

# ANTI-CORRUPTION HELPDESK

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## CORRUPTION AND ANTI-CORRUPTION IN FIJI

### QUERY

Could you provide an overview of corruption and anti-corruption in Fiji?

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### CAVEAT

Recent literature and in-depth research on corruption and the impact of corruption on specific sectors in the country are limited.

### SUMMARY

Fiji is situated below the global average in terms of its performance on international corruption measurement indicators and performs poorly in terms of the rule of law.

Like many Pacific Island Countries, political corruption and nepotism stand out as the main corruption risks in Fiji, whereas citizens' experience of bribery is low.

The interim government that took power in the 2006 coup used the anti-corruption discourse, together with the defence of multiracialism, to legitimise overthrowing the elected government. It has since systematically weakened the country's democratic institutions, reduced civil society space, and silenced opponents and the media. Some positive developments are to be noted, however, slowly bringing the country back on the path towards full democracy.

## 1 OVERVIEW OF CORRUPTION IN FIJI

### Background

Fiji's corruption and governance standing is embedded in its economic and geographical context as well as in its recent political history.

Fiji is classified as a lower middle income country with a GDP per capita just under US\$4,500. The country's main income sources are the tourism, sugar and fishing industries. The sugar industry is going through a crisis after the 2009 flood and the end of the country's special access agreement to the European market. Fiji has recently started to attract mining companies interested in exploring the country's potential resources of gold, bauxite, manganese and hydrocarbons, among others. Fiji's economy was affected by the recent economic and financial crisis coupled with the suspension of foreign aid (see below), although it is now starting to recover. The health of the country's economy is of concern for the region as a whole since many small island countries depend on Fiji for transportation and shipping (France Diplomatie 2012).

Fiji became an independent member of the Commonwealth in 1970 and has experienced political tension and instability since, largely originating from the rivalry between indigenous Fijians and Indo-Fijians (Freedom House 2012). The country was the scene of several coups in the last decades – the latest to date being in 2006, which placed Commodore Bainimarama at the head of the country. Bainimarama's campaign was built around the leitmotiv of multiracialism and the need to "clean up" the country from corruption, which has since served to dismiss many existing public officials, close civil society space, silence political opponents and slowly create an autocratic regime. The interim government dissolved the Parliament in 2006 and adopted the Public Emergency Regulations in 2007, authorising security forces to arrest people without warrant and limiting civil and political rights (US Department of State 2011). In 2009, Bainimarama's government abrogated the Constitution of Fiji.

The international community strongly condemned the 2006 coup; Fiji was suspended from the Pacific Islands Forum and donors reduced or suspended aid to the country (France Diplomatie 2012). Consequently, Fiji increasingly turned to China to stimulate foreign investments (Freedom House 2012).

Recent improvements are notable, however, with the revocation of the Public Emergency Regulations on 7 January 2013, negotiations around a new constitution and elections scheduled for 2014 (France Diplomatie 2012).

### Extent of corruption

The World Bank's Worldwide Governance Indicators (WGI) place Fiji in the lower half of the percentile ranks – with a score of 38 on a scale of 0 to 100 – in terms of control of corruption. Fiji's score has dropped significantly since 2002 (59) and has since fluctuated. Fiji's score dropped by almost 20 points between 2004 and 2005 and lost 10 points again between 2008 and 2009. It made a notable 20 point upswing between 2010 and 2011.

The country's score on rule of law (20) places the country in the lower quarter of the percentile ranks. It has dropped quite significantly since 2006 (52), which coincides with Bainimarama's military coup.

Transparency International's Global Corruption Barometer 2010-2011 indicates that citizens' opinion on corruption is almost evenly divided: 53 per cent thinking that the level of corruption decreased in the last year and 47 per cent considering that it has increased or stayed the same. Political parties, the private sector and the public administration are seen by citizens as the most corrupt institutions of the country.

### Forms of corruption

#### *Petty and bureaucratic corruption*

The US Department of State, in its Human Rights Report on Fiji, states that bureaucratic corruption in Fiji is systemic. According to the World Bank's

Enterprise Survey 2009, more than 35 per cent of the firms polled consider corruption as a major constraint for doing business in the country.

Even though petty corruption and bribery happen in Fiji through small payments made to “grease the wheel” of local bureaucracy (Chêne 2010), they do not, however, appear as a significant problem in the country. Only 13 per cent of the citizens surveyed by Transparency International’s Global Corruption Barometer 2010-2011 reported having paid a bribe in the last 12 months. Similarly, only 10 per cent of the firms polled by the World Bank’s Enterprise Survey 2009 expect to give gifts to public officials “to get things done”. Some areas of Fiji’s administration appear more corruption-prone in this survey, such as electricity or water suppliers.

The World Bank/International Finance Corporation’s 2013 report *Doing Business on Fiji* does not indicate bribery as an extra cost for starting a business dealing with construction permits, getting electricity, registering property or securing/enforcing a contract.

### *Grand corruption*

Little information is available to assess the breadth of grand corruption in Fiji. The World Bank Enterprise Survey 2009 indicates that only 3 per cent of the polled firms expected to have to pay bribes to secure a government contract.

In 2008, Global Integrity qualified the integrity of Fiji’s procurement structure as weak. Procurement procedures in Fiji are governed by the Fiji Procurement Regulations of 2010 which strengthened the existing legal framework. This text provides for the creation of a procurement office to oversee government procurement and to advise ministries and departments.

According to the International Budget Partnership (IBP), Fiji provides limited information to its citizens on the country’s budget. On the IBP’s Open Budget Index 2012, Fiji scores 6 on a scale of 0 (no information) to 100 (extensive information).

### *Political corruption*

Official and political corruption are a serious and widespread problem in Fiji. Politicians often engage in corrupt activities with impunity; this has been a key challenge for governments ever since independence (US Department of State 2011).

Since January 2013, political parties are strictly regulated by the Political Parties (Registration, Conduct, Funding and Disclosures) Decree. In an article published by Radio New Zealand International, Pr. Ratuva from the University of Auckland says that political parties in Fiji have contributed to political instability through ethnic mobilisation and interference with the administration; and that this new decree, instead of encouraging a more democratic system, severely limits access to the political process (Radio New Zealand International 2013). For example, the decree requires signatures of 5,000 citizens as party members to be able to register as a party – among a total population of 868,400. New Zealand, with a population of over four million, requires that parties have 500 members.

In Fiji, traditionally, distributing and offering small gifts to chiefs and voters in a transparent manner is “an integral part of election campaigns” (Larmour 2012). Freedom House states that Fiji is not an electoral democracy. Since the military coup in 2006 and the suspension of the Constitution in 2009, Bainimarama’s interim government has systematically postponed elections and ruled by decree.

Lastly, the current political situation in Fiji led to a situation in which the prime minister, on top of being the head of government, had multiple portfolios, some of which present potential conflicts of interests: Bainimarama is also the Minister of Finance, the Minister of Information, the Minister of Land and Mineral Resources, and the Minister of Public Service, among others.

### *Nepotism and cronyism*

Nepotism is common and widespread in Fiji. Appointments, recruitments and promotion in the civil

service and state-owned enterprises oftentimes depend on ethnic or political affiliations and loyalty to Bainimarama's government (Global Integrity 2008).

Nepotism and favouritism have a long history in Fiji and, prior to the 2006 coup, many affirmative action projects aiming at promoting indigenous Fijian and other marginalised groups were suspected to result in unethical and personal appointments and attribution of scholarships, among others (Transparency International 2001).

### *Money laundering and organised crime*

Fiji is not a significant regional financial centre, but its geographical situation makes the country a regional hub for shipping and transportation to Australia and New Zealand as well as other Pacific Islands.

The general level of crime is rather low in Fiji (World Bank 2006), but a number of notable cases of drug trafficking as well as human trafficking and migrant smuggling have been reported in the country, also involving transnational criminal gangs operating in the country (US Department of State 2012).

Commercial sexual exploitation of children and women is a continuous problem in Fiji. Fiji is a source country for children subjected to internal trafficking and a destination country for men and women subjected to forced labour and prostitution (US Department of State 2012).

Little information is available on any money-laundering risks in Fiji.

### *Fisheries*

Fiji's economy is largely based on the fishing industry with an Exclusive Economic Zone (EEZ) exceeding 1,200,000 square kilometres. Experts state that fisheries in Pacific Island Countries are increasingly becoming a site for corruption (UNDP 2007).

Most problems that Fiji's fishing industry faces are common to all Pacific Islands. A study prepared in 2007 for the Australian National Centre for Ocean Resources & Security states that the areas of fishing

licensing, access agreements, and monitoring and inspection are the most vulnerable to corruption. The weak legal and administrative frameworks combined with discretion and a lack of transparency create significant corruption risks. Corruption occurs both at the "low level", where bribes in the form of fish, gifts, holidays, excessive per diems or tuition fees at academic institutions are given to public officials and their families; and at a higher level, involving large financial transactions, political interference in administrative practices and organised criminal behaviour (Hanish and Tsamenyi 2007). In Fiji, allegations of corruption in the issuing of licences are frequent, most of them in relation to foreign companies buying licences in periods of over-fishing. In the mid-2000s, a Committee of Inquiry was set up in the Ministry of Fishery to investigate corruption cases (Hanish and Tsamenyi 2009).

Corruption in fisheries has a considerable impact on daily life and sustainable development in the region. On top of siphoning off revenues and resources, it threatens to deepen the issue of over-fishing and to destroy customary fishing practices, mainly through incapacitating fisheries management institutions and circumventing existing fishing regulations (Hanish and Tsamenyi 2008). The Pacific Islands are heavily dependent on fisheries for their economy but also as the main source of food (Hanish and Tsamenyi 2007), making the issue even more crucial.

### *Mining industry*

As mining becomes an increasingly important part of Fiji's economy, the country will have to set up safeguards to protect itself from the "resource curse". Currently, little information is to be found on Fiji's governance structure and corruption risks for the mining industry. Given the issues Fiji faces with regards to the issuance of fishing licences, there could be significant concerns in relation to the potential impact of a corrupt mining sector on the environment, land administration and cultural heritage, among others.

## 2 GOVERNANCE STRUCTURE AND ANTI-CORRUPTION EFFORTS IN FIJI

During the 2006 coup, Bainimarama systematically used the anti-corruption discourse and vowed to “clean up” Fiji’s widespread corruption. Although many improvements were achieved since the interim government took power, such as the establishment of Fiji’s Independent Commission against Corruption and the ratification of the United Nations Convention against Corruption, among others, it is important to note that experts consider the anti-corruption campaign politically partial, arbitrary, vengeful and ineffective (Larmour 2008).

Interestingly, Transparency International’s Global Corruption Barometer 2010-2011 shows that a vast majority (88 per cent) of the polled citizens consider the government to be effective or very effective in fighting corruption.

## Legal framework

### *International conventions*

Fiji is a state party to the United Nations Convention against Corruption (UNCAC) since 14 May 2008. Fiji was part of the first group of countries reviewed in the framework of the Implementation Review Mechanism and the executive summary is public and accessible on the United Nations Office on Drugs and Crime (UNODC) website. The convention is not self-executing in Fiji, meaning that it is not automatically transposed into national law, and there is no one piece of legislation that implements the convention as a whole into domestic law.

Since 1993, Fiji is also a state party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

The country is, however, not a state party to the 2000 Palermo Convention on Transnational Organised Crime or its supplementing protocols.

### *National legislation*

Fiji’s Crimes Decree of 2009 and Prevention of Bribery Promulgation (POBP) of 2007 cover bribery offences. Fiji has criminalised passive and active bribery of public officials; the POBP and the decree forbid the act of offering, giving and promising a bribe

(active bribery) and the act of soliciting, asking for, agreeing to and accepting a bribe (passive bribery). Fiji’s legislative framework covers the use of intermediaries and third parties in bribery. It is unclear whether bribery of foreign officials is criminalised in Fiji; the POBP covers conduct both within and outside the country, but its definition of public officials does not specifically refer to foreign public officials. Similarly, there is a lack of clarity about the liability of legal persons for bribery since there is no guidance on the circumstances under which a company is deemed responsible for the act of a natural person. Besides the lack of clarity, the Organisation for Economic Co-operation and Development (OECD) points to the insufficient sanctions under the POBP that would not discourage large corporations from engaging in corrupt practices (ADB/OECD 2011). Money laundering is a crime under the Proceeds of Crime Act of 2004 and the Financial Transactions Reporting Act of 2004.

Fiji’s Penal Code and Crimes Decree criminalise misappropriation, embezzlement and other diversion of property by public officials. However, regulations regarding conflicts of interest are limited in Fiji. The POBP mentions illicit enrichment, but the disclosure of interests and assets is not required by law. For a time, members of parliament and government officials would file their declaration of assets with the prime minister at his demand, but these declarations were not publicly available. The country has not adopted any specific legislation or regulations regarding gifts and hospitality.

Political financing is heavily restricted since January 2013. The Political Parties (Registration, Conduct, Funding and Disclosures) Decree of 2013 bans all foreign contributions to political parties and individual candidates as well as any corporate donations. Only individuals are allowed to make donations to political parties and candidates, and these cannot exceed 10,000 Fiji dollar (US\$4,850) per year. Parties and candidates ought to disclose the identity of their donors and must submit a financial report to the Registrar of the Fiji Elections Office within 30 days from the end of the financial year, and they also must submit a statement of their assets and liabilities 30 days before an election (IDEA 2012).

No information could be found indicating that Fiji has adopted proper whistleblower protection legislation or established mechanisms through which corruption can be safely and anonymously reported. The Fiji Independent Commission against Corruption (FICAC) acknowledges the importance of whistleblower protection on its website and the FICAC Promulgation of 2007 guarantees the confidentiality of whistleblowers without further provisions.

Fiji does not yet have an access/freedom of information law allowing citizens and media to access government information.

## Institutional framework

### *Financial intelligence unit*

Fiji's Financial Intelligence Unit (FIU) was established in 2006 under the Financial Transactions Reporting Act of 2004. The FIU is hosted, funded and administered by the Reserve Bank of Fiji. The role of the FIU is to receive all Suspicious Transaction Reports, analyse the information and develop intelligence, refer information about potential money laundering activities and offences to relevant law enforcement agencies and assist the investigation and prosecution of cases, issue policy and guidelines, and provide training and education.

The FIU is formally independent, but the administrative and financial support it receives from the Reserve Bank of Fiji challenges its independence.

Fiji's FIU is rather efficient. In 2011, it analysed 728 suspicious transaction reports, handled over 600,000 cash transaction and electronic fund transfers reports, disseminated 318 intelligence reports to law enforcement, issued 6 notices to financial institutions about suspicious persons, and assisted a number of investigations, among others (Fiji Financial Intelligence Unit 2011). The FIU has a functioning and up-to-date website featuring the unit's annual reports.

Fiji's FIU is a member of the Egmont Group of

Financial Intelligence Units.

### *Judiciary*

Fiji's judicial system is independent by law, but in practice, the reality is often different. Since the military coup of 2006, the interim government has systematically interfered with the judiciary's independence (US Department of State 2011).

When the Constitution was suspended in 2009, the judges in exercise were dismissed and replaced by appointees of the interim government, seriously challenging the independence of the judiciary (Freedom House 2012). As previously mentioned, the interim government has, since 2006, ruled by decree. It adopted the Administration of Justice Decree in 2009, prohibiting the judiciary from investigating cases relating to the 2006 military coup, from looking into the acts of the interim government and the abrogation of the Constitution as well as any government decree after the end of 2006. A 2010 amendment to this act further limits the jurisdiction of the country's courts on decisions made by the executive power (US Department of State 2011).

The Heritage Foundation echoes this concern about the lack of independence of Fiji's judiciary. It states that the respect for the rule of law has significantly worsened and that country does not have an effective and independent legal system. Fiji also experiences significant judicial backlog, making the judiciary slow and augmenting impunity. Moreover, political interference has risen and judicial corruption has become a major challenge to Fiji's governance structure (Heritage Foundation 2012).

### *Anti-Corruption commission*

The Fiji Independent Commission against Corruption (FICAC) was established after the adoption of the FICAC Promulgation of 2007, with the mandate to spearhead the fight against corruption in Fiji and the promotion of integrity, accountability and transparency. The FICAC was set up to investigate and prosecute corruption and bribery cases, to guide the government's anti-corruption efforts, and to raise awareness and educate citizens. It is notable that the

promulgation was adopted in the absence of Parliament by a government decree without parliamentary debate (Larmour 2008).

The FICAC proclaims its independence from the government, but, in practice, it is seen as answering to the president. In a 2008 report, Larmour quotes a civil society representative questioning the independence and impartiality of an institution that does not report to a representative body; he points to the recruitment procedures that could challenge the independence of the FICAC and to the risks of personal grudges interfering with the entity's decisions.

The FICAC is truly more concerned about prosecuting corruption than preventing corruption, Larmour says. The promulgation gives the FICAC the mandate to arrest suspects without arrest warrant and to prosecute them without the prior agreement of the director of public prosecutions.

The executive summary of Fiji's 2012 Review of Implementation of UNCAC states that the FICAC does not have sufficiently experienced and trained prosecutors and investigators, and that it lacks qualified forensic auditors.

### *Supreme audit institution (SAI)*

The Office of the Auditor General was created by the Audit Act of 1971. The independence and prerogatives of the auditor general were further strengthened by the Constitution Amendment Act of 1997 and the Audit Amendment Act of 2006.

According to Global Integrity's 2008 Integrity Report Card, Fiji's audit office is sufficiently protected against political interference. In 2008, however, the auditor general announced that, in the absence of Parliament, the audit report would be submitted to the Cabinet and would not be made publicly accessible (US Department of State 2011). This practice has been maintained ever since and seriously challenges the independence and credibility of the institution. The International Budget

Partnership qualifies the audit office as weak, indicating that the agreement of the legislative or judicial power is not required to dismiss the head of the audit office, that it does not have full discretion to decide which audits should occur, and that it does not have sufficient financial and human resources.

As of January 2013, it was impossible to access the audit office's website. This paper can, therefore, not assess the transparency of the institution and the amount of information available to the public.

Fiji's audit office is part of the Pacific Association of Supreme Audit Institutions (PASAI) which gives its 25 member states a space to exchange and support each other with regards to their supreme audit institutions.

### *Office of the ombudsman*

Fiji's Ombudsman Act of 1998 provides for the establishment of the Office of the Ombudsman to investigate abuse and misadministration in government departments.

However, since the abrogation of the Constitution in 2009, the resources allocated to the ombudsman office have been drastically reduced, making the institution ineffective (US Department of State 2011). Publicly available information does not indicate any recent activities involving the ombudsman office.

### *Elections office*

Fiji has not held any elections since 2006, making the Elections Office irrelevant. The country has, however, scheduled elections to be held in 2014 after the drafting and adoption of the new constitution planned for 2013 which reinstates the need for an electoral oversight body.

Fiji's Elections Office is now functional and receives funds from donors to undertake its multiple tasks. Fiji has initiated an electronic voters registration system and the recent efforts of the government to allow for democratic elections in 2014 are welcomed by the international community.

The office is placed under the attorney general, who is also the minister of justice, which presents certain challenges to the independence of the institution. Very little information is available with regards to the integrity and efficiency of the office.

## Other actors

### Media

The Constitution provides for freedom of speech and freedom of the press, but the text was abrogated in 2009 and, in practice, the military government does not respect these rights. The press is systematically censored by the government (Freedom House 2013). Reporters Without Borders ranks Fiji 107th out of 179 on its Press Freedom Index 2013.

The Media Industry Development Decree was adopted in 2010, giving the government the right to seize any documentation, material and equipment in newsroom on the basis of ambiguous complaints. It also created the Fiji Media Industry Development Authority as well as a special tribunal to impose sanctions on journalists considered against the “public order” (Freedom House 2012).

Media outlets in Fiji cannot be foreign-owned to more than 10 per cent, and in 2010, Richard Murdoch was forced to sell the Fiji Times to a local company. The editorial team – consisting of strong critics of the government – was then replaced. (Pacific Journal Review 2011).

There is no government restriction on the internet, but the government monitors the traffic on the internet to track criticisms of the government in the blogosphere (Freedom House 2012).

### Civil society

The abrogated Constitution provided for the right to freedom of assembly and association, but these have not been respected by the government since the 2006 coup. The Public Emergency Regulations<sup>1</sup> severely restricts civil society space; it gives the government the power to forbid marches and events

organised by civil society as well as the power to regulate the use of public and private space for political meetings involving more than three individuals. The government does not restrict the right to participate in the activities of civil society organisations (CSOs), but oftentimes it forbids them from holding meetings (US Department of State 2011).

CIVICUS indicates that there have been signs of civil society strengthening in the last years, with CSOs forming alliances and organising joint activities (CIVICUS 2010).

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