



National Integrity Systems

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Abbreviations

ADB	Asia Development Bank
AG	Attorney General
Compact 1	Compact of Free Association between the United States and the Federated States of Micronesia, 1986
Compact 2	Compact of Free Association between the United States and the Federated States of Micronesia, as amended, 2003
CMNI	Commonwealth of the Northern Mariana Islands
CSC	Chuuk State Code
FSM	Federated States of Micronesia
FSMC	Federated States of Micronesia Code
KSC	Kosrae State Code
Micsem	Micronesian Seminar
NGO	Non governmental organization
NIS	National integrity system
PSC	Pohnpei State Code
RMI	Republic of Marshall Islands
YSC	Yap State Code
JEMC	Joint Economic Management Committee
OECD	Organization of Economic Cooperation and Development
PIANZEA	Pacific Islands, Australia and New Zealand Electoral Association
US	United States of America

Introductory Section

Executive Summary

The Federated States of Micronesia (FSM) with a population of approximately 110,000 is spread out across 3 million square miles of Pacific Ocean, just north of the equator. Official definitions of corruption in FSM are implicit in the penal provisions which conform to western values and are consistent with western notions of rule of law. Indeed, the political institutions of FSM are built upon US models, the country is heavily dependant on US aid, and uses the US dollar as the official currency. Yet FSM today is a transitional society; an amalgam of Micronesian and American values. Thus one cannot analyse the issue of corruption within the Federated States of Micronesia (FSM) without understanding the contrast of traditional cultural values with those of more westernised democracies. In FSM it is very improper to openly criticize others or to cause someone to lose face. Moreover, there is a strong expectation of loyalty, particularly in relation to family and chiefs, and politicians in FSM are considered by many to have de facto status of a chief. Traditional values therefore deeply affect both the perception of corruption and the behaviour of people within the FSM, and constitute one of the most important elements to consider when analysing how to strengthen FSM's National Integrity Systems.

The most readily apparent instances of corruption in FSM are to be found in the misuse of electoral and other funds. Politicians, through improper use of funds, can gain an unfair advantage over candidates who seek to replace them. The lack of controls on campaigning and campaign funding facilitates patronage and nepotism following elections, and candidates often give favours or gifts to potential voters. Under the cover of tradition, strategic donations to leaders and customary chiefs are given, sometimes in relation to a wedding or a funeral. Chiefs retain an authority and power of persuasion over their people, which can be used to influence or even dictate who they vote for.

Corruption also results in more general cases of waste and inequities in FSM society. Misappropriation of public money by politicians on national and state level is perceived to be widespread and described as "pitch & catch". It is the pattern of financial misconduct where the same person is involved, directly or indirectly in appropriating funds and receiving them. Within the public service corruption occurs in the form of nepotism and is an obstacle to the hiring of the most competent public servants and the most qualified contractors. Manipulation of Government expenditure and patronage leads to inefficiency and burdens society with unnecessary costs.

However, apart from some perceptions of partiality based traditional values, the judiciary and legal system are generally seen to be unaffected by corruption. Although the extent to which police forces pursue corruption in other sectors of society varies; in general, the police forces are also perceived to be relatively free of corruption. Yet traditional loyalties still play a part here too and complaints against police are seldom dealt with expeditiously, if at all.

In terms of contemporary events, Compact 2, the bilateral agreement between FSM and the US for financial and other aid, is about to take effect. It includes stringent terms and conditions to ensure transparency and accountability. These planning, reporting and auditing requirements should have a significant positive effect, and signal that a discernable political will to improve transparency and accountability is evident at the national level. The main priorities of Compact 2 are education and health with a view to improve public sector capacity building. A central theme of education should be the idea that politicians are not chiefs, but servants to the general public and that elections do not confer chiefly status. Some structural changes in the election of the President and Members of National Congress might have a positive effect on transparency and accountability. Benefits would also accrue from strengthening what exists in the form of training of key skills for police and for forensic accountants and auditors.

It is therefore a difficult time to make recommendations for the strengthening National Integrity Systems in FSM as a number of new mechanisms are currently being implemented. However, this report suggests that additional mechanisms for consideration

might include an Ombudsman and a Leadership Code with uniform provisions in both State and National Governments in order to further strengthen these recent anti-corruption initiatives and to ensure greater transparency in governing FSM. Education of the public as to which anti-corruption mechanisms they can access; direct election of the President; limited terms of office for members of Congress; encouraging a wider spread of media and the growth of private sector NGOs; providing more comprehensive auditing support and police training and the creation of gift registries are other possible answers to creating greater transparency in FSM.

Country Overview

The Federated States of Micronesia is an independent country in free association with the United States, the former colonial overseer of the former Trust Territory of the Pacific Islands. The country comprises 4 states, namely (from east to west) Kosrae, Pohnpei, Chuuk and Yap. The country is spread over approximately 3 million square miles of the Pacific Ocean, just north of the equator. Travel to and among the states is expensive and relatively infrequent. The fact that to travel to Yap, one must leave the country, fly to Guam and then fly on to Yap exacerbates this isolation. The operation of centralized institutions is therefore difficult and expensive. The very small isolated population means that anonymity within a state, particularly among those who are in power, is nearly impossible. These are factors in how corruption is defined within FSM and how it may be combated.

There is a strong underlying culture in FSM and traditional lifestyles and values continue to dominate the lives of many people. From an outsider's point of view, the culture throughout the country appears similar. However from an insider's perspective, culturally, the country is diverse. Prior to independence, the peoples of each island had little to do with each other. Traditional laws, customs and practises vary between states. The extent to which traditional cultures were altered by the introduction of Christianity also varies from state to state. The lack of a remaining chiefly system in the state of Kosrae is cited as one example of this. Within each state, traditional practices may vary. This is particularly true of Chuuk, the largest state (home to half the population) which is spread over a great number of islands within a vast lagoon. Article V of the Constitution provides for the continuation of the roles of traditional leaders and provides for the establishment of a Chamber of Chiefs, which may be given roles and functions by the governments of each state.

The country became unified and independent partly as a result of an agreement among four of the territories of the former Trust Territory of the Pacific Islands. These states, which became the Federated States of Micronesia made a collective decision to unite. The boundaries of the country were not drawn by a colonizer's map. Other nearby Pacific Islands States such as Palau and Marshall Islands chose to be separate nations. The Northern Mariana Islands chose to retain a commonwealth relationship with the United States. Guam remains part of the United States. At independence, the states of FSM agreed to divest themselves of certain powers in favour of the National government and a national identity. The Constitution which resulted from this provides the National government with powers over matters that include foreign affairs, defence, national crimes, immigration, banking and interstate commerce, currency, shipping, and the post office. (Article 9) Both the national and state governments may raise taxes and borrow money. The states have a broad jurisdiction which includes all residual powers not specifically granted to the National Government. These include land, education, health, family and criminal law. The result is that the states have considerable autonomy including financial autonomy.

The National Government comprises the legislature (Congress), the executive and the judiciary, each with separate powers. Congress has 14 members elected from the four states, roughly in proportion to population. Members of Congress elect, from within their numbers, a president and a vice president. They, together with the secretaries of the six Government departments who they appoint form the executive.

Each state has its own constitution which provides for the three branches of government. The states' government structures are, generally speaking, a mirror image of the National Government. The executive comprises the governor and lieutenant governor. There is a unicameral legislative branch and a separate judiciary. One variation is found in the State of Chuuk where the legislature is bicameral and in Yap, where two traditional councils effectively constitute an upper house with effective veto power over all laws which affect culture. The legislative branch in each state passes laws within the jurisdiction of the state.

The Constitution provides that no less than 50 % of all taxes raised by the National Government must be returned to the states from which they were raised. Thus, a

minimum of half the national budget is spent by the individual states. From the perspective of transparency and corruption therefore, what happens at state level is very important.

In addition to providing for the National and State governments, the Constitution provides for Local Governments. Pohnpei and Chuuk have created local governments, the others have not. This may be explained by the small population of the other states (Kosrae has approximately 6,000 people).

The total land area of the country is approximately 270 square kilometres and the population is approximately 108,000. It has a high birth rate but emigration to the United States where citizens of FSM have a right of residency reduces the population growth somewhat. There is a relatively high literacy rate, estimated to be approximately 90%. Public education is free through high school. Beyond that, grants are available from the US for students who wish to continue their studies. Many travel to Hawaii or the continental US for a college education.

The underlying cultures of the country constitute the earliest and most enduring sources of law and entail attitudes and values which affect perceptions of and reactions to corruption. Generally stated, there is a reluctance to openly criticize others, particularly chiefs. There is a greater willingness to ignore or forget transgressions by leaders than there might be in the face of corruption in more westernised democracies. It has never been acceptable to criticize a Chief and this attitude has carried over to some extent to politicians. Customary chiefs retain an authority and power of persuasion over their people that is often used to influence if not dictate who they vote for. Whether this is regarded as corruption depends on one's perspective. The Constitution recognizes the continuing existence of traditional values.

The country was successively colonized by Spain, Germany, Japan and the United States. It became officially independent of the United States in stages between 1978 when the FSM Constitution was ratified and 1990 when the United Nations Security Council officially dissolved the Trust Territory in 1990. The country continues to be heavily dependant on the US and this relationship is formalized in a Compact of Free Association. Its political institutions are built upon US models, modified to the circumstances of the country. It continues to be hugely dependant on the US for aid. It has no central bank and uses the US dollar as the official currency. Citizens enjoy the right to live and work in the US and thousands do. An American airline, Continental, based in Houston Texas links the states to each other and to the outside world. American values therefore mix with traditional values to form the cultural amalgam that is FSM today. American attitudes, aid and people are also factors that affect how people think of corruption and inform approaches to the control of corruption in the country.

In terms of citizens' rights, the Constitution provides for universal individual rights and freedoms. Article IV of the Constitution contains a detailed declaration of human rights including freedom of expression, worship, religion and assembly. Equal protection under the law without discrimination on sex, race, ancestry, national origin, language, or social status is also guaranteed (section 4). No one may be deprived of life liberty or property without due process. Other rights include the free migration of citizens within the country and the inability of Congress to pass ex post facto laws.

With regards to the important question of economic activity, the economy of FSM is weak and it depends heavily on foreign aid. There are few local enterprises beyond the retail, wholesale and service industries. The business community does not have a cohesive presence. Remittances from the thousands of citizens living in the United States contribute significantly to the economy. Much of the economy, particularly in the outlying areas, is based on subsistence farming and fishing. Half of the formally employed work force works for the government. These are factors which affect perceptions and patterns of corruption and accountability in the country.

Finally, it must be stressed that in analysing corruption in FSM, it also needs to be remembered that transparency and degrees of corruption vary from state to state. Of the four states, Chuuk is widely regarded to be most affected by corruption. Recent prosecutions and convictions of politicians from that state are consistent with this

perception. Public perception of Yap, the westernmost state is that it is the least affected by corruption. Although small and distant from the rest of the country, the economy is healthy with significant surpluses over the last three years. (Pacific Magazine November 2003, Scott Radway – Wisdom is in the Basket, Yap's Slow Development Has Paid Off. Page 22). Analyses of corruption within the 'FSM' must therefore be aware of the differences between the various states too.

Narrative Section

Corruption Profile

Definition

Officially, corruption is understood to occur when a person uses his or her position or knowledge which came to the person in an official the course of their official duties to benefit either for him or herself or someone else. There is no Leadership Code in FSM. However, the national criminal law reflects a contemporary western understanding of corruption. It sets out a number of duties and offences which are specific to public officials (whether elected or appointed). (FSMC Title 11 Chapter 5) These begin with a policy statement regarding the conduct of public officials. S. 510 provides that:

A public official must conduct himself or herself in such a way, in both public and private life, so as not to:

- (1) place himself or herself in a position in which there exists a conflict of interest or in which the fair exercise of his or her public or official duties might be compromised;
- (2) demean his or her office or position;
- (3) call into question his or her integrity;
- (4) endanger or diminish respect for or confidence in the integrity of the Federated States of Micronesia, National Government; or
- (5) actually use or give the appearance of using his or her public office for personal gain.

Although this policy provision is non justiciable, and applies only to National public officials it serves as a useful definition and common understanding as to what constitutes corruption among public officials generally.

The National Code also provides for specific offences related to corruption. These include conflict of interest and a prohibition on public officials from representing any entity with interests adverse to the government within one year of the public officials employment with the government. (S 512, 513) Other offences include the misuse of government power to infringe another person's rights, official oppression (S. 514), speculating or wagering on official action or information (S. 515), bribery in official and political matters, (S. 516) threats and improper influence in official and political matters (S. 517) retaliation for past official action (S. 518) gifts to public servants by persons subject to their jurisdiction (S. 519) compensating public servant for assisting private interests in relation to matters before him (S. 520) and selling political endorsement, special influence, (S. 521). Special influence in section 521 means power to influence through kinship, friendship, or other relationship, apart from the merits of a transaction.

In addition to offences specifically tailored to combat corruption within the public sector, there are other national offences which are directed against international crime and money laundering. Chapter 9 of Title 11 provides for the confiscation of the proceeds of crime and property used in the commission of serious crime, and imposes barriers to the use of the financial system to launder money. It includes provisions which oblige financial institutions to maintain specific records, report suspicious transactions, and establish internal reporting procedures. Breaches of any of these obligations constitute a criminal offence. Courts are empowered to make orders to track and monitor transactions, over-ride secrecy provisions, and enforce compliance by institutions and individuals. (s 913 to 917). Money laundering itself is a serious crime which can result in 10 years' imprisonment and a fine of up to \$100,000 (\$500,000 where the defendant is a corporation). The court may confiscate any property that is found to be tainted in respect of a serious crime. In doing so, a court may pierce a corporate veil which might otherwise separate an offender from the proceeds of crime. (s 947). Search warrants and restraining orders (available ex parte) are also provided for in relation to property held by a defendant (even before a

conviction is made). (s 958) A receiver may be appointed by the court in relation to property seized. (s. 968)

The states also have provisions directed at combating corruption. These in effect reinforce the (YSC) definition of corruption. The Constitution of the State of Chuuk provides for an independent prosecutor with the power and duty to prevent, combat and eliminate corruption in government through investigation and prosecution. The Prosecutor may issue subpoenas and compel attendance of witnesses, administer oaths, and exercise other powers and duties as prescribed by statute. (Constitution of Chuuk section 4). The prosecutor supposed to be appointed to a three year term by the majority of mayors in Chuuk. Chapter 3 of the Chuuk State Code provides for investigative committees of the Legislature with the power to subpoena and examine witnesses under oath.

The Chuuk State Code also contains a number of criminal offences which, on their face, create offences relating to corruption. These in effect serve to define official corruption. Bribery in order to receive an official act and threats of public officials are offences. (4002, 4003) A government official who solicits or receives improper compensation for the doing of his or her duty commits an offence. (s.4005) Obtaining or providing a benefit in conflict of interest and improper dealing in government property by any official are also crimes. A public official who engages in misconduct in office is also guilty of a crime. Most of these crimes attract a maximum potential penalty of one year imprisonment or a \$1000 fine. In addition, Title 28 of the Chuuk State Code creates an offence, punishable by up to two years imprisonment for authorizing payment of government funds unless funds are appropriated and the authorization is within the scope of the appropriation (section 1008). A similar offence, punishable by up to three years imprisonment, prohibits the authorization of expenditure of funds before they are appropriated or in a sum which exceeds the appropriation.

The Kosrae State Code does not contain the elaborate provisions relating to corruption in public office that are contained in the Chuuk Code. However, Title 13 provides for the offence of misconduct in public office which entails doing any illegal act under the color of office or willfully neglecting to perform the duties of office (s 13.6.10). Despite this relative lack of specificity in the Kosrae provisions, it is regarded as significantly less affected by official corruption than is Chuuk.

The Pohnpei State Code provides general offences against public administration and misuse of public property but does not break these down into specific offences to the extent that the National Code does.

The Yap State Code (YSC) includes, at Title 11, Chapter 5, a number of offences against government administration. These include bribery of public officials (s.502), threats to influence public officials (s.503), retaliation for past official actions (s. 540) improper compensation (s. 505), conflict of interest (s. 506), misuse of government property (s. 507) and misconduct in public office (s. 508) Maximum potential punishment for these offences range from 6 months imprisonment to 3 years imprisonment.

YSC Title 13, chapter 12 provides criminal penalties for the wrongful obligation and disbursement of funds. There is a whistleblower protection for any state employee who reports violations relating to the wrongful disbursement of funds. (s. 1261 to 1265)

However, despite this existence of generally comprehensive criminal provisions which effectively define corruption, in the past, they have been seldom applied. Yet within the last two years, three national senators from Chuuk and a former speaker have been charged with misappropriation of funds pursuant to the provisions of Title 11, Chapter 5. These charges remain pending but they still serve to bring the formal definition of corruption more in line with public understanding.

Notwithstanding the official definition of corruption as implicit in the penal provisions, one cannot analyse corruption in FSM without taking into account the contrast of cultures. The traditional Micronesian culture is typified by a number of attitudes which, in context, are considered beneficial and integral to a harmonious society but which are, to some extent, at variance with values entailed by the democratic rule of law. For instance, in tradition, it is very improper to question or openly criticize others or cause someone to lose face. This

is particularly so in relation to a chief. The right to criticize and question is an inherent part of western democracies. Traditional notions of loyalty attach great importance to family, clan and island. In tradition, if a chief is asked to help an extended family member, it is his obligation to do so. In formal legal terms, it is a conflict of interest for a leader to use his or her position to benefit relatives or friends or to even place him or herself in a position where this might happen. In FSM, it is not always easy to separate the two views. Behaviour which might take place for personal gain in some cultures may take place simply out of traditional deference in FSM. For instance, a customs officer would be unlikely to closely question or search a chief arriving in the country from abroad. Politicians in FSM are considered by many to have de facto status of a chief and this affects both perceptions of corruption and behaviour.

Causes

A significant cause of corruption is the fact that much of what is officially defined as corruption is not viewed as corruption or at least not viewed as a serious problem by many people. This applies particularly to political corruption in the form of misappropriation of government funds. Those on the receiving end are not likely to put a stop to it. Those who are aware of it may consider putting a stop to it to be against their self interest as they might "get their chance" at some time in the future. This is integrally linked to cultural values.

A further cause of corruption is the inability of the system to adequately deal with it. There is no shortage of relevant laws, particularly at the national level. However, the political will is not always present to enforce the laws. This, in some cases may be due to the corruption of law enforcement officials. It may also be simply a reluctance to enforce laws against clan or family, particularly when a person might be a future beneficiary of the same pattern of behaviour.

In relation to corruption in the form of misappropriation of funds, a causal factor is widely perceived to be the pressure felt by politicians to bestow benefits on family, friends and relatives. This however, does not explain self enrichment of politicians, a number of whom have acquired significant property, both domestic and international during and after their political careers.

A further cause of corruption is the lack of awareness, not of the wrongdoing by any particular offender, but of the overall cost of corruption on society. There is not a well formed collective appreciation that when public monies are misappropriated, they are monies that are taken out of the pockets of citizens. Associated with this, particularly in areas such as Chuuk, where corruption is widespread, is that self interest may be served by not reporting corruption even if one is not personally involved. It may be hoped by such individuals that they too will benefit in future from the same sort of behaviour.

Further, there is a perception that an election victory bestows upon a person the status of chief and thus accords the politician a level of traditional deference which inhibits criticism or blame. Many people do not regard an elected politician as a servant of the public. The standard of conduct of the politician therefore has less bearing on whether the politician will be removed from office in a subsequent election.

Apart from lack of political will and the influence of traditional expectations, another cause of corruption is the challenge of enforcing the law. There is perceived to be a shortage of financial auditors, particularly those who can conduct forensic audits and police officers who are able to conduct white collar investigations. This is more pronounced at the state level.

The political structure of the country may also indirectly contribute to corruption. Although the government is modelled on that of the United States, in FSM, the president and vice president are elected by Congress, not directly by the people. The President is dependent on the Congress for election, and re-election after a first 4 year term and is therefore dependant on the continuing goodwill of the Congress. The President appoints Supreme Court judges and secretaries, including the secretary of justice, who is responsible for criminal prosecutions. However, these appointments require confirmation by Congress. Where members of Congress feel vulnerable to potential investigations, they are in a

position to hold the President as a political hostage. Also, because there are only 14 Senators and no opposition (there are no political parties) there is great scope for collusion among the members of Congress and this is perceived to widely occur.

These dynamics have played out in interesting ways in recent months. In the months leading up to the last election, members of Congress have felt vulnerable to corruption investigations of the Attorney General. After the election, it became necessary for the President to nominate an Attorney General to run the Department of Justice. The President nominated a former Attorney General who had successfully indicted members of Congress. Congress refused to approve his nomination. An acting Attorney General now fills the position pending resolution of this problem. If Congress has its way, it is considered likely that a weak Attorney General who will not vigorously pursue corruption will be appointed.

With regards to other specific cases, transit crimes, drug trafficking or the use of FSM for international money laundering are not considered significant causes of corruption in FSM. FSM is not an offshore tax haven, has no central bank, is without a significant illegal drug problem and is not a significant destination for illegal immigrants.

Levels

Corruption probably occurs to some degree at all levels of FSM society. However, its extent varies greatly from state to state. Yap is considered to be relatively free of corruption in any form. Chuuk, with approximately half of the national population is clearly associated with the highest level of corruption in the country. Corruption in Chuuk is perceived to occur at all levels of the public service, with some politicians (at all three levels of government) and with commercial interests and individuals who are associated with them. (Takeuchi, 2003a) Corruption is not perceived to be as pervasive in other states as it is in Chuuk. However, it should be stated that there are businesses, politicians and individuals in Chuuk who are *not* associated with corruption.

Generally speaking, corruption is not perceived to occur at the level of individual members of the public securing services or avoiding sanctions by means of bribes to public officials. Nor is corruption perceived to occur widely in the judiciary or within the police force or legal sector. There are undoubtedly some exceptions, mostly having to do with loyalties and bias which favours others, not the person directly exercising the power.

Costs

Corruption results in waste and inequities in FSM society. Money that is appropriated for one purpose is spent for another, contrary to the intention of the lawmakers. Corruption allows politicians to remain in power despite financial mismanagement and misappropriation. Corruption is also an obstacle to the hiring of the most competent public servants and the most qualified contractors. This leads to inefficiency and extra cost to society. Moreover, in Chuuk, where corruption is considered to have been widespread for many years, public infrastructure is in very bad shape. Supply of water and electricity is intermittent, the roads are full of potholes. This is in contrast to the infrastructure in other states where corruption is not perceived to have been so prevalent.

Corruption has also had a corrosive effect on democracy in FSM. Politicians who use improper financial advantage resulting from their incumbent status are able to gain unfair advantage over candidates who seek to replace them. This can include misuse of representation funds and misappropriation of other funds.

Corruption further contributes to a lack of investor confidence. Related to this is the tendency of citizens of FSM to invest money offshore rather than at home in FSM. Some businesses consider themselves to be deliberately squeezed out by competitors owned by politicians who have control of licensing and regulation in the relevant area of administration.

National unity itself appears to be threatened by the degree of corruption in Chuuk and the costs this has had, not only for Chuukese but also for the rest of the country. In a recent article, both a former President of the country, John Hagelgam and the current President

are quoted as stating that national unity is threatened by the continuing pattern of financial mismanagement and leadership problems in Chuuk. (Takeuchi, Pacific Islands November 2003).

Types

Corruption takes a number of forms in FSM. Public money is sometimes appropriated for purposes which are ostensibly for public benefit but which have a secondary purpose which is to benefit a politician or politicians who has interests on the receiving end of the money. This is referred to in FSM as "pitch and catch." Other forms of corruption involving public money are the misappropriation of money for purposes other than what was originally intended by the Congress (national or state) that appropriated the money. This misappropriation may take place in collusion with suppliers, contractors, lower level politicians or public officials. Misappropriation of public money by politicians is perceived to be widespread.

Other forms of corruption relate to elections. Chiefs and other leaders are sometimes given gifts by candidates on the understanding that they will deliver the votes of their people. Individual voters are likely to obey a chief's instructions as to who to vote for, in accordance with traditional obligations simply on the basis of the chief's or other leader's authority. Sometimes gifts by politicians are not easily distinguished from traditional obligations. For instance, where a politician gives a gift as part of a wedding or funeral, it may be characterized as a customary obligation although the effect may be to enhance the politician's chances of re-election.

Within the public service, corruption occurs in the form of nepotism. Although the laws provide for the hiring of public servants on the basis of merit and, in the case of the national public service, require an examination of candidates, in fact, personnel managers and others have found ways to put relatives and friends ahead of more qualified applicants. Although this is clearly unlawful, in most cases, there is a usually a significant element of traditional obligation involved with the process and it continues partly because of cultural expectations of loyalty and a reluctance to openly confront the issue.

Other forms of corruption involve the police not investigating (or delaying the investigation of) alleged wrongdoers who are related by family, clan or island or who are connected with the police force. Complaints to the police about police conduct are unlikely to be followed up with any degree of commitment. In addition, where the enforcement of a court order depends on the police, it is sometimes frustrated due to police loyalties to the judgment debtor.

Manipulation of government expenditures and patronage is another perceived form of corruption in FSM. An example of this is said to take place with respect to travel agencies where time for purchasing less expensive tickets is deliberately allowed to lapse in favour of later purchase of more expensive tickets.

Finally there is the area where corruption merges with inefficiency or unethical conduct. Travel by public servants is widely recognized to be excessive. A per diem allowance of approximately \$130 per day (very often exceeding base salary) are an added inducement to travel as often and for as long as possible.

It should be noted that there are various forms of corruption which are *not* perceived to exist at a significant level in FSM although there may be individual instances. Petty bribery of public servants and police is not a common practice. As mentioned above there is no significant corruption concerning drug trafficking or money laundering. FSM, unlike RMI and several other South Pacific nations has not been blacklisted by the Financial Accountability Task Force, an offshoot of the OECD. Major scams involving the investment by governments in phoney grand investment schemes, along the lines of what has been experienced in some other South Pacific countries (Vanuatu, Tonga) does not occur in FSM.

Other examples of corruption relating to public procurement are found below, under that heading.

Impact of Change

Compact 2, the contractual bilateral agreement between FSM and the US under the terms of which financial and other aid will be delivered to FSM over the next 20 years includes stringent terms and conditions which are designed to ensure transparency and accountability. Given the extent to which FSM relies upon US aid, these conditions will have a significant positive effect on transparency and accountability in the future.

Other factors which have had an impact which may be expected to continue are the recent increase in prosecutions and convictions of members of the National Congress and other politicians. The newly elected President, Joseph Urusemal has spoken forcefully the need to deal with corruption, particularly in the State of Chuuk where it is most prevalent. The rhetoric of the President is backed up by his current struggle with Congress to appoint an Attorney General who enforces the law in relation to public accountability crimes.

The National Integrity System

Executive

The executive power of the national government is vested in the President who is elected by Congress for a term of 4 years by a majority vote of the members of Congress. The President may not serve more than 2 consecutive terms. The compensation of the President and Vice President may not be increased during their term of office. The President is the formal head of state as well as being vested with executive powers. (X,3) The president may appoint ambassadors, judges of the Supreme Court and principal officers of the executive, known as secretaries.

The President has the power to pardon. He may also declare a state of emergency to preserve health or safety at a time of extreme emergency caused by civil disturbance, natural disaster, immediate threat of war.(X,9) during a state of emergency, the President may issue decrees, but only to the extent required for peace, health or safety. This has been done only rarely, for short periods of time and in connection with natural disasters. The Constitution provides that 30 days after the declaration of a state of emergency the declaration may be reviewed by the judiciary. (X, 9)

The President and Vice President are elected by Congress. To be eligible for election as President or Vice President, a congressman or woman must be elected for a 4 year term, have been resident in FSM for at least 15 years and have been born in FSM. (Title 9 Chapter 2). There has not been any alleged misconduct or corruption in relation to this process although voting power of the home state of those who put their names forward as presidential candidates is a matter of great political importance when Congress chooses the President. The President may be impeached although this has never happened.

The Federated States of Micronesia Code (FSMC) Chapter 7 provides for the impeachment of the President, Vice President or a Supreme Court Justice. Grounds for commencing impeachment proceedings are that it is probable that the official in question has committed an act of treason, bribery or corruption in office. Proceedings take the form of a trial in Congress governed by the rules of fairness and requiring proof beyond a reasonable doubt. An impeached official is entitled to an appeal before the Supreme Court, or in the case of an impeached Justice of the Supreme Court, by a special tribunal made up of judges of the state courts. There have been no impeachment proceedings in FSM.

The President, once elected, nominates 6 secretaries who preside over the Departments of Justice, Education and Health, Economic Affairs, Public Administration, Foreign Affairs and Transport, Commerce and Infrastructure. Secretaries of these departments are appointed by the President with the approval of the Congress. They are unelected. Each of the 4 states' legislatures elects governors who appoint secretaries to head departments. These operate in a way similar to the National model. The only significant variation on this is in the State of Chuuk which is based on a bicameral legislature. There is both a Senate and a House of Representatives.

The nomination and confirmation of secretaries has been a matter of controversy associated with perceived corruption. Congress consists of 14 senators. Their power over the appointment of the Secretary of Justice has a bearing on the rigour with which anti corruption is pursued by way of criminal charges. Recently, a former Secretary of Justice was nominated by the President, following the March 2003 Congressional Election. Congress refused to confirm the nomination. Political observers believe that this refusal was due to the fact that the former Secretary, when he last occupied the office, secured convictions and indictments against some municipal officials in the State of Chuuk and against a National Senator from the same state. They were charged with numerous offences relating to misuse of government money. In effect, members of Congress were punishing the former Secretary for upholding his oath of office and at the same time protecting themselves. (Haglelgam, 2003) There is widespread perception that other Senators may be vulnerable to prosecution if the same diligence in the Department of Justice continues. The current indictment names three Congressmen along with 11 other

defendants on charges relating to the criminal misuse of over 1.1 million dollars in national funds. (KP Nov 1/03)

Legislature

The FSM National Congress comprises 14 members. Four of these members are known as "members at large", each representing one of the four states. These members serve for a 4 year term. The other 10 members of Congress come from the 4 states in numbers roughly according to the population of the state from which they are elected. Each of these members is elected for a term of 2 years. (Title 3, s 101) The chief powers of Congress are to make laws and, on a three quarters vote (one vote cast by each state delegation) to over-ride a presidential veto. Section 21(a) of the Constitution:

Article 9, section 21 of the Constitution provides that any statute passed by Congress must embrace only one subject which is denoted by its title. In other words an omnibus bill may not be passed. This prevents a law from including unrelated provisions which might be otherwise able to slip past attention of critics or the media. It also prevents a provision on an unrelated unpopular measure to be passed as part of the price of passing a generally favourable bill. This may have some role in preventing corruption.

The National Code contains a provision designed to prevent conflict of interest on the part of members of Congress. Section 106 of Chapter 5 prohibits a member of Congress from holding another office or employment during the term for which he or she is elected. For three years after the expiration, a member may not be appointed to a public office or to employment which was created by National statute during his or her term in Congress. The remuneration of members of Congress is prescribed by statute at 27,000 per annum with an expense allowance of \$3,000. The Speaker's remuneration is \$30,000. Article 9 of the Constitution provides that members of Congress may not benefit from any pay rise which is enacted while they hold office.

Congress has been able to circumvent the cap on salaries by means of the Representative Fund. This comprises allotments which Congress distributes among its members. It is usually done on a sessional basis and amounts vary but it usually amounts to roughly \$20,000 per year per member of Congress. This practice has become institutionalised. The amount tends to increase in the sessions before an election.

The illegal misuse of government monies, partly concerning the representation funds and both National and state levels over the last 5 years appears to be significant. The current charges against the three members of Congress allege money laundering, bribery, theft of National government funds, false swearing in official matters and criminal conspiracy. (Kaselele Press, November 27, 2003) Part of the funds in question relate to representation funds. It is also alleged that the indicted Congressmen conspired to create illegal obligations for money and misappropriate money which was appropriated for specific purposes including medical benefits for a region of Chuuk State. (KP Dec 10/03) One member of Congress named in the November 6th charges is alleged to have requested and received over \$120,000 from vendors conducting business in his home state of Chuuk. (Kaselele Press, November 27, 2003). This matter has resulted in Congress debating a bill which would provide amnesty to anyone who has allegedly stolen money from the National Government since independence. Such a bill would protect members from existing and potential prosecutions and has attracted adverse opinion from a variety of quarters. (ABC Online)

The States each have legislative provisions which relate to the misuse of public monies. For instance, Pohnpei has provisions for the appointment of an independent legislative investigator with elaborate powers, appointed by the speaker with the consent of the majority of the members of the Legislature. (T2 Ch3, 101). The states also have provisions which provide for salaries, representation funds and travel expenses. The representation funds are in amounts which are periodically awarded by state legislatures to their members in the same way that they are awarded at the national level. (PSC Title 2, Ch9, 101)

Political Parties

There are no political parties in FSM. However, the National Congress often forms into groups of rival Senators from different states who form voting blocks. Given the small number of Senators it is relatively easy to assemble a block which is sufficient to pass or block government bills or frustrate the nomination of an official by the President.

Electoral Commission

Citizens of FSM who are at least 18 years old and registered are entitled to vote by secret ballot, unless they are under a disability or are serving a sentence for a felony.

A person is eligible to be a candidate for senator if he or she is at least 30 years old, has been a citizen of FSM for 15 years and a resident of the state where he or she stands as a candidate. A convicted felon may not in future run as a candidate. The nomination procedure requires that at least 25 voters support the petition of nomination by the candidate.

National elections are administered by a National Election Director and National Election Commissioners in each state. The Director is appointed by the President. The Commissioners are appointed by the Director in consultation with the governors of each state. The National Election Director has considerable power and responsibility. His or her duties include maintaining a national election register, reviewing nomination petitions, preparing a registered voters list, promulgate rules, investigating irregularities, certifying and declaring results and ruling on petitions for recounts.

Chapter 5 of Title 9 for the FSMC provides that voters must register to vote. Registration requires a sworn statement from each person wishing to register that establishes his or her qualification as a voter. Elections are a matter for the legislative and executive branches of government. The courts do not interfere with elections except on clear grounds relating to appeal. Although, not seen as entirely without error, actual administration of voting in FSM, at both the National and State levels is generally seen as an uncorrupted if sometimes inefficient and overly expensive process. People appear to be vigilant about their right to vote and interested in the integrity of the process. Recently, with Australian aid, the electoral roles at both national and state levels were digitalized and coordinated. This should improve the efficiency and transparency of the election process in the future.

There are no controls on campaigning and campaign financing. There is no obligation on a candidate to disclose the source or amount of any campaign contribution. This makes the patronage and nepotism that follows elections more difficult to trace. In addition, candidates often give favours to potential voters in the form of tables of food and drink. This is not universally regarded as corrupt and is seen by many of an integral part of the colour of elections, perhaps in part because of underlying cultural values. Other more worrisome practises occur. Candidates, particularly incumbents who are more likely to have money often provide strategic gifts to leaders and chiefs in the community. This may be under cover of tradition where the donation is made in relation to a wedding or a funeral. However, in response to such a strategic gift, which may constitute a boat or an outboard motor, the leader of chief dictates to his people who to vote for. This practice appears to be widespread throughout the country. It may not be universally regarded as improper by individual voters. Typically, no discernable policy platforms are articulated by candidates during a campaign, perhaps in part due to the lack of political parties.

One of the few statutory controls on election campaigning or fundraising is found at FSMC Chapter 9, section 805 which requires only that no candidate may campaign within 110 feet of a ballot box on Election Day and no public broadcasting facilities may be made available to candidates on Election Day. In practice, campaigning does take place on Election Day and it is common practice for candidates to set up tables for the free distribution of food and beverages to voters near the polling stations. This practice was recently banned on election days in Kosrae but it continues to take place in the days leading up to Election Day.

Although government broadcasting facilities are made available to candidates on an equitable basis, no Government vehicles or vessels are made available without cost to candidates.

Supreme Audit Institution

Title 55, Chapter 5 of the FSMC provides for a public auditor. The public auditor is appointed by the President with the advice of Congress to a 4 year term. (s. 502). The public auditor has authority to audit not only the finances of the National Government but also all agencies and states to which national monies are disbursed. This includes independent contractors who perform services for the government or an agency of the government on a cost reimbursement basis. (s. 505) The public auditor has the power to subpoena witnesses and compel information. (s 506) The public auditor has the power to conduct not only conventional financial and compliance audits but also audits of efficiency to determine if resources are utilized efficiently and causes of inefficiency and program results audits to assess whether the desired results or benefits established by the Congress or other authorizing body are being achieved and whether the program administrators have considered alternatives that might yield desired results at a lower cost.(s. 507). Where the resources of the public auditor are insufficient, he or she has the power to retain the expertise of a private accountancy firm.

On the face of it, this very comprehensive scheme of public auditing provides sufficient powers to identify many types of corruption. However, despite these provisions, inefficiency and to a lesser extent, corruption continues to plague both the national and state governments. This is a concern for the major donor of funds to the FSM, the United States. Under Compact 1 the ability of the United States to impose conditions on the receipt and expenditure of funds by the National Government was recognized and facilitated by legislation. (Title 55, chapter 3). This legislation required planning, coordination and agreement among and between the national government and the states concerning the receipt and application of funds provided to FSM by the United States each year in accordance with the Compact of Free Association. However, in practice these requirements did not accomplish what they were intended to do. One weakness at the root of the problem is the lack of reliable information with which to conduct a reliable audit. Auditors are commonly frustrated by the documentation of transactions and the quality of auditing suffered as a result. It is not uncommon for an auditor to conclude that completion of a specific audit is not possible for lack of documentary records. These problems are perceived to be significantly worse in the state of Chuuk.

Chapter 4 of the KSC provides for an audit (either annual or biannual) of the state's finances. The Speaker designates and authorizes in writing a Senator who has not had direct responsibility for the disbursement of public funds to negotiate and contract with an auditor for the annual/biennial audit.

The Chuuk constitution provides for an independent Public Auditor appointed by the Governor and confirmed by the Senate. The CSC Title 28, Chapter 3 provides that the public auditor must be an experienced certified public accountant who is appointed for a 6 year term. One of the duties of the Chuuk public auditor is to investigate, either on his or her own initiative or at the direction of the Governor's and speakers direction any reasonable suspicion of misuse of public funds. The audit reports of the public audit are to be made available to the Legislature and to the public. (1105.2) there is a specific whistle blower provision to protect public servants who disclose information to the public auditor. (s. 1107). The law is very comprehensive. However, no Public Auditor has been appointed in Chuuk.

In Pohnpei, the PSC provides at Title 5, Chapter 1 for an Office of the Public Auditor. An audit of state government finances is required at least every two years. The Public Auditor may hire outside expertise (to the extent that funds allow for this) and must make an annual report to the Pohnpei State Congress.

Title 13 of the YSC provides for the office of the Public Auditor who may be but is not required to be a certified public accountant. It sets out at s. 703 the powers and duties of the Public Auditor and provides for an annual audit of the government. The Public Auditor is prohibited from holding any other employment either public or private. The Public

Auditor has the power to issue subpoenas and compel witnesses. He or she also has the authority to request assistance from the national public auditor or a private auditor if necessary.

The second Compact agreement or Compact 2 as it is known has now been concluded and is before the United States Congress for ratification. It involves the continuation of funding by the United States for a further 15 years. This funding is subject to more stringent conditions than were the funds provided under Compact 1.

The last National Public Auditor, in public audits, uncovered irregularities and missing funds in public audits and indicated where responsibility lay. Members of Congress were not receptive to this "unmicronesian" behaviour and, when the auditor's term was complete, he was not reappointed.

This may be partially due to the fact that although audit reports are public, they are not easily accessible by the public. They are not debated in Congress although, perhaps they should be. The public appears to lack an interest in the reports or their recommendations. Part of reason for this may be that an attack on Congress is perceived to be an attack on Micronesian society. Once again, this is a reflection on traditional values concerning authority.

Judiciary

There are two systems of courts in FSM. The Supreme Court of FSM hears cases which fall within the National government's jurisdiction. State courts hear cases which fall within state jurisdiction. Supreme Court Judges are appointed for life subject to mandatory retirement. Their appointment is subject to congressional approval and they are subject to impeachment although this has never happened. The National Court of Appeal comprises Supreme Court judges and, where necessary (because of conflict of interest) judges from other South Pacific Countries (FSM, Palau, etc.)

Justices of the Supreme Court are required to adhere to the standards of the Code of Judicial Conduct of the American Bar Association. The Chief Justice may by rule prescribe stricter or additional standards. (FSMC Title 4 s. 122). Judges who have an interest in a case before them are guided by the provisions of s124 and are bound to disqualify themselves. Judges do this when appropriate and there is considerable case law refining the meaning of this duty. There is a perception however, particularly at the state level that judges are often incapable of acting independently and impartially due to underlying traditional loyalties and affiliations which go far beyond immediate families. In the case of the National Supreme Court, there is an attempt to ensure that judges do not preside over cases in their home state. There is a National Supreme Court Judge in each of the States except Kosrae which is serviced by an itinerant National Supreme Court Judge.

Judges of the Supreme Court of FSM have a disclosure requirement. Each year they disclose their assets to the Clerk of the Court. This information is not made public but is may be resorted to if there is an allegation of conflict of interest involving a case. In State Courts there is no such requirement.

The legal system is staffed by a significant number of American lawyers and American trained lawyers. The FSM justice system reflects the robustness of its American counterparts. Case law is plentiful and is available to the public in the FSM Interim Report and on the internet. Subject to some perceptions of partiality based on traditional values, the judiciary and legal system are generally seen to be unaffected by corruption. The judiciary has the power to review the actions of the executive and entertain actions for infringement of rights although there is a reluctance to pursue this course on the part of litigants, partly based on a relatively low level of perceived infringement of individual rights by the government and partly due to a reluctance to sue the government, based on cultural deference to authority.

Civil Service

Half of the formally employed workforce in FSM is employed in the public service. This amounts to approximately 10,000 people who work for either the national government of

one of the state governments. Public service is by far the largest industry in the country. The three next largest sectors of the economy together account for a significantly smaller proportion of the GDP than does the public service. This results in a reversal of the normally favoured model where private enterprise provides funds with which to drive the economy and support the government.

A job in the public service is a coveted position for most aspiring employees. Officially, hiring is regulated to provide that employees are hired competitively on the basis of education and experience. In practice however, this is often circumvented, in favour of hiring family and friends of people already working in the public service. Traditional loyalties place added pressure on those within the public service to do this and diminish the likelihood that the practice will be openly challenged. Two methods are known to be applied to achieve the hiring of a favoured candidate. One is to place the candidate in an acting position for some time, thereby giving him/ her an advantage when the choice of a permanent candidate is made. Sometimes, applications of more qualified candidates go missing so that lesser qualified but more favoured candidates are able to succeed in the competition for the position.

Regulations pursuant to Title 52 Chapter 52 of the FSMSC provides for a grievance procedure for public service workers. A worker who grieves is entitled to be free of coercion, reprisals or discrimination. If an employee is demoted, dismissed or suspended for a period of more than 3 days, that worker is entitled to representation at a hearing which is to be held within 15 days before a three person panel who makes a recommendation to the highest relevant personnel officer. There is a further right of judicial review.

Police and Prosecutors

In accordance with the federal structure of the country, there are National and State level police and prosecutors in FSM. The national police and prosecutors are under the authority of the national Minister of Justice. The state forces are under the authority of the state counterparts. Each is responsible for enforcing laws within their jurisdiction. Insofar as these laws relate to corruption, they have already been described above. The vigour with which these forces pursue corruption varies in accordance with the priorities of the Attorney General they serve. The Attorney General is a political appointment which requires the approval of Congress. The dynamics of this process and potential politicians to prevent the appointment of zealous prosecutors has been described above. At the National level, this is now an open issue.

Although the extent to which police forces pursue corruption in other sectors of society varies; in general, the police forces themselves are perceived to be relatively free of corruption. Where corruption is perceived to exist, it takes place in relation to several particular areas. Complaints against police are seldom dealt with expeditiously if at all. This spills over into complaints against relatives of police officers. Again, traditional loyalties and values play a part in this. It must be noted however that complaints against police involving mistreatment of persons have occasionally resulted in substantial cash settlements to the victims and the dismissal from the force of officers involved. This is a credit to the justice system.

Cases that proceed through court and result in a judgment are sometimes frustrated at the stage of enforcement. This is particularly so where the judgement involves possession or ownership of land. However, large corporations have encountered trouble obtaining the assistance of police forces whose responsibilities extend to seizing assets to enforce a civil judgement. Enforcing criminal warrants of search or arrest are also sometimes frustrated where the accused is connected has traditional or political connections with the authorities in the police force.

Conflicts between the National and state levels of police have been known to occur. An example of this occurred in 2002 when the national police were sent to Chuuk to enforce a search warrant on a mayor in that state. The facts are complicated and remain somewhat contentious but there is no doubt that the Chuuk state police physically interfered with the execution of the warrant by the national police. They are perceived to have condoned, if not participated with social unrest associated with the incident.

At some levels of the police, there is a lack of professionalism and competency. Because of the small size of some forces, it is difficult to establish an esprit de corps which is necessary in a disciplined force. Periodic training with members of other forces could address this weakness.

Public Procurement

National law requires competitive bidding on large contracts. All contracts for construction projects with a value over \$20,000 and all contracts for the purchase of personal property with a value of \$50,000 are subject to free and open competitive bidding, by sealed bids, to the lowest responsible bidder. (T55, 403) Preference is given to citizen bidders over non citizen bidders according to a formula based on the amount of the contract.(404) This is not always complied with. Contracts are frequently deliberately broken into smaller contracts which are each below the threshold that triggers competitive bidding requirements. Even when competitive bidding is applied, there are often few bidders whose goods or services meet the quality or other requirements of the intended contract. This narrows the field with the result that collusion is more easily accomplished. Sub contracts with the successful bidder are not subject to open bidding and this presents a further opportunity for price fixing and kickbacks.

The Governor of Kosrae recently frustrated attempts to make public procurement fairer by making an executive order to exempt any state construction projects below the value of 200,000 from open bidding. The Governor is the owner of Pacific Construction Company, which has benefited from government construction contracts. (KP December 11/03)

There is perceived to be widespread abuse of public expenditures. "Pitch and catch" is an expression used in FSM to describe the pattern of financial misconduct where the same person, usually a politician, is involved in appropriating funds and receiving them. Examples are plentiful. In one case, a member of the National Congress owned land next to courthouse. It became apparent that the courthouse required additional drainage facilities and that the drainage would have to pass over the politician's land. He demanded an exorbitant amount of money for the right to an easement over his land. Although this amount was not available, the politician succeeded in having money appropriated for the easement, thereby enriching himself by the exorbitant amount he charged for the easement. In another the pattern worked in reverse, albeit unsuccessfully. A politician owned a building which was being leased by the government to house a school. It became apparent that the school was no longer adequate and alternate accommodation was found in the form of a hotel which was for sale. The politician fought the purchase of the hotel in order to preserve his lucrative lease with the government. Use of insider knowledge is also a source of waste in public procurement. In one case, a high government official learned of the need to expand the campus of a college. He bought the adjacent land at market price and then sold the land to the college (i.e. government) for several times what he paid. These examples are typical of other schemes and deals.

Ombudsman

There is no ombudsman in the classical model in operation in FSM. However, there is an officer, called an ombudsman attached to the courts in the country. The duty of this official is at variance with that of an ombudsman in the classical model who receives complaints into government administrative error and makes recommendations. The judicial ombudsman in FSM performs a number of roles associated with the courts. Therefore FSM is without an independent authority to receive complaints, conduct investigations and make recommendations on misadministration within the government.

However, a person aggrieved by any administrative action is entitled to make a grievance to an administrative review board. FSMC, Title 19 provides that any person aggrieved by any administrative decision (by any government agency) is entitled to a hearing before a hearing officer. (s108). A hearing takes place with all the features of procedural fairness. The hearing officer may make or recommend orders as a result of the hearing and may act to seek a settlement of the issues. Special provisions regarding government licenses require notice on the part of the government where a license is revoked, suspended or withdrawn and a party has the right to an administrative hearing to deal with a grievance.

Judicial review of the outcome of an administrative review is available, with further possible appeal to the Court of Appeal.

This process applies a model which is somewhat more like a conventional administrative tribunal than a classical Ombudsman. Rather than making recommendations only, the tribunal has the power to make specific orders. Services of Micronesian Legal Services are available to a person with an administrative grievance.

Investigative Watchdog Agencies

There are no investigative watchdog agencies at present. However, under the terms of Compact 2, significant monitoring of the disbursement of aid money will take place. Funds will be administered more along the lines of USAID money provided to other developing countries by the United States. (See below – Donor Anti Corruption Activities)

Media

Currently, the only newspaper which covers the entire country and is available throughout the country is the Kaselehlle Press. This 20 page paper is published once every two weeks. Although it covers the news, and in so doing includes reporting on politicians who have been charged with offences, there is no editorial coverage or analysis concerning corruption or transparency. It would seem that there is good reason for the paper to steer clear of politically sensitive subjects. In 1997, a foreign newspaper editor, Sherry O'Sullivan, was effectively deported from the country for publishing articles which were overly critical of the actions of some powerful politicians. She attempted to pursue a civil action against the government but was not allowed to return to the country to do so. (Pacific Media Watch June 22, 1997) Subsequently, her newspaper collapsed. It was replaced by another newspaper which also collapsed.

The Kaselehlle Press faces considerable challenges. The distance, small market, small advertising base and cost of production are all factors which limit the power of the newspaper to be an effective voice. Added to this is the fact that a regular feature of the local paper is the police blotter, which lists those who have been charged with criminal offences (almost exclusively, driving, alcohol and property related crimes – and not white collar crimes) has alienated a number of retailers. The paper is boycotted by one retailer in Pohnpei and all but one in Chuuk. A newspaper from the CNMI, the Marianas Variety is published 5 days per week and covers news from the region and international news. It is distributed widely in FSM and competes with the local paper.

There is one FSM television channel which is privately owned. Its coverage includes mostly entertainment. It has occasionally carried "grass roots" programs on social issues which have been produced by Wan Smolbag Theatre out of Vanuatu. Otherwise it carries virtually no news or any other public affairs programs and it has not focused on issues of transparency, corruption or accountability in government.

The National government owns and operates a radio station which broadcasts throughout the country. Subject to the discretion of the national election commissioner, government broadcast facilities must be made available to election candidates equally in an election campaign. This discretion appears to be exercised fairly with all candidates having access to broadcasting facilities. (FSMC9, Ch6.s107) The government owned radio station includes news in its programming. It also covers sessions of the State Legislatures in the local language of each state. Sessions of the National Congress are not covered by broadcast media, perhaps because the language of the Congress is English which is not universally understood throughout the country.

The lack of national identity may be a factor in the relative lack of media in the country. Another factor may be the lack of commercial viability of providing commercial media (either print or electronic) over such great distances to so few numbers. There have been newsgroups concerned with FSM on the internet in the past but they now seem to be defunct. While they may have some use in maintaining a discussion (anonymous or not) of important issues, a majority of the population has little access to computers.

Civil Society

Micronesian Legal Services is a legal aid office staffed by Micronesian and American lawyers, which provides legal services in the non criminal sector. The Public Defender provides criminal defence representation to those who cannot afford a lawyer.

Micronesian Seminar (Micsem) is a highly regarded Jesuit run NGO located in Pohnpei but with pan Micronesian coverage. Some have referred MicSem as a "think tank." It conducts research and publishes articles relating to a broad range of social issues. It has not however specifically targeted issues of transparency or corruption but has published brochures on the rule of law and dispute settlement. Micsem focuses on issues and principles rather than specific cases and individuals.

A local group of citizens in Pohnpei has initiated a "Crime Stoppers" hotline which enables people to call anonymously to report any crimes. This hotline is available in relation to all types of crime, it including crimes of official corruption.

Traditional Organizations

The degree to which traditional chiefs have an influence varies from state to state. In Kosrae, there have been no chiefs since the time of the early missionaries over 100 years ago. In Pohnpei and Yap, chiefs exist and have some influence. Yap is clearly the state where chiefs and tradition are strongest and have the greatest continuing role in society. In fact, it has been said that in Yap, chiefs have "all the power." Generally, chiefly power is a source of stability in communities. However, where the influence of chiefs is greatest, the risk of influence on voters is also greatest. Although viewed by outsiders as a form of corruption, there are few people who would view it as such through the lens of tradition.

In Chuuk, where people live in small groups on numerous scattered islands, there has been no traditional mechanism for supra family organization of society. With the evolution of the state and the need to bond with other parts of the state, links were very loose. While it might be said that Chuukese appreciate strong central society, they have not learned how to make it work. There is no sense of common weal that exists in other states, notably Yap.

Article 5 of the National Constitution provides for the continuation of the roles of traditional leaders and provides for the establishment of a Chamber of Chiefs, which may be given roles and functions by the governments of each state. This has never been done.

The Constitution also provides that a state may provide that one of its Congressional seats is set aside for a traditional leader in lieu of one representative elected on the basis of population. This has not been done by any state. (Article 9, Section 11)

In Yap, Article 3 of the state Constitution provides for two traditional councils to be given formal status, the Council of Pilung and the Council of Tamol. It provides that due recognition shall be given to traditions. The scope of the Constitution of Yap precludes the invalidation of any recognized custom or tradition.

In practice, the councils have been very active and influential in policy and legislation, protecting tradition. A recent example is the vetoing by one of the councils of an appropriation bill for a bus for a village. The concern of the council was that the seats on the bus were higher than seats in sedan cars and pickup trucks. In a society where people of lower caste sit on the ground in the presence of higher caste people, the bus would have enabled lower caste riders in the bus to sit above higher caste people riding in other vehicles. The fact that Yap operates on a significant financial surplus is thought to be attributable in large part to traditional communal values and the stabilizing influence of the two councils.

Private Sector and NGO's

There is a Chamber of Commerce in Pohnpei but it is presently moribund. Apparently it sometimes regroups, typically in response to government policy initiatives or announcements (typically in relation to tax policy) but does not have regular meetings nor

officially advocate for governance or transparency. A number of businessmen have expressed frustration at the failed attempts to establish a strong chamber of commerce in Pohnpei. Service clubs such as Rotary provide services to the community in accordance with their mandates but none have taken up the issue of official accountability or corruption. The wider NGO sector is largely concerned with environmental and gender issues.

There is no NGO which concerns itself solely with issues of transparency or corruption. Several NGO's in FSM such as the Conservancy Trust deal with environmental and conservation issues and advocate strongly for the environmental and conservation issues. There are also several women's groups

Churches are plentiful in FSM. Some villages as small as 300 or 400 people have several pastors: some full time and others, public servants who perform their pastoral duties part time. There is no perception of significant corruption within the churches in FSM. However, for the most part, they focus on events that are 2000 years old and generally, do not address the present day issues of transparency and official corruption.

Regional and Local Government

As discussed above, there are state governments which each have their own constitution and three branches of government. They have significant and exclusive jurisdiction over land, family, health, education and corporate law and other areas. The constitution provides that the states may delegate power to local governments. This has only been done in Pohnpei and Chuuk. Generally speaking, the states operate much like the National government

Progress with Government Strategy

There is no discernable coordination or overall strategy against corruption at governmental level. However a number of initiatives have taken place which indicate a positive trend.

Passage of Chapter 5 of Chapter 11 of the FSMC Code which provides for various crimes against public administration is a worthwhile step and one which effectively provides a definition of official corruption (see above – Corruption Profile)

There is an increasing tendency to prosecute corrupt politicians. Recent examples (referred to above) exemplify this. This will not only have the effect of punishing some past wrongdoers but will also set standards of greater expectation on the part of politicians.

The National Public Auditor has set up a free hotline to which callers can make anonymous calls reporting financial abuse. This hotline is advertised on radio and in the newspaper from time to time. Some prosecutions have occurred as a result of anonymous tips received.

A recent constitutional amendment convention made 14 recommendations for amending the constitution. One of these was to create change the system of appointment of the Attorney General to create an independent special prosecutor at the National level. This amendment was not passed because an insufficient number of voters turned out to validate the referendum. However, it shows a political willingness to deal with the problems in appointing an Attorney General who is truly independent.

At the South Pacific Forum leaders' meeting in Auckland in August, the principle of a Leadership Code was adopted. This is something which is largely contained already in Title 11 Chapter 5 of the FSMC. A leadership code could amplify these provisions and extend them to the state level.

FSM has recently joined the Pacific Island, Australia and New Zealand Electoral Association (PIANZEA) which fosters good election administration and practices.

A discernible political will to improve transparency and accountability is evident at the National level. The President has recently spoken out on these issues in relation to the

state of Chuuk and the corruption problems there. To speak out and name a specific state is something of a breakthrough in view of the cultural resistance to openly criticizing others even at a political level. At the same time, there appears to be awareness among leaders that they will be held more accountable in the future. The public appears to be increasingly demanding greater public accountability.

Donor Anti Corruption Activities

The United States contributes enormously in terms of finance and development in FSM since independence. During the last 5 years, this has included projects and technical assistance within the area of accountability and transparency. In the past, US aid has taken place under the terms of Compact 1. The provisions of Compact one have been amended in the form of Compact 2 which, at the time of writing has been passed by both houses in the United States and awaits the President's signature. Over the next 20 years, Compact 2 will provide approximately 3.5 billion dollars to FSM and RMI. The main priorities of Compact 2 are education and health. However, included in the priority areas for aid is public sector capacity building.

In a corollary agreement to Compact 2, FSM and the United States have agreed to procedures for implementing the assistance provided in Compact 2. It contains planning, reporting and auditing requirements that are far more stringent than those contained in Compact 1. The funds are to be administered by a Joint Economic Management Committee (JEMC). This committee will comprise 5 members, three of whom, including the chairman will be from the Government of the United States. The JEMC may stipulate special conditions relating to grant awards. Awards are conditioned on specific requirements for financial reporting, accounting, internal controls, and source documentation. The JEMC may impose special conditions from time to time. A written code of conduct governing the conduct of FSM is required for employees who are involved in the award and administration of contracts. Conflicts of interest, acceptance of gifts are prohibited and violations will be subject to penalties. Recent amendments to FSMC Chapter 11 fulfil most of these requirements. However, some additional amendments to comply with these provisions may be required at the National level and in some states. Enhanced financial and accounting standards require the retention of original documents and audits by officials from the Government of the United States. Funding may be suspended for non compliance with the conditions in Compact 2.

The conditions on US aid in Compact 2 may be considered a result of lessons learned in Compact 1 under which millions of dollars were squandered, largely through inefficiency but significantly through corruption. Given the importance of US aid to FSM, these conditions should significantly enhance standards of accountability and transparency in the country.

Australia has been a donor in projects which are related to transparency and corruption. As part of the Australia Pacific Patrol Boat Programme, three patrol boats were donated to FSM. These boats are used, among other uses, for patrolling for illegal fishing and transnational crime. During the last 2 years, Australia has also assisted with electoral registration, computerizing electoral roles and coordinating national and state electoral roles.

The Asia Development Bank (ADB) has, for approximately the last 8 years, provided technical assistance to the National Finance Department in the areas of budgeting and policy development. ADB has also assisted in the transferral of the laws of FSM and the states to electronic form. These laws are now available at www.fsm.gov.

Future Research and Donor Support

Priority areas for future donor support are set out at length in the sections below. These include the increased awareness by the population of what corruption is and how it tends to operate against everyone's interests. This entails an appreciation of the fact that resources are limited and what is taken by misappropriation or waste results in less for public purposes.

In order to ensure that existing mechanisms and laws operate better, some input should be considered to strengthen NGO's and other groups such as chambers of commerce and to encourage more dialogue between them and the government.

In a more theoretical sense, some useful research could be devoted to a possible Constitutional amendment to prevent a Congress from being able to indirectly control the executive or pass laws which afford its own members with impunity. Similarly, election campaign financing is an area which would benefit from a set of acceptable and enforceable rules which create transparency concerning gifts by and to politicians during an election campaign.

Anti Corruption Activities

Anti corruption activities in FSM have already been covered under headings above. They include amendments to the criminal law to include a code of conduct by public officials and related offences. The recent initiatives to hold allegedly corrupt politicians accountable through prosecution, the efforts to ensure that the Secretary of Justice heads a competent and active prosecution service, and the establishment of an anonymous hotline by the national Public Auditor.

Key Issues

The National Integrity System (NIS)

The constitutional limitation on the length of consecutive time that a President may serve (2 years, Article 10 of the Constitution) may be seen as a safeguard against the entrenchment of political influence and the establishment of a "dynasty" in power. There is an identical provision in the United States Constitution which has served this purpose for several decades.

It is sometimes difficult to distinguish between improvident investments and corruption. For example, in recent years, Congress approved the purchase, for each member, a satellite cellular telephone at a cost of over \$10,000 each. These telephones were a "perk" provided to members of Congress, ostensibly to enable them to keep in touch from remote locations within the country. In fact, it is generally considered that these telephones were an extravagant waste of money.

One phenomenon which is not evident in FSM is the susceptibility of the executive to con men who induce, through corruption or otherwise investments in corrupt schemes. These con men are notorious in some other Pacific Island countries (for example Tonga and Vanuatu). The reason for the absence of such hustlers may be the large number of lawyers in each branch of government who are perhaps more sophisticated in such schemes and therefore provide a deterrent.

One of the recognized requirements of good governance is transparency. In larger societies, transparency requires public disclosure of government transactions and public officials' interests. In FSM, formal disclosure of these matters has been infrequent. However, in FSM, the small and largely tribal nature of communities ensures that to a great extent there is transparency without formal disclosure. Most people in a small community know what is going on and who is receiving money. Further, to a great extent, there are laws in place to deal with conflict of interest. The missing link is appreciation by members of society of the long term cost of corruption and a feeling that it is acceptable to hold public officials accountable. The challenge is therefore to communicate the long term damage that conflict of interest and related forms of corruption can have on a society and generate a public willingness to combat it.

Effectiveness of Government and Donor-Supported Activities

There is an apparent openness among members of the public service about the need to improve transparency and accountability. Although some see the stringent terms imposed by Compact 2 as an infringement on sovereignty, most people seem to welcome them and favour the same standards being applied throughout all sectors of the economy.

The amendment of the criminal law approximately 4 years ago to include specific offences relating to misconduct in office and corruption are a significant step in the right direction. The prosecutions of members of Congress, pursuant to these provisions, (unless they are frustrated by Congress' control over the appointment of the next AG) are likely to have a deterrent effect on current and future members of Congress. This is especially needed in relation to Chuuk where the rule of law is greatly compromised by corruption and inefficiency.

The lessons learned by FSM and the United States in Compact 1 have been incorporated into the terms of Compact 2.

Whether designed to combat corruption or not, the presence of foreign lawyers and judges in the justice system is seen by some as a good thing and by others as necessary. This view is founded on the premise that traditional loyalties make it difficult, if not impossible for Micronesians to administer a legal and judicial system free of bias.

The Public Auditor's hotline has been useful in leading to prosecutions for misappropriation and related offences. A traditional reluctance to use such mechanisms (even in non-traditional contexts) seems to be slowly evolving to allow for public awareness and

involvement in anti corruption activities. There are therefore grounds for optimism that the trends which are presently evident will continue.

Priorities and Recommendations

It is recognised that all change involves trade-offs among competing priorities. The following suggested priorities and recommendations are offered with this recognition. Subject to the costs, both financial and otherwise, they may have merit as ways to further enhance the NIS. in FSM and reduce the level of corruption.

General themes

Top down enforcement mechanisms are largely in place, at least at the National level. These will be reinforced by the soon to be applied conditions of Compact 2. It would be useful to supplement these audit and control mechanisms with a sense of public awareness of the nature and costs of corruption. A realization that transparency and accountability are in the public good, and that the continued extension of traditional deference and favouritism into the heart of political and public life is contrary to everyone's interests, should be reinforced in a culturally sensitive way. Anonymous hotlines, more public affairs broadcasting and civics education in schools would all contribute to this.

A central theme of such education would be the idea that politicians are not chiefs but rather, that they are servants of both chiefs and the general public. The notion that election to political office does not confer chiefly status should be reinforced. A greater appreciation that politicians are more like managers of the government who can be dismissed if they don't perform well would be a good thing. Education should also create a collective sense of ownership of the country's resources so that waste and corruption is seen to create victims of the citizens of the country.

Structural changes

- Direct election of the President. The president would then be more dependant on the population at large and less reliant on Congress and the interests members for political survival.
- Limit the term of office of the members of congress. There is a widespread feeling that the old guard are not easily displaced simply because of the advantages that being an incumbent brings. The old guard however would be required to participate in such a change.

Strengthening what exists

- Strengthen the independent media. This would ideally not be the voice of outsiders lecturing locals, but be an authentic, culturally sensitive voice of Micronesians.
- Encourage private sector NGO's such as chambers of commerce.
- Provide more resources for both auditing and training auditing personnel.
- Continue with the investigation and prosecution of politicians who commit offences.
- More police training. This training should ideally take into account local realities of policing in small island states.
- Auditing – including auditing of representation funds

New mechanisms.

- A uniform Leadership Code which operates at both the state and national levels. This should take into account existing laws relating to leadership in order to avoid redundancy.

- Gift registry for politicians. This could be part of a Leadership Code Act.
- An ombudsman who operates within the classical model, receiving complaints, conducting investigations into maladministration, and making recommendations. The Ombudsman could be given a broad public education and public awareness brief. This would ideally link with a strengthened media.
- A financial intelligence unit with forensic auditing expertise to assist other government departments in the investigation and preparation of prosecutions relating to white collar crimes.

Tighter rules and recording duties in relation to donations both to and by politicians in political campaigns.

Appendix 1 - Questionnaire

Executive

Can citizens sue government for infringement of their civil rights?

Formal or legal position

Yes.

Article 4 of the Constitution sets out various civil rights and freedoms. Citizens may sue the government for an infringement of these rights.

What actually happens

There is an abundance of case law dealing with suits against the government for infringement of rights. Citizens who have a case against the government may hire a lawyer privately or, if they are indigent, may make use of the services of the Micronesian Legal Services, a regional legal service funded by the US Government and staffed by US and Micronesian lawyers.

Are there procedures for the monitoring of assets, including disclosure provisions:

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

Formal or legal position

There is no legal requirement for monitoring of assets by either the executive or other government officials.

What actually happens

Members of the executive do not disclose their assets. Justices of the National Supreme Court voluntarily disclose their assets annually to the Clerk of the Supreme Court.

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

Formal or legal position

N/A

What actually happens

N/A

Are there conflict of interest rules:

- For ministers?
- For high level officials?

Formal or legal position

The offence of conflict of interest on the part of public officials is provided at FSMC Title 11, s. 512. The States of Yap and Chuuk also make conflict of interest on the part of public officials a crime.

What actually happens

Conflict of interest on the part of the executive at the National level is not unknown. However, it is not a serious problem, particularly in comparison to conflict of interest among members of Congress.

Are there rules and registers concerning gifts and hospitality:

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

Formal or legal position

There are no rules.

What actually happens

N/A

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

- **Have they legal powers to enforce disclosure?**
- **Have they staff to investigate allegations?**
- **What powers of sanction are in place against ministers who are also parliamentarians? Have they ever been invoked?**
- **What powers of sanction are in place against ministers who are not parliamentarians? Have they ever been invoked?**
- **What powers of sanction are in place against high level officials? Have they ever been invoked?**

N/A

Are there restrictions on post ministerial office employment?

- **by ministers?**
- **by high level officials?**

Formal or legal position

There are restrictions on post office employment. Public officials are prohibited from taking employment which was created while they were in office for three years after leaving that office.

What actually happens

It appears that this provision is, by and large, complied with.

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

Formal or legal position

No, other than in the appointment of Justices of the Supreme Court, Secretaries of the 6 National Departments or ambassadors. In these instances, after a candidate is nominated by the President, Congress must approve the nomination. This indirectly requires the President to justify such appointments.

What actually happens

Often, Congress does not approve a nomination of a candidate, forcing the President to resubmit the name or submit another nomination.

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

Formal or legal position

All expenditures must be approved by Congress. Even funds which have been allocated which are subsequently redirected to another purpose must be re-approved by Congress. The executive cannot over-ride Congress in these matters, other than in a declared state of emergency.

What actually happens

The law is followed. The President has declared a state of emergency in the face of natural disaster but has not misused the opportunity to enter into contracts or issue licenses.

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

Formal or legal position

The Congress has the power to impeach and remove the President and Vice President for specified wrongdoings.

What actually happens

No impeachment proceedings have been initiated.

Legislature

Is the legislature required to approve the budget?

Formal or legal position

Yes

What actually happens

No funds are appropriated except in accordance with a budget which is approved by Congress. This requires 2 readings; one passing by a majority of members of Congress and the other by three fourths of the votes cast by State delegations to Congress.

Are there significant categories of public expenditure that do not require legislative approval? (which departments does this involve, what is their expenditure and what percent does this represent of the government's annual expenditure?)

Formal or legal position

No, there are no significant categories of public expense which do not require the approval of Congress.

What actually happens

No funds are expended except in accordance with a budget which has been approved by Congress.

Are there conflict of interest rules for parliamentarians?

Formal or legal position

Yes, there are conflict of interest rules for members of Congress. The offence of conflict of interest on the part of public officials is provided at FSMC Title 11, s. 512. The States of Yap and Chuuk also make conflict of interest on the part of public officials a crime.

What actually happens

Widespread conflict of interest occurs among members of Congress. This occurs in various ways in relation to the appropriation and expenditure of funds. Conflicts occur among both national and state members of Congress. The degree of conflict of interest varies from one state to another. National and state members of Congress from Chuuk are perceived to be significantly more in breach of their duty to avoid conflict of interest. There is a recent trend to prosecute members of the National Congress who are alleged to be in conflict of interest.

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

Formal or legal position

There are no rules and registers concerning gifts and hospitality for members of Congress; apart from the obligation to avoid a conflict of interest described above.

What actually happens

N/A

If so, are these registers kept up to date?

By whom?

Have they legal powers to enforce disclosure?

Have they staff to investigate allegations?

What powers of sanction are in place against parliamentarians?

Have they ever been invoked?

N/A as there are no registers of gifts

Are there restrictions on post legislature employment?

Formal or legal position

The restrictions for members of the National Congress are the same as they are for the President and Vice President. As public officials, they are prohibited from taking employment which was created while they were in office for three years after leaving that office.

What actually happens

It is not known whether there has been a breach of this prohibition. There is no public perception or known allegation that there has been a serious breach.

Elections

Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?

Formal or Legal Position

National elections are administered by a National Election Director and National Election Commissioners in each state.

What Actually Happens

Elections are administered in accordance with the law.

Who appoints the Head of the Commission?

Formal or Legal Position

The Director is appointed by the President on the advice and consent of Congress. The Commissioners are appointed by the Director in consultation with the governors of each state.

What Actually Happens

The Director and Commissioners are appointed according to law.

Political Party Funding

Are there rules on political party funding?

Formal or legal position

There are no political parties in the Federated States of Micronesia. There are no rules on individual candidates funding.

What actually happens

In order to run for election in FSM, it requires a considerable amount of money. Rather than financial support flowing from supporters to candidates, in FSM, the pattern is that, during a campaign, the visible flow of money and other forms of wealth go from the candidate to the voters. Chiefs who have influence over the votes of their people are particular recipients of these favours. They can take the form of boats, outboards or vehicles in some cases.

The Representation fund which is provided to members of the National Congress is perceived to be one source of funding for candidates, giving incumbents a significant advantage. Another source is family and clan.

Are substantial donations and their sources made public?

Formal or legal position

There is no obligation to make donations and their sources public.

What actually happens

In the small communities of FSM, donations to and by candidates generally become public knowledge by word of mouth rather than through official disclosure.

Are there rules on political party expenditures?

Formal or legal position

There are no rules. See above.

What actually happens

See above.

Are political party accounts published?

Formal or legal position

There are no political parties in FSM.

What actually happens

N/A

Are accounts checked by an independent institution, are they published and are they submitted to parliament?

Formal or legal position

N/A. There are no political parties and individual candidates are not obliged to publish accounts.

What actually happens

N/A

Does that institution start investigations on its own initiative?

Formal or legal position

N/A

What actually happens

N/A

Who appoints the head of the institution?

Formal or legal position

N/A

What actually happens

N/A

Supreme Audit Institution

Is the national auditor general independent? i.e.

Is the appointment of the general auditor required to be based on professional criteria/merit?

Is the appointee protected from removal without relevant justification?

Is the office of Auditor General adequately resourced?

Formal or legal position

The law provides for Public auditors at both the National and State levels. The National Public Auditor is appointed by the President on the advice and consent of Congress to a 4 year term. It requires a two thirds vote of Congress to dismiss a Public Auditor during his or her term.

The public auditor has no guarantee of adequate funding.

What actually happens

At the national level, Public Auditors are appointed in accordance with the law. However, reappointment is not automatic. Funding is generally adequate. However, it has been a challenge to acquire competent forensic accountants to work under the Public Auditor. A public auditor who is "too good" at the job is unlikely to be appreciated by Congress and is unlikely to be reappointed. The position was either vacant or filled by acting Public Auditors for several years recently. Funding for auditing has in the past, fallen short of what is required to do the job, including hiring outside expertise in the form of investigators or lawyers to find and interpret information where necessary.

In Chuuk, no public auditor has ever been appointed despite the legislative provision for one. The public auditor in Kosrae was appointed in recent years. Yap and Pohnpei both have public auditors. Like the National Public Auditor, it is a challenge to keep the offices staffed with qualified accountants. The quality of the audits suffers accordingly.

Are all public expenditures audited annually?

Formal or legal position

Audits are done annually or semi annually according to the law of the jurisdiction.

What actually happens

Audits are conducted annually or semi annually apart from Chuuk where the position of state auditor remains unfilled. However, the quality of the audits, particularly at state level varies according to the availability of source documents and auditing resources.

Is reporting up to date?

Formal or legal position

Reporting can be slow but is generally completed within a year of the relevant year.

What actually happens

See above

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

Formal or legal position

The Public Auditor files a report at least once a year with the Congress. The Public Auditor may file other reports at such other times as he may determine. All reports of the Public Auditor are made available to the public.

Audit reports are not debated by congress.

What actually happens

Technically, audit reports are available to the public but difficulty in accessing it and lack of public interest results in their going largely unread.

Are all public expenditures declared in the official budget?

Formal or legal position

Yes

What really happens

All expenditures are made pursuant to an official budget. However, categories of expenditure in the budget are sometimes too general to restrict discretionary spending.

Judiciary

Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister or other ministers and their officials)?

Formal or legal position

Yes, the constitutionality of executive orders may be challenged in court.

What actually happens

Case law establishing this right is well developed.

**Are judges/investigative magistrates independent? i.e.
Are appointments required to be based on merit?
Are the appointees protected from removal without relevant justification?
Are recruitment and career development based on merit?**

Formal or legal position

Judges are formally independent. National Court Judges are appointed by the President for life and may only be removed by impeachment by the National Congress. Judges are bound by the provisions of the Judicial Code of Ethics of the American Bar Association. Judges are required to disqualify themselves from hearing cases in which their impartiality may be reasonably questioned.

What actually happens

Judges are widely perceived to be incapable of being truly independent where one party in a case is related to the judge's island, clan or family. Where such loyalties are tested, justice is thought to come in second place. To deal with this, attempts are made to schedule National Court Judges so that this problem is unlikely to occur. For instance, the National Court will not send a judge from a state when the Court travels to that state for sittings.

There is a widespread (although not unanimous) opinion including among Micronesians that the judiciary can only function properly if there are foreign judges in the judiciary. In fact, judges at both the national and state levels have trained expatriate lawyers who sit with them and assist in writing judgments. This alleviates the problem to some extent, at the expense of compromising the power and independence of judges in other ways.

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

Formal or legal position

Senior officials have no formal impunity and may be prosecuted for corruption or any other offence in the same way as anyone else.

What actually happens

In 2002, a Mayor in the State of Chuuk was successfully prosecuted for a number of offences involving official corruption which involved the expenditure of government money. There are several prosecutions of Congressmen for similar offences pending.

Civil (Public) Service

Are there laws establishing criminal and administrative sanctions for bribery?

Formal or legal position

Bribery is an offence for both the person who offers or gives a bribe and the person who accepts or agrees to accept a bribe. (T11, 516). Further, a public servant may be dismissed for accepting any compensation or gift which might result in the appearance of the use of public office for private gain. (T52, 142)

What actually happens

Bribery is not perceived to occur in FSM. Although it may not be absent altogether, members of the Public Service do not routinely engage in bribery. However, nepotism is considered to be a major factor in hiring public servants. Familial loyalties are seen to over-ride official hiring criteria throughout the public service.

Are there rules requiring political independence of the civil service?

Formal or legal position

The prohibition in engaging in any activity which might be construed to involve the use of public office for private gain implicitly prohibits the holding of political office while a member of the public service. (T52,142) However, employees may form associations to present their views and grievances to the government without fear of reprisal. (T52, 143)

What actually happens

There is some politicisation of the public service. However, this is to a far lesser degree than might be the case (and is the case) in other regional countries where party politics is a factor.

Are recruitment/career development rules based on merit?

Formal or legal position

Detailed recruitment procedures require appointment to the public service to be based on merit. (T52, 113) Examinations to determine competency are required to be administered in relation to each available vacancy. (T52, 132, 133)

What actually happens

Widespread nepotism is perceived within the public service. The rules which detail fair hiring procedures are circumvented in a number of ways. These include "missing" applications of those who might be better qualified than a candidate preferred on other grounds. Another pattern involves the hiring of a relative or preferred candidate on a temporary or acting basis for sufficient time that, when the vacancy is formally advertised, the acting candidate has the advantage of experience on the job.

Are there specific rules to prevent nepotism? Cronyism?

Formal or legal position

The law provides for hiring in the public service to be subject to the examination of applicants according to qualifications and experience.

What actually happens

The rules are often circumvented to favour relatives and extended family. (See above)

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

Formal or legal position

No

What actually happens

N/A

If so, are these registers kept up to date?

By whom?

Have they legal powers to enforce disclosure?

Have they staff to investigate allegations?

What powers of sanction are in place against public officials? Have they ever been invoked?

N/A

Are there restrictions on post public service employment?

Formal or legal position

There are no restrictions on post public service employment.

What actually happens

Former public servants are free to take employment wherever they wish. This is not perceived to be a significant concern in relation to conflict of interest.

Are procedures and criteria for administrative decisions published (e.g. for granting permits, licences, bank loans, building plots, tax assessments, etc)?

Formal or legal position

Yes

What actually happens

Obtaining these or any other government document from the relevant public office is a challenge which often defeats applicants with delays and referrals.

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

Formal or legal position

At the National level there is no formal provision creating whistle blower protection for public servants. However, Title 52, Chapter 1 includes specific provisions pursuant to which a public employee may be dismissed, suspended or demoted. These grounds implicitly prohibit any of these steps being taken in relation to whistle blowing. At the State level, there are specific provisions in both the YSC (Chapter 13 section 1265) and the CSC (Chapter 28 section 1107) provide protection to state employees who disclose misuse of public money to the State Auditor.

What actually happens

Although reporting of misappropriation of funds by public servants does occur, no specific instances have emerged. It follows that no discrimination of a public servant for disclosing an instance of misappropriation is known.

Are there means for complaints by members of the public?

Formal or legal position

Members of the public may lodge a complaint to the police where a criminal offence is believed to have taken place. This includes offences relating to the misappropriation of money. Further, where the action complained of constitutes an administrative action, a person aggrieved action is entitled to make a grievance to an administrative review board. FSMC, Title 19 provides that any person aggrieved by an administrative decision (by any government agency) is entitled to a hearing before a hearing officer. (s108).

What actually happens

This mechanism functions although it is not frequently used.

Are there administrative checks and balances on decisions of individual public officials?

Formal or legal position

See above. Any administrative decision may be challenged by a member of the public who is aggrieved.

What actually happens

See above

Police and Prosecutors

Is the commissioner of police independent? i.e.

Are appointments required to be based on merit?

Is the appointee protected from removal without relevant justification?

Formal or legal position

Appointments of prosecuting attorneys are based on merit. Prosecuting attorneys have considerable discretion concerning whether or not to begin or continue a prosecution. This discretion will only be interfered with in extraordinary circumstances.

What actually happens

Although there is formal independence of prosecutors, they are under the authority of the Secretary of Justice, whose tenure depends on that of the President who appoints him or her. The President's tenure is dependant on the members of Congress who elect him or her.

Are public prosecutors independent?

Formal or legal position

Public prosecutors in FSM are part of the Department of justice under the direction of the Secretary of Justice.

What actually happens

The Secretary of Justice is nominated by the President and confirmed by Congress. This process has constituted a bottle neck of late with Congress failing to endorse a Presidential nomination. This is thought to be related to the perceived zeal of the nominee and the feeling of vulnerability on the part of some members of Congress. In the meantime, the acting Attorney General is performing in an independent and professional manner.

Are there special units for investigating and prosecuting corruption crimes?

Formal or legal position

Not at the National level. However Chapter 10 of the CSC provides for an independent prosecutor.

What actually happens

The Chuuk State prosecutor is largely moribund.

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

Formal or legal position

No

What actually happens

Complaints against the police are either made to the police or to the Attorney General.

Does civil society have a role in such a mechanism?

Formal or legal position

The Micronesian Legal Services is available to provide legal advice and representation to people who have civil grievances against public authorities. This is a competent and well funded agency. Private lawyers also act in this capacity.

What actually happens

Legal redress is an effective generally. However, alleged corruption is not the cause of a great many suits against the government.

In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

Formal or legal position

N/A

What actually happens

No known prosecutions of police officers are known to have occurred.

Are there any cases of corruption within the prosecuting agencies?

Formal or legal position

No

What actually happens

N/A

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

Formal or legal position

Provisions which create offences relating to public corruption are available to the police and prosecutors. These provisions include speculating or wagering on official action or information (T. 11, 515), bribery in official and political matters (516), threats and other improper influence in official and political matters (517), retaliation for past official action (518), gifts to public servants by persons subject to their jurisdiction (519) compensation public servant for assisting private interests in relation to matters before him (520) and selling political endorsement and special influence (521). In addition, there are provisions against money laundering and similar offences (912-928).

What actually happens

There is a recent trend to apply these laws. See below.

Is the law applied?

Formal or legal position

There is no barrier to the application of these laws.

What actually happens

In recent times, there has been a noticeable increase in the application of these laws. This is not perceived to be related to an increase in the commission of these types of offences (which are widely considered to be pervasive within the government) but to a greater ability and willingness to apply the law.

Is private-to-private corruption punishable by law?

Formal or legal position

Private-to-private corruption is not perceived to have a noticeable presence in FSM.

Is the law applied?

N/A

How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

Formal or legal position

The exact number of prosecutions which have been undertaken in past years has not been ascertained.

What actually happens

Prosecutions take place at both the National and State levels. The number of prosecutions at the National level is relatively small, reflecting the relatively narrow scope of National jurisdiction over crime. However a more substantial part of the National jurisdiction compared with state jurisdictions has to do with crimes associated with corruption.

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Formal or legal position

National law requires competitive bidding. All contracts for construction projects involving \$20,000 or more or for the purchase of personal property involving \$50,000 or more made on behalf of any National Government agency are subject to free and open competitive bidding, by sealed bids, to the lowest responsible bidder. (T55, 403) Preference is given to citizen bidders over non-citizen bidders according to a formula based on the amount of the contract. (T 55 404)

What actually happens

Contracts are frequently deliberately broken into smaller contracts which are each below the threshold that triggers competitive bidding requirements. Even when competitive bidding is applied, there are often few bidders whose goods or services meet the quality or other requirements of the intended contract. This narrows the field with the result that collusion is more easily accomplished. Sub contracts with the successful bidder are not subject to open bidding and this presents an opportunity for price fixing and kickbacks.

Are the rules laid down in documents publicly accessible?

Formal or legal position

Yes, the rules are publicly accessible.

What actually happens

The rules are publicly accessible

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

Formal or legal position

There are extensive provisions governing the procedure for competitive bidding in relation to construction contracts over the amount of 20,000 and 50,000 for contracts for purchase of personal property. (Title 55 Chapter 4). Exceptions exist for foreign aid projects which stipulate that the contract be awarded to the donor country and contracts awarded during emergencies declared by the President.

What actually happens

Sole sourcing takes place in relation to contracts for an amount less than the specified amounts. These contracts are seen to represent a source of patronage in many cases. Sometimes, contracts over the stipulated amounts are artificially broken into separate

contracts below the threshold in order to accomplish the same purpose. Sub contracting of contracts over the stipulated amounts are often entered into without competitive bidding and are also a source of patronage and kick back.

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

Formal or legal position

Documents calling for bids are made by posting of notice for at least ten days in the immigration office and in one other prominent public place in each State in the Federated States of Micronesia. Radio TV and newspapers are used when considered appropriate by the contracting officer. (410)

What actually happens

These documents are available although it sometimes takes persistence to overcome the delay and bureaucracy in obtaining them.

Are procurement decisions made public?

Formal or legal position

Yes, with relation to contracts for amounts over the threshold mentioned above. Any citizen taxpayer may bring an action to enjoin the execution of a contract which was awarded contrary to statutory provisions. (T 55, Chapter 4)

What actually happens

Although information is made public, obtaining it can be subject to the bureaucratic delays and frustrations. The right to bring an action has not resulted in any court decisions.

Is there a procedure to request review of procurement decisions?

Formal or legal position

Any citizen taxpayer in the Federated States of Micronesia or any bona fide unsuccessful bidder on a particular contract is empowered to bring a civil action in the Federated States of Micronesia Supreme Court to enjoin execution of any contract entered into in violation of the statutory provisions governing government contracts. See above.

What actually happens

There are no reported cases of this ever being done.

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

Formal or legal position

See above.

What actually happens

See above.

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

Formal or legal position

No

What actually happens

N/A

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

Formal or legal position

There are no rules specifically directed against nepotism. However, the laws relating to bidding, outlined above, implicitly address and forbid nepotism in public procurements above the threshold level.

What actually happens

In contracts below the threshold level, nepotism is widely perceived to take place. Without the requirement for bidding, in an environment with a low level of private enterprise, extended families, traditional obligations and where politicians often have an interest in the commercial activities, opportunities for nepotism are rife.

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

Formal or legal position

No

What actually happens

N/A

Ombudsman

Is there an ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about maladministration)?

Formal or legal position

There is no independent ombudsman who makes persuasive recommendations in response to complaints about maladministration.

What actually happens

N/A

Is the ombudsman independent? i.e.

Are appointments required to be based on merit?

Is the appointee protected from removal without relevant justification?

Is the office of ombudsman adequately resourced?

Formal or legal position

N/A

What actually happens

N/A

Has an ombudsman been removed without relevant justification in the last five years?

Formal or legal position
N/A

What actually happens
N/A

Can petitioners complain anonymously if they fear possible reprisals?

Formal or legal position
N/A

What actually happens
N/A

Are reports of the ombudsman published?

Formal or legal position
N/A

What actually happens

Does the government act on the ombudsman's recommendations?

Formal or legal position
N/A

What actually happens
N/A

Investigative/Watchdog Agencies

Are there special investigative or watchdog agencies?

Formal or legal position

There are no watchdog or investigative agencies in FSM.

What actually happens

Although it cannot be strictly characterized as a watchdog agency, Micronesian Legal Services provides representation to people with legal complaints against government authorities and others. There may be some awareness and perhaps deterrence generated as a result of the services of MLS. However, it has no educational or awareness mandate.

What are their main responsibilities:

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

Formal or legal position

N/A

What actually happens

N/A

Are they independent? i.e.

Are appointments required to be based on merit? Are appointments generally based on merit?

Are the appointees protected from removal without relevant justification?

Are they adequately resourced?

Are their reports published (other than when criminal charges are pending)? Are they acted on by the government?

Formal or legal position

N/A

What actually happens

N/A

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

Formal or legal position

N/A

What actually happens

N/A

Can people complain to the agency without fear of recrimination?

Formal or legal position

N/A

What actually happens

N/A

Media

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

Formal or legal position

Article 4, section 1 of the FSM Constitution provides that no law may deny or impair freedom of expression, peaceable assembly, association, or petition. This is broad enough to cover freedom of speech of the press.

What actually happens

The media in FSM is restricted to one biweekly newspaper. The press is generally fairly timid and uncontroversial in relation to issues of accountability and corruption. What coverage does relate to these topics is usually restricted to facts or factual allegations reported from other sources (such as indictments or court pleadings).

Is there censorship of the media?

Formal or legal position

The freedom of expression provisions of the constitution prohibit are wide enough to implicitly prohibit government censorship of the media.

What actually happens

Tenacious reporters who are not citizens or Americans are at risk of deportation.

Is there a spread of media ownership?

Formal or legal position

There is no formal position concerning the spread or concentration of media ownership. Freedom of expression is guaranteed in the constitutional right.

What actually happens

There is very little media ownership to begin with. What exists is not concentrated. Media from outside the country has a greater penetration than that from internal sources.

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

Formal or legal position

There are no requirements that publicly owned media regularly cover the views of government critics. However, during election campaigns, the

What actually happens

Have journalists investigating cases of corruption been physically harmed in the last five years?

Formal or legal position

N/A

What actually happens

N/A

Does the media carry articles on corruption?

Formal or legal position

The one national newspaper, Kastelahlie Press does provide coverage on corruption.

What actually happens

Reporting on corruption is a small part of the news covered by the paper. Reporting on corruption tends to relate only to facts as alleged or reported to the paper. In relation to corruption, there is no investigative journalism and no editorial content.

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

Formal or legal position

Newspapers do not require any license over and above business licensing that is required of non media businesses. Broadcast media is subject to Title 21 of the FSMC. Licensing is subject to regulations made pursuant to the statute by the Secretary of the Department of Transportation and Communication. Internet access is provided solely by the Telecommunications Corporation which exists pursuant to the provisions of Title 21 of the FSMC. The Corporation has a monopoly on the provision of all telephone and internet services in the country.

What actually happens

Media, (either broadcast or print) is a very challenging commercial endeavour in FSM. The relatively small size of the media is more a reflection of this commercial reality than any restrictions on broadcasting licenses.

Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?

Formal or legal position

No.

What actually happens

N/A

Civil Society

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

Formal or legal position

Public documents are legally available to members of the public. Beyond that, there is no freedom of information legislation in FSM.

What actually happens

Access to public documents is not often refused outright but is frequently frustrated in practice. Unhelpful office staff, poor record keeping, delays and the "need" to resort to higher authority before release of documents often amounts to an inability to obtain even public documents.

Do the public authorities generally co-operate with civil society groups?

Formal or legal position

There is no legal barrier to limit cooperation.

What actually happens

In fact there are few civil society groups which seek cooperation from public authorities.

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

Formal or legal position

No

What actually happens

N/A

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

Formal or legal position

No

What actually happens

N/A

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

Formal or legal position

No

What actually happens

N/A

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

Formal or legal position

There is no formal position.

What actually happens

The education system pays attention to integrity issues only incidentally. Education, particularly at the tertiary level is geared to US standards and curriculum with the result that local history and politics is not sufficiently emphasized to raise local awareness concerning integrity issues.

Traditional Organisations

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

And to what extent are they part of the National Integrity System?

Formal or legal position

Article 4 Section 1 of the FSM Constitution provides:

Section 1, Nothing in this Constitution takes away a role or function of a traditional leader as recognized by custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles at any level of government as may be prescribed by this Constitution or by statute.

Section 2. The traditions of the people of the Federated States of Micronesia may be protected by statute. If challenged as violative of Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action.

Section 3. The Congress may establish, when needed, a Chamber of Chiefs consisting of traditional leaders from each state having such leaders, and of elected representatives from states having no traditional leaders. The constitution of a state having traditional leaders may provide for an active, functional role for them.

Section 11 of Article 9 of the Constitution provides for legislative representation for traditional leaders.

A state may provide that one of its seats is set aside for a traditional leader who shall be chosen as provided by statute for a two-year term, in lieu of one representative elected on the basis of population. The number of congressional districts shall be reduced and reapportioned accordingly.

At the State level, similar provisions exist. For instance, Article 3 of the Yap Constitution provides:\

Section 1. There shall be a Council of Pilung and Council of Tamol which shall perform functions which concern tradition and custom.

Section 2. Due recognition shall be given to traditions and customs in providing a system of law, and nothing in this Constitution shall be construed to limit or invalidate any recognized tradition or custom.

What actually happens

None of the above mentioned constitutional provisions have been implemented at the National level. However, in some parts of the country, namely Yap, where chiefs have retained much of their power, the relevant provisions of the Constitution are implemented and the councils are fully integrated into the national (state) integrity system.

Although traditional practises may not accord completely with western notions of transparency and governance, harmony and stability is preserved. Yap is the only state in FSM to have a significant operating surplus of funds.

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

Formal or legal position

No

What actually happens

N/A

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

Formal or legal position

As stated above.

What actually happens

In Yap, the Councils of Pilum and Tamol have virtual veto power over the passing of legislation.

What anti corruption measures, formal or informal, do they apply to their own members?

Formal or legal position

There are no formal or legal controls.

What actually happens

Traditional organizations apply traditional standards to their own conduct. This is not always in conformity with western notions of corruption and transparency. However, this does not deprive them of the integrity of traditional values. They operate in a manner which is open, understood and acceptable to most members of the community. In some parts of the country, traditional councils are credited with holding society together and preventing the misuse of money. This is clearly the perception in relation to the State of Yap.

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

Formal or legal position

There is no *Formal or legal position* with respect to whether deliberations and decisions of traditional groups are open to the public or media.

What actually happens

The media generally does not generally express an interest in the deliberations of traditional groups. Traditional organizations do not operate in secret and it is perceived that reporting on their deliberations would not be unwelcome. Chiefs are free to speak out on any issue they wish and frequently do so.

Private Sector and NGOs

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

Formal or legal position

None are known.

What actually happens

N/A

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

Formal or legal position

Not known

What actually happens

N/A

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

Formal or legal position

There is no *Formal or legal position* in connection with this question.

What actually happens

Privatisation and outsourcing is not a significant trend. In some sectors of the community (for instance weather service, air traffic control) services have been provided directly by the US in accordance with the terms of Compact 1. There is no indication of corruption in connection with any of these activities.

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

Formal or legal position

None are known.

What actually happens

N/A

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

Formal or legal position

Not known

What actually happens

There is no perception that Churches have engaged in corrupt activities.

Regional and Local Government

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

Formal or legal position

Each state has its own statutory code. Generally they mirror the National Government which has no provisions in relation to these things.

What actually happens

N/A

What public offices at regional and local level are appointed by the national government?

Formal or legal position

The constitution limits the powers of the National Government. These powers do not include regional and local levels of government.

What actually happens

N/A

Is there a legal requirement that meetings of city/ town councils be open to the press and public?

Formal or legal position

No

What actually happens

The meetings of local governments are open to the public and to the press.

Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and public?

Formal or legal position

No

What actually happens

The public is entitled to be present at local government meetings.

Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsmen, supreme audit institutions, and so on) work at regional or local levels and are there specific agencies with regional and local responsibilities?

Formal or legal position

Some of the states has its own constitution and extensive legislative powers. Each state has provisions which deal with ethical standards of public officials.

In Chuuk, Article 9, section one of the Constitution provides that a government official is disqualified from ruling upon any matter in which the official has a personal or financial interest. This provision is prescriptive and a breach carries no penal consequences. Title 12, Chapter 7 of the CSC provides for a number of offences relating to misconduct by government officers. These include bribery, threats to influence official matters, retaliation for past official action, conflict of interest, misconduct in office and misuse of government property

In Yap, the provisions prohibit such things as conflict of interest, improper interest and outside employment. However, these provisions are prescriptive and do not entail any penal consequences. (YSC T8Ch3). Title 13, Chapter 7 of the YSC provides for a public auditor with powers and duties similar to those of the National Public Auditor.

In Kosrae, Title 10 Chapter 4 of the KSC provides for a public auditor with powers roughly matching those of the National Public Auditor. Kosrae has no other provisions which relate specifically to the matters mentioned above.

What actually happens

These provisions have been seldom enforced in the past and, what enforcement has taken place has varied from state to state. Chuuk, which is perceived to be the state where most

abuses of power by officials takes place is also where enforcement has occurred most frequently. However, enforcement in Chuuk to date has been pursuant to the National Code provisions and not the CSC.

Progress with Government Anti-Corruption Strategy

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

Formal or legal position

The National government has not announced an anti corruption strategy.

What actually happens

The national Attorney General has recently displayed an increasing resolution in combating corruption which was not previously evident (although anti corruption prosecutions have are not unprecedented). These efforts have so far been in relation to National politicians from Chuuk State.

How much of the strategy has been implemented?

Formal or legal position

N/A

What actually happens

See above.

Is the strategy at national level or regional/local level?

Formal or legal position

N/A

See above

N/A

Is the government meeting its own timetable?

Formal or legal position

N/A

What actually happens

N/A

Donor Anti-Corruption Activities

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

Formal or legal position

The United States has been, by far, the biggest provider of foreign aid in FSM. The relationship has existed since FSM was a Trust Territory administered by the United States before independence. During the last 20 years, US aid has been provided pursuant to the Compact of Free Association, a government to government agreement between the United States and the governments of FSM and the Republic of the Marshall Islands. This arrangement will continue for a further 20 years under Compact 2. (At the time of writing, Compact 2 has been agreed to by the Government of FSM and the United States Congress. It has yet to be signed by the United States President. This is expected to take place.) Under Compact 1, few stringent controls were included as conditions for provision of aid. Under Compact 2, much more stringent controls exist. These include continual oversight and regular auditing with conditions that permit the suspension of funding where irregularities occur.

The Asia Development Bank has contributed technical assistance to the

What actually happens

The provisions of Compact 2 have yet to be implemented. It is anticipated however by both sides that the terms and conditions, particularly those relating to oversight and auditing will have a significant effect on the integrity of the disbursement of the funds flowing to FSM and its states pursuant to Compact 2.

What types of anti-corruption initiatives have they supported?

Formal or legal position

See above

What actually happens

Are there any examples of donors cooperating or coordinating their programmes?

Formal or legal position

Not known

What actually happens

N/A

Future Research and Donor Support

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

There are no quick fixes to corruption in FSM. The mechanisms and legislation which is required is largely in place. Political and institutional will which would be lacking at some times and in some areas. The appointment and support of competent, well resourced auditors, the wide dissemination of their reports and follow-up on recommendations made would have a significant impact in increasing the effectiveness of the legislative provisions.

Is there a particular aspect of corrupt activity either particular to the country concerned, or significant in terms of effect or impact, that would require more in-depth research?

The relationship between the Members of Congress and the President, specifically the reliance of the President on the approval of Congress for nomination of secretaries, combined with the small number of Members of Congress and the lack of a political opposition constitutes a means by which politicians may collude at a high level to avoid the constraints of good governance. This is a structural constitutional problem which has been raised and should continue to be studied with a view to possible alternatives.

Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice?

Corruption must be understood in light of the traditional values that continue to permeate society and which remain an important part of the social fabric. Corruption must be understood in light of these traditional values. It is important that traditional values and the principles of good governance accommodate each other.

The media represents an under utilized means of bringing issues and formulating public debate. Increased use of culturally appropriate public education and information could have a significant positive effect.

Corruption can only be dealt with if it is perceived by citizens of the country as an issue which affects their short and long term interests. An important feature in the fight against corruption is likely to be the enhancement of a sense of common ownership of the country's (or state's) resources and the negative impact of corruption.

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

The terms and conditions of Compact 2 are likely to provide a sufficient regulatory basis for combating corruption – at least in respect of government expenditures which derive from the United States. A public will to comply with the requirements (see above) and the resources and expertise to do so are important additional factors. Also, regulatory conditions which are analogous to those of Compact 2 in respect of money which originates from sources other than Compact 2 would be of benefit.

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

Some existing state legislation provides for comprehensive measures to deal with corruption (for example a special prosecutor in Chuuk, strict auditing requirements). Resources to implement and apply these provisions to their potential, including training of

Yes, key areas that can be usefully considered for future donor prioritisation include the following:

- A uniform Leadership Code which operates at both the state and national levels. This should take into account existing laws relating to leadership in order to avoid redundancy.
- Gift registry for politicians. This could be part of a Leadership Code Act.
- An ombudsman who operates within the classical model, receiving complaints, conducting investigations into maladministration, and making recommendations. This might be incorporated into existing administrative review structures. The Ombudsman could be given a broad public education and public awareness brief. This would ideally link with a strengthened media.
- A financial intelligence unit with forensic auditing expertise to assist other government departments in the investigation and preparation of prosecutions relating to white collar crimes.

- Tighter rules and recording duties in relation to donations both to and by politicians in political campaigns.

Appendix 2 - List of References

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Appendix 3 – List of Laws and Cases

Chuuk State Constitution

Chuuk State Code

Kosrae State Constitution

Kosrae State Code

Pohnpei State Constitution

Pohnpei State Code

Yap State Constitution

Yap State Code