signed by President Bush on December 6, 2003, over a year after the first Compact had expired (during this time interim funding was available). The second Compact will run for 20 years. The US will provide financial assistance on an annual sector grant basis for those 20 years as set out in Section 217. The US proposes to manage the assistance provided to the Marshall Islands under the Compact through a Joint Economic Review Board Management and Financial Accountability Committee, consisting of three members from the US and two from the Marshall Islands. RMI is required to submit to that Committee a Medium Term Budget and Investment Framework 90 days after the Compact is signed. The Office of Insular Affairs has since issued its Financial Assistance Manual, and has made public the complex implementation policies and terms of the RMI-US agreement (RMI-US Fiscal Procedures Agreement, Yokwe on line 8 December 2003 [www.yokwe.net]). Whether the newly restructured RMI Ministry of Finance will be able to meet all these new policies remains to be seen.

Also under the terms of the new Compact, a US GAO office has been established under the US Office of Insular Affairs in Hawaii, solely dedicated to monitoring federal assistance to RMI as well as FSM and the Republic of Palau. This office opened in November 2003 (Yokwe on line 4 November 2003 [www.yokwe.net]). Tighter management of funds across all government departments, together with the required reporting and acquisition of accounting skills will contribute towards greater accountability.

In terms of the activities and requirements of other major donors, Japan has contributed \$8.8 million over 10 years since 1992, and Taiwan gave RMI \$19 million in 1999 in return for port access for its fishing fleets. EU money is also provided for specific projects. But in the last ten years ADB has provided both the US and Asian parties with technical assistance in the Marshalls towards improving accountability. A loan of 12 million for the Public Sector Reform Programme in 1996, plus funding for Task Force 1 (1999) and Task Force 2 for Accountability (2002) plus training needs and scholarship have been gratefully received by RMI government as tangible support for their desire to increase transparency.

With regards to other issues of transparent and accountable governance within RMI, the elections of November 17, 2003 passed off as smoothly as could be expected, though procedures may be reviewed for the next election in three years time. Criteria for appearing on the electoral roll may need tightening, particularly given the increasing number of Marshallese resident overseas. Further, the 'reduction in force' of the civil eliminated one third of government jobs as part of the Asian Development Bank's Public Sector Reform Programme 1997-8 has resulted in department heads having difficulty finding trained committed applicants for the restructured sectors. Ministry of Finance in particular has major tasks to complete to comply with the taxation laws, and to turn around the record of non-reporting. Cuts in both the wage rate and operations budgets do not serve to attract experienced and skilled Marshallese currently living and working in the US, though members of the police and education sectors were not affected as they are not included within the Public Service Commission.

It is also important to note that the local media, mainly through the Marshall Islands Journal and the government radio station, have been providing the public with increasing amounts of information. Discussion of the Task force on Accountability report (2002) has brought the words accountability, anti-corruption and transparency to the fore. However since the English words are used in Marshallese it is by no means clear what people understand by these terms. Discussion of political issues in schools has been muted, and may take a new generation of teachers to have a marked effect.

Lastly, it is vital to understand the social context of RMI. Currently the social system is delicately poised between the traditional and the modern. With the inclusion of the Council of Iroij within the Nitijela, traditional forms of governance have been combined with modern systems. Since two thirds of the population live in two urban centres, and some 45 per cent of the population are under the age of 15, the waged work force has large number of dependents. The traditional role of the Iroij (chief) and Alab, land manager, is undergoing new nuances because so many Marshallese live away from their home atoll, and their lands which tie them into the traditional system. Yet those ties are the basis of their identity, and their land rights become even more important in certain contexts, such as voting. Yet access to land is such a crucial issue that it requires urgent attention, it is

with regards to these kinds of issues that transparency will be difficult to achieve, depending on whose terms it is negotiated.

The Marshall Islands is facing new ideologies, both obliquely as well as directly. The new relationship with the US under the second Compact will introduce strictures that Marshallese consider threatening to their sovereignty. They are being asked to be accountable by outsiders' rules, with little time in which to develop their own adaptations. A history of unchecked funding from the US, the continued importance of traditional values, and the new imposition of strict rules for governance will all continue to impact on issues of transparency and corruption within the RMI and will challenge the government to balance social and cultural needs with new economic realities.

Corruption Profile

Definitions and Scope

The word corruption has no equivalent in Marshallese language. The Constitution of 1983 includes a section entitled (in English) 'Ethical Government within the Bill of Rights' (Article II, Sect. 16). This states "The Government of the Marshall Islands recognizes the right of the people to responsible and ethical government and the obligation to take every step reasonable and necessary to conduct government in accord with a comprehensive code of ethics." That is the English translation. The Marshallese version uses the concept of '*kien jimwe in mol*' or (literally) 'government being upright in truth' in the Marshallese heading for the Bill of Rights section.

What is perhaps most striking about this particular case is that the RMI government more frequently refers to accountability than to anti-corruption. The term 'accountability' is also much more widely used by the general public, and steps are being taken to put it into practice, as discussed in various recommendations made by the Task Force on Accountability Report (2001). Accountability and transparency are thus the terms that best represent Marshallese endeavours in anti-corruption, and President Note set out "the issue of accountability" in the following terms (MIJ March 21, 2003),:

we, as a Government serving the public trust, must be accountable for how we spend each dollar and what results from the spending. I don't see the funds provided by the United States, Republic of China and others as "their money" giving us a chance to hold it temporarily and spread it at will. No, I see it as an investment in our country and in our people. We, not the Americans and others, are responsible for what or how we use it. Just like a family or an individual, we must provide the answers. No one else can or should provide the answers for us.

The meaning of 'corruption', in addition to that of accountability, is also of paramount concern throughout this report. In probing further what 'corruption' might mean in a local context I endeavoured to ascertain with each Marshallese colleague what they understood by the term. One person gave the standard definition (after much thought) 'corruption is the use of public funds by public officials for private gain' (Pers. Comm. C). Another suggested it only referred to 'business' but that was too narrow. Yet another person referred to the difficulty of assessing the term in relation to Marshallese custom. A commonly recurring word was 'trust', with accountability a concern in light of new (i.e. modern) relationships, such as business. Accountability have been introduced in the last three years, so people now see that changes in the old ways are necessary in today's business world. But they still draw a distinction between traditional obligations that may be labelled as corrupt today, and failures by government or in business obligations in the modern setting. The definition of corruption by Transparency International covers 'giving or receiving undue advantage in the course of business activities leading to acts in breach of a person's duties' (quoted in Dearden 2003:28) is narrowly confined to business and misses these nuances. In the context of the Marshall Islands, Sen's suggestion that corruption is "the social costs of asymmetrical power that the potentates of bureaucracy enjoy vis-à-vis the supplicating applicants' (Sen 1999:136) is arguably more applicable.

Causes

There are a number of possible causes of corruption in RMI. These include: historical legacies; political structures; traditional obligations; problems of low rewards in the public sector; low skill levels; overseas operators not heeding local customs; and even the use of US currency.

As indicated above, it would seem as if history is important in understanding the causes of corruption in RMI. The absence of a system of accountability in the past, either under Trust Territory government, or the first Compact enabled conflicting demands and misuse of funds to flourish. The relationship with the US has also spawned a culture of welfare. All peoples of the Trust Territory received an ever ready 'watering can' of money, promoting a mentality of 'ask and receive'.

The political structure that arose out of formal independence in 1983 integrated traditional leadership and custom (Council of Iroij) with the legislature (Nitijela). For the first 18 years of independence, government was led by a strong President who was also Iroij, and one dominant party. There was little coordinated opposition to his rule until he died in office, and more cohesive politicking has only emerged in RMI in the 1990s. The culture of government and 'opposition' is only just taking root.

With regards to other 'cultural' aspects, traditional values of gift-giving as a means of social cohesion, and recognition of kin and wider social ties sit uneasily alongside formal rules against 'corrupt' practice. Chiefs and the elite are expected to offer services and gifts when available, such as at election times. Workers expect care and attention, and material gifts from the elite. For example, in the 1960s Iroij Lejolan Kabua used to bring gifts for the people including fairy lights, a stereo system and a small car when he returned to Namu – these represented his idea of bringing the wider world to this atoll (NJP Fieldnotes 1969)

Additional causes of corruption arise out of problems with recruitment, reward and retention within the public sector. Pay scales tend to be low because RMI lacks income. The financial crisis of 1996 forced the President and Cabinet to realise that bills had to be paid, and that the lack of income could rebound on them as it did in the election of 1999. Further acknowledgement needed to be paid to the fact that the benefits of employment for the few had to be shared amongst large households, and the Reduction in Work Force policy had drastically reduced (by one third) the number of government workers. The urban population of some 20,000 was dependent on some 2000 jobs, making for incentives to become involved in corrupt practice. Moreover, low skill levels, as highlighted in all the ADB reports, have also meant that the processes of accountability have not been put in place.

Overseas actors have also contributed to corruption in RMI. International business has continued to operate within its own rules, disregarding Marshallese laws and protocols. This lax climate had been established with US firms under TT and the first Compact, and has spread to Asian business procedures. Further, the use of US currency in RMI enables individuals and businesses to operate through off shore banking facilities. Tracking such financial dealings for taxation purposes is going to necessitate some declaratory measures of reporting.

Levels

Corruption within RMI occurs at many levels of society. One case of misuse of funds by an individual, and another by an Embassy, are the only cases to reach public knowledge. Nepotism in the Civil Service and gift-giving at election times may also be considered as instances of 'corruption' by outsiders, but this interpretation is a little unclear in an indigenous setting. Accounting for expenditures for the public good has been notably lax, as the President has underlined, but individuals have not been identified.

Within RMI, the major concern is to address issues of accountability at the government level, and thus introduce practices across all government departments. Thus the Task Force on Accountability focused on taxation and foreign business licenses, as the major priorities. The dysfunctionality of the Ministry of Finance had to be overcome before any of the other procedures could follow. The mis-management of Marshall Islands Social Security Association (MISSA) funds and the Majuro Local Government (MALGOV) have been addressed by restructuring those agencies, but the lack of skilled staff predominates again and hampers these anti-corruption efforts. MALGOV's inadequate accounting for their budget from central government is symptomatic of the difficulties of an inherited system of non-accountability. The complications of moneys that come from many different sources, and the varying requirements by those sources for records of money spent are common.

Costs

The financial costs of lost revenue from failure to collect taxes, and from failures to honour terms of business licences can be measured in millions of dollars over some 20 years – money that the Nitijela needed in 1996 in order to pay salary and other bills.

Both political and financial accountability can only be achieved by trained and experienced personnel. Such personnel are not currently on the ground in RMI, thereby weakening anti-corruption efforts and rendering them less efficient.

Types

Different instances of corruption and non-accountability occur across both modern political systems as well as traditional systems, and include both financial and social responsibilities.

In analyzing types of corruption, we can distinguish the financial/taxation type from the human resource management type. A third type include the ethical criteria used in decision making, as when an official makes idiosyncratic decisions that may not in the best interests of the nation, i.e. elects to spend national funds unwisely – an all too frequent occurrence in RMI. A fourth type is those social commitments (modern and traditional) that require favours from the elite to their colleagues.

Much of the failure to account for funds dispersed in RMI can be labelled as instances of incompetence. The amount of individual gain is miniscule when weighed against the loss of revenue to RMI government from lost taxes or licenses not honoured.

In summarising the types of problems that occur within RMI, it is apparent that the problem of a lack of accountability is fairly widespread – from failures to file annual reports on budget expenditures to an overall lack of oversight of departmental activities. Grants or funds from sources outside RMI have not required close scrutiny and in the past contracts have tended to be drawn up with known or US supported firms rather than through an open bid process. Nepotism in hiring and promotions is an issue that has remained unaddressed.

Impact of Change

In terms of the impact of change on the Marshall Islands, recent developments have required a rapid introduction to new values and practices and this has had wide ranging social as well as political effects. The new Compact is an example where the Marshallese negotiators have had to relinquish their priorities in order to obtain money for their people to survive. Many feel as though Marshallese cultural heritage has been overridden by American ideologies and materialism. Contributors to Yokwe on line have therefore been expressing their concerns about 'mixing politics with *manit*.' (12 December 2003 [www.yokwe.net]) Only now are some recognizing the importance of reinforcing elements of their cultural distinctiveness in order to maintain an RMI identity. Workshops such as the Alele workshop on Researching Traditional Knowledge (2002, Pollock), and the activities of the Traditional Courts are steps towards reasserting Marshallese culture.

The new government (January 2004) remains committed to a programme of greater accountability. The earlier report by the Task Force on Accountability (2001) still has outstanding recommendations that need to be followed. The new Compact also requires that immediate action with regards budget reporting be taken in order that RMI will comply with new US Audit regulations. Major changes might therefore also still be forthcoming.

National Integrity Systems

Executive

The Executive won the 1999 election on a ticket of 'greater accountability' and the reelection of that President as of 5 January 2004 confirms that the Executive has delivered some of the actions required. President Note has made it his policy to present the public with summations of his government's actions. His speeches are not only broadcast on the radio, but also printed in the Marshall Islands Journal. For example his delivery of a "To the People of the Republic of the Marshall Islands" speech in March 17, 2003 summarised "the state of negotiations with the United States for a new economic assistance package under the Compact of Free Association" (MIJ March 21, 2003:16). This was followed by an update in June 2003, published in both English and Marshallese. Direct action has also been taken to minimize corrupt activities within the Cabinet. In 2003 Ministers were moved from portfolios where mismanagement had been proven, i.e. Ministry of Finance, and the reasons for such 'relocations' were common knowledge. (Pers. Comm I) The various Ministries have also established their own measures, and are keen to be seen to be doing the right thing, for example within the new Ministry of Statistics, Research and Development (Pers. Comm./Ch). The only person who has been charged directly with corrupt practice in terms of the misuse of government funds was the former Director of the College of the Marshall Islands in 2002, who was found guilty of embezzling \$506,000 and dismissed from office (MIJ July 18 2003)

Legislature

The Legislature has backed the President in passing bills to ensure financial accounting is tighter, and records are kept, and instruments in place to administer the new provisions, e.g. the Bidding Committee. However, a UNDP study of Marshallese Legislative Needs (Fraenkel 2002: 5) recommends that "The Nitijela needs to enhance and refine its legislative output, and increase the efficiency of parliamentary support services..." while the potentially strong committee system is not functioning to potential in scrutinizing the Executive. The report suggests a more rigid framework for operation of the Nitijela, including follow through on scheduling, reporting and clarification of rules and procedures. Legislation passed has languished rather than been enforced. "The Nitijela ... needs to enhance and refine its legislative output, and increase the efficiency of parliamentary support services." A parliamentary library for all government publications is suggested, as it was by my informants.

Political Parties

Political parties also have a much clearer base for operation in presenting their arguments leading up to the 2003 election than was present in 1999. Two parties are now recognised, though they remain 'the Government party' and 'the Opposition' with the latter being a collection of viewpoints rather than a formal party. A prominent party official distinguished the two parties as 'Traditional' and Non-Traditional (TD Pers. Comm.) Funding of parties is drawn from the bank accounts of their main/rich adherents. Funding for political campaigns comes either from private pockets or from international business backers. No system of accountability for such funds is made public, nor are clear rules in existence to govern sources of funds and how they are spent.

The Ethics in Government Act 1993 is still largely inoperative, and its terms remain unfamiliar to many politicians. It states the duty of the government is "to govern in such a manner as to foster public confidence in the integrity of the government". A Government Ethics Board comprising the Attorney General, Auditor General and Chief Secretary has yet to become operational, but could provide the framework across both government and non-government sectors for a national integrity system. The question of what ethical principles Marshallese choose to highlight is still an open one.

Electoral System

The Electoral Commission has not yet received scrutiny of the voter registration system, nor the procedures for vote counting. No scrutineers were announced for the election on

Nov. 17, 2003 and votes continue to be counted by hand. Publication of previous election results has also been labelled as 'rudimentary' (Fraenkel 2001). The Chief Electoral Officer was appointed only six months before the Election, and thus was unable to put in place any new procedures. He was transferred from the Archaeology section of Alele and thus could use only his current experience to assess or evaluate the need for new practices. Government funds may be used for election campaigns, and there is an absence of rules about campaign banners and posters. Rules governing candidates' taking temporary leave of absence from government jobs were widely publicised in 2003, though no system of checks was possible given the small size of the Electoral office (Pers. Comm I).

The system of each voter having dual votes, one for place of residence, and one for land-holdings, leads to many complications and change of affiliations (Frankel 2001; and Yokwe online for current elections). Also the large number of Marshallese residing overseas, mainly in the US, has contributed to delays in results being published. The Electoral system thus represents a collation of both traditional allegiances and modern day living, with transparency less clear to outsiders.

Supreme Audit Institution

The Audit Office is the major institution undergoing radical change for greater accountability in 2003. Along with the Ministry of Finance these two 'pillars' were the target of the major recommendations by the Task Force on Accountability in 2001. A new Auditor General was appointed in 2003, and with the help of ADB has begun to set in place key sectors for much improved reporting.

However many new tasks face the Audit Office in 2004 when a new US General Audit Office begins its work in Hawaii. It is charged with putting in place major accountability specifically for US Compact funds for both RMI and FSM. Previously the system of accounting for the first Compact funds was non-existent until 2000, due to US failure to meet its oversight obligations. Disagreements between the Department of State and Department of Interior regarding the level and nature of responsibility for monitoring Compact funds led to lack of reporting. Yet in 2000 suddenly RMI was expected to produce accounts for the previous 13 years. When these were found to be non-existent, many questions were asked in Washington (Pers. Comm.). For example, the Auditor General's annual report has not always included a report from the Public Accounts Committee when it should have been tabled before the Nitijela (ESC Report). That procedure has been recommended as urgent for reinforcement.

The result of these neglects and omissions is a new Government Audit Office, appointed by the US Government Audit Office in Washington. Its principal goal is to ensure that bi-annual budget reports are filed, and that all federal money including the special funds for PREL (education), FEMA (emergency management) etc. are properly audited.

In terms of other sources of audits in RMI, Deloitte Touche Tohmatsu had long held the contract as independent auditors. They indicated major areas of non-compliance, poor financial decisions, made by individuals without the proper authorisations, and misuse of funds. (Hughes 2001)

Judiciary

The Judiciary has been most exposed to corrupt practice during 2003 with the trial and dismissal of the Chief Justice Henry and two other judges (Marshall Islands Journal March/April 2003). Chief Justice Henry of the High Court was voted out of office, following a resolution in the Nitijela by the Minister of Justice calling for his removal from the High Court. The 29 charges against him included alleged cheating, misuse of government funds and libel; some of these related to stateside actions. He failed to show for his trial in Majuro. The other two judges were similarly dismissed (Yokwe Eok 7 Oct. 2003). These failures to honour the responsibilities of their very high office are negative examples for the Marshallese government as it attempts to raise awareness that corrupt practice is not acceptable. The fact that these Americans, who in general are seen to provide positive role models in RMI, have proved untrustworthy, accentuates the dilemma raised by these offences.

They have been replaced as of January 2004 by two Americans already living in the Marshalls, and a Marshallese. The process of rebuilding that trust within a key pillar of the integrity system will take time, and will require all of the new appointees' skills.

Civil Service

Responsibility for the public service is provided for in the Constitution by the Public Service Commission. This Commission is the employing authority and charged with management, efficiency and economy. Tensions exist between its management functions and Department's wish for a degree of autonomy. The Department of Education has achieved this, while Health and Environment continue their negotiations.

Public servants suffered a series of setbacks when salaries were threatened by the financial crisis of 1996 and by the subsequent Reduction in Force exercise carried out by ADB. Failure to collect taxes from civil servants and to recognize a reduction in compact funds led to a cash flow crisis that threatened the salaries of all civil servants.

A Public Sector Reform Program aimed to stabilise government finances, ensure structural stability over the long term, and create an enabling climate for the private sector. It included a Public Sector Improvement programme that focused on a Reduction in Force exercise to reduce the public service by 30 per cent to 1,484 in July 2000, and reduce pay scales. It was not based on a systematic appraisal of needs and productivity, but rather focused on staff numbers (Hughes 2001:54). The result was that many large households lost their sole source of income. But from a governance perspective it reduced the number of ministries from 10 to 8 and streamlined processes such as the Foreign Investment Business license applications. Seed money for the establishment of a Marshall Islands Intergenerational Trust Fund was intended to provide a secure long-term revenue base for the Government's budget, but was poorly invested on the whim of the then Minister of Finance (Pers.Comm H).

The civil service received a further blow when MISSA was found in 2002 to have invested funds poorly, and not to have recorded many payroll contributions. Thus government brought in a new Board to run MISSA and to reassure all public servants that funds would be available for their retirement. This was presented as one of the major government success stories in achieving accountability by means of drastic (and fast) structural reorganisation.

The concerns of Human Resource Management have yet to be dealt with. The Public Service commission is in need of urgent review. Appointments continue to favour ministerial favourites, while rewards for innovation and strong contributions to work programmes are overlooked. Government staff have no channels for registering their complaints about unfair, or harmful treatment.

Police and Prosecutors

This sector remains to have more transparency introduced. Two detectives were prosecuted in 2002. But strengthening of the integrity in decision making by means of discussions with other sectors of government is urgently needed. Specific targets need to be set for increasing information flow to and from Judiciary officials as well as Internal Affairs, PSC and EPSSO, together with time lines.

The public is unaware of police procedures for dealing with anything from petty theft, to drink driving, serious crime, or the terrorism issues emanating from the US. This was evident at the time of an August 2003 murder where a woman was murdered by another woman, and by two other murders in November and December (NJP fieldnotes and Pers. Comm). Similarly the general public is only vaguely aware of personal rights, and how to proceed when confronted by police. Further public relations programme with youth and the wider public would be beneficial.

Direct information as to corruption in the police and or prosecution was not forthcoming. Respondents cited hearsay about failures to prosecute important people but hard evidence was difficult to obtain.

Public Procurement

Foreign Investment Business Licensing has been specifically targeted as an issue that needs urgent attention (Task Force on Accountability 2001). The FIBL Act of 1990 has been complied with only loosely, with some businesses failing to obtain a FIBL before commencing operation, or to pay the required taxes. The Task Force was unable to discover a single instance where such an entity was criminally prosecuted by the Office of the Attorney General. Their recommendations included revocation of the License for violation of the Income Tax Act or Import Duties Act, and that firm should be ineligible to apply for a FIBL for a period of 3 years from the date of conviction.

As a result of the Task Force report, a new Bidding Committee has been established (2003) (CH Pers com.). Its purpose is to ensure that all contractual bids are available to a wide range of companies in several nations, not just the US, and to disseminate information about necessary procedures, and compliance requirements.

The aim is to make the procurement of contracts more transparent and to break the cycle of US contractors being the sole operators due to past involvements. This becomes a political issue as political party funding and other benefits have become attached to the bidding process. The degree to which the new Compact allows RMI to establish its own procedures remains to be seen.

With a move to contract management by the private sector replacing direct government provision of services, the public service has been forced to learn and apply new skills of contract management. This is introducing a whole new dimension to the work of the Public Service Commission (Hughes 2001:56).

Ongoing ties to firms such as Holmes and Narver, who have garnered (through the US Atomic Energy Commission) most of the rehabilitation projects for the Section 177 atolls will be hard to break. Deloitte Tohatsu is well established in the accounting sector. With the US as the source of nuclear rehabilitation money, it was clear at the time of the Enewetak and other claims that certain procedures were favoured as espoused by key firms (Nuclear Claims Tribunal notes, NJP). Even though each atoll negotiates its own rehabilitation with a selected company, the terms of those contracts may not follow the guidelines of the new Bidding Committee because of political pressures.

Ombudsman

The absence of any watchdog institution, particularly an Ombudsman means that a Marshallese with a concern has no independent agent to appeal to. Since this is more a social issue rather than directly concerned with finance, it has low priority within any accountability systems. It may well be that as citizens become more aware of the channels for rectifying rights violated that an Ombudsman office will be a requirement for government action.

Investigative/Watchdog Agencies

These have not been instituted – perhaps due in large part to the traditional Marshallese custom of not questioning authorities. But as more citizens become educated and gain overseas experience of a range of channels for pursuing their rights the demand may come through their Senator. Indeed, personal rights are a growing concern in RMI and may act to increase demands for greater questioning of authority.

In terms of other agencies that fulfill some important watchdog type roles, the churches have taken on a greater advocacy role on behalf of their parishioners in recent times. With its strong membership and peoples' acceptance of church doctrine the church has provided the support network to which people turn outside the family. Pastoral care has included giving advice, and upon occasion financial support. While the churches wish to stay beyond the bounds of politics, they have inevitably been drawn into issues on which they have a strong position. The anti-gambling segment of both the Protestant and Catholic churches formulated a strong lobby group to prevent Nitijela allowing the establishment of casinos on Ebeye. Similarly some of the issues associated with peoples' rights as affected by the new Compact were discussed at the Annual Conference of the Protestant church in

August 2003. The leading past of the Protestant Church in Majuro raises international issues such as globalisation and sustainability as they affect the Marshalls in his Sunday morning sermons.

Women's rights are also closely monitored by a revitalized women's group, WUTMI, standing for Women United Together, Marshall Islands. They have espoused selected causes to government, with their Women and Violence tape for radio and pamphlets being a recent endeavour. That government chose to ignore their work, and has not allowed the tape to be played on national radio indicates that this is a sensitive area for the Nitijela and government officials. With so few women in the Nitijela and even local government, women's voices have been muted. So WUTMI struggles on behalf of some 26 groups throughout the islands to raise women's concerns to a national hearing.

The rights of children have also become a national concern, particularly overseas adoptions. A Central Adoption Authority was set up by RMI effective March 1, 2004 to restrict unlicensed adoptions. One US agency, Journeys of the Heart, was licensed to facilitate adoptions between the US and RMI. In Hawaii a Bill was negotiated by a local attorney to prevent Hawaiian courts approving any Marshallese adoptions not authorised by the RMI court system (Yokwe eok 7 March 2004, and Roby, JW, pers. comm.). Two associated concerns have arisen, namely that children are being taken to the US by their mothers in order to obtain money; and that those and other children adopted from the Marshalls itself are being alienated from their cultural heritage, or suffering abuse, as raised by a US Congressman (Yokwe eok Jan 13, 2004). The photo on the front page of the Journal in July 2003 showing the departing American Ambassador carrying his adopted Marshallese daughter on to the plane was considered antithetical to their cause by those trying to reduce the numbers of these adoptions by non-Marshallese. The photo did serve to raise discussion of the issue so that the watch-dog group gained support for its work.

Peace Corps volunteers were another strong watch-dog group in the past, but with their departure went an awareness of household and outer island concerns, and procedures for advocacy. Past Peace Corps volunteers were particularly instrumental in helping with funding for rebuilding of outer island schools. Also those who gained legal training established a Micronesian Legal Services agency through which Micronesians could carry their cases to court. For example the Enewetak people used MLS services to appeal against a cratering experiment in the 1970s with positive effect. It was not allowed to proceed. Other NGOs that could bring to the fore human rights issues are much fewer in number than in the south Pacific, as discussed below.

Media

The Marshall Islands Journal and the national radio station are the two main public awareness agencies. Both have heightened public awareness of reports and events related to accountability. The editor of MIJ's long term position on the island and high level of social concern has enabled the Journal to print reports that may not otherwise have seen the light of day. During 2002 and 2003 the President has chosen to use the Journal in his campaign for greater transparency, and his wish "to keep the people informed". The ongoing changes to the Compact document under negotiation were brought before the people weekly. And the Journal publishes critical editorials such as the one headed "US ignoring legal requirements" (March 8, 2003 p.10) that challenged the US to pay the nuclear compensation money owing. And in the same edition they published a letter criticising statements in the Task Force on Accountability report. This was in an open letter addressed to Mr. Moses S. Gago, Chairman, RMI Task Force on Accountability. The MIJ has a stated commitment to assist with the dissemination of transparency to its readers.

However the absence of a rival publication means that only certain issues are highlighted each week. Various alternatives have had short runs. The e-mail site yokwe on line and website yokwe.net have grown in interest as the numbers of Marshallese in the US increase, and as they want to learn about the elections, the Compact and other concerns of their islands. These sites do not offer critical comment, but that is available through their chat line.

The other five radio stations in addition to the national one are run by the various church denominations, and offer little commentary other than on religious matters.

The management of MIJ has a policy that that journal should contain more columns in Marshallese. At present it is largely published in English because they have had difficulty finding a skilled journalist who can write in Marshallese. Thus the Journal is written to appeal to those fluent in reading English. Its dissemination of information does not reach those who prefer their understanding to come through the Marshallese language. However, President Note's address to the nation in July 2003 was published first in English, and then in Marshallese in the subsequent edition of the Journal.

Civil Society

Civil Society covers the whole of the Marshallese islands, including that 40 per cent of the population that are resident on outer islands, beyond the reaches of the two urban centres. Those outer islands receive only what information they hear on the national radio programme, or what they pick up on their visits to the urban centres. Thus dissemination of information to fulfil goals of transparency and accountability is still limited. In spite of the Executive's commitment to improve accountability, there are no indications of just how widely the message is reaching.

In addition to the roles played by churches, advocacy groups and the Peace Corps as outlined above, the main agency for receiving information is through local government authorities. But they too must rely on others passing it on. Mayors, school teachers and councillors are the most likely to receive that information, but their persuasion to react to it is limited.

A further division within civil society is slowly emerging in the Marshalls, namely those with access to income, and those lacking this means of support. The first group includes those who retained the 1500 government jobs after the Reduction in Force programme, plus those few who have jobs in the private sector. In addition are those who receive quarterly pay-outs for nuclear damage compensation, either because of their land rights on Enewetak, Bikini, Rongelap or Utrik, or because of verified health conditions. This latter group has had long discussions about their rights and brought these before the Nuclear Claims Tribunal. Therefore they are more aware of their rights than the rest of Marshallese society. They have also a lot more to be accountable for.

The sector of society concerned with accountability and national integrity is therefore very small – just how large this sector is would be a question worthy of investigation.

Traditional Organisations

Kin groups, land holding groups and atoll communities are still strong units predominating in every Marshallese person's life. Whether they are as strong today as they were in the past is an interesting question for further investigation.

The need to hold rights to land in order to provide collateral for loans has been a subject of major discussion, and land has become an even more contentious issue than in the past. Land rights are considered by some to be blocking development in the Marshall Islands as they are communally held, and thus not easily used as collateral for loans and future economic activity. Marshallese inherit their land rights in the maternal line, and hold those rights in conjunction with other members of their extended kin group (*jowi*) (Pollock 1972). The land tenure system does not allow land to be pledged as security by individuals, or to be seized and sold to satisfy debt without support of the senior land managers (*Alab*). A pre-1999 government attempted to introduce legislation to abolish the position of *Alab*, but it was defeated. The importance of the *jowi*, or matrilineage in modern times is a topic of concern for the Customary Law Commission, as discussed at their conference in April 2003.

Development finance is hard to obtain in the absence of adequate bankable security, i.e. individually owned property. Banks report that they are constrained from lending by lack of realizable collateral. The basic contention within the 'collateralization' debate contrasts the effects on the security base for all Marshallese, namely their land rights held with their

fellow jowi members, with the needs of individuals to access loans for developing private enterprise, using those land rights as collateral. Draft legislation to facilitate land leasing and establish a Marshall Island Development Land Registration Authority is not a solution acceptable to all Marshallese as land holders. There are claims and counter claims as to how openly the Nitijela is discussing all aspects of this issue of collateralisation. Fears that changes will happen without due consultation are widespread. Such a change would hit the very core of traditional organisation.

The position of the Iroij (or paramount chief) in governance today is very unclear. With the new climate that saw a non-Iroij, i.e. a kajur or commoner, elected as President in 1999, and reelected in 2004, it is clear that Iroij status is viewed differently from the past. But just what the components of their modern-day status are is in need of clarification. The Council of Iroij that was created within the Nitijela has allowed the whole group of Iroij to select 12 to serve on the Council each year, and thus to nominally participate in the process of governance.

An attempt to eliminate the status of Alab, or land manager, by legislation was lost under the previous government. This indicates that key features of the traditional social structure are still valued by society at large, and that such major changes are not acceptable. The transparency expected of the modern system of governance has not been applied to the Iroij, land tenure or the jowi social systems. Social obligations still prevail. The accountability that the President and Cabinet are promoting for the nation as a whole do not appear to have affected the Council, nor individual Iroij. Whether they should be accountable was a question for which I was unable to find an answer.

Private Sector and NGOs

The private sector has only begun emerging in the last five years. One major Marshallese firm runs businesses that include fishing, the hospitality industry, shipping and retail marketing. They are facing severe competition from overseas companies that have set up competitive businesses offering services at cheaper rates. These are in part due to failure to honour the tax and business investment laws of the land, and thus their ability to undercut other firms and Marshallese firms are finding it difficult to withstand the onslaught

The Government has moved to contracting out some of its services in an endeavour to develop the private sector. But failure to enforce tax laws and to file reports on business transactions is highlighted in the Task Force on Accountability Report (2001). Transparency is further obfuscated by a currency shared with the US.

In terms of financial institutions in RMI, two of the three banks formerly operating in the Marshalls were US commercial banks, and one was owned by the Marshallese government, the Bank of the Marshall Islands. One of the US commercial banks, the Bank of Hawaii, closed in 2002. The Banking Act of 1987 provides the legal framework for the conduct of banking, and also established the Office of the Banking Commission. As Hughes (2001:106) notes the orthodox supervisory regime demands greater resources than RMI can justify allocating to it.

Support for the development of the private sector through the establishment of a Marshall islands development bank has failed largely because loans have been made for consumer items rather than capital investment. Again the management of such a development bank requires expertise not yet available in the Marshalls.

NGOs are not as prevalent in the Marshall Islands as in other parts of the Pacific. Their role in service delivery has been in education, particularly JAICO, and health, via Australian Volunteers. Peace Corps pulled its volunteers out of the Marshalls some 5 years ago. WUTMI, the women's umbrella organisation, is among the largest NGOs covering some 24 groups spread across the atolls. It interacts with government in pursuing women's interests, and offering programmes of education and information such as the Women and Violence campaign. Greenpeace has had a presence in its endeavours to expose the vicissitudes of the US nuclear testing programmes. Other green organisations conduct research on the atolls in pursuit of information on global warming etc. The message of sustainability comes from these organisations and the churches, particularly in opposition

to projects such as a government plan to accept New York waste to be dumped in their islands as a money-earning project. NGOs thus could bring an alternative dimension of transparency, but are not regularly active or prominent in the islands.

Regional and Local Government

Local government in the form of the individual atoll authorities such Bikini Atoll Council have been the target of increased funding from Washington, and via other agencies such as the European Union and the Taiwan government. Accountability for such funds has been no more comprehensive than those for central government.

The individual local government councils are responsible to the Secretary of Internal Affairs to whom they are expected to submit annual reports of budget expenditure and activities. Some councils have fulfilled their obligations better than others. The two largest councils Ebeye Council/KADA and MALGOV for Majuro have each been found wanting and MALGOV was charged with finding missing funds (Pers. Comm., and MIJ April 2002). MALGOV has also been issuing business licenses without informing the Ministry of Finance. KADA had outstanding taxes at the time of the Task Force on Accountability report (2001). All of these oversights and omissions require tighter accounting processes and filing regular reports of expenditure and activities. Increased personnel in both the Ministry of Finance and the Ministry of Social Affairs will be necessary to ensure compliance, plus training in the expected procedures.

Progress with Government Strategy

In the absence of a clear statement of a strategy or target dates for the accomplishment of key goals, I can only comment on the progress made as stated in the sections above. Key points of the Task Force on Accountability report have been addressed as the major concerns, but that focus omits the many concerns about Human Resource management, and morale of the government work force. Without giving urgent attention to installing and encouraging a competent and motivated work force the financial concerns will continue.

Of the 25 recommendations made by the Task Force on Accountability, the major one, reorganisation of the Ministry of Finance, has been accomplished. The Minister in charge was 'relocated' and new staff were hired, the post of Secretary of Finance empty for over a year has now been filled. Compliance with the terms of the Financial Management Act and the Income Tax Act were the first tasks to be addressed, but the lack of an Enforcement Division to ensure all taxes are collected is a vital missing link in the new operation.

The two other concerns of the Task Force, the failure to enforce the Foreign Investment Business License Act, and the missing contributions to MISSA have been addressed. MISSA has been completely reorganized with a competent staff who have filed all reports on time (JN pers.comm.). The FIBL issue is a larger concern which can only be addressed in small pieces; the compilation of a list of the identities and citizenships of equity interest holders is in process. Whether government has the right to ask the Marshall Islands Journal to publish a list of defaulting tax payers is an open question – such a list may require several revisions.

Donor Accountability Initiatives

The audit office set up by USGAO specifically to manage the Compact funds awarded to RMI and FSM is so new (commencement November 2003) that it is not yet know what kind of policies for greater accountability will be introduced. By using a staff drawn from the business environment of Hawaii it is to be hoped that Marshall Islands government employees will be trained by exposure to those systems. How much room will be allowed for a Marshallese system is very questionable. It is likely that the accountability, certainly for donor funds, will have to conform to US standards.

Whether other donors such as the Taiwan government and the European Union will impose similar accountability is also unknown. It could be confusing for Marshallese if three distinct accountability systems are instigated. The Asian Development Bank has made major contributions to establishing financial accountability in RMI. Earlier government's

failure to follow the recommendations of the first Task Force on Accountability and the Public Sector Management Plan produced enough of a scare of financial collapse that the new government has paid greater attention to the recommendations of the second Task Force, as discussed above.

Initiatives have yet to be undertaken to establish a Task Force to look into Human Resource Management issues in both the government and also the private sector. Such a Task Force must take account of the small size of the work force and address the problem of attracting back to RMI those trained in Accounting and other assessment skills with higher salaries, and the chances of promotion and protection of working conditions.

Future Research and Donor Support

Donor support is needed for a programme of monitoring and evaluation of the new accountability measures. That programme should include managed discussion groups, training in report writing. These are areas that will boost staff confidence, and ensure a stronger public service with greater understanding of accountability and how it works.

In particular the impact of the new policies by the USGAO needs to be closely monitored to assess where they have the greatest level of effectiveness. In addition such monitoring needs to ensure Marshallese inputs are not overwhelmed by external criteria. Such monitoring needs to be conducted by a non-US researcher.

The role of traditional leaders in current governance ideology and practice requires urgent documentation. Open discussions about where transparency can be assessed and measures for greater inclusion of the Council of Iroij in the government's accountability programmes must be conducted urgently. Such discussions should lead to a survey of both urban and outer island Marshallese on the topic of where they see traditional leadership heading in the next 20 years. This will inevitably raise issues about land tenure, which also need to be examined for today's life in RMI.

Anti-Corruption Activities

Overview of Government's Reforms

The major accountability activities that have taken place over the last four years discussed here are:

- The government of President Note, newly elected in 1999 on an Accountability platform has brought about active commitment. Reelection of that government (in 2003) demonstrates that the populace supports the steps taken and wants more.
- For many Marshallese the notions of accountability and transparency are new. For government officials responsibility for their decisions and ensuing actions has suddenly become open to wide scrutiny, sometimes resulting in castigation, or loss of employment. They have been charged with failing to provide reports and account for US grant money in retrospect when no such requirements were enforced under the first Compact. Reforms are in process.
- The Ministry of Finance has been restructured in response to the recommendations of the Task Force on Accountability (2001). In particular taxation laws are in the process of being implemented.
- The Audit Office is under new management, from the USGAO office in Hawaii. It is too early to ascertain the directions that the new policies will take.
- The Government's campaign on accountability has found favour with the electorate, as the Executive was returned at the November elections.
- The media, both the Marshall Islands Journal and the radio, have covered the new accountability measures to inform the general public.

Thus accountability is now a concept that is being thought over, discussed, and put into practice. It will be even more helpful if such discussions extend to the secondary schools and non government sectors. Yet progress is being made.

Assessment of Progress

For some evaluators progress in anti-corruption efforts in RMI may seem slow, but given the lack of open accountability within the traditional Marshallese system of governance which stresses respect for the elite, the initiative has been driven by outside forces. US Congress members raised concerns about the lack of reports on expenditure of Compact funds in their own political forum in 2000, leading to an edict to RMI to provide retrospective accountability. The US was remiss in not clarifying in 1987 the budget for the first Compact, and the reporting requirements. Marshallese inexperience in the skills needed to meet these demands has necessitated fast learning by those staff in the hot-line.

An RMI programme of national integrity is thus in train. Of the four types of corruption discussed above, the government has begun with tackling the financial sector, stressing enforcement of taxation and foreign business licenses. That money is essential to ensure government receipt of internal income, and thus payment of salaries and the ongoing operation of departmental programmes. The human resource sector and the Public Service Commission accountability have yet to be addressed. Involvement of the Council of Iroij in future governance, and the role of traditional organisation will also need to be clarified in all programmes of accountability. A thorough examination of the key features to be implemented under the Ethics in Government Act 1993 is needed as a guide to officials' decision making. All senior management personnel, both in government and in private business must be involved in the formulation of such an integrity strategy, so that all dimensions of governance are covered. So a programme of ongoing discussions is needed, and it also needs to be recognized that donors can play an important role.

Overview of Donor Anti-Corruption Initiatives

- Donor initiatives to assist with accountability stem largely from the negotiations of the second Compact of Free Association with the US. It is clear that a strong institutional base of financial accountability will be established promptly. The degree of negotiation versus imposition on RMI will need to be evaluated.
- ADB's Public Sector Reform Programme (1997) has included a reduction in size of work-force, together with strong support for the second Task Force in Accountability (2001) recommendations. Their inputs into RMI governance are likely to continue, by supporting US initiatives. Other donor agencies, such as the EU and Taiwan government, may be forced to require greater transparency by implications from US and ADB policies.

Assessment of Priority Areas, Activities and Issues

Priority areas to ensure further progress must also include measures supporting the personnel required to carry out these new accountability policies. RMI personnel with accounting skills need to be induced to return to work for government by financial rewards, together with ongoing training programmes in financial and management reporting, that encourage staff to improve their skills. The Public Service Commission is the major authority for ensuring that all employees in government have a clear understanding of accountability. A new look at employment conditions will incorporate such transparency so that employee morale is boosted, and every move towards greater accountability is seen as part of a wider national integrity system rather than a personal reprimand. PSC needs to set in place clear criteria rewarding good work performance, and for career advancement. An overall review of PSC is therefore needed to strengthen its position as the main agent of human resource management.

Moreover, donor support is urgently needed for a research project to assess the role of both the Council of Iroij and traditional social organization in modern-day governance. By clarification of the links between inherited Iroij status and modern forms of leadership, greater understanding of where Marshallese concerns for accountability will become evident. Land rights, gift giving, and support for family members in public activities all need to be elucidated in the process of developing awareness of how new governance ideals and practices reach every Marshall Islander. Such an understanding is vital to the accountability built into RMI/US relations in the twenty first century.

Lastly, in analyzing the use of the term 'corruption' in RMI, it would seem as if 'corruption' is considered inappropriate in the context of the RMI for the above reasons. Greater emphasis is instead placed on the notion that higher levels of accountability can be achieved with positive assistance in clarifying processes and methods.

Key Issues

The NIS

No legal statement was available for an integrated National Integrity System. The term 'Integrity' is implied in the Bill of Rights by a term in the Marshallese version which generally translates as 'truth' or 'honour' (mol). But in the English version of the Constitution, Section 16 of the Bill of Rights is termed 'Ethical government'. This Section (16) confers on the Government of the Marshall Islands "the obligation to take every step reasonable and necessary to conduct government in accord with a comprehensive code of ethics." I did not locate anyone who knew which government sector was responsible for that code of ethics. Nor were they even aware that an Ethics in Government Act 1993 was in existence, let alone what it says. So the concept of ethics in Marshallese governance is in need of close examination. In contrast whereas the term corruption came up in conversation, the more usual term used was accountability, which has received wider attention and discussion. The practice of monitoring 'Integrity' as a system or systems (as stated in the NISPAC discussion document, p.8) is new for the Marshall Islands. Those I talked with were clearer about the term Accountability than Corruption, and thus I have chosen to use the former rather than the latter term throughout this report. The information provided here was collated from fifteen interviews, and a discussion group, plus many printed sources, but many reports I needed were not generally accessible.

In terms of assessing the state of RMI's NIS, the history, influence of culture and past problems of RMI must all be understood before assessing the most recent implementation of new governance structures under the new Compact. It seems as if, since the signing of the new Compact, new stringent anti-corruption measures will ensure a strong NIS. However, there needs to be greater education about accountability issues and a greater willingness to pursue accountability in practice in order for these new formal rules to succeed.

Effectiveness of Government and Donor-Supported Activities

The Marshall Islands government has taken steps to move towards greater accountability, as per its 1999 manifesto. This is a major innovation that can be analysed in terms of the four types of accountability discussed in the previous section.

Financial accountability has been promptly addressed by implementing the recommendations of the Task Force on Accountability (2001). Restructuring both the Finance sector and the Audit office have been completed. The Minister of Finance was replaced, a Secretary of Finance finally appointed, and the search continues for staff who are better qualified and with former experience. The down-sizing of the Audit Office may need to be reviewed in light of policies to be established for implementation of the second Compact, emanating from USGAO in Hawaii. But the scarcity of these experts is still a major deterrent to assessing the act of balancing the budget, and meeting many of the reporting requirements for each sector. In terms of other financial issues:

- The new US Government Audit office in Hawaii is charged with obtaining accurate data at least for 2002/3FY
- ADB has promised to assist with training staff in general reporting practices, including accountability.
- The new Compact that will provide some 65% of the annual budget requires new accountability for financial expenditure.
- Internal finance accruing from taxation will need continued monitoring to ensure that all sectors are complying.

The issue of *human resource accountability*, on the other hand, has yet to be addressed. The policies and procedures currently operating in the Public Service Commission need to be re-evaluated to ensure that all government servants understand the need for accountability.

In terms of *ethical accountability*, civil society is aware of the term (in English) 'accountability', and realises that it has something to do with being 'straight' and honest in monetary dealings. It implies new notions of trust, i.e. beyond traditional social organization. In particular it also includes the whole negotiation process with the US over land use in Kwajalein and the payment of compensation money for past nuclear damage to Marshallese.

Trust has been violated by the US so many times in the past. That nation was found wanting in its caretaker role under UN Trusteeship, and in its pursuit of nuclear testing regardless of harm to and objections by Marshallese. Responsibility for the failure to clarify budgetary reporting and filing of reports to US Congress falls to the US rather than to the Marshall Islands. Trust in a nation that is a major contributor to setting standards of accountability is absolutely vital. (see Pollock, Rongelap report to Nuclear Claims Tribunal 2001 for a historical overview of loss of trust).

Implementation of the Ethics in Government Act 1993 has yet to occur. This is an important step in the promulgation of a national integrity system. It should be an urgent piece of business for the new government to ensure that all government staff share a common understanding of the principles of ethics guiding government policy making. A clear statement of key elements of best practice to be followed by all departments, and by staff at all levels is required. Those guidelines are vital so that senior management staff follow those best practice steps in their decision making. Good leadership should be evaluated by examples of best ethical practice in operation.

The importance of *social accountability* is also being addressed. Social commitments in terms of *Manit in Majol* or Marshallese custom are gaining recognition as the Traditional Customs committee and others work on clarifying the key features for today's world. Gift giving, a key element, is likely to continue, particularly in the form of food, and particularly between outer island and urban communities. A sense of belonging remains embedded in a sense of attachment to land on a particular atoll, and is exemplified by exchanges of gifts of food involving the Iroij at times. Monetary assistance is still expected of Iroij, but not all comply. Urban households find living hard, especially following the loss of jobs in the Reduction in Workforce exercise. Increased migration to the States elongates the social commitments of both those who go and those who stay. The major concern across Marshallese society about overseas adoptions of Marshallese children is not alleviated by the argument that such homes are "better" for those children. Their loss to the Marshallese community is the major worry.

With regards to assessing particular achievements in RMI's accountability efforts, in the absence of any coherent plan for addressing the main issues of accountability, the only formal guidelines for transparent government rely heavily on the recommendations in the Task Force on Accountability Report (2001). Here it is clear that budget reporting is still in the process of being upgraded (according to former R& D officials). A taxation register is taking longer to compile than expected, and draws on the expertise in the revamped Ministry of Finance and the Audit Office. Without that tax take, the Public Service Commission, and thus the civil servants covered by Judiciary, Police, and all the Government departments will not be paid. RMI realises the urgent need to obtain its due tax take, and the restructuring of MISSA (social security) to secure those funds has drawn on the new principles operating in the Finance office, together with Public Service Commission requirements.

Procurement bids have been opened for widespread competition. The establishment of the Bidding Committee under the auspices of EPSSO serves to link Finance with Procurement. The Judiciary is responsible for ensuring compliance by contractors, but political parties' ties with companies behind those bids, particularly by US firms will take longer to become transparent. US authorities have 'the right' under the Compact to dictate those firms that are under contract to US government, particularly for the Section 177 (Nuclear testing) atolls. Transparency is made more difficult by the shared currency with US, and thus bank accounts not evident to taxation authorities, and compliance with the Foreign Business License Act of 1990 is proving difficult to enforce.

In recent years the Judiciary has also dealt with several major domestic cases of law breaking, working closely with the Police and Prosecution sections. Three judges, the Director of the local college, an Embassy and two policemen have all been called to task of accountability under the laws of the land.

However, anti-corruption (or rather 'accountability') efforts have been hampered by a lack of skilled workers and the lack of watchdog agencies, whether Ombudsman, Trade Unions, or specific NGOs. These are two particular weaknesses that RMI needs to rectify.

In summary:

- The will to track down, and eradicate financial malpractice has been put into practice by the 1999 government. Other pillars of the integrity system are affected particularly by the strengthening of taxation procedures. With increased internal revenue in the coffers there is some assurance that the situation of 1996 when the government had no money to spend on salaries or other commitments will not reoccur. Non-financial accountability will be harder to enact.
- Civil Society has learned that democracy means that they share in the decision making process, even though top officials enunciate those decisions. The old hierarchy with the Iroij as the major decision maker is passing, and may even be passed.
- The new Compact is likely to require much closer attention to those financial accountability during the next twenty years. The challenge will be for the Executive and the Nitijela to ensure that all the pillars of the national integrity system are embraced within an agreed set of actionable ethical principles.

The overall trend is thus towards increased awareness by civil society that its government officials, both national and local, should maintain honourable standards in their deliberations and practices. But the precise details have yet to be fully established. Much discussion is necessary for clear principles to be set in place.

Priorities and Recommendations

The following priorities are those proffered by an outsider, albeit with a long acquaintance with the Marshall Islands. They emerge from talking to Marshallese and reading background documents, and building on my past work on nuclear testing issues and personal research, and include:

- Establishment of priorities for accountability, together with target dates by which these are to be achieved
- Building trust between those calling for accountability and those expected to put them in place. Internal trust is essential for effective leadership and government. In the case of the Marshalls that trust must also extend to the US, both for what it provides to RMI, and for what it expects of them.
- Leadership built on strong ethical principles. Open discussions of the rationale for decision making across diverse sectors of civil society can help clarify what the people themselves most want out of their leaders.
- Traditional structural features of Marshallese need reassessment for today's world. The fit between traditional social organization and modern social systems is being questioned in some quarters. Further discussion must be fostered by all sectors involved in governance. The Iroij system, and its place in the governance structure must be a high priority.
- Land is always a major concern for any Pacific society. Currently key features of the social system, such as matrilineality, clans, and the role of siblings, as well as atoll affiliation must undergo widespread discussion in order to formulate some consensus on the way forward. The interplay between traditional and modern structures may require the efforts of two or three scholars, where a pooling of

views will be essential. The challenge is to pinpoint the key changes that are in progress, and those indicated for the future.

- Relationships with the US have been endorsed within the new Compact 2003-2023. These will require much close monitoring in dialogue with sectors of Marshallese civil society. New governance practices that are formulated must be open to monitoring and evaluation. But the terms of those practices must be set by Marshallese. Marshallese are realising the dangers inherent in the new Compact that the US is moving towards a unilateral approach to what is meant to be a bilateral process of establishing new systems of integrity over the next 20 years. The President and the Executive state otherwise, but the opposition political party is concerned.
- The integrity system which Marshallese construct for themselves is likely to have innovative features. Some of these may not be acceptable to outsiders' standards of accountability. We must be prepared to learn from these.

In terms of recommendations for future research:

- The role of the traditional social system, and leadership in governance today. Key factors in decision making would be elucidated.
- The vision of key government sectors for ways that accountability can best be achieved. Such sectors should include PSC, Department of Education, EPSSO and NGOs, particularly women's groups and the churches. A leading question would promote discussion around ethical principles as they relate to governance and accountability.
- The role of the churches in governance.

And lastly, this report recommends the following activities to increase accountability:

- A series of workshops run by Marshallese, perhaps under the auspices of EPSSO, to document the key points of accountability for the next 10 years. The aim should be to list key aims and target dates for their achievement.
- Training in monitoring and evaluation processes to empower civil servants and private sector to undertake ongoing M & E. Ideally a Marshallese agency could be established to carry out such M & E exercises.
- Discussion groups with secondary school students, women's groups and churches to examine key features of modernisation as it affects Marshallese social structure. Alele staff could coordinate. HPO might provide some funding. The aim would be to bring into the open key values and principles that lie behind a Marshallese moral system.
- Secondary school debating and/or essay writing on the topic of "What are the key values of being Marshallese?"
- A Government Library so that all government documents are promptly and readily available.

Appendix 1 - Questionnaire

Executive

Can citizens sue government for infringement of their civil rights?

Formal or legal position

The Bill of Rights (Article II of the Constitution, 1983) allows freedom of thought, freedom of speech, freedom of peaceful assembly and the right "to petition the government for a redress of grievances".

What actually happens

In practice the most accessible means of complaint has been through elected members of the Nitijela, or through the Iroij. Sueing the government is expensive, and beyond the capacity and means of most Marshallese. Opposition to violation of rights is expressed in other ways. For example in August 2003, the first ever demonstration outside Parliament was called to oppose the government's action to date on various clauses of the new (second) Compact of Free Association (2003-2020) with the US. This should be considered one means to sue government, by collective action.

Are there procedures for the monitoring of assets including disclosure provisions?

- **For cabinet and other government ministers?**
- **For high level officials?**

Formal or legal position

Monitoring of assets is the responsibility of the Ministry of Finance (Art. VIII, Sect. 6). Cabinet supervises expenditure and holds collective responsibility to account to the Nitijela for all public expenditure. An Auditor General is appointed by the President, upon nomination by the Speaker, The incumbent is responsible for auditing public funds and accounts of the Marshall Islands. Those include all departments of the legislative, executive and judicial branches of government, and any other public corporation or other statutory authority.

What actually happens

This monitoring process has been found wanting mainly due to lack of experienced staff rather than wilful corruption. However corrupt practices have been identified. Practices are undergoing reform. The new (1999) Government stated that annual budget estimates from all departments, previously lacking, must now be presented to the Nitijela (Hughes 2001:30). ADB recommends that RMI put in place "strong measures to prevent unauthorised expenditures from the General Fund and to limit expenditure from the Trust for Special Funds (Hughes 2001:31). Further very specific recommendations from the Task Force on Accountability (2001) are being actioned, as discussed below.

Are there any differences in procedures and disclosure provisions between elected ministers, appointed ministers and high level officials?

Formal or legal position

Disclosure provisions do not openly differentiate between elected and appointed ministers.

What actually happens

In practice some ministers and executive officers have been able to get around disclosure. The Marshall Islands Journal has reported cases where ministers and other officials have

been asked to explain travel costs, considered to be extraordinary. There is certainly more awareness today than before that such disclosures must be part of the privilege of ministerial and executive positions. The President's aim to make the Republic an open democracy addresses this.

The execution of the duty to disclose accounts pertinent to subsidised trips etc. has been under scrutiny, particularly in the last three years as the US, the main source of funds, has tightened its rules of audit. (See GAO reports, MIJ, and ADB 2001). The new proposed Compact institutes much stronger rules of audit by the US, one of the issues being contested by RMI.

Are there conflict of interest rules?

- **For ministers?**
- **For high level officials?**

Formal or legal position

Conflict of interest rules for ministers are protected under Article IV (Section 15, #2) which specifies that "the Rules of the Nitijela shall ensure that in the conduct of its official business there is an opportunity for all points of view represented in the Nitijela to be fully heard". Furthermore (Section 15, #4) a member is required to abstain from voting on any matter in which he has a personal interest.

For high level officials, Public Service Commission rules reiterate that conflicts of interest should be declared.

What actually happens

In practice this issue is not fully understood. It has become more difficult as Nitijela members and other officials debate matters included in the Compact both inside and outside the house. For example the elected officials for Kwajalein atoll have had to consider the Compact as a whole including clauses related to US access to lands on Kwajalein, and payment for them. Where land issues are involved there are inevitable conflicts of interest.

Are there rules and registers concerning gifts and hospitality?

- **For ministers**
- **For high level officials**

Formal or legal position

Registering of gifts and hospitality is something under regulation, with all gifts to ministers and high officials becoming the property of the government. Issues of hospitality and transport costs (i.e. travelling first class) are currently subject to open discussion in RMI.

What actually happens

While substantive gifts to the government are located in glass cabinets in the Cabinet room of the Nitijela, there is no register, and no inventory of the items held, their provenance, nor their value. The Secretary to Cabinet has this on his list of jobs to do. A fire in government buildings some four years ago destroyed all previous gifts – no record was kept of those.

If so are these registers kept up to date? By whom?

Formal or legal position

Secretary to Cabinet.

What actually happens

Not yet accomplished.

Are there restrictions on post ministerial office employment?

None specified in the Constitution.

What powers of sanction are in place against ministers who are also parliamentarians?

Formal or legal position

Powers of sanction against ministers and non-parliamentary office holders are subject to debate in the Nitijela. The Nitijela can revoke these.

What actually happens

They were invoked in the case of ministers involved in an anti-gambling bill under consideration. Ministers who fail to perform may be 'relocated' i.e. reassigned to another portfolio. It is very rare for a minister to be expelled from the Nitijela. In the recent case of a Chief Justice who failed to show for trial on 29 charges of alleged cheating, the Justice Minister introduced a resolution into Parliament calling for his removal from the High Court (Yokwe on line 25 Sept, 2003).

Powers of sanction against high level officials have been invoked, as in the case of two Judges currently being tried for misdemeanours, discussed below.

Are there restrictions on post-ministerial office employment?

Formal or legal position

No formal restrictions.

What actually happens

Ministers may choose to take up private employment, or negotiate their own business connections. Assignment to diplomatic postings is a common form of such re-deployment.

Are members of the executive obliged by law to give reasons for their decisions?

Formal or legal position

No formal regulation.

What actually happens

Members of the executive are expected to express the background reasons for their decisions. The President sets example by precedent. Proceedings of the Nitijela are broadcast and listened to by the public, leading to consequent questioning of ministers, or high officials. While questioning government decisions has not been very common in the past for most Marshallese, members of the public are more inclined to raise such questions as civil society realises its ability to exercise its rights.

Do ministers or equivalent high level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?

Formal or legal position

Contract awards and licensing of businesses are governed by the rules set by the newly revived Contract Bids Committee. Previously ministers have made their own decisions re contract awards. Licensing contracts have been negotiated privately.

What actually happens

The new Contract Bids Committee comes under the jurisdiction of the branch of Ministry of Research and Development, EPSSO. Failure to observe the terms of contracts and licensing was a key feature of the Accountability study, 1991, resulting in the establishment of this new Committee. Since the RMI economy is heavily dependent on these contracts, strong debate is ongoing. (This item is discussed further under the Public Procurement section.)

Are there administrative checks and balances on decisions of individual members of the executive?

Formal or legal position

Laws are passed from time to time to put in place particular administrative checks.

What actually happens

Administrative checks and balances on decisions made by individual members of the executive have been coming under closer scrutiny recently. These are particularly closely monitored in the time coming up to elections, as in November 2003. Such monitoring occurs mainly through informal channels, as well as through the radio and weekly newspaper, Marshall Islands Journal. The Accountability Report has highlighted the need for direct procedures.

Legislature

Is the legislature required to approve the budget?

Formal or Legal Position

The Cabinet is held responsible to the Nitijela for all matters pertaining to the Budget (Art VIII, Section 2, 1). No taxes or revenue raised, or public money may be expended unless authorised by law (Art VIII, Sect. 1). A Financial Management Act was passed in 1990. All relevant financial management and tax laws of the Republic provide for the promulgation of Regulations by the Minister or Secretary of Finance (see Report of Task Force on Accountability, Dec. 2001).

What actually happens

The Ministry of Finance has been found wanting in producing a Budget for approval by the Nitijela. ADB reports all indicate under-reporting. The Public Sector Reform Program (1997) attempted to set in place proper procedures but still financial under reporting has been noted (Hughes 2001). The Task Force on Accountability (Report, MIJ Dec. 2001) found the financial status of the RMI government to be severely lacking in several areas. It labels the Ministry of Finance as dysfunctional, as it has "continuously failed to implement and enforce the tax and financial management laws of the Republic (p.14). Furthermore successive Secretaries of Finance have failed "to comply with the responsibilities of their positions or to provide the leadership necessary to correct the numerous serious deficiencies in the Ministry."

Failure to operate policies for tax assessment, collection and receipt or to enforce the tax laws has led to serious tax evasion, and thus shortfalls in income. Failure to maintain records of taxes paid, or lists of taxpayers, results in inaccurate and incomplete information. Honest taxpayers are penalised by those who fail to pay their due.

Filing of annual financial statements, collating financial reports from government departments was noted as inadequate or inaccessible. Failure to ensure the collection of taxes resulted in both loss of revenue, and inequities between responsible and less responsible taxpayers. So many taxpayers, both individuals, businesses etc. had failed to pay and had not been reminded or penalised for those failures. The tax laws were not being enforced.

Four tax areas were identified as needing greater measures of accountability. Personal taxes and business taxes are inadequately reported, or even assessed. In addition a list of the identities and equity interests of those holding Foreign Investment Business Licenses is incomplete, and some non-citizens are not paying the required taxes. Delinquency in complying with tax obligations should lead to non-renewal of contracts, but without the list of License holders, there is no way of checking.

The withholding taxes that should have been collected by MISSA (Marshall Islands Social Security Association) have also not been filed, and again records are missing, as discussed below under Civil Service. Audit reports have detailed issues of financial mismanagement, but "Cabinet and Nitijela do not adequately review or do not fully understand the findings of the various audit reports." (Task Force on Accountability 2001).

The Task Force on Accountability (2001) specified the following categories of revenue not accounted for: gross revenue, individual income tax, business taxes, non-resident gross income, hotel/resort rooms tax, land leases and local government taxes. They recommend 20 points to be rectified. They conclude that the Ministry of Finance must be immediately re-organised and re-staffed in order to rectify "The inability or unwillingness of the Ministry of Finance to fulfil its duties and comply with its responsibilities" in order to re-institute the tax-collection system in the Republic. (MIJ January 4 2002: 15).

Agencies of government with particular responsibilities to the Ministry of Finance include the Public Service Commission and the Marshall Islands Social Security agency (MISSA). The PSC had not enforced employees' duties to pay taxes; local government bodies had not paid taxes, businesses had not met their contract terms to pay taxes. MISSA had not ensured collection of individual taxes nor filed accounts, a major concern remedied by reassigning the officials in charge. The Foreign Investment Business licensees had not met the terms of their contracts. And the Attorney General's office is noted to have failed in its responsibility for executing criminal or civil prosecutions for those not paying taxes.

Financial mismanagement has also been noted in two ADB Reports (Knapman & Saldanha 1999; Hughes 2001) as a serious failure in the transparency of government decision making. The absence of reliable, timely and comprehensive statistics on government finances has led to inadequate financial reporting. The poor financial accounting system is seen to be at the base of much of what has been labelled "corruption".

Are there significant categories of public expenditure that do not require legislative approval?

Formal or legal position

According to law all categories of public expenditure require legislative approval. However under the terms of the new Compact with the US a variation will apply on how grant money is accounted for. New procedures are being formulated within the terms of the new Compact with the US for grant money. The new audit requirements will identify the departments involved. Departments of Education and Health financial systems are likely to be brought in line with other departments.

What actually happens

Since 1996 under the new President attempts have been made to ensure more adequate accounting by sectors of the legislature. Government departments still have discretionary budgets, but should file their annual reports. The office of Research and Development is endeavouring to enforce compliance, but several departments had still not filed their 2001-2002 reports in August 2003. Small items do not require legislative approval.

Are there conflict of interest rules for Parliamentarians?

Formal or legal position

Conflict of interest rules are set out by the Public Service Commission.

What actually happens

Compliance has not been followed up. Where members of the Legislature hold private contracts they are expected to adhere to the terms of those contracts, but adherence is not enforced.

Are there rules and registers concerning gifts and hospitality for parliamentarians?

Formal or legal position

Gifts to members of the Nitijela should be recorded with the Secretary to Government's office for any item valued over \$100.

What actually happens

Such records are incomplete. Non compliance is not noted, or followed up.

Are these registers kept up to date?

By whom?

Formal or legal position

What actually happens

Such registers could not be located.

A major omission in the steps towards transparency of Nitijela business is the difficulty of access to government reports and records. Researchers for ADB contracts have noted this difficulty of access (Hughes 2001, and Knapman and Saldanha 1999). Internal Affairs through its Alele Museum and Archives section is supposed to be the repository for all government documents, but government departments fail to respond to the requests sent out annually by Alele, for those to be filed. Some reports filter (mainly by personal request) through to the editor of the Marshall Islands journal, and are reported there.

Elections

Is there an independent Electoral Commission?

Formal or legal position

An Electoral Commission was set up in 2002 to manage the elections timed for November 17, 2003.

What actually happens

The office is located within the Ministry of Internal Affairs, and reports to the Secretary of Internal Affairs. It is nominally separate from government in that it is formally a stand-alone agency but for complex reasons it has become associated with Internal Affairs.

Who appoints the Head of the Commission?

Formal or legal position

The Head of the Electoral Commission is appointed by the Public Service Commission.

What actually happens

The elections of November 17, 2003 were managed by the Head of the Electoral Commission and a staff of three. Votes are counted manually by election officials, vote counters, with the process overseen by poll watchers. A list of qualified nominees for the general election (11/17/03) for Nitijela as well as local atoll mayors and council members was posted on September 28, 2003 (Yokwe on line Oct.1/03).

The new head of the Electoral Commission was previously the Assistant Archaeologist. He has used the powers of his office to challenge the right of an individual elected in a by-election to take up that seat in the Nitijela. His argument was based on an inadequate time frame (two days) for the process of that by-election.

Political Party Funding

Are there rules on political party funding?

Formal or legal position

No.

What actually happens

Rules on political party expenditure were tightened for the November 2003 elections. Attempts were made to limit expenditure but the first declared candidate, a well known Marshallese, had already begun his campaign in August, three months before the election date, by putting up his posters around Majuro and actively pursuing his seat thereby avoiding some of these efforts to limit funding.

Candidates for election rely more on their personal income, or contacts for funding their campaigns, rather than on party funding (Pers. Comm.). Thus some candidates can canvas voters more widely and more extensively than others, according to personal wealth. Much electioneering is based on family ties, and the candidates' involvement in local issues.

Are substantial donations and their sources made public?

Formal or legal position

No. No formal legal authority applies.

What actually happens

Donations are not announced in the media, but the information is generally available because of small community communication.

A rule in place states that all candidates for electoral office, whether local government, or national government, shall cease to provide entertainment or other activities connected to their campaign one week before the election. In past practice these activities have continued during and after the election.

Are there rules on political party expenditures?

Not available

Are political party accounts published?

Formal or legal position

No legal requirement to do so.

What actually happens

Political party accounts are not usually published.

Are accounts checked by an independent institution?

Formal or legal position

What actually happens

No such institution exists.

Supreme Audit Institution

Is the national auditor general independent?

Formal or legal position

The office of Auditor-General and his tasks are specified in the Constitution (Art. VIII, Section 13-15). The appointee to the position is nominated by the Speaker, with the approval of the Nitijela, leading to formal appointment by the President. The qualifications of the Auditor General should include a business management degree. The appointee cannot be removed from office except for a major misdemeanour.

What actually happens

Activities of the Auditor General are critiqued in the assessment of the Task Force on Accountability report, 2001. A report in March 2003 noted that the Auditor General was complying with audit standards: according to an "internal quality control system suitably designed that provided reasonable assurance that government auditing standards were being followed." (MIJ March 7, 2003).

Various audit reports are published in the Marshall Islands journal. Furthermore they are the subject of letters to the Editor of that Journal. This indicates that the Nitijela is aware that this accounting transparency is a prime area for remedial action.

Is the appointee protected from removal without relevant justification?

Formal or legal position

What actually happens

Yes.

Is the office of Auditor General adequately resourced?

Formal or legal position

What actually happens

The office of Auditor General was down-sized in 1996 as part of the fiscal cut backs, and later reduced again to 5 persons. The matter of adequate resources is as much a matter of lack of skilled personnel as it is of finance.

This matter is under review as the US government establishes an Audit Office in Hawaii for the Compact states. This new body is a branch of the US Government Audit Office in Washington.

Are all public expenditures audited annually?

Formal or legal position

They are required to be audited under the terms of the Finance Act.

What actually happens

Public expenditures had not been audited annually, as required by law.

Is reporting up to date?

Formal or legal position

What actually happens

No. The audit office has been reorganised in order to produce annual reports. It now consists of the Auditor General and two staff in an office where staff had been under a lot of pressure for alleged lack of accountability. Its necessary associations with the failings of the Ministry of Finance, particularly with regard to tax collection, have been clearly addressed in the report by the Task Force on Accountability (Dec. 2001), as discussed above.

Under the terms of the new Compact (Sect 217) a Joint Economic Review Board for Management and Financial Accountability is established with 5 members, 3 from US, 2 from Marshall Islands (Yokwe online 28/9/03). This new audit function is seen as another form of US watchdog activities.

Are reports submitted to a Public Accounts Committee and/or debated by the legislature?

Formal or legal position

The Finance Act requires that government to provide annual public accounts for debate in the Nitijela.

What actually happens

This has not happened in the past. Attempts are underway to ensure all reports are filed appropriately, and reporting is slowly getting up to date. The finalised report for 2002/3 will be submitted through the Ministry of Finance to the legislature. The report will include most but not all public expenditures, as the new accountability is slowly put in place. The new US Government Accounting Office for Compact money will also provide new criteria for greater accountability for other sectors.

Are all public expenditures declared in the official budget?

Formal or legal position

They should be, except for independent Departments, such as Education, under the terms of the Finance Act.

What actually happens

This has been found wanting as the Accountability report notes.

A Nitijela Public Accounts Committee was set up (Resolution 102,) "to conduct investigative hearings into areas of government spending..." in the interests of accountability and transparency in government. That Committee was to report on the implications of the recommendations of the Tobolar Task Force Report on government over-spending in FY 2001, Investment of the Inter-Generational Trust Fund, and the Status of the Ministry of Public Works Fund. These reports are not yet available.

Judiciary

Have the courts the jurisdiction to review the actions of the executive?

Formal or legal position

What actually happens

Under the Constitution (Art, VI, Sect 1) the judicial power of the Marshall Islands is independent of the legislative and executive powers. It is vested in a Supreme Court, a High Court, a Traditional Rights Court, and such District Courts and other subordinate courts as created by law. The Judiciary has the power to review the actions of the President and other government officials, though these reviews were not able to be accessed by the author of this report.

Are judges independent?

Formal or legal position

A judge is appointed by Cabinet on the recommendation of the Judicial Service Commission and with the approval of the Nitijela: the appointee "shall hold office during good behaviour until reaching the age of 72 years unless, in the case of a judge who is not a citizen of the Marshall Islands, the judge has been appointed for a term or one or more years, or in the case of a sitting judge in another jurisdiction, for a particular session of court." (Art. VI, Sect. 4).

What actually happens

Judges have been held accountable for violations of Marshallese code of practice.

Judges have been drawn mainly from US citizenry in the absence of suitably qualified Marshallese judges. Localisation is an issue that is being addressed with attempts to encourage Marshallese to become judges. But an informant argued against this incentive on the grounds that the Marshall Islands is a small community with many cross cutting kin ties that increase the difficulty of the job. Thus even qualified lawyers prefer not to practice at home.

Are appointees protected from removal without relevant justification?

Formal or legal position

Yes, unless violations are proven.

What actually happens

Violations are under judicial process as outlined below.

Are recruitment and career development based on merit?

Formal or legal position

Technically yes under the terms of the Public Service Commission Act.

What actually happens

Few Marshallese have the qualifications to warrant appointment.

Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

Formal or legal position
What actually happens

Yes. Two major cases of corrupt practice by two judges are currently before the courts. One judge has been called to appear before the High Court of the Marshalls to explain charges for embezzlement of a housing allowance, and for libel for writing letters urging the US Congress to reject the Compact of Free Association (MIJ April 4, 2003). He failed to appear before the hearing. The Nitijela has debarred him (Website Sept. 26, 2003). In another case, an associate justice, an American, was refused renewal of his contract. He subsequently opened a private attorney's office in Majuro.

Civil Service

Are there laws establishing criminal and administrative sanctions for bribery?

Formal or legal position

Laws exist providing both criminal and administrative sanctions for bribery, as referred to in the Ethical Government segment (Section 16) of the Constitution.

What actually happens

Such laws are hard to access, and there is no government library where such laws can be perused by the public. Violations are reported in the Marshall Islands Journal.

Are there rules requiring political independence of the civil service?

Formal or legal position

The Public Service Commission act sets out terms of compliance. It is required to "furnish to the Cabinet a report on the state of the efficiency and economy of the Public Service and on the work of the Commission for the previous calendar year" (Sect. 9(4)). Political independence of the civil service is set out in the terms establishing the Public Service, which comprises "all employees necessary to assist the Cabinet in exercising the executive authority of the Marshall Islands" and "to perform other duties as required" (Art. VII, Sect. 1 (1)). The chief officer of the Public Service is the Chief Secretary, with the Attorney General, and the Secretary of Finance as major officers. A Public Service Commission consisting of a Chairman and two other members is appointed by Cabinet with the approval of the Nitijela. Those appointees to the Public Service Commission may not be members of the Nitijela, nor hold concurrently any office in the Public Service.

What actually happens

As the employing authority, the Public Service Commission's independence is compromised by a lack of an adequate skilled workforce from which to draw expert appointments.

Are recruitment/career development rules based on merit?

Formal or legal position

The PSC is responsible for provision of "reasonable employment opportunities for employment of citizens" under the terms of the Constitution. Human resource development, and monitoring and evaluation of promotions and career advancement are implied in the terms of the Public Service. Decisions relating to individual employees "whether they relate to the appointment, promotion, demotion, transfer, disciplining or cessation of employment of any employee" are a matter for the Public Service Commission without direction from Cabinet. (Constitution Art. VII, Section 10). Under Section 9 of the same article, the Public Service Commission should furnish reports to the Cabinet and Nitijela as to the state of the efficiency and economy of the Commission.

What actually happens

Recruitment and advancement on merit have not been fully observed. All public service staff are subject to 'relocation' including Ministers, and Secretaries of Departments. These moves have consequences for those lower in the hierarchy. In the last ten years the Public Sector Reform programme set in place with ADB funding in 1997 has been more concerned with reducing size of the work force than with building existing skills and encouraging new entrants to career paths in the civil service (Hughes 1991:54). This Reform Programme has therefore paid more attention to reducing the cost to government of salaries than in conditions of service. Salaries are low, and this contributes to the lack of skilled staff as mentioned in all reports. "The lack of a strategy to manage and plan for improving staff levels compounds the problem", as Hughes (2001:58) stated.

Appointments are not always based on merit. "Relocation" is used to remove a person from one position, and place them in another, without any explanation or rationale to that civil servant, or avenue for explanation. Steps (or Levels) to promotion are established, but career development is poorly supported and part of the inadequate human resource management structure.

Are there specific rules to prevent nepotism?

Formal or legal position

Rules to prevent nepotism and favoured appointments are embodied in the Public Service Commission Act. The Constitution also reaffirms that the PSC should act independently, and that it should act only in accord to the criteria relating to the individual's ability to perform his duties (Article VII, Section 10 (2)).

What actually happens

Ministers and senior government officials can and do replace staff with relatives and friends. Ministers move from one portfolio to another without adequate regard for skills, particularly in financial management. "Relocation" has become a negative concept for public servants, indicating a favour requiring an incumbent's replacement. The Public Service Commission lacks the staff to manage the government human resources. These have taken second place to financial resources. Some devolution of responsibilities for staff management to Departmental Secretaries has exacerbated their work load, and increased the problem of lack of managerial skills. As Hughes argues in his review of RMI Public service: "Excessive devolution can lead to chaotic terms of service, and nepotistic employment practices "(2001:50).

Are there rules and registers concerning acceptance of gifts and hospitality?

Formal or legal position

Rules regarding gifts are set down in the Public Service Commission regulations. Any gift of a value of more than \$100 must be reported to the Head of the employees department. He/she should then pass on the information to the Chief Secretary's office.

What actually happens

Such notifications, if and when they occur receive little action. Many gifts may not have a monetary value, i.e. handicrafts and food. Reporting of such gifts to the Chief Secretary's office is infrequent, records are not kept and the Public Service Commission does not have the staff to investigate any gifts of alleged higher value. Moreover, sanctions against public officials have been rarely invoked.

Are there restrictions on post public service employment

Formal or legal position

Post public service employment is not specifically regulated.

What actually happens

As jobs are scarce, employees have found it difficult to relocate outside the Public Service. But as private business grows, it is hoped that alternative jobs will become available. The Reduction in Force Programme (1997) (Riffing) included payment of redundancy money (via an ADB fund). This whole programme led to many of those qualified civil servants moving to the US for a job. RMI could ill afford this brain drain. Competition is emerging between civil service jobs and the private sector, where advancement is better rewarded.

Are procedures and criteria for administrative decisions published?

Formal or legal position

Procedures for administrative decisions should be reported, and filed for general access.

What actually happens

This reporting process is a major concern of certain government officials who recognize its importance within the policies of transparency and accountability. Only a very few reports reach the civil society, usually via the Marshall Islands Journal. Letters to the Editor draw attention to the importance of this accessibility of reports for civil society.

Are there complaint mechanisms for public servants and whistleblower protection measures?

Formal or legal position

The Public Service Commission is the body charged with receiving complaints regarding the transparency of actions of civil servants.

What actually happens

The PSC does not have the staff to address all of these complaints. And public servants know that it is not worthwhile complaining as no action will be taken. Complaints may be channelled to Senators or an Iroij, who may be able to bring about some action.

There is also no Union operating in the Marshalls as a watch dog agency for employees, whether in government or private sector. However it is also notable that the Marshallese are becoming more aware of the defensibility of their rights, so it could be expected that more complaints will be actively promoted in the future.

Are there means for complaints by members of the public?

Formal or legal position

The Bill of Rights covers this in Article II Section 1 (1), where it states that "every person has the right to....petition the government for a redress of grievances".

What actually happens

The Marshallese have not been used to using channels of complaint. They are now recognising that they can approach a Senator or a local government official, but it is mainly the younger, educated members of the public who do so.

Are there administrative checks on decisions of individual public officials?

Formal or legal position

The Public Service Commission is empowered to make such checks.

What actually happens

The officials involved may be reluctant to question an individual's decisions, and it appears as though only extreme cases are actioned.

Further, criteria for administrative decisions are not transparent. Though most government departments hold weekly meetings for their administrative staff, they often do not achieve the clarity sought. Marshallese, however, are learning to ask and to state their cases more forcibly than in the past. It is not Marshallese custom to press a senior official for an explanation, nor to assert personal rights in the hierarchy. However, letters to the editor, and comments over the radio are two main channels that are being used to express dissatisfactions. The August demonstration outside Parliament against clauses in the second Compact was hailed as a first for Marshallese asserting their democratic rights.

Employees belong to the Marshall Islands Social Security Association (MISSA), an agency independent of government, though appointed by Cabinet. It was set up under a Social Security Law to provide for the welfare of employees, and to provide retirement funds for those with a long record of government service. It runs in parallel with a similar US agency. In the Marshalls it is run by a Board. The decisions of that Board fell under close scrutiny when it was apparent that the funds they controlled had been mis-managed.

The previous government had set up a Retirement Trust Fund with \$25 million. All government employees and businesses are expected to contribute to this fund. But businesses were deducting the tax from their employees but not passing the funds on to MISSA. The result was that employees have not accrued their due retirement credits, and retirees expressed their dissatisfaction (JN pers comm.). This apparent loss of funds in the last couple of years has been questioned by government as it became apparent that the finances had never been audited, bills not paid, and collection of social service tax by employers was grossly in default. This resulted in a low level of finances and thus of the retirement fund. In addition the accounting system (spread over 26 bank accounts) was in disarray (JN Pers. Comm.).

A new Board and a new Director were appointed by Cabinet in 2003, and under the new Chairperson of the Board MISSA has undergone a total reorganisation. A new secretary with appropriate accounting background and experience was appointed. She has succeeded in reducing the level of outstanding taxes due, and is up to date with books to be audited. Unfortunately, as the new Chairperson commented, there was no MISSA statement for the November 2003 election. The opportunity to show a major achievement in transparency and good governance was therefore lost.

Police and Prosecution

Is the Commissioner of Police independent?

Formal or legal position

The commissioner of police is independent but his/her appointment must be approved by Cabinet. The appointment is governed by the rules of the Public Service Commission, with levels for advancement set by the PSC. That agency is responsible for hiring and firing the commissioner and all police recruits.

What actually happens

The whole police sector is under public scrutiny, but changes have not been apparent. Appointments are made by the Public Service Commission.

Are Public prosecutors independent?

Formal or legal position

Public prosecutors and public defenders come under the jurisdiction of the Judiciary, and the Attorney General.

What actually happens

The degree of independence is difficult to judge. They are involved sometimes in traditional as well as modern legal procedures.

In terms of other relevant features, an editorial in the MIJ (Feb 2003) noted the lack of prosecutors and others lawyers in the Attorney General's office. "The Public Service Commission has allowed this essential office to become dysfunctional."

Are there special units for investigating and prosecuting corruption crimes?

Formal or legal position

Special units do exist under the Commissioner of Police, and he oversees local government and national policing. Details of such units are not available.

What actually happens

The Audit Office and external agencies such as ADB have called for greater involvement of prosecutors in increasing accountability efforts. The cases of the two chief justices charged with unauthorised use of funds, cheating, libel and other misdemeanours, as well as the case of the CMI Director charged with embezzlement, were handled by the public prosecutor (MIJ January 2003). The findings were passed to Cabinet and Cabinet chose dismissal.

The reduction in force pronouncement in 2000 cut the Public Defender's office from 7 to 4 (in 2000), and now to 2, rendering this 'unit' too weak numerically, or in terms of skills, to investigate many lesser offences.

Is there an independent mechanism to handle complaints of corruption against the police?

Formal or legal position

The author was informed that such an agreement was in existence but was not given any further details.

What actually happens

Not operational.

Does civil society have a role in such a mechanism?

Formal or legal position
What actually happens

Word of mouth only, and at times some cases reach MIJ, such as the story of arrest of two police detectives for drink driving, described below (MIJ March 21 2002). However, in this case no outcome was reported.

Have police officers suspected of corruption been prosecuted?

Formal or legal position
What actually happens

Two detectives were prosecuted in 2002 for driving under the influence of alcohol by MALGov (MIJ March 21,2002). The offence is a common occurrence in the urban population. That they were detectives and the case was reported in the Journal is noteworthy in itself, as many such cases fail either to come to court, or to be reported widely. Failure on the part of police authorities to prosecute such cases was a concern of persons I spoke with. But since it is a relatively common occurrence, I was told that such cases are not considered worth pursuing - and replacing those found guilty would be costly and difficult for both local and national government.

Are there any cases of corruption within the prosecuting agencies?

Formal or legal position
What actually happens

None openly defined as 'corruption'. Slow filing of reports and the unavailability of those reports means that transparency is hard to achieve. Whether the finances of this sector are regularly audited could not be ascertained.

Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?

Formal or legal position

The Judicial Service Commission consisting of the Chief Justice of the High Court, the Attorney General, and a citizen of RMI. Its task is to recommend re judicial appointments, and appoint and remove judges of subordinate courts and the Traditional Rights Court. It is an independent body.

What actually happens

The trial of a Chief Justice (and other duties performed by him) thus required an outside legal authority, namely a US Judge.

How are complaints of corruption against the police handled?

Formal or legal position

These are handled through the Commissioner of Police.

What actually happens

The case of two detectives prosecuted for drink driving was actioned in 2002, but the follow up action was not reported publicly. Questions regarding corruption within the police force are part of the larger issue of what is considered 'corruption' as discussed in the

introduction. In a small community where most people are related in one way or another, the cautioning officer may well be a 'cousin'. So local customary laws apply alongside national laws. People speak of corruption in the police force, referring to failure to prosecute a high ranking person for, say, drink driving, or for known cases of bribery. But those are not easily verified. Any sentence issued may be considered 'light' by external standards.

Civil society input?

Formal or legal position
What actually happens

Members of civil society should be included in investigations of corruption, but those selected for their views may have kin ties, or other ties to the accused. Or they may be beneficiaries of largesse.

Have there been any prosecutions of police officers suspected of corruption?

Formal or legal position

Not directly, but some indirect references.

What actually happens

Two detectives were prosecuted in 2002 for driving under influence of alcohol by MALGov. (MIJ Mar.21,2002). The offence itself was not a charge of corruption against the officers but instead highlighted the possibility of inaction in the case of charges brought against the police.

Prosecutions within prosecuting agencies?

No information available.

Legislative instruments?

Formal or legal position

The Constitution provides for establishment of laws to investigate and prosecute cases of corruption.

What actually happens

In practice a common definition of corruption is still not widely accepted.

Is the law applied?

Formal or legal position
What actually happens

The law is difficult to apply without a clear legal definition of corruption being available.

Is private to private corruption punishable by law?

Formal or legal position

Such cases if taken up and proven are punishable by the appropriate law. For example, the Task Force on Accountability gave a high profile to failures to comply with RMI foreign

investment business licences. "It is a criminal offense for a non-citizen, or an entity in which non-citizen owns an equity interest to do business in the Republic without first obtaining a foreign investment business licence" (MIJ 33: 14)

What actually happens

The definition of 'corruption' in such cases would have to be agreed. Very few such cases reach the courts.

How many Cases of Prosecution have been undertaken in the past years?

Formal or legal position

Any such cases should be reported in the annual reports of the Ministry of Justice.

What actually happens

Such reports were not available. The major cases of known prosecutions include Chief Justices Charles Henry and Allen Fields for misdemeanours. Louiston Lewis, former Director, was found guilty of embezzling \$506,000 from College of Marshall Islands (MIJ July 18, 2003). The Chief Justices were voted out of office by the Nitijela upon a resolution by the Minister of Justice (Yokwe eok October 7, 2003), while the Director of the College of the Marshall Islands was also dismissed. The Marshall Islands Journal was the major source of information.

Public Procurement

Do rules for public procurement require competitive bidding?

Formal or legal position

The Bidding Committee is responsible for vetting, and making the final decision on awards of government contracts. Bids for contracts are subject to controls specified in Bidding Committee documents. Calls for such bids must be advertised.

What actually happens

New procedures have been set in place by the EPSSO to ensure greater transparency. The Bidding Committee is part of that new structure. In the past no Bidding Committee existed. Contracts were awarded on a haphazard basis, with minimal accountability, as noted with reference to foreign investment business licences. Bids were awarded to companies, usually US companies, with a track record with US government authorities. The US Department of Energy, for example, regularly used Holmes and Narver of Hawaii for attempts to clean up the northern irradiated atolls, despite their record of incomplete clean ups and failed replanting schemes. RMI had no say in these contract awards. Similar results happened with regards to the nuclear claims health awards. (NJP notes for Nuclear Claims Tribunal Hearings 1997-2002).

Are the rules laid down in documents publicly accessible?

Formal or legal position

Documents on each bid are theoretically made available from EPSSO. Public notice of the availability of contracts for contestability is now published in MIJ.

What actually happens

The contestability of bids has been recently revised as Committee rules were less readily accessible in the past. The current committee is endeavouring to make the whole process

as transparent as commercial sensitivity of such bids allows. The Ministry of Research and Development which formerly held responsibility for seeking and procuring such bids was subject to restructuring, with one of its new agencies (EPSSO) to open up the bidding process.

Are there strict formal requirements that limit the extent of sole sourcing?

Formal or legal position

The new terms of the Bidding Committee aim to eliminate sole sourcing.

What actually happens

Much commercial bidding has been tied to US activities in the Marshalls, and thus bids have been expedited by officials directly involved. The new procedures should eliminate this.

In the past government contracts have given the appearance of being too closely tied to aid funding, implicitly rather than explicitly. The winning bid was not the cheapest, but was the most extensive and thorough in the view of the Committee. They accepted it, even though the firm had no previous track record with RMI – for examples see the nuclear rehabilitation contracts discussed above.

Are all major public procurements widely advertised to the private sector?

Formal or legal position

The Bidding Committee requires that all contracts be advertised.

What actually happens

The new rules (as of 2003) are operative and contracts are being advertised. The bidding process for a recent major project was made available to some 200 potential applicants (CH Pers. Comm.). Successful bids are announced in the MIJ.

Is there a procedure to request review of procurement decisions?

Formal or legal position

Previously there were no avenues for assessment. Now the Bidding Committee directs the handling of such unfavourable decisions.

What actually happens

The new process has not yet made apparent any disputes over decisions. The newly revamped EPSSO office is endeavouring to secure the statistics and information necessary for performance monitoring. Policy advice from younger Marshallese with degrees, who have been off island and gained wider experience is slowly gaining recognition by older public servants. Availability of skilled staff to put in place strong measures of public procurement is still a problem.

Can an unfavourable decision be reviewed in a court of law?

Formal or legal position

Yes.

What actually happens

The new procedures are yet to be implemented.

Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

Formal or legal position

Laws for unethical procurement of contracts have been in place. Failure to pay taxes on previous Business licenses rendered future bids as unacceptable. The Foreign Business License Act is under review.

What actually happens

In practice in the past large contracts were secured with a proportion of the money going to political party funds. Key firms have secured contracts, and renewed contracts over many years as a result of policies external to RMI. For example, Hawaii-based Holmes and Narver had ongoing contracts over 30 years with US Department of Energy for monitoring the status of the nuclear affected islands, such as Bikini and Enewetak, and their clean-up (Nuclear Claims Tribunal Hearings 2000-2002). Under the first Compact some of those contracts continued, but more recently RMI is asserting its own selection processes. Nevertheless its hands are tied by some of the strictures of the Compact.

Thus the policy whereby many Contracts in the past went to US agencies is changing. More and more contracts are being signed with firms from Fiji, Papua New Guinea, New Zealand and Australia. This is the result of a widened bidding procedure. It will also lessen the likelihood of bribery. Whether companies will be 'blacklisted' remains to be seen, and another major concern is that some companies that have failed to pay their taxes in the past have been successful in a subsequent bid. EPSSO is attempting to eliminate these bidders.

The Foreign Investment Business License Act has been enforced with laxity. Some foreign investors have failed to obtain a License before operating in the Republic. They have also been able to operate businesses without identifying the identities and citizenships of the equity interest holders, as required by the Act. Many investors have also failed to file or pay required tax returns. The Task Force on Accountability (2001) noted that "It is a criminal offense for a non-citizen, or an entity in which a non-citizen owns an equity interest, to do business in the Republic without first obtaining a Foreign Investment Business License." The Task Force suggests that the Act be amended so that the applicant for a License open a tax account with Revenue and Taxation, and be granted that License only when the tax account is established. They also recommend that all licensees should file an annual FIBL report with the Registrar of Foreign Investment by 15 March of each year.

Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?

Formal or legal position

Yes.

What actually happens

Overlapping interests of political party funding, established links to US business and private business have led to the rules being ignored or circum-navigated. Conflict of interest is clearly an issue, as officials and those private business persons with comprehensive networks engage in deals which are both good for the RMI, and good for those business persons.

While those with whom I discussed political party funding would not cite specific contracts/deals that brought in offshore business from the US, Taiwan, Japan and elsewhere to the RMI, it is obvious that much construction and agencies are so financed.

The attempt to legislate for gambling casinos on Ebeye is one example of such collusion, and its political aftermath, in the downfall of that government. Local businessmen need the offshore finance and expertise, but at the same time they are vital conduits to securing contracts for infrastructure construction, such as roads, bridges, and agencies, as they have the land. Marshallese businessmen stated their difficulties in developing tourist infrastructure, say in the outer islands, in competition with large overseas companies. Such investments are touted as 'party' support rather than individual profit. Major discussions in the Nitijela regarding Foreign Business Licenses as a result of the Task Force on Accountability Report (2001) have necessitated members lobbying on behalf of particular causes. The new bidding system will change the process.

Clear manifestations of such successful businesses are to be found in the high standard of some housing in DUD, and in the cars those business people drive. What is not so evident is the size of the bank balances, and the offshore investments. Bank accounts held in the US provide a convenient repository for funds. A revised taxation system, as discussed above, will endeavour to capture a proportion of those who benefit from public procurements for the Republic as a whole.

Are assets, incomes and life styles of public procurement officers monitored?

Formal or legal position

What actually happens

They have not been. Small community syndrome means that many people can ask questions about sources of income. But few are openly criticised. Laxity in filing reports is an issue that both government and private sector wish to amend so that the process is tighter and more transparent. Obtaining the compliance of companies that have operated under the lax system in the past is going to be hard.

Ombudsman

Is there an ombudsman or its equivalent?

Formal or legal position

What actually happens

No such office exists.

One senior judicial official commented that it is too difficult for a Marshallese to stand aside from personal involvements. So there are no channels for complaints. A banking Commission has been suggested but not yet implemented.

Watchdog Agencies

Are there special investigative or watchdog agencies?

Formal or legal position

The Audit Office is the main watchdog agency. The Auditor General's reports should mention violation of laws within the scope of the audit, any improper expenditure, failures to record financial transactions and all other inaccuracies, irregularities, shortages, defalcations and other improper practice, according to the Auditor General Act 1986. Those bi-annual reports are required to be reviewed by the Committee on Public Accounts. The Public Service Commission is constituted to manage all employment issues.

What actually happens

The Auditor General's Office has been found severely wanting in the last five years, and thus has undergone major restructuring. Down-sizing and finding appropriately qualified

staff are two major problems. Also, the lack of expertise in report writing and manuals to ensure compliance is recognised for early address. The US firm Deloitte & Touche has been contracted to conduct audits of state owned enterprises and agencies, and thus to provide these for the Auditor General's annual report (Fraenkel 2002:50).

Procedures will change with the institution of the US Government Audit office in Hawaii as of November 2003. No other formal watchdog agencies are yet in place. There is no Trade Union organization or any independent agency (beyond PSC) to which government employees can express their grievances.

What are their main responsibilities?

- **Investigation;**
- **Prevention;**
- **Education and Awareness;**
- **Prosecution?**

Formal or legal position
What actually happens

In terms of investigation, financial auditing has been the main focus.

Prevention is in the process of implementation with the aid of training, replacing staff, and offering support. Other methods of prevention have been found in the case of the churches playing a major role in blocking the gambling bill in the legislature. Sectors of government were endeavouring to encourage the establishment of casinos and other forms of gambling in the two urban centres, as a means of obtaining revenue for government. The churches mounted a concerted campaign against the legislation and won.

With regards education and awareness, the necessities of monitoring finance and other areas of governance are yet to be addressed. Informal monitoring of social ills and education re civil rights is conducted by the churches, and by the women's' groups collective, WUTMI. The Churches are active agencies for matters of social concern. They are extraordinarily influential in peoples' lives. The annual convention of the Protestant Church meeting during the first week of August 2003 brought 4000 members of that church to Majuro. They came not only from the outer islands, but also from all the overseas communities spread across several of the States. Some 40 different communities of Marshallese were represented at this two week long fest/workshop. Human Rights and responsibilities featured in those workshops, and are also discussed weekly in church meetings. Ideas from the pulpit on Sunday disseminate thinking about issues such as sustainable developments, equity and other social concerns. The churches are a major source of moral leadership.

In their role of teaching the people to be honest, dedicated and increasing their awareness, the churches are an influential social force. Though some 8 different forms of evangelism are active in the Marshall Islands (see Pollock 2003), the Episcopal and Catholic churches have the largest number of adherents. Their messages thus reach some 80 per cent of the population.

Are they independent?

As NGOs they are independent (see discussion below on Private Sector and NGOs).

Do they report publicly to the legislature on the general scope of their work?

Formal or legal position
What actually happens

Yes, as in the case of the churches' objections to the introduction of Gaming. WUTMI also lobbies government on key issues, such as Adoptions Bill, and Women and Violence.

The four Section 177 (Nuclear testing affected) atolls have had to become watch-dog agencies for their own interests. They each have formulated their own Council, with staffing and lawyers to assert and monitor the progress of their claims for compensation. Both the Bikini Island Council, and Rongelap Council played a major part in the August 4 demonstration, with particular interest in the Changed Circumstances clause of the new Compact. These two island Councils, along with the Enewetak and Utrik Councils have been forced to mobilise their experts and their ideas in the course of formulating their cases to be heard before the Nuclear Claims Tribunal. They work with members of the Legislature on the Compact negotiations. Their many trips to Washington, and their dealings, each with their own lawyers, have led to the development of a high level of bargaining and presentation of argument (see Pollock 2002 for a discussion of the process of these Compensation claims). That expertise may now broaden from the island by island case to encompass issues that affect the whole of the Republic.

Can people complain to the agency without fear of recrimination?

Formal or legal position
What actually happens

Members of the public do pass their complaints through one of these agencies. In some cases job 'relocations' have been attributed to individual's support for such watchdog activities.

Marshallese people are learning to stand up for their rights, even though that means confronting those in the upper echelons of their society. Until recently it was not acceptable to question an Iroij, or a politician, or a school-master, or anyone in authority. An affronted individual was expected to take whatever he was apportioned without question, but the climate is changing.

Media

Is there a law guaranteeing freedom of speech and of the press?

Formal or legal position

The Bill of Rights in the Constitution guarantees all Marshallese the right to freedom of speech, and of the media (Article II, Section 1 (1)).

What actually happens

The Marshall Islands Journal, a weekly newspaper published since 1969, is the sole newspaper. Of six radio stations, one is run by government, based in Ministry of Internal Affairs, while two FM stations and two religious stations have recently added coverage of music and issues. Access to the internet through Marshall Islands website (Yokwe online) also allows dissemination of information about the Marshall Islands. The quasi-government agency, Marshall Islands Visitors Authority, also disseminates information about the Marshall Islands through its own promotion channels.

Is there Censorship of the media?

Formal or legal position

Freedom of the press is guaranteed in the Constitution Article II, Section 1 (1).

What actually happens

There is no overt censorship of the media. However access to material in government reports and documents is extremely limited, and requires a very persistent reporter to obtain it.

The government radio station has refused to air information on Violence in the Home offered by the Women's collective, WUTMI. It is not clear whether the Journal has been refused access to government documentation. The Journal has recently published full transcripts of documents such as the Report by the Task Force on Accountability, and a statement by the RMI Compact Negotiator addressed to the RMI General Public, dated June 10, 2003, outlining the components of the second Compact under negotiation. The MIJ also has an active Letters to the Editor section. The Editorial in each edition also takes a hardhitting look at current concerns. The paper has also published longer articles by RMI citizens on current critical issues.

Is there a spread of media ownership?

Formal or legal position
What actually happens

No. There is one journal, written mainly in the English language, and the government radio station and these are more diverse in their news compared with the other church run radio stations. Thus there may be room for an alternative channel through which to spread ideas on issues of concern to the public. Wider exposure of controversial viewpoints would represent a greater freedom of speech. Earlier attempts to set up an alternative newspaper have not succeeded.

The Editor of the MIJ is concerned to publish as much of the paper in the Marshallese language as is feasible. However he has difficulty in finding persons with suitable language skills for writing and translating documents. He must cater both for the older readers who do not read English, as well as for the younger, western educated readers who look for articles in English. He sees the Journal as a forum for debate, and thus it must present information and ideas in both languages (GJ Pers.comm).

Does any publicly-owned media regularly cover the views of government critics?

Formal or legal position
What actually happens

The newspaper publishes comments from several political perspectives, including those critical of government policies.

The radio presents live-broadcasts from Parliament when in session, as well as political commentaries. Critical views are broadcast. This was evident at the time of controversy over the new Compact issues. However the WUTMI programme on violence against women was refused air time.

Have journalists been harmed?

Formal or legal position
What actually happens

Unknown, but apparently not.

Does the media carry articles on corruption?

Formal or legal position
What actually happens

Yes, though more articles on Accountability than Corruption have appeared. Accountability, transparency and anti-corruption measures have been widely publicised in the Journal in the last three years, largely due to government pro-action on these topics. The radio has also broadcast extracts from these papers, and refers to accountability in its Marshallese programmes (using the English word). These English words are widely utilised but each

interviewee had difficulty in providing a Marshallese equivalent for them. Thus it may well be that people hold in mind a variety of interpretations of what government is attempting to do through its anti-corruption measures.

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

Formal or legal position

Media licensing laws are among those listed for revision.

What actually happens

Sanctions against reporting corruption are not overt, E.g. the cases of the Director of CMI, and the cases of the two Justices. Others are increasingly likely to reach the media as Marshallese society is becoming more open.

Are libel laws or other sanctions used to restrict reporting of corruption?

Formal or legal position

What actually happens

No information available.

Civil Society

Does the public have access to information and documents from public authorities?

Formal or legal position

The Bill of Rights states the right of the public to information. "Reasonable restrictions...do not penalize conduct on the basis of disagreement with the ideas or beliefs expressed" (Article II, Sect. 1 (2)©).

Section 16 of that Bill of Rights on Ethical Government reasserts that the Government of the Marshall Islands recognizes the right of the people to responsible and ethical government and the obligation to take every step reasonable and necessary to conduct government in accord with a comprehensive code of ethics.

What actually happens

Public access to public information and documents is virtually impossible. The system of archiving government departments is not operating as departments fail to honour their duty to file reports. Personal contacts with government officials and those in charge of such documents are the major means of access. All the visiting investigative teams, such as ADB, WHO, UNICEF or the US Government Audit Office, must visit each department in order to locate the person who knows where the relevant documents, may be located and many of these past documents may not be available. For those new to the Marshall Islands this paper trail is fraught with delays and difficulties.

Libraries should be another source of access (in addition to the media) to information on governance issues, such as anti-corruption policies, and reports of all government decisions. Papers on accountability could be expected to be located there. Two libraries exist in Majuro, Alele, as the government library, the other based in the College of the Marshall Islands, as a facility for students and others. The latter is more comprehensive and much more user friendly than Alele. Alele has lacked a Librarian for two years.

Alele is supposed to be the repository for all Government documents, and thus the place where the public can access such information Measures by the new government have

attempted to make government decisions and outcomes more widely available. Alele employees send out quarterly reminders to all government departments requesting copies of all documents relating to government decisions. But those are not followed up, so this process is notable for non-compliance. Even information I needed on current statistics was found at CMI Library.

Greater transparency would be afforded if government documents were managed so as to be readily available for public use through Alele Library. Alternatively the Chief Secretary could institute a Government Library, as is found in other places.

A Librarian conversant with government procedures and protocols is vitally needed to manage the vast number of documents emerging from each session of the Nitijela. Access to the vast documentation on the Compact negotiations is also likely to be needed in the future.

The Code of Ethics that sets out civil rights, as referred to in the Bill of Rights was not understood by many people. One informant discussed the matter fully, wondering aloud what a Marshallese Code of Ethics would contain.

Do the public authorities generally cooperate with civil society groups?

Formal or legal position

Cooperation with civil society is not controlled by any direct legislation.

What actually happens

Yes over matters of mutual interest. The churches are a major force in civil society.

Government cooperation with civil society groups is nominal, though as discussed above the Women's umbrella organisation is finding difficulty in communicating its programmes through government radio. The churches are an integral part of civil society, and generally operate in conjunction with the government.

Are there citizen's groups or business groups campaigning against corruption?

Formal or legal position

No groups are legally authorized to campaign directly against corruption. KADA is authorized to manage issues concerning lands on Kwajalein.

What actually happens

Specific anti-corruption groups are not widely in evidence on an on-going basis. Negotiations for the second Compact are crystallising issues of double standards, and failure to protect interests of various sectors of the community. The government's failure to protect land use and civil support such as postage and emergency relief was being addressed by those protestors at the August 4, 2003 demonstration outside Parliament.

Kwajalein land holders are one active group which has made its own position on the land issues (LUA/Land Use Agreement) embodied in the new Compact well-known. Their position includes some alleged corrupt practices. This hard-line position defending their particular interests has been pursued ever since negotiations began for independence. Those land-owners feel short-changed by government, and thus this may be voiced as an accusation of corruption, i.e. not regarding their concerns with strident enough bargaining in Washington.

Are there citizen's groups monitoring the government's performance in areas of service delivery etc?

Formal or legal position

Local Government authorities have been active in calling on government to improve service provisions to the outer island communities.

The four 177 Nuclear Testing Atolls have formed their own Councils for just this purpose.

The Compact Negotiating Committee as established by the Nitijela is constituted to represent the concerns of various sectors of the Marshallese population to the US government in Washington. Kwajalein landowners group is an authorised voice of their people.

What actually happens

Each of these agencies takes its concerns to the relevant department.

The annual meeting of mayors of all the islands is convened by Internal Affairs to provide a forum for Ministers to meet with the mayors and discuss concerns for each Ministry in turn. Since outer island mayors vastly outnumber the two urban mayors many issues that are rarely heard are voiced.

Various senators have meetings of 'their' adherents who are in loose affiliation, but share concerns about particular issues, namely the new Compact in 2003. They have learned to express their criticisms openly, as the Demonstration on August 4, indicated.

The Section 177 atolls persist with their claims that RMI government is not doing enough to extract compensation moneys from Washington. They have been joined by those who claim Changed Circumstances entitle them to nuclear compensation money. Together these groups are becoming a louder and louder voice of that segment of civil society in the Marshalls that comes from the interest of individual atoll identities.

Do citizen's groups regularly make submissions to the legislature on proposed legislation?

Formal or legal position

The Council of Chiefs is constituted to provide a watching brief on all legislation passing through the Nitijela. That body is particularly responsible for any legislation affecting land tenure.

What actually happens

Citizen's groups make submissions to their Senator, or the Nitijela on proposed legislation, e.g. on the Gambling bill. Letters to the editor in both English and Marshallese express concerns of groups, reacting to some government enactments. Radio is widely listened to by the public at large.

Does the education system pay attention to integrity issues and corruption/bribery?

Formal or legal position

What actually happens

Some teachers encourage students by means of projects that address aspects of the accountability issue; one class did a project on civil rights that was displayed in one supermarket. But this is not a formal component of the curriculum. This gap needs to be addressed.

Traditional Organisations

To what extent are traditional organisations, such as councils of chiefs, subject to the National Integrity System?

Formal or legal position

In the absence of a National Integrity System, the Council of Iroij is implicated in accountability as a member of the Nitijela. The Council of Iroij as duly constituted under Article III of the Constitution is expected to consider "a copy of every Bill adopted on third reading by the Nitijela (Sect.3). They can ask for a reconsideration of a Bill, and if necessary call for a joint conference. The Council is thus empowered with a watchdog function within the Nitijela.

What actually happens

Few Bills are read or receive comment by the Council of Chiefs.

Is their funding and staffing subject to external review and audit?

Formal or legal position

Funding and staffing are subject to review by the Audit Office, along with the whole Nitijela.

What actually happens

The Audit Office has not called for annual reports of expenditure, or other means of accountability for financial expenditure. The new UDGAO office may institute monitoring and checks.

To what extent are they part of the NIS controlling corruption in other bodies?

Formal or legal position

As part of the Nitijela the Council of Chiefs is implicated in all measures of accountability.

What actually happens

Controlling corruption in other bodies is not usually practiced.

What anti-corruption measures do they apply to their own members?

Formal or legal position

The same laws apply as to other members of the Nitijela.

What actually happens

Corruption is not easily definable in Marshallese custom. Traditional systems of accountability of ri-jerbal to the Iroij are still extant, though some urban residents do not feel the need to observe them. The accountability of Iroij to their people is debatable as young people question the use of money accumulated from the peoples' copra. They have a procedural code, embedded within the *Manit in Majol* Marshallese custom, rubric. This is subject to changes over time, as it always has been.

What anti-corruption measures do they apply to their own members?

Formal or legal position

Customary law provides for social sanctions to be applied.

What actually happens

Iroij challenged with corrupt practice have been transferred to law courts in the past. The practices of a former Iroij /President came under scrutiny with regard to the gambling bill he tried to introduce, and other interests that were seen as narrowly self-serving.

One major current concern is an attempt by Iroij and others to move away from matrilineal patterns of inheritance to inheritance in the male line. This is regarded as amoral by families with respect to rights to land. The debate over this issue raises matters of self-interest rather than outright corruption.

Distribution of funds among the land holders on Kwajalein who receive rent money from the US for the base is contentious. With the Iroij standing to gain a significant proportion of the pay-out, the 'democratic' principle argued by some of their *Kajur* or allegants is a source of grievance.

Traditional land tenure is seen as a major deterrent to developments such as tourism and fishing. Iroij power is based in the allegiances expressed through land holdings. Any consideration by the Nitijela to pass legislation regarding land-holdings has not been viable. This is seen by some as self interest, a form of corruption; others see it as due process in changing times.

To what extent are their deliberations and decisions open to the public and to the media?

Formal or legal position

This depends on whether customary law or modern law prevails.

What actually happens

The public is not generally included in their discussions. From time to time summaries of their discussions may be transmitted by radio.

The Council of Iroij is thus subject to scrutiny within the local systems of accountability (national integrity systems) that apply to other members of the Nitijela.

In practice Iroij remain a powerful force in Marshallese society. They operate by their interpretations of the rules. Reports by ADB and other officials include reference to the impact of the traditional leadership on specific issues, such as tourism, or land tenure, rather than on fiscal matters. Their role in accountability and audits remains separate from that of elected members of Nitijela or other officials. Hughes 2001 comments: "Traditional and modern structures of authority uneasily coexist, Overlap and friction between them are inevitable, and lead to lack of coordination, under-performance, and even litigation...Customary relationships are being exploited for monetary gain and reciprocity, and mutual dependence is weakening ..."(2001:12). The Iroij and the Council of Iroij thus remain peripheral to any systems of accountability (integrity) but play a vital role in social rights. Their part in controlling corruption is variable, according to the choices of individual Iroij.

Council of Chiefs deliberations are recorded in the Marshallese language. Some issues may be broadcast on the radio from time to time.

Private Sector and NGOs

What measures have private companies adopted to reduce corruption within their own activities?

Formal or legal position

The laws of the land apply. Local businesses are governed by laws such as the Bill of Rights in the Constitution, Taxation laws, the Employment Act, and the Marshall Islands Social Security Act. Foreign Businesses are governed by Foreign Business Licensing laws. Bank deposits are protected by the Federal Deposit Insurance Corporation (US).

What actually happens

Private Marshallese companies are vastly outnumbered by foreign owned companies. The practice by the former of violating laws such as minimum wage rates, and licensing laws has become detrimental to the operation of local businesses. The major locally owned company with many separate businesses is being forced to retrench as foreign companies are undercutting that business. Marshallese run companies are also constrained by their size. Already compliance with anti-corruption measures has cost small businesses their livelihood. They see large outside financed companies such as the fish-loin factory able to get away with paying wages below the minimum wage, yet as Marshallese they are under greater pressure to comply with such laws.

Taxation is the major area of compliance which is undergoing revision, due to failure to ensure taxes have been paid. As the Ministry of Finance tightens its controls on the collection of money due to RMI, so small companies in the private sector, particularly those overseas owned, try to find ways to minimize compliance.

The Foreign Business Licensing Laws have therefore been targeted in the Accountability Report (2001). They are first in line for reducing corrupt practices, particularly those that undercut local businesses. But enforcing such Laws is considered 'difficult'. The example of wages below the minimum wage paid by an Asian company to women at the fish loin factory highlights the desperate need for wage jobs over rights and conditions.

Failure by some companies to pay MISSA (social security) for employees' deductions has resulted in those expecting to withdraw their retirement pensions finding there is no money available. Their outcry has led to media coverage. However enforcing compliance by overseas owned companies has both political and economic difficulties. Thus the number of these small overseas backed companies grows at the expense of Marshallese owned companies.

Investment in the Marshall Islands is heavily dependent on overseas funds, for which accountability, and alleged corruption charges are hard to enforce. Two of the three banks are US commercially owned, (one of those has recently pulled out of the Marshalls) and one is the domestically incorporated Bank of the Marshall Islands. The latter bank is supported by Compact funds and a loan from Taipei. One assessment states: "The difficulty and cost of installing and maintaining competent local supervisory capacity [for the banks] is out of proportion to its likely benefits" (Hughes 2001:106). So any misuse of funds has gone untraced and undetected.

What measures have private companies or Chambers of Commerce adopted to discourage their members from corrupting public officials?

Formal or legal position

The first task is to ensure that such private companies adhere to the laws of the land. Laws of business and compliance with Business Licensing Laws are the first to be targeted.

What actually happens

Such practices as may be labelled corrupt will have to be targeted carefully to ensure that those investments are not lost.

What has the impact of privatisation and outsourcing and increased use of NGOs in service delivery been on opportunities for corruption, and the control of corruption?

Formal or legal position

No information was available.

What actually happens

The number of NGOs operating in the Marshalls is far smaller than in southern Pacific nations. Attempts to find a listing of NGOs and their terms of operation in the Marshall Islands have not yet been successful. WUTMI, the women's umbrella organisation, includes some 40 or more organisations. The six major churches each have branches, and sub groups, such as Women's committees within their organisation.

Main service delivery organisations are overseas based. Peace Corps as a large US based service delivery organisation pulled out of the Marshalls in the early 1990s. Japanese and Australian volunteer organisations assist in education, health and small business building. The kinds of corruption in those organisations are likely to be vastly different from that in the Marshalls. They do however provide another source of criticism and advocacy. Ex-Peace Corps who became lawyers founded Micronesian Legal Services which has provided much needed legal advice, particularly over claims for compensation for US nuclear testing activities.

What measures have NGOs or peak bodies adopted to reduce opportunities for corruption in their own activities?

Formal or legal position

Own corporate body rules.

What actually happens

Accountability is preached as well as increasingly being practiced by the churches. Audits of Church accounts, WUTMI, and other organisations will inevitably follow from the government audit provisions.

What measures have Churches adopted to reduce opportunities for corruption in their own activities?

Formal or legal position

What actually happens

The Churches have actively engaged in anti-corruption debates, thus highlighting awareness of the need for accountability in their own activities. Their voice, as it represents the views of a large sector of civil society, is respected and a force for action. In particular the Protestant church, calls upon its members to be vigilant. They are also active in the campaign to stop the sale of Marshallese babies, i.e. overseas adoptions, to non-Marshallese. (Walsh Pers. Comm.).

Regional and Local Government

Are there at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post public office employment?

Formal or legal position

The Local Government Act replicates many of the clauses of national acts. The local atoll councils are responsible for financial accounting and reporting through the Department of Internal Affairs.

What actually happens

The two major local government authorities, MALGOV for Majuro and KADA for Kwajalein have been found wanting in filing their annual reports, budget statements, and financial balance sheets.

Money was reported to have gone missing from one of the Section 177 Atolls for nuclear testing funds. These errors were brought to light in the Journal, and discussed by Internal Affairs. But the skills to upgrade management of these bodies are scarce.

The employment of mayors in secondary jobs is raised as an illegal, if not corrupt practice. Mayors are drawing their salaries as school teachers and office managers, while also being paid from local community resources as Mayor or councillor. Government attempts to stop this practice have been reiterated from time to time, and will come up as an election issue for November 2003. The opposition to such 'double-dipping' comes mainly from government rather than local communities.

What public offices at regional and local level are appointed by the National Government?

Formal or legal position

Health, Justice and Education departments appoint public offices for each atoll.

What actually happens

Public officers appointed by the Nitijela include a legal officer, and health officials who run the health centres on each island. Agriculture appoints rural agricultural officers from time to time. Teachers are appointed by the Education Department. A census officer and an electoral officer for each atoll are appointed close to these events.

Is there a requirement that meetings of atoll councils be open to the press and public?

Formal or legal position

Local Government Act covers rules of meetings. The Constitution also covers the case that these local meetings should be open to the public.

What actually happens

Routine meetings are held with no public in attendance. On occasion meetings are open for any one in the community to attend. Most open meetings are those concerned with planning for a visiting dignitary where the provision of food and garlands, and gifts is a significant component, and a social requisite. Meetings are not subject to press scrutiny, with the exception of some MALGov and Kwajalein atoll meetings. The 177 atolls hold meetings that are specifically open for general input, but atoll Council meetings are usually all-male affairs.

Are there clear criteria restricting the circumstances when atoll councils can exclude the press and public?

Formal or legal position

What actually happens

The Local Government Act does not specifically indicate who can and cannot attend meetings.

Do national agencies with a remit to deal with corruption work at regional or local levels and are there specific agencies with regional and local responsibilities?

Formal or legal position

Local Government Act requires accountability. Ministry of Internal Affairs is responsible for local government practices, including financial accounting and reports.

What actually happens

Concerns regarding accountability (financial) have focused mainly on the two urban centres. Thus the 24 the atoll councils have not been held accountable. The exceptions would be MALGOV, the local body representing Majuro Local Government bodies, and Ebeye Council. Disinterest rather than debarring is a common reason for non-public participation. Auditing local government accounts is more readily carried out in Majuro or Ebeye where many of the Mayors live. Scrutiny of accounts may be called for by councillors, or by central government officials.

Progress with Government Anti-Corruption Strategy

Has the government announced an anti-corruption strategy and a timetable for implementation?

Formal or legal position

Government began putting in place measures of accountability, as promised in its platform for election in 1999. Financial reorganization was the first task. No timetable has been made public.

What actually happens

Accountability has become a commonly heard expression in the Marshalls. The Report by the Task Force on Accountability was submitted to the Nitijela on 15 February, 2001. That Task force was chaired by Moses Gago, with two Marshallese and two American lawyers as members. Its terms of reference were "to inquire into instances of tax evasion by individuals, business or employees of the Republic; and to review government contracts to ensure that the person has complied with all RMI laws and the terms of each contract or entity awarded the contract". No schedule of activities was included.

How much of the strategy has been implemented?

Formal or legal position

The Ministry of Finance was charged with reorganization in order to expedite tax collection.

What actually happens

Top officials have been newly appointed to The Ministry of Finance with the task of addressing the concerns raised by the Task Force on Accountability. A computerised list of taxpayers is in the process of collation. Business licenses are now obtainable only through EPSSO and must be vetted by the Bidding Committee. Existing licenses have yet to be renegotiated.

The review of MISSA where funds were missing was considered as part of this new accountability schedule, as was a review of MALGOV budget and expenditure. Targets have yet to be set by the new (as of October 15, 2003), US Government Audit Office for assessment of expenditure of new Contract funds.

Is the strategy at national level or regional local level?

Formal or legal position
What actually happens

The strategy initially targets national level, though MALgov review is a local atoll initiative

Is the Government meeting its own timetable?

It has no timetable. A fully operational Licensing system, together with a strict enforcement of taxation of these overseas businesses would not only help RMI as a whole, but regenerate faith with the small Marshallese business people, and provide a demonstration effect for the private sector. Private investments by Marshallese must be supported by appropriate measures.

Donor Anti-Corruption Activities

Which bilateral and multilateral donor agencies are based in the country?

Formal or legal position
What actually happens

In addition to the US presence and Embassy as party to the Compact of Free Association, the Asian Development Bank, Taiwan government and the European Union are major donors to the RMI. Only the US and Taiwan have formal embassies located in Majuro. Separate funding, via the US rent money for Kwajalein and specific federal (US) grants to particular programmes, such as PRELL in education and the Federal Emergency Management Action are subject to special scrutinies.

Which types of anti-corruption initiatives have they supported?

Formal or legal position
What actually happens

ADB supports US programmes for transparency, ADB has been pro-active in establishing accountability standards particularly in financial matters, by funding the Task Force and Public Sector Reform Programmes and Reduction in [Work] Force programmes in order to promote economic efficiency and introduce accountability. They also collaborate with US at specific programme levels. The new USGAO office in Hawaii is also expected to install programmes of accountability for US funds.

Are there examples of donors cooperating or coordinating their programmes?

Formal or legal position
What actually happens

The ADB and US are the main collaborators in the Marshalls.

Future Research and Donor Support

Can key areas or issues be identified in terms of corrupt activity that the research for the report has demonstrated as requiring immediate attention?

Primarily local understanding/s of the ideas of corruption, transparency and accountability must be debated and elucidated. While one ADB report has defined corruption as “pressures for good performance in economic reforms” (Duncan et al. 1999:18), this is far too narrow in Pacific thinking, especially in the case of the Marshalls.

Four distinct domains for achieving anti-corruption measures in the Marshalls have emerged from this research:

- financial accountability for a nation’s finances;
- human resource management in governance;
- personal morality in national decision making; and
- social responsibilities, where both traditional and modern obligations must be honoured.

The first is being addressed. The second, the Human Resource sector, is in urgent need of attention if a committed and skilled Public Service sector is to be built to support the implementation of government policies

Financial reforms, particularly concerning the taxation system have been addressed by the Task Force on Accountability. This area will need careful monitoring, particularly in light of the strictures imposed on budget formation by the latest terms of the Second Compact. Hughes made specific recommendations (2001:156) that planning and budgeting require steps for implementation that include overall policy coherence, and operational autonomy of management. The new Compact may go even further in its requirements for implementation of financial plans. The degree of autonomy appears to have been reduced by US requirements for expenditure of its “grants”.

MISSA funds have been reorganized so that some of the injustices have been addressed. Foreign Business Licenses need to be actively implemented and political good-will separated from financial obligations. This is unlikely to happen in the immediate future given the overseas funding for election candidates.

The new Compact’s Audit facility needs independent monitoring and evaluation, preferably by a team of Marshallese and non-US researchers. The main concern is that RMI interests are not subjugated by new US measures. The bottom line is RMI autonomy which appears to have been threatened by the new terms of the Compact as set down unilaterally by Washington. This point is a matter of lively discussion between the Office of Compact Negotiation and the civil society.

The process of establishing an interim Compact one year later than provided in the first Compact has led to confusion, and much mistrust by Marshallese. The interim Compact has led to increased awareness of key issues by civil society. Their concerns have activated several watch-dog groups not formerly in evidence in RMI. These watchdog groups should be monitored by a non-government agency, with reports every two years.

Accountability in RMI finances need to distinguish clearly between Compact grants (i.e. government to government for US rental use of Kwajalein land); rent of Kwajalein lands due to Kwajalein landowners, and the role of KADA in that pay out; and compensation outstanding for nuclear test related damage and injuries (Hughes 2001, p.151; Website Sept. 28,2003, Pollock 2003).

Accountability can be effectively monitored only if reports are accessible. Those reports can then be matched against the practices observed. A tight system of filing government documents must be instituted, managed by an experienced Librarian. A separate Government Library must be considered.

Is there a particular aspect of corrupt activity that would require more in-depth research?

Human resource management is in need of discussion and revision. The Public service workforce needs to be able to attract competent and skilled, and experienced staff to set the tone for RMI as a whole. A review of the opportunities for advancement and reward for tasks fulfilled, as an integral feature of a review of the policies of the Public Service Commission must be conducted urgently. The Council of Iroij in the governance structure must also be assessed. Focusing on the key points for discussion of transparency and accountability must be questioned: are they feasible? Are they desirable from the point of view of kajur?

Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice. Research is needed into appropriate METHODOLOGIES for assessing Anti-corruption and accountability measures. The terms of the new Compact provide a framework for establishing best practice based on methodologies suitable to RMI. Once the new budgeting system is in place, planning documents must include Monitoring and Evaluation processes that must be reported in annual progress reports. The aims of such M&E are to establish "dimensions of sustainability of the nation state as a system" (Hughes 2001:167-170). Specifically these include: security of income and capability recognition; efficiencies to meet demands of domestic structures and external markets; equity or fairness of distribution of cost and benefits of the development process.

Can key areas relating to possible anti-corruption initiatives be identified as requiring donor support?

- Land-holding is in need of assessment given the stresses for privatization, and the less than open approaches that are being carried out currently. The matter of "collateralization" came up in many interviews, which for most Marshallese can only mean their land rights. The attempts to achieve clarification of land rights in a modern Marshall Islands society requires a balanced approach between traditional and modern demands.
- Traditional rights - examination of the place of traditional forms of social organisation and the rights is being undertaken, with particular reference to inheritance of land rights. This needs to be encouraged.
- Government Library and Librarian with power to access and record all documentation produced by government departments. It should be located under the Chief Secretary's office. Without such an archive, transparency of actions by government is difficult to trace.

Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming the basis for potential donor prioritisation, sequencing, cooperation and coordination?

Under the new Compact the US appears to be strengthening its monitoring process for US grants, with the establishment of an Audit office to jointly serve RMI and FSM. That office is likely to include accountability not previously in place.

The major issue is training Marshallese staff in the processes of accountability – as mentioned in the series of ADB reports. Until staff are clear as to the processes of best practice in accountability then the current dilemmas will continue. EPSSO has commenced its own best practice strategies, and would be in a position to lead in this process.

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