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CORRUPTION AND ANTI-CORRUPTION IN THE COOK ISLANDS

QUERY

Could you provide an overview of corruption and anti-corruption in the Cook Islands?

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Date

21 January 2013

CAVEAT

Recent literature and studies on the current political situation in the Cook Islands as well as in-depth research on corruption and the impact of corruption on specific sectors in the country are limited.

SUMMARY

The lack of available information makes it difficult to assess the level of corruption and its impact in the Cook Islands. Nevertheless, according to international surveys, the Cook Islands is situated around the global average in terms of its performance on governance indicators but perform poorly in terms of the rule of law.

Nepotism and political corruption appear to be the main corruption risks in the Cook Islands. In addition, being an offshore financial centre makes the country vulnerable to money laundering.

1 OVERVIEW OF CORRUPTION IN THE COOK ISLANDS

Background

The Cook Islands' current state of corruption and governance results from its recent history and political development. The country's geography also has an influence on its political situation.

Similarly to most of its neighbours, the Cook Islands has a small and geographically isolated economy. The country is quite well off compared to other island countries in the region, with a GDP per capita exceeding €11,500 in 2009. The country gets most of its resources from tourism (about 65 per cent of the GDP). The other main sources of income are fishing, copra, black pearl farming and offshore financial services. The Cook Islands is dependent on the remittances from their nationals living abroad, principally from the nearly 50,000 Cook Islanders living in Australia and New Zealand. Both Australia and New Zealand are also the country's main donors (France Diplomatie, 2012). China is also becoming an increasingly important donor.

Since 1965, the Cook Islands is a self-governing parliamentary democracy in free association with New Zealand. Queen Elizabeth II is the Head of State of the Cook Islands and has a representative in the country exercising her power. The people of the Cook Islands are citizens of New Zealand and the latter is responsible for the Cook Islands' defence since they do not have their own armed forces. The country has the right to unilaterally move to total independence at any time (APG on Money Laundering, 2009).

Political life in the Cook Islands has been characterised by a high degree of volatility and instability, especially before the 2010 elections. Coalitions regularly change and allegiances switch, even though the country's main political parties, the Democratic Party and the Cook Islands Party, do not really differ with regards to their policy platform. This situation has even led to by-elections (European Union, 2008). The Cook Islands Party won the majority of seats in the last elections in 2010.

Traditional and customary forms of power still play a significant role in the everyday life and in politics in the Cook Islands (Larmour, 2012). This situation is sustained by the geographical situation of the country where large ocean distances between the islands creates low penetration of the state in the territory – leaving the provision of state services in the hands of non-state actors (UNDP, 2007). Traditional authorities are even present within the state; the legislative power is composed of two chambers – the legislative assembly that is elected by popular vote and the House of Ariki that is made up of traditional leaders (CIA, 2012).

Extent of corruption

The World Bank's Worldwide Governance Indicators (WGI) place the Cook Islands in the upper half of the percentile ranks – with a score of 53.6 on a scale from 0 to 100 – in terms of control of corruption. The Cook Islands' score drastically dropped between 2007 (82) and 2009 (32.5). The country's score on rule of law (18.8) places the country in the lower quarter of the percentile ranks. It dropped severely from 2005 (86.6) and 2007 (67.5). No clear explanation of these drops can be found.

Forms of corruption

Petty and bureaucratic corruption

Most Pacific Islands share the issue of capacity deficit in the public sector. As a result, proper checks and balances are not in place and administrative structures and services are not institutionalised (Chêne, 2010). This type of situation generally presents the risk of citizens having to pay for free services or paying bribes to "get things done".

Current published research does not allow for an assessment of the most corrupt sectors in the Cook Islands' administration. Though, a 2007 United Nations Development Programme (UNDP) study points to the most bribery-prone sectors in the Pacific more generally, among which the police, customs authorities, fisheries, ports and basic public services can be found. Police seem to be one of the areas

most vulnerable to corruption in the Cook Islands' administration (Chêne, 2010).

Grand corruption

Too little information is available currently to properly assess whether procurement in the Cook Islands is vulnerable to corruption.

The Cook Islands adopted the Ministry Finance and Economic Management Act and the Public Expenditure Review Committee and Audit Act in 1995-1996 to frame and regulate the country's procurement. The Cook Islands' regulations include procurement at the central and local levels as well as in state-owned enterprises (Pacific Economic Development Agency, 2010). The Audit Office is responsible for ensuring compliance with the rules (ADB/OECD, no date).

Political corruption

Only limited information on political corruption is currently available, but older reports show that the tradition of rent-seeking by politicians and public officials in the Cook Islands has created an environment of suspicion about politics and its integrity (Synexe, 2007).

Historically, in the Cook Islands, ministers and high ranking cabinet members have had significant leverage to modify and use their assigned budget without sufficient supervision. One repeated problem has been the transfer of budgets from priority areas such as education or health to other areas more profitable for government officials (UNPAN, no date). A 2011 review report of the government's public financial management performance seems to indicate that the Cook Islands has improved its budget transparency, reducing the risk of the use of political power for private gain. The report, however, notes that parliamentary oversight remains very weak, creating a gap in the accountability chain.

Lastly, the reduced financial resources of the Cook Islands lead to a situation in which members of the government have multiple portfolios, some of which present potential conflicts of interests – the minister of finance also serves as the head of the financial

intelligence unit; the prime minister is also the minister of justice, the ombudsman for environment services and the attorney general (Government of the Cook Islands, 2012).

Nepotism and cronyism

The geographic and demographic factors of many of the Pacific Islands creates a sense of smallness and lack of anonymity (Larmour, 2012), which requires looking at conflicts of interest and cronyism through a particular lens.

The small size of the population of the Cook Islands (11,000 inhabitants distributed on 15 islands) leads to a situation where "people are likely to be related to each other which can lead to lack of objectivity and integrity". Customary practice of respect for leaders and the elderly results in a general reluctance to question their actions (Larmour, 2012).

A United Nations Public Administration Network (UNPAN) report on the Cook Islands indicates that recruitment of government employees is often subject to nepotism and favouritism, and that, in many instances, staff members who report on the corrupt practices of their superiors are threatened or fired.

Money laundering and organised crime

The Cook Islands offshore financial sector is a significant part of the country's economy and presents significant vulnerability to money laundering. The country has taken steps forward to reduce risks and align with international regulations.

In the 2011 Financial Secrecy Index, the Cook Islands were awarded a secrecy score of 75, which made them the 40th most secretive of the 71 jurisdictions evaluated (Tax Justice Network, 2011). After the scores were weighted by market share in global financial services exports, the Cook Islands were ranked 70th out of 71, signifying that the country is not a major player in the world of illicit financial flows or capital flight. However, the Tax Justice Network's report on the Cook Islands indicates that the country:

- does not adequately restrict bank secrecy;
- does not maintain information on company ownership in official records;
- does not require company ownership, account and country-by-country reporting to be made public;
- does not require resident agents to report payments to non-residents to tax authorities;
- does not fully participate in the Automatic Information Exchange; and
- partly allows harmful legal vehicles.

The Cook Islands were placed on the Financial Action Task Force's (FATF) list of Non-Cooperative Countries and Territories (NCCT list) in 2000. They were removed from this list in 2005 after the enactment of anti-money laundering legislation and amendments in 2003 and 2004. The Organisation for Economic Co-operation and Development (OECD) has placed the Cook Islands on its implementation of tax standard white list (OECD, 2012).

The Cook Islands authorities say that the country does not have any serious organised crime or drug problems. The crimes that generate proceeds in this context are mainly fraud, petty theft and misappropriation of government funds (APG on Money Laundering, 2009).

2 GOVERNANCE STRUCTURE AND ANTI-CORRUPTION EFFORTS IN THE COOK ISLANDS

Legal framework

International conventions

The Cook Islands is a state party to the United Nations Convention against Corruption (UNCAC) since 17 October 2011. The country will be reviewed during the fourth year of the implementation review mechanism in 2013-2014. The Cook Islands is a state party to the 1988 Vienna Convention on drug trafficking and the 2000 Palermo Convention on Transnational Organised Crime. Within the framework of the UNCAC, the United Nations Office on Drugs and Crime (UNODC) has worked with the Cook Islands on the Global Programme against

Money Laundering, Proceeds of Crime and the Financing of Terrorism (GPML) initiative.

In addition, to coordinate its anti-corruption efforts, the Cook Islands is part of the Pacific Islands Forum Secretariat which hosts the Political Governance and Security Programme, promoting good governance and election observance, among others.

National legislation

The Cook Islands' Crimes Act of 1969 criminalises passive and active bribery of officials through 12 separate but overlapping offences. The act covers individuals who "give or offer or agree to give" a bribe, on the active bribery side, and persons who "accept or obtain, or agree or offer to accept, or attempts to obtain" a bribe. Soliciting a bribe is not explicitly referred to but could be understood from "offer to accept". The act fails to integrate intermediaries or "indirect bribery" as well as to include employees of public enterprises or public services in the definition of public official. Notably, bribery of foreign officials is not criminalised in the Cook Islands. The existence of corporate liability in the Cook Islands is unclear since, even though the act mentions legal persons, there is no case law in which a company was prosecuted for bribery. Moreover, the only sanction provided for is imprisonment, making it unclear how to sanction a legal person (ADB/OECD, 2011).

Money laundering is a crime under the Crimes Amendment Act of 2004, which replaced the Financial Transaction Reporting Act of 2003 and the Money Laundering Prevention Act of 2000.

Regulations regarding conflicts of interest are very limited in the Cook Islands. The Financial Policies and Procedures Manual under the Ministry of Finance and Economic Management Act prohibits conflicts of interest in public procurement. A Code of Conduct for Members of the Parliament requires the latter to disclose their assets. Experts, however, state that the code is ineffective, as it is rather ambiguous and lacks sanctions (Syme-Buchanan, 2010). The Code of Conduct for Public Servants, which differs from the aforementioned code applying to members of Parliament, does not require civil servants to

declare their interests. The Public Service Commissioner Act of 1996 gives indications of good recruitment and employer principles in order to avoid nepotism, favouritism and abuses more generally (ADB/OECD, no date).

Political financing is poorly regulated in the Cook Islands. Limited information is available on the status of the country's legislation and regulations regarding political parties, but the Asian Development Bank and the OECD, in their joint report on anti-corruption policies in Asia and the Pacific, state that the Cook Islands once had transparency regulations for political parties but removed them in 2000 through an amendment of the Electoral Act (ADB/OECD, no date).

Whistleblower protection is not very extensive. The Audit Act of 1995 provides for the confidentiality of the identity of individuals who report acts of misbehaviour. Not directly related to whistleblowing, the country enacted a Victims of Offences Act in 1999.

The Cook Islands adopted the Official Information Act in 2008, which came into force in 2009. It is the first country in the region to enact such a law. This act gives citizens the right to request official government information and requires the government to satisfy the requests unless the information is deemed confidential according to the act. Access Info Europe and the Centre for Law and Democracy rank the Cook Islands 70th out of 93 countries assessed in terms of the strength of their legal framework with regards to access to information. This ranking does not evaluate the implementation of the law. Experts indicate that, much like other Pacific Islands, the government's information storing system is not able to retrieve information, making it trickier for public officials to respond to requests from the public (Williams-Lahari, no date). The Office of the Ombudsman, which is in charge of the administration of the act, lacks sufficient human and financial resources to be able to adequately respond to the demand for government information. The local media criticises the government for not investing enough resources in ownership and awareness-building around the act (UNESCO, 2011).

Institutional framework

Financial intelligence unit

The Cook Islands Financial Intelligence Unit (CIFIU) was established in 2001 after the adoption of the Money Laundering Prevention Act in 2000.

The CIFIU receives Suspicious Transaction Reports and is responsible for analysing them and disseminating them to the relevant authorities. This institution also provides training to financial institutions and is in charge of raising awareness among the public. It undertakes research and provides statistics on money laundering trends in the country.

The CIFIU is autonomous and has an independent budget. The recruitment process of this institution is very stringent to identify individuals that have proved their professional qualification and integrity. According to the Asian Development Bank and the OECD, the institution is, however, rather ineffective, transmitting only a very limited number of cases to the Cook Islands police for investigation. Its activity is also hindered by technical limitations of the database.

The CIFIU is a member of the Egmont Group of Financial Intelligence Units, an informal group of financial intelligence units working towards better international cooperation since 2004.

Judiciary

The Cook Islands' legal system is formed on the basis of English common law. The judiciary is composed of the High Court of the Cook Islands, the Court of Appeal and the Privy Council located in London; many of the judges exercising a mandate in the Cook Islands are senior or retired judges from New Zealand (Oxford Club, no date).

Judges are appointed by the executive branch of the government, and recruitments have not always been based on merit (Transparency International, 2004). This relation between the executive and the judiciary challenges the independence of the latter who act on the advice of the executive council. Experts state that

the judiciary in the Cook Islands would need to be strengthened to address corruption and white collar crime (Secretariat of the Pacific Community, 2007). As previously mentioned, the country's score on the World Bank's Worldwide Governance Indicators (WGI) in terms of the rule of law dropped significantly in the middle of the 2000s and is now in the lower quarter of the percentile ranks.

Most studies on the region report very little judicial corruption in the Pacific (UNDP, 2007). The Crimes Act has a specific section dealing with judicial corruption and bribery of judicial officers, in addition to the articles criminalising bribery.

Anti-Corruption Committee

The Cook Islands established an Anti-Corruption Committee (ACC) in 2001. The committee is chaired by the solicitor general and has four other members: the auditor general, the ombudsman, the head of the CIFIU and the police commissioner. The committee has no legal basis and operates informally. It works as a watchdog to detect corrupt activities in the public sector and promotes integrity, transparency and accountability. The chair of the committee is the contact person for all matters regarding the UNCAC and its implementation in the Cook Islands (United Nations, 2013).

Experts state that the committee lacks a clear mandate and adequate resources. The committee is not considered to be an independent anti-corruption agency (Cook Islands Herald, 2011).

Supreme audit institution

The Audit Office of the Cook Islands was established in 1986 after the adoption of the Public Expenditure Review Committee and Audit Act of 1995/1996. Before that, the government audit was conducted by the government of New Zealand. The office is in charge of the financial integrity of the state.

By law, the office is independent from the executive branch of government, but experts say that the reality is different since the contract of the head of the office must be renewed by the Cabinet every three years and the budget needs government approval

(Transparency International, 2004). It has, however, been rather effective in bringing both civil and criminal cases to prosecution (United Nations Public Administration Network, no date).

The office is part of the Pacific Association of Supreme Audit Institutions (PASAI) which gives its 25 member states a space to exchange and support each other with regards to their supreme audit institutions.

Office of the ombudsman

The Cook Islands' ombudsman was established through the Ombudsman's Act of 1984. The ombudsman is in charge of investigating complaints reported by citizens about the central government and, since 2007, s/he is responsible for the Cook Islands Human Rights Office. The Official Information Act of 2008 gives the ombudsman the mandate to review and investigate complaints regarding access to information requests (Office of the Ombudsman, no date).

The Office of the Ombudsman of the Cook Islands is part of the Pacific Ombudsman Alliance, a mutual support network that provides regional coordination and trainings.

No information could be found on the practical functions of the ombudsman.

Electoral office

The Electoral Act of 2004 created the Electoral Office, located in the Ministry of Justice and responsible for the administration and proper conduct of elections. The registration of voters and maintenance of the rolls is carried out by a different entity, the Electoral Registration Office. The chief electoral officer is nominated by the government, which could present a challenge for the independence of the office. No information could be found to evaluate the efficiency of the office. A team of observers from the Pacific Islands Forum was deployed to observe the 2010 general elections, but their conclusions are still not available online.

Other actors

Media

The Constitution of the Cook Islands guarantees freedom of speech and expression. As mentioned previously, the Cook Islands is also the first country in the region to pass an access to information act, which was passed in 2008. Experts say that the country experiences relative freedom of press (Woods, 2010). The influence of the government is limited to the distribution of broadcasting licences (UNESCO, 2011).

The attitude of the state towards the media varies from being open to tense. While adopting the Official Information Act, the government also tried to pass a law further regulating the media industry. The current government has failed to live up to its promise of transparency and openness, and it drastically reduced its communication with journalists shortly after the elections (UNESCO, 2011).

In addition, the media industry suffers from the significant outward migration experienced by the Cook Islands in the last 15 years; making fully-trained local journalists more and more rare (UNESCO, 2011). The country lacks sustained media oversight and newspapers often reflect the private agenda of owners¹.

The Pacific Journalism Review published a number of articles exposing the risks of harassment, intimidation and lawsuits, among others, that journalists face in the Cook Islands. It used the case of Helen Greig who was charged with trespass in 2010 after having published an article on government corruption. She was pronounced guilty on the radio before even appearing in court.²

Civil society

The right to assembly and association is guaranteed by the Constitution of the Cook Islands. There are many civil society organisations (CSOs) in the country that have played a significant role in public life in recent years. Most of them are funded by donors and international organisations. CSOs have been gathered in an umbrella organisation entitled

Cook Islands Civil Society Organisations (CICSO) to exchange and support each other (IFRC, 2012).

Experts state that the Cook Islands have networks and structures in place that demonstrate positive social capital and foster dialogue among the various groups in society. CSOs in the Cook Islands are a strong “checks and balances” mechanism for the government. Nevertheless, CSOs have expressed their frustration with poor access to official information and lengthy delays when working with the government (Health Specialists Limited, 2010).

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¹ Contribution from Peter Larmour, 2013

² Charges were eventually dropped.

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