National Integrity Systems

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Mathilda Uhrle was appointed Commissioner for Offshore Financial Services in July 1999 by the Cook Islands Government and served as the Deputy Commissioner of the Financial Supervisory Commission, which took over the responsibilities of Offshore Financial Services in June 2003 following legislative changes. She will take up a new position as head of policy for financial sector regulation with a Caribbean government in early 2004.

In 1992 she took up a position in the legal division of a Cook Islands trustee company in offshore financial products, services and management for five years. From 1997 Ms Uhrle worked for two years as a manager in the trust and fiduciary department a large trustee company in the British Virgin Islands, where she was also responsible for compliance issues.

Ms Uhrle has represented the Cook Islands at a number of regional and international forums in relation to money laundering (Financial Action Task Force, Asian Development Bank and the Asia Pacific Group on Money Laundering), financial sector regulation (New Zealand Combined Law Agency Group, Pacific Islands Forum Secretariat) and information exchange for tax purposes (OECD and the Commonwealth Secretariat) as well as preparing jurisdictional responses for all significant reviews of the Cook Islands offshore sector and anti-money laundering efforts (International Monetary Fund) during the period 1999–2003.

Ms Uhrle was a member of the Cook Islands Money Laundering Authority from 2000 until 2003 when the law was amended, and is a member of the Cook Islands Anti-Corruption Committee established in 2001. She also participated on Cook Islands Public Service policy committees for employment, code of conduct and travel policy. From 2001 to 2003 she acted as the Pacific regional contact for the International Trade and Investment Organization, a group of regulators from 16 small and developing jurisdictions

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Contents

Abbreviations

A-CC	Anti-Corruption Committee
ADB	Asian Development Bank
AML	Anti-Money Laundering
AusAID	Australian Agency for International Development
CIANGO	Cook Islands Association of NGOs
CIB	Criminal Investigation Bureau
CIDB	Cook Islands Development Board
CIIC	Cook Islands Investment Corporation
CIP	Cook Islands Party
DAP	Democratic Alliance Party
EU	European Union
FATF	Financial Advisory Task Force
FIU	Financial Intelligence Unit
FSC	Financial Supervisory Commission
GRs	Government Representatives
GPC	Group for Political Change
HOMs	Heads of Ministries
ICAC	Independent Commission Against Corruption
IMF	International Monetary Fund
INTOSAI	International Organisation of Supreme Audit Institutions
JPs	Justices of the Peace
MFEM	Ministry of Finance and Economic Management
MP	Member of Parliament
NAP	New Alliance Party
NGO	non-government organisation
NIS	national integrity system
NZAID	New Zealand Agency for International Development
OECD	Organisation for Economic Cooperation and Development
PERCA	Public Expenditure and Review Committee
PSC	Public Service Commission
QR	Queen's Representative
SAI	supreme audit institutions
SPAISAI	South Pacific Organisation of Supreme Audit Institutions
UN	United Nations

Executive Summary

The Cook Islands is a micro-state in the Southeast Pacific with a population of only 14,990, mostly Polynesians. The Cook Islands were previously a territory of New Zealand and gained internal self-government in 1962.

While the Cook Islands Government has put in place an Anti Corruption Action Plan, in practice, the Cook Islands public has different opinions about what counts as corruption, and the traditional practice of respect for elders and leaders leads to a reluctance to question their actions. It is also commonly expected that people who misuse entrusted power for private benefit will get away with it. Therefore, while legal and other structures exist to deal with corruption, implementation of the legislation is hindered by lack of political will, a slow rate of response by the Police, and a general lack of resources in the Crown Law office for prosecutions.

In theoretical terms, the Cook Islands National Integrity System (NIS) is fairly robust. For a micro-state with a very small population much anti-corruption legislation has been established—indeed, with over 400 Acts in place, it is a costly burden for Government to effectively implement all the legislation.

At senior levels of the public service and amongst most politicians there is an awareness and understanding that corrupt conduct involves

- the dishonest or partial exercise of official functions, or
- a breach of public trust, or
- the misuse of information or material acquired in the course of official functions.

There is little deterrent for public servants who engage in corrupt activities. There is no leadership code of conduct for public servants or members of parliament. Focus group participants noted that ethics are lacking at all levels of Government and there is serious disregard for transparent processes and decision making. They also stated that some Heads of Ministries (HOMs) are easily influenced. They noted there is a need for a more a transparent process for renewal of appointments, as some Ministers delay renewals for pubic servants who question decisions and actions of Members of Parliament.

Some High Court decisions reflect the intent of such legislation, especially those decisions made by judges appointed by the Minister of Justice who live outside the Cook Islands (mostly New Zealand) and are independent. However, local Justices of the Peace are not seen by the public to have the relevant skills and qualifications and are not seen to be independent, resulting in a lower level of confidence in the judicial system.

Moreover, while the Audit Office has effective policies and investigative skills to investigate corrupt practises, it is not completely independent of the political process. The Director is responsible to the Minister of Finance and Cabinet approves the budget. However, despite these restrictions, the Audit Office has been effective in carrying out investigations that have resulted in successful prosecution. With regards to other issues of transparency and good governance, it is problematic that there are no clear ethical guidelines for members of Parliament, ministers and public servants, and no code of conduct or standards for issues such as conflict of interest and gifts. In addition, it is alleged that corruption exists in the private sector, although this is more difficult to track. There have also been some instances of low-level corruption in churches and NGOs.

Further, although domestic corruption is easier to investigate at the national or local levels, opportunities also exist for external corruption and fraudulent activities at international levels through the offshore financial services sector where there is insufficient transparency. This lack of transparency and some questionable practices that surround the industry has resulted in the Cook Islands being 'black-listed' by the Financial Action Task Force (FATF) on the List of Non-Cooperative Countries and Territories (NCCT) in June 2000.

Although the Cook Islands have recently put in place a suite of new Anti-Money Laundering legislation to address these issues, it remains on the blacklist, as it has been slow to act on the FATF concerns.

The Cook Islands experienced a major economic crisis in the mid 1990s caused by Government over-spending, large foreign debt and one of the largest public services in the Pacific Island region. This required major reforms in financial management, accountability and transparency, and resulted in a massive reduction in the number of public servants and the privatisation of a number of services.

As a micro-state, the Cook Islands face unique social, political and economic challenges. Some of these challenges stem from the large numbers of Indigenous Cook Islanders leaving the country. Others arise from the frequent changes of coalition governments (six since 1999) and the resulting politically unstable environment has created more opportunity for corrupt practices. In some instances corruption has driven emigration. For instance, some people suspected of corruption have been able to flee the country due to slow police investigation and prosecution processes.

In other instances, Cook Islanders who have returned from overseas have not brought high standards of anti-corruption policies and expectations with them. Some have attempted to manipulate public funds, politicians and the legal system. There are also instances of non-Cook Islanders with criminal records and corrupt practices who have been successful in manipulating politicians to gain residency status.

Some focus group participants also noted that the small size of the Cook Islands and the population means that people are likely to be related to each other, which can lead to a lack of objectivity and integrity. Business monopolies (mostly owned by non-Indigenous people) in shipping, air transportation, fuel and wholesale food businesses ensure that the cost of living is high. The lack of competition in basic goods and services and the concentration of economic power in the hands of a few means that 'big business' has disproportionate power and influence over Government officials.

Focus group participants stated that in the absence of good governance and positive leadership role models, corruption has increased. Some public servants have put self-interest before the national interest and the instability of Government (with multiple coalitions over the last four years) means there is no commitment to a code of ethical behaviour.

This has led to a situation where, despite the 1996–97 catchphrase associated with the economic and political reforms, that Government would operate 'without fear or favour', seven years later these words are no longer heard. In fact, public servants who raise questions about accountability and transparency issues in Government are fearful of losing their jobs.

The small population, high per capita cost of government services, constant emigration and lack of quality health and education services and political instability compound the problems. This raises the issue of whether the Cook Islands are sustainable as an independent sovereign country with an effective NIS.

Participants therefore noted that the Cook Islands NIS is fragmented and that there is an urgent need for an Independent Commission Against Corruption to expose and minimise corruption in the public sector and educate the community on corruption issues and other functions. Other options and models of governance need to be considered, such as shared or joint components of the NIS with other countries. Some focus group participants suggested that there is a need for exchanges and secondments or 'twinning' of senior Cook Islands public servants in partnership with their counterparts in other countries such as New Zealand and Australia.

Recommendations arising from this report therefore include the suggestion that the proposed Human Rights Commissioner and Independent Commission Against Corruption should have strong partnership links with counterparts in Australia and New Zealand. In addition, senior public servants from Finance, Police, Audit, Crown Law, Fraud Investigation Unit (FIU), and the Financial Supervisory Commission could be seconded in an exchange with another country's officials. This would enable more objectivity and independence in decision making and provide opportunities for building the capacity of public servants. A similar secondment (not exchange) system is already working well for

High Court judges. Another example is the NZ Government's Serious Fraud Office secondment of an officer to the Cook Islands FIU. These concepts are worth pursuing, and international aid donors should be approached as soon as possible to provide technical assistance and resources to develop the concepts further and seek endorsement at decision-making levels to establish a more effective NIS. This would result in a new model for national integrity systems for not only the Cook Islands, but also other small island states, enabling them to become part of larger systems, including partnership arrangements with the New Zealand and Australian national integrity systems.

Country Overview

The Cook Islands are a group of 15 small, widely dispersed islands between French Polynesia and Samoa. While the total land area is only 240 square kilometres, the Cook Islands exclusive economic zone covers a marine area of nearly 2 million square kilometres. The Southern Group includes Rarotonga (the largest island), Aitutaki, Atiu, Mangaia, Mauke, Mitiaro and Takutea, which are mostly of high volcanic formation with fertile soils and lush tropical vegetation. Palmerston and Manuae are small atolls. The Northern Group includes Manihiki, Nassau, Penrhyn, Pukapuka, Rakahanga and Suwarrow, which are low-lying coral atolls with spare vegetation and large lagoons. Governance of these tiny islands as a sovereign country with rural/urban drift and dwindling populations is extremely difficult and challenging.

The Indigenous people are Cook Islands Maori, Polynesians closely related ethnically and linguistically to the people of Tahiti and the New Zealand Maori. The Cook Islands population has been declining from a high of 19,000 in 1995 to 14,990 in 2001. (Cook Islands Census 2001) Rarotonga's resident population is 9,424 (the first time it has fallen below 10,000 in many years), and Aitutaki's population is 1,743, signalling that both islands have experienced a significant decline in population since 1996. (Cook Islands Census 2001)

Since the economic downturn in 1995/96, significant numbers of Cook Islanders have migrated to New Zealand and Australia (an estimated 15 per cent of the population in 1996–97). Large numbers of Cook Islanders have left because of political pressure and lack of employment opportunities. It is estimated that more than 50,000 Cook Islanders live in New Zealand and 15,000 in Australia. (NZAID, 2003; Ron Crocombe) Some local people believe that some have emigrated to escape political oppression while others have emigrated to escape criminal prosecution. Other people have emigrated so they can access better health and education services and better jobs, and become eligible for superannuation and retirement entitlements which are not available in the Cook Islands, except for public servants. Other 'push factors' include

- expensive and inefficient political and bureaucratic structures with low standards of social and economic services
- high taxes and no welfare support
- poor health services and inconsistent standards of education
- business monopolies (food, shipping, airlines) that force the cost of living to very high levels
- a rising cost in housing stimulated by the sale of land leases on Rarotonga on the international market.

However, while Cook Islanders have been emigrating at an alarming rate, the rate of immigration of people from other countries (especially Fiji and New Zealand) has been increasing. This is beginning to cause some social problems. As a result of this increase in 'foreigners', an Immigration Advisory Committee was established in early 2003 to review the current immigration policy. Consultation has been held with traditional leaders, island councils and communities in the southern group and New Zealand, and the report was submitted to the Minister in December 2003. The public is awaiting release of the report in 2004.

The subject of immigration is very sensitive and will have major impacts on labour supply, economic development and social issues. Ethnic tensions are minor at the moment but could become more serious if issues are not addressed. The Cook Islands are moving from being a nation of one major language and culture to several languages and cultures in which the indigenous Cook Islanders are becoming increasingly marginalised and subordinate to immigrants, mostly from New Zealand.

Moreover, there is concern amongst Cook Islanders that the Development Investment Board and some politicians are making it easier for non-Cook Islander 'investors' with criminal backgrounds to gain residence through questionable investment policies and political decisions. For instance, a NZ property developer and millionaire, whom locals have dubbed 'Miami Vice', has been allowed to buy a home and settle in Rarotonga as an

'investor'. Also, he was recently granted a 12-month residency permit by the Immigration Minister (who is also the Prime Minister), allegedly against the recommendation of the Immigration Department head. The 'investor' had earlier been convicted in New Zealand on charges of weapons possession and arrested in connection with drug abuse. He has allegedly been in the Cook Islands developing plans to complete construction of a defunct hotel. A public rally was held in early December in the Cook Islands to protest the Minister's decision and the payment of NZ$150,000 by the developer in exchange for the permit, money that was allegedly put into Democratic Party coffers (*Cook Islands News*, December 2003). Meanwhile, the Immigration Minister issued a press release saying the money was put into a trust account as a surety of good behaviour during his stay. There is an agreement that if he, or any member of his family, is convicted of any criminal activity in the Cook Islands, the permit will be revoked. As a result of the public protest, $100,000 was returned to the 'investor' in late December 2003, while $50,000 was withheld for 'legal fees' (*Cook Islands News*, 21 December 2003). Undoubtedly, there will be further investigation into this latest example of questionable practices. As a result of pressure from the Concerned Citizens Group, the Prime Minister recently ordered a police investigation into serious allegations (including pornography, drug use and assault) against the 'investor'. He also banned this person (who was overseas) from re-entering the country (*Cook Islands News*, 16 January 2004).

In terms of the national economy as a whole, it is important to note that the Cook Islands experienced a major economic crisis in the mid 1990s. The main reason for this was that the Government had been over-spending during the late 1980s and early 1990s and the public service had become one of the largest in the Pacific Island region. In addition to this, the country had built up a large foreign debt. GDP fell by 7 per cent from 1996 to 1997 and by 3.2 per cent in 1997–98. (Cook Islands Government website) To combat this, in 1996 the Government introduced a program designed to revive the economy by reducing the number of public servants, selling state assets and encouraging strong economic growth in the public sector. The number of government departments was cut from 52 to 22, and about 1,600 government jobs were axed. (Cook Islands Government website) Yet the current state of the economy is still troubled. In January 1998, an international credit rating agency (Standard and Poor's) assigned the Cook Islands a B-long-term credit rating. The close relationship with New Zealand and a heavy public debt burden contributed to the low rating. The short-term credit rating was C. (*Dominion Post*, Wellington, 1998). The operating revenue and expenditure statement for the year 2003/04 showed a fiscal operation surplus of $4,742,000. The total operating revenue for 2003/04 of $72 million was $0.8 million less than forecasted for 2002/03. (Cook Islands Government Budget Policy Statement 2003/04)

With regards to the make-up of the Cook Islands' national economy, there are five key economic sectors—tourism, agriculture, marine resources, offshore financial services and local industry and services. Tourism is the main economic sector and has strong linkages with the other sectors. Tourism has grown considerably since the 1990s, with approximately 75,000 tourists now visiting the Cook Islands annually. Doubts about the sustainability of the tourism industry in the Cook Islands have recently been raised in a report presented to Cabinet. (South Pacific Tourism Organisation News, 21 November 2003) Marine resources are substantial with a large exclusive economic zone (EEZ). Fishing resources have only recently been exploited by Cook Islanders who have now invested in fishing boats to harvest pelagic species in the Cook Islands EEZ. Black pearls are the Cook Islands' leading export, producing $NZ18 million worth of pearls in 2000 reducing to $NZ6 million in 2001 due to declining pearl prices and disease outbreaks. (Cook Islands Government Online website)

The other major source of economic activity is to be found in the Cook Islands' offshore finance services sector that was created by a series of legislation in the 1980s. This provided a regime for international companies, partnerships and trusts, offshore banking, insurance companies and registered companies. The six trustee companies in the Cook Islands contribute to the economy through licence fees and taxes and a range of indirect benefits including employment. In 2003, the offshore finance services sector contributed approximately $1.7 million to the Cook Islands Government in licensing and other fees. (Financial Services Commission Report 2003) Entities established under the offshore regime are exempt from any form of income taxation. Strong confidentiality provisions apply to the offshore regime and no exchange controls apply to offshore activities. The

industry's most important activities revolve around the formation and management of trusts for asset protection and considerable onshore business servicing the trusts and providing administration services for offshore mutual funds.

The offshore banking industry in the Cook Islands came under international scrutiny when the New Zealand Government conducted the Davison or 'Wine Box' Commission of Inquiry, which started in 1994 and concluded in 1997. The Commission examined transactions referred to in papers presented by the Hon Winston Peters, who tabled a wine box full of documents in March 1994. The inquiry was to assess if the New Zealand Serious Fraud Office (SFO) and the Inland Revenue Department had turned a blind eye to tax evasion by major New Zealand corporations in the 1980s. The Davison Commission reported in August 1997 (at a cost of $15 million), and found that the Inland Revenue Department had acted in a lawful, proper and competent manner in dealing with the wine box papers. The Commission argued that the corporations had acted within the law when they presented Cook Islands' tax certificates to the New Zealand Government. Although this was a New Zealand inquiry into New Zealand corporations under New Zealand law, they used the services of offshore banks in the Cook Islands.

As a result of the Wine Box Inquiry, the Cook Islands were dubbed the 'Crook Islands', an unfortunate name that seriously damaged the image of the country. This international scrutiny, significant pressure from the OECD and other events have led to serious efforts to improve the Cook Islands' international business image through legislative reforms of the offshore banking industry. Details of these reforms are provided in the Anti-Corruption Section of this report and Appendix 4.

Research into offshore financial centres (OFCs) as a strategy to develop their domestic economies through the provision of international financial services have shown that 'notional' OFCs (those that provide minimal financial services) contribute little to the economy and do not form the basis for sustained economic growth (Asia/Pacific Group on Money Laundering, 2002:14). 'Functional' OFCs, on the other hand, provide a wide range of value-added financial services, require significant investments in infrastructure, and create a demand for goods and services, as well as an educated workforce to support value-added activities. There is a need for more research into the Cook Islands offshore financial services sector to determine current trends and identify the benefits the industry provides for local people in terms of employment and the economy.

Corruption Profile

Definition and Scope

The Cook Islands people and community expect public officials to perform their duties with honesty and in the best interests of the public. Corrupt conduct by a public official involves a breach of public trust and leads to inequality, wasted resources and wasted public money. Corruption commonly involves the dishonest or preferential use of power or position that has the result of a person or agency being advantaged over another.

However, in the context of the Cook Islands, definitions of corruption are not clear and are sometimes disputed. There is little community understanding of what defines corruption or conflict of interest. Although Cook Islands people have a cultural tradition of sharing resources amongst family and community and taking care of each other, when a person takes something that is not rightfully theirs, the person is regarded as a *keikeia* (thief). However, the difference between 'sharing' and theft is sometimes blurred, thus issues such as this need to be further explored in the Cook Islands cultural context. A definition of theft would need to involve proof of intent to pervert the course of justice or to gain direct personal benefit.

There is no specific definition of corruption within Cook Islands legislation. The Crimes Act 1969 provides a definition of 'bribe' as 'any money, valuable consideration, office, or employment or any benefit, whether direct or indirect' (Section 110). Other sections (111 to 116) cover crimes of judicial corruption, bribery of judicial officials, corruption and bribery of Ministers of the Crown, members of the Legislative Assembly, law enforcement officers, and Government officials. The common elements for each of these offences are: 'corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted in their official capacity' (Crimes Act 1969).

As the Cook Islands has adopted the OECD ADB Regional Anti-Corruption Initiative, it is implied that a working definition of corruption is that used by the OECD and the UN. The simple definition proposed by the World Bank is the 'abuse of public power for private gain' (World Bank, 1997:102).

Embezzlement of money and fraud are criminal offences under the Crimes Act, however it has occurred in the public service, the private sector and even in the churches. Actions of politicians and public servants are more likely to attract attention than questionable behaviour of people in the private and religious sectors.

It is commonly understood that since colonisation when political power passed to elected representatives under a western form of government, traditional leaders (*aronga mana*) mainly have a ceremonial and cultural role rather than a political role. Most traditional leaders (*ariki, mata'iapo, rangatira*) try to stay out of politics to maintain their independence, however there are some exceptions, with a few examples of chiefs receiving bribes and attempting to influence how people vote, however family ties also tend to influence how people vote.

The behaviour of public servants is regularly scrutinised by the media and the public. In a recent example, a high-profile former public servant was sentenced to two-and-a-quarter years in jail for receiving $27,000 of taxpayers' money in illegal 'kickbacks' while he was chief of staff in the Office of the Prime Minister. The disgraced former public servant was sentenced along with his partner-in-crime, who avoided a prison term. His defence lawyer lodged an appeal against both conviction and sentence, and he was granted bail until the appeal hearing. (*Cook Islands News*, December 2003) The High Court Justice found that the offences fell 'under the broad heading of governmental corruption or dishonesty.' (*Cook Islands News*, December 2003) The former public servant was convicted of seven charges of receiving secret commission payments—referred to as kickbacks—and another count of forgery. The scam stopped in mid 2000 after the local newspaper, *Cook Islands News*, ran articles about the arrangements in the Prime Minister's office, which led to queries from the Public Service Commissioner and an Audit investigation. When the pair came under police investigation in 2002, they forged a backdated letter suggesting the

payments had been made for 'goodwill'. This high-profile case is the first to be brought under the Secret Commissions Act of 1994/5 in the Cook Islands, and the crimes carry a maximum jail term of 10 years and a fine of $20,000.

What is most interesting is the way in which the Defence handled the case. The defence lawyer attempted to minimise the seriousness of the offences by telling the Court that the offences were not viewed seriously in the Cook Islands and that the legislation was put in place to deal with far larger sums of money. He requested a discharge without conviction and suggested some community service, both of which were denied by the Judge. In handing out the jail sentence for the kickback charges, the Judge accepted that the former civil servant had made a big contribution to the Cook Islands in the past and stated that this would be taken into consideration. He added, 'Notwithstanding your undoubted talents you were placed in a position of authority, power, respect and trust and you have broken the trust of your employer. I think that is undoubtedly the case, sad though it may be.' The strong penalties for people who breach the law contained in the Secret Commissions Act have provided a standard that the court is bound to follow. Yet, although these are serious offences, this case also highlighted the fact that public attitudes are often sympathetic ('We feel sorry for his children', 'How much did the community lose from his criminal actions?', and 'The community did not suffer any loss').

Causes

A number of factors have contributed to corruption in the Cook Islands. Although no one factor 'causes' corruption, together they contribute to the attitude that some level of corruption is acceptable.

One of the causes of corruption is the cultural and social system that encourages people to respect elders who are often those in power, for example, politicians. This discourages criticism and provides opportunities to push the boundaries of acceptable behaviour. A mature age is almost a pre-requisite for a successful politician, which means that many MPs have been in Parliament for a long time and it is difficult for younger (and potentially better educated) people to be nominated. There is a general acceptance of some level of corruption because people who benefit from the current system don't want change.

Another cause is that MPs often claim they do not understand the legal and political system and often do not have a clear understanding of their role and responsibilities. There is often a lack of capacity and understanding of the consequences of corruption.

The main cause of corruption is the instability of Government, and the need for MPs to change parties and alliances and form coalitions in order to stay in power. There is very little understanding of the role of Opposition in Parliament, committees are rarely used, key issues are not publicly debated in Parliament and questions are not raised.

Fear of political reprisal is another cause—people would rather live with the consequences of corrupt politicians than face losing their jobs.

At the international level, the private sector maintains a level of secrecy in international financial services sector, thereby providing opportunities for money laundering and other forms of corruption.

The Cook Islands was the subject of a joint mutual evaluation by the Asia/Pacific Group on Money Laundering (AGP) and the Offshore Group of Banking Supervisors (OGBS) in 2001. Whilst the Evaluation Team noted that no cases of suspected money laundering had been identified or investigated, the Cook Islands had the potential to be used for money laundering purposes. The report noted that there is a need to ensure that regulators, law enforcement agencies and prosecutors have the skills and resources to effectively identify, investigate and prosecute money laundering offences (Asia/Pacific Group on Money Laundering, 2002).

Levels

There are examples of corruption at all levels of society, however the activities of the Executive, political leaders and public servants are the main focus of scrutiny. The Audit

Office has been the most effective agency in investigating corruption at all levels, including Central Government, Island Councils and Outer Islands administrations. There are numerous cases of corruption by public servants in the Outer Islands who are more isolated and not under the scrutiny of the media or other watchdog agencies.

Costs

The cost of corruption in the Cook Islands resulting in the wastage of public funds is considerable. This wastage contributes to the inability of Government to deliver quality public goods and services, especially in the areas of health and education. Also, there are numerous instances of appointment of public servants for political reasons without transparent processes, rather than on the basis of merit. This results in lack of capacity and effective management skills and contributes further to the high cost of government. Weaknesses in health and education strategies and service delivery often lead to higher costs to government in reactive programs.

Types

The main types of internal or domestic corruption in the Cook Islands are: political appointments of poorly qualified public servants without transparent processes; conflicts of interest in awarding contracts and licences; nepotism; excessive travel by ministers and public servants; the granting of immigration permits without transparent processes; and lack of respect for the rule of law.

There are numerous examples of Ministers directly appointing more public servants as 'Ministerial support staff' on the basis of political affiliation and family ties. With an election looming in late 2004, people are alarmed by the growing number of recent appointments.

There are also opportunities for money laundering and other forms of corruption at the international level through the financial services sector.

Impact of Change

Good governance is effective management of taxpayers' funds by and public interests by the public service for the purposes of a cost efficient maximisation of delivery of services to the public. It also means that Parliament needs to listen to the voices of the people, and make changes as required to enact and amend laws to ensure the health, safety and well-being of citizens. Honesty, transparency and trust are all elements of good governance, however these strategies on their own are not enough. Good governance also means good systems with innovative strategies implemented in a cost-effective way to add value to government services to the public.

It is not clear whether the costs of the current control systems are balanced with benefits. It is necessary to conduct a cost–benefit analysis that also considers the constraints of a micro-state like the Cook Islands. Some claim that one of the most important impediments to progress of the Cook Islands is the excessive cost of governance of such a small state and economy. It is also necessary to analyse the effectiveness of Government. The cost of the political system is extremely high per capita compared with other countries such as New Zealand. The high cost of the system does not necessarily provide better government services. There are claims that people in the Cook Islands get poorer quality government services than other countries such as New Zealand at a high cost to taxpayers. While the Cook Islands have adopted some NZ systems of governance, these are often inappropriate, and are far too costly for a micro-state the size of the Cook Islands.

In July 1998, the Cook Islands Parliament (led by the then Prime Minister) unanimously agreed to set up the Commission of Political Review. The three members appointed to the Commission to undertake a wide consultation process and produce a report were a lawyer (former politician, minister and diplomat), an internationally recognised academic and an educator. The report covered a review of the political system and governance issues ranging from the Parliament and how it operates, Executive Government (Cabinet), island and *vaka* government, and checks and balances (governance). (Commission of Political Review, 1998)

The Commission was required to propose a system of government that

- is founded on the principles of good governance
- enshrines fundamental democratic principles
- is cost effective, and
- is appropriate to the unique conditions of the Cook Islands.

The Commission noted that 'The principles of justice, fairness, integrity, responsibility and honesty, which are essential strands in the fabric of good governance, depend on the way in which they are woven by the elected leaders'. (Commission of Political Review, 1998:15)

The Commission made a range of recommendations in its report, entitled *Reforming the Political System of the Cook Islands: preparing for the Challenges of the 21st Century, 1998*. While some of these recommendations have been implemented (for instance the elimination of the Overseas seat and former MPs superannuation in 2003), most have not. Some of the recommendations will be referred to in various sections of this report.

In addition to this sort of initiative, a workshop on improving public sector governance, sponsored by the Sustainable Development Department of the Asian Development Bank (ADB) and the NZ Government was held in Rarotonga in October 2003. This provided an opportunity for Ministers and senior public servants to discuss the effectiveness of the Public Service Act, PERCA and the MFEM Act and make suggestions for change. It also provided an opportunity for the NZ Public Service Commissioner to illustrate how the relationship between ministers and senior public servants is regulated and applied in practice in New Zealand. It is unclear what impact this has had on more effective governance.

The National Integrity System

Executive

The Executive is made up of the Prime Minister and Cabinet of Ministers. Each minister is responsible for one or more government departments or agencies. They are appointed from amongst the majority party in Parliament and remain members of Parliament

The current Cabinet of six comprises the Prime Minister, Deputy Prime Minister, and four other ministers. It is a Democratic Party Coalition government, in coalition with the Democratic Alliance Party (DAP). The leader of the DAP is currently employed as a special adviser to the Prime Minister with an office in the Prime Minister's office building. (Focus group discussion)

The Cook Islands is a semi-independent country in free association with New Zealand, with its own government responsible for providing the complete range of public services. The Government is also responsible for international relationships, while New Zealand provides assistance with defence.

The Head of State is Queen Elizabeth II, represented by a locally appointed Queen's Representative (QR), a political appointee with a term of three years. The current QR is the former Secretary of the Democrat Party, while the former QR was the President of the Cook Islands Party who served for three terms. For the last 20 years or so, the office has been occupied by former MPs and political supporters.

The role of the QR is to act as a unifying force above politics, sign bills into law and receive credentials of visiting ambassadors. The Office costs the taxpayers $189,000 a year, and questions regarding the effectiveness and necessity of the QR's office have been raised. Some people favour combining the posts of Head of State and Head of Government. Others suggest that it is too costly, ineffective, not politically independent and currently mainly a ceremonial role, and recommend that it should be held concurrently by the Chief Justice or Governor-General of New Zealand.

Legislature

The Cook Islands has a Westminster parliamentary style of government similar to that of New Zealand but operating as '*tapere democracy*'. *Tapere* democracy is based on traditional land divisions and boundaries that run from the mountains to the sea. It is usually a 'pie-shaped' constituency made up of people who are related by blood and land resources. This often means that voters feel compelled to vote for candidates who are their relatives to promote harmony with their neighbours, which comprises the concept of democracy and free choice.

Parliament is therefore made up of elected representatives from 24 electorates (reduced by Parliament from 25 in 2003), representing districts (*tapere)*, and in some cases, islands. Rarotonga has six MPs and the outer islands have at least one elected MP each; some (Aitutaki, Atiu and Mangaia) have two or three, even though the populations of most outer islands have been in rapid decline since 1996. The outer islands are administered by Government Representatives (GRs), who are usually political appointees selected by the Prime Minister. The Commission recommended that GR positions should be abolished. The outer islands also have their own elected mayors and island councils, which adds to the cost of government. For instance there are three mayors on Rarotonga.

In terms of recent recommendations regarding changes to the legislature, the Commission recommended a change in the composition of Parliament, reducing the number of members of Parliament to a total of 17. The report also made several other innovative recommendations, for example that

- there be four members elected by the whole nation as a single constituency
- the Prime Minister be chosen by Parliament from among the four members elected by the whole nation, and

- Cabinet should consist of up to six Ministers including the Prime Minister.

It is also recommended that the Electoral and Civil List Acts need to be amended to deter MPs from breaching the law. For example, if an MP loses his seat due to breaches of these Acts, he can stand for re-election in the future. Other issues that need to be addressed include the fact that, although Parliament is not a full-time job, and even though the number of Parliamentary sitting days has been reduced from 22 half-days in 2000 to 15 half-days in 2002/03, MPs are paid $34,000 a year. One session lasted only two hours, making it impossible for a vote of no confidence to be introduced (*Cook Islands News*, July 2003). In 2003, Parliament has had only a few half-day sittings. (Focus group discussion)

Political Parties

After 13 years of relative political stability (from 1986 to 1999), the Cook Islands have been in a state of political turmoil and instability. Since 1999, there have been five changes of Government, with MPs from the three main political parties—Cook Islands Party (CIP), currently in opposition, the Democratic Alliance Party (DAP), and the New Alliance Party (NAP)—forming several coalitions to maintain Government. During the period of this project (September–November 2003) the Coalition was made up of members of the Democratic Party. Just a year previously, however, the Government was a DAP/CIP coalition.

For a small country with a declining population and small electorates (some as small as 300 voters), some believe there are too many political parties and factions. Members of the focus groups interviewed for this Report indicated a high level of public disenchantment with Government. This was also reported by the Political Review Commission in 1998, which noted that 'MPs are seen by many voters as having exceeded their powers and taken more than their share of the national cake for their own benefit'. (1998:21)

There is also a high level of political instability. For example, recently, when the then Minister of Finance (and Deputy Prime Minister) returned from a week of travel to attend the OECD Global Forum on Taxation, he found that the Cabinet in his absence had approved a loan to the Cook Islands Investment Corporation of $3 million to assist with government projects. The CIIC Chief Executive was not able to give details on the projects, as she was not involved in the preparation of the project. The Prime Minister had made an oral submission to Cabinet for the loan, a highly unusual, non-transparent process, and Cabinet approved it while the Minister of Finance was overseas. There is speculation that the loan is meant to be used for development projects and thus to figure in the imminent election campaign. (*Cook Islands News*, October 2003)

As a result of this breach, and after a failed attempt to win a vote of no confidence in the current Government in Parliament, the Deputy Prime Minister and Minister of Police (Transport Aviation and Shipping) resigned from the Cabinet. In addition to this irregularity, declaratory judgements have also been filed against two MPs for allegedly drawing payments as Crown Servants while in receipt of their MP salaries from the Civil List. The decisions on these cases are due in early 2004. (*Cook Islands News*, focus group discussions)

Electoral Commission

There is an Electoral Commission (Officer) known as the Chief Registrar of Elections appointed under the Electoral Act 1998 (amended) whose responsibility is to register voters and oversee elections.

The Justice Department is the agency responsible for conducting general elections, by-elections and referenda; it is regarded as non-partisan. The Registrar of Births, Deaths and Marriages is also the Chief Registrar of Elections. The major concern of the Registrar is to ensure the proper conduct of polling clerks for the effective taking of the poll at every polling booth.

Recently, results of by-elections have been both expensive to the taxpayer and critical to the balance of power for the Government. In one constituency the by-election results were challenged in court proceedings, resulting in a reference back to the polls by the court.

In terms of election funds, there are no rules or regulations on political party funding, and when substantial donations are made, there is no requirement for their sources to be made public. The political party accounts are not published and not checked by an independent institution.

The Audit Office

The Cook Islands Audit Office exists as a constitutional safeguard to maintain the financial integrity of the country's parliamentary system of government, and to assist Government in the effective, efficient and economic use of resources. The Audit Office's primary role, therefore, is to assist Parliament to strengthen the effectiveness, efficiency and accountability of the instruments of government.

The Audit Office, in theory, is independent of the Executive branch of Government. However, in practice, this is not the case, as the Director's contract must be renewed every three years by Cabinet. Further, the Audit Office is not independent in terms of its budget, as it still requires approval of the PERCA Committee and the Minister of Finance to report to Parliament. Also, the budget is insufficient ($700,000 per year) to provide the level of services required.

The statutory mandate for the functions of the Audit Office is enshrined in the Constitution of the Cook Islands under Article 71 and the Public Expenditure Review Committee and Audit Act 1995/96 (PERCA), Part 3. The purposes of the Act are to give effect to the principle of the Executive Government's responsibilities to the public through Parliament to

- keep Parliament informed on the scrutiny of public expenditure and management of public money
- promote accountability of public servants in terms of public expenditure and public monies, and
- promote accountability of local authorities in the management of public money and stores.

The Act provides for the establishment of a Public Expenditure Review Committee (PERCA) of two–four members appointed by the Minister of Finance for three-year terms. Objectives of the Committee are to ensure that financial statements are produced and are subject to review, adherence to fiscal disciplines is explicit; and that other obligations of HOMs are met. It also provides a mechanism for public consultation and input to budget and expenditure proposals, undertakes audits and pursues legitimate issues of public concern that affect the management of public funds.

The Director of PERCA is appointed by the QR in accordance with a decision of Cabinet, and 'shall be deemed not to be a member of the Cook Islands Public Service' (S. 21(2)). This is an attempt to ensure that the Director will not be subject to political pressure, but in practice the fact that the Director is appointed by Cabinet means that the position is not independent of the Executive.

The PERCA Act also provides that the Director 'shall employ two competent external audit advisors…and the Director together with the external audit advisors will be known as the Audit Commission' (S. 21 (4)). PERCA members are appointed by the Minister and include a chairman and two members. The current committee is ineffective: it needs members with more specialised skills and more experience. The Cook Islands population is small, people are related to each other, and independence is difficult.

Audit can conduct special reviews and investigations initiated by the Director or on complaints from the public or MPs. The number of investigations is increasing, with a total of 44 over the last year (Cook Islands Audit Office, 2003a). Internal controls in government departments are weak and bad management skills contribute to the problem. Audit now has qualified staff who have increased their competence over the last few years.

Staff enjoy public service protections, but the Director is on a three-year contract and needs the Minister's and Cabinet approval for renewal, and has no civil service protections.

Participants indicated that the Audit Office needs more of a law enforcement role with a refinement of its powers, as low-level corruption exists within the public service along with undermining of authority and misuse of power. Recent Parliament sittings have been so short that there is no longer an opportunity to debate the budget, PERCA, Audit or other Government reports. Also, Parliament has not appointed any select committees to debate Audit reports.

There is no longer any opportunity for public debate about Government. There is also a need for public education and awareness programs on government, governance and civics. Participants noted that MPs expect to not be caught, and this attitude filters through to public servants. Perhaps most importantly, the Director of the Audit Office believes that corruption in Cook Islands' governance is caused by

- poor or weak internal controls
- reliance on poor-quality advice and lack of professionalism, and
- the attitudes and behaviour of individuals in power. (Cook Islands Audit Office, 2003a)

There is a need to broaden the functions of the Audit Office with powers similar to the NZ Serious Fraud Office to search, seize and arrest offenders. Without these law enforcement agency powers, the Audit Office is handicapped in its efforts to combat Government fraud, waste and abuse. In the past, the Audit Office has provided substantial investigations before handing the cases over to the Police Department, where they have been ineffectively and inefficiently handled.

The Audit Office's Anti-Corruption Role
Since its reformation under the PERCA Act, the Audit Office has undertaken an increasing role in combating Government corruption and strengthening good governance. In the 1998 report of the Commission of Political Review, the level of confidence in PERCA was only 40 per cent, with people interviewed indicating that they had considerable knowledge of improper actions they believed the Audit Office (PERCA) had not acted on. In more recent years, however, the Audit Office has pursued a number of investigations into fraud and corruption with some success.

The Audit Office has been effective in bringing to prosecution both civil and criminal cases arising from its reports. For example, it has succeeded in bringing to prosecution the following cases.

- An official in charge of the Government liquor supply and sales was convicted for theft, bribery, and receiving secret commissions of over $100,000.
- Thefts committed by five employees from the outer islands' Government savings bank branches and post offices (total loss approximately $250,000).
- A high-ranking former Government official was recently convicted of forgery and receiving secret commissions (total loss approximately $27,000).
- Last year, a Member of Parliament lost his seat by receiving a public service salary.
- Arising from Audit reports, the Attorney General filed an application with the court for a declaratory judgement in relation to another two members of Parliament having allegedly received salaries from the public service whilst active Members of Parliament. On 15 January 2004 the High Court declared that one of the MPs was not a crown servant and could therefore keep his seat as an MP. The MP claimed that the application for a declaratory judgement was a 'result of envy and jealousy of epidemic proportions which is being fuelled by the opposition and the media conglomerate' (*Cook Islands News*, 16 January 2004). The MP was accused of receiving payments as a crown servant when he was a consultant to the Environment Service, which is not permissible under the Electoral Act. He indicated that he will seek 'heavy costs' from the crown. The other MP's case has not yet been concluded.

Audit Office's Regional and International Activities
The Audit Office is a participating member of the International Organisation of Supreme Audit Institutions (INTOSAI), which is the professional organisation of supreme audit

institutions (SAI) in countries that belong to the United Nations or its specialised agencies. INTOSAI supports its members in this task by providing opportunities to share information and experiences about the auditing and evaluation challenges facing them in today's changing and increasingly interdependent world. As the internationally recognised leader in public sector auditing, INTOSAI issues international guidelines for financial management and other areas, develops related methodologies, provides training, and promotes the exchange of information among members. The Asian Development Bank (ADB) maintains a strong anti-corruption policy in relation to its lending practices

At the regional level, the Audit Office is a participating member of the South Pacific Organisation of Supreme Audit Institutions (SPAISAI), and the Director of Audit currently holds the Chairmanship. The main objective of SPASAI is to encourage, promote and advance cooperation among members in the field of Public Audit. In particular, SPASAI

- promotes understanding and cooperation among member-institutions through exchange of ideas and experiences in the field of Public Audit
- provides facilities for training and continuing education for government auditors with a view to improving the quality of their performance
- serves as a centre of information and as a regional link with organisations and institutions in other parts of the world in the field of Public Audit
- promotes closer collaboration and brotherhood among auditors in the service of the Government of the respective member-institutions and among regional groups
- makes it possible for members to assist each other by providing technical assistance and exchange of expertise that will benefit members in the field of Public Audit
- allows members to cooperate with non-member SAIs in the South Pacific region.

Judiciary

The Judiciary is made up of independent judges of the High Court, and the Land Court. Currently the Judiciary is the responsibility of the Minister of Justice (who is a farmer) and the Minister for Crown Law (who is a local business woman).

The courts have the jurisdiction to review actions of the Executive. The Police normally investigate criminal complaints then hand the case to Crown Law who recommend if charges should be laid and brought before a court. However, questions have been raised by the public about the independence of some police (Focus group discussion).

The Cook Islands Government appoints High Court Judges from overseas (mostly New Zealand). The public views the external judges to be independent and appointed on merit, however that is not the case with local Justices of the Peace (JPs). There are questions about the qualifications and experience of some JPs, and appointments are not required to be based on merit. The education system does not pay attention to integrity issues, corruption or bribery, and public understanding of the issues is not well informed.

Appointments of judges at High Court level from an external source that is independent of the political environment has been critical to recent watershed judgements. These judgements include the declaratory judgement rendering a Parliamentary seat vacant following a Member's receipt of Government payments as a consultant, rendering the MP a 'civil servant', and the recent conviction of a senior public servant for secret commissions. (*Cook Islands News*)

The Political Review Commission found that most people support the use of external judges to enable more objectivity and independence in judicial decisions. However, it found that public confidence in the judicial system was not high, with only 32 per cent satisfied that the judicial system provides adequate controls. (Political Review Commission Report, 1998)

Civil (Public) Service

The Public Service Commission (PSC) was established by legislation to ensure a professional, competent Public Service. Although there are rules requiring political independence of the civil service, the public does not regard the civil service as being highly independent.

In 1996 the number of public servants was approximately 3,500. This reduced to approximately 1,341 in October 1998 as a result of Government downsizing and reform prompted by external forces, including the NZ Government and the ADB. (Cook Islands Government website) Recruitment and career development rules are required to be based on merit, but in practice this is not the case. There are no specific rules to prevent nepotism and cronyism, and appointment of incompetent individuals is regarded as commonplace.

At the time of this study, some civil servants complained of political interference, fear, favouritism in appointments to boards and jobs, and lack of support and career paths. People reported dismay at the lack of transparency and process for some appointments and contracts that have recently been awarded to relatives and friends of politicians.

There is no Code of Conduct for public servants and no rules or registries concerning acceptance of gifts and hospitality. There are no complaint mechanisms for public servants and whistleblower protection measures. Although there is an Ombudsman, he is a political appointee and is not effective, therefore there is no effective system to handle complaints by members of the public other than through the media.

The Political Review Commission recommended that a National Appointments Council be established to select and appoint Judges, JPs, the positions of Speaker of the House, Ombudsman, Solicitor General, Chairman of PERCA, Auditor General, Commissioner of Police and Heads of Ministries.

The effectiveness of the work of the Public Service Commission is heavily reliant on the degree of interest the Cabinet places on it. The effectiveness of the PSC is reliant on the commitment of the Public Service Commissioner to drive improvements in institutional strengthening. There were questions raised about the effectiveness of the PSC in convincing Cabinet to adopt a Code of Conduct and adopt appropriate travel and employment policies.

Ombudsman

The Ombudsman Act (1984) established an Ombudsman who is an officer of and responsible to Parliament. The QR, on advice from the Prime Minister, appoints the Ombudsman for a three-year term. The functions of the Ombudsman are to investigate any decision or recommendations made by any government department. The Prime Minister and Parliamentary Committees may refer matters for investigation. The Ombudsman Act does not provide for appointments based on merit.

Anonymity of petitioners is not specified in the legislation and the public fear possible reprisals if they make a complaint. The Ombudsman's reports are not published and it is not seen by citizens to be an independent body where they can make complaints about Government administration. Moreover, the responsiveness of Government to the Ombudsman's recommendations is selective and depends on a number of factors, including public opinion and support for the issue, governmental priorities (including proximity to elections) and legal considerations.

The Political Review Commission's report noted that people's lowest level of confidence was in the Ombudsman (92 per cent expressing dissatisfaction). Since it was established, the office has been held by only three people: the first Ombudsman was a former Democratic Party minister who had been dropped to form a coalition; the second was the husband of a senior member of the Cook Islands Party; and the current person is a senior member of the Democratic Party. People believe that the Ombudsman's real role is to protect the political party that appointed him, rather than protect the public. (Political Review Commission, 1998:75) The Commission therefore recommended that the role of Ombudsman be reconsidered and possibly replaced by a Human Rights Commissioner.

Police and Prosecutors

The Cook Islands Police Commissioner is appointed by the Minister of Police, under the Police Act 1981. The Commissioner may only be removed with cause. The provisions of the Act are not always followed and anecdotal evidence in newspaper articles in 2000 questioned the effectiveness of the Police.

The Political Review Commission found that confidence in the Police was very low, with 81 per cent expressing dissatisfaction. Participants also noted there is a lack of leadership and management skills, lack of capacity and lack of rigorous investigation skills in the Police. A common complaint is that the Police allow people to leave the country before they can be prosecuted.

Public prosecutors are not seen by the public to be independent, partly because of the small population and lack of confidence in the competency of the Police. The Criminal Investigations Bureau (CIB) handles all investigations of serious crimes and Police are investigated by Commissioned officers when directed by the Commissioner. Because there is no independent mechanism to handle complaints of corruption against the Police, civil society has no role in such processes. Currently there are no reported cases of corruption in the prosecuting agencies.

Participants in the focus group noted that there is a lack of cooperation between government agencies. For instance, after the Audit Office has investigated a case, the Police often sit on serious cases for four–five years, often claiming that they have lost the case files so they can't prosecute. (Focus group discussion)

Crown Law (with three solicitors) is responsible for prosecuting cases but has a backlog of cases that have not been filed, and now need to contract private lawyers to handle the cases. However, this is limited by their inadequate budget of only $356,000. Focus group participants noted that Crown Law doesn't have the capacity to deal with almost 80 per cent of the cases.

Public Procurement

The Ministry of Finance and Economic Management (MFEM) was established under the MFEM Act and provides guidelines for public procurement. The powers exercised by Ministers and senior public servants are dictated by law, policy and procedures such as the MFEM Act. In practice authority can be delegated. Ministerial involvement in contracts depends on the levels of delegated authority and the size and sensitivity of the contract.

There are administrative checks and balances on decisions of individual members of the Executive, however some Ministers ignore established policy and processes, and make individual decisions without adequate transparency. A recent example is the Prime Minister, who presented a verbal submission to Cabinet for a large ($3 million) loan approval, bypassing normal documentation and processes.

The Minister of Finance is required to present the budget to Parliament after the Budget Committee completes consultation with each Ministry on the areas of priority.

Rules for public procurement require competitive bidding for all major procurements, however procurement rules are followed with varying degrees of compliance. The rules for public procurement are contained in the Government's Financial Policies and Procedures Manual (released in 2002) and are authorised by Section 63 of the MFEM Act. The Manual is not easily accessible to the public.

The Procedures Manual does not require for procurements decisions to be made public. This may happen at the discretion of the tendering Ministry, but in practice it doesn't happen often. Procurement decisions must be documented and made available to MFEM and Audit on request. The Manual does have a clause covering conflict of interest for anyone intending to supply goods and services to Government.

Civil Society

Civil society in the Cook Islands is made up of a range or organisations including the media (print, radio and TV), the *aronga mana* (traditional leaders), sports groups, religious groups, the private sector, community groups and other NGOs.

Media

Freedom of the press is guaranteed in the Cook Islands Constitution and there is no overt Government censorship of the media, however there is insufficient spread of media ownership.

The media is the only tool to get information to the public. Print, TV and radio are important, however there is a media monopoly with one family company owning the only TV licence and several print media companies.

There are several independent newspapers in the Cook Islands—the *Cook Islands News* (*CIN*), a privately owned daily, is the oldest newspaper and has been instrumental in investigating suspected corruption. The *CIN* has been effective in raising questions about conflicts of interest of public servants and double dipping by politicians. It carries detailed articles on corruption and regularly covers the views of Government critics. The level of investigative journalism at *CIN* has increased significantly in recent years and it is now considered to be a good source of factual information.

The other company, Elijah Communications, publishes the *Cook Islands Herald* (weekly) and the *Independent* (monthly). This company also owns Cook Islands Television, a former Government-owned TV station that was privatised in 1996. The Director of Elijah is closely connected to the Prime Minister and his advisers. A significant issue for media independence is that ownership of major media services is concentrated in one family.

There is no Code of Ethics for journalists in the Cook Islands and no process to allow the public to complain about media content, except through letter to the editor.

Traditional Organisations

The House of *Ariki* and *Koutu Nui* are the main organisations that provide traditional cultural advice on public life. These organisations are not subject to the NIS and currently have no role in anti-corruption initiatives.

The House of *Ariki* (chiefs) is made up of traditional leaders and occasionally provides consultation and advice to Parliament. Its functions as described under the Act are to consider matters relative to the welfare of the people of the Cook Islands as may be submitted to it by Parliament for its consideration. In reality, the House is rarely consulted on significant issues, and provides little advice to Parliament, most of which is ignored. The *Ariki* have little political power, yet it costs approximately $150,000 to support the House of *Ariki* and to administer two meetings a year. Funding and staffing are subject to external review and audit. However, the *Ariki* do not try to influence voting and bribery is uncommon. Other than Audit review, no anti-corruption measures are applied to members.

The *Koutu Nui* was established in 1972 to provide for a forum for *kavana, mata'iapo* and *rangatira* (sub-chiefs) to meet in an effort to build up political support from traditional leaders other than *Ariki*. The *Koutu Nui* makes recommendations relating to customs and traditions to the Parliament. It is made up of *mata'iapo* and *rangatira* of Rarotonga and usually meets monthly. Deliberations and decisions of these organisations are generally available to the public and the media. Currently, the *Koutu Nui* tries to maintain political independence, and keeps a low profile in the political environment. The current President believes that the *aronga mana* should not be involved in politics.

Private Sector and NGOs

The private sector in the Cook Islands has grown significantly in the last 30 years, mostly through the tourism, retail, fisheries and black pearl industries. The Cook Islands' GDP growth is the highest of the small island states in the Pacific. While a number of Cook

Islanders are employed in the private sector, 'big business' is owned mainly by non-Indigenous people. There is a public perception that the private sector is made up of foreigners who are exploiting the Cook Islands to make lots of money. There were also claims that big business has created monopolies that keep prices of retail goods high and adds to the high cost of living.

Public groups do have some access to information and documents from public authorities, and public authorities generally cooperate with civil society groups. Some citizen's groups undertake active campaigns against corruption. The Group for Political Change raises issues through talk-back radio, organises protest marches and keeps the public well-informed on issues of corruption and lack of transparency issues. The Cook Islands Business and Professional Women's group also raise issues and make submissions. The Cook Islands Association of Non-Governmental Organisations (CIANGO) also has a key role in debating issues. However, these citizen's groups receive little response from Government in terms of immediate and effective policy change.

Civil society groups also include religious groups, which have a strong and effective influence in the community. The Religious Advisory Council has members from a number of denominations in the Cook Islands. Occasionally, Government establishes task forces with defined functions to act in special advisory capacities. Some examples of this are the Action Group chaired by the Chamber of Commerce as a response to world events following the tragedy of 11 September 2001 and its potential impact on the tourism industry, and the recent Immigration Review Committee headed by the Chair of the *Koutu Nui.* Until recently, the churches have been silent on corruption issues, as most of them rely on Government for significant funding. Likewise, the sports organisations receive significant Government funding from MPs' contingency funds. The Religious Council recently raised questions about the granting of a 12-month residency permit to a person who has a criminal record.

Sports organisations in the Cook Islands play a significant role in civil society and have large memberships, especially popular sports such as rugby, netball, tennis, soccer, basketball, canoe paddling, and volley ball. Many sports codes are represented and the Cook Islands is also a member of the Olympic Committee.

The Cook Islands Trustee Companies' Association, comprising the six trustee companies in the Cook Islands, acts as a liaison between Government and the offshore financial services industry. However, these and other agencies in the private sector and the Chamber of Commerce have not adopted measures to discourage their members from corrupting public officials. Since the change to privatisation and outsourcing of goods and services in 1995/6, the opportunities for corruption seem to have increased.

Apart from the Group for Political Change (which has a political focus), there are no NGOs with programs specifically related to corruption or good governance—there is no Transparency International organisation such as those that exist in Vanuatu and Papua New Guinea. While good governance training is occasionally available to public servants, there is no equivalent training available to NGOs. Thus, there is a need in the Cook Islands for more anti-corruption and good governance training and awareness programs.

Local Government

The Cook Islands Government is committed to sustainable outer islands development and governance. Devolution of power to local government levels is an integral part of national governance. Until recently, political and economic power was heavily concentrated in central government on Rarotonga. As part of the reforms of 1996/7, responsibilities for goods and services have been devolved to local government in the outer islands.

Through consultation and appropriate legislation, central government continues to devolve greater authority and responsibility to the Islands Councils. It is also providing capacity training to improve the capacity of Island Councils to manage their own resources. Infrastructure development in the Outer Islands such as harbour development, airport runway upgrades, water and roads upgrades, health clinics and education facilities are supported mainly by donor-funded projects. Central Government allocates approximately

14.7 per cent of the total budget to cover operating expenses and capital expenditure. (Cook Islands Government website)

In reviewing Central Government's role in the outer islands, the Political Review Commission found that the role of Government Representative (GR) has outlived its usefulness and that people in the outer islands think the role should be abolished. Earlier studies of the Cook Islands system of local government have documented the earlier shift of functions to central government, and since 1997 another shift of power back to the Island and *Vaka* Councils. The first election of Mayors and Island Councillors under the new Outer Islands Local Government Act was held in 1997.

While there is a lot of support for devolution, the Commission noted the need to establish a rigorous financial accounting and auditing system. It was noted that a code of ethics and a system to ensure accountability is also needed, however this had not been achieved in many islands. There are no rules and disclosure provisions on nepotism, conflict of interest, gifts and hospitality at local government level, but as these rules don't exist at national level this is only to be expected. The Commission therefore recommended that a Leadership Code be established and applied to mayors and CEOs, and that Island Councils' accounts should be subject to annual independent audit. The Audit Office actively audits these accounts on a rotational basis.

The Commission had reservations about implementation of the Rarotonga Local Government Act 1997, since the three *Konitara Vaka* (*Vaka* Council) would be expensive and greatly increase the public payroll with an additional 60 people to pay. Thus, it suggested reducing the number of *Konitara Vaka* to one. It also found the purpose, powers and functions to be confusing and contradictory, and recommended that elections be deferred to enable further consideration of the role of *Konitara Vaka*. However, this did not happen.

Government has not announced an anti-corruption strategy with a timetable for implementation by local government, and public servants at the national level don't perceive a need to publicise their anti-corruption activities.

Anti-Corruption Activities

Overview of Government's Reforms

As stated previously, since 1995 the Cook Islands Government has undertaken a range of reforms to address corruption and good governance issues. This culminated in a suite of anti-money laundering legislation in June 2003.

Corruption is defined by Transparency International as 'the misuse of entrusted power for private benefit'. There are differences among and within countries about what counts as corruption. There are also differences between law, traditional expectations and public opinion.

The Cook Islands also has an offshore financial services sector that allegedly presents opportunities for corrupt activities. Until June 2003, administration and regulation of the offshore industry was carried out by the Commissioner for Offshore Financial Services. The new legislation affecting the offshore banking industry is being implemented to bring the Cook Islands industry into line with international standards. These changes have been made as a result of significant pressure from the OECD's Financial Action Task Force (FATF), and donor countries such as New Zealand and Australia.

The Financial Action Task Force (FATF)

The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental body whose purpose is to develop and promote policies, both at national and international levels, to combat money laundering and terrorist financing. The FATF is a policymaking body that works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

On 22 June 2000, the Cook Islands was placed on the FATF List of Non-Cooperative Countries and Territories. (The FATF NCCT List is based on assessment of international money laundering standards with respect to 25 criteria established by the FATF in February 2000).

Since the listing, the Cook Islands has attempted to satisfy the requirements of the FATF by introducing legislation and establishing anti-money laundering structures with some success, however it has not yet been removed from the blacklist.

Progress in bringing the Cook Islands closer to compliance with the FATF's requirements made between August 2000 and February 2003 includes the following moves.

- The Cook Islands enacted the Money Laundering Prevention Act (MLPA) on 18 August 2002.
- An NZAID-funded Financial Intelligence Unit (FIU) Technical Adviser, with experience from the NZ FIU, was appointed to establish the FIU under the auspices of the Money Laundering Authority.
- The Asia/Pacific Group on Money Laundering (APG) conducted a Mutual Evaluation in conjunction with the Offshore Group on Banking Supervisors in October 2001; the ADB conducted a review in September 2001; the IMF conducted reviews in March and November 2001 and December 2002. The APG is the FATF-Regional Style Body for the Asia Pacific.
- The Money Laundering Prevention Regulations 2002 were promulgated in January 2002 with detailed customer identification processes and records retention matters.

Insufficient progress had been made by the Cook Islands due to the demands of responding to the international community, focus on non-regulatory issues, lack of legislative progress and general capacity constraints.

Early in 2002, the Cook Islands made a commitment under the OECD Harmful Tax Practices Initiative to cooperate to improve the transparency of its tax and regulatory systems and establish an effective exchange of information with OECD countries.

The FATF did not clarify its main concern, which was the risk posed by 'shell banks' established under the offshore regime, until July 2002. A 'shell bank' is a bank that does not establish a physical presence in its country of incorporation and is not subject to any form of supervision, consolidated or otherwise, of its activities in line with international standards.

The FATF sought confirmation in February 2003 seeking confirmation that the Cook Islands Government would

- adopt a comprehensive legal framework to combat money laundering
- commit to implement a comprehensive legal framework to combat the financing of terrorism
- commit to implement international standards relating to the regulation of domestic and offshore banks
- prevent 'shell banks' from operating from the Cook Islands
- provide evidence that the Cook Islands administrative authorities are providing effective cross-border cooperation with other jurisdictions and there are no restrictions on their ability to do this
- actively and effectively participate with the IMF technical assistance and assessment programs.

In order to address the FATF concerns, the Cook Islands requested that the IMF conduct a diagnostic mission; this took place in March 2003. Following the IMF review, the former Deputy Prime Minister presented a suite of Anti-Money Laundering (AMF) legislation to Parliament on 7 May 2003. These various acts came into force in June 2003.

The AML suite of legislation addressed FATF concerns and included

- The Crimes Amendment Act 2003
- Proceeds of Crime Act 2003
- Mutual Assistance in Criminal Matters Act 2003
- Extradition Act 2003
- Financial Transaction Reporting Act 2003
- Financial Supervisory Commission Act 2003
- International Companies Amendment Act 2003
- Criminal Procedure Amendment Act 2003
- Banking Act 2003.

More detail on this legislation is available in Appendix 4.

The Financial Supervisory Commission (FSC)

The Board of the Financial Supervisory Commission (FSC) was appointed on 23 June 2003 comprising two lawyers (one of whom previously established the first offshore bank in the Cook Islands), a former Deputy Governor of the Reserve Bank of New Zealand, and two local businessmen.

The FSC has held monthly meetings since July 2003 to determine the nature and scope of the work it is required to undertake under new legislation and to consider the resources available. In September 2003 the Board appointed a Commissioner who was formerly the Banking Regulation and Supervision Advisor of the Pacific Financial Technical Assistance Centre (PFTAC).

The FSC collects registration, renewal and license fees estimated to total $1.7 million in 2003/04 and has an operating budget of approximately $600,000.

While the FATF Asia Pacific Review Group has indicated it is pleased with the progress of the AML suite of legislation introduced in June 2003, the existence of 'shell banks' in the Cook Islands remains a concern to the FATF. The FATF is waiting to see how quickly the Cook Islands implements the new legislation and regulations, and the FSC has plans to ensure that 'shell banking' effectively ceases to exist within 12 months of the Banking Act coming into force.

In February 2003, the Former Deputy Prime Minister and Minister of Finance created the 'Anti-Money Laundering and Counter-Terrorist Financing Working Group' (the Working Group), which included representatives of banks, trustee companies and relevant Government agencies. Its purpose is to develop strategies to ensure that the Cook Islands is de-listed by the FATF as soon as possible. However, since the former Minister of Finance resigned in November 2003, there has been no indication from the new Minister of Finance whether the Working Group will continue.

In October 2003, it was reported that some offshore banks were reviewing their operations in the Cook Islands after the new legislation governing licensed financial institutions was introduced in June 2003. This legislation was brought in to ensure that the industry complies with international standards in an attempt to help remove the Cook Islands from the OECD's blacklist.

Other Anti-Corruption Strategies

In addition to making reforms to the offshore and onshore financial services sector to minimise corruption, there is a need to reform the public service sector to prevent corruption. The Political Reform Commission (1998) recommended that a Leadership Code be introduced to apply to the Prime Minister, other Ministers, members of Parliament, HOMs and board members of Government-owned corporations and bodies, and persons appointed by the National Appointments Council.

The present Government conducted its 1999 election campaign on the basis of a number of transparency reforms including a Code of Conduct. A Bill was drafted (in 2002) covering conflicts of interest and asset disclosure requirements, however the draft bill met resistance from HOMs (and MPs) and has been shelved.

Members of Cabinet are required to respond to questions from opposition party members during Question Period in Parliament, however with few, very short sittings over the past three years (some lasting only two days), there is no time for questions. Government has effectively silenced the Opposition.

The Cook Islands Government is a member of the ADB OECD Anti- Corruption Initiative for Asia-Pacific, which agreed in 2000 to develop a regional anti-corruption compact to promote cooperation to combat corruption both in terms of prevention and enforcement. A draft Action Plan was finalised in October 2001 by representatives of interested governments, civil society, business organisations and the international donor community.

The global Action Plan was endorsed by governments, including the Cook Islands, in November 2001. The 3 Pillars of Action are: developing effective and transparent systems for public service; strengthening anti-bribery actions and promoting integrity in business operations; and supporting active public involvement. The Solicitor General, Crown Law Office is the main contact in the Cook Islands, however little information has been shared and there has been no consultation with the community.

In 2000, the Government established an Anti-Corruption Committee (with five members including the Secretary of Finance, and chaired by the Solicitor General). While the Chair attends international meetings and reports on the Cook Islands Anti-Corruption Strategy (which has been adopted by Cabinet), people in the Cook Islands know little about the strategy. There has been no public consultation on the strategy, thus awareness of the strategy and initiatives is minimal.

Discussion of Key Issues

The National Integrity System (NIS)

The Cook Islands NIS is affected by old habits, family ties, culture and tradition. The political and social hierarchy ensures that people obey their superiors and political bosses. This principle operates in families, villages, churches and the public service. One of the biggest problems is patronage, or giving jobs, contracts and other favours as payback for previous favours, or in the hope of future favours, rather than on the basis of merit. In addition, electorates are defined on '*tapere*' (or extended family) lines, where the voting population lives on family land and is likely to have a blood relationship to the candidate. Family members living as neighbours are likely to feel pressure to support a blood relative in politics.

The selection process for MPs is ineffective, as candidates are selected not on merit in terms of education, or whether they have good governance and leadership skills, but on the basis of church attendance, roads and drainage maintenance, provision of food for community celebrations, participation in social functions and local popularity. These criteria do not necessarily select political candidates with the right mix of governance skills, values and experience that should be required. Serving as an MP involves managing national issues and analysing, evaluating and debating parliamentary bills and reports, all of which requires complex skills.

Because the Cook Islands NIS is currently quite fragmented, some people in the focus groups indicated that there is a need for an Independent Commission Against Corruption (ICAC). This would be an umbrella organisation established to protect the public interest, prevent breaches of public trust, develop a public service code of conduct, and guide and monitor the conduct of public officials. It could also develop a Leadership Code of Conduct for members of Parliament.

The Commission would have significant powers and discretion to expose corruption through investigations which could include public hearings; prevent corruption by giving advice and developing resistance to corrupt practices in public sector organisations; and educate the public sector and the community about corruption and the role of the ICAC. These functions would expose and minimise corruption in the public sector. The ICAC would be a public authority independent of the government of the day, funded independently from international sources, and accountable to the people of the Cook Islands through the Cook Islands Parliament. The ICAC could be administered in a manner similar to the High Court judges. It is suggested that it could be made up of three independent persons (including people living outside the Cook Islands) appointed to monitor corruption in the Cook Islands. Once established, it could possibly operate in other small Pacific countries such as Niue and Tokelau.

With a dwindling population and public service (although with an election looming politicians are again increasing the size of the public service), a greatly reduced tax base and government budget, and many government functions now privatised, the government service system has been reduced. However, the political structure and associated high governance costs have not been reduced and remain 'expensive, excessive and exploitative' (Political Review Commission, 1998).

Effectiveness of Government Anti-Corruption initiatives

Although Government has put in place a range of anti-corruption initiatives, it has not publicly announced an anti-corruption strategy and timetable for implementation. Some initiatives have been implemented, including the Anti-Money Laundering legislation, the Fraud Investigation Unit and the Financial Supervisory Commission, however much more is still required. The strategy is currently focused on the national and international levels, with key public servants frequently travelling to international conferences, however there is little awareness of the strategy at the local level. The Fraud Investigation Unit that has recently been established is responsible for monitoring fraud and corruption. Whilst these stand-alone agencies address corruption abuse issues, there is no one independent investigative or watchdog agency such as an ICAC, thus activities are fragmented.

The Anti-Corruption Committee appointed by Cabinet in 2001 provides reports to regional meetings of the OECD and the ADB anti-corruption initiatives. However, this Committee does not make its reports available to the public (other than on the MFEM website, which is not accessible to most Cook Islanders) and is not independent. The Committee does not report publicly to the legislature on the general scope of their work and there is no mechanism in place for public complaints.

Moreover, whilst there are some useful mechanisms in place such as PERCA, the institutional strengthening program, and the Anti-Corruption Plan for the Cook Islands, these efforts are often frustrated by lack of full implementation, lack of political will and indirect or direct political interference. Implementation is also problematic because the public has not been fully informed of the Anti-Corruption Plan.

Greater education is therefore of key importance. Effective public awareness programs would also be critical to the on-going viability of any capacity building in Government. This could be achieved by application of successful public awareness strategies employed by OECD countries in the region providing technical assistance in this area.

Greater political motivation is also vital. For instance, the Australian Government provided training on Standing Orders for Parliamentarians and Parliamentary staff in 2003 which was poorly attended at the Parliamentarian level, and the Government's National Development Forum in November 2003 was also poorly attended by members of Parliament. Most MPs are not engaging in forward-looking, anti-corruption strategies.

Overseas Aid – Donor-Supported Anti-Corruption Initiatives

Overseas donor governments and organisations are taking steps to guard against cronyism, favouritism and fraud. For instance, NZAID prefers to fund projects through NGOs or to fund its own projects directly. New Zealand established a new development assistance program with the Cook Islands in May 2001. The program aims to strengthen governance and encourage sustainable economic development as well as improve the delivery of basic services. NZ aid for 2003–04 will concentrate on outer islands development, education and human resource development, strengthening governance and encouraging sustainable economic development. In tandem with Government's key areas of development, aid for 2003/04 will concentrate on outer islands development, education and human resource development (Cook Islands Government website).

NZAID provides the Cook Islands with project support of $6.2 million and is the largest bilateral donor to the Cook Islands, followed by Australia. In the 2000/01 financial year, NZ aid accounted for 53 per cent of total bilateral aid to the Cook Islands. The Australian Agency for International Development (AusAID) provides $1.5 million, and other aid comes from a range of agencies including the ADB, the Canada Fund, the South Pacific Regional Environment Program, the UN Environmental Program and the Food and Agriculture Organization. Aid flows in recent years have averaged $10 million (Cook Islands Government website).

Also, in June 2000 the Cook Islands signed the Cotonou Agreement, paving the way for important financial and technical assistance from the European Union and its Asia, Caribbean and Pacific Group, and entitling it to access the 9th European Development Fund (2001–05) of NZ$5 million. In 2003, $1 million of EU funding is being applied to assist the outer islands in the areas of health and education (Cook Islands Government website).

In terms of the role played by other agencies, there are no multilateral donor agencies based in the Cook Islands and the only bilateral donor agency that has a presence is NZAID, which is based in the High Commission. They have supported anti-corruption activities through a secondment to the FIU, assistance from the NZ Serious Fraud Office when investigating major cases, other technical assistance, and by conducting good governance workshops for senior public servants. Multilateral donor agencies that have provided support and technical assistance in developing anti-corruption strategies are the ADB, IMF and the Pacific Forum Secretariat.

Future Research and Donor Support

There is an urgent need for an independent investigative watchdog agency. More donor-supported research is needed to develop and implement options for establishing an ICAC to coordinate and implement the Cook Islands Anti-Corruption Strategy and Action Plan. Once established, this organisation could provide a model for other small island states and eventually operate at a sub-regional level.

The ICAC would be responsible for serious fraud investigations; negotiating and finalising a Leadership and Public Service Code of Conduct; implementation of the Anti-Corruption Strategy and Action Plan; public education and awareness of anti-corruption issues and initiatives; coordination of specialised technical assistance; secondments and exchanges of senior public servants; and joint initiatives with larger national integrity systems such as New Zealand and Australia.

There is also a need for donor-supported research, independent assessment and monitoring of the offshore financial services sector, to ensure that the Cook Islands is removed from the FAFT blacklist and future activities do not further harm the reputation of the Cook Islands. There is also a need for research into the Cook Islands offshore financial services sector to determine trends and what benefits the industry provides for local people in terms of employment and the economy

Further research could focus on developing successful strategies to engage members of Parliamentarian in anti-corruption activities. The Standing Orders training provided by Australia should be encouraged as routine training for Parliamentarians. It would appear from the Cook Islands' recent experience that initiatives of this nature would most likely fail without external funding support and independent driving forces. More in-depth assessment of the abuse of Ministerial actions and provision for automatic legislative mechanisms to prevent the abuse of Ministerial discretions across the board would be beneficial for the Cook Islands.

Donor support research for anti-corruption initiatives should also focus on developing strategies to build the capacity of key Government Ministries in terms of both quantity and quality of employees. This is most evident in the frustration of the Audit Office and the Police, who have recently called on the assistance of the New Zealand Serious Fraud Office for guidance in investigation and prosecution of acts of bribery and corruption. Building and maintaining the capacity of Crown Law, the Audit Office and the Police are absolute requirements of any donor-based anti-corruption initiatives to assist the Cook Islands over the next five years.

Priorities and Recommendations

Priority areas in which activities need to be undertaken include the following.

- Establish an effective watchdog agency (independent commission)
- Establish a leadership code of conduct
- Legislative review and review of QR and Ombudsman's role
- Develop new NIS model for small island countries
- Anti-corruption education and awareness
- Institutional strengthening through capacity building
- Facilitation of integration of the NIS
- Investigation of decentralisation/urbanisation and youth unemployment.

It is recommended that

- an Independent Commission Against Corruption (ICAC) be established to protect the public interest, a role to facilitate the integration of the NIS, with functions to include the powers to prosecute, prevent breaches of public trust and guide the conduct of public officials across the board
- the ICAC be administered in a manner similar to the High Court judges. It could be made up of three independent persons (possibly to include some members living outside the Cook Islands) appointed to monitor corruption in the Cook Islands. Once established, it could be expanded to cover other small Pacific Island states such as Niue and Tokelau

- a Leadership Code of Conduct for MPs and a Public Service Code of Conduct be finalised and adopted by Parliament
- the Government review key legislation (such as the Public Service Act, Civil List, Electoral, PERCA, MFEM, Justice and Crown Law) to strengthen compliance issues
- the Civil List and Electoral and MFEM Acts be amended to include specific and meaningful fines and penalties to deter abuse. Currently there is a lack of disincentive for politicians and public officials to engage in illegal or unsound practices
- the role of Ombudsman be reconsidered and replaced by a Human Rights Commissioner
- the role of Queen's Representative be reconsidered and incorporated into the role of the Chief Justice's or the NZ Governor General
- a new model for a national integrity system for the Cook Islands be established to enable it to be part of larger systems, including partnership or 'twinning' systems with other island countries and the New Zealand and Australian NIS
- international aid donors facilitate exchanges or secondments of relevant senior Cook Islands public servants (for example, Human Rights Commissioner, Police, Crown Law, Finance/Treasury, Audit) with their counterparts in other countries such as New Zealand and Australia
- a Review Commission be established to assess the social, economic and political impacts of recent legislative reforms on the NIS.

Appendix 1 – Questionnaire

Executive

Can citizens sue government for infringement of their civil rights?

Formal or legal position

Yes, citizens can sue government for infringement of their civil rights pursuant to the Crown Proceedings Act 1950.

What actually happens

In practice, however, very few have sued Government for infringement of civil rights. Suing the government can be a very expensive exercise and as most citizens cannot afford the high legal fees few have exercised their rights. Most citizens, however, probably do not know they have rights to sue the government.

There have, however, been two successful civil suits of note against the Cook Islands Government in recent times. One case involved an action for damage to private property following the breaking and entering of an escapee. The other successful case involved the employment issue of unlawful dismissal. Neither case, however, has resulted in payment of any significant monetary compensation from the Cook Islands Government to the successful plaintiffs.

Are there procedures for the monitoring of assets, including disclosure provisions for cabinet and other government ministers?

Formal or legal position

No, there are no procedures for monitoring of assets, including disclosure provisions for Cabinet and other Government Ministers and other high-level officials.

What actually happens

The present Government conducted its 1999 election campaign on the basis of a number of transparency reforms including a draft Code of Conduct Bill for parliamentarians and high-level public servants.

The Code of Conduct Bill that was prepared for Parliament covers conflict of interest and asset disclosure requirements for spouses and dependent children. Compared to the New Zealand equivalent Code of Conduct for public servants, the Code Of Conduct Bill was viewed as too invasive.

Accordingly the Government encountered opposition from Heads of Ministries (HOMs, or senior public servants) in terms of its applicability to them. HOMs provided a simplified draft Code of Conduct, which has not been adopted. Cabinet has deferred the Code of Conduct Bill for future consideration.

Are there any differences in procedures and disclosure provisions between elected ministers, appointed ministers and high-level officials?

Formal or legal position

No, there are no differences in procedures and disclosure provisions between elected ministers, appointed ministers and high-level officials.

What actually happens

N/A

Are there conflict of interest rules for ministers and high-level officials?

Formal or legal position

Yes, there are conflict of interest rules contained in the Cook Islands Government Financial Policies and Procedures Manual released in 2002.

What actually happens

In practice, there is a variable degree of compliance and it is very difficult to monitor and enforce. For instance, the Audit Office has found indications of sole sourcing for supplies without tendering processes. This resulted in the Director of Audit issuing a sample tender process in December 2000.

Are there rules and registers concerning gifts and hospitality for ministers?
For high-level officials?

Formal or legal position

No, there are no rules and registers concerning gifts and hospitality for ministers or high-level officials. There are no Standing Orders that cover gifts either.

What actually happens

N/A. Although there are no rules or registers in existence at this time, the proposed Code of Conduct Bill, when enacted, will provide for these disclosures. Section 7 of the Code of Conduct Bill will require a Member of Parliament to provide to the Ombudsman a declaration disclosing the directorships or other similar positions held together with the assets and interests of the Member of Parliament in so far as those positions, assets and interests may be relevant to the duties of that public office to which the Member of Parliament is appointed.

If so, are these registers kept up to date?
By whom?
Have they legal powers to enforce disclosure?
Have they staff to investigate allegations?
What powers of sanction are in place against ministers who are also parliamentarians?
Have they ever been invoked?
What powers of sanction are in place against ministers who are not parliamentarians? Have they ever been invoked?
What powers of sanction are in place against high-level officials? Have they ever been invoked?

Formal or legal position

N/A, as there is no legal requirement for a register of gifts to be maintained.

Are there restrictions on post ministerial office employment?
By ministers?
By high-level officials?

Formal or legal position

There are no restrictions on post Ministerial office employment.

What actually happens

There are instances of people being dismissed for misconduct then being re-employed.

Are members of the executive obliged by law to give reasons for their decisions?

Formal or legal position

Yes, the Prime Minister and members of Cabinet are required to respond to the questions from the opposition party members during 'Question Time' in Parliament. They are also subject to regular questions from the media. They may also be required to respond to letters from citizens and their own constituents.

What actually happens

In practice, however, the question period in Parliament has been ineffective. Over the last two years, as a result of several coalitions and changes in government, Parliament sittings have been extremely short, some lasting only two days. These short sessions do not allow for question time, so in effect the Executive does not have to justify its decisions at all.

Do Ministers or equivalent high-level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?

Formal or legal position

Yes, the powers exercised by Ministers and high-level officials are dictated by general law, policy and procedures such as the Ministry of Finance and Economic Management Act 1996 and the Public Service Act. Specific licensing powers are contained in the Gaming Act 1967, the Transport Licensing Act 1967 and the Marine Resources Act 1986.

What actually happens

In practice authority may be delegated. The nature and degree of delegation varies from department to department. Ministerial involvement in contracts depends on the levels of delegated authority, the size and sensitivity of the contract.

Are there administrative checks and balances on decisions of individual members of the executive?

Formal or legal position

Members of the Executive must operate within the policy framework and the specific administrative rules and regulations of the government for activities such as accounting, audit and evaluation, contracting, financial management. They must also conform to rules and regulations of individual departments and agencies.

What actually happens

Anecdotal evidence (newspaper articles) and the continuous work of the Audit Office in detecting inappropriate appointments of Members of Parliament in consultant capacities contrary to the oath of office resulting in Parliamentary seats being declared vacant, strongly suggests that in practice, there is a varying degree of compliance.

Legislature

Is the legislature required to approve the budget?

Formal or legal position

Yes, the Parliament is required by Ministry of Finance and Economic Management Act to approve the annual budget.

What actually happens

Prior to the beginning of the fiscal year, the government, through the Ministry of Finance and Economic Management (MFEM), presents the Budget Policy Statement, which provides an overview of proposed areas of priority for each Ministry. Subsequently each Ministry meets with the Budget Committee to put its case regarding outputs contained in the Budget Policy Statement and the amounts to be included in the Appropriation Bill for that Ministry. The formal provisions are not always followed.

Are there significant categories of public expenditure that do not require legislative approval?
(Which departments does this involve, what is their expenditure and what percent does this represent of the government's annual expenditure?)

Formal or legal position

All major categories of public expenditure require legislative approval.

What actually happens

N/A

Are there conflict of interest rules for parliamentarians?

Formal or legal position

There are no procedures concerning conflicts of interest for parliamentarians.

What actually happens

N/A

Are there rules and registers concerning gifts and hospitality for parliamentarians?
If so, are these registers kept up to date? By whom?
Have they legal powers to enforce disclosure?
Have they staff to investigate allegations?
What powers of sanction are in place against parliamentarians?
Have they ever been invoked?
Are there restrictions on post legislature employment?

Formal or legal position

There are no rules and registers concerning gifts and hospitality for parliamentarians.

What actually happens

N/A, as there is no legal requirement for a register of gifts to be maintained and there are no legal powers to enforce disclosure. No staff are allocated to investigate allegations.

As there are no procedures governing this area the only mechanism for capturing abuse of conflicts and gifts is by the ex-post facto process of audit of ministry accounts. The audit process may detect a conflict. Improper use of gifts that became assets of a ministry may also be detected by the audit process through an asset register review.

Various sanctions apply to Parliamentarians depending on whether the Crown can bring an action for breach of a criminal offence or other legislative provision. The Police may investigate allegations of violations of the Crimes Act although not all investigations result in prosecution. Examples of sanctions against Parliamentarians include the obtaining of a declaratory judgment in 2002 rendering a Parliamentary seat vacant.

Elections

Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?
Who appoints the Head of the Commission?

Formal or legal position

The Justice Department is the agency responsible for conducting general elections, by-elections and referendums and is regarded as non-partisan.

The Registrar of the Births, Deaths and Marriages is the Chief Registrar of Electors and is appointed by statute (Electoral Act 1998).

What actually happens

The legal position is followed. A Committee on Political Reform was established in 1998. Regarded as a significant watershed in Cook Islands political reforms many of the recommended reforms of the Report remain merely as a paper tiger with much public criticism as a result.

Political Party Funding

Are there rules on political party funding?

Formal or legal position

There are no formal rules governing political party funding.

What actually happens

There is no transparency of political party funding. The Political Reform Committee recommended regulations on political party funding. Those recommendations have not been acted upon. Political parties view themselves as being private organisations with no need to publicly disclose their financial affairs.

Are substantial donations and their sources made public?

Formal or legal position

There are no rules requiring publication of significant donations to political parties.

What actually happens

Donations and their sources are not made public. There is some speculation about certain business interests being associated with certain politicians and political parties, but without public records it is not possible to verify this.

Are there rules on political party expenditures?

Formal or legal position

There are no rules on political party expenditure.

What actually happens

It is not possible to verify how political parties spend their money, as there is no transparency. There have been instances in the past of political parties using funds for improper purposes (for example, payment of airfares for fly-in voters from New Zealand in the 1968 elections) in order to buy votes.

Are political party accounts published?

Formal or legal position

There are no rules requiring publication of political party accounts.

What actually happens

Political party accounts are not published.

Are accounts checked by an independent institution, are they published and are they submitted to parliament?

Formal or legal position

No, there are no rules requiring political party accounts to be checked, published or submitted to parliament.

What actually happens

No institution checks political party accounts.

Does that institution start investigations on its own initiative?
Who appoints the head of the institution?

Formal or legal position

Not applicable, as there is no institution that investigates political party accounts.

Supreme Audit Institution

Is the national auditor general independent?
That is, is the appointment of the general auditor required to be based on professional criteria/merit?
Is the appointee protected from removal without relevant justification?
Is the office of Auditor General adequately resourced?

Formal or legal position

Yes, the Director of Audit is independent. Candidates for Director of Audit must be professionally qualified. The Minister of Finance appoints the Director for a three-year period. The Director can only be removed for exceptional reasons and may not be removed without relevant justification.

What actually happens

Ministries respect the independence of the Audit Office and Director. The present Director has been subjected to indirect political pressure. No auditor general has ever been removed.

The Audit Office is under resourced not only in term of funds, but also in terms of capacity. Auditors tend to be attracted to the private sector.

Are all public expenditures audited annually?

Formal or legal position

Yes, under the MFEM Act 1995–96 there is a requirement for annual audits.

What actually happens

The Director is dependent on information supplied by the MFEM. The lack of provision of the Ministry accounts on a timely basis has held up the Audit Office. As a result, two NZAID funded accountants have been employed on one-year contracts to specifically assist with the Crown accounts. The two NZAID accountants will report to a committee consisting of the Director of Audit, the Financial Secretary and a representative from the Ministry of Finance and Economic Management.

Is reporting up to date?

Formal or legal position

N/A

What actually happens

Auditing of Ministry accounts is behind due to capacity problems within the Audit Office, although the Audit Office itself is on target for its own reporting. The Director's reports are submitted to Parliament quarterly.

Are reports submitted to a Public Accounts Committee and/or debated by the legislature?
Are they acted on by the government?

Formal or legal position

The MFEM Act 1995–96 legally provides for a Public Accounts Review Committee.

What actually happens

Lengthy time delays are often encountered between Reports of the Public Expenditure Committee being tabled and significant debate in the Parliament. The degree of scrutiny is variable although measurement of impact is difficult to gauge as few reports have been acted upon by the parliament.

Are all public expenditures declared in the official budget?

Formal or legal position

All public expenditures must be declared by virtue of the Constitution.

What actually happens

Anecdotal evidence indicates that not all revenue collected by government agencies is accounted for or deposited into government accounts. Also, some aid money is not approved as public expenditure.

Judiciary

Have the courts the jurisdiction to review the actions of the executive (that is, Presidency, the Prime Minister or other ministers and their officials)?

Formal or legal position

Yes, the courts have the jurisdiction to review the actions of the executive. The Police investigate criminal complaints. Crown Law would then recommend if charges should be laid and brought before a court. There is no impediment to initiating a civil case simply because the individual is a public office holder or official.

What actually happens

The judiciary are active in reviewing actions of the executive and public servants.

Are judges/investigative magistrates independent?
That is, are appointments required to be based on merit?
Are the appointees protected from removal without relevant justification?
Are recruitment and career development based on merit?

Formal or legal position

Yes, external Judges of the High Court are independent and appointments are required to be based on merit. A judge may only be removed by Parliament and are protected from removal without justification.

What actually happens

While external Judges of the High Court are appointed based on their merits, local Justices of the Peace appointments are not required to be based on merit. It is not clear what criteria is used to appoint JPs.

Have there been instances of successful prosecutions of corrupt senior officials in the past three years?

Formal or legal position

N/A

What actually happens

The Police investigate complaints and legal proceedings may follow. A Secret Commissions trial against a former high-level official was concluded in November 2003, resulting in a conviction and imposition of a custodial sentence of two and a quarter years. The defendant is currently on bail pending an application for appeal against conviction. Assistance was obtained from the New Zealand Serious Fraud Office in the way of investigative assistance and prosecuting the case. The alleged illicit activity was disclosed through action taken by the then Public Service Commissioner and the audit process under the auspices of the Director of Audit.

Civil (Public) Service

Are there laws establishing criminal and administrative sanctions for bribery?
Are there rules requiring political independence of the civil service?
Are recruitment/career development rules based on merit?
Are there specific rules to prevent nepotism? Cronyism?
(Note: rules discriminating positively in favour of marginalised or minority groups are <u>not</u> included in this description)

Formal or legal position

The Public Service Commission (PSC) has been established by the Public Service Act 1996The Act covers good employer principles and the employment of Heads of Ministries (HOMs) to provide a professional, competent Public Service. It is accountable to the Minister of the Public Service. Recruitment and career development rules are supposed to be based on merit. There are rules requiring political independence.

The Audit Office can provide checks to ensure the employment systems are in place and implemented.

What actually happens

The public does not perceive the Civil Service to be politically independent. There have been numerous instances of lack of transparency in appointments. Also there is a lack of women in senior public service positions.

Nepotism and cronyism, which may result in the appointment of individuals without appropriate skills, qualifications and experience is regarded as commonplace in the absence of documented procedures for appointment.

Whilst the merit principle should apply to recruitment and promotion, this is not always the case. The recent round of appointments of HOMs for 1 July 2003 is a classic example of failure to devise and adopt documented and clear procedures for the appointment of HOMs.

The Public Service Commissioner has identified weaknesses in the devolution of HOM responsibility and is in the process of developing a standardised system for employment.

Are there rules and registers concerning acceptance of gifts and hospitality?
If so, are these registers kept up to date? By whom?
Have they legal powers to enforce disclosure?
Have they staff to investigate allegations?

Formal or legal position

There are no rules and registers concerning acceptance of gifts and hospitality.

What actually happens

N/A

What powers of sanction are in place against public officials? Have they ever been invoked?

Are there restrictions on post-public service employment?

Formal or legal position
There are no restrictions on post public service employment.

What actually happens

N/A

Are procedures and criteria for administrative decisions published (for example, for granting permits, licences, bank loans, building plots, tax assessments, and so on)?

Formal or legal position

The rules for public procurement are contained in the Government's Financial Policies and Procedures Manual 2002.

What actually happens
There is limited publication of procedures for granting of licences and assessments and many public servants are not aware of these policies and procedures. More training of public servants on implementation of rules is required.

Are there complaint mechanisms for public servants and whistleblower protection measures?
Are there means for complaints by members of the public?

Formal or legal position

The Audit Act allows for the non-disclosure of those reporting acts for investigation to provide some protection for whistleblowers. Also, complaints can be filed by public servants and members of the public with the Ombudsman.

What actually happens

Because the Ombudsman is usually a political appointee, few complaints are filed with that office.

Although there is some protection for whistleblowers, there is little guarantee that they will remain anonymous in a society as small as the Cook Islands. There are plans to draft more protections pursuant to the region's anti-corruption plan and the institutional strengthening legislative programme designed to strengthen key legislation such as the Public Service Act, the Ministry of Finance and Economic Management Act and the Public Expenditure Review Committee and Audit Act, all enacted in 1995–96.

Are there administrative checks and balances on decisions of individual public officials?

Formal or legal position

There are no administrative checks and balances on decisions of individual public officials.

What actually happens

As there is no Policies and Procedures manual for the Public Service it is difficult to apply any process for assessment of decisions.

Police and Prosecutors

Is the commissioner of police independent?
That is, are appointments required to be based on merit?
Is the appointee protected from removal without relevant justification?

Formal or legal position

The Commissioner of Police is required to be appointed on merit under the Police Act 1981, reports to the Minister of Police, and may only be removed with cause.

What actually happens

The provisions of the Police Act 1981 are not always followed when recruiting. For instance, anecdotal evidence in newspaper articles in 2000 questions the suitability of the present appointee.

Independence is not always respected due to the smallness of the Cook Islands community and an inherent lack of public confidence in the competency of the Police.

Are public prosecutors independent?
Are there special units for investigating and prosecuting corruption crimes?

Formal or legal position

The functions of public prosecutors are intended to be independent.

What actually happens

There are no special units exclusively for investigating and prosecuting corruption crimes. The Criminal Investigations Bureau (CIB) handles all investigations of serious crimes.

Is there an independent mechanism to handle complaints of corruption against the police?

Formal or legal position

There is no independent mechanism to handle complaints of corruption against the police.

What actually happens

Crimes involving police staff are investigated by Commissioned Officers (Inspectors and above) as directed by the Commissioner.
In the last five years, there have been no reported cases of police officers suspected of corruption being prosecuted, or seriously disciplined or dismissed or cases of corruption within the prosecuting agencies.

Does civil society have a role in such a mechanism?

Formal or legal position

Civil society has no role.

What actually happens

N/A

In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?
Are there any cases of corruption within the prosecuting agencies?
Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?
Is the law applied?
Is private-to-private corruption punishable by law?
Is the law applied?
How many cases of prosecution have been undertaken in the past years?
How many have been successful?
If the number is low, are there other effective measures or other good reasons why the number is low?

Formal or legal position

The Crimes Act 1969 provides for the offences of fraud and bribery.

What actually happens

Private-to-private corruption depends on the definition. There are a number of offences in the Crimes Act, which could potentially apply.

With respect to bribery the law seems to be applied in varying degrees. Whilst investigations are undertaken, prosecutions do not always result and note merely due to lack of evidentiary proof. An example is the lack of action involving alleged bribery by a Minister and full application of the prosecutorial process against a former high-level government official for payments of secret commissions.

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?
Are the rules laid down in documents publicly accessible?
Are there strict formal requirements that limit the extent of sole sourcing?
Are all major public procurements widely advertised to the private sector?
Are procurement decisions made public?
Is there a procedure to request review of procurement decisions?
Can an unfavourable decision be reviewed in a court of law?
Are there provisions for blacklisting of companies proved to have bribed in a procurement process?
Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?
Are assets, incomes and life styles of public procurement officers monitored?

Formal or legal position

The Financial Policies and Procedures Manual (released in 2002) issued under section 63 of MFEM Act provides rules for public procurement. Every Ministry and crown agency has a copy of the Manual. The Manual can be made available for public viewing if requested.

What actually happens

Transactions that are likely to be contestable, or subject to public interest, are required to go through a competitive process. A competitive process is defined to have the following attributes: contestable, transparent, and accountable, at arms length, without favouritism. Certain types and size of transaction require a formal process such as capital projects and assets sales. For example, capital projects exceeding $50,000.00 are required to be put out to public tender, which includes the process of being publicly advertised for 14 days. The Procedures Manual does not refer to the allowance of exceptions.

The procurement procedures require three quotes for purchases under $50,000.00 and three tenders for purchases $50,000.00 and over. There are differing thresholds determined by the nature of the procurement. The one used above relates to capital projects. All major public procurement exceeding $10,000 must be advertised in local media that has wide coverage.

The Procedures Manual does not require that the procurement decision be made public and is at the discretion of the ministry putting out the tender to do so. However, there are strict requirements that the whole process is documented and kept on file for audit verification. This file is also accessible to the MFEM for review on request.

The Procedures Manual does not expressly state that an unfavourable decision can be reviewed in a court of law. However, there is no provision that precludes this action. There are no procedures addressing bribery or blacklisting, however there is a conflict of interest clause. This means that anyone intending to supply goods and services to the ministry cannot be involved with the evaluation of the tenders.

Assets, incomes and life styles of public procurement officers are not monitored.

What actually happens

As the Procedures manual has just completed its first year of operation, it is difficult to gauge compliance. The audit process will disclose the degree of compliance or otherwise.

In the area of sole sourcing the Director of Audit has reported violations.

There are dissatisfactions with the system and there are no decisions that have been reviewed by the courts.

Ombudsman

Is there an ombudsman or its equivalent (that is, an independent body to which citizens can make complaints about maladministration)?
Is the ombudsman independent?
That is, are appointments required to be based on merit?
Is the appointee protected from removal without relevant justification?
Is the office of ombudsman adequately resourced?
Has an ombudsman been removed without relevant justification in the last five years?
Can petitioners complain anonymously if they fear possible reprisals?
Are reports of the ombudsman published?
Does the government act on the ombudsman's recommendations?

Formal or legal position

The Ombudsman is responsible to Parliament. The Ombudsman Act does not provide for appointment based on merit. The appointee is protected from removal without justification.

Anonymity of petitioners is implied in the legislation due to the Ombudsman and staff being required to maintain secrecy.

What actually happens

Government action is selective and depends on a number of factors including public opinion and support for the issue, need for consultations, governmental priorities, legal considerations, timing (proximity to elections), complexity and costs of the recommendations. To date the public perception is that the Office of the Ombudsman has been ineffective in addressing complaints.

Investigative/Watchdog Agencies

Are there special investigative or watchdog agencies?
What are their main responsibilities?

- **investigation**
- **prevention**
- **education and awareness**
- **prosecution?**

Are they independent?
That is, are appointments required to be based on merit?
Are appointments generally based on merit?
Are the appointees protected from removal without relevant justification?
Are they adequately resourced?
Are their reports published (other than when criminal charges are pending)?
Are they acted on by the government?
Do they report publicly to the legislature on the general scope of their work?
Can people complain to the agency without fear of recrimination?

Formal or legal position

The Public Expenditure Review Committee and Audit (PERCA) is intended to provide a 'watchdog' role through the pursuit of legitimate issues of public concern that affect the management of public funds. Issues relating to the resourcing of PERCA and its reports are noted above under the discussion pertaining to the Supreme Audit Institution. There is provision for PERCA to report publicly to the legislature on the scope of their work and people can complain to the agency.

An Anti-Corruption Committee (A-CC) was also appointed by Cabinet in August 2001 and consists of the Solicitor-General, the CEO of the Office of the Prime Minister and members of the Money Laundering Authority (now defunct through legislative change) although the individuals still sit on the A-CC.

What actually happens

PERCA reports have a significant impact on the public but appear to have a limited impact at the parliamentary level. PERCA's role is not fully understood by the public, therefore complaints are minimal. The public is also not convinced that they can complain without fear of recrimination.

Appointments of members to both PERCA and the A-CC are made by Ministers, and are often political appointments. Therefore these committees are not considered to be independent.

The A-CC fulfils mainly administrative functions in providing reports to a regional meeting of the ADB/OECD Anti-Corruption Initiative. The Committee has only recently publicised its stock take on the MFEM website following prompting from the public, however many people do not have access to the internet.

The effectiveness of the present Anti-Corruption Committee is questionable as there has been no consultation with the public despite presentation of the country plan to the regional meetings of the ADB/OECD on this initiative.

Media

Is there a law guaranteeing freedom of speech and of the press?
Is there censorship of the media?
Is there a spread of media ownership?
Does any publicly owned media regularly cover the views of government critics?
Have journalists investigating cases of corruption been physically harmed in the last five years?
Does the media carry articles on corruption?
Do media licensing authorities use transparent, independent and competitive criteria and procedures?
Are libel laws or other sanctions (for example, withdrawing of state advertising) used to restrict reporting of corruption?

Formal or legal position

Freedom of the press is guaranteed in the Cook Islands Constitution. There is no direct government censorship of the media and no specific media licensing authorities. Defamation laws may be used if reports are deemed to have violated the law.

What actually happens

It is difficult to determine in isolation whether libel laws or other sanctions are used to restrict reporting of corruption. However, an accumulation of anecdotal evidence would strongly suggest there have been attempts to muzzle the media.

Government uses other processes to coerce the media and vice versa. Some media ownership is concentrated in one family in the Cook Islands, giving rise to the perception that the reporting from that particular media group is tainted with the political views of its

reporters. The *Cook Islands News* is regarded as having a greater degree of independence in providing a balanced view of events.

Ministerial media releases usually provide a different range of views to the private media and are often regarded by the public as 'spin doctoring'. Radio talkback provides a useful avenue for airing issues and gives a raw measurement of public perception of current events. Callers from all walks of the community may contribute. Radio talkback provides some anonymity for the caller and allows continuous public debate on topical issues including input from Members of Parliament.

Civil Society

Does the public have access to information and documents from public authorities?
Do the public authorities generally cooperate with civil society groups?
Are there citizen's groups or business groups campaigning against corruption?
Are there citizen's groups monitoring the government's performance in areas of service delivery, and so on?
Do citizen's groups regularly make submissions to the legislature on proposed legislation?
Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

Formal or legal position

Access to information can be obtained through a range of legislation.

The introduction of new legislation involves various consultative requirements and processes.

What actually happens

Large amounts of information concerning government activities, regulations and procedures are increasingly available but there still needs to be considerable improvement. Public authorities cooperate with civil society groups in varying degrees.

Citizens' and business groups do undertake specific anti-corruption campaigns. Groups such as the Group for Political Change and the Chamber of Commerce have raised specific issues such as the granting of a 12-month residency permit to a person with a criminal record. Citizens groups who monitor government performance are currently receiving little response from government in terms of immediate and effective policy change. Actions requested by the Group for Political Change (GPC) 12 months ago calling for an early general election following constantly changing coalitions have not been addressed in a manner satisfactory to the public.

The Environment Bill is another example of public consultation. Due to the complexity of the issues involved, the public consultation process includes the employment of a consultant to review public concerns.

The education system is not expected to pay attention to the issues of bribery and corruption, and it does not. However, some change can be expected in the future due to the recent Secret Commissions conviction and Ministerial granting of a 12-month work permit to an individual where it is alleged that the permit was granted contrary to the public perception to refuse permits to convicted criminals and where 'security for costs' in the sum of NZ$150,000.00 are alleged to have been paid to the account of a political party. The granting of this particular work permit resulted in public outcry, culminating in a public rally on 12 December 2003. As a result of the outcry, the political party has since returned NZ$100,000 to the individual, while retaining $50,000 for 'legal fees'.

Traditional Organisations

To what extent are traditional organisations, such as councils of chiefs, subject to the National Integrity System?
And to what extent are they part of the NIS?
Is their funding and staffing subject to external review and audit?
To what extent are they part of the part of the NIS controlling corruption in other bodies?
What anti-corruption measures, formal or informal, do they apply to their own members?
To what extent are their deliberations and decisions open to the public, and the media?

Formal or legal position

The House of *Ariki* is recognised as the main traditional organisation by an Act of Parliament in 1966. As it receives an appropriation from government it is subject to the Ministry of Finance and Economic Management Act 1995–96 and procedures. Accordingly, its appropriation and use of expenditure is audited by the Audit office. Their funding and staffing are subject to external review and audit. Their deliberations and decisions are not open to the public but the media often reports on their decisions. They do not apply any specific anti-corruption measures to their members.

What actually happens

The House of *Ariki* is not open to the public but the public does not see this as a negative as their decisions are confined to cultural advice. Discussions on issues relevant to corruption are aired in public fora with some representatives of the House of *Ariki* often being recognised as the voice of the people and the voice of reason.

Private Sector and NGOs

What measures have private companies adopted to reduce corruption within their own activities?
What measures have private companies, or Chambers of Commerce, adopted to discourage their members from corrupting public officials?
What has the impact of privatisation and outsourcing and increased use of NGOs in service delivery been on opportunities for corruption, and the control of corruption?
What measures have NGOs or peak bodies adopted to reduce opportunities for corruption in their own activities?
What measures have churches adopted to reduce opportunities for corruption in their own activities?

Formal or legal position

There is no public knowledge of formal provisions adopted by private companies or the Chamber of Commerce to reduce corruption. NGOs and churches have also not adopted formal measures to reduce opportunities for corruption in their activities.

What actually happens

The private sector, Chamber of Commerce, NGOs and churches focus their attention on corruption in the public sector (government) and have not recognised a need to develop their own anti-corruption measures.

Recently, however, the Chamber of Commerce and the Business and Professional Women's Association were represented at the ADB/OECD 4th Annual Conference held in Kuala Lumpur, Malaysia (December 2003). Attendance of those delegates was at the request of the conference organisers and motivated by the need for both organisations to develop a process for raising public awareness of anti-corruption issues in small, vulnerable and often isolated economies in the Pacific.

Church leaders through the religious Advisory Council have been outspoken recently regarding Ministerial actions granting a 12-month work permit to a convicted criminal and the alleged acceptance of 'security for costs' of NZ$150,000.00.

Regional and Local Government

Are there, at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post-public office employment?
What public offices at regional and local level are appointed by the national government?
Is there a legal requirement that meetings of city/town councils be open to the press and public?
Are there clear criteria restricting the circumstances in which city/town councils can exclude the press and public?
Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsmen, supreme audit institutions, and so on) work at regional or local levels and are there specific agencies with regional and local responsibilities?

Formal or legal position

The Outer Islands Local Government Act 1987 and the Rarotonga Local Government Act 1997 govern the actions of local government bodies. Government Representatives (GRs) are appointed by national government pursuant to procedures similar to the appointment of HOMs.

What actually happens

Island council members are elected by each island (three on Rarotonga) and are responsible for local government.

There has been dissatisfaction with the manner in which national government has appointed GRs and ways it has dealt with the issue of 'devolution' for the outer islands. The role of GRs is believed by the public to be redundant.

There is no requirement that local government meetings admit the public or the press and with no media based in the outer islands, there is little coverage of outer island issues.

Progress with Government Anti-Corruption Strategy

Has the government announced an anti-corruption strategy and a timetable for implementation?
How much of the strategy has been implemented?
Is the strategy at national level or regional/local level?
Is the government meeting its own timetable?

Formal or legal position

The government does not have a single anti-corruption strategy. However, anti-corruption measures are found in a variety of policies, laws and regulations including the Crimes Act, the Public Service Act, the MFEM Act and the Public Expenditure Review.

Cabinet adopted the Cook Islands Anti-corruption Action Plan (AAP) in 2001 driven externally by the ADB/OECD Anti-Corruption Initiative.

What actually happens

As a result of a range of uncoordinated anti-corruption strategies and fragmentation, there is no single agency that is responsible for anti-corruption measures and there is little awareness of government's anti-corruption strategies.

As the compilation of the Government's Anti-corruption Action Plan has involved only government officials who consult with overseas agencies, there has been minimal consultation with the local community. As a result there has been no announcement of the AAP to the Cook Islands public, even though there has been extensive travel by officials and regional liaison with the Asian Development Bank and the OECD.

Donor Anti-Corruption Initiatives

Which bilateral and multilateral donor agencies are based in the country?
What types of anti-corruption initiatives have they supported?
Are there any examples of donors cooperating or coordinating their programmes?

Formal or legal position

The New Zealand High Commission is the only bilateral donor agency based in Rarotonga. There are no multilateral donor agencies based in the Cook Islands.

What actually happens

The NZ High Commission actively supports anti-corruption measures under the auspices of the NZAID programme and through New Zealand's membership of the OECD. Support for anti-corruption initiatives is also provided by the ADB, OECD, Australian Government and the Forum Secretariat.

Future Research and Donor Support

Can key areas or issues be identified in terms of corrupt activity that the research for the report has demonstrated as requiring immediate attention, and which are they?

The report demonstrates that there is an immediate need to better coordinate and implement anti-corruption activities in the Cook Islands through a single, independent anti-corruption commission to establish an effective watchdog agency (such as a Transparency International office like in other countries) establish a leadership code of conduct, and to more effectively implement and enforce existing laws by the various responsible government agencies.

Is there a particular aspect of corrupt activity either particular to the country concerned, or significant in terms of effect or impact, that would require more in-depth research?

More research is needed into the passive attitude of most people to corruption and cultural constraints.
More research into the activities of the offshore financial sector, and the local private sector is also needed

Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice?

Further research is required to develop a new model for small island states such as the Cook Islands to achieve more independence and include partnership or 'twinning' systems in other countries such as New Zealand and Australia.

Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support?

Donor support is required for establishment of an Independent Commission Against Corruption (ICAC) exchange and secondment of senior public servants to work in partnership with counterparts in other countries such as New Zealand and Australia

- more training for Parliamentarians, public servants and NGOs on institutional strengthening and capacity building for key government ministries, Standing Orders, good governance and anti-corruption strategies
- development and implementation of an anti-corruption consultation, public awareness and communication strategy including education in schools.
- establishment of a Review Commission to assess the social, economic and political impacts of the 1995/6 reforms on the national integrity system.

Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming the basis for potential donor prioritisation, sequencing, cooperation and coordination?

The establishment of a well-resourced (from external sources), independent watchdog agency such as an independent commission against corruption is required in the short term.

Institutional strengthening and capacity building in all government departments responsible for monitoring the NIS is essential in the medium to long term.

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Appendix 3 – Legal References

Statutes

Banking Act 2003

Constitution of the Cook Islands 1994

Civil List Act 1984

Cook Islands Act 1915

Cook Islands Investment Corporation Act 1998

Crimes Act 1969, Crimes Amendment Act 2003

Criminal Procedure Amendment Act 2003

Extradition Act 2003

Electoral Act 1998

Financial Transaction Reporting Act 2003

Financial Supervisory Commission Act 2003

House of Ariki Act 1966

International Companies Act 1994, International Companies Amendment Act 2003

International Trusts Act 1994

Ministry of Finance and Economic Management Act 1995–96

Mutual Assistance in Criminal Matters Act 2003

Ombudsman Act 1984

Police Act 1981

Proceeds of Crime Act 2003

Public Expenditure Review Committee and Audit Act 1995–96

Public Service Act 1995–96

Secret Commissions Act 1994–95

Appendix 4
Anti-Money Laundering Legislation

The **Crimes Amendment Act 2003** gives effect to the Palermo Convention. The Act creates new offences and widens powers in relation to corruption and conspiracy, such as organised crime, corrupt use of official information, conspiring to defeat justice, corrupting juries and witnesses, money laundering, and altering and reproducing a document with the intent to defraud.

The **Proceeds of Crime Act 2003** forms part of the AML legislation that is aimed at providing effective monitoring and prosecution of persons who have committed serious offences, including the offence of money laundering. The purpose of the Act is to deprive persons who have committed serious offences of the proceeds, property and benefits derived from the commission of such offences. It enables law enforcement authorities to trace these proceeds, property or benefits. The Act creates the ability to 'deal' with the proceeds of crime, including freeze, seize and confiscation powers.

The **Mutual Assistance in Criminal Matters Act 2003** is aimed at setting up a legal framework regulating and facilitating the provision, by the Cook Islands, of international assistance in criminal matters when a foreign country makes a request.

The purpose of the **Extradition Act 2003** is to codify the law relating to the extradition of persons to and from the Cook Islands. The Act sets out separate categories within which other countries are placed—Commonwealth countries; South Pacific countries; Treaty countries; and Comity countries.

The Proceeds of Crimes Act, Extradition Act and the Mutual Assistance in Criminal Matters Acts are based on the regional model laws prepared under the auspices of the Pacific Islands Forum Secretariat. The FTRA was based on a draft model law prepared by the Legal Department of the IMF. Each of the four Acts was drafted in consultation with the Legal Department of the IMF with the aid of an NZAID-funded drafter.

Financial Transaction Reporting Act 2003 (FTRA)—replaces components of the now repealed Money Laundering Prevention Act 2000. The FTRA forms part of the legislative framework that is aimed at monitoring and prosecuting proceeds of serious criminal offences, including the offence of money laundering. The FTRA established the Financial Investigation Unit (FIU) to facilitate the prevention, detection, investigation and prosecution of money laundering and require financial institutions to maintain records. The unit provides financial intelligence.

The FTRA imposes obligations on financial institutions in the Cook Islands to report transactions of $10,000 and over and any suspicious transaction to the FIU. Pursuant to the FTRA, financial institutions are also required to undertake due diligence and other measures to combat money laundering.

The FTRA facilitates the prevention, detection, investigation and prosecution of money laundering and other serious offences and the enforcement of the Proceeds of Crime Act 2003 by establishing this entity to collect, analyse and disseminate suspicious transaction reports and other financial information. A financial institution is required to retain information for six years and in a form that allows the FIU to readily reconstruct a transaction. The FIU may enter the premises of financial institutions to ensure compliance, and the provisions of the FTRA specifically override the secrecy provisions in other legislation.

The FIU conducts an analysis of the financial records and submits this to the Police who provide the evidence to lay charges with the Solicitor General in Crown Law.

Financial Supervisory Commission Act 2003—replaces two acts, that is, the Offshore Financial Services Act and the Monetary Board Act. This legislation creates a new licensing, regulatory, and supervisory body.

The principal object of the Act is to establish the Financial Supervisory Commission, which is responsible for the supervision and regulation of domestic and offshore banks, offshore insurance companies and trustee companies according to internationally recognised standards. The Act establishes a Financial Supervisory Board consisting of five members appointed by the Minister, which may delegate its supervisory functions to the Commissioner.

The Commission also has broad powers to obtain disclosure of information from a financial institution, which includes all of the Acts that allow the establishment of offshore entities, partnerships and trusts.

International Companies Amendment Act 2003—deals with the risk of bearer debentures, that is, 'bearer shares', and now creates the requirement for immobilisation and possession by a 'custodian'.

The **Criminal Procedure Amendment Act 2003** amends the Criminal Procedure Act 1980–81 by introducing provisions enabling the Police to apply to a Judge of the High Court, for permission to intercept private communications where there are reasonable grounds for believing that a group of people are organised for criminal purposes and are contemplating committing or have committed a serious offence. The policy is to update the laws of the Cook Islands to international standards in order to assist in the prevention and detection of organised crime.

The **Banking Act 2003** repeals the Banking Act 1969 and the Offshore Banking Act 1981 and provides a single updated regulation and supervision framework for the conduct of banking business by both domestic and offshore banks, under the oversight of the Financial Supervisory Commission.

Three categories of licences are permitted: domestic banking licences, international banking licences and a restricted banking licence. A licensing evaluation process and criteria for licensing are set out: a minimum capital of NZ$2 million, and in the case of a foreign bank, a prerequisite for effective regulation and supervision on a consolidated basis by the home supervisor, along with confirmation that the home supervisor has no objection to the licence application. Conditions may be imposed on a licence, and failure to comply with conditions or other requirements under the Act are grounds for enforcement action that can lead to suspension or revocation of a licence.

On-going prudential supervision arrangements are provided for, including information collection and review of management quality, compliance inspections, external audit and annual financial statements to be furnished to the Commission, ability for the Commission to issue directives and require specials reports from auditors and examiners, and powers to remove officers of licensees. Foreign supervisors may be permitted to participate in on-site compliance inspections with the approval of the Commission.

Under the new anti-money laundering framework, the main agencies responsible for implementing the legislation are the Fraud Investigation Unit (FIU), the Financial Supervisory Commission (FSC), the Cook Islands Police and Crown Law. The FIU is the lead agency responsible for collection, analysis and dissemination of suspicious transaction reports and other financial information in respect of money laundering. A person from New Zealand's Serious Fraud Unit has been seconded to the Cook Islands as the head of the FIU and a person from the Cook Islands Police has been seconded to the unit as the Financial Intelligence Officer. The FSC has a compliance role in relation to ensuring that licensed financial institutions (banks, trustee companies and insurance companies) meet their record keeping, customer verification and identification obligations. The Police continue to have responsibility for investigating the offence of money laundering, and Crown Law continue to have responsibility for prosecuting money laundering offences.

The Cook Islands has informally approached the Pacific Islands Forum Secretariat as a first-priority country to receive in-country legislative drafting assistance to adapt the model provisions to domestic requirements. A New Zealand lawyer who assisted with the AML suite will assist the Cook Islands to draft legislation to amend the Crimes Act, Proceeds of Crime Act, Mutual Assistance in Criminal Matters Act, and Financial Transactions Reporting Act.