

II. Country Governance Assessments

For the Pacific region, taking into account available ADB resources and the number and size of PDMCs, it was decided that ADB staff would undertake CGAs of a sample of countries that represent the diversity of geographical, cultural, and political systems. Such an overview of governance institutions and processes would provide a sufficient understanding of those governance issues that are significant enough to warrant further attention and actions, either as regional initiatives or as country-specific projects. The six countries that were selected to constitute the sample are Fiji Islands, Federated States of Micronesia (FSM), Papua New Guinea (PNG), Samoa, Kingdom of Tonga, and Vanuatu.

Conducting the Country Governance Assessments

The overview assessment takes a top-down analytical approach: ADB staff review each country's constitution and other legislation, government policy documents, academic research papers; and more importantly, they conduct interviews with each country's senior officials, politicians, traditional chiefs, civil society participants, and staff of development partners who have a presence in the country. Such interviews are important to an understanding of whether and how legislative prescriptions and policy decisions are applied on the ground, to obtain a sense of how well institutions are structured, managed and operate, the areas of specific governance challenges and where assistance can be helpful and should be considered.

For an understanding of the governance environment in the remaining PDMCs, namely the Cook Islands, Kiribati, Republic of the Marshall Islands, and Tuvalu, a desk review of relevant documents was supplemented by information from ADB staff obtained from past and ongoing policy dialogue and projects in these countries. Nauru and Solomon Islands were not assessed in this study due to the special circumstances existing in the two

countries; Palau¹¹ and Timor-Leste became ADB member countries after most of the substantive assessment work was already complete.

The CGA framework examines institutions, processes, policies and practices of government in five areas:

- (i) The legislature, machinery of government, and public administration, covering the law-making process, civil service, local government, and the overall policymaking and implementation framework;
- (ii) Public financial management, including revenue policy and administration, public expenditure management, public sector accounting and auditing, inter-governmental fiscal relations, procurement and anticorruption measures;
- (iii) The legal and regulatory framework, assessing the extent to which the rule of law is manifested in the legal and regulatory regimes that govern interactions between government institutions and citizens;
- (iv) The judicial system, covering the degree to which the rule of law is manifested in the operations and effectiveness of the judiciary through the court system, the appointment and remuneration of judges and magistrates, the independence of the judiciary, and the efficiency and effectiveness of the system; and
- (v) Civil society participation: its capacity to organize and its ability to scrutinize government decisions, operations, and activities.

Key Findings of the Country Governance Assessments

This section focuses on key issues common to most countries in the Pacific region, organized around the five major areas of governance outlined above. Unfortunately, nearly all Pacific island countries today face serious challenges in all areas of governance,

¹¹ Palau became an ADB member in December 2003. A study of the country's governance and institutional capacity was carried out in June 2004 as part of the classification process to assist in determining the development status of a new member country.

and it is hard to avoid a negative tone in detailing the issues revealed or highlighted by the CGAs. It is important to stress that there are healthy institutions and honest, dedicated politicians and public servants in all PDMCs, and this section will mention as many of them as possible.

Every country, developed or not, has weaknesses in governance. In most developed countries, a strong civil society, such as the media and non government organizations, monitors government policies and activities, publicizes anomalies, blows the whistle on wrongdoers, and works to keep governments open and accountable to their citizens. In nearly all developing countries, however, Western/liberal democracy is a relatively new concept and practice; in the Pacific region, especially, the system is laid onto the base of a longstanding traditional culture whose values and institutions often seem at odds with it. The kinds of governance institutions that are so critical in producing equitable and effective development have not had time to develop fully, nor have communities had time to work through the process of integrating the new and old systems and processes, sorting out what works and what doesn't and developing a model that is suitable for them and the region.

The purpose of the CGAs is to help ADB, the PDMC governments, and other aid providers to work together to raise awareness of how important good governance is as a condition for equitable and effective development in their countries and in the region. To reform the system, it is necessary to point out where it needs reforming. Additionally, the CGAs also aim to increase ADB understanding of the country, contribute to the Country Strategy and Program and determine ADB's assistance in this area.

Legislature, Machinery of Government, and Public Administration

As a starting point for an assessment of government administration, it should be noted that three different political systems exist in the Pacific:

- (i) Tonga is described as a constitutional monarchy, but in practice the King occupies a special position and has

significant power, as he appoints the Cabinet, which makes up one third of the Parliament, with another third elected by the nobles (some 33 families), who also have a relationship with the royal family. Only one third of Parliament represents ordinary citizens. The Privy Council, made up of Cabinet members and chaired by the King, has ultimate authority in all matters.

- (ii) The North Pacific countries (FSM and Palau) adopted the US presidential system, with a Congress and an elected President who has executive power and authority. Congress members and the President are elected as individuals as there is no political party system in both countries. A Council of Chiefs, whose authority is recognized in these countries' constitutions, protects traditional customs and values.
- (iii) The remaining countries¹² adopted a version of the Westminster political system, with political parties, a Parliament, and the executive and judiciary similar to the structure maintained in colonial governments. The "national" layer of government under the colonial arrangements did not interact closely with traditional forms of leadership except where they were co-opted into the colonial structure, as for example in the Fiji Islands, when recognition was given, via the Fijian Affairs Act of 1874, to the Great Council of Chiefs and lower-level chiefs, and a parallel administrative system to look after the welfare of native Fijians. Today the Great Council of Chiefs does not have formal political power, but politicians cannot afford to ignore its roles and influence. While under the law chiefs must compete with ordinary citizens for political power through the ballot box (except in Samoa, where only *matai*, members of the chiefly caste, can become parliamentarians), traditional status is very often a factor in increasing one's legitimacy and influence.

¹² Despite its geographical proximity and close association with the US through the Compact of Free Association Agreement, RMI adopted a Westminster-style political system whereby the President, who is also the head of state, is appointed by the Legislature (the Nitijela). The President selects the Cabinet from members of the Nitijela, and the Cabinet, jointly and individually, is accountable to the Legislature.

As a point of information, Timor-Leste constitutes an exception, having adopted a European congressional system, with a popularly elected president who has limited powers and a prime minister whose party holds a majority in Parliament. Ministers are nonpolitical, appointed by the president on the recommendation of the prime minister, and are therefore accountable to the prime minister.

In all PDMCs except Tonga, a clear separation of powers exists among the legislative, executive, and judicial branches of government, and the exercise of democratic principles is legislated and generally observed. However, given the nature of Pacific island societies and their traditions, the effectiveness of this fundamental separation of powers and of associated institutions and processes in delivering good governance is increasingly a matter of debate. The fit between the traditional culture of leadership and administration, and the Western democratic paradigm is perceived to be poor.

Pacific Island leaders, at the end of their two-day roundtable discussion on Democracy and Good Governance (Nadi, Fiji Islands, August 2002), agreed that "there is no perfect constitutional model to suit all Pacific island countries. Existing written Constitutions, based largely on the Westminster model, often contain aspects that are foreign to the Pacific experience and fail to take account of the values of Pacific societies..." Many Pacific leaders said they felt Western values of democracy had been imposed on their already established traditions and cultures. The leaders agreed that the "unique cultures of each Pacific island country need to be recognized," that democracy is new to many Pacific island countries, and that they should be given time to accept democracy at their own pace. The pace of acceptance needs to be in tune with the capacity to absorb the process. They need time to adjust.¹³

¹³ PACNEWS. 2003. Third on line edition, 20 August.

However,

[D]evelopment implies a change from traditional to modern societies. Such change has both costs and benefits... Roseate views of traditional life became dominant and were adopted as realistic and accurate by Pacific leaders. It was a short step to argue that traditional social institutions could be maintained without change and yet deliver the modern education, health [care], jobs and incomes that Pacific islanders, like people everywhere, want.

It is implicit in the views of the Pacific political leaders that integration of indigenous cultures and modern requirements for equitable development is widely agreed upon, but to date no PDMC government has undertaken the process of reshaping its system of democratic government to better suit local conditions (with the exception of Fiji Islands, which has done so in response to coups and the desire to protect the political supremacy of indigenous Fijians). Thus, tradition and modernity blur; each is used as it fits one's personal and political agenda. The constitutional references to the role of chiefs, tradition, and culture are often vague and not specific enough to be of help in practice.

Major Observations

Machinery of Government: Legislature and Public Service

- ***The modern and traditional systems of governance coexist uneasily.*** Whereas the former advocates individual merit, neutrality, equal participation, and the rights of the individual and the nuclear family, the latter demands priority and loyalty for kin and community, consensual and consultative values within the chief/"big men" traditional hierarchy, and traditionally defined roles for men and women. Such uncomfortable juxtapositions of values help to explain the often ineffective application of a modern merit-based public service system, widespread practices in the name of traditional/culture that are deemed corrupt under the modern system, and the inherent weaknesses of the electoral system.

At a governance workshop in Rarotonga, Cook Islands, in October 2003, the Solicitor General of the Cook Islands suggested that the cultural aspects of good governance needed to be acknowledged not only by public officials but also by the community at large, so that both sides will understand their role in enforcing good governance. In the Cook Islands and the region generally, she maintained, constituents often visit ministers for help with their personal or family problems (for example, a son or daughter in need of a job), and expect the ministers to deliver; thus the community contributes to undermining good governance as much as the politicians.

- ***Meaningful or effective oversight by the legislative branch of the executive is lacking, either due to lack of understanding of the process, lack of education on the part of the parliamentarians, or simply lack of interest.*** In many PDMCs, parliaments have few sitting sessions, and/or sessions are of extremely short duration: 30 days per year is the average in PDMCs, and in the Cook Islands and Tuvalu, sessions have been as short as 20 days per annum. The time allowed for debates and consideration of bills is short; parliamentarians are not well briefed as to their roles and functions with respect to pending legislation, and neither they nor their political parties have specialists to assist them.
- ***The political systems as adopted in the countries' constitutions make them rather complex and confusing to ordinary citizens, especially where the chiefs, traditions, and culture are recognized without clarification or explanation in any practical or meaningful way.*** In Vanuatu, for example, chiefs have an observer status at provincial council meetings, but their relationship to the provincial council is unclear. Further, when the implementation of a provincial council decision will affect a village or district within the province, no clear requirements exist for consultation with the local community about the decision—not even with the chiefs.

- ***Serious weaknesses exist in government policy development and in decision-making capacity and procedures, especially at the cabinet level.*** No clearly established procedures exist in many PDMCs that spell out requirements in terms of policy analysis to ensure that all cabinet submissions are consistent with the strategic direction and policy priorities that the Government has established. Or even where these procedures exist, compliance is often haphazard or non-existent. In general, very few PDMCs require legal, environmental, and financial impact analysis of new policy and/or legislative proposals: financial impact analysis is somewhat better developed where such requirement exists. However strategic policy development skills are not strong, either in sector departments or at the prime ministerial office/cabinet levels. This weakness may explain the lack of sustainability of reform initiatives in several PDMCs.
- ***Weaknesses in policy formulation are evident in all PDMCs, but inadequate policy implementation skills are of even more concern, as these often lead to inconsistent applications of approved policies.*** Neither category of inadequacy helps to create a predictable policy environment necessary to attract foreign investments.
- ***Inadequate capacity building, coupled with the loss of senior staff who have management and technical skills, is common in many PDMCs.*** The Fiji Islands, for example, suffered serious staff and skills losses as a result of outmigration after the political events of 1987 and 2000. The Cook Islands and Tonga cannot seem to keep qualified professionals for more than a few years, most likely because of low remuneration compared to comparable jobs open elsewhere to graduates, inadequate opportunity for career advancement, and frustration and lack of job satisfaction because of the “cultural” aspects of personnel management. Training under the reform decade of the 1990s had relied mainly on consultants who had not been successful in transferring skills to their local counterparts, or through more sustainable mechanisms such as through some local

educational institutions, or through the use of intermittent consultancies which would give local staff the opportunity to “learn through doing” while under “remote” supervision.

- ***Effective mechanisms to encourage citizens’ participation in the legislative process are largely lacking, because information on the legislative agenda is almost never available in advance, nor are draft bills published prior to parliamentary consideration.*** Even when governments provide advance notice on draft bills or the timing of their consideration, the reality is that apart from a small number of educated citizens who invariably live in the capital cities, most people living outside the capital have a very limited understanding of politics, citizens’ rights and obligations, and public policy issues. Civic education is a longer-term exercise than most PDMCs have had time for. Palau provides a good example of basic civic education with the publication of a government textbook by the Ministry of Education¹⁴ on the government of Palau for use in secondary level schools as it was recognized that “...many young Palauans have only a superficial understanding of the role of government and little knowledge about the structure of government in Palau and how it has evolved...This book [aims] to provide Palauan students with a basic understanding of the principles that underlie that system. It emphasizes the relationship between citizens and government and the importance of citizens being involved in governmental decision making”.
- ***Many exercises promoting community participation in national political life have had variable results.*** As part of the Comprehensive Reform Program supported by ADB, the Vanuatu Government held several national summits, involving civil society, community groups, and other development partners, to generate interest and commitment by the community in public sector reforms. The NGOs involved, however, viewed the exercises as one-off and ineffective: they saw no change in the way the Government

¹⁴ Ministry of Education, Republic of Palau. 2002. *Government of Palau: A Nation That Honors its Tradition*, Koror.

conducted its business, nor in the way national priorities for annual resource allocation, especially public investment program decisions, were determined.

In Samoa, on the other hand, NGOs and others involved in the community's participation in priority-setting exercises in recent years viewed the process as more successful: they feel more confident about their understanding of the process, and have seen some of their input reflected in the final strategic plans and the reporting back of achievements of past plans by public officials.

Corruption in the Public Sector

- ***Corruption, seen as a major issue in all PDMCs, is nonetheless regarded in many cases as "acceptable" because of custom and tradition*** (e.g., kin and community "sharing" values, expectations of chiefs/big men). Deciding what constitutes corruption in Asia and the Pacific is more art than science. People tend to use terms like "the Pacific way" or "Asian values" to denigrate claims of corruption by "outsiders".

Some have attempted to argue that corruption in the Pacific is of a relatively minor nature and difficult to judge because of the *wantok*/kin/community sharing culture in most PDMCs. All publicized cases of corruption in Pacific countries involving politicians and public officials tend to be in the nature of kickbacks, palm greasing, rank pulling, and other misuse and abuse of public funds or public office. Politicians and senior public servants apply pressures to get jobs for their family/wantok, or at times under strong pressures themselves "to help" as befits "community leaders". Enforcement and sanctions as to the illegal/unethical practices of public officials and dealings between the public and private sector are weak. Transparency International, in its 2001 report on Fiji Islands, noted with concern that "greasing the palms of public servants" is fast becoming an accepted way of life in the Fiji Islands."¹⁵

¹⁵ Transparency International Fiji. 2001. *Country Study Report*.

It is estimated that one third of public investment in many Asian and Pacific countries is lost to corruption. Keeping in mind the difficulty of measurement, ADB officials suggest that it can cost as much as one sixth of a country's potential gross domestic product. Corruption also goes to the heart of the Millennium Development Goals. Because corruption robs funds from programs to improve health care, education, and other basic services, the poor too often pay the price. The World Bank Institute estimates that child mortality can fall as much as 75% when countries tackle corruption and improve their rule of law.¹⁶

- ***In some PDMCs, it may be argued that corruption occurs at high levels because of the composition of the government, (coalition of non-ideological parties) or a “first-past-the-post” system that makes the number of electors so small that “gifts” are “distributed” in return for votes.*** The incidence of party swapping created political instability in PNG and Vanuatu. The existence of legislation prohibiting such practices, however, does not seem to help much, so long as self-interest is the norm of political behavior and no sanction exists for such behavior. A recent incident illustrates this point:

The Federated States of Micronesia Congress bill, affording amnesty to “certain classes who are being accused, or yet to be accused, or who have been prosecuted of certain types of crimes,” has created a firestorm since its introduction into the Congress in mid-January [2004]... inasmuch as four former or present congressmen are among those charged [with] misuse of public funds... Even more frightening than what the bill proposes is the assumption on which it rests—that misuse of public funds is so widespread that a large percentage of high officials would be implicated if the government decided to prosecute all wrongdoers.¹⁷

¹⁶ ADB Review, June 2004.

¹⁷ F. X. Hezel, S.J. 2004. *Pacific Magazine*, March.

Electoral corruption is “a particularly dangerous problem in the Pacific region”, especially in Melanesian countries, according to Transparency International’s Global Corruption Report 2003. The problem, according to the report’s author, Mark Findley, is implementation: the countries have legislation, leadership codes, and oversight institutions, such as an Ombudsman’s office, but the way in which politicians reflect on these provisions and respect them renders them problematic.

In Vanuatu, the situation is similar to PNG [and] other countries: you’ll find admirable and very strong constitutional wording, which challenges politicians and leaders to act in a moral and responsible way... But in many respects that’s seen as little more than wishful thinking and doesn’t translate well either into parliamentary practice or into well-funded and well-resourced accountability mechanisms.¹⁸

- **Several PDMC governments¹⁹ participated in the ADB/OECD supported “Anti-Corruption Action Plan for Asia and the Pacific,”** but the jury is still out on its effectiveness in combating corruption in these countries. Corruption was recognized as a key constraint to economic and social development in the region in varying degrees and levels, yet few PDMCs have a strong and willing civil society and media prepared and able to address the issue. The work of the PNG Media Council with participation of community groups on anti-corruption initiatives prior to the 2002 election is worth noting (Box 4).

Although leadership codes exist in several countries in the region, they are not perceived to be useful in bringing about behavioral change; this indicates implementation deficits (e.g., lack of compliance and enforcement) and suggests a disconnect between the Westminster system obligations required of elected leaders and those expected under the traditional system.

¹⁸ PACNEWS. 2003. 12 February.

¹⁹ Cook Islands, Fiji Islands, PNG, Samoa, and Vanuatu were signatories to the Anti-Corruption Action Plan at a meeting in Tokyo in November 2001. In early 2004, Timor-Leste also became a signatory.

Box 4: Papua New Guinea—Citizens and Media Fight Back for Good Governance

With a population of 5.5 million, innumerable ethnic groups (more than 800 separate languages), and 850 coastal islands, governance has always been a challenge in Papua New Guinea (PNG). Governance deteriorated after 1994 when the impact of the country's largest revenue generator (44% of the national budget), Bougainville Copper mine, which closed down in 1988) was felt fully. Inflation began taking a huge chunk of Papua New Guineans' earnings. Tourist arrivals in PNG dropped by 50% in 5 years.

Government and private sector services deteriorated rapidly, social order—law and order—was seriously affected, and the theft of public funds by officials became tolerated public behavior. By 1999, PNG was on the verge of economic collapse. No one, it seemed, wanted to step forward and stand up against corruption.

The newly formed Media Council of Papua New Guinea finally said NO to corruption in 2001. In their campaign, they focused on three goals:

- expose leaders in the private and public sector involved in corrupt practices;
- promote good governance and stability; and
- implement a grassroots media campaign to educate citizens and create awareness of the problems—and what can be done about them.

The radio station PNG-FM opened the War on Corruption, as it came to be known, by airing the first-ever media campaign against corruption; the *Post-Courier* followed up with substantive stories to support the radio campaign. The first phase reminded citizens of the ongoing investigations against corrupt public officials, (ii) called for the community to join in the fight against corruption, (iii) encouraged good leaders to speak out, and (iv) ran a corruption hotline to expose grafting public officials.

Phase 2 started with the 2002 elections. The Media Council promoted a vote for good leadership, for change, against corruption, and for empowerment of the people. It provided continuous direct coverage of "anomalies" in the election process.

The positive results so far? The Community Watchdog Group, a community coalition against corruption, has been set up, as has a self-regulating, independent Media Standards Committee. An Editors' Task Force on reporting corruption has also been established to aid in reporting corruption. In both print and electronic media, special sections have been established to aid in promoting good governance.

Source: PowerPoint presentation by Bob Howarth, Managing Director of the PNG *Post Courier* and member of the Media Council of Papua New Guinea.

Oversight of the Executive

- ***Oversight institutions, such as the offices of ombudsman and auditor general, are often poorly resourced and ineffective.***

In a speech to the July 2003 regional governance workshop, the Auditor General of the Fiji Islands cited the following issues that hindered financial accountability in his country:

- (i) No audit access to all “public funds” despite court rulings mandating such access (e.g., Fiji Military Forces Trust Funds, Police Department Special Branch budgetary allocations).
- (ii) Despite constitutional provisions, not all public agencies are “accountable” directly to Parliament, because the mandate and scope of the Audit Office are incomplete. For example, the audit of commercial statutory authorities and government commercial companies is undertaken by private sector auditors that do not have a mechanism to report directly to Parliament except via the minister²⁰.
- (iii) The office of the Auditor General is not completely independent of the executive government, because its budget appropriations and staff appointments are subject to executive government decisions, such as those of the Ministry of Finance and the Public Service Commission.
- (iv) The rules and regulations under which the Auditor General operates are outdated. For example, the Fiji Islands’ Finance Instructions, and Supplies and Services Instructions were last revised in 1982.

The Parliamentary Public Accounts Committees in all PDMCs have insufficient resources, political will, and/or knowledge/interest to carry out their critical functions. The PNG’s Permanent Public Accounts Committee (with new parliamentarians in the majority of its membership), however, has been active since the 2002 election in keeping many public agencies under the spotlight of public pressure; its scrutiny power and an active inquiry program provide a good example of

²⁰ The Fiji government recognizes this deficiency and aims to rectify it through a draft Audit bill prepared in August 2004 under the Financial Management Reform program.

oversight, but it still suffers from inadequate resources and support, which render it less than fully effective.

The Ombudsman office, which exists in several PDMCs, is another mechanism to keep executive government (i.e., politicians and public servants) open and accountable. However, the inability to enforce compliance with rules and regulations, and the lack of follow-up on ombudsmen's reports by governments relegate the reports to the category of mainly interesting reading. A bright spot is PNG's Ombudsman Office, which has a high profile and has done a good job of enforcing legislative requirements in relation to the leadership code and political behavior.

Decentralization

- ***In most PDMCs, local governments have little capacity and limited funding relative to transferred responsibilities.*** They receive inadequate funds from central governments, and generally lack the expertise and the staff to undertake programs or to collect own-source revenue—which collection usually turns out to be more costly to administer than the revenue raised. As this is the level of government that interacts directly with the people, their inability to deliver services does not make the outlook for participatory democracy at the grassroots level especially bright.

In Vanuatu, for example, the funding formula for local government allots the same amount to every province regardless of size or population. Thus, provinces with smaller councils (i.e., smaller population) end up receiving more money per capita than larger ones. The ultimate shortfall of funds, both those obtained from the central government and those collected locally from various levies, is so drastic that the autonomy and flexibility of local government may mean little when it comes to meeting citizens' needs.

- ***Decentralization of service delivery has been rushed in several countries; inadequate consideration was given to alternative strategies, the views of local communities, the difficulties of transferring compensatory resources and expenditure authority, and the capacity of people at the local***

council level to undertake the tasks. In the Cook Islands, for example, decentralization was pushed through in 1999 with little consideration of either the human or financial capacity of local authorities to deliver services. Many of the decisions were reversed in 2002 following a change of minister. Confusion resulted when decentralization/re-centralization decisions were made without any policy guidance in the form of legislation or other documents.

- **Many PDMCs appear overgoverned at the local level.** Beyond just the levels of “traditional” leadership/authority and the “modern” government system that overlays it, there are several layers of administration that impinge on local administration, either because of accretions over time, as in the Fiji Islands (Box 5), or because of the complexities of federalism, as in FSM (Box 6).

Box 5: Overgovernment—Fragmentation in the Fiji Islands

The Fiji Islands suffers from fragmented administrative arrangements for local government that began in the colonial years and has accreted multiple layers of administration. Provincial councils were first created in the 19th century, under the provisions of the Fijian Affairs Act 1874, to look after the well-being and good governance of indigenous Fijians. Under its provisions, 14 provincial councils, comprising chiefs at the provincial and district levels, are in turn supported by chiefs at the village level. Since then, Rural Local Authorities, whose members are appointed by the Minister for Health under the Public Health Act, have been created to operate in non-urban areas to implement the Rural Subdivision Act, and provide services such as those provided by elected municipal councils in administering the Town Planning Act, having to raise their own funding from local rates, business licenses and garbage collection fees. Meanwhile, Rural Advisory Councils, which are accountable to the Minister for Regional Development, provide services in rural areas through district officers and regional commissioners.

The superimposition of provincial councils, rural local authorities, rural advisory councils, and elected municipal councils is bound to bring confusion, even if roles and responsibilities are defined in legislation. The Government has recognized the potential overlap of functions in local government administration; a review of this element of the administrative machinery was commissioned in 2002. A consultant’s report is reported to have been submitted to the Government in 2003, but no response to it has yet been published.

Box 6: Overgovernment—Too Much Federalism in the Federated States of Micronesia?

The Federated States of Micronesia (FSM) is a victim of its own federal organization. Its 1978 Constitution, significantly inspired by that of the United States, divides the government into legislative, executive, and judicial branches. In addition, each of the four constituting states (Chuuk, Kosrae, Pohnpei, and Yap) also has a constitution dividing its government into the same three branches. Each state is in turn divided into local governments (or municipalities), a total of around 60 administrations in all, each of which has its own constitution and comprises an elected mayor and its own employees to deliver services, including a municipal-level police force. These municipalities operate as if each state were a federation of local governments although it must be noted that at the lowest level, traditional ways seem to apply as the chiefs are involved in and have significant influence on local elections and administration.

The impact of the federal system is a heavy one, in costs, inadequacy of human resources, and inefficiency. While having such a degree of decentralization may result in more grassroots democracy in FSM, the financial and human resources required to support three levels of government, each with its own version of legislative, executive, and judicial functions, for a population of around 110,000, may render this democratic arrangement unaffordable and unsustainable over the longer term.

Palau, ADB's newest member, also has a fairly decentralized government system, with 16 constituent states for a population of 19,200 people (as of the 2000 Census of Population and Housing), of which only 14,000 are citizens. The Constitution authorizes each state to have a legislature, chief executive, and supporting staff to carry out state-provided services. The efficiency and affordability of such a system is problematic; some state governments are simply too small to be sustainable (for example states with 250 to 500 inhabitants). In Palau, however, the national government provides corporate support to many state governments to ensure some degree of efficiency.

Public Financial Management

Reforms in public financial management in the PDMCs have been a key focus of assistance by major development partners over the past decade. Where public sector reforms, including reforms of public finances, were undertaken as a result of fiscal

crises, macroeconomic stabilization measures were generally successful: public expenditures were cut and revenue collection and administration were improved. This success was due in part to placing conditions on assistance (e.g., public service downsizing) and also to the countries' realization of the need to live within their means if more painful adjustments were to be avoided in the future. The frequency of disclosure of fiscal statistics has also improved somewhat, though there is room for improvement in the timeliness and reliability of the data. Sustaining these reform initiatives, however, has proved difficult for numerous reasons.

Major Observations

- ***Several PDMCs have benefited from bilateral assistance in the late 1990s to increase the level of revenue collection through improved administration and a change to more efficient and progressive tax policies as well as improved compliance and enforcement.*** Assistance was also provided by development partners to implement changes to fiscal duty rates and tariffs to comply with World Trade Organization (WTO) requirements as part of the condition for entry into WTO. Preliminary steps to encourage direct foreign investments such as reduction of business and legal red tape and clarification of "reserved" industries and activities have also been introduced in some countries.
- ***The stop/start, piecemeal approach to public financial management since the initial reform initiatives is due mainly to a lack of policy formulation and analysis skills in central agencies and sector departments, to ensure that programs and actions contribute to coherent strategies and consistent policy priorities.*** While it is generally recognized that skills and resource constraints in all PDMCs make public financial management reforms difficult, the process has not been carried out effectively for the following main reasons: the short-term nature of aid providers' funding programs, the absence of a government driven statement of priorities, the lack of comprehensive, properly sequenced and realistic implementation plans and inadequate emphasis on capacity building in the design and monitoring of projects.

Two examples of this weakness can be seen in Fiji Islands and Vanuatu. Vanuatu's Comprehensive Reform Program, launched in 1998 and supported by ADB, was premised on the enactment of legislation to improve public service administration and public financial management, and to commercialize/corporatize statutory authorities. Thus, Parliament enacted all the 8 pieces of legislation very quickly as required under the program loan, with little consideration being given to implementation. However, after consultants departed in December 2002, few changes can be seen in the way the Government operates or the way public finances are managed.

The situation in the Fiji Islands is illustrative of the piecemeal approach. The Public Finance Management Act 1999 was suspended shortly after its passage in March 1999, but the Public Service Act 1999 has continued to be implemented—even though its implementation relies, in many respects, on the suspended Act. This has resulted in inconsistent application of principles. For example, the Public Service Commission appointed new chief executives for all ministries in January 2004 under the performance contract system envisaged in the Public Service Act 1999. Despite a lot of preparatory work carried out in 2003 prior to the introduction, performance agreements signed by the chief executives are not fully satisfactory: while a chief executive's performance is to be judged on output and achievement of results, s/he does not have the financial and administrative flexibility that should go with such a results-based performance system. This flexibility was provided for in the suspended Public Finance Management Act 1999.

Another example is the incomplete implementation of the public enterprise reforms that were enshrined in the Public Enterprise Act 1996. The following agencies were created as a result of the legislation, but they have overlapping operational mandates and activities that are contrary to the corporatization principles of the relevant legislation: Airports Fiji Limited, a state owned enterprise with responsibility for running the Nadi and Suva international airports, while also providing air traffic control, which is a safety function; and the Civil Aviation Authority of

Fiji Islands, which has responsibility for air safety and compliance functions, but which also has a 51% share ownership in Air Terminal Services (a commercial operation) and operates housing estates around the airports to provide accommodation for airport workers. The Fiji Islands government recognized this deficiency and in mid-2003 initiated a revised financial management reform program that takes into account lessons learned from past efforts and the need to have consistent policies across all areas of public sector management.

- ***The application of “leading edge” concepts and techniques for fiscal reform has taken little account of local constraints, including resources and technical skills, cultural value systems, and the capacity for adaptation and for managing change.*** The New Zealand model of public sector management reforms, or some variation of which was adopted by a number of PDMCs (Cook Islands, Fiji Islands, FSM, and Vanuatu) emphasizes the concepts of fiscal responsibility, medium-term expenditure frameworks, performance/output-based budgeting, and accrual-based accounting and financial reporting, but without the necessary implementation details which are critical to make the systems work. In each of these countries, inadequate attention to the prioritization and sequencing of the reform elements, and to capacity constraints, has rendered a good many of these initiatives unsustainable.
 - In the Cook Islands, reliance on expatriate staff for the implementation of fiscal and management reforms in 1996/97 led to a lack of “ownership” and commitment by public servants and politicians, who reversed some of the initiatives at their earliest opportunity. The reliance on expatriate staff continues to this day²¹.

²¹ Reliance on expatriate staff for fiscal management in small economies like the Cook Islands may not necessarily be undesirable, as it enhances the perceived independence. However, this has to be done in conjunction with other mechanisms to ensure ownership and sustainability in the longer term.

- In Vanuatu, the various pieces of reform legislation were passed by Parliament very quickly in 1999 and 2000 to enable releases of the ADB program loan, but to date the Government has still not complied with or implemented many of the legislative requirements because of lack of understanding, commitment, and capacity to carry them out.
 - In Samoa, the introduction of output-based budgeting in 1995 was viewed as very difficult, as the Samoan representative explained at the July 2003 regional governance workshop; departmental staff resisted the program because of inadequate skills and lack of understanding of the benefits. The implementation was subsequently modified to take account of the Samoan context—“own pace, own way”—and this made it easier for the staff to accept it. This was not the end of the modifications: improvements are still being made to the definition of outputs and performance indicators and measurements, as part of the full implementation of the Public Finance Management Act 2001.
- ***Insufficient effort has been directed to establishing effective processes to link national strategic priorities, resource allocation decisions, and budget execution and monitoring functions.*** No PDMC has yet successfully implemented any form of medium-term fiscal framework; some have introduced a basic version of a forward estimates system, but the system lacks coherence and consistency, because it generally covers only current expenditure and includes few estimates of capital expenditure or the consequences of capital expenditure on current expenditure in future years. Plenty of technical materials on public expenditure management are available (from ADB, the World Bank, the International Monetary Fund, United Nations Development Programme, the United Kingdom Department for International Development) covering the whole gamut of policies and best practice. The difficulties PDMCs encounter are not so much what to do, but how to implement reforms in their own national context, taking into account country specific constraints and capacity, and the cultural value

systems that may impact on priorities and sequencing. For example, a perusal of Vanuatu's 2004 Budget documents and the medium term "Priorities and Action Agenda" showed that inadequate attention was given to time-bound action plans, financial and skill constraints, and links between the two documents. Specifically, the fifth national priority calls for "[e]nabling greater stakeholder participation in policy formulation by institutionalizing the role of chiefs, nongovernmental organizations, and civil society in decision making at all levels of government"; however, none of the identifiable programs in the Prime Minister's office or the Ministry of Comprehensive Reform Program reflected this priority.

- ***The financial reform programs in the 1990s were seen as aid provider and consultant driven, causing a lack of "ownership" and commitment.*** All participants in the July 2003 regional governance workshop emphasized this point, which was seen as the key reason for the difficulties PDMCs had with sustaining the reform initiatives. In several PDMCs, some of the initial reform policies were rolled back because politicians and public officials perceived that the reforms were being "imposed" by aid providers, not only in the timing and prioritization of policies, but also in the scope and content of the reforms.
- ***Coordination between aid providers and recipient PDMCs is inadequate.*** While this is a genuine issue, PDMC governments cannot expect aid providers to do the work, then complain that they should coordinate better. The recipient countries must *themselves* be in the driver's seat for aid coordination. Samoa is an example of how a country can reap the benefits of better aid coordination: the Government knows its priorities and where the needs are, and works with aid providers to direct assistance to specific projects and programs.

"Aid is not effective if every donor has its own strategy, each accompanied by complex procedures that overburden poor countries' institutional capacity," says Ms. Erna Witoelar, United Nations Special Ambassador for the

Millennium Development Goals (MDGs) for Asia and the Pacific, in a June 2004 interview in *ADB Review*.

*When I was in the Government, I was very upset because ADB had its own poverty strategy, the World Bank had its own poverty strategy and the Department for International Development of the United Kingdom had its own poverty strategy for the same country—Indonesia. We were just observers of this process. It was a case of their experts debating among themselves—about us. We don't have ownership of these processes. They don't need to work for us, they have to work with us.*²²

- ***All Pacific island governments in 2002 adopted the Millennium Development Goals, which must be mainstreamed into the process of national planning, resource allocation, and implementation at all levels of government if they are to be achieved by 2015.*** Discussions with senior officials and a perusal of budget documents and medium term strategic development plans of several PDMCs indicated, firstly, a lack of awareness of the critical importance of this linkage if results are to be achieved and measured by the 2015 deadline, and, secondly, where awareness of MDG exists, the knowledge of how to effectively operationalize the obligations at national and local levels is lacking especially given the multitude of other reform initiatives and day to day "crises" that senior officials have to contend with. Commitment from the highest political level and assistance from development partners will be necessary if this is to be achieved. Ambassador Witoelar emphasized this point in her *ADB Review* interview:

²² Achieving the Millennium Development Goals—Realistic, Possible? 2004. *ADB Review*, p. 5.

Governments need to be constantly reminded of the commitments they have already made to achieve the goals and that they should be really serious and mainstream them in existing work. But the real implementation has to happen at the local level... Many countries actually have money to reach the goals, it is just that [they] have not been using it in an effective way. [That's why] good governance is important, like accountability, participation, transparency, and minimizing corruption...²³

- ***Too many PDMCs have a poor “culture of compliance” with no effective sanctions for flouting rules and regulations, especially financial transgressions and abuse of systems.*** In the Fiji Islands, the Auditor General reported to Parliament that his office was denied access to some trust funds controlled by the Commander of the Fiji Military Force, but to date, even though there is judiciary support for the Auditor General's position, the situation remains a standoff. In Vanuatu, the Ombudsman has reported numerous transgressions, administrative and financial, but the will to enforce the law seems to be lacking: problems are known, culprits identified, but the executive power necessary for successful prosecution is rarely exercised to bring these cases to court.
- ***Importance of procurement rules in combating corruption has been downgraded in the rush to downsize public administration in order to reduce the budget deficits.*** Public service reforms in recent years have generally downgraded the role of centralized procurement due to reduction in staff number, or a complete dismantling of procurement offices. However the devolution of procurement decisions to agencies has not been supported by adequate training and staffing. This is an area where opportunities for corruption are rife as it is a thin line between corrupt practices and “traditional values”. In many instances, public servants are

²³ Achieving the Millennium Development Goals—Realistic, Possible? 2004. *ADB Review*, p. 4.

caught in the middle of ministerial “instructions” and generally accepted procurement rules and practices with no assistance provided in such conflict situations. Training in procurement is needed (for both politicians and public servants) not only in terms of rules and processes but also of transparency/accountability obligations and avoidance of conflict of interest situations.

The Legal and Regulatory Framework

The legal and judiciary systems of a country are essential to address and resolve conflicts between citizens (including legal entities), and between citizens and the government. An assessment of legal and regulatory frameworks is important to determine the extent to which the rule of law applies, and whether there is an adequate and transparent regulatory regime which can be enforced by the government.

- ***In most PDMCs, the legal and regulatory systems are generally weak and underdeveloped***, due to the lack of skills and resources to enforce compliance, as well as the lack of predictability and transparency of policy decisions. Most PDMCs rely on external assistance for important investigations, since many of the countries' oversight offices (Office of the Ombudsman, Director of Public Prosecutions) do not have sufficient resources to employ skilled investigative staff. Legal drafting is another area of weakness because senior officials do not provide adequate instructions from a policy perspective to ensure consistency and predictability of the legal, regulatory and policy framework.
- ***Given the small population, financial constraints and scarcity of skills in many PDMC economies, the appropriateness of a competitive and regulatory framework for public utilities and the means to achieve it may have to be modified from those practiced elsewhere.*** For example, scarcity of technical, financial and legal skills and the existence of a small hierarchical community may make outsourcing of the regulatory functions in countries like Tonga desirable in order to maintain independence of the

regulators. For similar reasons, the formulation of corporate governance arrangements in state-owned enterprises will have to take into account political and social systems in each country to ensure that transparency and accountability requirements are observed.

- ***Several governments have initiated public enterprise reforms focusing on improving the efficiency and productivity of state-owned enterprises, but without the necessary protection of the public interest.*** As public utilities such as electricity, water, and telecommunications are the main candidates for such treatment, it is of some concern that the reform efforts in some countries have not adequately covered changes in the regulatory framework to ensure that the public interest is protected while competition is introduced to reduce the cost of doing business, especially in the context of Pacific economies, geographically isolated small markets with constraints in skills. The issues of cross-subsidization and “cream skimming” by potential competitors should also be considered in public enterprise sector reforms.
- ***In several PDMCs, the police force is perceived to be corrupt and lacking in skills to undertake investigations that would lead to prosecutions.*** Transparency International has reported that “The lack of technical expertise of the required level to investigate, bring charges and convict offenders is a disturbing trend in Fiji and it brings a lot of doubt over the Government’s resolve of upholding law, order and justice.”²⁴ The Fiji Islands government recognizes the deficiency and in 2003 agreed to assistance provided by Australia through the appointment of an expatriate police commissioner who is seen to be competent and independent to carry out reforms of the police service.

²⁴ Transparency International Fiji. 2001. *Country Study Report*.

The Judicial System

- ***The judicial systems in most PDMCs are seen as generally independent, relatively free of corruption, and “reasonably resourced.”*** The use of external judges to help make up for the lack of qualified local judicial officials is seen as effective and as providing the independence needed to overcome the problems of rendering judgment in such close-knit, hierarchical societies.
- ***A substantial gap nevertheless exists in adequately trained and experienced judicial service personnel.*** Legal aid in many PDMCs is being cut back because of decreases in government funding; this makes access to justice for the poor and disadvantaged more difficult.
- ***Several PDMCs (Samoa, Palau and Vanuatu), have instituted parallel systems to deal with the tangle of customary land disputes, an important step given the special and sensitive nature of land in Pacific cultures.*** The parallel systems have generally not greatly improved the efficiency of disposition of land cases, however, because of the shortage of people “qualified” by their knowledge of customary land ownership and management to hear such cases. Resolving land tenure and ownership has generally been a long and arduous process and has hampered the use of land as collateral to facilitate private sector development.
- ***Although most PDMCs acknowledge the special nature and importance of tradition and custom in their constitutions, such matters are otherwise left to the elders and chiefs.*** In Vanuatu, an interesting experiment is taking place: the National Council of Chiefs in 2001 was considering the drafting of a bill in which oral “laws” would be codified, with external assistance. There have been calls recently to formally recognize the status and contribution that the chiefs may make to improving governance and public officials’ behavior. In most countries the role chiefs may play in the judicial system is unclear. The Chief Justice of Palau advocated an approach by which modernity mixes with tradition to ensure harmony:

judges may consider history, tradition and cultural factors in making decisions so that the decisions would be seen as fair and reasonable by most Palauans.

Civil Society and Governance

- ***The freedoms of information, association, speech, and religion are guaranteed in all PDMCs.*** Aside from the recent instance in Tonga where the government's amendment of certain sections of the constitution is seen as restricting press freedom, media in the region are free, and publication of "leaks" is not restricted except for the usual threats of libel/defamation action and intimidation. Few court cases are brought against journalists, but these are generally settled without much damage to media freedom. However, capacity for investigative journalism in general and of analysis of news stories and leaks prior to publication in particular, is lacking.
- ***The strength of civil society in the region is uneven:*** for example, it is strong in PNG, Fiji Islands, Samoa, and Vanuatu, but in other PDMCs, it hardly exists, except for women's groups within churches and some recent environmental NGOs established with assistance from the European Union. To date, the focus of a majority of NGOs are on social development and environmental issues rather than government fiscal accountability and transparency in decision-making processes. With increasing poverty, awareness of corruption and ethnic tension in several countries, some NGOs have become more active in demanding accountability of governments, politicians and senior public servants in meeting community standards and expectations. The aid community including ADB has taken up this call by providing assistance to civil society organizations to improve NGOs' understanding of the governmental fiscal process, and financial advocacy skills to enhance their effectiveness in changing the way public resources are used and are directed towards the poor and disadvantaged groups in society.
- ***Local NGOs in the region generally find it hard to survive without external financial support from bilateral funding***

agencies or their international NGO counterparts.

Economic NGOs such as Chambers of Commerce and employers' groups fare better than social NGOs in terms of financial support from their constituents. In the Fiji Islands and PNG, labor unions are strong, but the movement barely exists in other PDMCs. In the Fiji Islands, however, since the 1987 coup, and even more noticeably since May 2000, the union movement has split along racial lines. This move does not enhance the unions' bargaining power with employers' groups, and complicates the conventional tripartite arrangement (employers, employees, and governments) that is supposed to foster the harmonious industrial relations crucial for attracting foreign investment and promoting economic development.

Funding for social NGOs is problematic given their wish to remain independent of governments in spite of their reliance on public funds for some of their services. Some PDMC governments provide in-kind assistance, such as office accommodation, at no cost. Experience in other countries suggests that as certain NGOs become more active in specific areas and gain credibility with the community, monetary contributions from governments either for services rendered or simply annual grants will not be seen as compromising their independence.

- ***Regulatory regime for NGOs is weak in the region.*** NGOs supported by their international counterparts generally observe minimum standards of internal governance especially in relation to financial accountability. A great number of NGOs do not seem to comply with the minimum standards of governance for non profit organizations. A recent report commissioned by SustainAbility, UN Global Compact and the United Nations Environment Programme²⁵ indicated that very few international NGOs in fact observe all the transparency and accountability standards that they demand from governments. In the Pacific, some assistance has been forthcoming from bilateral aid providers to help improve basic financial accountability of NGOs.

²⁵ SustainAbility. 2003. *The 21st Century NGO – In the Market for Change*.

