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\* CAC/COSP/IRG/2021/1.



## II. Executive summary

### Fiji

#### 1. Introduction: overview of the legal and institutional framework of Fiji in the context of implementation of the United Nations Convention against Corruption

Fiji acceded to the United Nations Convention against Corruption on 14 May 2008, and the Convention entered into force for Fiji on 13 June 2008.

The implementation by Fiji of chapters III and IV of the Convention was reviewed in the first year of the first review cycle, and the executive summary of that review was issued on 23 March 2012 ([CAC/COSP/IRG/I/1/1/Add.6](#)).

The national legal framework for preventing and combating corruption includes, notably, the Constitution, the Prevention of Bribery Act, the Fiji Independent Commission Against Corruption Act, the Civil Service Act, the Electoral Act, the Financial Management Act, the Financial Transactions Reporting Act, the Mutual Assistance in Criminal Matters Act, and the Proceeds of Crime Act. International instruments are implemented through the enactment of national legislation and case law.

Institutions involved in the prevention of and fight against corruption include the Fiji Independent Commission against Corruption, the Office of the Auditor General, the Fiji Financial Intelligence Unit, the Office of the Attorney General, the Office of the Director of Public Prosecutions, the Fiji Police Force, the Fijian Elections Office and the Fiji Revenue and Customs Service. Fiji has also established a National Anti-Money-Laundering Council.

Fiji law enforcement authorities cooperate through different mechanisms and networks, including the Asian Development Bank and Organization for Economic Cooperation and Development Anti-Corruption Initiative for Asia and the Pacific, the Asia/Pacific Group on Money-Laundering, the International Criminal Police Organization and the Egmont Group of Financial Intelligence Units. Fiji is also a member of the Pacific Islands Forum Secretariat, the Pacific Islands Law Officers' Network, the Association of Pacific Island Financial Intelligence Units, the International Association of Prosecutors, the Pacific Prosecutors' Association and the Pacific Association of Supreme Audit Institutions.

#### 2. Chapter II: preventive measures

##### 2.1. Observations on the implementation of the articles under review

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

Fiji has not developed a dedicated anti-corruption strategy or policy but relies on its existing legislative and regulatory framework to promote integrity, transparency and accountability and to prevent corruption. Some measures on good governance as a means to limit corruption are provided in the *20-Year National Development Plan* released in 2017. Authorities explained that the Fiji Independent Commission against Corruption is in the process of drafting and proposing a national anti-corruption policy.

The Fiji Independent Commission against Corruption is responsible for combating corruption and promoting integrity, accountability and transparency. The Commission is mandated to investigate and prosecute corruption cases, to guide the anti-corruption efforts of the Government and to raise awareness and educate citizens.

The Commission conducts corruption impact assessments for public authorities and monitors and evaluates their implementation. Its Corruption Prevention Department also examines the practices and procedures of government departments and public bodies and makes recommendations to strengthen their frameworks (sect. 12 of the Fiji Independent Commission against Corruption Act). In addition, the Department

raises awareness among the public and private sectors, schools and the community. A monitoring and evaluation section of the Commission monitors and assesses the effectiveness of prevention activities to improve programming.

The Fiji Law Reform Commission was tasked with the review and examination of national laws with a view to their reform and development, but it is no longer in operation. Although the Fiji Independent Commission against Corruption undertakes periodic evaluations of anti-corruption laws to make proposals to the Attorney General's office for amendments, there is no systematic process for the periodic evaluation of anti-corruption legal instruments and administrative measures.

The Constitution provides that the Fiji Independent Commission against Corruption must be guided by the standards established under the Convention and be an independent entity not subject to direction or control by any person or authority, except by a court of law or as otherwise prescribed by written law (sect. 115). The Commissioner is appointed and may be removed by the President on advice of the Judicial Service Commission (sect. 5 of the Independent Commission Act). Adequate funding and resources are to be ensured by Parliament to enable the Commission to perform its functions and duties independently and effectively (sect. 115, para. 14, of the Constitution) and the expenses of the Commission must be met by the Government (sect. 4 of the Independent Commission Act).

Fiji participates in regional and international initiatives and organizations that assist in the prevention of corruption, as described above.

Fiji was reminded of its obligation to inform the Secretary-General of the United Nations of the name and address of its authorities that may assist other States parties in developing and implementing specific measures for the prevention of corruption.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

Public bodies conduct recruitment individually. The Constitution provides that recruitment and promotion must be based on objectivity, impartiality and fair competition, as well as ability, education, experience and characteristics of merit (sect. 123 (i)).

Civil servants are subject to recruitment under the Public Service Commission Open Merit-Based Recruitment and Selection Guideline of 2016, which contains detailed regulations on the selection of staff. The guideline applies to civil servants but not to other public officials such as those working in agencies and government departments. Referee checks are mandatory under the guideline. Guidelines issued under the General Orders require the open advertisement of vacancies, and promotion and development opportunities are subject to open competition. A procedural review is available for all hiring decisions.

With the exception of Financial Intelligence Unit staff, whose recruitment entails a security assessment that includes a declaration of assets and liabilities, no specific recruitment or hiring procedures exist for positions that are especially vulnerable to corruption. The Fiji Independent Commission against Corruption conducts ethics and anti-bribery training for officers in the public and private sectors, as well as in agencies with higher corruption risks, as identified in integrity assessments. The Ministry of Civil Service also offers integrity training.

Civil service salary scales are posted online and were reviewed and revised in 2016. Permanent secretaries have individual salaries determined by contract. Members of commissions and constitutional bodies receive remuneration as determined by the President.

Criteria for candidacy for parliamentary elections is laid out in sections 56, 57 and 83 of the Constitution. The Political Parties Act bans all foreign contributions to political parties and individual candidates, as well as any corporate donations. Only individuals can make donations, and those must not exceed 10,000 Fiji dollars (approximately

4,600 United States dollars at the time of reporting) per year. Parties and candidates must disclose the identity of their donors and submit a financial report to the Registrar of Political Parties of the Fiji Elections Office within 30 days of the end of the financial year, as well as a statement of their assets and liabilities 30 days before an election. Parties must submit financial reports annually, and all statements are subject to audit.

The Public Service Code of Conduct contained in the Civil Service Act contains provisions on the duty to avoid and disclose real or apparent conflicts of interest. Similar provisions are found in specialized codes, such as the Code of Conduct for the Fiji Independent Commission against Corruption, the Procurement Guidelines and the Code of Conduct for the Office of the Director of Public Prosecutions. Breaches of the codes can be investigated by the Public Service Disciplinary Tribunal and result in disciplinary proceedings (sect. 7 of the Civil Service Act). There are no formal guidelines or regulations on how to manage conflicts of interest, but this matter is part of the training sessions of the Commission. At the time of the country visit, a code of conduct bill was pending before Parliament. If passed, it would regulate avoidance and disclosure of conflicts of interest, income, assets and other interests and liabilities for high-level elected and appointed officials, Members of Parliament, judicial officers and all public officials, and establish an accountability and transparency commission to monitor compliance with the code. Staff of the Office of the Director of Public Prosecutions and members of the Government Tender Board must already declare financial and business interests under their codes of conduct.

The Fiji Independent Commission against Corruption provides means for reporting corruption-related incidents on its website, by means of a toll-free telephone line, by email or in person. The police have a 24/7 anonymous toll-free reporting line for complaints involving the police and corruption in the police. In 2019, the Attorney General announced that all corruption-related complaints must be made to the Permanent Secretary of the Ministry of Economy, the Secretary being responsible for ensuring that such matters are referred to the Fiji Independent Commission against Corruption. Apart from that obligation, no formal reporting mechanisms exist within public bodies. Reporting is mandatory under the Prevention of Bribery Act (sect. 30B) and the code of conduct bill 2018 mentioned above would provide for the protection of whistle-blowers.

The Judicial Code of Conduct prescribes judicial independence, impartiality, integrity and equal treatment before the law. It requires any person exercising judicial functions to be well informed and knowledgeable about his or her own personal, fiduciary and financial interests and to be reasonably informed about the financial interests of his or her family members.

The Office of the Director of Public Prosecutions has a detailed code of conduct, which covers all staff and includes disclosure requirements for conflicts of interest for staff and family members. Under the Constitution, Parliament is required to ensure that adequate funding and resources are made available to the Office, to enable it to exercise its powers and perform its functions and duties independently and effectively.

The Fiji Independent Commission against Corruption provides ethics trainings to the judicial department.

*Public procurement and management of public finances (art. 9)*

Public procurement is regulated by the Public Procurement Regulations. They are complemented by the Procurement Guidelines issued by the Fiji Procurement Office, which specify detailed procedures and processes on the procurement of goods, services and works in Government. The Procurement Office regulates and administers procurements under 50,000 Fiji dollars (approximately 23,000 United States dollars). Higher value procurements must be approved by the Government Tender Board. Guiding principles for procurement include ensuring value for money, encouraging competition and ensuring accountability and transparency (regulation 3).

A minimum of three competitive quotes must be obtained for the procurement of goods, services or works valued between 100 and 50,000 Fiji dollars inclusive (that is, between approximately 46 and 23,000 United States dollars) (regulation 29). A tender must be called for procurement valued at more than 50,000 Fiji dollars (regulation 30).

All requests for tender must allow reasonable time for potential tenderers to respond and must contain all necessary information, including the specifications of that particular procurement and the evaluation criteria for the award of the procurement contract. All requests for tender must be published for a minimum of two occasions in at least one newspaper circulating in Fiji; where appropriate, in special publications or relevant trade journals circulating in other countries; and on government websites. All bids received must be evaluated in accordance with the pre-determined evaluation criteria (regulation 37).

The contract award decision must be published or all bidders must be informed of the decision, and reasons for the decision may be requested by bidders (regulations 45–46).

Complaints may be submitted to the Permanent Secretary for Finance before a procurement contract enters into force. A written decision must be issued within 30 days stating the reasons for the decision and, if the complaint is upheld, the corrective measures to be taken. The decision is subject to judicial review (regulations 50–51). The Procurement Guidelines (sect. 3.4.6) encourage agencies to manage complaints through communication or conciliation.

The Procurement Guidelines contain core competencies for public officials involved in procurement, 10 rules for ethical government procurement, and reporting obligations for conflicts of interest. Upon declaration of a conflict of interest, Government Tender Board members are excluded from the evaluation of a tender (regulation 18). The Fiji Independent Commission against Corruption conducts training for procuring officers.

The Financial Management Act and the Finance Instructions provide for reporting on expenditure and revenue. An annual appropriation act, accompanied by a document outlining the details of the appropriation amounts included, is prepared annually by the Minister for Economy and adopted following parliamentary consultations (sect. 14 of the Financial Management Act). The budget, as well as quarterly appropriation statements, mid-year fiscal statements and annual reports and financial statements, are available on the Parliament and Government websites. Fiji publishes an annual budget kit, which contains clear explanations and highlights of budget information for each public body presented in a user-friendly and easily understandable format. According to the Fijian authorities, consultations are conducted with members of the public and private sectors and school students prior to the drafting of the annual budget, including online and through social media channels.

Each agency must record and report on all payments and revenue (sects. 15, 19, 20 and 30 of the Finance Instructions). The public accounts, control over public money and property, as well as all related transactions are subject to annual audit by the Auditor General (sect. 152 of the Constitution), and audit reports are publicly available. The audit follows a risk-based methodology to address identified entity and system risks. Annual risk assessments over internal control frameworks, which must be in place in each ministry (sect. 59 of the Finance Instructions), are also conducted. Failure to comply with regulations may result in the imposition of a surcharge (sects. 67 *et seq.* of the Financial Management Act), disciplinary or criminal proceedings.

The Public Records Act charges the Archives Office with the preservation of public records. Damage to and the destruction, alteration, concealment or falsification of public documents with a view to causing a loss or obtaining a gain are criminalized

(sect. 160 of the Crimes Act). Prior to the transmission of documents to the archives, documents are retained by the public bodies, and a digitization process is under way.

*Public reporting; participation of society (arts. 10 and 13)*

Official reports on parliamentary proceedings, as well as tabled documents and bills are available on the Parliament website, and parliamentary sessions are open to the public and media and streamed online. Public consultations are conducted by several public bodies on an ad hoc basis. Some government services may be requested through a digital platform, and feedback for public service delivery may be given electronically. Government agencies and ministries maintain websites. Legislation, judgments, cases and legal material are published online.

The Constitution establishes the right of access to information held by any public office (sect. 25). The Information Act had not yet entered into effect at the time of the review.

The Fiji Independent Commission against Corruption carries out awareness-raising campaigns for the public and private sectors, communities and schools, starting in primary schools. The Commission, jointly with the Ministry of Education, launched an anti-corruption curriculum for primary and secondary schools and an anti-corruption youth ambassadors award and programme to recognize acts of integrity by young citizens. Multilingual awareness-raising material, including on reporting channels, is published on the website of the Commission.

The Constitution grants the right to freedom of speech, expression and publication, including freedom to seek, receive and impart information, knowledge and ideas and freedom of the press and scientific research (sect. 17). A law may limit this right, inter alia, in the interest of making provision for the enforcement of media standards and providing for the regulation, registration and conduct of media organizations. The Media Industry Development Act charges the Media Industry Development Authority with investigating suspected breaches of media codes. Violations by journalists are punishable by a fine of up to 1,000 Fiji dollars (approximately 460 United States dollars) or up to two years' imprisonment.

*Private sector (art. 12)*

Fiji has not adopted standards of business ethics or conduct for private sector entities. The Fiji Independent Commission against Corruption has launched a corporate integrity pledge for selected companies that bid for government tenders, which has been signed by six companies to date.

A public company register exists. Information on legal and beneficial ownership must be updated when changes occur and is verified.

No measures are in place to avoid the misuse of procedures regulating companies, such as subsidies and licences for commercial activities.

Restrictions on former public officials taking positions in the private sector are provided for in the code of conduct bill.

Under the Companies Act, companies and managed investment schemes are required to keep written financial records for seven years and to prepare annual financial statements and directors' reports, which are subject to audit (sects. 386 *et seq.*). Financial institutions must have internal auditing controls in place.

Not properly keeping, falsifying or destroying financial records or books and making false or fraudulent entries are prohibited under the Companies Act (sects. 484 *et seq.*). The establishment of off-the-books accounts and other fraudulent accounting practices are usually investigated as money-laundering or tax evasion attempts.

Bribes are not tax-deductible in Fiji.

*Measures to prevent money-laundering (art. 14)*

The anti-money-laundering legal framework comprises, principally, the Financial Transactions Reporting Act, its implementing regulations and relevant administrative instruments. The Act creates obligations with regard to customer due diligence and beneficial owner identification, suspicious transactions reporting and record-keeping for financial institutions, including money or value transfer service providers, and for designated non-financial businesses and professions.

In a national risk assessment completed in May 2015, corruption was identified as a mid-range risk with respect to money-laundering. On the basis of the results of the assessment, Fiji revised its national anti-money-laundering/combating the financing of terrorism strategy in January 2018. Under the Financial Transactions Reporting Act, the Fiji Financial Intelligence Unit and the Reserve Bank of Fiji are required to supervise financial institutions and designated non-financial businesses and professions and to ensure that they comply with the Act and the Regulations. The Unit and the Reserve Bank follow a risk-based approach, and the supervision of the implementation of risk-based anti-money-laundering/combating the financing of terrorism programmes by reporting entities, including designated non-financial businesses and professions, has begun.

The Financial Transactions Reporting Act obligations for dealers in precious metals and stones have not been implemented, as the relevant threshold for transactions in the schedule to the Act has not been prescribed. It was explained that an ad hoc regulation would be issued should such activities arise, and that a transaction threshold for the sector would be determined following a further review of money-laundering risk.<sup>1</sup>

The Fiji Financial Intelligence Unit cooperates at the national and international levels on the basis of agreements and through the exchange of information, as provided under the Financial Transactions Reporting Act (sects. 25–27), as well as through the Egmont Secure Web. The Unit provides assistance and disseminates intelligence to domestic and foreign counterparts spontaneously and upon request. National cooperation takes place primarily through the National Anti-Money-Laundering Council, the Unit and cooperation agreements and arrangements.

Part 5 of the Financial Transactions Reporting Act and section 39 of the Financial Transactions Reporting Regulations establish a cross-border declaration requirement for currency or bearer negotiable instruments with a value equivalent to or above 10,000 Fiji dollars. Penalties for violations and powers of customs officials to search and confiscate undeclared or suspicious property are provided in sections 32 and 33 of the Act.

Requirements with regard to originator information for electronic transfers of funds (wire transfers) are implemented mainly through provisions of the Financial Transactions Reporting Act (sects. 7 and 12) and guideline 4 of the Financial Intelligence Unit. The measures are in accordance with article 14, paragraph 3, of the Convention.

Fiji underwent mutual evaluations by the Asia/Pacific Group on Money-Laundering in 2006 and 2016. The country submitted three follow-up reports between 2017 and 2019 that resulted in improvements in its compliance ratings.

<sup>1</sup> The 2015 national risk assessment report noted that there were no gold bullion dealers in Fiji and that the money-laundering vulnerability in respect of bullion dealers was rated as very low. Furthermore, there were only small-scale dealers in precious metals and precious stones, those dealers engaging in retail business involving homemade jewels with a value below the Financial Action Task Force threshold of 15,000 United States dollars/euros.

## 2.2. Successes and good practices

- The role of the monitoring and evaluation section of the Fiji Independent Commission against Corruption in monitoring and assessing the effectiveness of prevention activities (art. 5, para. 2).
- The publication of budget information in an easily accessible manner, and extensive consultations on the budget, including through social media, to allow participation from remote locations (art. 9, para. 2).

## 2.3. Challenges in implementation

It is recommended that Fiji:

- Develop and implement effective, coordinated anti-corruption policies, in accordance with article 5, paragraph 1.
- Endeavour to develop a mechanism for the periodic evaluation of relevant anti-corruption legal instruments and administrative measures (art. 5, para. 3).
- Consider broadening the coverage of the Open Merit-Based Recruitment and Selection Guideline beyond civil servants to all public officials (art. 7, para. 1 (a)).
- Identify and introduce adequate procedures for the selection, training and rotation, where appropriate, of public positions considered especially vulnerable to corruption (art. 7, para. 1 (b)).
- Consider adopting guidance on the management of conflicts of interest (art. 7, para. 4).
- Take steps towards the adoption and implementation of the code of conduct bill, including measures on the disclosure of conflicts of interest, assets and liabilities, and the establishment of the Accountability and Transparency Commission (art. 8, paras. 2 and 5).
- Consider strengthening mechanisms for public officials to report suspected acts of corruption (art. 8, para. 4).
- Take measures to prevent corruption involving the private sector, including by:
  - Adopting standards of business ethics or conduct for private sector entities (art. 12, para. 2 (b));
  - Establishing measures to prevent the misuse of procedures regulating private entities, such as subsidies and licences (art. 12, para. 2 (d));
  - Preventing conflicts of interest by restricting, for a reasonable period of time, the professional activities of former public officials in the private sector, where such activities relate directly to their previous functions (art. 12, para. 2 (e)).
- Accelerate the implementation of the Information Act (art. 10 (a)).
- Consider the development of university curricula as part of public education programmes (art. 13, para. 1 (c)).
- Strengthen measures to seek, receive, publish and disseminate information concerning corruption (art. 13, para. 1 (d)).

## 3. Chapter V: asset recovery

### 3.1. Observations on the implementation of the articles under review

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

The asset recovery framework of Fiji comprises principally provisions in the Mutual Assistance in Criminal Matters Act, the Proceeds of Crime Act and the Financial

Transactions Reporting Act. Applications in the courts for asset recovery, including those based on foreign requests, are handled by the Office of the Director of Public Prosecutions. The Office of the Attorney General is the central authority for mutual legal assistance.

Section 31 of the Mutual Assistance Act provides the legal basis for mutual legal assistance in the identification, freezing, seizure or confiscation of proceeds of crime or instrumentalities of foreign offences. In addition, Fijian authorities can register foreign forfeiture orders, pecuniary penalty orders and restraining orders, which may be enforced as domestic orders, as described below.

Competent authorities, such as the Office of the Director of Public Prosecutions, the Financial Intelligence Unit, the Fiji Police Force, the Transnational Crime Unit, the Fiji Independent Commission against Corruption, the Reserve Bank of Fiji and the Fiji Revenue and Customs Service, are able to cooperate with foreign counterparts both spontaneously and upon request.

Fiji does not have any bilateral mutual legal assistance treaties but can provide assistance to any foreign country, whether or not it has an arrangement or reciprocal agreement on assistance in criminal matters with Fiji (sect. 5 of the Mutual Assistance Act). As a member of the Commonwealth, Fiji could rely on the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth. In principle, Fiji also considers the Convention as a basis for international cooperation.

Fiji has never refused a request for asset recovery and has cooperated successfully with requesting States in two completed asset recovery cases involving matters not related to corruption. Assets were shared with the requesting State in one of those cases, as permitted under section 71C of the Proceeds of Crime Act.

*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

The Financial Transactions Reporting Act and its Regulations contain measures requiring the verification of customers (customer due diligence) and the identification of beneficial owners. Enhanced due diligence is required for high-risk customers and transactions, including politically exposed persons, their family members and close associates, as detailed in guideline 7 of the Financial Intelligence Unit.

The Financial Intelligence Unit provides financial institutions and designated non-financial businesses and professions with advice and guidance on the requirements under the Financial Transactions Reporting Act and its Regulations, including enforceable guidelines, policy advisories and advice upon request. This includes alert notices to financial institutions to protect the financial system from being used by individuals and entities reported as suspicious. Furthermore, the Unit has powers under the Act to issue directives to financial institutions and designated non-financial businesses and professions to take appropriate steps in relation to any information or reports that it has received, in order to enforce compliance with the Act or to facilitate investigations (sect. 25, para. 1 (h)). It also issues directives to temporarily suspend transactions in cases of incomplete customer due diligence or suspicion of money-laundering.

Record-keeping requirements are provided in sections 8 to 10 of the Financial Transactions Reporting Act, in line with article 52, paragraph 3, of the Convention.

Section 3 of the Banking Act requires that any company engaging in banking business in Fiji must be a licensed financial institution. The Reserve Bank of Fiji, pursuant to its supervisory authority under the Banking Act, does not license any “shell bank”, defined as “a bank incorporated in a jurisdiction in which it has no physical presence or which is unaffiliated with a regulated financial group” (regulation 30, para. 2, of the Financial Transactions Reporting Regulations). Financial institutions are prohibited from establishing any relationship with shell banks (sect. 5 of the Financial Transactions Reporting Act and regulation 30 of the Financial Transactions Reporting Regulations), and this requirement is enforceable pursuant to the Financial

Transactions Reporting Act (section 43), the Financial Transactions Reporting Regulations (regulation 42) and the Banking Supervision Policy Statement No. 6. The rules do not include a requirement for financial institutions to guard against establishing relations with foreign financial institutions that permit their accounts to be used by shell banks.

Fiji has not established comprehensive asset disclosure requirements for public officials. However, section 59 of the Standing Orders of the Parliament of the Republic of Fiji requires Members, before participating in the consideration of a parliamentary matter, to declare their financial interests in that matter. Furthermore, under section 2.9 of the Fiji Independent Commission against Corruption Standing Orders, all officers of the Commission must disclose their assets, liabilities and interests, and those of their spouses and children, on an annual basis. Fiji is currently considering a code of conduct bill that, if passed, would give effect to section 149 (f) of the Constitution. That section requires the adoption of a written law to provide for the annual declarations of assets and liabilities by certain public officers, and of such other relatives thereof as may be prescribed, to the Accountability and Transparency Commission, and for such declarations to be accessible to the public. As noted above, employees of the Office of the Director of Public Prosecutions and members of the Government Tender Board must disclose financial and other interests under their respective codes of conduct.

Pursuant to notifications issued by the Reserve Bank of Fiji in accordance with sections 3 and 9 of the Exchange Control Act, any person in or resident of Fiji, including any public official, is prohibited from holding any offshore assets unless approved by the Reserve Bank. The Reserve Bank maintains a register of persons who hold offshore assets.

Section 22 of the Financial Transactions Reporting Act establishes the Financial Intelligence Unit, while section 25 outlines its functions, duties and powers. The Reserve Bank of Fiji provides funding and administrative support for the operations of the Unit, and the Fiji Police Force and the Fiji Revenue and Customs Service provide additional staffing support. The Unit is a member of the Asia/Pacific Group on Money-Laundering, the Egmont Group and the Association of Pacific Island Financial Intelligence Units.

The Financial Intelligence Unit receives a significant amount of information and data in the form of financial transaction and other reports. Authorities reported adequate capacity to develop and disseminate intelligence to relevant authorities through the data-mining system, 24/7 alert and monitoring tool, case management system and direct data access systems of the Financial Intelligence Unit.

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

The legislation of Fiji does not specifically give legal standing to foreign States to initiate civil action in Fijian courts. However, nothing in the legislation would preclude a foreign State from initiating a civil action in Fiji to establish title to or ownership of property.

The courts have general criminal powers to award compensation and restitution under the Sentencing and Penalties Act 2009 (part X, on restitution and compensation orders, sects. 49–52). The issuance of pecuniary penalty orders by a court is covered in part 2, division 3 (sects. 20–27), of the Proceeds of Crime Act and under section 12AA of the Prevention of Bribery Act, as well as under section 71G of the Proceeds of Crime Act, in cases of unexplained wealth. This, in theory, should be applicable to foreign States.

While section 39, paragraph 3, of the Proceeds of Crime Act provides for the rights of bona fide third parties, no specific legal provision recognizes the interests of foreign States as primary claimants in confiscation proceedings.

The Fijian authorities can register foreign forfeiture orders, pecuniary penalty orders and restraining orders, which gain effect and may be enforced as domestic orders. Specifically, section 31 of the Mutual Assistance Act provides for the Attorney General to authorize the Director of Public Prosecutions, in writing, to apply for the registration of a foreign forfeiture or foreign pecuniary penalty order against property believed to be located in Fiji. A foreign forfeiture order registered in the Court has effect, and may be enforced, as if it were a forfeiture order made under the Proceeds of Crime Act at the time of registration (sect. 31, para. 4, of the Mutual Assistance Act). Fiji may also confiscate foreign proceeds through the issuance of domestic confiscation orders (part 2, sects. 5–27E, of the Proceeds of Crime Act).

Regarding interim measures leading to confiscation, section 13 of the Mutual Assistance Act provides for requests by foreign countries for search and seizure and permits the Attorney General to authorize a police officer to apply to a magistrate for a search warrant requested by a foreign country. Section 31, paragraph 2, of the Act further provides that, where a foreign country requests the Attorney General to arrange for the enforcement of a foreign restraining order, the Attorney General may authorize the Director of Public Prosecutions, in writing, to apply for the registration of the order in the court. A foreign restraining order so registered has effect, and may be enforced, in the same manner as a domestic restraining order (sect. 31, para. 6).

The Mutual Assistance Act permits assistance in non-conviction-based confiscation proceedings. In addition, the Proceeds of Crime Act does not require a conviction for domestic proceedings relating to restraint and forfeiture (sect. 10). Furthermore, section 11 of the Proceeds of Crime Act allows the Director of Public Prosecutions to seek an order from the court for forfeiture, which the court may grant if it is satisfied that the property is tainted. Fiji has recently introduced a criminal offence of unexplained wealth, which will allow the authorities to register and enforce relevant orders.

Section 47 of the Proceeds of Crime Act allows the Attorney General to take custody and control of property subject to a registered foreign restraining order. The Attorney General is required to preserve the property pending confiscation and may enter into agreements on control and management of foreign restrained property with foreign competent authorities. Procedures for the management and disposal of restrained and forfeited property are contained in the Manual on Proceeds of Crime (Management and Disposal of Property) Regulations 2012.

Guidance for requesting countries on the content of and other requirements for requests for mutual legal assistance is available on the website of the Office of the Director of Public Prosecutions.<sup>2</sup>

Assistance may be refused if, in the opinion of the Attorney General, the assistance would prejudice the national, essential or public interests of Fiji or result in a manifest unfairness or a denial of human rights (sect. 6 of the Mutual Assistance Act).

Consultations with requesting States are held as a matter of practice. Guidelines on the handling of mutual legal assistance requests are being developed by Fiji.

Sections 13, 16, 27A and 39, paragraph 3, of the Proceeds of Crime Act provides for the rights of bona fide third parties with regard to the powers available under the Act. Before a restraining order is made, interested persons must be given notice of the application, unless the court dispenses with this requirement at the request of the Director of Public Prosecutions (sect. 37 of the Act).

#### *Return and disposal of assets (art. 57)*

All proceeds recovered in Fiji are paid to the Forfeited Assets Fund. Sections 71A and 71D of the Proceeds of Crime Act provide for such payments out of the Fund as considered necessary by the Minister responsible for Justice to satisfy the obligation of Fiji in respect of registered foreign forfeiture or registered foreign pecuniary

<sup>2</sup> <http://odpp.com.fj/mutual-assistance>.

penalty orders, with the approval of the Minister of Finance; and for payments for discharge of forfeiture orders, as directed, under section 15 of the Proceeds of Crime Act. Expenditure is also authorized under section 71E for measures for the enforcement of the Proceeds of Crime Act, the Mutual Assistance Act and the Financial Transactions Reporting Act, the provision of assets and services to strengthen law enforcement measures relevant to the aforementioned acts, and related crime prevention measures.

Section 71C gives the Attorney General discretion to enter into arrangements with foreign competent authorities for the reciprocal sharing of proceeds, as the Attorney General thinks fit.

The measures summarized above do not provide for the mandatory return of proceeds to requesting States in the case of offences under the Convention.

The costs of asset recovery through mutual legal assistance are subject to agreements or arrangements on a case-by-case basis. The Fijian authorities expressed an interest in developing guidelines on asset recovery that would also cover that issue.

### **3.2. Challenges in implementation**

It is recommended that Fiji:

- Consider adopting a requirement for financial institutions to guard against establishing relations with foreign financial institutions that permit their accounts to be used by shell banks (art. 52, para. 4).
- Consider adopting effective financial disclosure systems for appropriate public officials, together with appropriate sanctions for non-compliance, through the enactment and implementation of the code of conduct bill (art. 52, para. 5).
- Adopt measures to recognize a foreign State's claim as a legitimate owner of property in confiscation proceedings (art. 53 (c)).
- Adopt measures in the legislation and relevant regulations providing for the return of confiscated property to requesting States in the circumstances set out in article 57, paragraph 3.
- Consider developing a manual or guideline on asset recovery that would address such matters as costs of asset recovery (art. 57, para. 4).

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