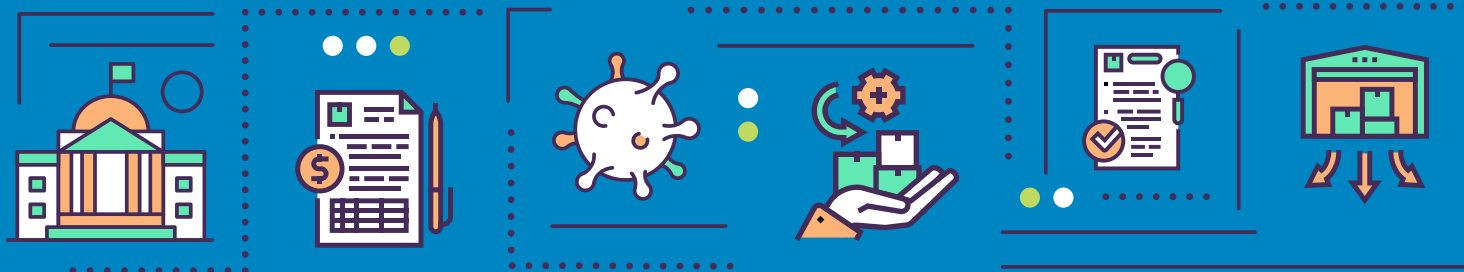




CORRUPTION RISKS IN PUBLIC PROCUREMENT IN THE CONTEXT OF COVID-19 IN PACIFIC ISLAND COUNTRIES



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Executive Summary

Public procurement is a critical function of government. The value achieved from public procurement in many countries directly impacts the well-being of its citizens as it provides healthcare, welfare, education and other essential services. However, the value of public procurement may never have been more apparent than it is now, with the COVID-19 pandemic requiring governments to respond rapidly to the immediate social and public health challenges, as well as enact sweeping and sizable economic support and stimulus measures to respond to the economic impacts. While already in pre-COVID-19 times, there was substantial corruption risk in public procurement due to the large amounts of money that governments spend every day, the increases in spending in order to address the economic, social, and health impacts of COVID-19 appear to have also led to a governance crisis and created more opportunities for corruption to flourish. Additionally, the need to disperse such large amounts quickly to respond to the urgent needs of citizens, has led to regulatory, budgetary and accounting safeguards often being relaxed to allow for more rapid assistance, increasing the risk that public funds may be diverted into private hands.

UNODC and UNDP's *Survey on the oversight mechanisms for economic relief/rescue/stimulus measures in the fight against the impact of COVID-19*, completed by participants from 14 Pacific Island countries (PICs) in mid-2020, provided the initial insights and overview of the support measures available at the time to initiate the drafting of this paper. While PICs remained relatively COVID-19 free for the most part of 2020 and into 2021, with only Papua New Guinea and Fiji experiencing significant case numbers, PICs were not shielded from the economic and social effects of the virus. Most significantly, PICs have experienced a precipitous drop in tourism across the region, with border closures and international travel bans essentially halting movement to PICs. However, the impacts do not stop there, with many PICs experiencing reduced income and investment, interruption of supply chains, and sharp downturns in gross domestic product growth and employment amid increased economic and social uncertainty.

In response to these challenges, PIC governments have taken broad and rapid actions to address both an economic crisis and a health emergency, including distribution of emergency financial assistance

to businesses and individuals by providing, for example, unemployment benefits, loan repayment holidays, tax and tariff cuts, and temporary subsidies for utility bills. Aid has also increased in the Pacific, for instance from Australia and New Zealand.

In order to quickly disperse government and aid funds, PICs have made a variety of law and policy changes to their procurement processes. Papua New Guinea for example, utilized the emergency powers permitted under Part X of the Constitution by enacting new laws such as the *Emergency (General Provisions) (COVID 19) Act 2020*, which stopped Papua New Guinea's usual laws from applying to all procurements for the purposes of the National Emergency. More commonly however, PICs have relied on emergency provisions in their legislation that already exist to alter their procurement processes. The Federated States of Micronesia for example, already had provisions in its Financial Management Regulations 2019 that provided for an exemption from open bidding in the case of emergency affecting public health, safety or convenience. While these emergency provisions are effective in helping PICs to respond quickly to the impacts of the virus, they may allow new opportunities for corruption to possibly occur as some of the checks and balances usually required by legislation are surpassed.

Additionally, corruption risks in public procurement existed in PICs well before the onset of the pandemic. Many PICs do not publicize key procurement information, such as information on the award of tenders, the conditions for participation in tenders and information on the criteria for public procurement decisions. Some PICs do have dedicated procurement websites, but in many circumstances, it is not clear if these are widely used and whether they are comprehensive in containing all relevant procurement information.

PICs also face a number of other challenges outside of corruption risks brought about by the pandemic, and these also have an effect on public procurement systems. For instance, there is a serious lack of suppliers of essential items and, even when these items are available, they are very costly. PICs have also reported facing delays and cancellations in receiving essential items due to border restrictions and have indicated that pressure on procurement staff has increased substantially during COVID-19, partly due to an increased workload, but also because many staff members have been required to relocate back to their homes on outer islands due to lockdowns and work-from-home requirements. This has sometimes resulted in inefficiencies due to unstable or limited internet connection and a lack of essential equipment such as computers.

In order to strengthen public procurement systems in PICs and therefore increase PICs' capacity to respond to crises such as COVID-19, this paper makes nine recommendations. These recommendations are primarily based on the United Nations Convention against Corruption (UNCAC) to which all PICs are States parties, as well as the principles of the 2030 Agenda for Sustainable Development (2030 Agenda) and its 17 Sustainable Development Goals (SDGs) that were adopted by all UN Member States in 2015, specifically SDG 16 on peace, justice and strong institutions.

1. **Ensure transparency and accountability mechanisms are in place in procurement laws and related procedures.** A good basis for this is article 9(1) of the UNCAC which requires that procurement systems are based on transparency, competition and objective criteria in decision-making, as well as SDG 16 on peace, justice and strong institutions and its associated governance targets, including in particular target 16.6 on development of effective, accountable, and transparent institutions at all levels.
2. **Collaborate regionally or bilaterally with other PICs and organizations to source suppliers and reduce administrative burden.** For example, coordinating procurement of essential

items regionally or bilaterally in order to be more competitive and secure lower prices.

3. **Assist businesses to improve their supply-chain-resilience capabilities to guard against global supply chain disruptions.** While PICs do not have large manufacturing sectors, they rely strongly on imports for essential COVID-19 related items and other items that have the ability to be affected by global supply chain disruptions in response to the pandemic, and therefore businesses are recommended to have plans in place, where possible, for when there are disruptions to the global supply chain.
4. **Improve oversight of the procurement process by anti-corruption agencies or other mandated institutions, including through audits.** Article 9(2) of UNCAC is a key foundation in this regard, as it recommends State parties to take appropriate measures to promote: transparency and accountability in the management of public finances, including procedures for the adoption of the national budget, timely reporting on revenue and expenditure, a system of accounting and auditing standards and related oversight; effective and efficient systems of risk management and internal control; and, where appropriate,

corrective action in the case of failure to comply. The related SDG 16 targets, in particular targets 16.5 to substantially reduce corruption and bribery and 16.6 on development of effective, accountable, and transparent institutions at all levels, are equally important.

5. **Establish effective right to information frameworks.** Many PICs do not have right to information frameworks that give the public the right to access information held by public bodies; therefore, by establishing such frameworks, PICs could improve transparency of their procurement processes by allowing the public to request access to key information that is not publicly available in line with SDG 16.10 target on ensuring public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.
6. **Improve integrity in the public sector.** Ensuring public officials act with integrity can reduce the potential for corruption to happen, even when urgency and the reduction in checks and balances mean that corruption becomes more enticing, therefore it is recommended PICs strengthen integrity within the public sector through adherence to articles 7 and 8 of UNCAC and SDG 16 good governance targets.
7. **Enact effective whistleblower laws.** Currently very few PICs have whistleblower legislation; therefore, including these protections in law and policy is a good step to ensuring that corruption in procurement can be detected and dealt with as whistleblowers are safe and protected in reporting corruption and other wrongdoings.
8. **Promote cooperation and dialogue between the government, the private sector and civil society.** As public procurement can involve the flow of money from the government to the private sector and members of the public, it is vital that dialogue is promoted between the government and private sector, and the government and civil society.
9. **Consider introducing technological solutions.** e-Procurement has been shown in some countries to be an effective instrument to mitigate corruption, and is becoming more popular in the Pacific; PICs could therefore explore possibilities and forge partnerships for harnessing the potentials of digital technology for more effective, efficient and corruption-resilient procurement practices.

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1. Introduction

“Corruption is criminal, immoral and the ultimate betrayal of public trust. It is even more damaging in times of crisis – as the world is experiencing now with the COVID-19 pandemic. The response to the virus is creating new opportunities to exploit weak oversight and inadequate transparency, diverting funds away from people in their hour of greatest need.” – United Nations Secretary-General, António Guterres.¹

The COVID-19 pandemic has required governments to respond rapidly to the immediate social and public health challenges, as well as enact sweeping and sizable economic support and stimulus measures to respond to the economic impacts. Around the globe, countries have implemented a multitude of different economic support measures to minimize the shocking effects of the pandemic and to protect vulnerable groups of people and most affected businesses.

The Pacific is no exception to this, with the pandemic exerting a series of negative effects on Pacific Island countries (PICs). With a precipitous drop in tourism across the region,² reduced income and investment,³ interruption of supply chains,⁴ and sharp downturns in GDP growth and employment

amid increased economic and social uncertainty,⁵ PICs have been required to implement economic support measures to respond to these challenges.

However, where these economic support measures have required governments to disburse considerable quantities of emergency funds quickly, in order to secure urgently needed medical supplies, Personal Protective Equipment (PPE) and other life-saving protective equipment, as well as bolster the social safety net and avert further downward economic spiral, it has meant that regulatory, budgetary and accounting safeguards have often been relaxed to allow for more rapid assistance, increasing the risk that public funds are diverted into private hands.

While PICs are incredibly diverse, their procurement systems largely share similar characteristics brought about by their limited domestic resources, small size and population, and reliance on imports.⁶ Many of the challenges therefore faced by PICs in relation to the effect of COVID-19 on public procurement are similar.

This brief aims to outline how procurement systems in PICs have changed as a result of COVID-19 and explore the challenges brought about by these changes, both in terms of increased corruption risk and otherwise. This brief will then provide recommendations on how to address these challenges and mitigate these corruption risks.

These recommendations are primarily based on the United Nations Convention against Corruption (UNCAC), which is the only legally binding instrument to address corruption on a global scale. UNCAC entered into force

on December 14, 2005, and all 14 PICs have acceded and/or ratified UNCAC. In addition to UNCAC, the recommendations follow the principles of the 2030 Agenda for Sustainable Development (2030 Agenda) and its 17 Sustainable Development Goals (SDGs) that were adopted by all UN Member States in 2015. The 2030 Agenda establishes an ambitious action plan for the delivery of sustainable development designed to end poverty and improve the lives of populations everywhere.⁷ These recommendations directly address SDG 16, the goal for peace, justice and strong institutions, as preventing and fighting corruption will help PICs to meet target 16.5 to substantially reduce corruption and bribery in all their forms. Additionally, creating stronger procurement frameworks that mitigate corruption risks will directly focus on target 16.6, to develop effective, accountable and transparent institutions at all levels.⁸

2. Background

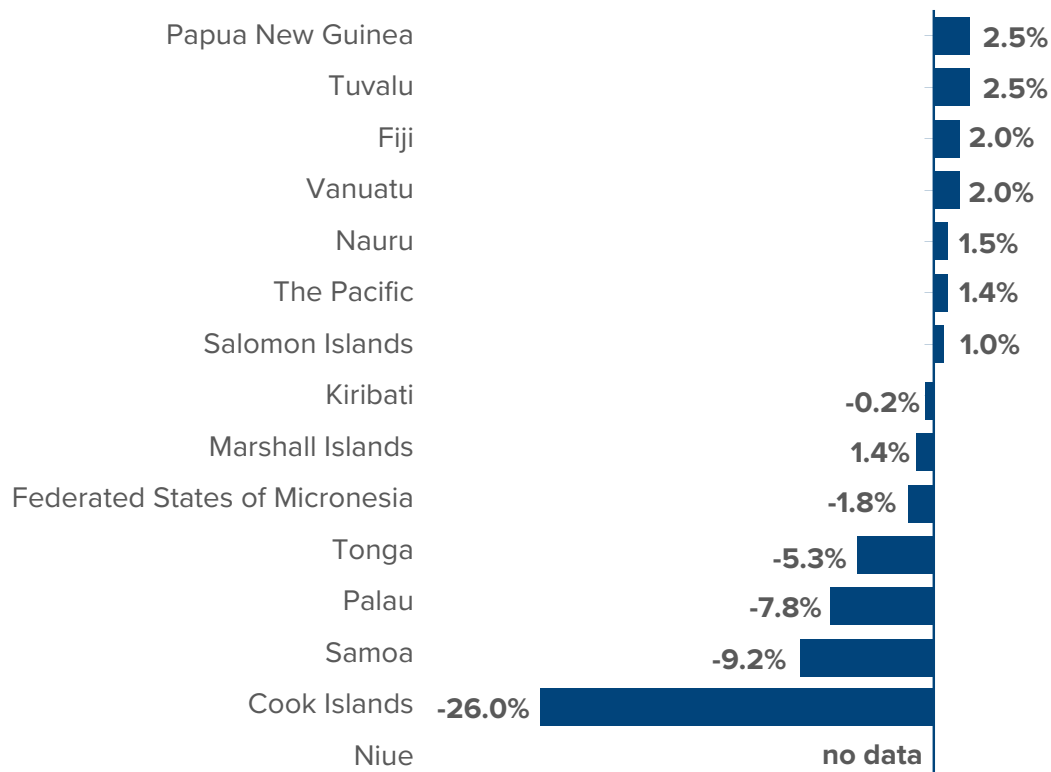
For most of the earlier part of 2020, all of the 14 PICsⁱ remained relatively free from COVID-19. While this has since changed for some PICs, such as Papua New Guinea (PNG) and Fiji, the Pacific was reasonably protected from the health effects of the virus at its onset.⁹

However, the absence of the virus on the shores of the Pacific has not shielded PICs from its economic and social effects. While PICs are distinct from each other, they share common challenges that come with being small and isolated economies, such as having limited domestic resources and a limited domestic market for goods and services.¹⁰ This therefore increases reliance on imports and, at a time when the costs of essential PPE and other vital equipment has skyrocketed (particularly at the start of the pandemic), PICs have been limited in the amount of equipment that they can buy, often resulting in panic buying among the community.¹¹ Additionally, PICs' vulnerability

to climate change has limited the Pacific's ability to respond to COVID-19 and other crises. For instance, in 2020, when the world was focused on COVID-19, PICs faced two Category 5 cyclones, with Severe Tropical Cyclone Yasa being the strongest tropical cyclone in the Pacific since Winston in 2016. Research indicates that as the negative impacts of climate change increase, so too will the frequency and strength of cyclones in the Pacific.¹²

PICs that rely on tourism have been hit particularly hard by COVID-19, with border closures and international travel bans essentially halting movement to PICs. Prior to COVID-19 in 2018, tourism contributed US\$3.8 billion (11.1 percent of GDP) and more than 130,000 jobs to the Pacific region.¹³ For countries such as Fiji and Palau, nearly 40 percent of GDP was generated through tourism pre the onset of COVID-19.¹⁴ The impact of this downturn is predicted to result in negative economic growth for at least half of the Pacific in 2021 (see **Figure 1**).

ⁱ The 14 PICs are the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. This brief does not include the territories in its analysis (i.e. American Samoa, French Polynesia, Guam, New Caledonia, Northern Mariana Islands, Pitcairn Islands, and Wallis and Futuna).

FIGURE 1: GDP Growth rate, 2021 forecast¹⁵

Source: Asian Development Bank. Asian Development Outlook (ADO) 2021 (April 2021)

Uncertainty regarding borders opening coupled with disrupted trade and supply chains has meant that many national businesses have faced a case of survival. Revenue declines remained high across 2020, with close to 90 percent of Pacific businesses experiencing declines in revenue.¹⁶ However,

despite this significant revenue decline, Pacific businesses have remained resilient, with three-quarters of businesses remaining full or partly operational throughout 2020, primarily due to businesses taking actions to reduce costs.¹⁷

All these and other associated factors have sharply increased inequalities within PICs and have strained public health and social welfare systems.¹⁸

In response to these challenges, PIC governments have taken broad and rapid actions to address both an economic

crisis and a health emergency, including distribution of emergency financial assistance to businesses and individuals.¹⁹ These measures have included unemployment benefits, loan repayment holidays, tax and tariff cuts, and temporary subsidies for utility bills (see **Box 1** for an example of PNG's economic support package).²⁰

BOX 1: PNG's economic stimulus package

'On April 2, 2020, the PNG government announced a K5.6 billion economic stimulus package in the parliament, including a K600 million credit line to support businesses and individuals in coordination with the banks and financial institutions, and K500 million support from superannuation savings to employees affected by the economic slowdown. Support for businesses includes K200 million in guarantees for loans to small and medium-sized enterprises. Moreover, the government has allocated K645 million more to support health, security and economic sector.

The Bank of Papua New Guinea (BPNG) has reduced the Kina Facility Rate (KFR) – the main policy rate – by 200 basis points to 3 percent from 5 percent and has asked the commercial banks to reduce their respective Indicative Lending Rates. BPNG has also reduced the Cash Reserve Requirement to 7 percent from 10 percent to provide additional liquidity to the commercial banks.

In addition, BPNG purchased K750 million of government securities in the secondary market in a program to increase liquidity to the private sector. To encourage interbank activity, BPNG has increased the margin on central bank borrowing by 25 basis point to 100 basis points of both sides of KFR. All financial institutions have agreed to provide relief of 3 months on loan repayments and interest payments to customers who have lost their jobs on a case-by-case basis. To cover for the 3-month loan repayment holiday for borrowers severely affected by the COVID crisis, BPNG suspended loan-loss provisioning for affected loans during this period. A total of K806 million is estimated to be paid out the members from their superannuation savings. The amendments to the Superannuation Act will allow its members to withdraw up to 20 percent of their contribution or a maximum of K10,000.²¹

The crisis has also seen an outpouring of aid to the Pacific. When measured in aid inflows as a proportion of Gross Domestic Product (GDP), the Pacific is the most aid-dependent region in the World, with over US\$2 billion spent in foreign aid each year from 2011 to 2017; equal to approximately 6.5 percent of the region's GDP.²² While there is no current data on the total amount of aid sent to the Pacific, various countries have reported that they have increased their support. Australia, for example, has increased spending in the Pacific by AUD50 million from last years' contribution totaling AUD1.44 billion, which is the most Australia has ever spent in the region.²³ New Zealand also pledged around NZD1.331 billion to the Pacific region from 2018 to 2021, equating to 60 percent of New Zealand's total aid budget.²⁴ However, while this money is seen as a necessary contribution to PICs' ability to respond to the crisis, this additional input of large amounts of money also provides a possible corruption risk where appropriate checks and balances are not necessarily in place during this time of crisis to ensure the money ends up in the right hands.

In order to track the ongoing process of distribution of economic support packages and changes in policies and legislation in response to COVID-19, the UN-PRAC Project initiated a survey among the 14 PICs. This survey was titled, *Survey on the oversight*

mechanisms for economic relief/rescue/ stimulus measures in the fight against the impact of COVID-19. It looked at a number of factors including the amount and types of economic support measures, the legal basis for the financial assistance, the implementing agencies, and whether the support measures included specific safeguarding policies and regulations to prevent fraud and corruption in the management of these funds. 22 responses were received to the survey, and this included at least one response from each of the 14 PICs. The survey was conducted from 1 to 25 July 2020 as desk-based research. However, while these survey results were insightful and provided a good overview of the support measures available at the time of the survey, there were several limitations including that for some countries, such as PNG and the Solomon Islands, there were no respondents from within the government. Additionally, due to the timing of the survey and the fact that policy in relation to COVID-19 was enacted very quickly, it is likely that some of the survey results are outdated.

Therefore, this brief has primarily used the results of the survey to direct the discussion to the key issues; however, due to the above limitations, this brief is primarily based on sources such as reports from reputable agencies, PIC governments and the UNCAC review reports.

3. How have the procurement systems and processes in PICs changed as a result of COVID-19?

The injection of cash into Pacific economies, both from PIC governments and donors, has increased corruption risks within the Pacific. It has provided much more of an incentive for people to commit corrupt acts as the reward for doing so is much greater. Additionally, the relaxing of safeguards preventing corruption and therefore protecting this money from going into illicit hands, means it is less likely these people will be caught.

In order to adapt to this climate, changes to procurement systems in PICs can generally be summed up into two categories: changes in legislation and/or changes to policy that allow for quicker procedures for expending money; and/or increased use of already existing emergency provisions in legislation and policy.

3.1 Legislation and policy changes

Across the Pacific, some PICs have introduced new legislation to allow for emergency procurements to occur more efficiently. In

PNG for example, the Government moved quickly to enact the emergency powers permitted under Part X of the Constitution. The National Parliament met at the beginning of April 2020 to appoint the Emergency Controller (Police Commissioner David Manning MBE DPS QPM) and pass the *Emergency (General Provisions) (COVID 19) Act 2020* (Emergency Act) and the *Emergency (General Provisions) (COVID 19) Regulations 2020* (Emergency Regulations). The Emergency Act includes provisions that stop PNG's usual laws from applying to all procurements for the purposes of the National Emergency (section 8(1)). Instead, all that is required is that the procurement of goods, works and services for the purposes of the National Emergency must be done in consultation with the Emergency Controller (section 8(2)).

Other countries also have powers in their legislation that allow regulations like PNG's Emergency Act and Emergency Regulations to be made that allow procurement procedures to be amended during states of emergency, such as Vanuatu in section 17

(ca) of the *Government Contract and Tenders (Amendment) Act 44 2019*.²⁵ However, it is not clear if such regulations have been made as this information is not publicly available.

3.2 Increased use of emergency provisions in law and policy

Another method that does not involve law or rule change is for PICs to rely on emergency provisions in their legislation that already exist. In the Federated States of Micronesia (FSM) for example, which declared a state of emergency on 31 January 2020,²⁶ there were already provisions in its *Financial Management Regulations 2019* for how procurement should be managed in a state of emergency. For example, section 6.1 (11)(c) (ii) allows for procurement by non-competitive

proposals when there is a public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (e.g. a health crisis arising from an outbreak). Additionally, section 6.2.17 provides an exemption from open bidding in the case of emergency affecting public health, safety or convenience.

Likewise in Fiji, regulation 32 of *Procurement Regulation 2010* allows for emergency purchases to be made in the case of an emergency.

Many other PICs, including Nauru,²⁷ and Samoa,²⁸ have provisions that are similar to these, and some PICs have reported use of these provisions almost exclusively for COVID-19 related procurements.²⁹

4. What are the key risks and challenges faced by PICs in public procurement in the context of COVID-19?

4.1 Corruption risks

While these emergency procedures are necessary to ensure that PICs can procure everything that they need in order to respond to COVID-19, it does allow new opportunities for corruption to occur as some of the checks and balances usually required by legislation are surpassed. Additionally, the use of emergency provisions for COVID-19 procurement does present significant corruption risk, as many of these provisions include no or limited checks and balances. Taking the example from FSM in the section above, which allows an exemption from open bidding in the case of an emergency, the removal of the open bidding requirement essentially means the removal of some corruption controls from the procurement process. Open bidding in Part 6 of FSM's *Financial Management Regulations 2019* includes many controls, such as: requiring at least three persons on the bidding panel; preventing the restriction of competition in a number of ways, including preventing organizational conflicts of interest or non-competitive pricing practices between firms or between affiliated companies; and

requirements for certain bids to be formally advertised (see section 6.1).

In addition to these challenges brought about by the changes in procurement procedures, there are already corruption challenges that existed in PICs prior to these changes, and these are at risk of being exacerbated during COVID-19. For example, many PICs do not publicize key procurement information such as information on the award of tenders, the conditions for participation in tenders and information on the criteria for public procurement decisions. While some PICs do have this information available, such as the Cook Islands which has a sophisticated procurement portal that contains standard procurement forms, respective information on tender announcements, procurement guidance, and information on current tenders, closed tenders and awarded tenders, including the name of the successful tendered and the amount awarded,³⁰ it is not clear whether all tenders related to the COVID-19 procurement contracts are available as they do not appear to be listed on the site. Additionally, in PNG, where the procurement

website includes substantial information, as well as a dedicated section for COVID-19 procurements including a list the suppliers of procurements related to COVID-19 and guidelines for managing funds allocated for the COVID-19 stimulus package, there is no official data on COVID-19 procurement contracts available (other than the supplier information).³¹ Furthermore, while some PICs have websites related to procurement, it is not clear if they are in use. For example, Tuvalu has a website that has sections for current tenders, proposed tenders, awarded tenders and closed tenders; however, these sections are all currently empty.³²

In terms of members of the public accessing this information from governments when it is not available online, citizens have limited options other than contacting the agencies responsible for procurement directly. Only in four PICs do the public have the right to access information under established Right to Information (RTI) legislation; these being the Cook Islands, Fiji, Palau and Vanuatu.³³ However, while some of these RTI frameworks are comprehensive, others have substantial limitations, such as in Fiji where section 6 of the *Information Act 2018* only allows a person to access information held by a public agency where the information directly affects them. Additionally, while many PICs include the right to access information in some way in their constitutions, such as the Solomon Islands and Tuvalu where their

Constitutions enshrine freedom of the press, and the freedom to receive and communicate ideas and information without interference,³⁴ it is not clear if these constitutional rights have been used by the public to request and receive information.

It is also not clear how much oversight agencies dealing with corruption have had of COVID-19 procurement in PICs. In the survey, respondents were asked whether a specialized oversight or anti-corruption agency had been consulted on the safeguards to be put in place for ensuring that risks of corruption and fraud in the disbursement of economic support packages were addressed, and the majority of the respondents responded no or that they did not know. Respondents were also asked whether a specialized anti-corruption agency was involved in any other way in the disbursement of the emergency package, and again the majority of respondents responded with no or that they did not know.

Finally, many PICs also lack sufficient whistleblowing mechanisms that protect those who call out corruption. Without these provisions, government employees and others who may witness corruption, whether within the government or elsewhere, cannot be expected to call this behaviour out and report this behaviour to authorities, if they are not protected from potential adverse consequences.

4.2 Other challenges

In addition to these clear corruption risks, PICs also face a number of other challenges brought about by the COVID-19 pandemic.

The first is the lack of suppliers of essential items and when these items are available, the high cost of these items. This has been an issue throughout the pandemic, with PICs indicating difficulties in sourcing vital products. As discussed earlier, this limited supply has often resulted in panic buying among the community; in Fiji at the onset of the pandemic for example, the cost of hand sanitizer doubled.³⁵ A lack of suppliers of these products locally means that PICs must source these products internationally; however, when demand across the world is so high, it is difficult for PICs to afford these products when competing with much wealthier countries. Most pertinently, as the global scramble to vaccinate is in motion, it is likely that PICs will struggle to vaccinate their citizens without assistance from other countries. According to the Director-General of the World Health Organization (WHO) Tedros Adhanom Ghebreyesus, only 0.3% of the vaccines that have been administered have gone to low-income countries,³⁶ and so far in the Pacific, it is mainly the countries associated with the United States, such as Palau and the Republic of Marshall Islands, that have received the most vaccines so

far as part of the United States' Operation Warp Speed.³⁷ While the COVID-19 Vaccines Global Access Facility (COVAX) aims to supply two billion doses to developing countries by the end of the year, the UK-based Economist Intelligence Unit forecast that Pacific countries like PNG, Fiji, Vanuatu and Solomon Islands may not vaccinate the majority of their populations (i.e. more than 60 percent) until at least 2025.³⁸ While this forecast will unlikely be true for Fiji, as 55 per cent of Fiji's population is already fully vaccinated and 11 per cent are partially vaccinated (as of 16 October 2021), this will still likely be the case for Solomon Islands, Vanuatu and PNG which, as of 16 August 2021, have fully vaccinated only 4, 9 and 0.67 per cent of their populations respectively.³⁹

PICs have also reported facing delays and cancellations in receiving essential items due to border restrictions. They have also indicated that pressure on procurement staff has increased substantially during COVID-19, partly due to an increased workload, but also because many staff members have been required to relocate back to their homes on outer islands due to lockdowns and work-from-home requirements. This has sometimes resulted in inefficiencies due to unstable or limited internet connection and a lack of essential equipment such as computers.

5. Recommendations

***Recommendation 1:** Ensure transparency and accountability mechanisms are in place in procurement laws and related procedures.*

While it is understandable that PICs have needed to implement new laws or make use of emergency provisions in existing legislation to ensure essential items are procured, it is important that these emergency provisions still include some basic requirements that will work to prevent corruption. Essentially, this requires clear legal frameworks that secure key principles for the functionality of a national public procurement system. This is namely to optimize efficiency and value for money in the delivery of public services, while respecting the principles of non-discrimination, equal treatment, transparency and proportionality.⁴⁰

A good basis for this is article 9(1) of UNCAC which requires that procurement systems are based on transparency, competition and objective criteria in decision-making (see **Box 2**), as well as SDG 16 on peace, justice and strong institutions and its associated targets such as target 16.6 on development of effective, accountable, and transparent institutions at all levels. Article 9(1)(a) for example, requires the public distribution of information relating

to procurement procedures and contracts. Sharing as much information with the public in terms of procurement will lead to greater transparency, in turn enabling accountability and building trust between the public and the government, as the public feels that they are informed and aware of procurement contracts and processes.

Another good example is article 9(1)(d) which requires State parties to have an effective system of domestic review. This allows those who feel like the procurement decision was perhaps unfair to appeal such a decision and have it judged by a person or body who did not make the original decision, therefore ensuring that the original decision was robust and in line with the legislation. While many PICs do have systems of domestic review, it is not clear whether these systems have been utilized for COVID-19 procurements.

Finally, another key paragraph is article (9)(1)(d) which requires State parties to implement measures regulating personnel. Conflict of interest declarations are especially important during COVID-19 procurements to ensure that those making the decisions, notably on such large amounts of money and on items of such public importance, do not have any outside interest that could impact their decision-making.

Box 2: UNCAC Article 9(1).

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish **appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption**. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

- a. The **public distribution of information** relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
- b. The establishment, in advance, of **conditions for participation**, including selection and award criteria and tendering rules, and their publication;
- c. The use of **objective and predetermined criteria** for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
- d. An effective system of **domestic review**, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;
- e. Where appropriate, measures to regulate matters regarding **personnel** responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

UNODC's publication entitled, *Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption* provides a more in-depth breakdown of the requirements of article 9 and how implementing such provisions can help to strengthen procurement systems against corruption, Annex II provides a set of questions that can assist States parties in determining whether their procurement system is in compliance with article 9 of UNCAC.⁴¹ UNODC also released a publication

on procurement and corruption in Small Island Developing States titled, *Procurement and Corruption in Small Island Developing States: Challenges and Emerging Practices*, which provides further advice on article 9 and procurement in general, but with a focus on Small Island Developing States.⁴²

The following checklist from the UNDP Guidebook on *Tackling integrity risks in government contracts: An opportunity to unlock resources for sustainable*

development in Asia and the Pacific is also a helpful tool from States to assess their procurement legal and regulatory frameworks

in terms of its transparency, accountability and resilience to corruption risk (see **Box 3**).

BOX 3: Checklist questions on procurement legal and regulatory frameworks.⁴³

- Is public procurement regulated by law or regulations?
- Are all procuring entities and contracts covered by the regulatory framework?
- Which entities and contracts are exempted from the regulatory framework?
- Is open competitive tendering the default method and are there other available procurement methods based on clear justifications, and do they follow the principle of transparency?
- Is the design of technical specifications clearly laid down in the procurement law, based on standards, leaving no room for biased descriptions?
- Are there clear rules on the qualifications of bidders and their selection (eligibility, technical and financial capacity, and debarment)?
- Are the award criteria clearly described in the law, such as lowest evaluated price or most economically advantageous tender?
- Is the revision and format of tender documentation sufficiently described in the law?
- Are there clear rules for publication of tender notices and sufficient minimum time limits for the submission of tender; normally between 10-40 days?
- Is the opening of tenders done publicly in accordance with law?
- Is the tender evaluation process clearly described in the law?
- Is there a complaint procedure laid down in the law?

A good way to measure whether procurement systems are transparent and accountable is to look at the indicators for SDG target 16.6, to develop effective, accountable and transparent institutions at all levels. These indicators are the proportion of original approved budget by sector that is made up by primary government expenditures, as well

as the proportion of the population satisfied with their last experience of public services.

However, determining which procurement corruption risk should be addressed first will depend on the context of the particular country and what risks pose the greatest concern. A country may, for example, find that a wide range

of submissions for tender are often received, but that there have been complaints of unfairness from those tenderers. Therefore, in this circumstance, perhaps focusing on competition is not as high a priority as focusing on transparency, and this may be the opposite in different countries. Thus, it is important that PICs ensure they are focusing on areas of greatest concern, particularly when resources are limited. For guidance on determining which risks should be focused on, see UNODC's *State of integrity: A guide on conducting corruption risk assessments in public organizations* publication. This provides advice on how corruption risks should be mapped and assessed in order to develop a risk mitigation plan.⁴⁴

Recommendation 2: *Collaborate regionally or bilaterally with other PICs and organizations to source suppliers and reduce administrative burden.*

To address the problem of limited suppliers and high prices, PICs should consider coordinating procurement of essential items regionally or bilaterally. This would allow PICs to be more competitive, as they would be offering to buy more of particular items and therefore be likely to secure goods at a lower price. It would also reduce the administrative burden of evaluating and assessing suppliers

to ensure they are value for money, as this burden can be shared across multiple countries.

PICs should also consider cooperating with other procurement agencies in the region, including international financial Institutions and international organizations, such as the UN and the World Bank.

Where possible, PICs should also take advantage of initiatives such as COVAX which is aiming to supply developing countries with vaccines, as well as other initiatives like the UN Platform COVID-19 Supply Chain System, which aims to help countries with supply of quality COVID items that comply with WHO standards.⁴⁵ There are substantial corruption risks associated with the vaccination roll-out, for example vaccines may be stolen from the public supply chain during the transportation process and diverted to the black market or kept for personal use, and vaccine supplies are also at risk once they reach the hospital or public health facility administering the vaccinations, if there are no reliable oversight measures in place. Therefore, when collaborating regionally or bilaterally, PICs must still ensure that rigorous oversight mechanisms are in place in sourcing vaccines, particularly in the early stages of the roll-out where supplies are limited but demand is high.⁴⁶

Recommendation 3: Assist businesses to improve their supply-chain-resilience capabilities to guard against global supply chain disruptions.

In addition to COVID-19 related items, the pandemic has also resulted in disruptions to supply-chains in general. For example, the supply disruption of plastics through constraints on the supplies of raw materials such as polyethylene, polypropylene and monoethylene, are leading to factory shutdowns, sharp price increases and production delays across a range of industries.⁴⁷ Raw materials such as those related to plastics are used in so many different kinds of products; therefore, there is a need to build supply-chain-resilience capabilities to protect against disruptions like these where possible.

While PICs do not have large manufacturing sectors, they rely strongly on imports for essential COVID-19 related items and other items that have the ability to be affected by global supply chain disruptions in response to the pandemic. It is therefore important that businesses have plans, where possible, in place for when there are disruptions to the global supply chain.

Supply-chain-resilience capabilities include businesses understanding the supply chains for their products and identifying alternative sources. This means paying close attention not only to direct suppliers, but also to suppliers' suppliers, so that businesses know when disruptions are likely to occur and have alternatives already prepared in those circumstances.⁴⁸ Additionally, businesses should assess when periods of high demand from customers will occur, such as the panic buying of hand sanitizer discussed earlier, and factoring this in where possible. For example, this may require being aware of current inventory, as well as checking in with suppliers along the value-chain to have an understanding of demand for the goods and the materials that make up the goods globally.⁴⁹

As mentioned earlier, some PICs have indicated issues due to border restrictions and travel bans preventing the movement of goods from some countries. In these cases, it is important that PICs have alternative sources from different countries and regions in order to quickly respond to these disruptions. PIC governments can assist businesses by providing trainings to businesses on responding to supply-chain disruptions.

Recommendation 4: *Improve oversight of the procurement process by anti-corruption agencies or other mandated institutions, including through audits.*

As PICs have been required to make changes to their procurement systems that result in some corruption risks, it is vital that there is oversight of this process in order to identify when corruption has occurred in order to remedy the situation and also improve processes for the future.

Article 9(2) of UNCAC requires State parties to take appropriate measures to promote transparency and accountability in the management of public finances. This includes procedures for the adoption of the national budget, timely reporting on revenue and expenditure, a system of accounting and auditing standards and related oversight, effective and efficient systems of risk management and internal control, and where appropriate, corrective action in the case of failure to comply. This is also reflected in the SDG 16 targets, which require Member States to substantially reduce corruption and bribery in all their forms (target 16.5) and develop effective, accountable, and transparent institutions at all levels (target 16.6).

The survey indicated that respondents did not think or know of any anti-corruption

bodies involved in oversight of procurement. While many PICs do not have specialized anti-corruption agencies in the form of Independent Commissions Against Corruption (ICACs), with the exception of Fiji, the Solomon Islands and the newly formalized ICAC in PNG (which is yet to be operationalized),⁵⁰ the Ombudsman in many PICs often have corruption prevention mandates.⁵¹ Therefore, it is recommended that Ombudsman's Offices, ICACs and other agencies with corruption prevention mandates take up the role of overseeing public procurement in terms of corruption. This could be through using existing legislative powers; for example in PNG, the Ombudsman Commission has the power to investigate, on its own initiative or on complaint by a person affected, any conduct on the part of any State Service or a member of any State Service, as well as any governmental body, or an officer or employee of a governmental body.⁵² Additionally in Palau, the Special Prosecutor has the power to "...receive complaints of, investigate and prosecute on behalf of the people, the national and state governments, or some combination thereof, any and all allegations of violations of the Constitution, laws of the Republic, laws of the Trust Territory, District Code laws, prior present and future, or failure to implement such law of the Republic by elected or appointed officials and employees of the national government and state governments."⁵³

In addition to this oversight, it is also recommended that PICs undertake audits, either internal, external or both, of the procurement process. In the Cook Islands for example, the Ministry of Finance & Economic Management (MFEM) acknowledged in a media release that COVID-19 is having an impact on public financial management and recognized the need to tighten up its oversight and management of all public finances. In light of this, MFEM has pledged to carry out internal audit reviews across government agencies with an initial focus on those agencies that are handling cash receipts over the counter to ensure that payments are receipted properly and not misappropriated. Additionally, MFEM's implementation of a centralized financial management information system will require all government payments and receipts to go through a single Treasury account, in order to improve control on spending as well as receipting.⁵⁴

Most PICs have a Public Auditor responsible for auditing and inspecting the accounts of the government and can therefore be utilized for internal audits where their legislation permits. For instance, in Samoa, the Auditor General is responsible for auditing public assets, liabilities and equity including public money.⁵⁵ Public Accounts Committees also often have a role in auditing, for example in Tonga, the Public Accounts Committee met to update Members with information on the Government's response to COVID-19

especially its social-economic impact on the proposed budget 2020/2021.⁵⁶

Additionally, PICs may consider undertaking an external audit to ensure the greatest objectivity possible. While attraction of the independent auditor will involve costs, these costs are likely to be outweighed by the benefits of ensuring that funds are not lost to corruption, given the volume of funds intended for COVID-19 procurements.

If possible, audits should be done intermittently, with reports published on an ongoing basis, and findings and recommendations for the respective follow-up actions taken on board. Making these reports publicly availability would also provide transparency to the public and build trust.

Recommendation 5: Establish effective Right to Information frameworks.

Many PICs do not currently have effective RTI frameworks that give the public the right to access information held by public bodies. RTI reflects the principle that all information held by governments and other public institutions is public information, and this should only be withheld from the public for legitimate reasons that are in the public interest. RTI is an integral part of the fundamental right to freedom of expression, as recognized by article 19 of the

International Covenant on Civil and Political Rights and article 19 the Universal Declaration of Human Rights, and it is also found in the public reporting requirements in article 10 of UNCAC. Additionally, ensuring public access to information falls under target 16.10 and thus is an integral part of achieving SDG 16 and therefore attaining peace, justice and strong institutions.

In terms of improving transparency in procurement, RTI is important for those instances where procurement information is not publicly available. In these circumstances, a member of the public can seek information on procurements, in turn building dialogue between the government and its citizens, and ensuring that the public can become

watchdogs for detecting corruption. This means that if the public suspects corruption or of wrongdoing in a procurement, they can seek information to either verify their assertion or to assure them that there was no corruption present. In this way, it is an effective tool for building trust.

RTI also improves media reporting by giving the media access to source material, which improves public reporting in line with article 10 of UNCAC (see **Box 4**).

Many PICs already have this right in their Constitution, so it is just a matter of enacting laws and policies that support such a framework.

BOX 4: UNCAC Article 10.

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

- a. Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- b. Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- c. Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Recommendation 6: *Improve integrity in the public sector.*

Improving integrity in the public sector is a good way to combat corruption in public procurement, especially when emergency provisions are in use. This is because having public officials who act with integrity will reduce the potential for corruption to happen, even when urgency and the reduction in checks and balances mean that corruption becomes more enticing. Improving integrity in the public sector also contributes to key SDG targets including target 16.6 of developing effective, accountable and transparent institutions at all levels and target 16.7 of ensuring responsive, inclusive, participatory and representative decision-making at all levels, and therefore attaining SDG 16.

In order to improve integrity within the public sector, PIC governments should ensure they are complying with articles 7 and 8 of UNCAC.

For instance, article 7(1) of UNCAC requires PICs to ensure that their recruitment, hiring, retention, promotion and retirement procedures are transparent and based on objective criteria, include training for individuals in public positions considered especially vulnerable to corruption (see **Box 4**). By ensuring that those who handle procurement are hired and promoted based

on these principles, the culture of the public sector is likely to be less conducive to corrupt behaviour as its staff are expected to behave with integrity.

Article 8 of UNCAC requires State parties to ensure its public officials are acting with integrity, honesty and responsibility by complying with codes or standards of conduct. Additionally, article 8(4) requires that public officials are able to report acts of corruption to appropriate authorities when they notice these acts in the performance of their functions, and article 8(6) requires State parties to have disciplinary measures where public officials violate codes or standards of conduct.

Many PICs have codes or standards of conduct in place, as well as disciplinary procedures for when these codes are violated. However, as there is limited reporting on these procedures, it is unclear how often these codes are violated and what disciplinary actions have been taken when these violations occur.

PIC governments should ensure all aspects of UNCAC articles 7 and 8 are complied with. Additionally, publicly reporting on compliance with codes or standards of conduct would help to give a better picture to the public of the level of integrity in the public sector.

PICs could also ensure there is a capacity development programme in place for staff to ensure they are aware of both the procedures that ensure transparency and accountability, as well as their ethical conduct obligations to act with integrity, through systematic and regular trainings and certification.

Recommendation 7: Enact effective whistleblower laws.

The definition of a whistleblower differs across the world. Near and Miceli define the term whistleblower as “organization members (former or current) who disclose illegal, immoral or illegitimate practices under the control of their employers to persons or organizations who effect action.”;⁵⁷ however, article 33 of UNCAC does not use the term whistleblower and does not require that a reporting person be an employee or member of any organization, or that they are reporting on matters in relation to their employer. Instead, article 33 uses the term “reporting persons” in relation to those who report to competent authorities any facts concerning offences established within UNCAC, which includes offences such as bribery of public officials and persons who work in the private sector, abuse of office, and embezzlement. Article 33 requires State parties to provide protection against any unjustified treatment for any person who reports corruption offences in good faith and on reasonable ground to the appropriate authorities.

Whistleblowers are often the first to witness wrongdoing or malpractice in organizations. They play a vital role in the prevention and detection of corruption. Even where a country does have effective laws and procedures that work to prevent corruption, it is important that the public have some way of knowing if these procedures and laws are actually being complied with, and this is where a whistleblower is incredibly effective, as evidenced by a major Australian study that identified employee whistleblowing as the single most important way in which wrongdoing was brought to light in public sector organizations.⁵⁸ In procurement for example, if an agency states that it requires conflict of interest declarations by staff involved in procurement processes, but then in practice, this is not actually being done, it is necessary that somebody calls this out.

However, whistleblowers can suffer from detrimental treatment such as mistreatment from managers or colleagues, demotion or dismissal and they can even suffer from the threat of physical harm. It is vitally important that States protect those who speak up in the public interest, and having these laws protecting whistleblowers helps to create trust between the government and the public as well as the government and its employees.

Currently very few PICs have whistleblower legislation;ⁱⁱ therefore, including these protections in law and policy is a good step to ensuring that corruption in procurement can be detected and dealt with.

Recommendation 8: Promote cooperation and dialogue between the government, the private sector and civil society.

Addressing corruption in public procurement affects everyone in society. It affects the public as money lost to corruption means there is less money to respond to, for example, the health and economic impacts of COVID-19. It also affects businesses because it distorts competition by awarding tenders based on connections, nepotism and bribes, as opposed to businesses that are both complying with the law and offering the best value for money.

This is why it is important that dialogue is promoted between the government and the private sector, and the government and civil society, also in line with article 13 of UNCAC. This will ensure a holistic approach is taken to avoiding corruption in procurement.

This may be through business seminars/workshops/consultations, round tables, capacity-building and technical support for suppliers to increase their participation in procurement, as well as awareness-raising of the key procurement procedures and anti-corruption legislation.

For civil society, this may include expanding the mandate for participation beyond the provision for the participation of tenderers and their representatives in order to create spaces for meaningful participation of non-State actors and citizens in procurement decision-making. Additionally, as mentioned earlier, ensuring a free exchange of information whether through proactive disclosure or disclosure in response to an RTI request, will mean citizens are more aware of what is going on with public procurement.

Recommendation 9: Consider introducing technological solutions.

Finally, PICs should consider gradually introducing technological solutions such as “e-Procurement” where possible. e-Procurement has been shown in some countries to be an effective instrument to

ⁱⁱ Currently only Solomon Islands and PNG have stand-alone whistleblower protection laws (see Solomon Islands’ *Whistleblower Protection Act 2018* and PNG’s *Whistleblower Act 2020*). However, other PICs have some whistleblower protections in other pieces of legislation, such as section 83(1) of Vanuatu’s *Right to Information Act 2016*.

mitigate corruption, and is becoming more popular in the Pacific.⁵⁹ Research and country studies from India and Indonesia show that the use of electronic media in public procurement proceedings can contribute to curbing corruption risks when embedded in a regulatory reform effort.⁶⁰ The strength of e-procurement as an anti-corruption tool arises due to its capacity to reduce the cost and increase the accessibility of

information, as well as automate and thereby reduce discretion in practices that have high corruption risks.⁶¹

e-Procurement can, however, be expensive to implement and take a long time. Therefore, PIC governments are recommended to explore technological solutions where appropriate.

ENDNOTES

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⁴⁹ Ibid.

⁵⁰ UN-PRAC (UNODC & UNDP), 2021. *Holistic Integrity Frameworks to Address Corruption*. [online]. Available: <https://www.pacific.undp.org/content/dam/fiji/docs/holistic-integrity-frameworks-to-address-corruption.pdf>, at , pg. 7.

⁵¹ For example, article 82B of the Samon Constitution includes, as a function of the Ombudsman, the carrying out of functions relating to promotion of good governance in public administration provided by the Constitution, and section 33(a) of the Ombudsman Act includes, as a function of the Ombudsman, the promotion of public awareness of human rights and efforts to combat all forms of discrimination or corruption through the provision of information and education.

⁵² *Organic Law on the Ombudsman Commission* (PNG), s 13.

⁵³ Palau National Code § 503(a)

⁵⁴ MFEM, 2020, *Media Release: Strengthening Public Finance Management*. [online]. Available at: <http://www.cookislands.gov.ck/news/121-finacial-secretary-office-news/1064-media-release-strengthening-public-finance-management> [accessed 29 March 2021].

⁵⁵ Samoa Constitution, Article 97A.

⁵⁶ Parliament of Tonga, 2020. *Parliament standing committee continues to serve the people of Tonga*. [online]. Available at: https://www.parliament.gov.to/media-centre/latest-news/latest-news-in-english/717-parliament-standing-committee-continues-to-serve-the-people-of-tonga?switch_to_desktop_ui=4.

⁵⁷ Near, JP., and Miceli, MP, 1985. “Organizational Dissidence: The Case of Whistleblowing” *Journal of Business Ethics*. [online]. Available at: <https://link.springer.com/article/10.1007/BF00382668>, at pg. 4; For further discussion on the definition by the authors see also Marcia P. Miceli and Janet P. Near, *Blowing the Whistle: The Organizational & Legal Implications for Companies and Employees*, Lexington Books, 1992. Accessible via: https://books.google.com.au/books/about/Blowing_the_Whistle.html?id=dffRUmygxCMC.

⁵⁸ Brown, A. J., ed, 2008. *Whistleblowing in the Australian Public Sector. Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organizations*, Australian National University E Press: Australia. [online]. Available at: <https://press-files.anu.edu.au/downloads/press/p8901/pdf/book.pdf>, at pg. 44.

⁵⁹ OECD, 2008. *Fighting bribery in public procurement in Asia and the Pacific: Proceedings of the 7th Regional Seminar on making international anti-corruption standards operational*. [online]. Available: <https://www.oecd.org/site/adboecdanti-corruptioninitiative/40838411.pdf>, at pg. 16.

⁶⁰ Ibid.

⁶¹ Ibid, pg. 115.



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