

Overall Score:

64 - Weak

Legal Framework Score:

73 - Moderate

Actual Implementation Score:

52 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶² Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | **NO**

Comments:

Citizens are free to form organizations. If they seek legal registration they may form a charitable trust, or a company with limited guarantee. At the present time, the government is reviewing the Charitable Trust Act. Two of the major NGOs in this field, the Citizen's Constitutional Forum, and Transparency International, have established companies with limited guarantee

References:

Constitution of Fiji – Chapter 4 (Bill of Rights) Section 32 Freedom of Association
http://en.wikisource.org/wiki/Constitution_of_the_Fiji_Islands

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | **NO**

Comments:

In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources, although full sustenance from a foreign source may draw comment concerning whose interests are being represented – domestic or foreign?

References:

Funding can be received, presuming that this takes place within legal requirements. For example, accounts must be audited if the organization exists under the companies act, as required by paragraph [149].
Source: Fr. Kevin Barr, Director of ECREA

http://www.paclii.org/fj/legis/consol_act/ca107/

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there are any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

The Rabuka government had once sought to have all NGOs directed through government, but this did not eventuate due to strong protests from NGOs and donors.

References:

All companies and associations registered under the Companies Act are required to do so under paragraph [149] (Fr. Kevin Barr, ECREA).

http://www.paclii.org/fj/legis/consol_act/ca107/

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

Accountability NGOs include Transparency International, Greenpeace, the Pacific Center for Public Integrity and others. There can be strong interaction, principally via the mass media, over the pronouncements of individual NGOs, but there have been no instances in which a civil society organization has been hindered from expressing its views or from forming an organization

References:

The government does not create barriers to the organization of new anti-corruption/good governance CSOs (Fr. Kevin Barr, ECREA).

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | **50** | 25 | 0

Comments:

Each NGO takes its own particular approach. Some write articles, letters to the editor, appear on TV, etc. Some are invited by the government to provide input on the national budget and to attend some government meetings, like the Economic Summit or Poverty Summit. Some visit government departments to present their views. An invitation was made to a number of NGOs by the Law Reform Commission to take part in a workshop on laws that affect CSOs and the NGO community. Fiji's law reform commission also accepts and reports findings of certain reviews to a wide range of audiences, including CSOs.

References:

Kevin Barr, Executive Director, ECREA, Suva, 12 September 2008
<http://www.lawreform.gov.fj/common/default.aspx?page=howWeWk>

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | **NO**

Comments:

There was a case of this in the recent past, but it did not happen within the timeframe of the report.

In this particular case, the Citizen's Constitutional Forum (CCF) was de-registered by the Qarase government on the grounds that they were working outside the realm of a charitable organization (CCF had registered as a charitable organization under the Charitable Trusts Act (Cap 67) http://www.itc.gov.fj/lawnet/fiji_act/cap67.html. They then registered under the Companies Act (Cap 247) http://www.paclii.org/fj/legis/consol_act/ca107/.

In practice, the Qarase government voiced and prevented a number of protests against government policies with declarations that any protest, march, etc. would be against national security through provisions of the constitution. To a lesser extent, this also happened at the beginning of the military regime's takeover.

References:

Fr. Kevin J Barr, (Programme Consultant), Ecumenical Centre for Research, Education and Advocacy (ECREA). Suva, 12/09/08.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

Some civil society activists were taken in by the military for questioning after their protests against the military takeover in December 2006, and some were kept overnight in a cell. There is no accusation that the military has imprisoned" them.

While this is not acceptable, other activists chose less direct language and actions to make their views known to the military government.

References:

Fr. Kevin J Barr (program consultant), Ecumenical Centre for Research, Education and Advocacy (ECREA). Suva, 12/09/08.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

Following the December 2006 coup there were numerous incidents in which the Republic of Fiji Military Forces (RFMF) detained without a warrant and abused persons who had voiced opposition to the coup or who supported a return to democratic government. In the late hours of December 24 and early hours of December 25, soldiers took six pro-democracy supporters from their homes, including young persons who had erected a pro-democracy shrine" outside a house in Lami, near Suva. They were brought to the RFMF's Queen Elizabeth barracks where they were beaten, stepped on, and threatened with weapons

The Fiji Human Rights Commission (FHRC), a constitutionally mandated statutory body, reported that through June 2007 it had received 18 formal complaints "relating to the December coup" that it deemed within its jurisdiction. Of these, 16 related to the use of cruel, inhuman, or degrading treatment. However, human rights nongovernmental organizations (NGOs) reported that numerous individuals who were victims of such treatment were unwilling to make formal reports to the FHRC. According to human rights observers, this unwillingness reflected a climate of intimidation and fears of reprisal. The incidence of mistreatment declined significantly in the second half of the year, following local and international criticism and the ending of the state of emergency. The FHRC reported that during the third quarter of 2007, it received one complaint related to the right to life and six complaints related to the use of cruel, inhuman, or degrading treatment.

References:

<http://www.state.gov/g/drl/rls/hrpt/2007/100520.htm>

Fr. Kevin J Barr (programme consultant), Ecumenical Centre for Research, Education and Advocacy (ECREA). Suva, 12/09/08.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Fr. Kevin J Barr (programme consultant), Ecumenical Centre for Research, Education and Advocacy (ECREA). Suva, 12/09/08.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

88

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

The Constitution (section 33) and law (The Employment Relations Act 2008, formerly Employment Act 1965) protect the right of workers to form and join unions, elect their own representatives, publicize their views on labor matters, and determine their own policies. In 2007, an estimated 36 percent of the workforce was unionized. <http://www.ilo.org/public/english/dialogue/ffdial/info/national/fiji.htm>

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are organized into trade unions. However, the authorities do not always respect all their rights in practice. In March 2007, citing state of emergency regulations, police stopped the annual meeting of the National Union of Public Workers and briefly detained the union's general secretary and lawyer for questioning using the pretext that the union did not have a permit to conduct the meeting. Similarly, striking nurses and Fijian Teachers Association members were intimidated by police and military during their strike action.

The military has arbitrarily arrested a number of unionists. On March 22, Public Employees Union General Secretary Pita Delana was detained at a military camp for two hours and questioned after he criticized the military regime.

Fiji has just had its second anniversary of the coup, and some unions have joined a new 'pro-democracy' front seeking to pressure the military into holding long-promised elections.

References:

<http://www.state.gov/g/drl/rls/hrpt/2007/100520.htm>

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | **NO**

References:

Media freedom is provided for under the constitution (Section 30) http://en.wikisource.org/wiki/Constitution_of_the_Fiji_Islands.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | **NO**

References:

This is provided for under the constitution (Section 30) http://en.wikisource.org/wiki/Constitution_of_the_Fiji_Islands.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

88

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

The government does not create barriers.

Legislation pertaining to the press is contained in the Newspaper Registration Act http://www.pacii.org/fj/legis/consol_act/nra272/ and Press Correction Act. Under these acts all newspapers must register with the government before they can publish.

References:

Bob Pratt (Executive Secretary), Fiji Media Council. Suva, 11/09/08.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

A licensing framework for print media does not exist. Print media entities are only required to register under the Newspaper Registration Act and other laws concerning company operations (Company Act and Business Licensing Act Cap 204). Bob Pratt, Executive Secretary Fiji Media Council.

References:

Bob Pratt (Executive Secretary), Fiji Media Council. Suva, 11/09/08.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
Yes. No known obstacles or hindrances have been faced in the past years.

References:
Bob Pratt, executive secretary, Fiji Media Council. Suva, 11/09/08.

- 100:** Licenses are not required or licenses can be obtained within two months.
75:
50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.
25:
0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
A licensing framework strictly for print media does not exist. Print media entities are only required to register under the Newspaper Registration Act and other laws concerning company operations (Company Act and Business License Act).

Costs incurred for the registration of print media under the company and business license act is quite reasonable as the Fiji Media Council has not received any complaints about the issue.

References:
Bob Pratt, executive secretary, Fiji Media Council. Suva, 11/09/08.

- 100:** Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.
75:
50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.
25:
0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

75

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:
The Interim government has opened up the television broadcast sector, which was previously exclusively controlled by Fiji Television Ltd's Fiji One channel, which was protected by previous governments.

References:

<http://www.parliament.gov.fj/legislative/bills.aspx?billID=267&viewtype=reports&billnav=bill>
<http://archives.pireport.org/archive/2005/December/12-09-ft.htm>

Bob Pratt (Executive Secretary), Fiji Media Council. Suva, 11/09/08.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | **NO**

References:

Under the Television Decree 1992 – Before suspending or revoking a licence, the minister must give a notice of his intention, and allow the licensee to show cause why the licence should not be suspended or revoked.

http://www.vanuatu.usp.ac.fj/library/Paclaw/Fiji/Fiji_cases/FLR_1997/Fiji_TV_Minister_Information.html

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Yes, this is true for radio broadcast media, but less so in the TV broadcast sector. Previous governments have been very protective of Fiji Television Ltd, which is jointly owned by Yasana Holdings Ltd (51 percent), an investment company set up by government for the 14 Fijian provinces; and the government, which holds 14 percent and has held exclusive control of free-to-air TV rights up until the current administration's decision to revoke this exclusive license.

References:

<http://www.parliament.gov.fj/legislative/bills.aspx?billID=267&viewtype=reports&billnav=bill>
<http://archives.pireport.org/archive/2005/December/12-09-ft.htm>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Yes and No. This is a relative question. Fees are either paid based on a percentage (1.55) of the broadcast company's annual turnover or a fixed fee of \$FJ20 000, whichever is higher. TV broadcast stations in operation for less than 3 months pay 25 percent of the radio station broadcast fees. Companies have not complained about license fees.

References:

Bob Pratt (executive secretary), Fiji Media Council. Suva, 11/09/08.

http://www.fiji.gov.fj/publish/page_12540.shtml

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

75

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

The government does not restrict/prevent citizens from accessing on-line content.

References:

Netani Rika (Editor in Chief) Fiji Times Ltd. Suva, 10/09/08.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

Yes, the government does censor citizens creating on-line content. The military attempted to censor or shut down a number of anti-government blogs that appeared after the coup, and the Public Service Commission warned civil servants against accessing or taking part in anti-government websites. The military extensively monitored Internet chat rooms on these websites.

However, the military attempt to shut down bloggers was generally unsuccessful. Given the high volume of dissent on the net, and even in daily newspapers through letters to the editor, editorials, and feature articles, the military is not succeeding in preventing political commentary.

References:

<http://www.state.gov/g/drl/rls/hrpt/2007/100520.htm>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

75

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

Prominent Labour politician and former Finance Minister Mahendra Chaudry has taken the Fiji Times and Fiji Sun to court seeking damages, following their publication of stories alleging corruption – see <http://www.fijitimes.com/story.aspx?id=82243>. A suit was laid pursuant to this provision under the constitution <http://www.rnzi.com/pages/news.php?op=read&id=38582>.

References:

Although the Bill of Rights guarantees freedom of expression, at the same time, it imposes restrictions under Section 30 (2b): A law may limit, or may authorize the limitation of, the right to freedom of expression in the interests of (b) the protection or maintenance of the reputation, privacy, dignity, rights or freedoms of other persons.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The government has attempted to censor the media, particularly in the months following the coup. The independent media were active and expressed a wide variety of views; however the government warned media outlets against making inciting comments," and most practiced some degree of self-censorship.

Since the Qarase government, there has been several attempts at regulating the media and even tabled a draft media bill in parliament which has been at the center of controversy as the new administration has also outwardly expressed a need for media regulation.

References:

<http://www.state.gov/g/drl/rls/hrpt/2007/100520.htm>
http://www.pmc.aut.ac.nz/niusbeat/080801_Fijipressure.shtml

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In 2008 the government allowed the media to operate independent, but expressed concerns about media freedom and lack of oversight by the industry's standards body, the Fiji Media Council. Throughout the year the media run stories on several key figures in the interim administration, including stories on the finance minister that may have contributed to his removal from office. However, as a result of a number of anti-government articles, two expatriate publishers, Evan Hannah from the Fiji Times and Russell Hunter from the state-owned Fiji Sun were deported. In August, Fiji Times reporter Serafina Silaitoga was arrested by the police and questioned about an article regarding the interim finance minister and other reporters were detained for questioning about their stories and their sources. Thus, whereas the interim government didn't exercise pre-publication censorship during 2008, the media faced consequences on occasion post-publication .

References:

Bob Pratt (executive secretary), Fiji Media Council. Suva, 11/09/08.
Netani Rika (editor in chief) Fiji Times Ltd. Suva, 10/09/08.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

90

10a. In law, print media companies are required to publicly disclose their ownership.

YES | **NO**

References:

All companies registered under the Newspaper Registration Act and Companies Act are required, among other things, to disclose ownership.

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | **NO**

References:

All companies registered under the Companies Act are required, among other things, to disclose ownership.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | **75** | 50 | 25 | 0

Comments:

All journalists and media organizations are encouraged to adhere to and abide by a general code of ethics and practice established by the Fiji media council, a voluntary private watchdog group of media and academic figures that receives and seeks to resolve complaints of bias and malfeasance within the media. (Netani Rika, editor, Fiji Times Newspaper)(Bob Pratt, executive secretary, Fiji Media Council).

References:

Netani Rika (Editor in Chief) Fiji Times Ltd. Suva 10/09/08.
Bob Pratt (Executive Secretary), Fiji Media Council. Suva 11/09/08.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

In its report (Fiji General Election 2006 – Report of the Commonwealth Observer Group pp. 26, 29) the Commonwealth Observer Group noted that political parties campaigned freely and used the media extensively and received fair media coverage.

References:

Fiji General Election 2006 – Report of the Commonwealth Observer Group

http://www.thecommonwealth.org/document/34293/35144/152078/151553/fiji_islands_general_election_2006_report_of_the.htm

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

State-owned media outlets operate relatively autonomously with little or no government participation, particularly during elections.

References:

Bob Pratt (Executive Secretary), Fiji Media Council. Suva 11/09/08.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

67

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

Journalists have not been imprisoned, but they have been detained and deported. In February the Fiji Sun's publisher Russell Hunter, an Australian citizen, was accused by Fiji immigration of violating his work visa and posing a threat to national security and was subsequently detained and deported. On May 1, another Australian publisher, the Fiji Times' Evan Hannah, was deported from Fiji for allegedly attempting to destabilize government. In August, Fiji Times reporter Serafina Silaitoga was arrested by the police and questioned about an article regarding then-interim Finance Minister Mahendra Chaudhry.

References:

Bob Pratt (executive secretary), Fiji Media Council. Suva 11/09/08.

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

Journalists have been 'questioned' but not physically harmed.

References:

Bob Pratt (executive secretary), Fiji Media Council. Suva 11/09/08.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

Bob Pratt (executive secretary), Fiji Media Council. Suva 11/09/08.

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81

I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

0

12a. In law, citizens have a right of access to government information and basic government records.

YES | **NO**

Comments:

Although the Constitution's Bill of Rights – Section 30 (1) (a) – provides for freedom to seek, receive and impart information and ideas and Constitutional section 174 envisages the enactment of a law establishing a right to government information, no such law was passed between 1997 and 2006. Furthermore, whilst it might be argued that the Bill of Rights establishes the rights of citizens to government information in a general sense, public servants are in practice constraint by their administrative responsibilities under Official Secrets Act" which is so broad-ranging, and so punitive toward those who breach it, as to inhibit the easy flow of information.

References:

Constitutional Bill of Rights Section 30 (1) (a) freedom to seek, receive and impart information and ideas and section 174 of the Constitution: As soon as practicable after the commencement of this Constitution, the Parliament should enact a law to give members of the public rights of access to official documents of the Government and its agencies.

The Public Records Act (Cap 108) http://www.itc.gov.fj/lawnet/fiji_act/cap108.html is the principle legislation governing the access of government information and basic government records.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

Comments:

The Public Records Act of 1970 provides for a government archives and establishes the powers of the government archivist. Section 14 (1) states that public records can be made available for public reference, with discretion given to the archivist to withhold access for any good cause. This decision can, however, be appealed to the minister, whose decision is final. The availability of court records is dependent on permission of the chief justice or nominee. However, it is important to note the distinction between older records and contemporary records, as the public records act provides for access to the former, whereas there is no freedom of information law that allows for access to more current records. It should be noted that the Public Records Act" refers to records that have been handed to the Government archives. it does not include records of public interest that are still maintained by various government ministries, departments, and agencies.

References:

Access to information is provided in the Public Records Act (Cap 108).

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

There is no established and general mechanism that citizens can use to apply for records from government departments. This is not to say that mechanisms have not been established in one or other sector. The Registrar of Companies, for instance, has set out mechanisms that can be used to research information on companies operating in Fiji. But the existence of successful practices in one sector does not imply that similar processes exist in others. The National Archives (whose information may be somewhat accessible) do not contain current working information; only historical records of government.

References:

The National Archives of Fiji established the Public Records Act (Cap 108), but this does not guarantee a right to information.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

30

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Record-keeping systems are poor within government agencies and therefore the official government repository contains largely outdated material/information. Information (departmental reports etc.) held outside the archives office in other government departments are largely accessible. However, information deemed sensitive usually has stringent access conditions. Similarly, officials are often unsure of the nature of information and prefer to deny information requests altogether.

References:

www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/fiji/foi_speech_notes_for_wacc.pdf

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Provided the information is available at the National Archives Office, there are no costs incurred other than those associated with making copies of extracts. Information held outside this office may be accessed through further requests to the minister.

References:

Bob Pratt (executive secretary), Fiji Media Council. Suva 11/09/08.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This is highly dependent on the nature of information being sought with appeals to access sensitive information receiving substantial delay or denied access altogether.

References:

www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/fiji/foi_speech_notes_for_wacc.pdf

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

As there is no right to information," it is not a matter of the cost of gaining access or launching appeals.

References:

Bob Pratt (executive secretary), Fiji Media Council. Suva 11/09/08.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The government does not give reasons for denying access to information.

References:

Bob Pratt (executive secretary), Fiji Media Council. Suva 11/09/08.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁵⁸ Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | **NO**

Comments:

The Fijian electoral laws are regarded as being in line with the standards for representation outlined in Covenant on Civil & Political Rights, Article 1 of which states, "The effective institutionalization of basic electoral and political rights obliges states to establish an appropriate electoral system, to implement international obligations in regard to the individual rights, (and) to establish an effective impartial and/or balanced mechanism for the management of legislative elections. However, the system is at the same time one that is weighted to disproportionately favor the indigenous Fijian population."

References:

The right to vote is guaranteed under the constitution (Sect. 6 (f)) and Sect. 55).

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | **NO**

Comments:

The Universal Declaration of Human rights states: "The will of the people shall be the basis for the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal suffrage and shall be held by secret vote or by equivalent free voting procedures."

References:

This is outlined under the constitution (Sections 59-63).

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

67

15a. In practice, all adult citizens can vote.

100 | **75** | 50 | 25 | 0

Comments:

The voting age is currently 21, but electoral reform proposals by the National Council for Building a Better Fiji would lower the age of suffrage to 18.

Voters who cannot attend one of the polling stations during polling are entitled to cast their votes by postal ballot, as long as they fall into one of the appropriate categories. The grounds upon which an application for a postal ballot may be made are set out in Section 90 of the Electoral Act 1998 (see Annex IX).

References:

Christopher Pride, Solicitor General, Suva, 9 September 2008.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Ballots are legally required to be equal and secret. In its report (Fiji General Election 2006 – Report of the Commonwealth Observer Group) the Commonwealth Observer Group noted that ballots were kept secret. However, a contentious issue that was raised had to do with the accompaniment into polling booths by police officers of physically disabled persons.

References:

Fiji General Election 2006 – Report of the Commonwealth Observer Group http://www.thecommonwealth.org/document/34293/35144/152078/151553/fiji_islands_general_election_2006_report_of_the.htm.

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Fiji has experienced four coups: 1987 (2), 2000 and 2006, which have interfered with the regular holding of general elections. Post-independence elections have been held 1972, April 1977, September 1977, 1982, 1987, 1992, 1994, 1999, 2001 and 2006.

References:

Details are available at the Pacific Governance Portal – <http://www.governance.usp.ac.fj/top-menu-29/countries-and-territories-175/fiji-176/governance-information-181/>

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

95

16a. In law, all citizens have a right to form political parties.

YES | **NO**

Comments:

This is guaranteed under the constitution.

References:

Krishna Datt, former Member of Parliament, Suva, 9 September 2008.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | **NO**

Comments:

In some instances the Electoral Act requirements have been ignored — people who would not have been legally eligible by law were able to run for office when the Electoral Commission granted the right based on special circumstances.

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

The constitution outlines several conditions for registering as a candidate. (Section 58).

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Not many women participate in electoral politics, and there is discussion in Fiji about whether a temporary quota system would be beneficial to the system of representation.

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

The electoral law stipulates that candidates cannot be bankrupt, but there are few studies of political funding in Fiji or other Pacific Islands to suggest contemporary expenditure patterns. Anecdotal evidence suggests that while candidates are running increasingly sophisticated campaigns, expenditure by individuals is still relatively moderate. The most recent election is well documented in Fraenkel, J. and S. Firth, Eds. (2007). From Election to Coup: the 2006 Campaign and its Aftermath. Suva, Institute of Pacific Studies and Asia Pacific Press.

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Fiji's parliamentary politics have always included a strong role for opposition voices. It has also experimented with a government of national unity," in response to the need to forge unity in the country's political leadership. However, attempts to establish multi-party government, as called for by the 1997 Constitution, have not been successful to date. Following elections in 2006, Prime Minister Qarase invited the Labour party to hold a number of cabinet positions, but this overture split the opposition, with some agreeing to participate and others remaining in an opposition role.

The political primacy of indigenous Fijians is to some extent enshrined in the constitution, which mandates that 14 of Parliament's 32 senators be appointed by the indigenous Fijian Great Council of Chiefs, a hereditary body, and one by the Rotuma Island Council. The remainder are appointed by the government and opposition. This arrangement essentially ensures indigenous Fijians effective control in the senate. The constitution establishes a 71-member lower house with 25 seats open to any ethnicity and 46 seats allocated to the different ethnic communities. Of the 46 communal seats, 23 are allotted to indigenous Fijians, 19 to Indo Fijians, three to "general voters" (for the most part mixed race, Caucasian, and East Asian voters), and one to Rotumans (an ethnically distinct Polynesian group). These allotments were generally proportional to the ethnic composition of the country's population in 1996, but the constitution does not provide for future changes in the allotments to reflect changes in the composition of the population.

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

<http://www.state.gov/g/drl/rls/rrpt/2007/100520.htm> and http://www.thecommonwealth.org/document/34293/35144/152078/151553/fiji_islands_general_e

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

70

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | **NO**

Comments:

Under the current climate the OSOE is very clear on neutrality.

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | **75** | 50 | 25 | 0

Comments:

Appointments to the positions of supervisor of elections and the electoral commission are made on a professional basis by a constitutional commission. Financial support for these appointments, as well as for technical support has been provided by AusAID, NZ Aid, and the EU. Other staff in the Office of Elections are allocated by the Public Service Commission, and there are some issues around the security of their appointments with the commission, as they may be moved elsewhere within the public service at the discretion of the PSC. The issue is not the appointments as much as the structure and corporate plan, etc., of the office that determines transparency/neutrality.

The Office of the Supervisor of Elections is usually thinly staffed and is then supplemented by officials from government departments during the period of the election. The reliance of government officials in running elections has, at times, raised concerns over the independence of the electoral commission and the Office of the Supervisor of Elections, particularly on the part of some of the political parties. The opposition also expressed concern that there was an imbalance in the staff recruited immediately prior to the 2006 general election, with more indigenous Fijians than Indo-Fijians employed in activities such as voter registration and, on the polling days, as polling station staff. On the charge of ethnic imbalance, the supervisor of elections responded that his appointments were based on merit and that racial and ethnic balance was a secondary consideration. He also referred to the availability of staff and the role that was envisaged as material considerations.

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

http://www.thecommonwealth.org/document/34293/35144/152078/151553/fiji_islands_general_election_2006_report_of_the.htm

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Between general elections the Office of Elections has only a skeleton staff. Although many public servants have experience in running elections at the polling station level, there are few professional staff to oversee national coordination. The Commonwealth Observer Group suggested the independence of the electoral commission and the Office of the Supervisor of Elections should be strengthened by making the commission permanent and the position of the supervisor of elections permanent and full-time. The resources available to both need to be substantially increased so that they have the necessary capacity. In the case of the Office of the Supervisor, the core and regional elections staff should be greatly enhanced, so that there can be a properly functioning office for the whole time between elections, with its own senior staff in the divisions.

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

http://www.thecommonwealth.org/document/34293/35144/152078/151553/fiji_islands_general_election_2006_report_of_the.htm

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The Electoral Office has a reputation for providing timely electoral data, although it has been less forthcoming with more technical data that could allow for a reconstruction of vote counts to determine the accuracy of ballot counting where the transfer of votes is required under the preferential system. During the 2006 elections at each counting center there was a media center. Results were announced by the returning officer (the divisional commissioner) as they were available, and broadcast live on Fiji One television. They were then posted on the elections office website.

References:

Fraenkel, J. (2006). An Audit of Fiji's Electoral System." Paper presented at 'CCF Workshop; The Review of Fiji's Electoral System, 9th-10th February 2006.

Fraenkel, J. (2006). "The Failure of the Alternative Vote as a Tool for Ethnic Moderation in Fiji." Comparative Political Studies 39(5): 663-666.

Election results are available at <http://www.elections.gov.fj/results2006.html>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There has not been an enforcement component in the Fiji Elections Office. The OSOE is currently investigating this. There is a problem with the accuracy of the role and there has been a high percentage of votes that cannot be counted, therefore it's clear that a solution is needed. Currently, the OSOE is investigating using an electronic voter registration system.

References:

Supervisor of Elections, 20 Sept 08.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

75

19a. In practice, there is a clear and transparent system of voter registration.

Comments:

Voter registration is an area of ongoing concern. There has been a high percentage of votes that cannot be counted, therefore clearly a solution is needed. Currently, the OSOE is investigating using an electronic voter registration system. More problems with voter registration have resulted from lack of training, illiteracy and inter-cultural relations than political interference or corruption. According to the law, the voter register should be updated annually. This has never been done, largely due to inadequate resources on the Office of the Supervisor of Elections.

A complete re-registration took place across the country from September 12 to 30, 2005, with a further period in January 2006. When the final Register of Voters – used as the register for the polling stations – was produced, it contained 479,674 names. This compared with 468,772 in 2001. Given that the Elections Office had a figure of approximately 519,000 of those who were eligible, the number of people registered was quite substantial – approximately 90 percent. Among the reasons for this high figure was the scale of the Elections Office registration drive, which included house-to-house registration, and the fact that registration is compulsory.

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

http://www.thecommonwealth.org/document/34293/35144/152078/151553/fiji_islands_general_election_2006_report_of_the.htm

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and "ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | **NO**

Comments:

Part seven of the ELECTORAL ACT 1998 provides for objections to the results of elections to be filed with the High Court of Fiji, which then sits as a Court of Disputes Returns to consider the evidence. The constitution (Sect. 73) requires petitions to be filed within six weeks of the declaration of the poll and the Electoral Act (Sect 145) requires the petitioner to lodge \$500 with the registrar of the court as security for costs.

References:

Supervisor of Elections, 20 Sept 08

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

Comments:

In respect to the general elections, although there are legal provisions and procedures for challenges, for some results, political parties are usually urged to accept the overall outcome. Mahendra Chaudhry was successful in appealing a decision after the 2001 elections on the make-up of the multi-party cabinet based on constitutional provisions.

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

During the 2006 elections, Commodore Frank Bainimarama, the military commander, was visible and active before and during the campaign period. The army was initially opposed to the date set for the elections, citing the poor status of the electoral registers and the need for a national census prior to the general election. According to reports, in early March 2006, the military commander announced a plan for the military to travel throughout the country to engage with the people. It was also reported that the army would be informing the population of the truth as they saw it about the events surrounding the coup of 2000 and giving its views on the policies of the ruling SDL.

Despite his assurance that he would respect the outcome of the elections, his intervention created an atmosphere of unease during the campaign.

References:

http://www.thecommonwealth.org/document/34293/35144/152078/151553/fiji_islands_general_election_2006_report_of_the.htm

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

The law does not provide for observation, nor does it disallow it. As neither the Electoral Act nor the constitution provide legal

framework regarding the participation of domestic and international observers. In the last general elections, the initiative to invite international observers, and, to a certain extent regional observers, came from the prime minister. As such no domestic observer group in Fiji has even participated in the electoral observation. The OSOE is currently investigating how to improve this and is accepting reports from domestic observer teams from the 2006 election as a roadmap for improvements.

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

The functions of observers are outlined under the electoral act.
http://www.elections.gov.fj/voter/count_process.html

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

There were a number of election observation teams present during the 2006 elections, including one from the University of the South Pacific. From the different reports of the international groups published in the aftermath of the 2006 general election; access to all phases of the electoral process was facilitated (e.g. EUEOM 2006 – The EUEOM wishes to express its appreciation for the cooperation, coordination and assistance of (a) 39-European Union; (b) 10-Commonwealth Observer Group; (c) 23-PIF Observation Mission; (d) 19-USP; (e) 15-US Embassy; (f) 3-NZ High Commission; (g) 6-independent observers).

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

The Commonwealth Observer Group, in its report, was able to effectively monitor the 2006 elections.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The Electoral Commission together with Divisional Commissioners and the OSOE. The monitoring can take many forms: e.g. complaints etc.

There are two key elements to election management in the Fiji Islands: the Electoral Commission and the Supervisor of Elections.

The Electoral Commission has general responsibility for the registration of voters and the conduct of elections. It consists of five members, all of whom are part-time commissioners. The chairperson is appointed by the president and other members of the commission are appointed by the president, on the advice of the prime minister, following consultation by the prime minister with the leader of the opposition. By law, the chairperson must be or be qualified to be a judge.

The supervisor of elections is responsible for the management of the elections. He has the right to attend meetings of the electoral commission and must carry out the directions of the electoral commission concerning the organization of the elections. The supervisor must also be a qualified lawyer.

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

http://www.thecommonwealth.org/document/34293/35144/152078/151553/fiji_islands_general_election_2006_report_of_the.htm

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

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II-3. Political Financing

20. Are there regulations governing the financing of political parties?

0

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

http://www.thecommonwealth.org/document/34293/35144/152078/151553/fiji_islands_general_election_2006_report_of_the.htm

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | NO

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | **NO**

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | **NO**

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | **NO**

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | **NO**

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | **NO**

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | **NO**

References:

Soro Toutou, Deputy Supervisor of Elections, Suva, 20 September 2008.

Dr Tupeni Baba, former member of parliament, Suva, on 12 September 2008.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | **NO**

References:

Kinivuwai, P (2008). SDL Party Secretary, Suva, 12 September 2008.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | **NO**

References:

Kinivuwai, P, SDL Party Secretary, Suva, 12 September 2008.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

References:

Kinivuwai, P, SDL Party Secretary, Suva, 12 September 2008.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | **NO**

References:

Kinivuwai, P, SDL Party Secretary, Suva, 12 September 2008.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

References:

Kinivuwai, P, SDL Party Secretary, Suva, 12 September 2008.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

References:

Kinivuwai, P, SDL Party Secretary, Suva, 12 September 2008.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

References:

Kinivuwai, P, SDL Party Secretary, Suva, 12 September 2008.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

Karavaki, S, former Supervisor of Elections, Suva, 16th September 2008.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Karavaki, S, former Supervisor of Elections, Suva, 16th September 2008.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, thought limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Karavaki, S, former Supervisor of Elections, Suva, 16th September 2008.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

References:

Kinivuwai, P (2008). SDL Party Secretary, Suva, 12 September 2008.

100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

References:

Kinivuwai, P (2008). SDL Party Secretary, Suva, 12 September 2008.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

References:

Kinivuwai, P (2008). SDL Party Secretary, Suva, 12 September 2008.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

References:

Kinivuwai, P (2008). SDL Party Secretary, Suva, 12 September 2008.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, thought limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Electoral Act allows for the imposing of such penalty, but no regulation has been put into place. The act is concerned about the integrity of the ballot paper, campaign activities, the act of voting, and electoral administration, but is silent on matters of party financing.

In June 2007, Transparency International's Fiji chapter said, TI believes that there is little, if any, accountability by political parties of campaign funding received by them from various sources. There is a lack of oversight for private donations, scarce accountability by candidates, unreliable oversight measures and data for political parties along with the fact that information about political financing is not made public in Fiji. " (online at <http://www.transparencyfiji.org/readNews.aspx?newsId=37>). Responding to an independent technical assessment handed to the Forum Secretariat that month recommended that the election commission "issue a regulation establishing an interim system of disclosure of significant donations made to registered parties and to election candidates." The "Fiji Independent Commission Against Corruption" Promulgation 11 of 2007 stated that its provisions related to corruption carried out "in any election" but remained silent on the specific issue of political financing.

References:

Kinivuwai, P (2008). SDL Party Secretary, Suva, 12 September 2008.

Karavaki, S, former Supervisor of Elections, Suva, 16th September 2008.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

The finances of individual candidates' campaigns are not audited.

References:

Karavaki, S, former Supervisor of Elections, Suva, 16th September 2008.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

25

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

All financial details are summarized in the parties' Financial Statement, and citizens or supporters can access these during the party's annual general meeting.

References:

Kinivuwai, P (2008). SDL Party Secretary, Suva, 12 September 2008.

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regularly withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

In practice the party normally disseminates its financial records during annual general meetings.

References:

Kinivuwai, P (2008). SDL Party Secretary, Suva, 12 September 2008.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

They can only access it during the party's annual general meetings.

References:

Kinivuwai, P (2008). SDL Party Secretary, Suva, 12 September 2008.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Karavaki, S, former Supervisor of Elections, Suva, 16th September 2008.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regularly withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No requirements exist. Much would depend on the integrity of each individual candidate.
(It is worth adding that for the purposes of tax returns, one is required to file the total amount expended for election costs (including campaign and voting.)

References:

Karavaki, S, former Supervisor of Elections, Suva, 16th September 2008.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Karavaki, S, former Supervisor of Elections, Suva, 16th September 2008.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁴⁶ Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

44

27a. In practice, the chief executive gives reasons for his/her policy decisions.

Comments:

While the Interim Prime Minister provides explanations and justifications for some decisions, there is no parliament at the current time, and hence no formal process for eliciting responses.

References:

Interview with a Suva-based lawyer, 5 September 2008.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | **NO**

Comments:

Decisions of the High Court for 2008 are posted on the Pacific Legal Information Institute website at <http://www3.paclii.org/fj/cases/FJHC/2008/>

The most recent significant challenge to executive action was decided in *Qarase v. Bainimarama* [2008] FJHC 241; HBC 60.2007S; HBC 398.2007S (9 October 2008) (online at <http://www.fijiilive.com/archive/showpdf.php?pdf=2008/10/Qarase%20vs%20Bainimarama%20Judgment.pdf>).

In this case, the plaintiff was deposed Prime Minister Laisenia Qarase, who sought — unsuccessfully — to have the court find that the president went beyond his powers in dismissing the prime minister in December 2006, allowing the commander of the military forces to assume executive power.

References:

Chapter 9 of the 1997 Constitution establishes an independent judicial power. Section 120 gives the High Court unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under this Constitution.⁹ <http://servat.unibe.ch/icl/fj00000.html#C009>.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

Comments:

There are diverse opinions on judicial independence in Fiji following the military coup of December 2006. While it is true that applications may be made to the courts for review of executive action, it is noted that few judgments, if any, have been made

against the government; where lower courts have found against the executive, such decisions have been rapidly suppressed through stay orders granted by other judges sitting as the Appeals Court.

References:

The Courts have played a significant role in constitutional definition in Fiji. Cases are reported on the website of the Pacific Legal Information Institute" – PACLII – at <http://www.paclii.org/databases.html#FJ>.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

The interim prime minister has appointed an interim cabinet to assist with decision making, and also consults a military council. However, in the absence of a parliament, all decisions require promulgation by the executive, rather than legislative assent.

References:

The regional Magazine Islands Business carries monthly reports on the situation in Fiji. see Army assumes executive authority," online at http://www.islandsbusiness.com/news/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=130/focusContentID=7143/tableName=full.tpl

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

Nobody is above the law. Regardless of position held, no one is exempt from the law. Following a civilian coup attempt in 2000, a number of senior political and traditional leaders were prosecuted for treason. Those removed from office and jailed include the vice president. Jailed members of parliament continued to draw their salary, amidst much public outcry.

References:

Interview with a retired civil servant, Suva, 15 September 2008.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | **NO**

Comments:

No one is exempt from the law — whether one is the queen, president, or common citizen.

References:

Interview with a retired civil servant, Suva, 15 September 2008.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

0

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | **NO**

Comments:

A World Bank survey of Income and Asset Disclosure Requirements for Heads of State and Governments conducted in 2006 confirms that there are no legal requirements in Fiji. In lieu of formal requirements, the practice of the Prime Minister who held office until the Military intervention of December 2006 was to require each member of his government to submit a declaration of assets. This was held by the Prime Minister, rather than by the Ombudsman, the Auditor-General, or the Speaker of Parliament, and acted thus more as a political control than as a practice of public accountability. It should be noted that this informal practice affected members of government, but not the head of state, nor did it require the Prime Minister to make a declaration of assets such as he required of his ministers.

References:

Income and Asset Disclosure Requirements for Heads of State and Governments – World Bank Client Countries, June 15, 2006, online at <http://209.85.175.132/search?q=cache:q2D4ysCo598J:siteresources.worldbank.org/INTLAWJUSTINST/Resources/IncomeAssetDisclosureinWBClientsasofJune2006.pdf+Income+and+Assets>

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | **NO**

Comments:

A bill for a public integrity law was prepared in 1999 but never passed into legislation. There is no legal requirement for ministers to prepare a declaration of assets. The democratically elected government in place up to December 2006 had a practice of submitting declarations of income and assets to the Prime Minister but this was not a legal requirement.

References:

Anonymous interview with retired civil servant. 15 September 2008.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | **NO**

Comments:

There is no law regulating gifts and hospitality offered to members of the executive branch.

References:

Interview with a retired civil servant, Suva, 15 September 2008.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

Comments:

Since there is no legal requirement of asset disclosure, there is no law covering audit, either.

References:

Anonymous Interview with retired civil servant. 15 September 2008.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

There is no law restricting heads of state and ministers from entering the private sector after serving the government.

References:

Interview with a retired civil servant, Suva, 15 September 2008.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no regulations restricting heads of state and government ministers after their government service.

References:

Interview with a retired civil servant, Suva, 15 September 2008.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

As noted elsewhere, there are no disclosure requirements for members of the executive branch.

in 2008 the Fiji media reported the details of overseas bank accounts supposedly belonging to then Finance Minister Mahendra Chaudhry. Following this exposure, the issues focused not on the legality of the funds — for there is no law requiring disclosure — but on the ethics of holding money overseas, which its donors presumed was collected to assist poor farming communities, and the question of whether tax laws were broken, as citizens are expected to repatriate funds held offshore within a specified time period.

References:

It's Chaudhry: FIRCA sought source of \$1.6million," FijiTimes Online, at <http://www.fijitimes.com/story.aspx?id=82059>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

As noted elsewhere, in the absence of asset disclosure rules, there is no audit process.

References:

Anonymous Interview with retired civil servant. 15 September 2008.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

These are personal matters and confidentiality laws apply. No law compels public officials to declare their assets.

References:

Anonymous Interview with retired civil servant. 15 September 2008.

See also Income & Asset Disclosure Requirements for Public Officials: How to Establish and Maintain an Effective Disclosure Program" online at <http://www.ethicsworld.org/publicsectorgovernance/bestpracticesbygovernments.php>

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

**References:**

Interview with a retired civil servant, Suva, 15 September 2008.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

**References:**

Interview with a retired civil servant, Suva, 15 September 2008.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Citizens have the right to hold government accountable for various reasons. This is allowed in Chapter 4 Bill of Rights in the 1997 Constitution.

Agnes Ali-Harm, formerly Human Rights Commission, Suva, on 5th September.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

50

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

The ruling government itself is run by the ruling political party. But these two are different entities. If there is a government function, then the costs will bear by the state, and similarly, the political party functions will be bear by the party themselves, and functions will focus within the party.

References:

Interview with a retired civil servant, Suva, 15 September 2008.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

32a. In law, the judiciary can review laws passed by the legislature.

YES | **NO**

Comments:

The judiciary can review the law. Their primary role is to interpret the law, and sees to its consistency with the constitution.

References:

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | **75** | 50 | 25 | 0

References:

Interview with a confidential source. Suva, 16 September 2008.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | **NO**

Comments:

Regardless whether it's the prime minister or ministers, there is no immunity to members of legislature if they are subject to criminal proceedings.

References:

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

0

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | **NO**

Comments:

Parliament was disbanded by the Fijian military in December 2006, and there are no members of parliament at the current time. While there are no laws in place that require MPs to disclose assets, former Prime Minister Qarase required members of his government to lodge a statement of assets with him, but these statements were not made public.

References:

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

There is no law to restrict national legislators entering private sector after leaving the government.

References:

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | **NO**

References:

There is no law regulating gifts and hospitality offered to members of the national legislature. A 2001 report prepared for Transparency International (National Integrity Systems – Fiji Report – online at <http://www.transparency.org.au/documents/fiji.pdf>) explains that an integrity bill was drafted in 1999, but never passed. Following the military's dismissal of the elected government in December 2006, anti-corruption rules have been promulgated that address public servants but make no mention of members of parliament.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

There is no law providing for independent auditing of asset disclosure forms of members of parliament. At the current time there is no elected parliament.

References:

Anonymous interview with a former member of parliament, Suva, 16 September 2008.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Anonymous interview with a former member of parliament, Suva, 16 September 2008.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

References:

Anonymous interview with a former member of parliament, Suva, 16 September 2008.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

Comments:

As noted above, there is no asset disclosure requirement.

References:

Anonymous interview with a former member of parliament, Suva, 16 September 2008.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Comments:

There are no asset disclosure requirements.

References:

Anonymous interview with a former member of parliament, Suva, 16 September 2008.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Anonymous interview with a former member of parliament, Suva, 16 September 2008.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Anonymous interview with a former member of parliament, Suva, 16 September 2008.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Once tabled in the house, bills and other proceedings are available for public consumption.

References:

Anonymous interview with a former member of parliament, Suva, 16 September 2008.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although the Fijian parliament is currently suspended (following the military intervention of December 2006), the parliament's website continues at <http://www.parliament.gov.fj/main/index.aspx>, where hansard and other parliamentary proceedings are available.

Additionally, numerous laws of Fiji are available online through the government's Department of Information Technology and Computing Services, as well as on the website of the Pacific Islands Legal Information Institute – PACLII.

References:

Anonymous interview with a former member of parliament, Suva, 16 September 2008.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There are no costs or charges levied on citizens who want to access to these documents.

References:

Anonymous interview with a former member of parliament, Suva, 16 September 2008.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

44

III-3. Judicial Accountability

36. Are judges appointed fairly?

83

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | **NO**

Comments:

The Judicial Service Commission selects the judges. How transparent the procedures are depends on how independent the JSC is and who is appointed.

References:

Sect 131, 132 and 134 of the Constitution outline the processes for the selection of judges.

Interview with a confidential source. Suva, 16 September 2008

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | **50** | 25 | 0

Comments:

The appointment of national judges under the Bainimarama government has been controversial. Whilst the administration has argued that all requirements for dismissal and appointment have been in accordance with law, the circumstances surrounding the suspension of former Chief Justice Faitaki and the appointment of his replacement, CJ Gates, were disputed by many in the legal community who assert that the new Chief Justice was not appointed in accordance with the provisions of the constitution and assumed office following recommended/sanction by the Judicial Service Commission which in law did not have any jurisdiction over the matter and during whose deliberations the appointee was present as a member. Other appointments to the High Court, Court of Appeal and Supreme Court of Fiji have appeared controversial as well given the circumstances under which they were made, compelling the President of the Fiji Law Society (who is member of the Judicial Service Commission) to withdraw from the proceedings.

References:

Interview with a confidential source. Suva, 16 September 2008.

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | **NO**

Comments:

Judges are appointed by the president on the recommendations of the Judicial Service Commission and consultation with the minister. The fact that the Judicial Service Commission is involved qualifies for a YES score here (appointments are not simply at the discretion of the executive).

References:

References: section 138, 1997 Constitution

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

58

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | **NO**

Comments:

There is no legal requirement for judges to give reasons with their decisions. Judicial training in judgment writing was to be included in a development program but it was discontinued following the military's removal of the elected government in 2006.

References:

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

Comments:

While there is no formal requirement to include reasons, judges are aware that summary rulings risk being overturned on appeal, and this provides motivation to give reasons.

References:

Interview with a confidential source. Suva, 16 September 2008.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | **NO**

Comments:

There is a Judicial Service Commission. But it is the president who has the final authority to discipline a judge.

References:

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | **NO**

Comments:

Section 118 of the 1997 Constitution states that the judicial system is independent from the executive and dependent on the law. It is thus clear that in a legal sense, judicial appointments relied on professional criterion. However, opinion was divided in 2008 as to whether the Judicial Services Commission (JSC) was truly independent. In law, the JSC includes the Chief Justice as chair, the chair of the Public Service Commission chairman, and President of the Fiji Law Society. There is an inbuilt assumption each of these figures is independent of political influence. Following the military's removal of the elected government in 2006, the JSC suspended the chief justice on accusations of corruption. Although moves were made to establish a tribunal to hear the charges, the tribunal was not established and the chief justice made a financial agreement with the interim administration to retire in return for all charges being dropped.

References:

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

Although the Judicial Services Commission has the power to initiate investigations in the the activities of judges, it has not done so, apart from the Fatiatki case previously referred to. In 2007 the interim administration established an inquiry to make recommendations on, among other things, the operation and performance of the Magistrates' Courts, including their registries; and on the elimination and prevention of any corrupt, improper or inefficient practices within the Magistrates' Courts. The full findings of the report have not been made public.

References:

Interview with a confidential source. Suva, 16 September 2008.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

There is no record in the recent past of the Judicial Services Commission disciplining judges.

References:

Interview with a confidential source. Suva, 16 September 2008.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

0

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

There is no law requiring public disclosure of assets.

References:

Interview with a confidential source. Suva, 16 September 2008

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

Judges are not governed by the Public Service Act.

References:

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

There is no law that requires independent auditing of an asset disclosure form, hence there is no auditing of disclosures.

References:

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with a confidential source. Suva, 16 September 2008.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

They are no regulations, but in practice, they have to be careful when receiving gifts and hospitality from clients, as their decision can be viewed as biased by others.

References:

Interview with a confidential source. Suva, 16 September 2008.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with a confidential source. Suva, 16 September 2008.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

Interview with a confidential source. Suva, 16 September 2008.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

Comments:

This is not in practice.

References:

Interview with a confidential source. Suva, 16 September 2008.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

Comments:

this is not in practice.

References:

Interview with a confidential source. Suva, 16 September 2008.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

40a. In law, the legislature can amend the budget.

YES | NO

References:
Section 179, 1997 Constitution.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

Until December 2007 the whole budget process, including expenditures, required legislative approval. However, in the absence of a legislature in 2007 and 2008 approvals rested with a cabinet appointed by the military administration. The media carried reports of levels of expenditure far in excess of allocations established in the administration's budget for the year.

References:

Interview with an independent constitutional office holder, Suva, 16 September 2008.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

At present the legislature is suspended. Prior to the events of December 2006, Fiji's legislature was aware of the need to improve the capacity of MPs to perform oversight of budget processes. This was acknowledged in an IMF report issued in 2004. In 2008, parliamentary support staff participated in online sessions about parliamentary oversight of budget formation offered by the World Bank's Global Development Learning Network (DGLN).

References:

International Monetary Fund, Fiji: Report on the Observance of Standards and Codes – Fiscal Transparency Module:, 2004, online at <http://www.imf.org/external/pubs/ft/scr/2004/cr0464.pdf>.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

50

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Prior to the removal of the Qarase government by the military in December 2006, government was making efforts to increase transparency in budget formation processes. While most preparation took place in government ministries, sectoral working groups" were established to provide for input from industry and civil society. However, members of parliament received no specific training on budget scrutiny.

References:

UNDP, National Integrity Systems 2001.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

The national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval). However, there is a feeling that civil society actors are not yet well versed in budget preparation issues, and where civil society views are expressed, they are not given sufficient consideration.

References:

UNDP, National Integrity Systems 2001, FIJI: p6

Asian Development Bank, Technical Assistance for Civil Society Participation in Budget Formulation", 2003, online at http://www.vanuatu.usp.ac.fj/sol_adobe_documents/world/icnl/civil.pdf

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

There is a process for stakeholder participation in budget preparation in the sectoral working groups." However, the process of budget formation is basically internal to the Ministry of Finance and Planning, and the public's first detailed scrutiny of budget figures is after they have been promulgated.

References:

Various issues of the Fiji Times for 2005 and 2006.

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

17

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Reasons why reporting has not been up-to-date include:

- Lack of resources and quality staffing,
- National crises, like recent political turmoil.

Some accounts have been delayed for ten years. This includes provincial council, town council, statutory authority and government controlled companies.

References:

National Integrity Systems Report for Fiji, 2001, : p7.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | **25** | 0

Comments:

Although a new parliament was elected in 2006, the government and opposition were unable to agree on the composition of the Parliamentary Accounts Committee, which as a consequence failed to convene.

References:

Various issues of the Fiji Times in 2005 and 2006.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | **0**

Comments:

Prior to the military intervention of December 2006, the PAC failed to meet. Under the current interim government, a Public Accounts Committee has been appointed to report to the executive, rather than to the parliament. It has been inspecting the backlog of tabled reports, but most doubt that it has spare resources to initiate investigations.

References:

Various editions of the Fiji Times in 2005 and 2006.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

Yes, Public Accounts Committee. Normally, reports are first submitted to the parliament and after being debated are referred to the Public Accounts Committee for scrutiny. At the current time, however, parliament is suspended, and the military government has established its own public accounts committee to continue this function. It should be noted that prior to the military takeover, the PAC was not operating effectively due to conflict between parliamentary parties.

References:

UNDP, National Integrity Systems 2001, FIJI: p8.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁵⁸ Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

The Public Service Commission Act 1999 and PSC Regulation 1999 specify conditions for appointments.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

Currently appointments of all officers below principal level are done by the various ministries and departments. Similarly, succession planning of these officers is handled by the separate departments.

References:

The PSC Act 1999 and PSC Regulation 1999 specify conditions for appointments.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | **NO**

References:

Part 5 of the Public Service Act 1999 revives the PSAB established by the Public Service (Amendment) Act No. 58 of 1998. The Public Service Appeal Board is established to ensure that fairness and basic human rights are observed. The Public Service (Appeal) Regulations 1999 makes it possible from 1 July 1999 to commence and operate the PSAB – online at http://www.psc.gov.fj/au/divisions_Appeals_Board.aspx

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | **NO**

Comments:

This may depend on the scope of the misdemeanor.

References:

There is no specific prohibition in the Public Service Act 1999 – http://www.itc.gov.fj/lawnet/fiji_act/cap74.html.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

45a. In practice, civil servants are protected from political interference.

Comments:

In 2008 there was much commentary in Fiji about the positioning of military figures throughout the public service, and the deployment of public servants in education campaigns' about the "people's charter" that has been developed by the National Council for Building a Better Fiji

References:

Multiple media reports in 2008 Fiji Times and other newspapers.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

Comments:

While procedures are in place for the appointment of public servants on the basis of merit, it is widely perceived that senior positions are political appointments. Also, Fiji has conducted affirmative programs since 1987 that favor indigenous Fijians over Indo-Fijians in public service appointments.

References:

National Integrity Systems – Fiji Report, 2001.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

Comments:

There are diverse views on how well civil service laws concerning employment have been used in recent times. Following the military's removal of the elected government in December 2006, significant changes have been made to the great majority of public service leadership positions. A

All permanent secretaries (CEOs) were dismissed, regardless of their current levels of performance. They were replaced through a selection process overseen by the Public Service Commission, which itself was subject to sudden leadership change. There are now many serving and retired members of the military in public service positions.

The Constitution provides for consultation with the Prime Minister on many senior level appointments. What may appear to some as legitimate appointments made by executives using discretionary decision-making, appears to others as nepotism.

References:

Various issues of the Fiji Times and other newspapers in 2007 and 2008.
Interview with the solicitor general, 9 September.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Perhaps 40 percent of public servants have realistic job descriptions, according to well-placed sources. There has been no attention paid to aligning positions with work requirements.

References:

Interview with the Solicitor General, 9 September, and interviews with other confidential sources

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

As yet, no link has been made to performance and pay. A performance management system is currently suspended, however,

some statutory bodies, such as the Fiji Electricity Authority, have adopted a system of financial bonuses for the attainment of core program objectives.

References:

Peniana Lalabalavu, NCBBF Secretariat, Suva, 10 September.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

There is a Staff Establishment Register", a "civil list" and a Person to Post (PTP) report which is filed with the PSC Management Improvement Division by all ministries and departments on a monthly basis.

References:

Christopher Pryde, solicitor general, 9 September, Suva, and other anonymous sources

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

The Public Servants' Code of Conduct was enacted in 1999 and is displayed in all government offices. The Public Service Commission is empowered under Constitutional Section 147 to take disciplinary action against holders of the public service. The appeals board acts independently, and is able to control its own grievance agenda, but in practice, the Public Service Commission does not always readily respond to decisions made by the Appeals Board.

References:

Confidential source.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Interview with a senior public servant, Suva, 10 September.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

There are no clear guidelines on this matter. Press reports have recently noted that the government will seek the expert views of a former public servant currently serving a prison term for corruption.

In the past few years there have been instances of public servants returning to service on completion of a manslaughter charge, but there are also instances in which a public servant, despite having been found not guilty of an offence, such as corruption, being unable to return to public sector employment.

References:

Interview with a senior public servant, Suva, 10 September

Public servant, Ministry of Public Enterprises and Public Sector Reform, Suva, 18 March 2009.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | **NO**

Comments:

There is no such requirement. Applicants for public service positions are required to disclose their assets (including a spouse's assets). This small requirement does have an impact on public servants' subsequent activities.

References:

Interview with a senior public servant, Suva, 10 September.

Public servant, Ministry of Public Enterprises and Public Sector Reform, Suva, 18 March 2009.

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | **NO**

Comments:

Public Servants are required to declare their interests, but not necessarily recuse themselves.

References:

Interview with a senior public servant, Suva, 10 September.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

References:

Interview with a senior public servant, Suva, 10 September.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

The Prevention of Bribery (Promulgation No. 12 of 2007) does not make specific reference to the handling of gifts or hospitality.

References:

Prevention of Bribery (Promulgation No. 12 of 2007).

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

Comments:

In the absence of such disclosures, public servants have been found to have created companies to benefit from the former Government's affirmative programs".

References:

Maraia Vavaitamana, Fiji Independent Commission Against Corruption, Suva, 9 September.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with a senior public servant, Suva, 9 September.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent.

or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

This is not covered in the regulations.

References:

Prevention of Bribery (Promulgation No. 12 of 2007).
Interview with Peniana Lalabalavu, Public Service Commission, Suva, 10 September.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with a senior public servant, Suva, 10 September.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable.

References:
Interview with a senior public servant, Suva, 10 September.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

The NGO Citizens Constitutional Forum argues in a 2004 Brochure entitled "A Freedom of Information Law for Fiji" that the principle means in practice is that all information held by all public bodies should be presumed to be subject to disclosure on request, unless a public body can show that it has a legitimate ground for withholding particular information in a given case. However, no such legislation was put in place between 1997 and the military takeover at the end of 2006.

References:

Interview with an independence constitutional office holder, Suva, 16 September 2008.

The 1997 Constitution guarantees freedom to seek, receive and impart information and ideas (section 30(1)(a)).

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable.

References:

Prevention of Bribery (Promulgation No. 12 of 2007).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable.

References:

<http://www.transparencyfiji.org/Default.aspx>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

13

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The country does not have any formal whistle-blowing legislation or mechanism in place, apart from recent reference to protection of sources in the 2007 anti-corruption legislation. While in a strictly legal sense it could be said that Fiji has taken a step toward whistle-blower protection, many feel that it will be difficult to maintain anonymity in such a small society of just 800,000.

References:

Transparency International — National Integrity Systems 2001, FIJI: p5.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

Fiji Revenue and Customs authority sacks whistle-blower", Posted on Radio New Zealand International website – <http://www.rnzi.com/pages/news.php?op=read&id=12003> at 22:18 on 07 September, 2004 UTC.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

As this is a new promulgation, the effectiveness of the laws has not yet been tested. Section 30A provides the suppression of names and addresses from court proceedings in cases where material information has been provided by informants who are concerned for their well-being if exposed. however, the promulgation does not provide for further steps, such as a witness protection program.

References:

Sec. 30A of the Prevention of Bribery (Promulgation No. 12 of 2007 concerns protection of informers".

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

There are not many press articles about whistle-blowing. However, there are many more instances of whistle-blowing than are reported. Under the interim government, the Fiji Independent Commission Against Corruption has provided the public with opportunities to bring forward grievances, with considerable response.

References:

Whistleblower Rabo unhappy with talks", Fiji Times online <http://www.fijitimes.com/story.aspx?id=83581> Tuesday, March 11, 2008.

Maraia Vavaitamana, Fiji Independent Commission Against Corruption, Suva, 9 September.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

56

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

While the Independent Commission Against Corruption has dedicated staff, there is a lack of experience with forensic accounting, criminal investigation, and prosecution. Approximately 50 people were charged with corruption in 2008, but of this number the commission only secured one conviction.

References:

Maraia Vavaitamana, Fiji Independent Commission Against Corruption, Suva, 9 September.

Civil Servants Top FICAC Complaint List", Fijivillage.com, 4 February 2009, online at <http://www.fijivillage.com/?mod=story&id=0402097273f1e6119941f963f68752>

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

FICAC's 2007 budget was 1.5 million Fiji dollars, and its 2008 budget was 3 million FJD. There are, additionally, anti-fraud units in the Reserve Bank of Fiji and the Fiji police.

References:

Maraia Vavaitamana, Fiji Independent Commission Against Corruption, Suva, 9 September.
2008 Fiji Islands Budget Summary", online at http://www.afbc.org.au/Economic_2008%20Budget_KPMG_Commentary.pdf.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although FICAC has sought to act quickly to prosecute corruption charges, it is yet to have significant success in the courts. Additionally, some cases have now been under investigation for two years with out resolution.

References:

Richard Naidu, MunroLeys Solicitors, Suva, 5 September.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In its short life-span (since April 2007), the Fiji Independent Commission against Corruption has logged more than 1,000 investigations, leading to approximately 50 charges against individuals, but resulting in just one conviction by February 2009 (a former accounts clerk for the Wainikoro Fisheries Co-operative was jailed for 18 months for stealing more than \$3,000. FICAC has initiated a number of high-profile investigations.) Conversely, a number of controversial matters have become public which FICAC does not seem to have investigated, such as evidence that a former finance minister held large sums of money in secret, offshore accounts.

References:

Maraia Vavaitamana, Fiji Independent Commission Against Corruption, Suva, 9 September.

Office of the Attorney General, FICAC Achieves First Conviction & Sentencing", online at <http://www.ag.gov.fj/pfo.aspx?newsId=270>.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | **NO**

Comments:

In 2007 FICAC, the Fiji Independent Commission Against Corruption, advertised a hotline" which attracted some 5000 complaints between April 2007 and February 2009. Complaints are also received via email, or through visits in person to the commission's Suva office.

References:

Maraia Vavaitamana, Fiji independent commission against corruption, Suva, 9 September.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

56

IV-3. Procurement

51. Is the public procurement process effective?

53

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | **NO**

Comments:

Government purchasing is covered by the Finance (Supplies and Services) (General) Regulations 1982 and the Finance (Public Works) Regulations 1982. These establish a Major Tenders Board (for contracts over \$30,000), a Minor Tenders Board (for contracts less than \$30,000 but more than some minimum set out in regulations), and a Public Works Tenders Board (for all public works purchases).

References:
IMF Country Report 2004, No. 04/64.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:
Officials are given ad hoc training in ethics, but not mandatory training.

References:
Curbing Corruption in Public procurement in Asia and the Pacific – ADB/OCED anti-corruption Initiative for Asia and the Pacific: <http://www.oecd.org/dataoecd/4/40/37575976.pdf>.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:
With no effective legislation in place, public servants have avoided punishment for conflicts of interest.

References:
Akuila Yabaki, Chair, Citizen's Constitutional Forum, Suva, 5 September.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

Comments:

This was discussed in the Fiji Law Reform Commission's 2003 report on corruption.
Corruption_FINAL_REPORT_Ch_3_National_Integrity_System.17 June 2003."

References:

Fiji Law Reform Commission (2003). Corruption_FINAL_REPORT_Ch_3_National_Integrity_System.17 June 2003
at <http://www.lawreform.gov.fj/common/default.aspx?Page=pubForm&dlId=37&dTypeid=2&allowDl=False>.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | **NO**

References:

ADB and OECD (2006). Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries." <http://www.oecd.org/dataoecd/4/40/37575976.pdf>.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | **NO**

References:

Transparency International, National Integrity Systems. Fiji Report, 2001. online
at <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN013101.pdf>.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | **NO**

Comments:

In some instances the aggrieved party will appeal to the Ministry of Finance, or else take the matter to court.

There is a minor tenders board and a major tenders board. In law, appeals may be made to the courts, but there is no special administrative appeals board. In practice, tenders are submitted to tenders board after published deadlines have expired. These usually have political sponsorship. In practice, however, there has never been an appeal against a tender award decision.

References:

ADB and OECD (2006). Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries." <http://www.oecd.org/dataoecd/4/40/37575976.pdf>.

Interview with Ms. Jiu Daunivalu, general manager corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | **NO**

Comments:

Yes, challenges are legally possible, but they have not been made.

References:

ADB and OECD (2006). Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries." <http://www.oecd.org/dataoecd/4/40/37575976.pdf>.

Ms. Jiu Daunivalu General Manager Corporate Services Fiji Ports Corporation Limited Suva, Fiji Islands

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | **NO**

References:

ADB and OECD (2006). Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries." <http://www.oecd.org/dataoecd/4/40/37575976.pdf>.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

References:

ADB and OECD (2006). Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries." <http://www.oecd.org/dataoecd/4/40/37575976.pdf>.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

67

52a. In law, citizens can access public procurement regulations.

YES | **NO**

References:

ADB and OECD (2006). Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries." <http://www.oecd.org/dataoecd/4/40/37575976.pdf>.

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | **NO**

References:

ADB and OECD (2006). Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries." <http://www.oecd.org/dataoecd/4/40/37575976.pdf>.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

Comments:

Public procurement regulations are complicated and it takes time to access them. There are up to ten levels of paperwork involved.

References:

ADB and OECD (2006). Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries." <http://www.oecd.org/dataoecd/4/40/37575976.pdf>.

Interview with Ms. Jiu Daunivalu, general manager corporate services Fiji Ports Corporation Limited Suva, Fiji Islands

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Christopher Pryde, Solicitor General, Suva, 16 September.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Although procurements are generally advertised, there are others that are 'selective' due to the need for rapid service. For instance, at times of water shortage or power shortage, tenders are 'selective' rather than generally advertised.

References:

Christopher Pryde, Solicitor General, Suva, Email 16 September.

Jiu Daunivalu, general manager corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for

bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | **25** | 0

Comments:

There is no place where the results of bids are centralized and made easily available. Each ministry controls its own process and the decisions are scattered across the public sector. This practice is targeted for reform, but the reform has not yet taken place.

References:

Christopher Pryde, solicitor general, Suva, email 16 September.

Jiu Daunivalu, general manager corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

Under the Public Enterprises reform program, all entities are eligible for privatization upon the endorsement of the cabinet. Ideally, all entities are encouraged to be profitable as much as possible so that attraction of interested investors is feasible.

In some cases, privatization and even outsourcing are also pursued for poor performing entities.

References:

Christopher Pryde, solicitor general, Suva, Email 16 September.

Jo Navuku, senior financial analyst for the Ministry of Public Enterprise, Suva, 3/11/2008.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | **NO**

Comments:

Recent privatization initiatives adopt a transparent approach, whereby an independent sales adviser is engaged to implement the privatization process.

References:

Christopher Pryde, solicitor general, Suva, email 16 September.

Jo Navuku, senior financial analyst for the Ministry of Public Enterprise, Suva, 3/11/2008.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | **50** | 25 | 0

Comments:

The conflict of interest concept is well catered for in the guidelines used in privatization, although no specific law is in place to regulate conflict of interests of government officials involved in privatization. Broad guidelines for this appear to come from the Public Sector Reform Act 1996 and the Public Finance Act 1999, Public Service Act 1999 and Financial Management Act 2004.

References:

Christopher Pryde, solicitor general, Suva, email 16 September.

Jo Navuku, senior financial analyst for the Ministry of Public Enterprise, Suva, 3/11/2008.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

54a. In law, citizens can access privatization regulations.

YES | **NO**

Comments:

All privatization initiatives within government entities adopt transparent approaches that include provision of relevant information about the project involved. An information memorandum is usually part of the documents available to the public.

References:

Christopher Pryde, Solicitor General, Suva, Email 16 September.

Mr Jo Navuku, Senior financial Analyst for the Ministry of Public Enterprise, Suva, 3/11/2008.

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | **75** | 50 | 25 | 0

Comments:

Expressions of interest are usually widely advertised in the local media as well as internationally via the trade commissions, embassies and the websites.

References:

Christopher Pryde, Solicitor General, Suva, Email 16 September.

Jo Navuku, Senior financial Analyst for the Ministry of Public Enterprise, Suva, 3/11/2008.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | **NO**

Comments:

Usually a working committee inclusive of the sales adviser oversees the initiative. Its report and recommendations are then submitted to the cabinet, which makes the final decision and publicly announces the outcome.

References:

Christopher Pryde, solicitor general, Suva, email 16 September.

Jo Navuku, senior financial analyst for the Ministry of Public Enterprise, Suva, 3/11/2008.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Recent privatization schemes often take at least 12 months for completion, provided all issues are mutually resolved.

References:

Christopher Pryde, Solicitor General, Suva, Email 16 September.

Jo Navuku, Senior financial Analyst for the Ministry of Public Enterprise, Suva, 3/11/2008.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No separate privatization legislation is in place. However, existing legislation and policy guidelines guide the process, which are available to the public.

References:

Christopher Pryde, solicitor general, Suva, email 16 September.

Jo Navuku, senior financial analyst for the Ministry of Public Enterprise, Suva, 3/11/2008.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. National Ombudsman ⁸²

56. Is the national ombudsman effective?

45

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

The 1997 Constitution (sec 163) provides for the appointment of the ombudsman by the Constitutional Offices Commission following consultation by it with the prime minister.

The appointment is for five years. there are provisions for removal if the office holder is unable to fulfil their responsibilities.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Shaista Shameem, director of the Fiji Human Rights Commission, was appointed to the position of Ombudsman in July by the Military Regime. In both roles, Dr Shameem has issued reports that are sympathetic to the removal of the Qarase government by the military in December 2006.

The Ombudsman Decree Fiji was promulgated in 1987 after the abrogation of the 1970 Constitution to re-establish the Office of the Ombudsman. The 1990 Constitution subsequently made the necessary constitutional provisions for the ombudsman.

References:

Get it straight, Shaista," Fiji Times editorial, December 11, 2007.

In "Tensions between economic reform and good governance in Fiji" (online at http://rspas.anu.edu.au/papers/melanesia/conference_papers/1998/prasad.html), Prasad points out that "Through both an independent procedure for appointment of the ombudsman (by the constitutional offices commission) and by shielding the office from legal challenges, the ombudsman in Fiji enjoys considerable autonomy and independence. These protections are central to realizing the potential of the office."

Significantly, the 1997 constitution provides that the ombudsman may 'of his own motion, .. investigate any action' relating to a matter of administrative action. At least theoretically, the office can be a useful mechanism through which the potential and the aspirations of the social justice clauses and the Bill of Rights can be realized.

The constitution gives authority to the ombudsman to investigate complaints in relation to action taken by a commission. However, the office is specifically not authorized to investigate actions taken by ministers. It is difficult to gauge the implications of these limitations in advance of the transition to a power sharing system of government. But I think there was some expectation that the authority of the office could have been expanded to include ministerial actions to compensate for the absence of a traditional Westminster-type of parliamentary opposition."

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The Constitutional Offices Commission may, following consultation by it with the Prime Minister, appoint a person to act as Ombudsman during any period, or during all periods, when the office of Ombudsman is vacant or when the Ombudsman is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.

References:

Section 157 of the constitution.

http://www.unescap.org/esid/psis/population/database/poplaws/law_fiji/fiji_004_11.htm

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In 2004, the Office of the Ombudsman had 16 established staff and two unestablished.

An ESCAP report, Integrating Environmental Considerations into the Economic Decision-Making Process" (online at <http://www.unescap.org/dpad/publication/integra/volume1/fiji/1fj06a.htm>) states "Complaints to the Office of the Ombudsman about the non-performance of local authorities in the area of enforcement do not appear possible in Fiji. The Ombudsman has limited powers and limited resources at its disposal. For a period prior to the appointment of the current ombudsman, Dr Shaista Shameem, the Ombudsman's staff did not include a lawyer.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

http://www.oag.gov.fj/reports_2004/Vol_2_Part_II_General_Admin/section_22_ombudsman_office.pdf.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Section 164 specifies the manner of the Ombudsman's appointment, and the limitations of the office. Following consultation with the prime minister, the Constitutional Offices Commission appoints the Ombudsman. This is to safeguard the independence of the office, and to prevent conflict of interest scenarios.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In 2004, the Office of the Ombudsman was approved a budget of \$438,900. The budget was revised during the year to \$439,000.

In 2008, the Office of the Ombudsman budget was \$1.47 million Fijian, up from \$1.42 million the previous year.

References:

Renee Lal, "The Diversified or Strict Role of an Ombudsman : A Comparison in the Roles of the Ombudsman in Vanuatu and Fiji", Journal of South Pacific Law, online at http://www.vanuatu.usp.ac.fj/journal_splaw/working_papers/Lal1.htm.

Report on the 2008 Budget at <http://wwwfijicoup2006.blogspot.com/2007/11/budget-2008-for-fiji.html>.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | **50** | 25 | 0

Comments:

The Ombudsman does not have a home page, and reports may be publicly available but are not easily accessible.

Under s 139 (3) of the Fiji Constitution, the Ombudsman has to make an annual report to the president concerning the discharge of his functions. This report has to be laid before the House of Representatives and the Senate. The Ombudsman can make periodic reports, which might be needed. However, these reports do not have to be presented to the president or to the Parliament unless, within a reasonable time after the report is made, no action is taken which seems to be adequate and appropriate.

References:

The Office of the Ombudsman is listed on the prime minister's page at http://www.fiji.gov.fj/publish/pm_office.shtml, which shows that the office does not have a website.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

Section 135(1) sets out the basic function of the ombudsman. It states:

[T]he ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority.

It appears that under s 135(6)(b)(ii) of the Constitution of Fiji that the ombudsman has the additional responsibility of investigating breaches of any fundamental rights protected by Chapter II of the Constitution of Fiji, in relation to administrative action. Under s 135(1)(b), Investigations should be in private, in accordance with the procedures of the Constitution, any act passed by parliament, and in accordance to a manner that the ombudsman finds appropriate (This is however subject to the Constitution and any act)."

References:

There is no media coverage suggesting that the Ombudsman has initiated major investigations in recent times.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

There are no media reports about the ombudsman imposing penalties on offenders.

References:

The Diversified or Strict Role of an Ombudsman: A Comparison in the Roles of the Ombudsman in Vanuatu and Fiji by Renee Lal online at http://www.paclii.org/journals/fJSPL/vol01/vol01_Lal_Diversified.shtml.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | **25** | 0

Comments:

Specific grievances against government officials, once investigated, are referred to other branches of government — eg, legal matters are referred to the attorney general, human rights issues are referred to the Human Rights Commission.

References:

Peni Moore, co-founder and creative director, Women's Action for Change, Suva, 20th November.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

Comments:

Citizens are more likely to refer to the Human Rights Commission. Historically, the Ombudsman Commission has not been regarded as effective.

References:

Peni Moore, co-founder and creative director, Women's Action for Change, Suva, November 20.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

67

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

The ombudsman does not operate a website, but has offices in the main part of the city where published reports can be obtained by the public.

References:

the constitution sect 161 requires the ombudsman to make reports to parliament on investigations undertaken. it does not state explicitly that reports are to be available to the public, but this can be implied.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

References:

Peni Moore, co-founder and creative director, Women's Action for Change, Suva, November 20.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Government printing, archives and parliament produce copies at a reasonable cost.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

The Office of Ombudsman is established in Constitutional Sections 157 through 164. These provisions in the 1997 constitution were further elaborated in the Ombudsman Act of 1988, which is online at http://www.itc.gov.fj/lawnet/fiji_act/cap3.html.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

88

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The AG is independent of government and parliament and appointed by the Constitution Officers Commission.

References:

The office of auditor general is established in the constitution, sections 166-9. see <http://www.servat.unibe.ch/icl/fj00000.html>.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The auditor general can only be dismissed upon inability or for misbehavior and through recommendations of a tribunal consisting of at least 2 or 3 members who have held high judicial office, as it stated under the section 172 of the constitution.

References:

Constitutional Section 170 – online at <http://www.servat.unibe.ch/icl/fj00000.html>.

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

**Comments:**

The minimum qualification is equivalent to Bachelor's degree in accounting and Fiji Institute of Accountant is a prerequisite for an advancement. The institution had 70 professional and seven administrative staff members.

Whereas there is no doubting the integrity of the work of the office of the AG, there is also a perception in some government agencies that the AG's work is insufficient to counter the extent of public sector corruption and inefficiency.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

**Comments:**

Appointments are conducted under PSC scrutiny to avoid and doubts on the integrity of the force.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

**Comments:**

Yes, the Office of the Auditor General's budget is drawn from the central government.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Government ministries and departments, together with the consolidated national accounts, are to be tabled in parliament by the speaker annually. Government commercial companies, statutory authorities and statutory authorities are also required to produce annual accounts for audit. the audit reports are online at <http://www.oag.gov.fj/> There have been times when Auditors reports have taken some time to reach parliament.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Whereas the public accounts committee scrutinizes the audit reports and table its recommendations, and the minister of finance is meant to respond on the courses of action to be taken by his ministry to notify actions highlighted, there is not a strong track record of either a) public accounts committee response; or b) response by executive government. Similar problems are thus reported year after year.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The OAG initiates investigations from proven red flags or indicators of abnormalities within audit portfolios. The audit office monitors the media and responds to internal whistleblowers.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

92

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

Once reports are tabled in parliament by the speaker, they become public documents.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The speaker is required to table reports in parliament. Once this step is taken, the report becomes a public document and the AG makes it available on its website at <http://www.oag.gov.fj/>.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available through the government printing, archives and parliament at a reasonable cost. They are also available online.

References:

Interview with a member of the Office of the Auditor General, Suva, 4/11/2008.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

The Fiji Islands' Audit Department, now the OAG, was an integral part of the colonial administration. In 1971 — directly after independence — the Fiji Islands' Government approved the Audit Act 1971, which clarified OAG's role and responsibilities. The Audit Act 1971 remains in force, however the auditor general's independence and powers were strengthened by the Constitution Amendment Act 1997.

The OAG is the Supreme Audit Institution (SAI) of the Fiji Islands and is a member of the International Organization of Supreme Audit Institutions (INTOSAI), the Public Debt Committee of INTOSAI, the South Pacific Association of Supreme Audit Institutions

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

93
V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

FIRCA recruits tax officers, auditors, assessors, senior principal, chief auditors and assessors who have accredited membership with Fiji Institute of Accountants (FIA) or who are competent to work full-time in collecting taxes.

References:

<http://www.frca.org.fj/>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

FIRCA funds the national budget every year through civil servants remuneration, health services, education, public infrastructure and other public utilities and amenities.

References:

The FIRCA website announces an annual operating budget of \$31 million dollars. <http://www.frca.org.fj/>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

FIRCA recruits customs officers who acquire a diploma in customs from FIT, and the staff work on full-time basis. There also are executive staff members that are competent in this area of specialty and acquired World Customs Organization professional accreditation. They ensure to protect and secure the national borders, detain prohibited items and ensure safety of Fiji's citizens. However, one public servant estimated that the capacity of staff in the customs agency is 20 percent of what is required.

References:

Salite Kurua , FIRCA industrial relation officer , October 8, 2008

Jiu Daunivalu general manager corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Customs Division receives funds through customs duty and tariffs from Importers and exporters who operate at sea ports and airports and other customs agents. The customs body, FIRCA, receives full financial backing from the Ministry of Finance.

References:

Salite Kurua , FIRCA industrial relation officer, October 8, 2008.

Jiu Daunivalu, general Manager, corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | **NO**

Comments:

Fiji Islands Revenue & Customs Authority (FIRCA) collects tax through its Taxation Division under the Principal (Tax) Act legislated by the Fiji parliament.

References:

FIRCA – Fiji Islands Customs and Revenue Authority.

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

75

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | **75** | 50 | 25 | 0

Comments:

The Taxation Division of FIRCA has a debt management unit that collects taxes from tax defaulters/evaders without discrimination. It is the duty of taxpayers to make arrangement if they cannot pay in full, otherwise they face penalties. However, there was one high-profile case in 2008 of a member of cabinet evading tax through forcing amnesty tax provision without parliamentary sanction at a time when his own case was investigated.

References:

There have not been media reports suggesting unfair imposition of taxation.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

64. In law, is there a national customs and excise agency?

YES | **NO**

Comments:

The Customs Division with its legislated powers under the Customs Act.

References:

The Fiji Islands Revenue & Customs Authority (FIRCA) was officially established on January 1, 1999 in accordance with the Fiji Islands Revenue & Customs Act 1998.

FIRCA – administers the Customs Revenue Act (1986) and the Income Tax Act (2007).

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Salite Kurua , FIRCA industrial relation officer, October 8, 2008.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

The public enterprise act of 1996 gives the minister considerable discretion through a right to consult about decisions concerning the management of state-owned enterprises. In practice, this can lead to extensive interference. For example, the ministry may assemble a list of suitable candidates for the board of an SEO and have the minister completely bypass the recommended list and make appointments of his choosing, based on other considerations.

Given the considerable scope for discretion, there is much lobbying of ministers, for example by landowning groups, and by other groups of influential people.

A number of sources have indicated that the Ministry of Public Enterprise is prone to pressure from the ministry. There are more than ten commercial companies that are 100 percent government owned, and each is subject to considerable political interference.

For any investigation that is done in-house, the Private Enterprise Act does not have a penalizing clause, so no action is taken internally. However, they would be referred to the police for criminal proceedings to take place if it is warranted.

References:

Jiu Daunivalu, general manager corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands, public servant, Ministry of Public Enterprises and Public Sector Reform, Suva, 18 March 2009.

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The quality and number of staff has reduced from 33 to 16 in the past two years. Leakage is through migration, and shift into the private sector. On the positive side, this reduction in capacity has resulted in more interaction between the three ministry's three functional groups (monitoring, restructuring, and policy and research).

All professional staff have at least a degree or are doing post-graduate studies. But formal training and qualifications do not equip a public servant with all the tools required to assess such a complex field as public enterprise reform.

Many of Fiji's state-owned enterprises are struggling in the marketplace. Since other companies are surviving, even in harsh economic times, this suggests that the SOEs lack adequate skilled staff. The reasoning is that it takes approximately 10 years to develop mature experience in the field, and after about a decade in the public service, many capable workers tire of being in an organization that resists change and development, and move on.

References:

Jiu Daunivalu, general manager corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands, public servant, Ministry of Public Enterprises and Public Sector Reform, Suva, 18 March 2009.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The departments receive funding through the annual government budget, as similar for other government departments and ministries. But funding for the ministry has been subject to decline. In 2008 there was no budget to take on consultants, which are required to do feasibility studies.

However, there is insufficient funding available to SOEs. Each change of government in Fiji tends to result in reversal of policies with regard to reform, privatization, etc. Reform processes, from legislative review to human resource needs assessments, redundancy packages etc, can cost anywhere up to one million dollars (Fijian) per entity, and there have been instances where the arrival of a new government has led to a reversal of reform processes, so that this public expenditure has had no result.

References:

Jiu Daunivalu, general manager corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands, public servant, Ministry of Public Enterprises and Public Sector Reform, Suva, 18 March 2009.

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The department makes briefs to the minister. Board papers are assessed monthly and any anomalies are investigated. The department can only recommend to the minister, who decides whether or not to act. Sources suggest that investigations only proceed if they are politically desirable; undesirable investigations, on the other hand, are blocked.

References:

Jiu Daunivalu, general manager corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands, public servant, Ministry of Public Enterprises and Public Sector Reform, Suva, 18 March 2009.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

If the board is at fault, the minister can suspend or dismiss it. If an officer is involved, the board will have to refer the complaint to the relevant body. However, employees of SEOs are not, by definition, public servants, so are not subject to the disciplinary procedures practiced by the Public Service Commission.

The public enterprises act is silent on the imposition of penalties for wrong-doing. Even if the Auditor General highlights a malpractice, there is little investigation and action.

References:

Jiu Daunivalu, general manager corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands, public servant, Ministry of Public Enterprises and Public Sector Reform, Suva, 18 March 2009.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

85

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

By law the entities are to submit annual reports to the minister and this is tabled in parliament /cabinet after which they become public documents. Also, the companies are to file annual returns to the companies' office, and that too is available for scrutiny of the general public.

Published financial records are free, direct from the companies or the department. They are produced on demand, due to the cost of publication, and are mostly assessed by students and academics and, to a lesser extent, the media.

References:

Jiu Daunivalu, general manager corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands, public servant, Ministry of Public Enterprises and Public Sector Reform, Suva, 18 March 2009.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

The act states that the annual reports be submitted to the minister within five months after the end of the financial year and they should be tabled to parliament within four months of the minister receiving the documents. With respect to the practices in house, financial data on entities are updated monthly.

References:

Jiu Daunivalu, general manager corporate Services, Fiji Ports Corporation Limited, Suva, Fiji Islands.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

The reports are scrutinized according to the standards of the Office of Auditor Generals, which is compliant with international standards. As of the year 2008, the OAG also has adopted the International Financial Reporting Standards, and this will be the standard for future audits.

References:

interview to be filled in

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The records are easily accessible after they have been tabled in cabinet or parliament. In most cases they would be available on the websites of the entities themselves, or hard copies can be obtained by visiting their offices. Financial statements are available annually.

Sometimes SOEs will ask for a waiver or extension of a deadline, citing as excuses the existence of pressing strategic issues, boards not ready, or changes in management structure.

References:

Jiu Daunivalu, general manager corporate services, Fiji Ports Corporation Limited, Suva, Fiji Islands, public servant, Ministry of Public Enterprises and Public Sector Reform, Suva, 18 March 2009.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Where the department doesn't have enough copies available it offers the public three options; either to download an electronic copy, take our copy and photocopy at their own expense and return the original, or a photocopy can be provided as long as they supply the paper.

References:

Electronic copies, if available, are free of charge minus the cost of printing, which the reader would reasonably be expected to carry out on his or her own. Some entities might agree to photocopy copies of annual reports in case the internal library copies are low, and the normal practice is to charge a nominal per-page fee, to recover cost of paper and toner.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | **NO**

Comments:

By virtue of the entities being declared as commercial enterprises, the department seeks to have them operate as accountable and transparent as a private company while ensuring that their operations are in the best interest of the general public. Furthermore, the Office of the Auditor General also maintains an oversight on these entities and signs off on their annual reports.

References:

The Public Enterprise Act sets the legal mandate for the Minister of Public Enterprises to oversee affairs of the 100 percent-owned Government Commercial Companies and Commercial Statutory Authorities. The department, on behalf of the minister, monitors these entities and has oversight on their financials, governance and strategic direction.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

72

V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

88

70a. In law, anyone may apply for a business license.

YES | **NO**

Comments:

In the Business License Act, anyone can apply for a business. Non-citizens must provide a certificate of approval from the Fiji Trade and Investment Board.

If a business license application is not approved, the applicant is advised to relocate to another area where that particular type of business can operate. eg: a car wash or a garage can only operate from Bhindi Street in Vatuwaqa (as that is an industrial area in Suva), but cannot operate from Salato Rd in Namadi (a residential area) or a takeaway can only be allowed in Cumming street (commercial area) but not in Nasese (residential area).

References:

Business License Act

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | **NO**

Comments:

Apart from general recourse to the courts, specific grievances are handled in specific laws. For instance, the Business License Act allows for appeal from decision of Divisional Liquor Licensing Authority as follows: Subject to the provisions of Section 23. Any applicant or objector who is aggrieved by the decision of an authority may, if dissatisfied with such decision as being erroneous in point of law, apply to the Central Liquor Board in writing within 21 days from the date of notification to him of the decision."

The Business License Fee review has been carried out under the provision of Section 17(2) of the Business License Act, Cap 204.

References:

Section 17(2) of the Business License Act, Cap 204.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

The business license is valid for one year. If a new business starts in June, the department gives them a pro-rated fee, as all licenses expire on the 31st of December, 2008 or according to the year of operation.

References:

Salite Kurua , FIRCA Industrial Relations Officer , 8th of October, 2008.

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | **75** | 50 | 25 | 0

References:

Salite Kurua , FIRCA Industrial Relation Officer, 8th of October, 2008.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | **NO**

Comments:

There are regulatory requirements. All restaurant owners, motels, hotels, butchers, hair salons and the like have to obtain a health permit first before they can pay business license fees. This is to ensure that they have complied with all health requirements.

References:

Salite Kurua, FIRCA Industrial Relation Officer, 8th of October, 2008.

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | **NO**

References:

These are included in the Business License Act.

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | **NO**

Comments:

These are in the Business License Act.

References:
Salite Kurua, FIRCA industrial relation officer, 8th of October, 2008.

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

67

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Yes, inspection is carried out prior to the construction of any building, and also the completion of the building for business purposes. For restaurants, random checks are carried out. If it doesn't meet the standard under the Business License Act, it can be closed by the officials.

References:

Salite Kurua, FIRCA Industrial Relation Officer, 8th of October, 2008.

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Salite Kurua, FIRCA Industrial Relation Officer, 8th of October, 2008.

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Completion certificates are issued to the license holder if the officials are satisfied and all the requirement in the Business license Act, which include fire and health standards, are complied with.

References:

Salite Kurua, FIRCA Industrial Relation Officer, 8th of October, 2008.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁷⁹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

This promulgation was issued by the interim government in 2007 to create legislation to prevent bribery, corruption, electoral fraud and misconduct in public office.

References:

Interim Government of the Republic of the Fiji Islands (2007). Prevention of Bribery Promulgation."

Section 376 (a) Penal code Covers attempt to obtain and not attempt to give.
Section 106 refers to public officials.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | **NO**

Comments:

Public officials were charged with extortion in 2008 by the Fiji Independent Commission Against Corruption.

References:

Interim government of the Republic of the Fiji Islands (2007). Prevention of Bribery Promulgation."

Section 376 (b) Penal code refers to extortion by public officials.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | **NO**

References:

Interim government of the Republic of the Fiji Islands (2007). Prevention of Bribery Promulgation."
section 4 (1).

Section 376 (b) of Penal code states that it is illegal.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | **NO**

References:

Interim Government of the Republic of the Fiji Islands (2007). Prevention of Bribery Promulgation."

Section 376 (a) states it is illegal.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | **NO**

Comments:

The word "any person" in section 376 of the Criminal Code also covers foreign officials.

References:

Interim government of the Republic of the Fiji Islands (2007). Prevention of Bribery Promulgation."

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | **NO**

References:

Interim Government of the Republic of the Fiji Islands (2007). Prevention of Bribery Promulgation."

Section 106 and 107 of Penal Code.

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | **NO**

Comments:

Public servants are bound by the Official Secrets Act of the United Kingdom 1911-1920.

References:

<http://www.psc.gov.fj/Publications/PSC%20Circulars/2008%20PSC%20Circulars/PSC%20Circular%2017-%20Contract%20of%20Service.pdf>

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | **NO**

References:

Proceeds of Crime Act 1998.

The World Bank (2006). DETAILED ASSESSMENT REPORT ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM Fiji FINAL." online at <http://www.apgml.org/jurisdictions/default.aspx?JurisdictionID=7>

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | **NO**

References:

Interim Government of the Republic of the Fiji Islands (2007). Prevention of Bribery Promulgation." Section 12A.

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

61

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | **NO**

Comments:

All the comments in this review of Fiji are written in the context of post-coup institutions, which have been legitimized in the domestic courts, but whose legitimacy remains suspect to significant groups both inside and outside the country.

As FICAC is still a new institution with relatively little history, it is as hard to determine the extent of presidential influence over its activities, in practice.

References:

Under the interim government of the Republic of the Fiji Islands (2007). Fiji Independent Commission Against Corruption Promulgation 2007: the commissioner is subject only to the orders and control of the president (Sect 5). Other officers of the commission are appointed by the president on the advice of the commissioner.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

FICAC initiated investigations against Rajendra Chaudhry, son of then-Finance Minister Mahendra Chaudhary. Media discussion focused on whether FICAC would remain free of political interference in such cases. It may be too early in the life of this institution to say whether it is, in practice, able to maintain its independence.

References:

Fiji Interim minister's son charged with obstruction", 14 April <http://www.radioaustralia.net.au/programguide/stories/200804/s2217776.htm>

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

The first appointment to the position of commissioner, Mah Weng Kwai, president of the LawAsia, faced much criticism for accepting the appointment, and did not take up the post. (Fiji Times 6 June 2007).

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.



References:

Maraia Vavaitamana, Fiji Independent Commission Against Corruption, Suva, 9 September.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.



Comments:

FICAC has a staff of 56.

References:

Maraia Vavaitamana, Fiji Independent Commission Against Corruption, Suva, 9 September.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.



References:

Maraia Vavaitamana, Fiji Independent Commission Against Corruption, Suva, 9 September.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The agency has only been established for one year and has not yet issued many reports.

References:

Maraia Vavaitamana, Fiji Independent Commission Against Corruption, Suva, 9 September.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Staff of FICAC say they are well equipped with powers to search, investigate, and prosecute. Opponents of the commission, however, say that the commission's powers are too extensive. Others challenge the legitimacy of the institution as a whole, as it has been appointed by the interim government, which is a military and unelected government.

References:

Maraia Vavaitamana, Fiji Independent Commission Against Corruption, Suva, 9 September.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

FICAC has initiated investigations into a number of figures from the government of Prime Minister Qarase, including the former prime minister himself. However, the course of investigations has led to friction with other sections of government. The head of the tax office refused to hand FICAC tax records for suspended Chief Justice Daniel Fatiaki, resulting in the tax head's removal from office. In addition, a number of cases that appear to involve figures in the interim administration have quite clearly not been investigated, including allegations of misuse of military funds, and tax evasion by members of cabinet.

References:

Fiji Times 25 February, Qarase interviewed by FICAC: 3rd time" online at <http://www.fijitimes.com/story.aspx?id=82307>.

"Tax man faces axe" Fiji Times, 18 July 2007 online at <http://www.fijitimes.com/story.aspx?id=66592>

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

88

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

FICAC received more than 1000 complaints about government departments and officers in its first year of existence.

References:

Radio Fiji, Land disputes tops FICAC complaints," February 19, 2008, online at <http://www.radiofiji.com.fj/bula-fm/fullstory.php?id=8672>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Media reports suggest that the public is complaining to FICAC about a range of issues, including alleged corruption in the timber industry, and in the operation of provincial councils.

References:

Fiji live, "FICAC probes Fiji sandalwood scam", 26/09/2008, online
at http://www.fijilive.com/news_new/index.php/news/show_news/8998

"Tempers flare at meet", THERESA RALOGAIVAU, Fiji Times, Thursday, October 16, 2008, online
at <http://www.fijitimes.com/story.aspx?id=103517>

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

The Fiji Independent Commission Against Corruption was established by promulgation in 2007.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

83

VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES | NO

References:

This is in the constitution: Section 121 Jurisdiction of Court of Appeal.

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

High Profile and politically important cases have been considerably delayed. One of these concerned the former prime minister Qarase's challenge to the legality of his overthrow by the military, others concern charges of treason against a collection of former military personnel and prominent businessmen.

References:

Case delay concern for Rewa Co-operative", Fiji Times, Sunday, October 05, 2008, online at <http://www.fijitimes.com/story.aspx?id=102700>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The appeals mechanism exists but can be very expensive and thus not accessible.

References:

Semesa Karavaki, former electoral commissioner, Suva, 5th of October 2008.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

75

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Judgments follow the criminal law. Individuals have a right to appeal, which acts as a corrective in cases where a lower court may have erred.

References:

Semesa Karavaki, former electoral commissioner, Suva, 5th of October 2008.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

75

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

Semesa Karavaki, former electoral commissioner, Suva, 5th of October 2008.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

63

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

The independence of the courts is being seriously tested, and in instances, it may not be seen as independent. This point is somewhat controversial. Some judges opted to not renew their contracts in Fiji following the military's takeover of executive power in December 2006. On the other hand, new judges have taken office. A challenge to the legality of the coup sought by ousted Prime Minister Qarase was dismissed in a judgment in October 2008.

References:

Judicial independence is set out in the 1997 Constitution: Chapter 9 Judiciary – Section 118 Independence of judicial branch. The judges of the State are independent of the legislative and executive branches of government.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In a strictly formal sense, the courts would say that all judges are constitutionally protected from political interference.

References:

Judges concerned over Fiji judicial independence.", Pacific Islands Broadcasting Association, publication date: 13-NOV-07.

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:
Semesa Karavaki, former electoral commissioner, Suva, 5th of October 2008.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | **NO**

References:
Appointment (Section 132) and removal of judges are protected under the constitution. Judges cannot be removed without just cause. (Section 138)

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | **NO**

Comments:
In the past year, judges have been able to adjudicate corruption cases without threat, coercion or intimidation. Note the "agriculture scam" case (State v Kunatuba, State v Peter Alifereti), and magistrates and judges have been able to address administrative and legal issues pertaining to cases brought by FICAC without any influence from outside the judicial process.

References:
Romulo Nayacalevu, UNHCR Legal Officer, Suva, 10 November.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | **NO**

References:
Romulo Nayacalevu, UNHCR Legal Officer, Suva, 10 November.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

68

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

The constitution guarantees equal access to justice for all citizens (Section 29) and this has been confirmed by the high court in Silatolu v the State, Criminal Action HAC 001 of 2001.

Romulo Nayacalevu, UNHCR Legal Officer, Suva, 10 November.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Women are not as successful in gaining custody of children in divorce cases. Women who commit infanticide are charged with murder and get 10 years rather than 3.

References:

Peni Moore, Women's Action for Change, November 20, Suva.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | **NO**

Comments:

Yes, through the Fiji Legal Aid scheme. The legal Aid Scheme in Fiji is implemented under the Legal Aid Act 1996 by the Legal Aid Commission. The Legal Aid Commission was established on 15 July 1998, as a new regime to provide legal services to the impoverished and disadvantaged community of Fiji. Previously, legal aid was administered by the Chief Registrar's Office.

The commission administers the legal aid scheme from funds derived from the annual budgetary allocation from government, and from the interest earned on solicitors' trust accounts under the Trust Accounts Act 1996.

References:

Office of the Attorney General, online at <http://www.ag.gov.fj/default.aspx?page=legalAid>.

Legal Aid Act 1996 online at <http://documents.ag.gov.fj/LegalAidAct1996.pdf>.

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | **50** | 25 | 0

Comments:

State is providing more than required, but the lawyers are not putting 10 percent of their trust fund, as required.

References:

Peni Moore, Women's Action for Change, 20 November.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

**Comments:**

In practice, it will depend on the nature of the legal suit. The cost of a family case legal is much lower than a civil suit, which is often very expensive.

References:

Romulo Nayacalevu, UNHCR Legal Officer, Suva, 10 November.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

**Comments:**

The cost of litigation is always very high. Depending on who the other party is or may be, the legal costs involved could be on a high scale.

References:

Romulo Nayacalevu, UNHCR Legal Officer, Suva, 10 November.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

**Comments:**

Cases need to be brought to court where the offense occurred, nor where transaction occurred.

References:

Semesa Karavaki, former electoral commissioner, Suva, 5th of October 2008.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

42

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Nepotism is said to still continue, with appointments and promotions being made along provincial and kinship lines.

There exist a criteria for selection to various post within the Fiji police, according to the job description for the post. In practice there are times when these have been overlooked, especially if the criteria fit but the officer has been assessed to have the potential for the post.

References:

Interview with a corporal in the Fiji Police, Suva, 1st October 2008.

Interview with another member of the Fiji Police force, Suva, 10 November 2008.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The Fiji police have had a chronic shortage of operational budget. In the 2008 budget, the police allocation was increased, although there is concern that the increase is insufficient and that it has not necessarily been matched with full consideration of how it can best be used.

It is quite effective, given the limitation and budget constraints. The current detection rate is around 60 percent, which is one of the highest in the world. However, unscheduled operations, make it difficult for the force to operate.

References:

MAHENDRA REDDY, Inward looking Budget 2008," Fiji Times online at <http://www.fijitimes.com/story.aspx?id=74947>, accessed 6 November 2008

Interview with a corporal in the Fiji Police, Suva, 1st October 2008.

Interview with another member of the Fiji Police force, Suva, 10 November 2008.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

With the appointment to the position of commissioner of police of a senior military figure who has no previous police experience, there is a public perception that the police have little independence under the current military regime.

By and large the Fiji police force acts unilaterally without political presence, but these are times when political exigencies have been used to pressure decision making.

References:

Fiji military chief, made head of police", <http://www.theage.com.au/news/World/Fiji-military-chief-made-head-of-police/2007/06/08/1181089313332.html> – accessed 6 November 2008.

Interview with a member of the Fiji Police force, Suva, 10 November.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

75

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | **NO**

Comments:

The general norm is for a complaint to be lodged at a police station. Since December 2006 there have been several high profile grievances against policy brutality. These can be reported to the Fiji Human Rights Commission and the Ombudsman.

All police officers are accountable for decision and action taken. Illegal and suspension acts order complaints are investigated either by individual investigation/ ethics units, the internal audit unit or CID. The officer are liable and can be charged with criminal offenses.

References:

Interview with a corporal in the Fiji Police, Suva, 1st October 2008.

Interview with another member of the Fiji Police force, Suva, 10 November 2008.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

The most prominent cases are of Sakiusa Rabaka, who was killed in February 2007 by eight army officers and a police officer; Tevita Malasebe, who died on 4th June 2007 from injuries sustained during police interrogation; Joseva Baleiloa, who died on September 16, 2008 from injuries sustained during his arrest. In the Malasebe case, two police officers were sentenced; in the Sakiusa Rabaka case, officers have been charged but there has been no conviction; and in the case of Baleiloa, there has not been an investigation.

Officially, all complaints against officers are investigated. When an offense has been committed, relevant charge are laid. It is now compulsory for the victims/complaints to be regularly informed of the progress of investigation against the officers.

References:

Fiji: Perpetrators of police brutality must be brought to justice", amnesty International Report, 30 July 2008, online at <http://www.amnesty.org/en/library/info/ASA18/001/2008/en>

Interview with a member of the Fiji Police force, 10/11/2008.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | **NO**

Comments:

Corruption is a crime and all corruption allegations are investigate by CID. However FICAC has now has taken over investigation of all the allegations of corruption by public official including police officers.

References:

The Fiji Independent Commission Against Corruption (FICAC) was established by promulgation in 2007 to meet the challenges of corruption in all government agencies, including the police.

Interview with a member of the Fiji police force, 10/11/2008.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

Whenever there is allegation of corruption, an initial investigation is done to establish its credibility. If there is evidence, the officer is suspended pending the investigation offense. Often he is on half pay during the suspension period.

References:

Maraia Vavaitamana, Fiji Independent Commission Against Corruption, Suva, 9 September.

Interview with a member of the Fiji Police force, 10/11/2008.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Penal Code

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

In the period of military administration (since December 2006) a number of law enforcement officers have been brought before the courts on charges of murder or manslaughter, in cases where persons detained by the police died during the processes of capture or questioning. In some cases, members of the policy and the military were only charged following considerable public outcries about delayed justice.

In practice, once investigation produces evidence of a criminal act, the investigation file must be forwarded to the DPP, who will independently assess the evidence and decide whether to lay charge or not. DPP also can return the investigation file with further direction and instructions. The file is returned to the DPP when these instructions have been met.

References:

Fiji Times (various dates)

Interview with a member of the Fiji Police force, 10/11/2008.

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.