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National Integrity Systems

TI Country Study Report

NAURU 2003

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ABBREVIATIONS

ADB	Asian Development Bank
AusAID	Australian Agency for International Development
CID	Criminal Investigation Division
CJ	Chief Justice
DOP	Director of Police
DPP	Director of Public Prosecution
FATF	Financial Action Task Force
IMF	International Monetary Fund
NAC	Nauru Agency Corporation
NLGC	Nauru Local Government Council
NPC	Nauru Phosphate Corporation
NPF	Nauru Police Force
NPRT	Nauru Phosphate Royalties Trust
NGO	Non Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
PSC	Public Service Commission
RONFIN	Republic of Nauru Finance Corporation
USP	University of South Pacific

EXECUTIVE SUMMARY

Nauru is a single Island state with a land area of 21 Km square and a population of approximately 11,300. It is one of the world's smallest Republics and was Nauru part of the German territories from 1886 to 1914. It was then mandated by the League of Nations to Australia, New Zealand and United Kingdom. Nauru was administered by these three powers through the Trusteeship system of the United Nations after 1945 until it was granted full independence on the 31 January 1968. Nauru was one of the richest nations in the world on a per capita basis, when its export of phosphate rock, the sole and only export, was at its peak. Trouble for its fragile economy began when world price of phosphate began to fall in about 1988. The economic decline sharpened in the late 1980s and early 1990s but Nauru failed to, or did not want to, take the necessary steps of reducing expenditures commensurate to the fall in revenue by both the Nauru Phosphate Corporation (NPC) and the Government. As a consequence, Nauru began eating into its reserve funds that were held with Nauru Phosphate Royalties Trust (NPRT) and drawing on its savings with Bank of Nauru (BON). Moreover, these economic difficulties have been compounded through the apparent gross mismanagement of investment funds with NPRT and corrupt practices elsewhere.

Issues of corruption and governance, domestically and internationally, are widely gossiped about within Nauru and have been the cause of some heated debates in Parliament. In the domestic jurisdiction very little has been done to control corruption running rampant. Aspects of traditional culture, especially gift giving and the privileges of elders, contribute to this climate of ambivalence. Other aspects of the Nauru society, like the extensive relationship amongst many Nauruans, could discourage serious investigations and the potential apprehension of corrupt individuals. For example, an extended Nauruan family could be so extensive as to spread throughout the island, as for every 5 Nauruans 2 will be related in some way.

In Nauru the private sector is small and does not provide much employment, hence the public relies heavily on the government for employment, either in the public service or in one of the statutory corporations. It is common for people to go to their Members of Parliament to ask for money and other favours, and if their member is a Minister the greater their expectations will be. Anything that happens in the government of Nauru affects the whole nation. Hence, the activities of Government and related agencies will always be a concern for every Nauruan.

At the international level, offshore financial institutions incorporated under the commercial laws of Nauru, namely the Corporation Act 1972 and the Banking Act 1975, have allegedly been used to facilitate international money laundering activities. This type of international level of corruption is not apparent to the average Nauruan and apart from information which has surfaced through the international media, no further information has emerged within Nauru which directly incriminates local officials. Even though the domestic perspective of the establishment of offshore financial institutions is that it is not unlawful and does not raise much concern, the international community perceived the existence of the off-shore financial centres as providing an environment for corruption to grow and has been very vocal in its condemnation of such ventures.

All of this has resulted in Nauru being blacklisted by the Financial Action Task Force as one of the non-cooperating countries and territories in 2000. Further, despite anti-Money Laundering legislations being enacted by the Parliament of Nauru shortly thereafter, Nauru remained on the FATF blacklist. Since 2001 Nauru has enacted two Anti-Money Laundering Acts and made 3 Amendments, the latest being passed by Parliament on 27th of February 2004 but it still remains on the FATF blacklist.

Similarly, in 2001 the Organisation for Economic Corporation and Development (OECD) blacklisted Nauru as a 'non-cooperating country' who potentially encourages harmful tax practices. The OECD demanded that Nauru make commitments on the Principal of Transparency and effective exchange of information by other Nations. The Republic of Nauru has since then made a political commitment at the highest level of the Presidents office, and in December 2003 was removed from the OECD blacklist.

Nauru at the moment does possess agencies or institutions that contribute to the pillars of a National Integrity System (NIS), however they are not entirely independent and is almost not possible for such institutions to perform their duties independently.

The main difficulties with these institutions are that they do not effectively work together. Reasons include clashes of personalities, lack of skills or experience and an overall lack of awareness as to how the NIS as a whole should function. One significant difficulty is that the few qualified personnel that exist, more often than not, perform multiple duties. That practice can and will create conflicts in their

different duties.

With regards to these NIS institutions, there is no ombudsman or equivalent institution in Nauru. Additional to normal duties of public prosecution, the public prosecutors also perform the functions of an Attorney General's chambers. Thus the Director of Public Prosecutions is also the Attorney General. This means that conflicts of interests may arise. Further, the legal system has operated in Nauru since 1914 and the concept of the rule of law is embodied in the Constitution, but the notion of the role of litigation in society remains very much beyond the comprehension of the average Nauruan.

Nauruans speak only one language and traditionally they tend to be reserved and readily accept decisions of traditional leaders and now elected leaders. They are not aggressive and are usually hesitant to voice their complaints to the authorities. Further, the tradition of respecting elder members of the extended family is still strong, and by natural extension is an important factor during general elections. It is also a factor that may increase some leaders' sense of being above the law. Tradition discourages the criticism of leaders, who used to have very broad powers. Modern leaders use this traditional concept to justify their actions.

However, there are also factors within the Nauru society that could be used to support NIS ideals. The fact that Nauru has one language, a single small Island, and extensive blood relationships could be useful to encourage and strengthen links between pillars of the national integrity system and satisfactorily blend a traditional concept with a modern concept. This, however, may be more of a theoretical ideal than a practical solution.

Strengths within the NIS are always related to a particularly committed and hard working individual or team of individuals. Conversely, weaknesses are usually linked to underperforming individuals. The obvious answer is to improve checks and to raise expectations of work standards.

There are six priority areas in which activities need to be undertaken to ensure the strengthening of Nauru's NIS:

- Creation of NIS institutions
- Reform of the law
- General education and public awareness
- Institutional strengthening through capacity building

- Enforcement of the law
- Facilitation of integration of the NIS

Pursuit of the above factors will engender a necessary shift in perception, so that corruption ceases to be an irrelevant abstract concept, and is instead internalised and made a real issue of personal and institutional concern and activity of national priority.

COUNTRY OVERVIEW

Nauru is a democratic Republic with some unique features in its system of government. It has adopted the precepts of a parliamentary democracy following a 'Westminster' model, to which have been added some aspects of a presidential system of government. This institutional arrangement reflects the notion of the separation of powers of government among the three arms of government; the Legislature, the Executive, and the Judiciary.

The President has the dual roles of being Head of State as well as Head of Government. The President performs the role of a Head of State and role of the Prime Minister in the Westminster system. The President appoints the Cabinet, made up of no more than 6 Ministers (including himself) from among the elected Members of Parliament. The Cabinet is answerable to the Legislature, or Parliament. An independent judiciary is made up of a District Court, and the Supreme Court. It has also specialist courts in the Family Court and a Court of Appeal.

The President is elected for a three-year term by simple majority of the total number of members of Parliament. During his or her term the President may only be removed from office due to incapacity or by a vote of no confidence.

Parliament is unicameral. The 18 members of Parliament are elected by a modified preferential vote. There is universal suffrage for people over the age of 20. Voting is compulsory carrying a penalty of $10.00 for failing to exercise the right and privilege. Nauru is divided into 8 constituencies. Depending upon its size, 7 constituencies have 2 seats and 4 seats for one constituency. The maximum life of Parliament is 3 years, although the Speaker can dissolve it within 14 days, on the advice of the President. There are no political parties in parliament of Nauru and they are not encouraged – there being no provisions made to facilitate for their future arrival on the basis that Nauru is too small for party politics. This deliberate and conscious act of discouraging the growth of political parties may have deprived an essential element in the development of the parliamentary system of democracy in Nauru. Still, with new breeds of Parliamentarians there have been talks of parties.

As illustration of the significance of the absence of political parties, Nauru's political climate has remained fluid, with politicians crossing the floor easily and frequently to the detriment of governance. It is not

apparent whether instances of ‘crossing the floor’ have been carried out on the basis of clearly held policies or in the pursuit of self-interest. The absence of political parties has placed an emphasis upon the individual. This, in turn, has developed to such an extent that national policy requirements get lost and economic policy loses out to adventurism. Voting in general elections appears to be based more upon family ties than policies. There are emerging small parties, and in the last national elections a large number of independent candidates also stood.

The Judiciary remains independent from politics and its decisions on cases involving political matters reflect this independence. The Constitution provides that Nauru adopt the common law system. The Custom and Adopted Laws Act 1971 provides that certain elements of Nauruan customs, usages and institutions form part of the laws of Nauru. The use or application of customary law within the formal legal system remains limited in most areas as it is conceptually difficult for both customary and introduced law to work alongside each other within the formal legal system, but is most noticeable in land laws.

The Nauru Police Force (NPF) is administered under the Police Force Act 1972. Its establishment of officers varies from year to year depending on perceived needs over the next 12 months period. The NPF consists of general duties officers and ‘reserves’. Reserves are called up to carry out specific assignments as the need arises as Nauru is largely a peaceful place.

Nauru does not have an active media. It has the Nauru Television (NTV), Radio Nauru broadcasting on FM 88.8mz., and the Nauru Bulletin, all under the Department of Island Development and Industries and operated by a Media Bureau. The Bulletin is published on a monthly basis, containing mostly public announcements and some departmental news. There is no privately owned newspaper.

Though important, these institutional arrangements do not provide much indication of the social and economic environment in Nauru. Its economy is heavily reliant on phosphate exports. With the phosphate industry coming to its end, the impact is very clear with government falling into loan arrears and public services salaries are two to three months in default. Other important economic sectors are Nauru's tax haven status, and the offshore financial services sector. However, under pressure of threats from the OECD and FATF for alleged harmful tax practices and money laundering, these services have been legislatively closed down in March 2003. There is also a fishing

industry with Nauru having a 200 mile exclusive economic zone that has strong tuna fields.

Local industry is hindered by the isolation of the country itself and the availability of markets. International shipping services to the Island, comes only once every one to two months, is always costly. The only reliable overseas contact is Air Nauru. It flies to Australia, Solomon Islands, Kiribati and Fiji. Electricity and water supply are very much limited. Power cuts are frequent occurrences due to the aged generators and their lack of proper and regular maintenance. The water supply for the island relies on rainfall, since the desalination plant broke down over a year ago and is still under repair. Utilities and telecommunications are very expensive. The high cost of exporting goods, whether by ship or by plane, hinders the development of export markets. Political instability and a largely unskilled workforce also detract from the development of local industry.

CORRUPTION PROFILE

Definitions and scope

"Corruption? Yes I cannot say there's no corruption. There's corruption and there's a lot of people who want to fill up their own pocket. That's why Nauru has become so much in the media"

Anthony Audoa M.P 2001 (Naoero Amo "The Vissionary" Quote of the Month 14/6/01 Issue No 4-01)

There is no single legal definition of corruption in Nauru. Popularly, corruption may be defined as occurring when a leader misuses his or her position for personal gain. Such definition however does not have any support from any legislation, such as Electoral Act and Criminal Law, nor in the regulations or bylaws of Nauru. The term has also been seen as referring to those leaders who do not go to church, and who party and travel overseas frequently. Such inferences reflect the wide variety of views that individuals define corruption against their own background.

Popularly the notion of corruption, and related standards of 'good behaviour', relates more to the behaviour of people and institutions within the introduced political system rather than people who are considered leaders under traditional or grassroots structures. Actions of members of parliament and civil servants are more likely to attract charges of corruption than actions of chiefs or community leaders, including church leaders. Actions of individuals that are benefiting from, and maybe encouraging, corrupt behaviour, are also not seen as corrupt.

To illustrate, the Criminal Code Act of Nauru creates offences for people who try to bribe officials and/or receive bribes during elections. However, in the popular perception, ordinary people who receive bribes are not 'corrupt'. Heads of families command all individuals within the family or the extended family. The command of such head of families to his subjects on how to vote, after receiving bribes or goods or favours for their families, are not normally perceived as corrupt. The person offering the bribe is, however, sometimes seen as acting corruptly. The reasons for differing perceptions as to what is corrupt are complex. In the voter bribery situation it may be that there is an acceptance that people are vulnerable to temptation. The blame attaches to the person who offers the temptation, rather than the person who accepts it. Heads of families who accept bribes and distribute them throughout his or her subjects are seen as doing their family duties properly, for the benefit of the family as a whole, and

therefore not corrupt. However, heads of families who take bribes and do not distribute them may be seen as corrupt. Western concepts of corruption and local concepts of wrong behaviour do, sometimes, differ. Further, because social systems encourage respect of head of families, and thereby discourage criticism, it is less likely that heads of families will be labelled corrupt.

The real difficulty in any meaningful definition of corruption comes from the fact that people who have acted corruptly are not necessarily seen as having acted in a morally wrongful manner that should attract punishment. Nauru is a very small society consisting of twelve tribes that frequently intermarry. It is possible to find out about misuses of power and position quite easily, through official reports, or casual conversations and gossiping with people. However, punishment does not result for want of prosecution arising from the slackness of the law covering corruption. Politicians who are headlines of gossips or street conversations continue to be re-elected back into Parliament. One reason for this may be a lack of general awareness amongst the voting population of the role of politicians. Another reason may be that the general population sees corruption as largely irrelevant or the concept itself is foreign to the voters relative to tradition and custom in Nauru. It is quite rare for large public outcries regarding corruptions or related matters to occur.

Where the line is drawn between traditional gifts and bribes is difficult, if not impossible to define precisely. Nauruan culture has a strong tradition of gift giving and sharing as part of family obligations and customary ceremonial duties to strengthen family ties and friends. Whilst culture can, undoubtedly, be misused, there is no clear line of demarcation between what is culturally acceptable, and what is legally unacceptable. Indeed, because the lines of demarcation come from two different systems of thought (culture and law) it is unsurprising that there is some confusion about what should be, or is, legal, or what rules should apply in any given situation.

For instance, some voters see the receipt of gifts in return for voting a particular way to be a legitimate part of the electoral process. Such gifts may be the only actual return that some voters expect to ever see out of the State political system. Whilst such actions are legally wrong, they fit within custom. However, this is not a traditional custom setting. Although the acceptance of gifts may seem to subvert the political system, given that the political system remains largely meaningless for a lot of people, the acceptance of gifts in return for voting appears to be a legitimate blending of custom and introduced

systems in the eyes of some people.

There is, therefore, much variety in Nauruan interpretations of what corruption might be. However, a particular document has been important for shaping ideas about corruption – and this is the Republic of Nauru Corporation Act 1972 which sets out in the Second Schedule of the Act the Articles for Management of a Holding Corporation. In that document, which is part of various documentations applicable to any holding company upon registration in Nauru, Article 91 reads: "A director may vote and be counted in the quorum in respect of any contract or proposed contract with the corporation in which he is in any way interested or on any matter arising thereof and ***no contract entered into by the corporation in which a director is in any way interested shall by reason thereof be voidable*** and ***no director shall be liable to account to the corporation for any profits realised by such contract or any office of profit held by him*** by reason of his being a director." (emphasis added)

That single Article altered the definition and the face of corruption in Nauru. Conflict of interests and multiple directorships are not issues at all. Therefore, declarations of any kind by directors of corporate bodies are not required. The most effective promotion of corruption made possible by this Article is immunity from liability of directors even if they made personal profits by virtue of knowledge and information from their other offices. The Article gave the notion of corruption a new complexion to a much narrower version and at the same time legalised certain pre-conditions of corruption; multiple directorships, non-declaration of interests, and conflict of interests.

Although aspects of the Corporation Act were designed to protect and thereby attract overseas companies to register in Nauru, in so doing it cannot help but provide conditions ideal for corruption to take root and flourish within local companies. The recent stoppage of registration of overseas company by legislations, consequential to pressures from overseas governments through OECD and FATF, is not applicable to local companies. And as the Corporations Act 1972 is still applicable as part of Nauru law, the narrow definition of corruption and the corruptible base for local companies in Nauru still applies. Even if private companies are not normally restricted in any way in relation to contracts and conflict of interest, Public companies and public administration, however, are in a different category altogether.

Causes

There are a number of factors that enable corruption in Nauru to exist or even flourish. Some of the factors directly causes corruption while some may not 'cause' corruption but they contribute to a climate in which corruption can and does occur.

The causes of corruption can be classified under six main categories. The first is the lack of a social and welfare system. Second is the lack of understanding of cause and effect of corruption. Third is the lack of personal values to deny corruption in all forms absolutely. The fourth cause is the lack of legislative mechanisms to punish and deter corruption. The fifth cause is the economic difficulties gripping the country left the people vulnerable to corruption. And lastly, it may be that tradition and culture also causes corruption.

Nauru does not have a welfare system in place which is comprehensive and designed to ensure the welfare of the wider population. As such, leaders and the general population alike have been looking to and have been using the political system, the public sector, and any other government instrumentalities and entities of Nauru as a hidden welfare system. It is not unusual for an individual to be given employment in the Public Service or in one of the government owned entities simply to ensure that the individual will have a regular source of income. Given Nauru's limitations with resources and capacity for development in the private sector, most people, if do not secure employment by these means, would most likely remain unemployed and without a source of income. People in power, rather than amend the system to better cater to the needs of the state as a whole, generally maintain and abuse the existing system to meet the basic needs of their voters. Nepotism has and continues to arise where elected leaders use their powers to meet their welfare obligations to their voters.

The same problem of meeting political obligations and promises also exist in areas such as disbursement of finance, overseas medical referrals, and housing. This problem persists and may be expected to escalate as Nauru's economy progressively contracts. For a greater proportion of the population whom have not been exposed to alternative systems, the hidden welfare system is normal and accepted. The fact that government job application forms ask applicants to indicate the number of their dependents can be seen to support the general tendency at all levels to accept the hidden welfare

system as normal. The concept of the hidden welfare system further complicates the average Nauruan's definition of corruption.

The second factor, that of a lack of understanding of what corruption actually is, means that there is an overall lack of appreciation of the negative consequences of corrupt activities on society. One who gains from acts of corruption does not always see that gain to be depriving other people or adversely affecting the greater society. Nauruans by culture are a sharing and caring people. It is part of the Nauruan culture that a fisherman, fortunate enough to bring in a good catch, would give away the fish not immediately needed by his family to anyone. It is also part of the Nauruan culture that a person who is paid a compliment on a piece of property, would give that property away to the complimenting party. But when cause and effect of corruption is not understood fully, then there will be no ethical or moral dilemma to deter corrupt activities.

Ignorance as to the causes and effects of corruption is not absolute, but it would seem that only a small proportion of the total effect of corruption is actually appreciated and thus in most instances the effect may be regarded as of little consequence and will not deter corrupt activities. During the period of Nauru's economic peak, this problem was compounded by the Nauruan's popular attitude that the resources were in abundance and the economic well being of the state will not be significantly affected by their corrupt activities.

Third, the National emblem of Nauru puts "God's will first", and declare in it's Constitution "the people of Nauru acknowledge God as the almighty and everlasting Lord the giver of all good things" and "we humbly place ourselves under the protection of His good providence and seek His blessing upon ourselves and upon our lives". The founding fathers of Nauru vested upon themselves and the people of Nauru personal values based on Christian principles of honesty and on the role of the guidance of God.

These guiding principles were intended to be signposts where the leaders are to run the nation, and come down to personal integrity and not to the mandate of the law. Much is invested on personal values of leaders that these are open to abuse by leaders who do not live with the intention of the founding fathers of the Republic of Nauru. This is reflected by the fact that since Nauru gained its independence, there has been no legislation or, at least, a provision in the Constitution providing leadership norms or standards expected from them. This resulted in the difficulty of defining corruption as a practically

meaningful notion. The resulting grey area allows leaders with lesser moral integrity to exploit the neglect of the situation for their personal benefit.

In terms of the fourth category, Nauru does not have legislation specifically addressing the code of conduct of leaders. As indicated above, this has been left to the individual leader's honesty and integrity. There is no such office equivalent to Ombudsman in Nauru. Even if the people do complain, there is simply no one to whom such complaints are to be heard or investigated, such as an independent media outlet. Allegations of corruption therefore simply cannot be investigated. This has led to the mentality with some leaders that whatever is done that is not contrary to law, no body will ever be able to stop them. The fear of legislative sanction may act as deterrence to leaders who are corrupt. However, in this regard, it is not the case of the leaders being free to do what ever they want.

Aggravating these circumstances is the lack of freely accessible legal services to the public. The public in Nauru do not have free access to legal service, let alone the government lawyers at the Justice department. The public will have to engage private practitioners at costs. On the whole, where there is no rule, leaders can conduct acts that may be branded as corrupt or likened to corruption.

Nauru's economy too is very much in difficulty and brings its own problems. Government salaries are 6 to 9 fortnights in arrears. Statutory bodies are in even worse situation with their salaries. These economic difficulties may have been caused by gross mismanagement from leaders of past years. The Public servants are left to struggle for their survival for two to three months before being paid their salaries. Public servants in this very difficult economic climate are very much vulnerable to corruption at least to support them through the difficult times. Some of the skilled workers within the Public service are foreigners. The ailing economy and the default of salaries in Nauru has resulted in the exodus of skilled workers and it would be difficult to attract replacement workers with similar skills from overseas.

Further, poor pay in the public sector, as compared to the private sector, may also help to contribute to corruption. Poor pay lowers morale, and may help to foster a climate, in which people do not take responsibility for, or pride in, their work. It can also foster absenteeism. Also, people with technical skills, particularly in the areas of finance and law, are likely to seek jobs in the private sector, thereby lowering capacity in the public sector.

Fifth, there appears to be a lack of capacity to understand or lack of ability to work within the introduced legal and political system. Parliamentarians often do not have a clear understanding of their roles and duties. Public servants often do not have the technical training or experience to be able to fulfil their duties competently.

The education system in Nauru has not developed to respond to the national need. In some aspects, the system has deteriorated significantly since independence. Thus the education system will not be able to alleviate the problem of capacity, in the short run anyway. Education is a major problem in itself and would need specialised attention. Suffice it to say that the present lack in capacity amongst locals, will remain a problem for some years to come, reflects the lack of planning and policies of Nauruan leaders.

Last, we might consider the effects of tradition and culture. Nauruan society is very much non-aggressive and easy going. There are no organised civil groups or NGO's that can have a collective voice to express outrage to blatant corruption by leaders. As such, corruption is accepted or regarded as part of the political system. Traditionally, Nauruans do not question the actions and behaviour of their chiefs out of respect or fear or both. Whatever the reasons there is a preference among Nauruan not to question but accept the acts of heads of families or leaders. The welfare and cohesion of the extended family is held dear than the cost of corruption to the nation. Most Nauruans do not understand or appreciate the principle that what is good for all of the people is also good for the individual Nauruan as well as the extended family.

Levels

Corruption occurs at all levels of society. However, the concept of corruption is most firmly linked with the actions of members of Parliament, the Public Service, and certain government institutions. In Nauru there is only one level of government and that is the national government. There was once a Nauru Island Council but this has been legislatively abolished in 1992 by the Nauru Local Government Council Dissolution Act 1992. All powers of the Council were bestowed upon the National cabinet of Nauru. Much of the attraction for corruption therefore lies with the national government, which includes the Public Service and statutory corporations according to the wider definition of government.

Corruption in the international level is widely alleged by the international community to be a major problem for Nauru. Nauru as well as its other Pacific neighbours has increasingly been portrayed as unrepentant 'deviants'. (Fossen 2002) The mass media reported that Nauru was involved in the Bank of New York scandal and assisted Russian Mafia to launder US$ 15 billion to the Bank of New York. These monies are believed to be proceeds of tax evasion, contract murders, drug trafficking, prostitution and other unlawful activities. At the same time, in 2001, the US department of Treasury imposed special measures against the Republic of Nauru; to deny financial dealings with Nauru financial system through correspondent accounts, under their Patriotic Act since Nauru is believed to be involved in money laundering (USA Department of Treasury 2002: 43). In December 2001, the FATF imposed economic counter-measures/sanctions on Nauru due to the existence of 400 shell banks licensed by Nauru, which the FATF believed posed an unacceptable money laundering risk, and due to Nauru's failure to enact appropriate legislative measures to counter money laundering and to combat terrorism (Report to FATF on Anti-Money Laundering Reforms by the Republic of Nauru 1 June 2003: 2). On the other hand, FATF, while acknowledging Nauru's enactment of anti money laundering legislation in 2001, it demanded Nauru to do more until it satisfied the international community (FATF Annual Review of Non-cooperative countries and Territories 20 June 2003). Nauru is still on the Blacklist of the FATF and facing economic sanctions by both the United States of America and the FATF.

Nauru was also blacklisted by the OECD as one of the countries who assist foreign national to evade taxes in their home jurisdictions and practice other harmful tax practices. Nauru has since been removed by the OECD after Nauru made a strong commitment to the Principles of Transparency and effective exchange of information.

Costs

In general terms the costs of corruption in Nauru include waste of public funds, a lack of investor confidence in Nauru, mortgaging of investment properties, falling into ill afforded loans, but worse is the loss of privately owned investment funds with NPRT and loss of personal savings with BON. The costs are reflected in the poor performance of the economy. Even though there are no bodies like the ombudsman or equivalent to investigate into allegation of corruptions, it is widely accepted in Nauru that part of the collapse of the economy is due to corruption of leaders. Without specific investigation of the

extent of the corruption, therefore actual costs of corruption are not accounted for yet.

Types

Even though specific incidences of corruption and their costs have not yet been investigated and therefore remain largely speculative, there is a variety of corruption that occurs in Nauru. It can be observed quite clearly by the general public and it is common knowledge that leaders commit certain types of corruption. Five main themes of corrupt behaviour have been identified: political appointments of unqualified people; involvement in business deals without following correct procedures; a lack of respect for the rule of law, or a wilful refusal to be bound by rules; misuse of funds; and unfair treatment of people based more on political considerations rather than merit. Unnecessary travel by ministers and public servants also consumes large amounts of public money. For instance, at times public servants get sponsored to go on conferences, and also claim allowances from the government. This type of corruption is, maybe, under-recognised at the present time.

Importance of change

The biggest aspects of 'change' that have affected Nauru have been its decreasing economy and the recent demands of the international community. Nauru has had to react to the demands of the international community by enacting changes to its offshore banking and financial matters in a way that prevents corrupt practice, and at the same time Nauru has been facing major economic difficulties as it can no longer rely on the phosphate trade. Some important changes have therefore been made to pacify the international community, but local instances of corrupt practice may in fact have increased for the kinds of reasons outlined above.

THE NATIONAL INTEGRITY SYSTEM

Executive

Part III of the Constitution established the executive of the Republic of Nauru. The executive is made up of the President and the five or four Ministers, who are appointed by the President from amongst elected Members of Parliament. They are normally referred to as Cabinet as distinct from the term executive, which may refer to Cabinet Ministers and the heads of Departments or the whole Public Service with their Ministers. The maximum size of the Cabinet is six.

The majority of Nauruan Parliamentarians do not fully understand their roles and responsibilities. Some have had only limited education, and many do not have a thorough understanding of Nauru's adopted political and legal system of government. This hinders the effectiveness of the executive, as individual ministers may not have full understanding of how to exercise their powers legally and appropriately. A good illustration of this occurred in 2002 when a function of the Eigigu Corporation, a Public Holding Company owned by Government, was transferred to another body; that other body being a private company registered in the name of one of the Ministers. In answer to a question without notice in Parliament, the Minister responsible explained, without qualm, that he committed the act as a matter of convenience at the time, and that revenues from the operation were paid into Treasury. Parliament failed to confirm the assertions of the Minister by appointing a Select Committee to look into the matter and report back to the House. It therefore appears that both Parliament and Cabinet accepted the explanation of the Minister as reasonable and proper, including the Minister's admission of placing a public operation in his personal name. The operation remains in the name of the Minister, who retains his ministerial post.

There is an obvious lack of responsibility amongst Ministers. Another example is the Constitutional requirement to maintain a quorum of 3 Ministers at all times. Yet on many occasions Ministers will travel overseas leaving no quorum at all on the island. These occurrences may be nothing more than the results of bad planning, but because they have become regular occurrences this indicates a definite lack of respect for the rules and laws of Nauru.

Ministers are becoming increasingly more adept at using the legal system, so innocent lack of capacity is becoming less of a viable excuse for poor decisions within the executive. Maybe lack of 'moral

capacity' (distinguishing between right and wrong, and using this distinction to actually guide behaviour) is a more accurate conceptualisation of at least some of the capacity problems. Even though this is common knowledge, little has been done to rectify the problem.

Ministers have also shown a growing lack of loyalty to colleagues and to their President. Reasons are not entirely clear. Quality of leadership may have something to do with this feature or more Ministers may have developed a greater sense of ambitions for the top job or both. Frequent changes of government also hinder the stability of the executive. In the past 2 years there have been 5 changes of Government from votes of confidence. Such climate of political instability is conducive to corruption becoming more established.

Legislature

Members of Parliament are not always given Bills in advance of Parliamentary sessions, making it difficult for meaningful debates of issues. Even if there has been advance distribution of Bills there is a sense that Parliament merely rubber stamps legislation presented by Government, rather than putting it through a rigorous second reading debate and exhaustive scrutiny in committee. Enacted legislations are often 'reactive' in nature rather than 'proactive'. This is because most of the bills introduced in Parliament are reactive from international pressures and are not necessarily pieces of legislation intended to advance government policy in the local interest.

The role of the legislature as a forum in which the public interests in Bills is debated is also hindered as most Bills are prepared in conditions that do not allow for public debate. Some Bills are prepared in secrecy, with interested members of the public being unable to obtain copies. Even when Bills are not prepared secretly there is currently no institutionalised system of calling for public submissions or comments on Bills at any stage before they are passed by Parliament into law. Most of the bills are those of model legislations often drafted by regional or international bodies.

The doctrine of separation of powers, and the concept that the legislature can and should act as a check on the executive, is not well understood in Nauru. Opposition members not only have less numbers but more often than not they are splintered and disorganised and very rarely can opposition members offer an alternative government. To worsen matters non-government members do not have any personal

staff to assist them carry out and fulfil effectively their parliamentary duties as well as their constituency obligations. Unless a member has alternative and reliable source of independent income, sufficient to support the family, a non-government member will not be able to afford any staff to assist and help him. Members are paid an allowance, which is just above the basic wage, for they are expected, to be doing other full-time work to supplement their members' allowance. In truth members on allowance are part-time parliamentarians. The full-time parliamentarians in Nauru are the Cabinet Ministers and the Speaker of Parliament, as they get paid salaries, additional to their members' allowance. The well-paid jobs, however, are under the control of government, in the Public Service and statutory corporation. Any member unable to secure any of the 7 salaried positions in Parliament will find himself in a position where he will soon be susceptible to corruption.

Political Parties

Nauru does not have any political parties. Opponents of political parties offer various arguments against the formation of such parties, with the most vocal argument being the notion that, with population of less than 12,000, political parties will shatter the delicate fabric of the Nauru community beyond repair. There is little to support such a thesis. The most likely explanation was that at the time Nauru started fighting for independence, the vanguard for the struggle were the elected members of the NLGC, which was the remnant of the Council of Chiefs. Their motivation for independence was to wrest control of the phosphate industry away from the British Phosphate Company. They were not motivated to seek independence so that they can bring to the Nauruan people a democratic system of government. But a democratic system of government was a non-negotiable condition placed by the powers that be on independence. However, it was felt by the then Nauruan leaders that political parties were not necessary. The traditional leaders in 1968 in Nauru were the nine elected councillors. They were already organised under the strong leadership of Head Chief Hammer DeRoburt. They were all candidates for the first Parliament and they all won. NLGC was a cohesive and effective political group. It was a powerful political force for the first twenty years of the life of the Parliament of Nauru, and in fact, until the death, in July 1992, of Head Chief and President Hammer DeRoburt, the first President of Nauru and the last of the traditional chiefs.

Some time soon the decision will have to be made whether the sophistication of a parliamentary democratic system of government

with all that it entails, including political parties, is embraced in its entirety or continue to hang on to the old fabric of Nauruan society.

At this point in time, though, Members of Parliament cross the floor whenever they want. Many of them do not have nor do they pursue policies intended to achieve stated goals that the people can see and accept as will be beneficial nationally. Allegiances are established mainly on personal basis, rarely on policies or principles. Members do not understand the need to have publicly stated purposes and goals for being in Parliament. Therefore, members do not appreciate that such conditions create situations conducive to corruption. Members fail to appreciate further that political parties will at least provide them the necessary goals and purposes for being in Parliament, stated publicly, and will organise them channel their efforts toward attaining those stated goals. Or if they do have an appreciation, then obviously they do not wish for the political orderliness and certainty that may ensue. Members do not understand and cannot accept that the system of government that was chosen to be adopted for Nauru back in 1968 needs a party system, ideally a two–party system, for it to function effectively. Otherwise, an alternative system of government, like the communist system, designed to function best with a single party, may have worked better for Nauru.

Under the existing system, without political parties to guide novice politicians through a political career, each Member of Parliament is a free agent, potentially on the lookout for opportunities to better and improve his position thereby possibly making him receptive to offers. Clearly, contests for control of power in any country are of such vital importance that they cannot and should not be left to the whims of free agents. The introduction of formal political parties is critical and vital as a first step toward eliminating an important source of corruption. Political parties, operating openly and transparently, can therefore become effective pillars for a NIS.

Electoral Commission

There is no Electoral Commission in Nauru. There is however an Electoral Registrar and a deputy appointed by the President, according to the Electoral Act 1965-1973. The Electoral Registrar in all the elections so far has been a senior officer in the Office of the Chief Secretary. The Chief Secretary has been the Returning Officer in all the general elections since independence.

The independence and/or integrity of the Electoral Registrar is

potentially jeopardised in two main ways. First, the Electoral Registrar comes under the Chief Secretary's budget hence he/she does not have financial independence. Secondly the Registrar is appointed by the President and not by any other independent body. Since the position of Chief Secretary has become more and more a political appointment, there is a belief that the Electoral Registrar tends to lean towards government. The office of the Electoral Registrar and his deputy are temporary positions, in any case, appointed especially for each election their significance are not considered to be lasting enough to be of importance.

Provision exists in the Act for complaints to the Court of Disputed Elections, which in most respects is the Supreme Court. There have been petitions for election irregularities in Nauru. In one case, the Court ruled that an elected member for Ubenide improperly used the power of his office to influence voters when he used a police vehicle to ferry voters to the polling booth. In 2001, in another case, the Court ruled on appeal that the election results for the Ubenide constituency were invalid due to irregularities in how voting was conducted at one of the constituency's polling booths on election day.

Supreme Audit Institution

Nauru's supreme audit institution is the Office of the Director of Audit. This is a constitutional office established under Article 66 of the Constitution. The Chief Secretary appoints the Director of Audit with the approval of the Cabinet.

It is not expressly stated in the Constitution or the Audit Act 1973 whether the office of the Director of Audit is an independent body. The non-independent status of the office itself creates a problem on the independence of the office of the Director of Audit. The Chief Secretary also appoints staffs of the Audit office with the approval of the President.

Section 6 of the Audit Act 1973 prescribed the duties of the Director of Audit. Generally, the Director of Audit on behalf of the Parliament examine, inquire into and audit the accounts of all accounting officers in Nauru and in the offices of the Republic outside Nauru. The DOA is to furnish a yearly report to the Minister responsible to be tabled in parliament. So far, such report was last done in 1999 and at time of this study no other Auditor's report has been tabled in Parliament.

The DOA office can be more effective should it be required to report

directly to Parliament.

Judiciary

Nauru's Judicature consists of a Court of Appeal, a Supreme Court, a District Court and the Family Court. The Nauru Lands Committee is established under the Nauru Lands Committee Ordinance to determine customary land matters with a right of appeal to the Supreme Court.

The District Court, Supreme Court, Court of Appeal structure is what you would expect to find in any common law jurisdiction. The President appoints the Chief Justice. The President also appoints the Resident Magistrate of the District Court but with the consent of the Chief Justice. Although custom remains part of the law of Nauru pursuant to the Customs and Adopted laws Act 1971, these Courts largely work with English common law and the statutes of Nauru.

The magistrates, appointed to the District and Family Courts, are normally required to have a law degree and some years of practical experience. This has helped to strengthen the perception that the District Court is strongly respected and that the law will be applied. The Supreme Court is generally viewed as a strong institution, comprised of an independent judge, although there are perceptions by some members of the public that since the President appoints the Chief Justice, the Chief Justice is likely to be biased towards the President or Cabinet. In most democratic countries, the judiciary are appointed on recommendation of Cabinet.

The Judiciary, through the Supreme Court, also functions as an effective check on the legislature. There have been three constitutional references determined by the Supreme Court for the year 2003. However, the Supreme Court cannot initiate such references. Constitutional references are limited to initiatives by resolution of Parliament and by Cabinet or its members. The appeals system functions well from the District Court to the Supreme Court but not from the Supreme Court to the Court of Appeal. The latter being that, the Appeals Court of Nauru is the High Court of Australia and it is too costly to run such an appeal. Appeals may lie from the Supreme Court to the appeals jurisdiction, which may comprise of two or more judges, of the Supreme Court. Further appeals may lie to the High Court of Australia in criminal matters or in civil matters by leave of the Supreme Court and/or the High Court. Matters concerning lands and Nauruan customs, and the Constitution cannot go on appeal to the High Court. There have been two occasions that appeals have gone

before the High Court.

The Pacific Islands Legal Information Institute now publishes cases and statutes online. Prior to this online publication system there was no regular law reporting in Nauru, which made the use of precedent more difficult. In 2001, a Law Reporting Committee was established by the current Chief Justice. The reporting of Court cases and their publication is in progress and resources are being marshalled towards the publication of a set of the Nauru Law Reports. More comprehensive law reporting will ease accessibility to law practitioners of both the decisions of the Supreme Court and a body of Nauruan Common Law.

Civil (Public) Service

In Nauru the main problem with the civil service is that it has not been clearly separated from the executive. This political interference also created some instability in the civil service, with frequent changes of the executive resulting in changes within the civil service as well. It is common in Nauru that whenever the government changes there will follow changes also within the Public Service. It is well known and accepted in the population that the changes will be a result of the directives of the Cabinet of the day. The general feeling, it would seem, that an appointment is justified in so far as it ensures that the new appointee is one who will support Government's policies and thus will be more effective in implementation. Similarly, appointments to lower positions within the Public Service are influenced by Cabinet. It is also common that most of these appointments will be in an acting capacity, indicative of most Cabinet's acceptance that the appointments are temporary and that Cabinet will maintain a standpoint for easy reshuffling of their appointees. This has been and continues to be fundamental to instability and the lack of continuity within the Public Service.

In terms of the role of Chief Secretary in the Civil Service, the Chief Secretary position is one of the few positions created under the Constitution. It is the top post in the Public Service, appointed by Cabinet. Its main role is to manage the Public Service and ensure that it operates effectively and efficiently, within set rules and within approved budget. Another vital role of the Chief Secretary is to provide the conduit between Cabinet and Public Service, as it is essential that the Public Service perform its functions according to the policies of the Government.

The Public Service Appeals Tribunal is created under the Public Service

Act and it sits from time to time to consider and adjudicate complaints lodged by public servants. The Chief Justice chairs the Tribunal. The public servants elect one member of the Tribunal. The other member is selected and appointed by Cabinet. Most of the matters handled by the Tribunal arise from wrongful or unfair dismissals.

Police and Prosecutors

The Nauru Police Force (NPF) is the focus of a major AusAID strengthening project, which is due to commence early in 2004. At present it is recognised that the NPF is under resourced, under skilled, and suffering from a serious lack of morale. There is little public faith in the ability of the police to deal with crime.

In an incident a few years back, a Member of Parliament, with some relatives, went to the Police Station, where he forcibly released a relative who had been locked up pending charges to be laid for assault and other offences. Even though that Member was brought to account for his transgression of the laws in the Police Station incident, the incidence demonstrated the extent of interference by politicians in the execution of the duties of the Police. It also indicated clearly the little regard that some Nauruan held for the NPF. On the other hand the department of Public Prosecution and NPF did show signs of being able to withstand, at least, that physical and direct onslaught of political interference. It is believed by those within NPF at all levels, and by many in the wider community, that the future of NPF is threatened significantly from political interference.

The Office of the Public Prosecutor however does not receive any Ausaid funding. The Public Prosecutors in the Director of Public Prosecutions (DPP) are very much under resourced. There are no photocopier, printers and faxes. Neither are there any computers that are fully functional in the DPP's office. These shortcomings have crippling effects on the performances of the office. The working of the office has been in doubt, because the Public Prosecutors are the very same lawyers for the government. There is also no separate budget for the Public Prosecutions office. It rather comes under the Justice Department budget. Even though the Prosecution is staffed with qualified efficient prosecutors, their performances are very much weakened by under funding and poor resources.

The work of the Public Prosecutor is hindered by ineffective investigations by the NPF. Relatively more members of the Nauru Police Force needs more training in investigative and evidence related

laws. This results in the Public Prosecutor being presented with files that have insufficient evidence to go to trial. The public do not appreciate that the role of the Public Prosecutor is not to investigate complaints, but to take them to court, so some criticism is misdirected at the Public Prosecutor for failures to investigate cases. Whilst generally problems with investigations are attributed to lack of resources, including skills on the part of police officers there is also a perception both within and without the force that some investigations are manipulated on the basis of people applying pressure on senior officers either to drop cases or pursue them more aggressively.

Finally, the effectiveness of the NPF and the Public Prosecutor is called into question by the frequency with which presidential pardons are given. Every time a new President is elected, 3 years at most, a list of names is prepared by the Prison Warden for consideration to be pardoned. Currently, even if someone commits a crime and gets sent to jail, he or she may well be released within a few months. As such, the prosecution system is seen to have only limited deterring effect. This also contributes to a weakening of morale in these institutions. The presidential power to pardon has been 'Nauruanised' to such an extent that it distorted the system of justice, to punish proven offenders and to deter potential offenders, rendering it weak and ineffective.

Public Procurement

The Government Loans Act 1972 vested in the cabinet the power to raise loans on behalf of the Republic. Government determines the maximum amount of every loan and such loans may be procured through the Minister responsible. After a loan is taken, the Minister responsible shall report to the Parliament as to the status of the loan taken, and its terms and conditions. The unlimited discretion given to the executive to raise an unlimited amount of loan is open for abuse, in view of the very small number of executive (maximum of six members of Parliament). The scope of corruption in this area has never been studied and examined.

In 2002 and 2003 Ministers procured second hand vehicles from a company in Osaka, Japan. Government used some of the vehicles, but some were disposed of privately under the supervision of the Ministers involved. The procurement contract has not been made public. Neither, was the whole operation or exercise, involving hundreds of thousands of Treasury funds, reported and tabled in Parliament.

Ombudsman

There is no Ombudsman or similar position in Nauru.

Investigative/Watchdog Groups

There are no specific anti-corruption investigative or watchdog groups in Nauru.

Media

Nauru has the Nauru Television (NTV), Radio Nauru broadcasting on FM 88.8mz., and the Nauru Bulletin, which all come under the auspices of the Department of Island Development and Industries and are operated by a Media Bureau. There is no privately owned newspaper. No stories on issues to do with corruption are routinely covered by these media sources.

Civil Society

Civil society in Nauru includes traditional groups, community groups, religious groups, and more conventional non-governmental organisations (NGOs). The private sector is also an important, but under organised (in the sense of being a cohesive grouping), part of civil society.

Traditional Organisations

There are no specific traditional organisations in Nauru though, as noted above, there remains an emphasis on the role of heads of families and on the privileged place of elders.

Private Sector and NGOs

The private sector is very small in Nauru and is not active in calling for stronger accountability measures. No major NGO groupings exist in Nauru that are active in agitating for better accountability and less corruption.

Regional/Local Government

Nauru has no other levels of government.

Progress with Government Strategy

As noted before, progress has been patchy. Some efforts have been made at the international level to deal with accusations of corruption, but little has been done at the domestic level. This is explored further in the overview of government reforms in the next section on Anti-Corruption Activities.

Donor anti-corruption initiatives

There is no donor activity or initiative in Nauru aimed and intended at creating and enhancing a viable NIS. This study hopefully will bring about change in this area.

Future research and donor support

It is widely agreed that Nauru still has much to do to establish a system of laws with a practical and workable institutional framework, conducive to promoting a NIS. Creation of new institutions and introducing new laws should be the focus of future research and donor support.

Specific areas for future research and donor support are discussed below, in the next two sections of the report.

ANTI CORRUPTION ACTIVITIES

Overview of government's reforms

Due to the instability of government over the last ten years or more, it is very difficult to assess government reforms as far as corruption is concerned. From personal observation and experience it will not too incorrect to suggest that there is no Government reform directed at curbing and stopping corruption of any type in Nauru at all.

At the international level, Nauru has made great reforms in its financial laws particularly addressing Anti-Money laundering initiatives and harmful tax practices. This has come about after serious concerns were being raise by the international community and went as far as being black listed by the FATF & OECD including economic sanctions imposed. The international community raised security concerns with regards to the Pacific region which Nauru is in the forefront is properly described by the Australian senate committee Report 2003 when they state (p175) that:

> The committee agrees that political stability of much of the Pacific cannot be overlooked. However, whilst the potential for terrorist organisations to infiltrate the region is a serious concern, albeit debatable, the inspired nature of translational crime-drug trafficking, small arms trafficking, and money laundering- is prevalent in parts of the Pacific…

Prior to 11 September 2001, combating terrorism was not seen as a serious priority in the region and many of the Pacific Island countries have no framework for dealing with terrorism. Transnational organised crime and terrorism however are now widely recognised as a growing problem. (Foreign Affairs, Defense and Trade References Committee 2003: 191) The Australian Transaction Reports and Analysis Centre (AUSTRAC) advised in August 2003 that Pacific Island countries are a priority area in its' international work, with a particular emphasis on providing support for developing anti money laundering and counter financing of terrorism programmes in the Pacific jurisdictions. This has prompt the senate report to recommend to the Australian government to dedicate additional funds to strengthen and support efforts in addressing money laundering and terrorist financing in the Pacific Island states. This also coincides with the Japanese government sponsored Pacific Islands Leaders Summit meeting in Okinawa in May 2003, whereby the Japanese government signed a "Joint Action Plan"

or “Okinawa initiative” that prescribe one of the main action plan for Japan to support law enforcement programmes conducted by the Pacific Islands Forum Secretariat and seminars on money laundering and tax-collection regimes.

As a result there, have been major reforms in Nauru for the last three years in the area of anti-money laundering and harmful tax practices. In 2001 the Parliament legislate Anti-Money Laundering Act 2001, criminalising money laundering and provide for proper checks in transactions done within the jurisdiction of Nauru. This Act was amended again in 2001 for further improvements. In 2003, the Anti-Money Laundering Act 2001 was repealed by the Anti-Money Laundering Act 2003. The legislation is in constant review in order to keep up to the standard the international community expects and the demands of the FATF. The Anti-Money Laundering Act 2003 (AML 2003) is more extensive than the Anti-Money Laundering Act 2001 and vigorously addressed the money laundering issue. The AML 2003 make use of Nauru’s interpretation Act’s definition of property which includes money, goods, choses in action, land and every description of property, whether movable or immovable; and also obligation, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as herein defined. Because of this inclusive nature and use of definition, the definition of ‘money laundering’ becomes of wider import than ever.

The Anti-Money Laundering Act 2003 makes money laundering an offence, defines financial transactions, establishes the Financial Institute Supervisory Authority (FISA),it empowers FISA to carry out investigation in a more effective manner including the power to obtain search warrants, property tracking and money orders. The AML further enhances the ability of Nauru to cooperate with foreign nations when coming to exchange of information and the Director of Public Prosecutions is empowered to freeze and forfeit assets in relation to money laundering. The AML 2003 was again reviewed in light of its reform to eliminate money laundering and was recently amended when the Parliament enacted the Anti-Money laundering (Amendment) Act 2004 on 27th February 2004. The Amendment has extended the definition of activities that financial institutions do to include trustees and beneficiaries of trusts.

In addition to the legislative reforms to the Anti-Money Laundering legislations, the Corporation Act 1972 along with the Banking Act 1975 has been heavily amended. The Corporation (Amendment) Act 2003

abolished the existence of offshore banking licences issued by Nauru and effectively terminated all the licences granted to both foreign and domestic corporations. Section 5(1) and Section 5(5) in particular addressed the issue of banking licences. Section 5(1) states that corporation cannot be registered for banking business and section 5(5) reads, the Minister may grant licences, if he thinks fit, to corporations and foreign corporations authorizing or nominee corporation, or of any such business. In conjunction with section 5(1), this prohibits a corporation under the Corporations Act from being incorporated (or licensed) for the purpose of banking. It does this through the word 'such' to which limits the licenses that can be granted under section 5(5).

At the same time, any existing licenses were terminated to make way for the legislative reforms. This was accomplished by section 5(A) of the Corporations (Amendment) Act 2003 which states as follows:

"Continuation and validity of existing licences"

5(A) (1) The repeal of the power to grant licences to corporations and foreign corporations to carry on the business of banking pursuant to section of the Corporations Act shall not affect any license issued before such repeal and such licenses shall continue to exist, but

(a) Shall expire at the expiration of 30 days after the commencement of this Act.
(b) Unless the corporation is able to establish that it is either the wholly owned subsidiary of a Bank licensed in the United States of America, the Commonwealth of Australia, New Zealand or a member country of the European Union, to carry on banking there, in which case the registration of such a corporation shall expire six (6) months after the commencement of this Act;
(c) Under no circumstances shall they be renewed.

(2) A licence granted pursuant to section 5 of the Corporation Act to carry on banking business is, with effect from the date of its annual expiry or the date which is 30 days after the commencement of this Act, whichever first occurs, for all purposes, void unless it is a bank prescribed under section 5(A)(1)(b) which in this case is, with effect from the date of its annual expiry or the date which is six (6) months after the commencement of this Act, whichever occurs first for all purposes, void.

The Parliament further enacted and passed the Banking (Amendment) Act 2004 on 27 February 2004 and made it clear that the Banking Act

1975 does not issue offshore banking licences and does not have the jurisdiction to operate such licences for offshore banking. These legislative reforms taken by Nauru therefore cater to the demands of the international community.

Further, the Republic of Nauru also made a political commitment on the Principles of Transparency and effective exchange of information in November 2003 to the OECD (Letter of Commitment from the President of Nauru to the OECD dated 3/12/03). These are the commitments that have been undertaken:

- EFFECTIVE EXCHANGE OF INFORMATION

1. Agrees to the effective exchange of information for criminal tax matters, which shall become effective for the first tax year after 31 December 2003. For civil tax matters to become effective from the first tax year 31 December 2005. Such exchanges shall be achieved under negotiated tax information exchange agreements that require the effective exchange of information for specific tax matters pursuant to a specific request. The tax information agreements will define the tax matters covered and include protections against unauthorized disclosures, unauthorized use of information and fishing expeditions.

2. For information requiring investigation and prosecution of criminal tax matters, information shall be provided without the requirement that the conduct being investigated must constitute a crime in the Nauru. Such information may however, not provided where the party requesting it cannot, under its own laws for purposes of enforcing its own tax laws, obtain such information.

3. For information required in civil tax matters, the absence of Nauru tax interest in the case or in obtaining the information shall not be a bar to the provision of such information. Such information however cannot be provided if the country requesting it done so purposely to enforce its own laws.

4. Costs to be determined on the capacity and volume of work required.

- TRANSPARENCY

1. Will ensure that information on beneficial ownership of companies, partnership and other legal entities and on trustees and beneficiaries of trusts established in Nauru are available to their tax or regulatory authorities. This includes companies and other entities having a place of business in PIS provided the information are present with the Republic of Nauru's jurisdiction. These are subject to the exchange agreements referred to above.

2. Subject to de minimis and other exceptions to be developed together with the OECD and other committed jurisdictions, Nauru agrees to require financial accounts to be kept by companies, partnership, trusts and other legal entities established or having a place of business in PIS. The requirement of audit accounts will follow accepted international standards.

3. The Nauru agrees that their tax or regulatory authorities, or such other authority as it may designate, will have access to bank information

    - STANDSTILL

The Republic of Nauru will ensure that:

1. No new taxation regime or practice is introduced that fails to comply with the principles of transparency and effective exchange of information

2. No existing taxation regime or practice is modified in such a way that, after the modification, it would not comply with the principles of transparency and effective exchange of information

The financial system of Nauru (at the international but not domestic level) is therefore undergoing major reform. Though the legislative reforms are robust and may well live up to the standard the international community expects, implementing such complex legislation requires much expertise and resources that Nauru may not be able to afford. This legislative reform may therefore not withstand the test of time.

Assessment of progress

Again progress has been something largely confined to the

international level and little has been achieved at the domestic level.

Donor anti-corruption initiatives

There is no donor activity or initiative in Nauru aimed and intended at creating and enhancing a viable NIS though AusAID funding has been earmarked for improving police performance in 2004.

Assessment of priority areas, issues or activities

There are five priority areas in which activities need to be undertaken:

1. The reform of laws and the creation of new NIS institutions.
2. General education and public awareness.
3. Institutional strengthening through capacity building.
4. Enforcement of the law.
5. Facilitation of the integration of NIS institutions.

In order for corruption to be addressed properly in Nauru, a legislative mechanism program first needs to be put into place. Such legislation would create an ombudsman commission; guarantee the independence of the Public Prosecutors Office; set a standard of behaviour for leaders like a leadership code of conduct; facilitate formation and introduction of political parties; and create independent institutions to monitor the process of establishing NIS.

The second step is then to focus on raising public awareness through education. The people are to understand and appreciate what is expected of leaders and corruption issues. Enforcement of the law should proceed from there and will, hopefully, have an educational aspect at the same time. The process of enforcement will provide opportunities to review the mechanisms and determine which area or part needs strengthening.

Capacity building could then be focused on. Eventually, there should be sufficient resources to tackle the thankless and onerous task of monitoring the individual behaviours of leaders, along the line of compliance with the leadership code.

KEY ISSUES.

The National Integrity System (the NIS)

The National Integrity System in Nauru needs a lot of comprehensive legislative work to establish and regulate institutions, and encourage transparency and accountability. The legislative structure at the moment is insufficient to encourage and support efforts for greater transparency and accountability.

The National Integrity System of Nauru in as far as money laundering is concerned is, on the other hand, robust and up to the international standard defined by the FATF. Nauru is also committed to the principals of transparency and effective exchange of information with regards to harmful tax practices to the standards the OECD prescribes. This however must as yet stand the test of implementation as Nauru may not have the capacity to allocate the resources as required by the legislation for the full implementation.

Effectiveness of Government and Donor-Sponsored Activities

Again effective measures have largely been restricted to money-laundering and offshore banking issues. Many more areas need to be addressed.

Priorities and Recommendations

As stated above, there are five priority areas in which activities need to be undertaken:

- Comprehensive review of the law and the creation of new pieces of legislation;
- General education and public awareness;
- Institutional strengthening through capacity building;
- Enforcement of the law; and
- Facilitation of the integration of NIS institutions within Nauru's political and social context.

The Nauru national integrity system at this stage needs a lot of changes and upgrading especially with regards to its laws and with respect to the creation of official watchdog institutions. The instability in the Government and the non-existence of vocal NGO's has been a major cause of difficulties in assessing the extent of corruption in

Nauru. However, the biggest handicap in uplifting transparency to an internationally acceptable standard is the attitude of the Nauruan people themselves, which, in the final analysis, comes down to lethargic apathy. External assistance may be required to kick start the necessary process of change.

Appendix 2 – References

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