



UNODC

United Nations Office on Drugs and Crime

Country Review Report of the Cook Islands

Review by Belarus and Qatar of the implementation by the Cook Islands of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption ('UNCAC' or the 'Convention') was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention (the 'Review Mechanism'). The Review Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the Cook Island of the Convention is based on the completed response to the comprehensive self-assessment checklist received from the Cook Islands, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from the Cook Islands Belarus and Qatar, by means, by means of telephone conferences, e-mail exchanges and in-person dialogue. The review process involved the following persons listed below.

The Cook Islands:

- Ms. Kim Saunders, Solicitor-General, Crown Law Office
- Ms. Cheryl King, Crown Counsel, Crown Law Office

Belarus:

- Mr. Pavel Sascheko, Head of Division for Criminological Forecasting of Key Trends, Dynamics and Structure of Organized Crime and Corruption, the Scientific Center for the Problems of Reinforcing Law and Order of the General Prosecutor's Office

Qatar:

- Mr. Firas Sabar Ahmed, Head of International Relations, Qatar Public Prosecution
- Mr. Yasser Refaie, Investigating Magistrate, Qatar Public Prosecution
- Mr. Mr. Ahmed Alzaman, Prosecutor, Qatar Public Prosecution

The staff members of the Secretariat were Mr. Vladimir Kozin and Ms. Annika Wythes.

6. A country visit, agreed to by the Cook Islands, was conducted from 10 to 13 November 2014. During the visit meetings were held with the Crown Law Office, the Ministry of Foreign Affairs, the Police Force, the Financial Intelligence Unit, Public Service Commissioner, the Audit Office, the Minister of Justice, Ombudsman Office, the

Financial Supervisory Commission, the Ministry of Finance and Economic Management and with the representatives of the private sector (the Cook Islands Chamber of Commerce).

III. Executive summary

1. Introduction

1.1 Overview of the legal and institutional framework against corruption of the Cook Islands in the context of implementation of the United Nations Convention against Corruption

7. *The United Nations Convention against Corruption entered into force for the Cook Islands on 16 November 2011 in accordance with article 68 (2) of the Convention. The Cook Islands deposited its instrument of ratification with the Secretary-General on 18 October 2011.*
8. *The Cook Islands is a unitary state with a parliamentary type of government based on the Westminster model.*
9. *The legal system of the Cook Islands is common-law based.*
10. *The Cook Islands implements the provisions of the Convention through domestic legislation. The Convention cannot be applied directly in the absence of corresponding provisions in the domestic legislation.*
11. *The Cook Islands has created a special Anti-Corruption Committee that includes the Solicitor-General, the Commissioner of Police, the Head of the financial intelligence unit, the Director of the Cook Islands Audit Office, the Financial Secretary of the Ministry of Finance and Economic Management, the Public Service Commissioner, the Chief of Staff of the Office of the Prime Minister and the Ombudsman.*
12. *Some of the anti-corruption measures implemented by the Cook Islands were assessed in the course of the 2009 mutual evaluation of the Asia/Pacific Group on Money Laundering (APG), of which Cook Islands is a member.*

2. Chapter III: Criminalization and Law Enforcement

2.1 Observations on the implementation of the articles under review

Bribery and trading in influence (articles 15, 16, 18, 21)

13. *Active and passive bribery of public officials is criminalized in section 116 of the Cook Islands Crimes Act (Crimes Act 1969). Specific provisions with aggravated punishment for the bribery of certain types of public officials are contained in section 111 on judicial corruption, section 112 on bribery of judicial officers, section 113 on corruption and bribery of the Minister of the Crown, section 114 on corruption and bribery of members of the Legislative Assembly and section 115 on corruption and bribery of law enforcement officers.*

14. *Section 4 (1) of the Secret Commissions Act 1994-1995 stipulates that certain gifts, according to relevant customs, may be recognized as legal if “the Court is satisfied that such custom tradition, practice or usage is honest and reasonable”, which may create difficulties in the application of bribery provisions.*
15. *Sections 4 and 5 of the Secret Commissions Act criminalize bribery of agents where such “gifts” are given corruptly and are applicable to bribery in both the public and private sectors. The concept of agents is broadly construed and covers Government officials and persons with managerial functions in private sector entities. Although persons with managerial functions are covered as subjects of the offence, general employees of private sector entities cannot be prosecuted for similar violations.*
16. *Bribery of foreign public officials and trading in influence are not criminalized in the current legislation.*

Money-laundering, concealment (articles 23, 24)

17. *The Cook Islands has legislatively implemented all the required elements of the offence of money-laundering as stipulated by article 23 of the Convention via section 280A of the Crimes Act.*
18. *More specifically, subparagraph (a)(i) of article 23 of the Convention is implemented via section 280A 2(b) of the Crimes Act.*
19. *Subparagraph (a)(ii) is implemented via section 280A 2(c) of the Crimes Act.*
20. *Subparagraph (b)(i) is implemented via section 280A 2(a) of the Crimes Act.*
21. *Subparagraph (b)(ii) is implemented via section 280A 2(d) of the Crimes Act in the part of aiding. Additionally, general provisions of the Crimes Act on participation, abetting, counselling (sections 68 and 72 of the Crimes Act) attempt (section 334 of the Crimes Act) and conspiracy (section 333 of the Crimes Act) also apply to the offence of money-laundering.*
22. *Section 280A (1) provides that a predicate offence for the purposes of money-laundering is an act or omission for which the penalty is not less than 12 months imprisonment or a fine of \$5,000 which covers all the offences established in accordance with the Convention under the Cook Islands law.*
23. *Section 280 A (1) (b) contains a dual criminality requirement applicable to predicate offences committed abroad.*
24. *Self-laundering is criminalized pursuant to section 280A (2) (c).*
25. *Most of the elements of concealment are covered by section 280A (2) (a) of the Crimes Act.*

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

26. *The legislative provisions of the Cook Islands criminalizing embezzlement are applicable to both the public and private sectors and include sections 242, 244, 246 and 249 of the Crimes Act.*
27. *Section 246 can be used to prosecute embezzlement, diversion and misappropriation of immovable property when such is committed via the illegal use of documents providing for legal rights over such property. Other relevant provisions include “crimes resembling theft”, i.e., sections 250, 251A and 255 and “fraud”, i.e. section 274.*
28. *The Cook Islands has not considered establishing abuse of functions as a separate criminal offence.*
29. *The Cook Islands has not considered establishing illicit enrichment as a separate criminal offence.*

Obstruction of justice (article 25)

30. *The Cook Islands has partially criminalized the offence of obstruction of justice.*
31. *Interference with giving testimony or production of evidence are addressed in section 128 of the Crimes Act.*
32. *The elements promise or offering of undue advantage are covered by the wording of “dissuades or attempts to dissuade a person by... bribes” in section 128 (a); the use of physical force and threats or intimidation are covered by the wording of “wilfully attempts in any other way to obstruct, prevent, pervert, or defeat the course of justice” in section 128 (e) of the Crimes Act as explained by the Cook Islands.*
33. *Section 75 of the Police Act 2012 criminalizes assault of police officers, which, according to the explanation provided by the Cook Islands, would also include “the use of physical threats, threats or intimidation” as required by the provision under review.*

Liability of legal persons (article 26)

34. *The definition of “person” under the Crimes Act also covers legal persons, which implies that legal persons can be held liable for all the offences stipulated in the Crimes Act, including the corruption offences. However, there is no established court practice on that matter.*
35. *Section 280A (5) of the Crimes Act separately provides for increased punishment (five times \$50,000) in cases where a person convicted of money-laundering is an incorporated body. Additionally, a separate penalty is stipulated for a body corporate (fine not exceeding \$100,000) for corruption violations under the Secret Commissions Act 1994-1995 (section 13).*
36. *Legal persons can also be held civilly and administratively liable based on the applicable common law principles. However, there is no established case law in that area, particularly with regard to corruption offences.*

Participation and attempt (article 27)

37. *The Crimes Act stipulates the liability of accomplices (section 68 (b)) and assistants and instigators (section 68 (c) and (d)). The Crimes Act also separately criminalizes conspiracy (section 333).*
38. *Attempts to commit an offence are also separately criminalized (section 74 and section 334).*

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

39. *Corruption offences are mostly punished with imprisonment in the Cook Islands. Offences of money-laundering and assault on police can also be punishable by fines.*
40. *In the Cook Islands functional immunity is applicable only to members of Parliament and employees of Office of the Ombudsman.*
41. *The discretionary legal power to prosecute is an exclusive prerogative of the Commissioner of Police of the Cook Islands. The Crown Law Office provides advice on whether there is sufficient evidence to prosecute.*
42. *Section 87 (3) of the Criminal Procedure Act 1980-1981 imposes a condition that a defendant who has been granted bail shall personally attend the hearing.*
43. *Section 6 of the Criminal Justice Act provides for the power of the High Court to impose probation.*
44. *Early release from imprisonment is possible by a decision of a parole board that needs to take into account the class of sentence imposed on the offender and the term of such sentence.*
45. *No provisions exist in the criminal legislation of the Cook Islands requiring the suspension, removal or reassignment of a public official accused of a corruption offence, as that would be contrary to the right to a fair trial under the criminal law doctrine of the Cook Islands.*
46. *Part 12 “Immunities from Prosecution” of the New Zealand Prosecution Guidelines adopted by the Cook Islands provide detailed requirements under which immunity from prosecution can be granted to a person who provides evidence.*

Protection of witnesses and reporting persons (articles 32, 33)

47. *The Cook Islands does not have detailed provisions on the protection of witnesses, experts and victims. Section 67 of the Police Act 2012 provides for the protection of the identity of witnesses under police protection programmes.*
48. *There is no legislation in place providing protection against unjustified treatment for reporting persons.*

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

49. *The Proceeds of Crime Act 2003 (POCA) and the Proceeds of Crime Amendment Act 2004 provide for the mandatory application by the Solicitor General of a forfeiture order against tainted property of the accused and/or a pecuniary penalty order against the accused for benefits derived by him/her from the commission of the offence (section 11 (1) of the POCA, section 3 of the Proceeds of Crime Amendment Act 2004). Value-based confiscation is possible as “a payment to the Crown” (section 33 of POCA). All types of confiscation are strictly based on the conviction of the accused of “serious offences”.*
50. *“Tainted property” is property used in or intended to be used in or in connection with a serious offence, or proceeds of that offence (section 3 (1) of POCA). “Proceeds” of an offence means property into which any property derived or realized directly from a serious offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the commission of the offence, whether the property is situated in the Cook Islands or elsewhere (section 3 (1) of POCA.). “Serious offences” include all offences that are punishable by imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000 (section 3 (1) of the Act), which covers all the relevant offences, implementing the requirements of chapter III.*
51. *Identification and tracing can be conducted by police based on search warrants issued under sections 35 (1) and 85 of POCA. The court may also require financial institutions to produce “property tracking documents” based on the application by a police officer (section 79 of POCA). Section 87 of POCA allows the Solicitor General to apply to the Court for monitoring orders for financial institutions.*
52. *Freezing can be conducted based on section 50 of POCA. Seizure can be done based on section 43.*
53. *Besides the provisions of the Act, the provisions of the Criminal Procedure Act 1980-1981 (section 96) can be used additionally to identify and seize the proceeds of crime.*
54. *The Solicitor General acts as administrator of the seized, restrained and forfeited property (sections 3, 40, 46 and 54 of POCA). The Attorney General may also appoint another person to act as administrator (section 102 of POCA).*
55. *The Financial Transactions Reporting Act 2004 (FTRA) gives powers to the financial intelligence unit to request information from financial institutions and share it with law enforcement authorities (section 30 of the Act). Bank secrecy laws have been superseded by the FTRA (section 35).*
56. *Rights of bona fide third parties are afforded protection by sections 20 and 53 of POCA.*

Statute of limitations; criminal record (articles 29, 41)

57. *The Cook Islands legislation does not provide for statutes of limitations for any criminal offence including corruption offences.*

58. *The Cook Islands does not have specific provisions on taking into consideration any criminal record from abroad. However, in actual court practice previous convictions are accepted as aggravating factors during sentencing.*

Jurisdiction (article 42)

59. *The Cook Islands criminal jurisdiction covers the cases where at least some part of offence was committed in its territory (section 6 of the Crimes Act). The jurisdiction also extends to the acts committed on board of any ship belonging to the country that is part to the British Commonwealth and on board of any Cook Islands aircraft (section 7 (1) (a) and (b) of the Crimes Act).*

60. *Additionally, in cases of money-laundering committed abroad where offenders are ordinarily residents in the Cook Islands or corporations registered in the Cook Islands, they may also be held liable based on section 7A of the Crimes Act and with the consent of the Attorney General based on section 7B of the Act.*

Consequences of acts of corruption; compensation for damage (articles 34, 35)

61. *A contract would be viewed as illegal in the Cook Islands if it was entered to by means of corruption based on the common law principles and Illegal Contracts Act 1987.*

62. *The Crimes Act allows for the compensation to the victims of offences (including corruption offences) in the criminal proceedings (sections 415 and 416). Additionally, the victims can request compensation in the civil proceedings.*

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

63. *The Cook Islands has created an Anti-Corruption Committee consisting of the representatives of the Solicitor General, the Commissioner of Police, Head of the financial intelligence unit, Director of the Cook Islands Audit Office, Financial Secretary of the Ministry of Finance and Economic Management, Public Service Commissioner, Chief of Staff of the Office of the Prime Minister and the Ombudsman. Information regarding possible corruption offences is exchanged between the Committee members regularly in due course.*

64. *The Cook Islands considers establishing a specialized anti-corruption authority in the future by giving additional powers to the Ombudsman Office.*

65. *FTRA requires a wide range of private sector actors including financial institutions (section 2) to report to the financial intelligence unit information on suspicious transactions relevant to the commission of “serious offences”, which also include corruption offences (section 11).*

2.2 Successes and good practices

66. *Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:*

- *25 Criminalization of active and passive bribery of electors or any persons in order to induce such persons to procure or endeavour to procure favourable vote, as a practice conducive to the fight against corruption;*
- *The adoption of the comprehensive Proceeds of Crime Act providing detailed regulation of different aspects of freezing, seizure and confiscation of illicit assets;*
- *The creation of the Confiscated Assets Fund managed by the Financial Secretary and the Ministry of Finance to administer the money paid as a result of pecuniary penalty orders or paid by foreign jurisdictions;*
- *The effective system of sharing operational information within the framework of the Combined Law Agencies Group (CLAG) between the Cook Islands law enforcement authorities as a good practice conducive to the efficient fight against corruption.*

2.3 Challenges in implementation

67. *It is recommended that the Cook Islands:*

- *Continue providing clarifications on the distinctions between “gifts” and “undue advantages” in legislation and/or sentencing guidelines;*
- *Harmonize the definition and categories of public officials in accordance with article 2 of the Convention and ensure that active bribery of all types of such officials is criminalized; in particular, bribery of the employees of public companies or companies with the state participation, as well as the bribery of the persons providing public services;*
- *Criminalize the active bribery and consider criminalizing the passive bribery of foreign public officials and officials of public international organizations in accordance with article 16 of the Convention;*
- *Consider clearly criminalizing active and passive bribery of any person who works in any capacity for a private sector entity in line with article 21 of the Convention;*
- *Explicitly indicate the theft by public officials as an aggravating element to be taken into account while issuing sentences to convicts in sentencing guidelines for judges;*
- *Consider criminalizing the trading in influence in line with article 18 of the Convention;*
- *Consider criminalizing abuse of functions as a separate offence in line with article 19 of the Convention;*
- *Consider introducing national system of asset and conflict of interest declarations and their verification;*

- *Explicitly criminalize the use of physical force to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in line with article 25 of the Convention;*
- *Criminalize the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice; and consider more clearly stipulating the elements of the use of physical threats, threats or intimidation or any member of Police in the Police Act 2012 as required by article 25(b) of the Convention;*
- *Provide clear and proportionate sanctions in the Crimes Act for the commission of corruption offences when the convicted persons are incorporated bodies (that could be similar to the sanctions in section 280A) in line with article 26 of the Convention;*
- *Clearly stipulate that legal person's liability shall be without prejudice to the criminal liability of natural persons who have committed the offence;*
- *Consider including clear guidance on the sanctions applicable to incorporated bodies for participation in corruption offences in sentencing guidelines for judges;*
- *Adopt sentencing guidelines providing standards for judges in the process of issuing verdicts, particularly, in the cases involving corruption offences;*
- *Ensure that in the future there are clear guidelines in place that provide the reasons based on which the Attorney General can refuse its endorsement of prosecution based on section 117 of the Crimes Act;*
- *Consider establishing procedures for the disqualification in line with article 30 (7) of the Convention;*
- *Take additional measures, particularly, in its legislation to encourage persons who participate or who have participated in the commission of corruption offences to supply information and provide help to competent authorities in line with article 37 (1) of the Convention;*
- *Consider explicitly including the provision on the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of a corruption offence in the relevant legislation and/or sentencing guidelines in line with article 37 (2) of the Convention;*
- *Consider extending immunity from prosecution to the cases where persons provide substantial cooperation during the investigation of a corruption offence in line with article 37 (3) of the Convention;*
- *Introduce detailed legislative provisions providing effective protection for witnesses, experts and victims who give testimony concerning offences in line with the requirements of article 32 of the Convention;*
- *Consider incorporating in the domestic legal system measures against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the*

competent authorities any facts concerning corruption in line with article 33 of the Convention;

- *Consider including in the domestic legislation the requirement to consult with foreign counterparts as stipulated in paragraph 5 of article 42 of the Convention;*
- *Include more detailed provisions on making corruption a relevant factor in legal proceedings to annul or rescind a contract or withdraw a concession in relevant domestic legislation; particularly, in the Tender and Procurement Act;*
- *Finalize the process of the creation of the independent specialized anti-corruption authority and ensure its independence, as well as the adequate capacity of its staff proceed in line with article 36 of the Convention;*
- *Consider adopting legislative provisions requiring public officials to report suspected instances of corruption to the authorities responsible for anti-corruption law enforcement;*
- *Continue making more targeted efforts to encourage citizens to report on corruption offences, as well as to raise general awareness of the public of the problem of corruption and powers of relevant anti-corruption authorities in line with article 39 (2) of the Convention;*
- *Harmonize the definition of “proceeds” in (section 3 (1) of POCA) in accordance with article 2 of the Convention to ensure it covers any property derived from or obtained, directly or indirectly, through the commission of an offence;*
- *Consider the need to adopt legislative measures to better implement article 41 of the Convention.*

2.4 Technical assistance needs identified to improve implementation of the Convention

68. *The following technical assistance needs were identified:*

- *Summary of good practices/lessons learned; model legislation, legislative drafting; legal advice; on-site assistance by an anti-corruption expert in relation to embezzlement;*
- *Summary of good practices/lessons learned in relation to trading of influence;*
- *Summary of good practices/lessons learned; legislative drafting in relation to abuse of functions;*
- *Summary of good practices/lessons learned; legislative drafting in relation to illicit enrichment;*
- *Summary of good practices/lessons learned; legislative drafting in relation to bribery in the private sector;*

- *Summary of good practices/lessons learned; legislative drafting; independent in-country expert assistance working with national counterparts, in particular, in investigating money-laundering offences in relation to money-laundering;*
- *Summary of good practices/lessons learned and legislative drafting in relation to obstruction of justice;*
- *Analysis of the current situation, mapping out the existing penalties in order to ensure they are proportionate and can act as important deterrent against commission of offences in relation to liability of legal persons;*
- *Summary of good practices/lessons learned; legislative drafting in relation to prosecution and sanctions;*
- *Summary of good practices/lessons learned and legislative drafting in relation to cooperation with law enforcement authorities;*
- *Summary of good practices/lessons learned and capacity-building programmes for authorities responsible for establishing and managing witness, expert and victim protection;*
- *Summary of good practices/lessons learned and legislative drafting in relation to protection of reporting persons;*
- *Enhancement of existing resources in relation to specialized authorities and cooperation between national authorities.*

3. Chapter IV: International cooperation

3.1 Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons, transfer of criminal proceedings (arts. 44, 45 and 47)

69. *Extradition is governed by the Extradition Act 2003 (EA). This applies to Commonwealth countries, Pacific Island countries and comity countries. A “backing of warrants” procedure is in place for Pacific Island countries (part 4). The Cook Islands does not make extradition conditional on the existence of a treaty. However, an “extradition country” is defined as a Commonwealth country, a South Pacific country, a treaty country, or a comity country (section 4 (1)). Extradition matters in the Cook Islands are under the authority of the Crown Law Office but a formal request would come through diplomatic channels (i.e. the Minister for Foreign Affairs). No extradition requests have been sent or received in the last 5 years. The Convention cannot be used as a legal basis.*
70. *Extradition is subject to dual criminality (section 5) and is limited to the extent that not all offences under the Convention have been criminalized. The minimum penalty requirement is imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000.*

71. *The general extradition procedures from the Cook Islands are outlined in part 2, including provisional arrest warrants (sections 8-9); however, the requirements differ to Commonwealth countries (part 3), South Pacific countries (part 4, noting that the “backing of warrants” procedure applies: ss.29-30), treaty countries (part 5) and comity countries (part 6).*
72. *The Attorney General can refuse to order the surrender of a person based on that person being a national of the Cook Islands (section 62 (2) (a)); pursuant to section 62, the Cook Islands will submit the case for prosecution. However, the Cook Islands may also surrender the person sought to the requesting State for the purpose of trial only as long as the requirements of section 64 are met. It was explained during the country visit that if a foreign State were to apply to the Cook Islands to consider the enforcement of a sentence, then the Cook Islands would entertain the application.*
73. *Extradition proceedings must be conducted in the same manner as criminal proceedings (section 15 (1)). Fundamental human rights and freedoms are guaranteed in the Constitution (art. 64). The Attorney General would refuse to order the surrender of a person if “the person may be prejudice at his or her trial, or punished, detained or restricted in his or her personal liability, because of his or her race, religion, nationality, political opinions, sex or status” (section 61 (2) (b)).*
74. *The Cook Islands would not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters (section 5 (4)). A duty to consult with requesting States before refusing extradition is not specified in the EA, but followed in practice.*
75. *The Scheme for the Transfer of Convicted Offenders within the Commonwealth only applies to Commonwealth countries, but has not been used to date.*
76. *The transfer of criminal proceedings is not covered.*

Mutual legal assistance (article 46)

77. *The Mutual Assistance in Criminal Matters Act 2003 (MACMA) provides the legal basis for mutual legal assistance (MLA) with the objects of the Act outlined in section 2. The Cook Islands does not make MLA conditional on the existence of a treaty (section 3 (2), Mutual Assistance in Criminal Amendment Act 2004 (MACAA)). As a member of the Commonwealth, the Cook Islands could, in principle, rely on the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth, although there has been no experience in its application.*
78. *The Crown Law Office is the responsible authority for MLA, as has been notified to the Secretary-General of the United Nations; the Attorney General delegated his statutory obligations under the MACMA to the Solicitor General. However, requests would normally be received and sent through diplomatic channels. In the last two years, 21 requests have been received and responded to. Only one request has been sent by the Cook Islands to New Zealand and the information requested was sent. MLA is limited to the extent that not all offences established under the Convention have been criminalized, but would be equally applicable to legal persons.*

79. *MLA is broadly afforded by the Cooks Islands (parts 3-5, 7 and 8 of EA and in relation to production orders: ss.79-84, Proceeds of Crime Act 2003 (POCA)). As a matter of practice, competent authorities (e.g. the transnational crime unit, financial intelligence unit) proactively transmit information to a foreign competent authority, without a prior MLA request, where such information could assist in the investigation of offences. The Cook Islands complies with MLA requests where the said information is to remain confidential with restrictions in its use (sections 60-61, MACMA). While the Cook Islands is not prevented from disclosing in its proceedings information that is exculpatory to an accused person, the Crown Law Office would notify the transmitting State of this without delay. A Court (production) order is required to lift bank secrecy in relation to receiving requested information (section 8, MACAA).*
80. *Despite the dual criminality requirement of the Cook Islands (section 3, MACMA), the Government can take measures as may be necessary to ensure that MLA involving non-coercive measures is afforded in the absence of this requirement.*
81. *Part 5 of MACMA covers the arrangements for persons to give evidence or assist in investigations as required by the Convention, noting that consent is covered in sections 21 (2) (b) (iii) and 30 (d) (i), and immunities in section 23.*
82. *While an MLA is to be in writing or by e-mail (section 7 (2)), in urgent circumstances, where the Cook Islands have dealt with a foreign State before, an oral request may be considered; the official request is required prior to going to Court (e.g. for a production order). Requests have been made through INTERPOL.*
83. *The details of what an MLA request is to contain is covered in section 7 (2). As a matter of practice, MLA requests are executed in accordance with domestic law and where possible, in accordance with the procedures containing in the specific request. A hearing can also take place through a video or Internet link from the Cook Islands (section 10 (2) or the requesting State (section 14 (2))). Information being requested in an MLA request that is not available to the general public could be provided through an official letter or a Court order, depending on the nature of the information.*
84. *The grounds for refusing an MLA request are covered in section 9, noting that the Cook Islands would also refuse a request that involves matters of a de minimis nature. The Attorney General, after consulting with the foreign State, may postpone an MLA request as it “would be likely to prejudice the conduct of an investigation or proceeding in the Cook Islands” (section 9(b)). The ordinary costs of an MLA request would be borne by the Cook Islands; if the costs are of a substantial or extraordinary nature, the Government would consult with the foreign State.*

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

85. *The law enforcement authorities of the Cook Islands cooperate through regional and international agreements and arrangements, as well as on a case-by-case basis; a treaty or formal memorandum of understanding (MoU) is not a prerequisite.*
86. *The Transnational Crime Unit (TCU) cooperates internationally, not only through the Pacific Transnational Crime Network (PTCN), but also through other counterparts*

(including the New Zealand New Zealand Police and Australian Federal Police). TCU cooperates with INTERPOL through the Pacific Transnational Crime Coordination Centre (PTCCC) situated in Samoa and through the New Zealand Police. Since its establishment, 5 TCU members have been seconded to the PTCCC.

87. *Law enforcement cooperation is also carried out through other regional initiatives (e.g. Pacific Islands Chiefs of Police, Pacific Islands Forum Secretariat, Oceania Customs Organization, Pacific Patrol Boat Programme, Pacific Islands Law Officer's Network).*
88. *The financial intelligence unit (FIU) has informal connections with other FIUs (including AUSTRAC) and is involved in the Pacific Association of FIUs to share information. The FIU has been an EGMONT member since 2003.*
89. *The Cook Islands undertakes joint investigations with foreign States, namely New Zealand, Australia and the United States of America on a case-by-case basis. Joint prosecutions have also taken place. Appropriate bilateral arrangements on the use of special investigative techniques have been used on a number of occasions with New Zealand, Australia and the United States. Special investigative techniques have been used on a number of occasions with New Zealand, Australia and the United States. The Police Act and the Narcotics and Misuse of Drugs Act provide for wiretapping, but this has not been used in practice with regard to corruption offences.*

3.2 Successes and good practices

90. *Overall, the following success and good practice in implementing chapter IV of the Convention is highlighted:*
- *Cook Islands' international law enforcement cooperation, particularly in the region and joint investigations, especially with New Zealand and the United States.*

3.3 Challenges in implementation

91. *It is recommended that:*
- *The Cook Islands could grant extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law;*
 - *The Cook Islands could grant extradition requests that include several separate offences, one of which is extraditable, also for the other offences that are not extraditable;*
 - *Recognize all the Convention offences as being extraditable offences;*
 - *The Cook Islands may wish to also consider using the Convention as a legal basis for extradition to entertain extradition requests from States that require a treaty-basis;*
 - *Consider simplifying and streamlining procedures and evidentiary requirements (such as internal guidelines and/or a request management system) in order to allow for extradition and mutual legal assistance requests to be dealt with efficiently and effectively;*

- *The Cook Islands may wish to consider entering into bilateral or additional multilateral agreements or arrangements on the transfer of convicted persons for offences related to the Convention;*
- *Notify the Secretary-General of the United Nations of the acceptable language for executing MLA requests;*
- *Ensure that MLA is not refused on the sole ground that the offence is also considered to involve fiscal matters through legislative measures;*
- *Consider the possibility of transferring criminal proceedings to and from a foreign State it were in the interests of the proper administration of justice, in particular where several jurisdictions are involved.*

3.4 Technical assistance needs identified to improve implementation of the Convention

- *The Cook Islands indicated that on extradition and MLA, it would require technical assistance, including: a summary of good practices/lessons learned (in particular from other Small Island States); the sharing of experiences on how other such States deal with international cooperation; legislative drafting; extradition templates/precedence that can apply to incoming requests, pursuant to the EA;*
- *On transfer of sentenced persons and criminal proceedings, the requested technical assistance included a summary of good practices/lessons learned and legislative drafting;*
- *On law enforcement cooperation and special investigative techniques, the technical assistance requested included capacity-building programmes for authorities responsible for cross-border law enforcement cooperation, for designing and managing the use of special investigative techniques and for international cooperation in criminal/investigative matters, as well as the enhancement of existing resources.*

IV. Implementation of the Convention

A. Ratification of the Convention

92. The Convention entered into force for the Cook Islands on 16 November 2011 in accordance with article 68(2) of the Convention. The Cook Islands deposited its instrument of ratification with the Secretary-General of the United Nations on 18 October 2011.

B. Legal system of the Cook Islands

93. The Cook Islands has a Westminster parliamentary style of government similar to that of New Zealand and England.

94. The country is a self-governing State in free association with New Zealand since 4 August 1965. While the Constitution provides for New Zealand to be responsible for defence and some aspects of international relation, this can only be enacted upon request by the Government of the Cook Islands. The Government is responsible for enacting legislation and is fully competent to enter into international agreement and conduct its own international relation.
95. Parliament consists of a single chamber of 24 elected members, 10 of whom are from the main island of Rarotonga and the rest are from the outer islands.
96. The Head of State is Her Majesty the Queen, Elizabeth II who is represented by the Queen's Representative. The position is currently held by Sir Thomas Marsters.
97. The legal system of the Cook Islands incorporates English common law, certain British and New Zealand statutes and customary laws - Constitution is the supreme law.
98. The government consists of:

(i) Executive Branch:

Head of State: Her Majesty Queen Elizabeth II in right of New Zealand - represented in Cook Islands by the Queen's Representative, appointed by the Queen (3 year term).

Head of Government: Prime Minister - the Queen's Representative appoints the Prime Minister, being a Member of Parliament, who has the confidence of a majority in the Parliament.

Cabinet: Cabinet of Ministers - Prime Minister + 6-7 Ministers, being members of Parliament, appointed by the Queen's Representative on the advice of the Prime Minister; responsible to Parliament.

Executive Council: consists of the Queen's Representative and the Cabinet.

(ii) Legislative Branch:

Parliament - The Parliament of the Cook Islands is unicameral and consists of 25 members elected by popular vote. The Parliament serves a four-year term.

House of Arikis - consists of up to 14 Arikis (Chiefs) appointed by the Queen's Representative. Function - to consider any matters regarding the welfare of the people of the Cook Islands as are submitted to it by Parliament, and to express its opinion and make recommendations to Parliament. No legislative power.

(iii) Judicial Branch:

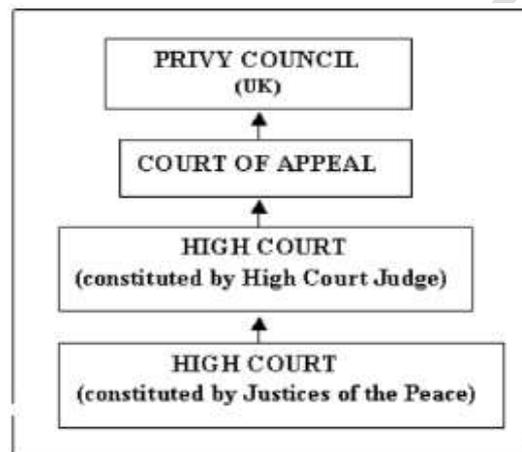
High Court (constituted by Justices of the Peace) - Justices of the Peace are appointed by the Queen's Representative, acting on the advice of the Executive Council and sit in the High Court by virtue of the Judicature Act 1980-81.

High Court (constituted by a Judge) - established under the Constitution, it consists of the Chief Justice and any other Judge appointed by the Queen's Representative acting on the advice of the Executive Council.

Court of Appeal - established under the Constitution, it consists of three Judges. The Chief Justice and puisne Judges of the High Court are Judges of the Court of Appeal and other Judges may be appointed by the Queen's Representative acting on the advice of the Executive Council.

Privy Council - Appeal from decisions of the Court of Appeal to the Privy Council is allowed by statute in certain circumstances.

COURT SYSTEM OF THE COOK ISLANDS



99. Major laws the Cook Islands relevant to the implementation of the Convention include:

- Constitution;
- Banking Act, 2003;
- Criminal Justice Act, 1967 (and amendments);
- Criminal Procedure, Act (and amendments);
- Crimes Act, 1969;
- Crown Law Office Act;
- Extradition Act, 2003 and Extradition Regulations, 2004;
- Financial Supervisory Commission Act, 2003;
- Financial Transactions Report Act, 2003;
- Illegal Contracts Act, 1987;
- Mutual Assistance in Criminal Matters Act, 2003 (and amendments in 2003 and 2004);
- Ombudsman Act, 1984;
- Police Act, 2012;
- Proceeds of Crimes Act, 2003 (and amendments);
- Public Service Act, 2009;
- Secret Commissions Act, 1994-1995.

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

100. The Cook Islands has indicated that it implemented the provision under review.
101. The Cooks Islands has referred to PART VI. CRIMES AFFECTING THE ADMINISTRATION OF LAW AND JUSTICE of the Crimes Act 1969 on "Bribery and Corruption", in particular, section 116 on corruption and bribery of official (noting section 110 on interpretation).
102. Additionally, more specific provisions are contained in: section 111 on judicial corruption; section 112 on bribery of judicial officer, etc; section 113 on corruption and bribery of Minister of the Crown; section 114 on corruption and bribery of member of Legislative Assembly; and section 115 on corruption and bribery of law enforcement officer.
103. Also, section 117 on the restrictions on prosecution are to also be noted.
104. The Cook Islands has cited the following implementation measures.

CRIMES ACT 1969

PART VI. CRIMES AFFECTING THE ADMINISTRATION OF LAW AND JUSTICE

Bribery and Corruption

110. Interpretation

In this Part of this Act, unless the context otherwise requires,-

"Bribe" means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

"Judicial officer" means a Judge or Commissioner of any Court, Coroner, or Justice, or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath;

"Law enforcement officer" means any constable or any person employed in the detection or prosecution or punishment of offenders;

"Official" means any person in the service of Her Majesty in right of New Zealand in the Cook Islands (whether that service is honorary or not, and whether it is within or outside the Cook Islands), or any member or employee of any Island Council.

The main provision is section 116.

116. Corruption and bribery of official

...

(2) Everyone is liable to imprisonment for a term not exceeding three years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him in his official capacity.

112. Bribery of Judicial Officer, etc.

(1) Every one is liable to imprisonment for a term not exceeding seven years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer in respect of any act or omission by him in his judicial capacity.

(2) Every one is liable to imprisonment for a term not exceeding five years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer or any Registrar or Deputy Registrar of any Court in respect of any act or omission by him in his official capacity, not being an act or omission to which subsection (1) of this section applies.

113. Corruption and bribery of Minister of the Crown

...

(2) Every one is liable to imprisonment for a term not exceeding seven years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any Minister of the Crown or member of the Executive Council in respect of any act or omission by him in his capacity as a Minister or member of the Executive Council.

(3) No one shall be prosecuted for an offence against this section without the leave of a Judge of the High Court. Notice of the intention to apply for such leave shall be given to the person whom it is intended to prosecute, and he shall have an opportunity of being heard against the application.

114. Corruption and bribery of member of Legislative Assembly

...

(2) Every one is liable to imprisonment for a term not exceeding three years who corruptly gives or offers, or agrees to give any bribe to any person with intent to influence any member of the Legislative Assembly in respect of any act or omission by him in his capacity as a member of the Legislative Assembly.

(3) No one shall be prosecuted for an offence against this section without the leave of a Judge of the High Court. Notice of the intention to apply for such leave shall be given to the person whom it is intended to prosecute, and he shall have an opportunity of being heard against the application.

115. Corruption and bribery of law enforcement officer

...

(2) Every one is liable to imprisonment for a term not exceeding three years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any law enforcement officer in respect of any act or omission by him in his official capacity.

Section 117 is to be noted.

117. Restrictions on prosecution

No one shall be prosecuted for an offence against any of the provisions of sections 111, 112, 115 and 116 of this Act without the leave of the Attorney-General or if no such appointment has been made, then the Minister of Justice, who before giving leave may make such inquiries as he thinks fit.

ELECTORAL ACT 2004

2. Interpretation

(1) In this Act, unless the context otherwise requires –

“Bribery” has the meaning assigned to that term by section 88;

“Corrupt practice” means any of the offences specified in section 87;

PART 7. OFFENCES AT ELECTIONS

87. Corrupt practices

(1) Every person is guilty of a corrupt practice, who, in connection with any election, is convicted of bribery, treating, undue influence, or personation as defined in sections 88 to 91 and is liable on conviction to imprisonment for a term not exceeding five years.

(2) Where the Chief Electoral Officer, the Chief Registrar of Electors, or any person appointed by either of them for the purposes of an election believes that any person has committed any of the offenses defined in sections 88 to 91, he or she shall report the facts on which that belief is based to the Commissioner of Police.

88. Bribery

Every person commits the offence of bribery who, in connection with any election –

- (a) Directly or indirectly gives or offers to any elector any money or valuable consideration or any office of employment in order to induce the elector to vote or refrain from voting; or
- (b) Directly or indirectly makes any gift or offer to any person in order to induce that person to procure or endeavour to procure the return of any candidate or the vote of any elector; or
- (c) Upon or in consequence of any such gift or offer, procures or endeavours to procure the return of any candidate or the vote of any elector; or
- (d) Advances any money to any person with the intent that that money or any part thereof shall be expended in bribery within the meaning of this section; or

- (e) Being an elector, directly or indirectly receives or agrees to receive any gift, money, valuable consideration, office or employment as aforesaid in return for voting or refraining from voting or for agreeing thereto.

89. Treating

Every person commits the offence of treating who, being a candidate at any election, by himself or herself or by any other person on his or her behalf, either before or during an election, directly or indirectly gives or provides or pays wholly or in part the expense of giving or providing any food, drink, entertainment, or other provision to or for any person –

(a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or

(b) for the purpose of procuring himself or herself to be elected: Provided that it shall not be an offence against this section for a candidate to provide at any time after the close of the poll, hospitality according to local custom or practice.

SECRET COMMISSIONS ACT 1994-95

2. Interpretation

In this Act, unless a contrary intention appears, -

"Agent" includes any person who is or has been, or desires or intends to be, employed by or acting for any other person, whether as agent, servant, broker, auctioneer, architect, solicitor, director, or in any other capacity whatever, either alone or jointly with any other person;

"Consideration" means valuable consideration of any kind; and includes discounts, commissions, rebates, bonuses, deductions, percentages, employment, payment of money (whether by way of loan, gift, or otherwise howsoever), and forbearance to demand any money or valuable thing.

3. Persons deemed to be agents

(1) For the purposes of this Act -

...

(b) every officer or member of any Authority, Board, Council, committee, or other body of persons, whether incorporated or unincorporated, charged by statute with any public functions shall be deemed to be an agent of that Authority, Board, Council, committee, or other body;

(c) every person in the service of the Crown, or acting for or on behalf of the Crown, or holding any office in the public service, shall be deemed to be an agent of the Crown;

4. Gifts according to custom and tradition

(1) Nothing contained in this Act shall be deemed to prohibit or render illegal any recognised custom, tradition, or practice, or usage of any trade or calling, if the Court is satisfied that such custom, tradition, practice or usage is honest and reasonable.

(2) In determining whether any custom, tradition practice or usage is reasonable and honest, the Court shall have regard to -

(a) the circumstance that the commissions, rebates, or allowances paid or made by the third party to the agent under such practice or usage were lawfully received by the agent without any breach of his duty towards his principal; or

(b) the circumstance that the said commissions, rebates, or allowances so paid or made would not in any case be paid or allowed by such third party to the principal; or

(c) the circumstance that the same were paid or allowed in respect of services lawfully rendered by the agent to such third party without injury or loss to the principal and without any breach by the agent of his duty towards his principal.

(3) Except as provided by this section, evidence shall not be admissible in any proceeding for an offence against this Act to show that any such gift or consideration is customary in any trade or calling, nor shall the customary nature of any such gift or consideration be any defence in such proceedings.

5. Gifts to agent without consent of principal an offence

(1) Every person is guilty, of an offence who corruptly gives, or agrees or offers to give, to any agent any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business (whether such act is within the scope of the agent's authority or the course of his employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business.

(2) Any gift or other consideration given or offered or agreed to be given to any parent, husband, wife, or child of any agent, or to his partner, clerk, or servant, or (at the agent's request or suggestion) to any other person, shall be deemed for the purposes of this section to have been given or offered or agreed to be given to the agent.

13. Penalty on conviction

(1) Every person convicted of an offence against this Act is liable -

(a) if a body corporate, to a fine not exceeding \$100,000, and;

(b) if any other person, to imprisonment for any period not exceeding 10 years or to a fine not exceeding \$20,000 or to both such fine and imprisonment.

(2) Where the Court is satisfied that an act or omission constituting an offence under this Act has caused any loss or damage to any other person, the Court shall, in addition to any other penalty imposed under this section, and after giving the prosecutor and the offender an opportunity to be heard on the question of quantum, order the offender to make reparation for the amount of the loss or damage.

(3) An order for reparation made pursuant to subsection (2) may provide for payment of reparation in one sum by a date specified by the Court or, having regard to the means of the offender, may provide for payment by instalments of such amount and at such times as the Court may, at the time of making the order or by subsequent order, direct.

105. The Cook Islands has indicated that there have not been cases of active bribery of national public officials in the last two years. However, there is an ongoing investigation at the moment handled by the Police with the assistance of New Zealand authorities.

(b) Observations on the implementation of the article

106. The definition of official is contained in section 110 of the Crimes Act 1969 and, according to the explanation provided by the Cook Islands authorities, covers all types of Government employees.

107. The elements of offering and promising are both covered by the term “offer” in section 116(2) of the Crimes Act.
108. “Bribe”, according to section 110 of the Act, includes any benefit, which, as explained by the Cook Islands authorities, also covers an undue advantage of immaterial benefit, as long as it is offered *corruptly*.
109. The element “for the benefit of third parties” is also covered by the wording of section 116(2) that criminalizes bribery to “*any person* with intent to influence any official”.
110. Active bribery of judicial officers and court registrars is separately addressed in section 112 (1), (2) of the Act.
111. Active bribery of the Ministers of the Crown is covered in section 113 (a) of the Act.
112. Active bribery of members of Legislative Assembly is covered in section 114 (2) of the Act.
113. Additionally, the Electoral Act 2004 addresses active bribery of electors in sections 87 and 88.
114. Secret Commissions Act 1994-95 allows, in its section 4, the giving gifts *according to customs and tradition* to agents (who may also include the employees of entities with public functions or members of any authority). However, according to section 5 of the same Act, giving or offering to give any gift or *other consideration corruptly and as an inducement or reward to any agent in relation to the giver’s affairs or business and when such act is within the scope of agent’s authority or the course of his employment* is prohibited. In order to avoid practical difficulties in the application of these provisions, the Cook Islands is recommended to continue providing clarifications on the distinctions between “gifts” and “undue advantages” in legislation and relevant court practice and/or sentencing guidelines.
115. At the time of the review, the Cook Islands was in the process of considering amendments to the Crimes Bill 1969. The draft Crimes Bill 2015 also included amended provisions specifically focused on “Gifts according to Custom or Tradition Defence” which are cited below.

230. Gifts according to custom or tradition defence

(1) A person is not criminally responsible for an offence against section 228 or section 229 if, when the conduct required for the offence was carried out, the person was engaging in conduct that is—

- (a) a recognised customary or traditional practice; and
- (b) an honest and reasonable expression of that practice.

(2) The accused has a legal burden in relation to the matters mentioned in subsection (1).

(3) The question whether conduct satisfies the requirements of subsection (1) is a question of law.

(4) A court may take the following matters into account to determine the requirements:

- (a) the history of the practice;

- (b) the circumstances in which the practice would and would not have been appropriate;
- (c) any other matter the court considers relevant

116. The Cook Islands authorities also clarified that “consideration” may include valuable benefits of any kind (such as discounts, commissions, rebates, bonuses, deductions, percentages, employment payment of money, whether by way of loan, gift, or otherwise) and forbearance to demand and money or valuable thing (section 2 of the Secret Commissions Act).
117. Sanctions for bribery of judicial officers and ministers under the Crimes Act are notably higher than for the bribery of ordinary officials and are limited only to imprisonment and do not include monetary fines. However, monetary sanctions are applicable to the offences under the Crimes Act, including corruption offences, based on the Proceeds of Crimes Act 2003 (please see observations under UNCAC article 31 below).
118. The sanctions under the Secret Commissions Act besides imprisonment also include monetary sanctions and a possibility for the court to order the offender to make reparation for the amount of the loss or damage to a person harmed by the offence.
119. Additionally, the Draft Crimes Bill 2015 also included amended provisions specifically focused on bribery of public officials, which are cited below.

228. Public corruption

(1) A person is criminally responsible for the offence of corrupting a Cook Islands public official if—

(a) the person directly or indirectly—

- (i) provides an inducement to a Cook Islands public official or another person; or
- (ii) causes an inducement to be provided to a Cook Islands public official or another person; or
- (iii) offers to provide, or agrees to provide, an inducement to a Cook Islands public official or another person; or
- (iv) causes an offer for the provision of an inducement, or an agreement for the provision of an inducement, to be made to a Cook Islands public official or another person; and

(b) the person intends that the Cook Islands public official act improperly as a result of the inducement.

Maximum penalty: 7 years imprisonment.

(2) A person is criminally responsible for the offence of corrupt conduct as a Cook Islands public official if—

(a) the person is a Cook Islands public official; and

(b) the person directly or indirectly—

- (i) asks for an inducement for the person or another person; or
- (ii) obtains, or causes to be obtained, an inducement for the person or another person; or
- (iii) agrees to receive an inducement for the person or another person; and

(c) the person intends—

- (i) to act improperly as a result of the inducement; or

(ii) inducing a belief in another person that the person will act improperly as a result of the inducement.

Maximum penalty: 7 years imprisonment.

(3) A prosecution for an offence against this section must only be begun if—

(a) for a prosecution against a Minister of the Crown or a member of the Parliament of the Cook Islands—

(i) a Judge of the High Court grants leave to begin the prosecution; and

(ii) the person against whom the prosecution is proposed is given—

(A) reasonable notice of the prosecution's intention to apply for leave to begin the prosecution; and

(B) a reasonable opportunity to oppose the application; or

(b) in any other case—the Attorney-General consents to the prosecution.

(4) However, subsection (3) does not make any of the following unlawful if done before the High Court grants leave for, or the Attorney-General considers whether to consent to, a prosecution for an offence against this section:

(a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence;

(b) the arrest of the accused;

(c) remanding the accused in custody;

(d) granting bail to the accused.

(5) The High Court may inform itself, and the Attorney-General may inform himself or herself, of any matter considered appropriate for the purposes of deciding whether to grant leave for, or give consent to, a prosecution for an offence against this section.

(6) In this section:

act improperly, for a Cook Islands public official, means—

(a) be influenced or affected to dishonestly exercise the public official's functions; or

(b) dishonestly do or not do something as a public official, or because of his or her position as a public official; or

(c) dishonestly cause or influence another public official to act in a way mentioned in paragraph (a) or (b).

120. It is also not clear to which extent bribery of some categories of public officials, as, for example, persons performing public function for public agencies or providing public services are covered by bribery legislation.

121. The Cook Islands, is, therefore, recommended, to harmonize the definition and categories of public officials in accordance with article 2 of UNCAC and ensure that active bribery of all types of such officials is criminalized; in particular, bribery of the employees of public companies or companies with the state participation, as well as the bribery of the persons providing public services.

(c) Successes and good practices

122. Criminalization of bribery of electors or any persons in order to induce such persons to procure or endeavor to procure favorable vote, although not required by the article under review, can be regarded as a good practice conducive to the fight against corruption.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

123. The Cook Islands has indicated that it implemented the provision under review and referred to the following implementation measures.

CRIMES ACT 1969

PART VI. CRIMES AFFECTING THE ADMINISTRATION OF LAW AND JUSTICE

Bribery and Corruption

116. Corruption and bribery of official

(1) Every official is liable to imprisonment for a term not exceeding seven years who, whether within the Cook Islands or elsewhere, 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, or to be done or omitted, by him in his official capacity.

...

Other relevant provisions include the following:

Interpretation under section 110 as cited above under UNCAC article 15(a)).

111. Judicial corruption

(1) Every judicial officer is liable to imprisonment for a term not exceeding fourteen years who 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, by him in his judicial capacity. (2) Every judicial officer, and every Registrar or Deputy Registrar of any Court, is liable to imprisonment for a term not exceeding seven years who 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, or to be done or omitted, by him in his official capacity not being an act or omission to which subsection (1) of this section applies.

113. Corruption and bribery of Minister of the Crown

(1) Every Minister of the Crown or member of the Executive Council is liable to imprisonment for a term not exceeding fourteen years who 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, or to be done or omitted, by him in his capacity as a Minister or member of the Executive Council.

...

(3) *as cited under paragraph (a) above.*

114. Corruption and bribery of member of Legislative Assembly

(1) Every member of the Legislative Assembly is liable to imprisonment for a term not exceeding seven years who 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, or to be done or omitted, by him in his capacity as a member of the Legislative Assembly.

...

(3) *as cited under paragraph (a) above.*

115. Corruption and bribery of law enforcement officer

(1) Every law enforcement officer is liable to imprisonment for a term not exceeding seven years who 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, or to be done or omitted, by him in his official capacity.

...

Section 117 is to be noted.

117. Restrictions on prosecution

as cited under paragraph (a) above.

Section 88 (e) of the ELECTORAL ACT 2004

as cited under paragraph (a) above.

SECRET COMMISSIONS ACT 1994-95

6. Acceptance of gifts by agent an offence

(1) Every agent is guilty of an offence who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, or solicits from any person, for himself or for any other person, any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business (whether such act is within the scope of the agent's authority or the course of his employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business.

(2) Every agent who diverts, obstructs, or interferes with the proper course of the affairs or business of his principal, or fails to use due diligence in the prosecution of such affairs, or business, with intent to obtain for himself or for any other person any gift or other consideration from any person interested in such affairs or business, shall be deemed to have corruptly solicited a consideration within the meaning of this section.

13. Penalty on conviction

as cited under paragraph (a) above.

124. The Cook Islands has indicated that there have not been cases of passive bribery of national public officials in the last two years.

(b) Observations on the implementation of the article

125. The elements of soliciting and accepting of an undue advantage by public officials are both covered by section 116(1) of the Crimes Act.
126. The element “for the benefit of third parties” is also covered by the wording of section 116(1) that criminalizes passive bribery for another person; i.e., “*for (official) himself or any other person* in respect of any act done or omitted, or to be done or omitted, by him in his official capacity”.
127. Passive bribery of judicial officers and court registrars is separately addressed in section 111 (1), (2) of the Act.
128. Passive bribery of the Ministers of the Crown is covered in section 113 (1) of the Act.
129. Passive bribery of members of Legislative Assembly is covered in section 114 (1) of the Act.
130. Passive bribery of law enforcement officers is separately addressed in section 115(1) of the Act.
131. Additionally, section 88 (e) of the Electoral Act 2004 separately addresses passive bribery of electors.
132. The Secret Commissions Act 1994-95, in its section 6, criminalized the passive bribery of the agents.
133. Sanctions for passive bribery are notably higher than for active bribery.
134. Taking into account the recommendations under subparagraph (a) above, the Cook Islands has partially implemented the provision under review in its legislation.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

135. The Cooks Islands indicated that, pursuant to section 110 on the interpretation in the Crimes Act of 1969, “official” does not include foreign public officials and officials of public international organizations. However, the draft Crimes Bill is to criminalize both the active and passive bribery of foreign public officials.

(b) Observations on the implementation of the article

136. Current legislation of the Cook Islands does not criminalize the active bribery of foreign public officials. The criminalization of the active bribery of foreign public officials was considered and corresponding provisions were included in the draft Crimes Bill.

137. Following the country visit, the Cook Islands has provided the relevant citations from the draft Crimes Bill 2015.

229. Foreign corruption

(1) A person is criminally responsible for the offence of corrupting a foreign public official if—

(a) the person directly or indirectly—

(i) provides an inducement to a foreign public official or another person; or

(ii) causes an inducement to be provided to a foreign public official or another person; or

(iii) offers to provide, or agrees to provide, an inducement to a foreign public official or another person; or

(iv) causes an offer for the provision of an inducement, or an agreement for the provision of an inducement, to be made to a foreign public official or another person; and

(b) the person, as a result of the inducement, intends—

(i) to obtain or retain domestic or international business; or

(ii) to obtain an improper advantage in domestic or international business.

Maximum penalty: 7 years imprisonment.

(2) For this section, it does not matter that an inducement directed at a foreign public official was intended as an inducement for conduct that is not within the authority of the foreign public official.

(3) This section does not apply if—

(a) the conduct required for the offence was mainly engaged in to ensure or expedite the performance of a routine government action by a foreign public official; and

(b) the value of the inducement is small.

(4) In this section:

routine government action, in relation to the performance of any action by a foreign public official, does not include—

(a) a decision about—

(i) whether to award new business; or

(ii) whether to continue existing business with any particular person or body; or

(iii) the terms of new business or existing business; or

(b) an action that is outside the scope of the of the ordinary duties of the foreign public official.

138. The Cook Islands is recommended to criminalize the active bribery of foreign public officials.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

139. The Cook Islands has referred to their responses provided under paragraph 1 above.

(b) Observations on the implementation of the article

140. The passive bribery of foreign public officials and officials of public international organizations is not criminalized in the current legislation of the Cooks Islands.

141. The Cook Islands is recommended to consider criminalizing the passive bribery of foreign public officials and officials of public international organizations in accordance with article 16 of UNCAC.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

142. The Cook Islands has indicated that it implemented the provision under review and cited the following implementation measures.

CRIMES ACT 1969

PART X. CRIMES AGAINST RIGHTS OF PROPERTY

Theft

239. Things capable of being stolen

Every inanimate thing whatsoever, and every thing growing out of the earth, which is the property of any person, and either is or may be made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

242. Theft defined

(1) Theft or stealing is the act of intentionally and dishonestly taking, or intentionally and dishonestly converting to the use of any person, anything capable of being stolen, with intent-

- (a) To deprive the owner, or any person having any special property or interest therein, permanently of such thing or of such property or interest; or
 - (b) To pledge the same or deposit it as security; or
 - (c) To part with it under a condition as to its return which the person parting with it may be unable to perform; or
 - (d) To deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking or conversion.
- (2) For the purposes of subsection (1) of this section, the term "taking" does not include obtaining property in or possession of anything with the consent of the person from whom it is obtained, although that consent may be induced by a false pretence; but a subsequent conversion of anything of which possession only is so obtained may be theft.
- (3) It is immaterial whether the thing converted was taken for the purpose of conversion or whether it was at the time of the conversion in the possession of the person converting.
- (4) Theft is committed when the offender moves the thing, or causes it to move or to be moved, with intent to steal it.
- (5) A factor or agent is not guilty of theft by pledging or giving a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal.
- (6) A servant who, contrary to the orders of master, takes from his possession any food for the purpose of giving it or having it given to any horse or other animal belonging to or in the possession of his master is not by reason thereof guilty of theft.

244. Theft by person required to account

Every one commits theft who, having received any money or valuable security or other thing whatsoever on terms requiring him to account for or pay it, or the proceeds of it, or any part of such proceeds, to any other person though not requiring him to deliver over in specie the identical money, valuable security or other thing received, dishonestly converts to his own use or dishonestly omits to account for or pay the same or any part thereof, or to account for or pay such proceeds or any part thereof, which he was required to account for or pay as aforesaid:

Provided that if it is part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving it and the person to whom he is to account for or pay the same, and that such last-mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of the amount of the money or proceeds or any part thereof in that account shall be a sufficient accounting for the amount so entered; and in such case no dishonest conversion of the amount accounted for shall be deemed to have taken place.

246. Theft by misappropriating proceeds held under direction

Everyone commits theft who, having received, either solely or jointly with any other person, any money or valuable security, or any power of attorney for the sale of any real or personal property, with a direction that the money or any part thereof, or the proceeds or any part of the proceeds of the security or property, shall be applied to any purpose or paid to any person specified in the direction, in violation of good faith and

contrary to the direction, dishonestly applies to any other purpose or pays to any other person the money or proceeds, or any part thereof:

Provided that where the person receiving the money, security, or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, this section shall not apply unless the direction is in writing.

249. Punishment of theft

Every one who commits theft is liable to the following punishment:

- (a) To imprisonment for a term not exceeding five years if the theft is one to which section 244 (which relates to theft by a person required to account) or section 245 (which relates to theft by an attorney) or section 246 (which relates to theft by misappropriation) of this Act applies;
- (b) To imprisonment for a term not exceeding five years if the object stolen is-
 - (i) A testamentary instrument, whether it is stolen during the testator's life or after his death;
 - (ii) Anything stolen by a clerk or servant which belongs to or is in the possession of his employer;
 - (iii) Anything in the possession of the offender as a clerk or servant, or as an officer of the Government or of any Island Council, or as a constable;
 - (iv) Anything stolen from the person of another;
 - (v) Anything stolen from a dwelling house;
 - (vi) Anything stolen from a separate receptacle, locked or otherwise secured;
 - (viii)[sic] Anything exceeding in value the sum of forty dollars;
- (c) To imprisonment for a term not exceeding one year if the theft is one for which no other punishment is prescribed by this Act, and if the object stolen exceeds in value the sum of ten dollars;
- (d) To imprisonment for a term not exceeding three months if the theft is one for which no other punishment is prescribed by this Act, and if the object stolen does not exceed in value the sum of ten dollars.

Crimes Resembling Theft

250. Conversion or attempted conversion of motorcars, etc.

(1) Every one is liable to imprisonment for a term not exceeding five years who, intentionally and dishonestly, but not so as to be guilty of theft, takes or converts to his use or to the use of any other person any of the following things, namely:

- (a) Any motorcar, or any vehicle of any description;
- (b) Any ship;
- (c) Any aircraft;
- (d) Any part of any motorcar, vehicle, ship, or aircraft;
- (e) Any horse, mare, or gelding.

(2) Every one is liable to imprisonment for a term not exceeding two years who attempts to commit the offence referred to in subsection (1) of this section, or who, intentionally and dishonestly interferes with or gets into or upon or attempts to get into or upon any of the things referred to in paragraphs (a) to (d) of that subsection.

(3) In addition to imposing any penalty for an offence against this section the convicting Court may order the person convicted of the offence to pay to the owner of any thing or animal destroyed or damaged, by way of compensation for the destruction or damage, a sum not exceeding the amount of the loss suffered by him. The making

or enforcement of an order under this subsection shall not affect the right of the owner or of any other person to recover by civil proceedings any damages in excess of the sum recovered under the order.

(4) Any order for payment under this section may be enforced in the same manner as a fine.

251A. Taking or dealing with certain documents with intent to defraud

Everyone is liable to imprisonment for a term not exceeding 5 years, who, with intent to defraud-

(a) Takes or obtains any document that is capable of being used to obtain any privilege, benefit pecuniary advantage or valuable consideration; or

(b) Uses or attempts to use any such document for the purposes of obtaining, for himself or for any other person, any privilege benefit, pecuniary advantage, or valuable consideration.

[Added Act 1986/9]

252. Criminal breach of trust

(1) Every one commits the crime of criminal breach of trust and is liable to imprisonment for a term not exceeding seven years who, being a trustee, with intent to defraud and in violation of his trust, converts anything of which he is trustee to any use not authorised by the trust.

(2) The following persons and no others are trustees within the meaning of this section, namely:

(a) Trustees upon express trusts created by any deed, will, or instrument in writing, whether for any public or private or charitable object;

(b) Every person upon whom the duty of any such trust devolves or comes;

(c) Executors and administrators;

(d) Official assignees, liquidators, and other like officers acting in any winding up or dissolution of any company, society, or other body corporate, or in any bankruptcy, and any administrator under Part IV of the Administration Act 1952;

(e) Receivers and managers acting on behalf of debenture holders or creditors, or on behalf of any other persons or classes or persons.

(3) No one shall be prosecuted for an offence against this section without the leave of the Minister of Justice, who before giving leave may make such inquiries as he thinks fit.

Fraud

274. Falsifying accounts relating to public funds

Every one is liable to imprisonment for a term not exceeding ten years who, with intent to defraud,-

(a) Makes any false entry or any alteration in any accounts kept by any Government Department or by any Island Council or public body, or by any bank, being accounts of any public money, or of any other public fund, or being accounts of the owners of any stock, debentures, or other interest in the, debt of any Island Council or public body; or

(b) In any manner wilfully falsifies any such accounts as aforesaid; or

(c) Makes any transfer of any interest in any stock, debentures, or debt, in the name of any person other than the owner of that interest.

(b) Observations on the implementation of the article

143. The Cook Islands does not have specific provisions on embezzlement committed by public officials. The criminal conduct criminalized by the provision under review is addressed in a number of generic provisions of the Crimes Act on Theft. Those provisions include section 242 (Theft defined), 244 (Theft by person required to account), 246 (Theft by misappropriating proceeds held under direction). Section 249 (Punishment of theft) (a)(iii) specifically addresses the theft of anything in the possession of the offender “*as an officer of the Government or of any Island Council, or as a constable*” by punishing it by a prison term not exceeding five years. These provisions criminalize the theft of *movable property*.
144. Section 246 (Theft by misappropriating proceeds held under direction) can be used to prosecute embezzlement, diversion and misappropriation of immovable property when such is committed via the illegal use of documents providing for legal rights over such property. Other relevant provisions also include “crimes resembling theft”, i.e., section 250 (Conversion or attempted conversion of motorcars, etc.), 251A (Taking or dealing with certain documents with intent to defraud), 255 (Criminal breach of trust) and “fraud”, i.e., 274 (Falsifying accounts relating to public funds) of the Crimes Act.
145. The Cooks Islands further clarified during the country visit that wherever theft or other relevant offences are committed by public officials, the courts routinely apply increased punishment based on the concept of “abuse of trust”. However, there are no clear sentencing guidelines on that matter.
146. The new draft Crimes Bill also lists theft committed by public officials as one of the aggravating circumstances that entails an increased punishment. The relevant provisions of the Bill are cited below.

234. Embezzlement by Cook Islands public official

(1) A person is criminally responsible for the offence of embezzlement by a Cook Islands public official if the person—

(a) is a Cook Islands public official; and

(b) is lawfully permitted or required to deal with property in the name of, on behalf of, or on account of the Cook Islands in the course of the person’s employment or appointment; and

(c) engages in conduct that deals with property—

(i) in the name of, on behalf of, or on account of the Cook Islands; and

(ii) before the property comes into the possession of the Cook Islands; and

(iii) dishonestly for—

(A) the person’s own benefit; or

(B) the benefit of another person or entity.

Maximum penalty: 7 years imprisonment.

(2) In this section:

deals, with property, includes the following:

(a) acquires, receives, possesses, uses or disposes of property;

(b) carries out a transaction relating to the property

property includes all or part of the property

147. Additionally, Public Service Act 2009 sets out a code of conduct for public servants that according to section 22 of the Act is mandatory for all public officials and that requires them to ensure the proper and prudent use of Government resources and not to improperly use their status or authority to seek or obtain a benefit for themselves or anybody.

148. Also, Police Act 2013 sets out offences for the unlawful possession of police property in its section 70 with 3 month imprisonment or up to \$2000 fine.

149. The Cook Islands has partially implemented the provision under review. It is recommended to explicitly indicate the theft *by public officials* as an aggravating element to be taken into account while issuing sentences to convicts in sentencing guidelines for judges.

(e) Technical assistance needs

150. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Model legislation;
3. Legislative drafting;
4. Legal advice;
5. On-site assistance by an anti-corruption expert;

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

151. The Cook Islands has indicated that it did not implement the provision under review.

(b) Observations on the implementation of the article

152. The Cook Islands is recommended to consider criminalizing the trading in influence in line with article 18 of UNCAC.

(c) Technical assistance needs

153. The Cook Islands has indicated that the following form of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

154. The Cook Islands has indicated it did not implement the provision under review.

(b) Observations on the implementation of the article

155. The Cook Islands is recommended to consider criminalizing abuse of functions as a separate offence in line with the requirements of article 19 of UNCAC.

(c) Challenges

156. The Cook Islands has identified the following challenge and issue in fully implementing the provision under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.).

(d) Technical assistance needs

157. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Legislative drafting.

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

158. The Cook Islands has indicated that it considered but did not implement the provision under review.

(b) Observations on the implementation of the article

159. During the visit it was clarified that the Cook Islands would be unable to criminalize article 20 of UNCAC due to its incompatibility with the fundamental requirements of the Cook Islands' legal system.

160. Following the discussions during the country visit, the reviewing experts concluded that the Cook Islands would benefit from the introduction of the national system of asset and conflict of interest declarations and their verification. The Cook Islands is therefore recommended to consider introducing such declaration and verification systems.

(d) Challenges

161. The Cook Islands has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.).

(e) Technical assistance needs

162. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Legislative drafting.

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 21 Bribery in the private sector

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or

herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

163. The Cook Islands has referred to their responses under subparagraph (a) of article 15 above.

164. The Cook Islands has additionally clarified that the concept of “agent” under the Secret Commissions Act also includes private sector actors.

165. The Cook Islands has cited the following implementation measures.

SECRET COMMISSIONS ACT 1994-95

2. Interpretation

as cited under subparagraph (a) of article 15 above.

(1) For the purposes of this Act -

(a) every officer of a corporation and every member of a governing body of a corporation shall be deemed to be an agent of the corporation;

(b) *as cited under subparagraph (a) of article 15 above;*

(c) *as cited under subparagraph (a) of article 15 above;*

(d) every partner in a firm shall be deemed to be an agent of the firm;

(e) an executor, administrator, or trustee shall be deemed to be an agent of the beneficiaries under the will, intestacy, or trust;

(f) an arbitrator, umpire, or valuer shall be deemed to be an agent of every party to the arbitration or valuation;

(g) a liquidator of a company shall be deemed to be an agent of the company.

(b) Observations on the implementation of the article

166. The Secret Commissions Act 1994-95, in its section 5, criminalizes giving, as well as agreeing or offering to give gifts or other consideration corruptly as an inducement or reward to any agent in relation to the giver’s affairs or business and when such act is within the scope of agent’s authority or the course of his employment is prohibited.

167. “Agents” according to section 3 of the Act also include (a) officers and members of a governing body of a corporation, and (d) every partner in a firm.

168. However, it is not clear whether the general employees of a private sector entity/corporation are also covered by the prohibition under that section of the Secret Commissions Act.

169. During the country visit, the practicability of extending criminalization to general employees of the private sector entities was highlighted.

170. The Cook Islands is, therefore, recommended to consider clearly criminalizing active bribery *of any person who works in any capacity for a private sector entity* in line with article 21 of UNCAC.

Article 21 Bribery in the private sector

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

171. The Cook Islands has referred to their responses under subparagraph (a) of article 15 above and cited the following implementation measures.

SECRET COMMISSIONS ACT, 1994-95

6. Acceptance of gifts by agent an offence
as cited under subparagraph (b) of article 15 above.

13. Penalty on conviction
as cited under subparagraph (b) of article 15 above.

(b) Observations on the implementation of the article

172. Section 6 of the Secret Commissions Act criminalizes passive bribery (also including the solicitation of bribery) of agents.

173. However, as noticed in the observations under subparagraph (a) above, the subjects of the offence seem to be limited only to the persons with managerial functions in the private sector entities.

174. The Cook Islands is therefore recommended to consider clearly criminalizing passive bribery *of any person who works in any capacity for a private sector entity* in line with article 21 of UNCAC.

(c) Challenges

175. The Cook Islands has identified the following challenge and issue in fully implementing the provision under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.).

(d) Technical assistance needs

176. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;

2. Legislative drafting.

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

177. The Cook Islands has referred to its responses provided under article 17 above.

(b) Observations on the implementation of the article

178. The provisions regarding theft and relevant offences cited by the Cook Islands under article 17 also generally apply to the embezzlement of property in the private sector.

179. The Cook Islands has legislatively implemented the provision under review.

Article 23 Laundering of proceeds of crime

Paragraph 1

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

180. The Cook Islands has indicated that it implemented the provision under review and cited the following implementation measures.

CRIMES ACT 1969

280A. Money Laundering

(1) For the purposes of this section “serious offence” means

An act or omission that constitutes an offence against the law of the Cook Islands punishable by imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000; or

An act or omission that constitutes an offence against the law of another country that, had that act or omission occurred in the Cook Islands, it would have constituted an offence against the law of the Cook Islands punishable by imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000.

(2) A person commits an offence of money-laundering if the person –

acquires, possesses or uses property, or engages in a transaction that involves property, knowing or having reason to believe that it is derived directly or indirectly from a serious offence;

converts or transfers property derived directly or indirectly from those acts or omissions with the aim of –

concealing or disguising the illicit origin of that property; or

aiding any person involved in the commission of the offence, to evade the legal consequences thereof;

conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property derive directly or indirectly from those acts or omissions;

render assistance to another person for any of the above.

(3) Knowledge, intent or purpose required as an element of the above-mentioned activities may be inferred from objective factual circumstances.

(4) Any person may be convicted of a money laundering offence under this section notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered.

(5) Any person guilty of an offence under the provisions of this section is liable on conviction, in the case of a person, to a term of imprisonment of up to 5 years or a fine of up to \$50,000 and in the case of a person which is a body corporate, five times such fine.”

With regard to the implementation of subparagraph 1 (b)(ii)

CRIMES ACT 1969

PART IV. PARTIES TO THE COMMISSION OF OFFENCES

68. Parties to offences

(1) Every one is a party to and guilty of an offence who-

(a) Actually commits the offence; or

(b) Does or omits an act for the purpose of aiding any person to commit the offences;
or

(c) Abets any person in the commission of the offence; or

(d) Incites, counsels, or procures any person to commit the offence.

(2) Where two or more persons form a common intention to prosecute any unlawful purposes and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose.

72. Offence committed other than offence intended

(1) Every one who incites, counsels, or procures another to be a party to an offence of which that other is afterwards guilty is a party to that offence, although it may be committed in a way different from what which was incited, counselled, or suggested.

(2) Every one who incites, counsels, or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such inciting, counselling, or procuring, and which the first-mentioned person knew to be likely to be committed in consequence thereof.

PART XI. THREATENING, CONSPIRING, AND ATTEMPTING TO COMMIT OFFENCES

333. Conspiring to commit offence

(1) Subject to the provisions of subsection (2) of this section, every one who conspires with any person to commit any offence, or to do or omit, in any part of the world, anything of which the doing or omission in the Cook Islands would be an offence, is liable to imprisonment for a term not exceeding seven years if the maximum punishment for that offence exceeds seven years' imprisonment, and in any other case is liable to the same punishment as if he had committed that offence.

(2) This section shall not apply where a punishment for the conspiracy is otherwise expressly prescribed by this Act or by some other enactment.

(3) Where under this section any one is charged with conspiring to do or omit anything anywhere outside the Cook Islands it is a defence to prove that the doing or omission of the act to which the conspiracy relates was not an offence under the law of the place where it was, or was to be, done or omitted.

334. Attempt to commit or procure commission of offence

(1) Every one who attempts to commit any offence in respect of which no punishment for the attempt is expressly prescribed by this Act or by some other enactment is liable to imprisonment for a term not exceeding ten years if the maximum punishment for that offence is imprisonment for life, and in any other case is liable to not more than half the maximum punishment to which he would have been liable if he had committed that offence.

(2) Every one who incites, counsels, or attempts to procure any person to commit any offence, when that offence is not in fact committed, is liable to the same punishment as if he had attempted to commit that offence, unless in respect of any such case a punishment is otherwise expressly provided by this Act or by some other enactment.

181. The Cook Islands has additionally clarified that the cited provisions cover income derived from proceeds of crime by the words "*derived directly or indirectly from a serious offence*".

182. Property is defined in the Crimes Act 1969 as including real and personal property, and any estate or interest in any real or personal property, and any debt, and any thing in action, and any other right or interest, this includes whether the property is immovable.

183. The penalty for this offence is provided in subsection (5), up to 5 years imprisonment or maximum of \$50,000 fine or five times such for body corporate.

(b) Observations on the implementation of the article

184. The Cook Islands has implemented subparagraph (a)(i) of article 23 of UNCAC through section 280A 2(b) of the Crimes Act 1969.
185. Subparagraph (a)(ii) is implemented through section 280A 2(c) of the Crimes Act 1969.
186. Subparagraph (b)(i) is implemented through 280A 2(a) of the Crimes Act 1969.
187. Subparagraph (b)(ii) is implemented through section 280A 2(d) of the Crimes Act in the part of aiding.
188. Additionally, general provisions of the Crimes Act on participation, abetting, counselling (sections 68, 72 of the Crimes Act) attempt (section 334 of the Crimes Act) and conspiracy (section 333 of the Crimes Act) will also apply to the offence of money-laundering.
189. The Cook Islands has legislatively implemented the provisions under review.

Article 23 Laundering of proceeds of crime

Subparagraphs 2 (a)-(d)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

190. The Cooks Islands has referred to section 280A(1) as cited under subparagraph 1 above.

(b) Observations on the implementation of the article

191. Section 280A(1) provides that a serious offence for the purposes of money-laundering (i.e. *a predicate offence* in the meaning of the Convention) is an act or omission punishable by penalty of not less than 12 months imprisonment or a fine of \$5,000. This kind of penalty threshold covers all the corruption offences relevant to the implementation of UNCAC under the Cook Islands law.
192. Section 280A(1)(b) contains dual criminality requirement applicable to predicate offences committed abroad.
193. The Cook Islands has furnished copies of their laws that give effect to article 23 of UNCAC to the Secretary-General of the United Nations.
194. The Cook Islands has legislatively implemented the provisions under review.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

195. The Cook Islands has referred to section 280A(2)(c) of the Crimes Act as cited under paragraph 1 above.

(b) Observations on the implementation of the article

196. Under section 280A(2)(c) of the Crimes Act, the prosecution for self-laundering is not prohibited under the Cook Islands law.

(c) Challenges

197. The Cook Islands has identified the following challenges and issues in fully implementing the provision under review:
1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
 2. Limited capacity (e.g. human/technological/institution/other);
 3. Limited resources for implementation (e.g. human/financial/other).

(d) Technical assistance needs

198. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Legislative drafting;
3. Other assistance (independent in-country expert assistance working with national counterparts) in particular in investigating money-laundering offences.

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

199. The Cook Islands has referred to section 280A(2) of the Crimes Act, as cited under article 23 above.

(b) Observations on the implementation of the article

200. *The retention* of property when the person involved knows that such property is the result of an offence is generally covered by section 280A(2)(a) of the Crimes Act. The element of *concealment* likewise appears to be mostly covered by section 280A (2)(a).

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

201. The Cook Islands has cited the following implementation measures.

CRIMES ACT 1969

128. Corrupting juries and witnesses

Every one is liable to imprisonment for a term not exceeding 7 years who –

- (a) dissuades or attempts to dissuade a person, by threats, bribes or another corrupt means from giving evidence in any cause or matter (whether civil or criminal, and whether tried or to be tried in the Cook Islands or in an overseas jurisdiction); or

- (b) influences or attempts to influence, by threats or bribes or other corrupt means, a member of the jury in his or her conduct as such (whether in a cause or matter tried or to be tried in the Cook Islands or an overseas jurisdiction, and whether the member has been sworn as a member of a particular jury or not); or
- (c) accepts any bribe or other corrupt consideration to abstain from giving evidence (whether in a cause or matter tried or to be tried in the Cook Islands or in an overseas jurisdiction); or
- (d) accepts any bribe or other corrupt consideration on account of his or her conduct as a member of a jury (whether in a cause or matter tried or to be tried in the Cook Islands or in an overseas jurisdiction, and whether the member has been sworn as a member of a particular jury or not); or
- (e) wilfully attempts in any other way to obstruct, prevent, pervert, or defeat the course of justice in the Cook Islands or the course of justice in an overseas jurisdiction.”

(b) Observations on the implementation of the article

202. The Cook Islands has generally criminalized the interferences with giving testimony or production of evidence in section 128 of the Crimes Act 1969.
203. The elements *promise or offering of undue advantage* are covered by the wording of “dissuades or attempts to dissuade a person by... bribes” in section 128 (a); *the use of physical force* is covered by the wording of “wilfully attempts in any other way to obstruct, prevent, pervert, or defeat the course of justice” in section 128 (e) of the Crimes Act, *as explained by the Cook Islands*.
204. The Cook Islands, however, has not provided actual examples of how the relevant provisions are implemented in practice.
205. The Cook Islands has partially implemented the provision under review and is recommended to explicitly criminalize *the use of physical force* to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in line with article 25 of UNCAC.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

206. The Cook Islands has cited the following implementation measures.

POLICE ACT 2012

75. Assault on Police

Every person who assaults any member of Police, acting in the execution of duty, commits an offence and is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$15,000 or both.

(b) Observations on the implementation of the article

207. The Cook Islands has partially implemented the provision under review.
208. Section 75 of the Police Act 2012 criminalizes the *assaults* on police officers, which according to the explanation provided by the Cook Islands would also include “*the use of physical threats, threats or intimidation*” as required by the provision under review.
209. However, the legislation of the Cook Islands does not address the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice.
210. The Cook Islands is recommended to criminalize the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice as required by the provision under review; and consider more clearly stipulating the elements of *the use of physical threats, threats or intimidation or any member of Police* in the Police Act, 2012 as required by article 25(b) of UNCAC.

(c) Challenges

211. The Cook Islands has identified the following challenge and issue in fully implementing the provision under review:
1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.).

(d) Technical assistance needs

212. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:
1. Summary of good practices/lessons learned;
 2. Legislative drafting.

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 26 Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

213. The Cook Islands has indicated that they partially implemented the provision under review and cited the following implementation measures.

CRIMES ACT 1969

2. Interpretation

(1) In this Act, unless the context otherwise requires,-
"Person", "owner", and other words and expressions of the like kind include the Crown and any public body or Island Council, and any board, society, or company, and any other body of persons, whether incorporated or not;

PART XIII. MISCELLANEOUS PROVISIONS

417. Civil remedy not suspended

No civil remedy for any act or omission shall be suspended by reason that such act or omission amounts to an offence.

Section 280A (5) – *as cited under paragraph 1 of article 23 above.*

(b) Observations on the implementation of the article

214. Generally, the definition of “person” under the Crimes Act 1969 also includes legal persons. That, in theory, implies that legal persons can be liable for all the offences stipulated in the Crimes Act including for the corruption offences.

215. However, there is no established court practice on that matter and the Cook Islands was not able to demonstrate any cases where a legal person was held liable for participation in a corruption offence.

216. Additionally, section 13 of the Secret Commissions Act 1994-95 provides for a separate penalty for a corporate body where it is convicted of the offences under sections 4 and 5 of the Act.

217. Also, section 280A(5) of the Crimes Act separately provides for an increased punishment (fine as five times of \$50,000) in the case where a person convicted of money-laundering is an incorporated body.

218. There is no clear guidance or established court practice on the delineating the liability of natural and legal person for participation in criminal offences

219. Additionally, legal persons can be civilly and administratively liable based on the applicable common law principles. However, there is no established case law in that area, particularly, with regard to corruption offences.

220. The Cook Islands reported that in the draft Crimes Act, legal persons liability had been enhanced.

221. The Cook Islands has partially implemented the provision under review. The Cook Islands is recommended to provide clear and proportionate sanctions in the Crimes Act for the commission of corruption offences *when the convicted persons are incorporated bodies* (that could be similar to the sanctions in section 280A) in line with article 26 of UNCAC, as well as clearly stipulate that legal persons liability shall be without prejudice to the criminal liability of natural persons who have committed the offence. The Cook Islands is also recommended to consider including clear guidance on the sanctions applicable to incorporated bodies for participation in corruption offences in sentencing guidelines for judges.

(c) Challenges

222. The Cook Islands has identified the following challenge and issue in fully implementing the provision under review:

1. Other issues (keeping legislation up to date with current circumstances).

(d) Technical assistance needs

223. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Other assistance (analysis of the current situation, mapping out the existing penalties in order to ensure they are proportionate and can act as important deterrent against commission of offences).

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

224. The Cook Islands has cited the following implementation measures.

CRIMES ACT 1967

PART IV. PARTIES TO THE COMMISSION OF OFFENCES

68. Parties to offences

as cited under paragraph 1 of article 23 above.

PART XI. THREATENING, CONSPIRING, AND ATTEMPTING TO COMMIT OFFENCES

333. Conspiring to commit offence

as cited under paragraph 1 of article 23 above.

(b) Observations on the implementation of the article

225. The Cook Islands' Crimes Act 1969 stipulates the liability of accomplices (section 68 (b)) and assistants and instigators (section 68 (c) and (d)).

226. The Crimes Act also separately criminalizes conspiracy where a person conspires with another person to commit an offence (section 333 of the Crimes Act).

227. The Cook Islands has implemented the provision under review.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

228. The Cook Islands has cited the following implementation measures.

CRIMES ACT 1969

PART IV. PARTIES TO THE COMMISSION OF OFFENCES

74. Attempts

as cited under paragraph 1 of article 23 above.

PART XI. THREATENING, CONSPIRING, AND ATTEMPTING TO COMMIT OFFENCES

334. Attempt to commit or procure commission of offence

as cited under paragraph 1 of article 23 above.

(b) Observations on the implementation of the article

229. The Cook Island has separately criminalized attempts to commit an offence (sections 74 and 334 of the Crimes Act 1969).

230. The Cook Islands has implemented the provision under review.

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

231. The Cook Islands has referred to their responses provided under paragraphs 1 and 2 above.

(b) Observations on the implementation of the article

232. The Cook Islands has not separately criminalized the preparation for an offence. However, some forms of preparation may be covered to some extent by the provisions on attempts (section 74 of the Crimes Act) and conspiring (section 333 of the Crimes Act).

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

233. The Cooks Islands has indicated that there were no statute of limitations established with regard to any offence under the Crimes Act 1969.

(b) Observations on the implementation of the article

234. The Cook Islands legislation does not provide for statutes of limitations for any criminal offence including corruption offences.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

235. The Cook Islands has provided the following chart of offences and corresponding penalties.

UNCAC Offence	Corresponding sections of domestic legislation	Sanctions
Article 15 (a)	116. Corruption and bribery of official (the Crimes Act 1969)	Imprisonment for a term not exceeding three years
	112. Bribery of Judicial Officer, etc. (the Crimes Act 1969)	Imprisonment for a term not exceeding seven years
	113. Corruption and bribery of Minister of the Crown (the Crimes Act 1969)	Imprisonment for a term not exceeding seven years
	114. Corruption and bribery of member of Legislative Assembly (the Crimes Act 1969)	Imprisonment for a term not exceeding three years
	115. Corruption and bribery of law enforcement officer (the Crimes Act 1969)	Imprisonment for a term not exceeding three years
	4. Gifts according to custom and tradition (Secret Commissions Act 1994-95) 5. Gifts to agent without consent of principal an offence (Secret Commissions Act 1994-95) 13. Penalty on conviction (Secret Commissions Act 1994-95)	Imprisonment for any period not exceeding 10 years or to a fine not exceeding \$20,000 or to both A fine not exceeding \$100,000 in case of body corporate
Article 15 (b)	116. Corruption and bribery of official (the Crimes Act 1969)	Imprisonment for a term not exceeding seven years
	111. Judicial corruption (the Crimes Act 1969)	Imprisonment for a term not exceeding fourteen years (in case of passive bribery in “judicial capacity”) Imprisonment for a term not exceeding seven years (in case of passive bribery in “official capacity”)
	113. Corruption and bribery of Minister of the Crown (the Crimes Act 1969)	Imprisonment for a term not exceeding fourteen years
	114. Corruption and bribery of member of Legislative Assembly (the Crimes Act 1969)	Imprisonment for a term not exceeding seven years
	115. Corruption and bribery of law enforcement officer (the	Imprisonment for a term not exceeding seven years

	Crimes Act 1969)	
	6. Acceptance of gifts by agent an offence (Secret Commissions Act 1994-95) 13. Penalty on conviction (Secret Commissions Act 1994-95)	Imprisonment for any period not exceeding 10 years or to a fine not exceeding \$20,000 or to both
Article 17	249. Punishment of theft (the Crimes Act 1969)	Imprisonment for a term not exceeding five years Imprisonment for a term not exceeding one year (if the theft is one for which no other punishment is prescribed by this Act, and if the object stolen exceeds in value the sum of ten dollars) Imprisonment for a term not exceeding three months if the theft is one for which no other punishment is prescribed by this Act, and if the object stolen does not exceed in value the sum of ten dollars.
	250. Conversion or attempted conversion of motorcars, etc. (the Crimes Act 1969)	Compensation for the destruction or damage, a sum not exceeding the amount of the loss suffered
	251A. Taking or dealing with certain documents with intent to defraud (the Crimes Act 1969)	Imprisonment for a term not exceeding 5 years
	252. Criminal breach of trust (the Crimes Act 1969)	Imprisonment for a term not exceeding seven years
	274. Falsifying accounts relating to public funds (the Crimes Act 1969)	Imprisonment for a term not exceeding ten years
Article 21(a)	4. Gifts according to custom and tradition (Secret Commissions Act 1994-95) 5. Gifts to agent without consent of principal an offence (Secret Commissions Act 1994-95) 13. Penalty on conviction	Imprisonment for any period not exceeding 10 years or to a fine not exceeding \$20,000 or to both A fine not exceeding \$100,000 in case of body corporate

	(Secret Commissions Act 1994-95)	
Article 21(b)	6. Acceptance of gifts by agent an offence (Secret Commissions Act 1994-95) 13. Penalty on conviction (Secret Commissions Act 1994-95)	Imprisonment for any period not exceeding 10 years or to a fine not exceeding \$20,000 or to both
Article 22	249. Punishment of theft (the Crimes Act 1969)	Imprisonment for a term not exceeding five years Imprisonment for a term not exceeding one year (if the theft is one for which no other punishment is prescribed by this Act, and if the object stolen exceeds in value the sum of ten dollars) Imprisonment for a term not exceeding three months if the theft is one for which no other punishment is prescribed by this Act, and if the object stolen does not exceed in value the sum of ten dollars.
	250. Conversion or attempted conversion of motorcars, etc. (the Crimes Act 1969)	Compensation for the destruction or damage, a sum not exceeding the amount of the loss suffered
	251A. Taking or dealing with certain documents with intent to defraud (the Crimes Act 1969)	Imprisonment for a term not exceeding 5 years
	252. Criminal breach of trust (the Crimes Act 1969)	Imprisonment for a term not exceeding seven years
	274. Falsifying accounts relating to public funds (the Crimes Act 1969)	Imprisonment for a term not exceeding ten years
Article 23	280A. Money Laundering (the Crimes Act 1969)	Imprisonment of up to 5 years or a fine of up to \$50,000 and in the case of a person which is a body corporate, five times such fine
Article 25	128. Corrupting juries and witnesses (the Crimes Act 1969)	Imprisonment for a term not exceeding 7 years

	75. Assault on Police (the Crimes Act 1969)	Imprisonment for a term not exceeding 2 years or a fine not exceeding \$15,000 or both
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(b) Observations on the implementation of the article

236. In addition to imprisonment, the Proceeds of Crime Act 2003 and the Proceeds of Crime Amendment Act 2004 (please see the observations under article 31 below) provide for the mandatory application by the Solicitor-General for either or both of a forfeiture order against tainted property and a pecuniary penalty order against the accused for benefits derived by the person from the commission of the offence, following convictions of the accused of “serious offences” (section 11 (1) of the Proceeds of Crimes Act 2003, section 3 of the Proceeds of Crime Amendment Act 2004). “Serious offences” include all offences that punishable for imprisonment for not less than 12 month or the imposition of a fine for more than \$5000 in the Cook Islands (section 3(1) of the Act), which would cover all the corruption offences under the Cook Islands legislation relevant to the implementation of the requirements of UNCAC Chapter III.
237. The Cook Islands clarified during the country visit that during court proceeding the gravity of offences and relevant circumstances are taken into account before issuing final decisions based on general common law principles.
238. However, there is no sentencing guidelines, which would provide general standards for judges, neither the Cook Islands was able to demonstrate examples from the actual court practice.
239. The Cook Islands is therefore recommended to adopt sentencing guidelines providing standards for judges in the process of issuing verdicts, particularly, in the cases involving corruption offences.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

240. The Cook Islands has indicated that only members of Parliament and the Ombudsman Office possess functional immunity.
241. The Cook Islands has cited the following implementation measures.

THE CONSTITUTION OF THE COOK ISLANDS

PART III: THE PARLIAMENT OF THE COOK ISLANDS

36. Privileges of Parliament and of its members

(1) The validity of any proceedings in Parliament or in any committee thereof shall not be questioned in any Court.

(2) No officer or member or Speaker of Parliament in whom powers are vested for the regulation of procedure or the conduct of business or the maintenance of order shall in relation to the exercise by him of any of those powers be subject to the jurisdiction of any Court.

(3) No member or Speaker of Parliament and no person entitled to speak therein shall be liable

to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or in any committee thereof.

(4) No person shall be liable to any proceedings in any Court in respect of the publication by or under the authority of Parliament of any report, paper, vote or proceeding.

(5) Subject to the provisions of this Article, the privileges of Parliament and of the committees thereof, and the privileges of members and the Speaker of Parliament and of the persons entitled to speak therein may be determined by Act:

Provided that no such privilege of Parliament or of any committee thereof may extend to the imposition of a fine or to committal to prison for contempt or otherwise, unless provision is made by enactment for the trial and punishment of the person concerned by the High Court.

OMBUDSMAN ACT 1984

FUNCTIONS OF OMBUDSMAN

23. Proceedings privileged

(1) Except in the case of proceedings for an offence against the Official Secrets Act 1951,-

(a) No proceedings, civil or criminal, shall lie against any Ombudsman, or against any person holding any office or appointment under the Ombudsman, for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith;

(b) No Ombudsman, and no such person as foresaid shall be called to give evidence to any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise his functions.

(2) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

(b) Observations on the implementation of the article

242. The Cook Islands has only functional immunity applicable to the Members of Parliament and employees of the Ombudsman Office.

243. Additionally, section 117 of the Crimes Act 1969, as cited under paragraph (a) of article 15 above, can serve a possible impediment to the prosecution of corruption offences.

244. During the country visit, the Cook Islands clarified that section 117 merely provides that the prosecution shall be endorsed by the Attorney-General before a charge can be led. It was further explained that the advice of the Solicitor-General that “there is enough evidence to prosecute” is the only requirement for such endorsement.

245. Nevertheless, the Cook Islands is recommended to ensure that in the future there are clear guidelines in place that provide the reasons based on which the Attorney-General can refuse its endorsement of prosecution based on section 117 of the Crimes Act.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

246. The Cook Islands has clarified that the maximization of the effectiveness of law enforcement measures in respect of the UNCAC offences is ensured by the early involvement of the Crown Law Office in providing advice as the investigation progresses (i.e. by the Police or Financial Intelligence Unit) and then providing a legal opinion on whether there is sufficient evidence to prosecute. The decision to prosecute unless the Statute specifically directs otherwise is always with the Commissioner of Police. The Crown Law Office is independent of the Government.

(b) Observations on the implementation of the article

247. The discretionary legal power to prosecute is an exclusive prerogative of the Commissioner of Police of the Cook Islands. The Crown Law Office provides advice on whether there is sufficient evidence to prosecute.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

248. The Cook Islands has cited the following implementation measures.

CRIMINAL PROCEDURE ACT 1980-81

Place of Hearing

38. Powers of Court as to custody or bail of defendant

Where an order is made for the trial of any defendant at a substituted Court, the Judge of the Court of hearing may grant the defendant bail or commit him to a prison pending his trial

87. Release of defendant granted bail

(1) Whenever a defendant is granted-bail (whether as of right or not) the Court granting bail may impose as a condition of his release that the defendant report to the Police at such times and places as the Court thinks fit.

(2) Where a defendant who has been remanded in custody is granted bail, he shall, if he is in custody only under the warrant issued in pursuance of the remand, be released from custody upon entering, with or without surety or sureties at the discretion of the Court, into a bail bond in such sum or sums as the Court fixes, subject to the condition that he attend personally at the time and place to which the hearing is adjourned and at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned, and subject to the condition authorised by subsection (1) of this section where such a condition is imposed.

(b) Observations on the implementation of the article

249. Section 87(3) of the Criminal Procedure Act 1980-81 imposes a condition that a defendant who has been granted bail shall personally attend the hearing.

250. The Cook Islands' legislation is in compliance with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

251. The Cook Islands has cited the following implementation measures.

CRIMINAL JUSTICE ACT, 1967

PART I – PROBATION

6. Power of High Court to impose probation

(1) Where any person is convicted of any offence punishable by imprisonment the High Court may, in its discretion, instead of sentencing him to imprisonment, release him on probation for a period specified by the High Court, being a period of not less than one year nor more than three years:

Provided that nothing in this Act shall affect the power conferred on the High Court by any enactment other than this Act to release any offender on probation for any period referred to in that enactment and on any conditions therein referred to.

- (2) Where the High Court releases any person on probation under this section, it may also sentence that person to pay any fine authorised by law.
- (3) Where the High Court sentences any person to imprisonment for less than one year it may in its discretion order, as part of the sentence, that on his release from imprisonment he shall be on probation for any period, not exceeding one year, specified by the High Court, and may impose any condition of probation under section 8 of this Act. In any such case that person shall, on his release from imprisonment, be deemed to be an offender released on probation under Part II of this Act, and any conditions imposed under this subsection shall be deemed to be special conditions imposed under that Part, and the provisions of that Part shall apply accordingly.
- (4) For the purpose of any appeal or application for leave to appeal, a release on probation under this section shall be deemed to be a sentence or, where a fine is imposed, to be part of the sentence.
- (5) Where any person is released on probation under subsection (1) of this section the Registrar of the High Court shall notify the Director of Corrective Services.
- (6) Every probationer shall be under the supervision of a probation officer in whose district he resides for the time being, or of such other probation officer as the Director of Corrective Services may from time to time direct.
- (7) Where any person is released on probation, the Probation Officer shall issue to him a probationary licence setting out the conditions subject to which he has been released.

PART II - PAROLE BOARD

14. Parole Board

- (1) For the purposes of this Act, there shall be a Board, to be called the Parole Board, which shall consist of not less than three nor more than five members, being-
- (a) A Judge of the High Court who shall be appointed on the recommendation of the Minister and shall be the Chairman;
 - (b) The Director of Corrective Services;
 - (c) Not less than one nor more than three other members, who shall be appointed on the recommendation of the Minister.

...

17. Functions of Parole Board

- (1) The functions of the Parole Board shall be-
- (a) To make recommendations to the Minister as to the release of any offender undergoing imprisonment for life, and as to the release of any offender undergoing imprisonment whose case the Board is requested to consider under subsection (5) of this section;
 - (b) To make recommendations to the Minister as to the discharge from probation of any offender who is on probation under this Part of this Act after undergoing imprisonment;
 - (c) To make recommendations to the Minister as to the remission, suspension, or variation of any condition of the probation of any offender who is on probation under this Part of this Act after undergoing imprisonment, or as to the imposition on any such offender of any additional condition of probation;
 - (d) To report to the Minister from time to time, when requested by him to do so, on any matter relating to any recommendation made under this section.

(2) Subject to the provisions of this section, the Parole Board, for the purpose of carrying out its functions, shall consider the cases of offenders in the following manner:

(a) In the case of every offender undergoing imprisonment for life consequent upon his conviction for murder, as soon as may be practicable after the expiry of ten years from the date of his reception in the prison, and at least once in every period of twelve months thereafter;

(b) In the case of every other offender undergoing imprisonment for life, as soon as may be practicable after the expiry of five years from the date of his reception in the prison, and at least one in every period of twelve months thereafter.

(3) After any offender has become entitled to have his case considered for the first time under subsection (2) of this section, he may from time to time apply to the Parole Board for the further consideration of his case:

Provided that no application under this subsection shall be made to the Board at any time within six months after the making of a previous application under this subsection.

(4) Every offender who is entitled to have his case considered under subsection (2) of this section shall be given an opportunity of appearing before the Parole Board and stating his case in person at least once in every year, and for that purpose the Parole Board shall from time to time visit every prison where there are offenders undergoing imprisonment for life or shall have the offender brought before it.

(5) Any member of the Parole Board may at any time request the Board to consider any case, including the case of any offender who is undergoing imprisonment for any term, and on any such request the Board shall consider that case at its next meeting.

(6) In considering any case under this section, the Board shall have regard to-

...

(c) The class of sentence imposed by the Court and the term of sentence;

(b) Observations on the implementation of the article

252. Section 6 of the Criminal Justice Act provides for the power of the High Court to impose probation. However, there is no clear provision with regard to taking the gravity of offence into account during the process of considering the eventuality of parole. The Cook Islands clarified during the country visit that in such cases general principles of common law are applied. It also was mentioned that the Cook Islands were considering adopting sentencing guidelines as part of a broader criminal justice reform.

253. Additionally, early release from imprisonment is possible by a decision of the Parole Board that needs to take into account the class of sentence imposed on the offender and the term of such sentence.

254. The Cook Islands, based on the above, has partially implemented the provision under review. The Cook Islands is referred to the recommendation under paragraph 1 above.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an

offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

255. The Cook Islands has cited the following implementation measures.

THE CONSTITUTION OF THE COOK ISLANDS

PART IV. THE JUDICIARY

APPOINTMENT, TENURE OF OFFICE AND SALARIES OF JUDGES

54. Removal of Judge from office

(1) The Chief Justice or any other Judge of the High Court, other than a Judge appointed under the provisions of Article 51 hereof, may be removed from office by the [[Queen's Representative]] only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or misbehaviour, and shall not be so removed unless the question of removal of the Chief Justice or other Judge from office has been referred to a tribunal appointed under subclause (2) of this Article and that tribunal has recommended that the Chief Justice or other Judge be removed from office for inability as aforesaid or misbehaviour.

PART V. THE COOK ISLANDS PUBLIC SERVICE

74A. Removal from office of Public Service Commissioner

(1) The Public Service Commissioner may be suspended or removed from office in accordance with the following provisions of this Article and not otherwise.

(2) The [[Queen's Representative]], acting on the advice of the [[Prime Minister]], may suspend the Public Service Commissioner from office for misbehaviour or incompetence, but the Public Service Commissioner shall not be removed from office except as provided in this Article.

(3) The [[Queen's Representative]] shall cause to be laid before [[Parliament]] a full statement of the grounds of any suspension within seven days after the date of that suspension if [[Parliament]] is then in session, or if [[Parliament]] is not in session then within seven days after the date of the commencement of the next ensuing session.

(4) Unless [[Parliament]], within twenty-one days from the date on which the statement in respect of the suspension of the Public Service Commissioner under this Article has been laid before it, declares by resolution that he ought to be removed from office, the Public Service Commissioner shall be deemed to be restored to office as from the date of his suspension; and if [[Parliament]] within the said time does so declare, the Public Service Commissioner shall be removed by the [[Queen's Representative]] from the date of his suspension.]

This Article was substituted by s 2 of the Constitution Amendment (No 6) Act 1973 (CI) for Article 74A that had been inserted by s 4 of the Constitution Amendment (No 2) Act 1968-69 (CI)

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (2), (3) and (4) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI).

The words "Prime Minister" were substituted for the word "Premier" in subcl (2) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

The word "Parliament" was substituted for the words "the Legislative Assembly" in subcls (2) (in two places) and (4) (in two places) by s 6 of the Constitution Amendment (No 9) Act 1980-81 (CI)

POLICE ACT 2012

Appointment of Commissioner

- (1) The Queen's representative must, by Order in Executive Council, appoint a fit and proper person as the commissioner of police for a term not exceeding a 5 years, and may reappoint that person for further terms of up to 2 years.
- (2) A person who holds office as a constable when appointed Commissioner continues to hold the office of constable while Commissioner.
- (3) The Queen's representative, acting on the advice of the Executive Council, conveyed by the Prime minister may –
 - (a) Suspend the Commissioner, with or without pay, pending an inquiry, and
 - (b) Following an inquiry, remove the Commissioner from office for serious misconduct or any disability affecting performance.

Suspension or removal of member of Police

- (1) The power to exercise disciplinary control over employees and members of the Police, except where otherwise specified in this Act, is vested in the Commissioner including the power to remove, transfer, or reduce in rank or level of position.
- (2) The commissioner, subject to this Act, General Instructions, and the conditions of employment set out in any applicable employment agreement, may at any time-
 - (a) Suspend any member of Police, or other employee, from employment, with or without pay;
 - (b) Remove any member of Police, or other employee, from employment.
- (3) Where the Commissioner, by direction in writing, has delegated to any Commissioned Officer an powers to suspend or decide on disciplinary outcomes, an appeal from any such decision must lie to the Commissioner.

Power to transfer member of Police

- (1) The Commissioner may transfer any member of police (whether permanently or temporarily) and appoint to another position or location in the Police if –
 - (a) At any time the substantial duties being carried out by the member are no longer to be carried out by the Police; or
 - (b) A greater number of Police are employed at a location than the Commissioner considers to be desirable; or
 - (c) There are reasonable ground for believing the member of Police has behaved in a manner inconsistent with the code of conduct and transfer is necessary to maintain good order and discipline within the Police or to avoid bringing the Police into disrepute.
- (2) Before making any appointment under subsection (1) the Commissioner must consult with the member affected by the proposed appointment.
- (3) Any member of Police who fails to comply with the written direction of the Commissioner requiring the member to transfer from one position or locality to another may be demoted with a consequent reduction in remuneration, or removed from employment.

OMBUDSMAN ACT 1984

OMBUDSMAN

6. Removal or suspension from office

(1) The Ombudsman may be removed from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or misbehaviour by the Queen's Representative on the advice of the Prime Minister who shall convey the recommendation of Parliament.

(2) The Ombudsman may be suspended from the Queen's Representative in Executive Council for inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or misbehaviour proved to the satisfaction of the Queen's Representative but any such suspension shall not continue in force beyond 2 months after the commencement of the next ensuing session of Parliament.

PUBLIC SERVICE ACT

SCHEDULE 3

PROVISIONS GOVERNING TERM OF OFFICE AND TERMS AND CONDITIONS OF EMPLOYMENT OF HEADS OF DEPARTMENTS

1. Subject to this schedule, the terms and conditions of appointment of a head of department are to be set out in a contract of employment made between the appointee and the Commissioner and approved by Cabinet.

2. The term of appointment must not be for more than 3 years and the term must be specified in the contract of employment.

3. The appointee is eligible for reappointment and may be reappointed in accordance with Schedule 2.

4. The appointee may be suspended and removed from office only as follows:

- (a) the Commissioner may, after consulting the Prime Minister, suspend the appointee from office for incompetence, redundancy, bankruptcy, disability, neglect of duty, or misconduct;
- (b) the Commissioner must cause to be laid before Cabinet a full statement of the grounds of any suspension within one month after the date of that suspension;
- (c) unless the Commissioner, within one month from the date on which the statement has been laid before the Cabinet, decides that the appointee ought to be removed from office, the appointee is to be treated as being restored to office from the date of his or her suspension;
- (d) however, if the Commissioner does within that time decide to remove the appointee from office, the appointee is to be treated as having been removed from office by the Commissioner from the date of suspension.

(b) Observations on the implementation of the article

256. No provisions exist in the criminal legislation of the Cook Islands requiring the suspension or removal of a public official accused of a corruption offence, as that would be contrary to the right to a fair trial under the Cook Islands' criminal law doctrine. However, the provisions in the Constitution provide for removal of the Judges of the High

Court “for inability to discharge the function of his office... or misbehavior” (section 54), the suspension of removal from office of Public Service Commissioner “for misbehavior or incompetence”(section 54), also section 4 of schedule 3 of the Public Service Act provides for the suspension of the head of departments in public service agencies for misconduct. Additionally, the Police Act 2012 provides for a possibility of suspension of the Police Commissioner and suspension, removal and transfer of any member of Police without specific references to the accusation of the commission of corruption offences as a possible basis for the above-mentioned actions.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

257. The Cooks Islands has indicated that they have not established such procedures in their legislation.

(b) Observations on the implementation of the article

258. The Cook Islands is recommended to consider establishing procedures for the disqualification in line with article 30(7) of UNCAC.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

259. The Cooks Islands has clarified that disciplinary powers against civil servants can be taken based on the existing Code of Conduct and Policy procedures and relevant legislation such as the Public Service Act 2009.

260. The Cook Islands has cited the following implementation measures.

THE PUBLIC SERVICE ACT 2009

PART 4. VALUES AND CODE OF CONDUCT

20. Values of the Public Service

Subject to the Constitution and the rule of law, the Commissioner, every head of department, and every employee must uphold the following values in their work –

- (a) honesty – acting honestly, being truthful, and abiding by the laws of the Cook Islands;
- (b) impartiality – providing impartial advice, acting without fear or favour, and making decisions on their merits;
- (c) service – serving the people well through faithful service to the Government of the Cook Islands;
- (d) respect – treating the people, the Government of the Cook Islands, and colleagues with courtesy and respect;
- (e) transparency – taking actions and making decisions in an open way;
- (f) accountability – being able to explain the reason for actions taken, and taking responsibility for those actions;
- (g) efficiency and effectiveness – achieving good results for the Cook Islands in an economical way.

21. Duty to act as good employer

(1) In performing his or her functions, responsibilities, and duties, the Commissioner and every head of department, as the case may be, must operate a personnel policy that complies with the principle of being a good employer.

(2) For the purpose of this section, a “good employer” is one who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees with respect to all aspects of their employment, including provisions requiring –

- (a) good and safe working conditions; and
- (b) the impartial selection of suitably qualified persons for appointment; and
- (c) opportunities for the enhancement of the abilities of individual employees.

22. Code of conduct

(1) The code of conduct set out in Schedule 4 sets out the minimum standard standards of integrity and conduct that apply in the Public Service.

(2) The Commissioner, every head of department and every employee must comply with the code of conduct.

(3) The Commissioner may advise the Minister if, in the opinion of the Commissioner, a serious breach of the code of conduct has occurred, or is likely to occur.

(4) The Queen’s Representative may, by Order in Executive Council, amend Schedule 4 to –

- (a) amend the code of conduct; or
- (b) substitute a new code of conduct.

SCHEDULE 4. CODE OF CONDUCT

Every employee and every head of department of the Cook Islands Public Service must, in the course of their employment –

1. behave with integrity and honesty; and
2. exercise care and diligence; and
3. be professional, courteous, and treat everyone with respect and without coercion or harassment; and
4. comply with all applicable laws relating to their employment; and

5. comply with all lawful and reasonable instructions; and
6. take reasonable steps to disclose and avoid any real or apparent conflicts of interest in connection with their employment; and
7. ensure the proper and prudent use of government resources; and
8. use official information only for official purposes; and
9. not improperly use their status or authority to seek or obtain a benefit for themselves or any other person or body; and
10. at all times act and behave in a manner that upholds and promotes the integrity, values, and good reputation of the Cook Islands Public Service; and
11. comply with any other conduct requirements as may be prescribed by regulations.

CODE OF CONDUCT POLICY

GOVERNMENT OF THE COOK ISLANDS effective October 2014

Policy Statement

This policy provides guidance on standards of conduct required across the public sector and how to identify and manage misconduct. The Public Sector Code of Conduct and Values are legislated in the Public Service Act 2009 and establish standards of behaviour required.

Scope

This policy applies to Heads of Public Sector Agencies, Employees and Contractors of the public sector.

Principles

The principles of: fairness, impartiality, integrity, professionalism, political neutrality, and zero tolerance to fraud apply.

Public Sector Code of Conduct

- Behave with integrity and honesty
- Exercise care and diligence
- Be professional, courteous, and treat everyone with respect and without coercion or harassment
- Comply with all applicable laws & policies relating to their employment
- Comply with all lawful and reasonable instructions
- Take reasonable steps to disclose and avoid any real or apparent conflicts of interest in connection with their employment
- Ensure the proper and prudent use of government resources • Use official information only for official purposes
- Not improperly use their status of authority to seek or obtain a benefit for themselves or any other person or body
- At all times act and behave in a manner that upholds and promotes the integrity, values, and good reputation of the Cook Islands Public Service; and
- Comply with any other conduct requirements as may be prescribed by regulations

Public Sector Values

- Honesty – acting honestly, being truthful, and abiding by the laws of the Cook Islands
- Impartiality – providing impartial advice, acting without fear or favour, and making decisions on their merits
- Service – serving the people well through faithful service to the Government of the Cook Islands
- Respect – treating the people, the Government of the Cook Islands, and colleagues with courtesy and respect

- Transparency – taking actions and making decisions in an open way
- Accountability – being able to explain the reason for actions taken, and taking responsibility for those actions
- Efficiency and effectiveness – achieving good results for the Cook Islands in an economical way

Legislation and Regulations

The Public Service Act 2009, Employment Relations Act 2012, Ministry of Finance and Economic Management Act 1995-96, and Public Expenditure and Review Committee and Audit Act 1995-96, and other relevant legislation apply.

Definitions

Conflict of interest is a situation where an individual or organisation is involved in multiple interests, one of which could possibly corrupt the motivation

Constitutional posts include: Queens Representative, House of Ariki, Speaker and Deputy Speaker of Parliament, Members of Parliament including Ministers of the Crown (Cabinet), Public Service Commissioner, Chief Justice, Ombudsman and Public Expenditure Review Committee

Complainant is any natural person who holds a constitutional post or is a current employer, employee or contractor of the public sector and the general public of the Cook Islands

Department means any ministry, department including any agency or instrument listed in the Public Service (Identification of Departments) Order 2008

Employee means any person who is an employee of the Public Sector

Employer means the Head of a Public Sector Department or Crown Agency, Ministerial Support Office or other agency or their delegated authority

Frivolous means not having any serious purpose, value or merit

Natural Justice promotes a fair hearing and rules against bias Political Neutrality means individuals must perform their duties faithfully and loyally, regardless of their political beliefs or affiliations

Public Service Appeal Board established under Article 76 of the Constitution comprises of: the Chief Justice, a Public Service employee or former employee representative appointed by the Queens Representative on advice from the Prime Minister, and a Public Service employee or former employee nominated by the public service or an organisation of public service employees to hold office for a period of three years

Public Service Commissioner means the Public Service Commissioner appointed under Article 73 of the Constitution and Section 5 of the Public Service Act

Public Sector includes Public Service Departments, Island Governments, Crown Agencies, Offices of Parliament, Ministerial Support Offices, State Owned Enterprises, and other agencies

Sexual Harassment means unsolicited/unwelcomed/offensive verbal and or physical conduct of a sexual nature directed at a person of either sex

Racial discrimination means discrimination on an ethnic or cultural basis, independent of whether these differences are described or identified as racial

Summary dismissal means dismissal without notice. This can apply in circumstances where there is a serious breach of legislation, policy or employment contract or agreement

Vexatious is an action without sufficient grounds done to cause annoyance to another individual

Misconduct

Misconduct is defined as unacceptable behaviour, actions or inaction that is in breach of this policy, or negatively impacts on other employees or the Agency.

Examples of misconduct include but are not limited to the following actions:

- Non-compliance with Public Sector policies, Code of Conduct and Values
- Failure to perform employment related tasks to the standards specified
- Failure to report to work without notification to the respective manager or supervisor
- Failure to consistently report to work at the specified start time or after any break
- Failure to complete the stipulated hours of work required for the position
- Use of obscene or threatening language in the workplace
- Harassing behaviour of a sexual, racial or discriminatory nature
- Unprofessional behaviour in the workplace and publicly which brings the reputation of the agency into disrepute
- Active involvement in political activities which undermine the confidence of members of parliament in public servants
- Personal attacks on the character of other employees, employers, members of parliament, development partners and members of the general public
- Publicly criticising government policies and leaders
- Misuse of public-funded resources and assets: such as offices and school halls; equipment and supplies (phones); communication (emails); and motor vehicles

Serious Misconduct

Serious misconduct involves serious wrongdoing whereby the actions of an individual are unlawful and/or of such significance as to make the continuation of the employment relationship untenable, or undermines the confidence and trust of parties in the employment relationship. Persistent misconduct may be classified as serious misconduct. Serious misconduct may justify summary dismissal of the individual.

Serious misconduct includes but is not limited to the following actions:

- Breaches of legislation, specifically the Public Service Act 2009, Ministry of Finance and Economic Management Act 1995-96, and Public Expenditure and Review Committee and Audit Act 1995-96
- Serious breaches of Public Sector Policies, Code of Conduct and Values
- Improper use or unauthorised disclosure of official or confidential information
- Possession or consumption of illicit drugs on work premises
- Consumption of alcohol on work premises without the authority of management
- Arriving for work or being at work, under the influence of alcohol or illicit drugs
- Smoking in restricted areas and/or failing to abide with the agency's no-smoking policy
- Unauthorised possession of agency property or any other person's property
- Unauthorised absence from work
- Harassing behaviour of a sexual, racial or discriminatory nature
- Incurring liability for an agency outside approved authorisation parameters
- Any offence involving dishonesty or indictable actions
- Assault or violence in any form, impairing or harming, or threatening to impair or harm, directly or indirectly, any individual or agency or the property of an individual or agency
- Failure to carry out lawful instructions from an employer, a senior manager or their delegated authority

- Fraudulent practice which involves any act, or omission, or misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit, or to avoid an obligation
- Corrupt practice which involves offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions of another party.
- Coercive practice which involves impairing or harming or threatening to impair or harm, directly or indirectly, any party or the property of the party to improperly influence their actions
- Collusive practice to achieve an improper purpose, including improperly influencing the actions of another party
 - Intentional or reckless abuse leading to theft, waste or improper use of public sector assets
- Undeclared conflict of interest which leads to improper influence over a party's performance of official duties and responsibilities, contractual obligations, or compliance with applicable laws and regulations
- Obstructive practices which involve deliberately destroying, falsifying, altering, or concealing evidence material in an agency investigation; making false statements to materially impede an agency investigation; threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to an investigation, or from pursuing the investigation; or materially impeding the agency's contractual right to audit or access information
- Retaliation against whistle blowers or witnesses through any detrimental act, (direct or indirect), recommendation or threat, because of their actions or cooperation with an agency's investigation

Procedures and Processes

Employers are responsible for administering this policy. Individuals have a responsibility to read, understand and comply with this policy. Any person who knowingly breaches this policy may be considered to have committed an act of misconduct and shall be subject to disciplinary action and/or dismissal.

Managing misconduct and serious misconduct

Employers are responsible for managing the process for: receiving; investigating; and dealing with misconduct and serious misconduct in accordance with the principles of this policy.

Receiving allegations:

Complainants must report alleged misconduct in writing within five working days of the circumstances or incident constituting misconduct or serious misconduct, to the:

- Head of Agency – where the allegation involves a public sector employee of that agency
 - Public Service Commissioner – where the allegation involves a head of agency
- Written complaints must include details of:

- All individuals directly or indirectly involved in the incident
- The location, date and time of the incident
- A description of the incident with relevant supporting documentation or evidence
- Any third parties involved

Complainants can remain anonymous, however complaints confirmed to be vexatious, frivolous, or deceitful can be considered misconduct and dealt under the provisions of this policy.

Heads of Agencies or the Public Service Commissioner must acknowledge the alleged misconduct within three working days of receiving the complaint.

- An employer may suspend an employee on pay while the investigation is in progress
- The period of the investigation up until the communication of the investigation recommendations must not exceed one month

Investigation:

All allegations must be investigated to confirm whether the allegation/s constitute misconduct or serious misconduct.

Criteria for investigations to proceed:

- The complaint must be laid by a natural person (ie: individual not a corporation) • The complaint must relate to the conduct of a public sector employer, employee or contractor • The individual has reasonable grounds to believe the alleged conduct has occurred
- There is a reasonable possibility that the conduct constitutes misconduct
- The complainant has provided their contact details
- The matter is important to justify an investigation and any remedial action

If the complaint does not meet all the above criteria, the complainant must be notified in writing within three working days of acknowledging the complaint.

If the complaint meets all the above criteria, an investigation is instigated and the complainant, accused and all relevant parties are notified of a pending investigation within five working days of acknowledging the complaint.

Guidelines:

- Every instance of alleged misconduct should be investigated and considered based on its facts and particular circumstances
- Individuals to be investigated must be advised of the specific matter causing concern and be given an opportunity to respond to the allegation
- Professional judgement must be exercised during all stages of the investigation and all aspects of the investigation must be recorded in writing and placed on the respective individual's personnel file
- Every effort must be made to maintain the complainant's privacy, including that of the individual under investigation and witnesses
- Individuals involved in investigations may be accompanied by an appointed representative in meetings
- If the employer cannot confirm the allegations of misconduct or serious misconduct, the employee should be reinstated to their former employment status

Objectives:

- To collate information regarding the allegation as quickly as possible
- To consider the information collected and draw reasonable, objective and impartial conclusions on the alleged conduct
- To maintain procedural fairness and confidentiality in the treatment of witnesses and the accused
- To make recommendations based on the conclusions drawn for remedial or appropriate

Action

Investigations must apply the principle of natural justice at all times during the investigation. This involves procedural fairness to ensure a fair decision is reached by an objective decision maker.

Conducting the investigation:

- All discussions, phone calls and interviews with witnesses and relevant parties must be recorded or documented
- Persons under investigation or witnesses do not need legal representation during the investigation process
- A final investigation report must be completed containing: a detailed outline of the allegation/(s); an account of all information received and rejected information, including the reasons for rejection; and recommendations arising from the conclusions

Dealing with misconduct or serious misconduct:

If the employer or investigating body concludes misconduct or serious misconduct has occurred, the following remedies are available and must be communicated in writing within five working days of the conduct being confirmed:

1. Disciplinary action

A warning may be issued in instances where behavioural changes are required and must be authorised by the employer or their delegated authority:

- a first written warning (or verbal warning followed by a written warning); or
- a second and final written warning, stating any future breach or failure to perform required actions or standards may result in dismissal

The following must be included when issuing warnings:

- A clear description of the misconduct
- Employee response to the misconduct
- Outcome of investigations following the employee response
- Where relevant include previous historical patterns
- Prescribed penalty and/or corrective action to be imposed on the employee
- Clear time frames for corrective action with consequences(if necessary) for not meeting corrective actions
- Confirmation in writing of outcomes after corrective actions have been completed

2. Summary dismissal for serious misconduct

- Employees may be dismissed without notice where serious misconduct
- Dismissal after warnings is different from summary dismissal in that the misconduct has not been serious enough to warrant instant dismissal; and the employee has been given warnings and an opportunity to correct their behaviour before a termination decision is made

Appeals against remedies

Public Sector employees may lodge a complaint to the Public Service Commissioner if they dispute the findings and outcome of the investigation by the head of agency. The Commissioner will then investigate the complaint using the investigation process outlined in this policy and issue recommendations which become final. Heads of the public sector who wish to dispute the findings and outcome of the investigation by the Public Service Commissioner may utilise the mediation process provided in the Employment Relations Act 2012, or put a case forward to the Public Service Appeal Board.

Other provisions

All records relating to the administration of this policy must be kept for at least seven years and only accessible by the employer and/or authorised staff. After the required seven year period, the department may destroy the documentation in adherence with government official information management policies.

Other information

For policy queries contact the Office of the Public Service Commissioner on phone (682) 29421 or email: opscinfo@cookislands.gov.ck

(b) Observations on the implementation of the article

261. The Cook Islands Regulations include the Code of Conduct Policy that is based on the Public Service Act 2009 and contains the rules of application of disciplinary measures relevant to the implementation of the provision under review applicable to the conduct of public employees. Particularly, corrupt action by Government employees can be classified as serious misconduct including: breaches of legislation, specifically the Public Service Act 2009, Ministry of Finance and Economic Management Act 1995-96, and Public Expenditure and Review Committee and Audit Act 1995-96, serious breaches of Public Sector Policies, Code of Conduct and Values; fraudulent practice which involves any act, or omission, or misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit, or to avoid an obligation, corrupt practice which involves offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions of another party, undeclared conflict of interest which leads to improper influence over a party's performance of official duties and responsibilities, contractual obligations, or compliance with applicable laws and regulations, retaliation against whistle blowers or witnesses through any detrimental act, (direct or indirect), recommendation or threat, because of their actions or cooperation with an agency's investigation.

262. Disciplinary actions for violations listed above can include warnings followed by dismissal, as well summary dismissal without notice.

263. The Cook Islands has implemented the provision under review.

Article 30 Prosecution, adjudication and sanctions**Paragraph 10**

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

264. The Cook Islands has clarified that it had measures in place to promote the reintegration into society of persons convicted of offences based on community-based resources.

(b) Observations on the implementation of the article

265. Due to the specific conditions of the Cook Islands (small territory and population), it has specific measures in place that are based on community-based resources and interests that are aimed at the quick reintegration of former convicts into society.

(c) Challenges

266. The Cook Islands has identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(d) Technical assistance needs

267. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Legislative drafting.

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 31 Freezing, seizure and confiscation

Paragraph 1

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

268. The Cook Islands has cited the following implementation measures.

PROCEEDS OF CRIMES ACT 2003

PART 1. PRELIMINARY

2. Objects of Act

The principal objects of this Act are –

- (a) to deprive persons of the proceeds of, and benefits derived from, the commission of serious offences; and
- (b) to provide for the forfeiture of property used in, in connection with, or for facilitating, the commission of serious offences; and

...

3. Definitions

(1) In this Act, unless the context otherwise requires, "proceeds", in relation to property, means property into which any property derived or realized directly from a serious offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the commission of the offence, whether the property is situated in the Cook Islands or elsewhere;

"property" includes money and all other property, real or personal, whether situated in the Cook Islands or elsewhere, including an enforceable right of action and other intangible or incorporeal property;

"relevant application period" for a person's conviction of a serious offence, means the period of 6 years after, -

(a) if the person was actually convicted of the offence, the day when the person was convicted of the offence; or

(b) if the person is taken to have been convicted of the offence because of section 5(1)(b), the day when the person was discharged without conviction; or

(c) if the person is taken to have been convicted of the offence because of section 5(1)(c), the day when the Court took the offence into account in passing sentence for the other offence referred to in that section;

"serious offence" means –

(a) acts or omissions that constitute an offence against the law of the Cook Islands punishable by imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000; or

(b) acts or omissions that constitute an offence against the law of another country that, had those acts or omissions occurred in the Cook Islands, they would have constituted an offence against the law of the Cook Islands punishable by imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000;

"tainted property" means –

(a) property that is used in, or in connection with, the commission of a serious offence whether situated in the Cook Islands or elsewhere; or

(b) property that is intended to be used in, or in connection with the commission of a serious offence whether situated in the Cook Islands or elsewhere; or

(c) proceeds of that offence;

PART 2. FORFEITURE ORDERS PECUNIARY PENALTY ORDERS AND RELATED MATTERS

General

11. Application for forfeiture order or pecuniary penalty order on conviction

(1) If a person is convicted of a serious offence committed after this Act commences, the Solicitor-General may apply to the Court for either or both of the following orders

(a) a forfeiture order against tainted property;

(b) a pecuniary penalty order against the person for benefits derived by the person from the commission of the offence.

(2) However, the Solicitor-General may not make an application after the end of the relevant application period for the conviction.

(3) An application under this section may be made for one or more serious offences.

- (4) After an application under this section is finally determined, no further application for a forfeiture order or a pecuniary penalty order may be made for the offence for which the person was convicted without leave of the Court.
- (5) The Court may give leave for a new application only if
- (a) the property or benefit to which the new application relates was identified after the previous application was determined; or
 - (b) necessary evidence became available only after the previous application was determined; or
 - (c) it is in the interests of justice that the new application be made.
- (6) Every application must, -
- (a) in the case of an application for a forfeiture order, identify the property that is alleged to be tainted property;
 - (b) in the case of an application for a pecuniary penalty order, identify the benefits that are alleged to have been derived from the commission of the offence.

PROCEEDS OF CRIME AMENDMENT ACT 2004

...

3. Application for forfeiture order or pecuniary penalty order on conviction

Section 11(1) of the principal Act is amended by deleting the word "may" and substituting the word "shall".

PROCEEDS OF CRIMES ACT 2003

Forfeiture orders

17. Forfeiture order on conviction –

- (1) If –
- (a) the Solicitor-General applies to the Court for a forfeiture order against tainted property in relation to a person's conviction of a serious offence; and
 - (b) the Court is satisfied that the property is tainted property in relation to that offence, the Court may order that the property, or so much of the property as is specified by the Court in the order, be forfeited to the Crown.
- (2) In deciding whether property is tainted property, the Court may infer, -
- (a) if the evidence establishes that the property was in the person's possession or effective control at the time of, or immediately after, the offence was committed, that the property was used in, or in connection with, committing the offence; and
 - (b) if the evidence establishes that the property was found, during investigations by the police before or after the person was arrested for, and charged with, the offence:
 - (i) in the person's possession; or
 - (ii) under the person's control in a building, vehicle, receptacle or place, that the property was derived, obtained or realised as a result of the person's committing the offence; and
- (c) if –
- (i) the evidence establishes that the value, after the person committed the offence, of all the person's ascertainable property is more than the value of all the person's ascertainable property before the person committed the offence; and
 - (ii) the Court is satisfied that the person's income from sources unrelated to criminal activity cannot reasonably account for the increase in value, that the value of the increase represents property that the person derived, obtained or realised directly or indirectly from committing the offence.

(3) If the Court orders that property (other than money) be forfeited to the Crown, the Court must specify in the order the amount that it considers to be the value of the property when the order is made.

(4) In considering whether to make a forfeiture order against property, the Court may take into account -

(a) any right or interest of a third party in the property; and

(b) the gravity of the offence concerned; and

(c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and

(d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.

PROCEEDS OF CRIME AMENDMENT ACT 2004

5. Forfeiture order on conviction

Section 17(1) of the principal Act is amended by deleting the word "may" and substituting the word "shall".

PROCEEDS OF CRIMES ACT 2003

23. Payment instead of forfeiture order

If the Court is satisfied that a forfeiture order should be made against property of a person, but that the property, or any part of it or interest in it, cannot be made subject to that order, and, in particular, -

(a) cannot, with the exercise of due diligence, be found; or

(b) has been transferred to a third party in circumstances that do not give rise to a reasonable inference that the title or interest was transferred to avoid the forfeiture of the property; or

(c) is located outside the Cook Islands; or

(d) has been mingled with other property that cannot be divided without difficulty, the Court may, instead of ordering the property, part or interest to be forfeited, order the person to pay to the Crown an amount equal to the value of the property, part or interest.

24. Enforcement of order for payment instead of forfeiture

(1) An amount payable by a person to the Crown under an order made under section 23 is a civil debt due by the person to the Crown.

(2) An order against a person made under section 23 may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by the person to the Crown; and the debt arising from the order is taken to be a judgment debt.

Pecuniary penalty orders

26. Pecuniary penalty order on conviction

(1) If the Solicitor-General applies to the Court for a pecuniary penalty order against a person for the person's conviction of a serious offence, the Court may, if it is satisfied that the person has benefited from the offence, order the person to pay to the Crown -

(a) an amount equal to the value of the person's benefit from the offence; or

- (b) a lesser amount that the Court certifies to be the amount that might be realised at the time the pecuniary penalty order is made.
- (2) The Court must assess the value of the benefit derived by a person from committing an offence in accordance with sections 29 to 33.
- (3) The Court must not make a pecuniary penalty order under this section –
- (a) until the period for the lodging of an appeal against conviction has expired without an appeal having been lodged; or
- (b) if an appeal against conviction has been lodged, until the appeal lapses or is finally determined.

27. Rules for determining benefit and assessing value

- (1) If a person obtains tainted property, the person's benefit is the value of the property so obtained.
- (2) If a person derives an advantage as the result of, or in connection with committing, a serious offence, the person's advantage is taken to be a sum of money equal to the value of the advantage so derived.

PROCEEDS OF CRIME AMENDMENT ACT, 2004

8. Pecuniary penalty order on conviction

Section 26(1) of the principal Act is amended by deleting the word "may" and substituting the word "shall".

9. Rules for determining benefit and assessing value

The principal Act is amended by repealing section 27 and substituting the following new section –

- "27. Rules for determining benefit and assessing value -** (1) If a person obtains property as the result of, or in connection with, the commission of a serious offence, the person's benefit is the value of the property so obtained.
- (2) If a person derives an advantage as the result of, or in connection with, the commission of a serious offence, the person's advantage is taken to be a sum of money equal to the value of the advantage so derived.
- (3) Unless the contrary is proved, the Court in determining whether a person has benefited from the commission of a serious offence, or from that offence taken together with other serious offences, shall deem –
- (a) all property appearing to the Court to be:
- (i) held by the person on the day when the application is made; and
- (ii) all property appearing to the Court to be held by the person at any time,-
- (A) if the offence or earliest offence was committed more than 5 years before the application is made, within 5 years before the day on which the application is made; and
- (B) within the period between the day the offence, or the earliest offence, was committed and the day on which the application is made, whichever is longer, to be property that came into the possession or under the control of the person by reason of the commission of that serious offence or those other serious offences for which the person was convicted; and
- (b) any expenditure by the person in the time mentioned in subparagraph (a)(ii) is taken to be expenditure met out of property received by the person as a result of, or in connection with, the commission of the offence or offences; and

(c) any property received or taken to have been received by the person at any time as a result of, or in connection with, the commission of the offence or offences is taken to have been received free of any other interests; and³

(d) if evidence is given at the hearing of the application that the value of the person's property increased after committing an offence, the increase is taken to be part of the person's benefit from the offence unless the person satisfies the Court that the whole or part of the increase was due to causes unrelated to the commission of the serious offence.

(4) If a pecuniary penalty order has previously been made against a person in relation to an offence, any of the person's benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under the earlier order must be disregarded."

(b) Observations on the implementation of the article

269. The Proceeds of Crimes Act 2003 and the Proceeds of Crime Amendment Act 2004 provide for the mandatory application by the Solicitor-General for either or both of *a forfeiture order against tainted property* and *a pecuniary penalty order against the accused for benefits derived by the person from the commission of the offence*, following convictions of the accused of "serious offences" (section 11 (1) of the Proceeds of Crimes Act 2003, section 3 of the Proceeds of Crime Amendment Act 2004). The Solicitor-General, however, may not apply for the orders if the "relevant application period" has expired (section 11 (2) of the Proceeds of Crimes Act 2003) which is generally understood as 6 years after the conviction or issuing of the court judgment with regard to the accused (section 3(1) of the Proceeds of Crimes Act 2003).

270. Value based confiscation is also possible as "a payment to the Crown" based on section 23 of the Act.

271. "Tainted property" is the property "used in or intended to be used in or in connection with a serious offence or proceeds of that offence" (section 3(1) of the Proceeds of Crimes Act 2003). "Proceeds of offence" means property into which any property derived or realized directly from a serious offence *was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the commission of the offence, whether the property is situated in the Cook Islands or elsewhere* (section 3(1) of the Proceeds of Crimes Act 2003). These wordings seem to include both the instrumentalities and proceeds of crime as required by the Convention. However, it is not clear whether "any property derived or realized directly from a serious offence" can be confiscated *without being later "successfully converted, transformed or intermingled, etc."* which may create difficulties in the actual application of the Proceeds of Crimes Act 2003. The same concern was expressed in the Mutual Evaluation Report of the Cook Islands produced by Asia/Pacific Group on Money Laundering in 2009.

272. "Serious offences" include all offences that punishable for imprisonment for not less than 12 month or the imposition of a fine for more than \$5000 in the Cook Islands (section 3(1) of the Act), which would cover all the corruption offences under the Cook Islands legislation relevant to the implementation of the requirements of Chapter III of UNCAC.

273. During the country visit, it was clarified that the Proceed of Crimes Act had not been used with regard to the corruption offences, but had been mostly applied with regard to drug trafficking cases.

274. The Cook Islands has largely implemented the provision under review in their legislation. It is recommended to harmonize the definition of “proceeds” in (section 3(1) of the Proceed of Crimes Act) in accordance with article 2 of UNCAC to ensure it covers *any property derived from or obtained, directly or indirectly, through the commission of an offence.*

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

275. The Cook Islands has cited the following implementation measures.

PROCEEDS OF CRIMES ACT, 2003

PART 1. PRELIMINARY

2. Objects of Act

The principal objects of this Act are –

...

(c) to enable law enforcement authorities to trace those proceeds, benefits and property.

PART 3. FACILITATING INVESTIGATIONS AND PRESERVING PROPERTY

Powers of search and seizure

35. Warrant to search land etc. for tainted property

(1) A police officer may apply to the Judge, Justice or Registrar of the Court, for the issue of a warrant to search land or premises for tainted property in the same way as a police officer may apply for the issue of a search warrant under section 96 of the Criminal Procedure Act 1980-81.

(2) If an application is made under subsection (1) for a warrant, -

(a) the Judge, Justice or Registrar of the Court may issue a warrant of that kind in the same way, and subject to the same conditions, as he or she would issue a search warrant under section 96 of the Criminal Procedure Act 1980-81; and

(b) subject to sections 36 to 41, the warrant may be executed in the same way as if it had been issued under that section.

36. Police may seize tainted property

If, in the course of a search under a warrant issued under section 35 for a thing of a kind specified in the warrant, a police officer finds another thing, the warrant is taken

to authorise the police officer to seize the other thing if that officer has reasonable grounds –

- (a) for believing the other thing to be tainted property or to afford evidence about the commission or a serious offence in the Cook Islands; or
- (b) for believing that it is necessary to seize the property or thing to prevent it being concealed, lost or destroyed, or used to commit, continue or repeat the offence or another offence.

Search for and seizure of tainted property -foreign serious offences

43. Police may seize tainted property

(1) Subsection (2) applies if, in the course of searching under a warrant mentioned in section 42 for tainted property, a police officer finds –

- (a) property that there are reasonable grounds for believing is tainted property for which another search warrant under that section is in force; or
- (b) anything that there are reasonable grounds to believe:
 - (i) is relevant to a criminal proceeding in the foreign country for the foreign serious offence; or
 - (ii) will afford evidence as to the commission of a relevant offence.

(2) If there are reasonable grounds for believing that it is necessary to seize the property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the relevant offence, the warrant is taken to authorise the police officer to seize the property or thing.

Restraining orders

50. Restraining order

(1) The Court may make a restraining order against property if it is satisfied that –

- (a) a defendant has been convicted of a serious offence, has been charged with a serious offence or will be charged with a serious offence within 48 hours; and
- (b) if the defendant has not been convicted of the serious offence, there are reasonable grounds for believing that the defendant committed the offence; and
- (c) if the property is property of the defendant, there are reasonable grounds for believing that the property is tainted property, or that the defendant derived a benefit directly or indirectly from the commission of the offence; and
- (d) if the property is property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property, or that the property is subject to the effective control of the defendant.

(2) The order may –

- (a) prohibit the defendant or any other person from disposing of, or otherwise dealing with, the property, or a part of it or interest in it specified in the order, either absolutely or except in a way specified in the order; and
- (b) at the request of the Solicitor-General, if the Court is satisfied that the circumstances so require, direct the Administrator:
 - (i) to take custody of the property or a part of it specified in the order; and
 - (ii) to manage or otherwise deal with all, or any part of, the property in accordance with the directions of the Court.

(3) In deciding whether there are reasonable grounds for believing that property is subject to the effective control of the defendant, the Court may take into account the matters mentioned in section 32(2).

- (4) The order may be subject to any conditions that the Court thinks fit and, without limiting this subsection, may provide for meeting, out of the property or a specified part of it, all or any of the following –
- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;
 - (b) the person's reasonable expenses in defending a criminal charge and any proceedings under this Act;
 - (c) another specified debt incurred by the person in good faith.
- (5) However, the order must not make such provision unless the Court is satisfied that the person cannot meet the expenses or debt out of property that is not subject to a restraining order.
- (6) If the Court gives the Administrator a direction under subsection (2)(b) for property, the Administrator may do anything that is reasonably necessary to preserve the property and, for that purpose, –
- (a) may do anything for the property that its owner could do; and
 - (b) may do so to the exclusion of the owner.
- (7) In proceedings for a restraining order, the Court may order that a witness need not
- (a) answer a specified question; or
 - (b) produce a specified document,
- if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.

Production orders and other information gathering powers

78. Definition of "production order" - In sections 79 to 86 "production order" includes an order that requires a person to make a document available for inspection.

79. Application for production orders –

- (1) Subsection (2) applies if –
- (a) a person has been convicted of a serious offence and there are reasonable grounds for suspecting that a person has possession or control of a property-tracking document or property-tracking documents for the offence; or
 - (b) there are reasonable grounds for suspecting that a person has committed a serious offence and that a person has possession or control of a property-tracking document or property-tracking documents for the offence.
- (2) A police officer may apply to a judge for a production order against the person.
- (3) The application –
- (a) may be made *ex parte*; and
 - (b) must be in writing and must be accompanied by an affidavit.
- (4) Subsection (5) applies if a police officer applies for a production order for a serious offence, and includes in the affidavit a statement to the effect that there are reasonable grounds for believing that –
- (a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and
 - (b) the property specified in the affidavit is under the effective control of the person mentioned in paragraph (a).
- (5) For this section, the Judge hearing the application may treat any document relevant to identifying, locating or quantifying that property as a property tracking document for the offence.

(6) In deciding whether to treat a document as a property-tracking document for an offence, the Judge may take into account the matters mentioned in section 32(2).

80. Production orders –

(1) The Judge may, if satisfied that there are reasonable grounds for doing so, make a production order requiring a person –

- (a) to produce to a police officer, at a specified time and place, any documents of the kind mentioned in section 79(1) that are in the person's possession or control; or
- (b) to make available to a police officer for inspection, at a specified time or times and place or places, any documents of that kind that are in the person's possession or control.

(2) The order has effect despite any law that prohibits disclosure of information.

(3) If a production order requires a person to produce or make available a document that is a computer file, the order is taken to require the person –

- (a) to allow the police officer named in the order, or a person acting under the direction of that officer, to use a computer on which the document is held; and
- (b) to give the officer any password necessary to provide the officer with access to the document; and
- (c) to enable the officer to use any computer software necessary to provide the officer with access to the document.

81. Scope of police powers under production order –

(1) If a document is produced to a police officer, or made available to a police officer for inspection, under a production order, the police officer may do any of the following -

- (a) inspect the document;
- (b) take extracts from it;
- (c) print it;
- (d) make copies of it;
- (e) for an order made under section 80(1)(a), keep the document if, and for as long as, reasonably necessary for the purposes of this Act.

(2) If a police officer keeps a document, the police officer must -

- (a) make a copy of the document, certify the copy in writing to be a true copy, and give the copy to the person to whom the order was addressed; or
- (b) allow the person:
 - (i) to inspect the document; or
 - (ii) to take extracts from it; or
 - (iii) to make copies of it.

82. What use can be made of information –

(1) If a person produces or makes available, a document under a production order, -

- (a) the production or making available of the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence under section 84.

(2) A person required by a production order to produce or make available a document is not excused from doing so on the ground that producing the document or making it available -

(a) might tend to incriminate the person or make the person liable to a penalty; or (b) would be in breach of an obligation (whether imposed by an Act or otherwise) not to disclose the existence or contents of the document.

83. Variation of production order - (1) If a production order requires a person to produce a document to a police officer, the person may apply to a Judge to vary the order.

(2) If the Judge is satisfied that the document is essential to the person's business activities, the Judge may vary the production order so that it requires the person to make the document available to a police officer for inspection.

84. Failure to comply with production order - (1) If a production order requires a person to produce a document to a police officer, or make a document available to a police officer for inspection, the person commits an offence if the person –

(a) contravenes the order without reasonable excuse; or

(b) in purported compliance with the order, produces or makes available a document that the person knows to be false or misleading in a material particular without:

(i) telling the police officer that the document is false or misleading, and the way in which it is false or misleading; and

(ii) giving correct information to the police officer if the person has, or can reasonably obtain, the correct information.

(2) An offence against subsection (1) is punishable by, -

(a) if the offender is a natural person, a fine of up to \$30,000 or a term of imprisonment of up to 5 years, or both; or

(b) if the offender is a body corporate, a fine of up to \$150,000.

85. Search warrant to facilitate investigation

(1) A police officer may apply to a Judge for a warrant under subsection (4) to search premises for a document if –

(a) a person is convicted of a serious offence and there are reasonable grounds for suspecting that there is on those premises a property-tracking document for the offence; or

(b) there are reasonable grounds for suspecting that a person has committed a serious offence and there is on those premises a property-tracking document for the offence.

(2) If a police officer applies for a warrant under subsection (1) for an offence and includes in an accompanying affidavit a statement to the effect that there are reasonable grounds for believing that –

(a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from committing the offence; and

(b) property specified in the affidavit is subject to the effective control of the person;

(c) the Judge may treat any document relevant to identifying, locating or quantifying the property as a property-tracking document for the offence under this section.

(3) In deciding whether to treat a document under subsection (2) as a property-tracking document for an offence, the Judge may take into account the matters mentioned in section 32(2).

(4) Despite any enactment that prohibits disclosure of information, if an application is made under subsection (1) for a warrant to search premises for a property-tracking document, -

(a) the Judge may, if satisfied that there are reasonable grounds for doing so, issue a warrant of that kind in the same way, and subject to the same conditions, as the Judge could issue a search warrant under section 96 of the Criminal Procedure Act 1980-81; and

(b) subject to this section and sections 78 to 84, and section 86, the warrant may be executed in the same way as if it had been issued under that section.

(5) However, a Judge may not issue a search warrant under subsection (4) unless the Judge is satisfied that –

(a) it would not be appropriate to make a production order in respect of the document; or

(b) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without warning to any person.

(6) If a police officer enters premises in execution of a warrant issued under this section, the police officer may seize –

(a) any document that is likely to be of substantial value (whether by itself or together with other documents) to the investigation for the purpose of which the warrant was issued; and

(b) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of an offence.

(7) In this section, "premises" includes any place and any building, receptacle or vehicle.

86. Production orders and search warrants for foreign serious offences –

(1) If a police officer is authorised, under the Mutual Assistance Act, to apply to a Judge –

(a) for a production order under this Act for a foreign serious offence; or

(b) for a search warrant under this Act for a property-tracking document for a foreign serious offence, sections 78 to 85 apply to the application and to any order or warrant issued as a result of the application as if a reference in sections 78 to 85 to a serious offence were a reference to the foreign serious offence.

(2) If a police officer takes possession of a document under a production order made, or a warrant issued, in respect of a foreign serious offence, the police officer may keep the document until the Solicitor-General gives a written direction about how the document is to be dealt with, but not for longer than 1 month.

(3) A direction by the Solicitor-General under subsection (2) about a document may include a direction that the document must be sent to an authority of the foreign country that requested the issue of the relevant order or warrant.

PART 4. MONITORING ORDERS

87. Application for monitoring order –

(1) The Solicitor-General may apply to the Court for a monitoring order that a financial institution provide information about transactions conducted during a particular period through an account held by a particular person with the financial institution.

(2) The Court may make a monitoring order if the Court is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought –

(a) has committed, or is about to commit, a serious offence; or

(b) was involved in the commission, or is about to be involved in the commission, of a serious offence; or

(c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence.

88. Contents of monitoring order –

- (1) A monitoring order must –
 - (a) specify the name or names in which the account is believed to be held; and
 - (b) specify the kind of information that the financial institution is required to provide; and
 - (c) specify the period during which the transaction must have occurred; and
 - (d) specify to which enforcement agency the information is to be provided; and
 - (e) specify the form and manner in which the information is to be given; and
 - (f) set out the effect of failing to comply with a monitoring order.
- (2) The period mentioned in subsection (1)(c) must –
 - (a) begin no earlier than the day on which notice of the monitoring order is given to the financial institution; and
 - (b) end no later than 6 months after the date of the order.

89. Protection from suits for those complying with monitoring order –

- (1) No action, suit or proceedings lies against –
 - (a) a financial institution; or
 - (b) an officer, employee or agent of the financial institution acting in the course of that person's employment or agency, in relation to any action taken by the financial institution or person in complying with a monitoring order or in the mistaken belief that action was required under the order.
- (2) A financial institution, or person who is an officer, employee or agent of a financial institution, who provides information under a monitoring order is taken, for purposes of offences relating to money laundering, not to have been in possession of that information at any time.

90. Making false statements in applications – (1) A person is guilty of an offence if–

- (a) the person makes a statement (whether orally, in a document or any other way); and
 - (b) the statement –
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
 - (c) the statement is made in, or in connection with, an application for a monitoring order.
- (2) An offence against subsection (1) is punishable by a fine of up to \$20,000, or a term of imprisonment of up to 2 years, or both.

91. Disclosing existence or operation of monitoring order –

- (1) A person is guilty of an offence if –
 - (a) the person discloses the existence or the operation of a monitoring order to another person; and
 - (b) the disclosure is not to a person mentioned in subsection (5); and
 - (c) the disclosure is not for a purpose mentioned in subsection (5).
- (2) A person is guilty of an offence if –
 - (a) the person discloses information to another person; and
 - (b) that other person could infer the existence or operation of a monitoring order from that information; and
 - (c) the disclosure is not to a person mentioned in subsection (5); and
 - (d) the disclosure is not for a purpose mentioned in subsection (5).
- (3) A person is guilty of an offence if –

- (a) the person receives information relating to a monitoring order in accordance with subsection (5); and
- (b) the person ceases to be a person to whom information could be disclosed in accordance with subsection (5); and (c) the person makes a record of, or discloses, the existence or the operation of the order.
- (4) An offence against subsections (1), (2) and (3) is punishable by a fine of up to \$20,000, or a term of imprisonment of up to 2 years, or both.
- (5) A person may disclose the existence or the operation of a monitoring order to the following persons for the following purposes -
 - (a) the Solicitor-General or an authorised officer:
 - (i) for the purpose of performing that person's duties; or
 - (ii) for the purpose of, or for purposes connected with, legal proceedings; or
 - (iii) for the purposes arising in the course of proceedings before a court;
 - (b) the Head of the Financial Intelligence Unit, or a member of the staff of the Financial Intelligence Unit who is authorised by the Head of the Financial Intelligence Unit as a person who may be advised of the existence of a monitoring order:
 - (i) for the purpose of performing that person's duties; or
 - (ii) for the purpose of, or for purposes connected with, legal proceedings; or
 - (iii) for purposes arising in the course of proceedings before a court;
 - (c) an officer or agent of the financial institution for the purpose of ensuring that the order is complied with;
 - (d) a barrister or solicitor for the purpose of obtaining legal advice or representation in relation to the order.

92. Failure to comply with monitoring order –

A person who is given a monitoring order and fails to comply with the order is guilty of an offence punishable by a fine of up to \$20,000 or a term of imprisonment of up to 2 years, or both.

PART 5. DISCLOSURE OF INFORMATION HELD BY GOVERNMENT DEPARTMENTS

93. Direction to disclose information –

- (1) This section applies to a document or information -
 - (a) that is in the possession or under the control of a person in charge of a Government department or a statutory body; or
 - (b) to which the person has access.
- (2) Despite any other law, the Solicitor-General may direct the person to give or disclose, to the Solicitor-General or an authorised officer, the document or information if the Solicitor-General is satisfied that the document or information is relevant to -
 - (a) establishing whether a serious offence has been, or is being, committed; or
 - (b) the making, or proposed or possible making, of an order under Part 2 or 3.

94. Further disclosure of information and documents –

- (1) A person to whom a document or information has been disclosed under section 93 must not further disclose the document or information except for -
 - (a) the investigation of, or the prosecution, or proposed or possible prosecution of, a person for a serious offence; or

(b) an investigation relating to proceedings, or proposed or possible proceedings, for the making of an order under this Act or for an investigation relating to the making, or proposed or possible making, of an order.

(2) A person to whom a document or information has been disclosed in accordance with this Part must not disclose the document or information to another person except for a purpose mentioned in subsection (1)(a) or (b).

CRIMINAL PROCEDURE ACT 1980-81

PART I. PROCEDURE FOR PROSECUTION OF OFFENCES

Search

96. Search warrants

(1) Whether or not an information has been laid, a Judge or Justice or the Registrar, if he is satisfied on the oath of any person that there is reasonable ground for believing that there is in any building, aircraft, ship, vehicle, box, receptacle, premises, or place-

(a) Any thing upon or in respect of which any offence punishable by imprisonment has been or is suspected of having been committed; or

(b) Any thing which there is reasonable ground to believe will be evidence as to the commission of any such offence; or

(c) Any thing which there is reasonable ground to believe is intended to be used for the purpose of committing any such offence-

may issue a search warrant in form 16.

(2) Every search warrant shall be directed either to any constable by name or generally to every constable, and any such warrant may be executed by any constable.

(3) Every search warrant shall authorise any constable at any time or times within one month from the date thereof to act in one or more of the following ways:

(a) To enter and search the building, aircraft, ship, vehicle, premises, or place referred to therein, with such assistants as may be necessary, and if necessary, to use force for making entry, whether by breaking open doors or windows or otherwise;

(b) To break open and search any box or receptacle therein or thereon, by force if necessary;

(c) To seize anything referred to in subsection (1) of this section.

(4) Every search warrant shall be executed by day, unless the warrant expressly authorises the execution thereof by night.

(5) It is the duty of every one executing any search warrant to have with him and to produce it if required to do so.

(7) In this section, "premises" includes any place and any building, receptacle or vehicle.

(b) Observations on the implementation of the article

276. Identification and tracing can be conducted in the Cook Islands by the Police based on a search warrant issued by a Judge, Justice or Register of the Court under section 35(1) and search warrants issued by a Judge to facilitate investigation under section 85 of the Proceeds of Crimes Act 2003. The court may also require to produce various documents relevant to identifying, locating and quantifying property as "property tracking documents" based on the application by a police officer, where a person has been convicted of a serious offence and there are reasonable grounds that he has control or possession of a property-tracking document or there are serious grounds for suspecting that person has committed a serious offence and has possession of property-tracking

documents (section 79 of the Proceeds of Crimes Act 2003). Additionally, Part 4 of the Act stipulates a detailed regime for monitoring orders requiring financial institutions to provide information about transactions conducted during a particular time period by a particular person on application by the Solicitor-General to the Court (section 87). Section 86 separately covers production orders and search warrants for foreign serious offences in the context of mutual legal assistance. Additionally, based on section 93 of the Act, the Solicitor-General may direct Government and statutory departments to disclose information if s/he is satisfied that such information is relevant to establishing whether a serious offence has been or is being committed or to the making of forfeiture, search, restraint and production order.

277. Freezing can be done based on section 50 (Restraining order) of the Act, pursuant to a restraining order issued by the Court. Police can also seize tainted property based on section 43 of the Act.
278. Besides the provisions of the Act, the provisions of the Criminal Procedure Act 1980-81 (section 96) can be additionally used to identify and seize the proceeds of crime.
279. The Cook Islands has legislatively implemented the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

280. The Cook Islands has cited the following implementation measures.

PROCEEDS OF CRIMES ACT 2003

PART 1. PRELIMINARY

3. Definitions

(1) In this Act, unless the context otherwise requires, -

"Administrator" means the Solicitor-General or the person appointed by the Attorney-General under section 102;

"Commissioner" means the Commissioner of Police appointed under section 3 of the Police Act 1981;

PART 3. FACILITATING INVESTIGATIONS AND PRESERVING PROPERTY

Powers of search and seizure

40. Retention of seized property if restraining order made

(1) Subsections (2), (3) and (4) apply if –

(a) property has been seized under section 36; and

- (b) a restraining order is made against the property before the Commissioner is required by this Act to return it; and
- (c) the restraining order directs the Administrator to take custody and control of the property.
- (2) Despite sections 38 or 39, the Commissioner must arrange for the property to be given to the Administrator in accordance with the restraining order.
- (3) If, when the restraining order is made, the property is in the Commissioner's possession, the Commissioner may apply to the Court for an order that the Commissioner keep possession of the property.
- (4) If the Court is satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of an offence, the Court may order that the Commissioner retain the property for as long as the property is so required as evidence.
- (5) If the Court makes an order under subsection (4) about the property, the Commissioner must arrange for the property to be retained until it is dealt with in accordance with another provision of this Act.
- (6) In proceedings for an order under subsection (4), the Court may order that a witness need not –
 - (a) answer a specified question; or
 - (b) produce a specified document,if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or the prosecution of a person for, an offence.

Search for and seizure of tainted property - foreign serious offences

46. Retention of seized property if restraining order made

- (1) Subsections (2), (3) and (4) apply if –
 - (a) property has been seized under subsection 43(2); and
 - (b) but, for that subsection, the Commissioner would be required to arrange for the property to be returned to a person as soon as practicable after the end of a period; and
 - (c) before the end of that period:
 - (i) a foreign restraining order against the property is registered in the Court; or
 - (ii) the Court makes a restraining order in respect of the relevant offence against the property.
- (2) The Commissioner must, -
 - (a) if the restraining order directs the Administrator to take custody and control of the property, arrange for the property to be given to the Administrator in accordance with the restraining order; or
 - (b) if the Court has made an order under subsection (4) about the property, arrange for the property to be retained until it is dealt with in accordance with another provision of this Act.
- (3) If the property is in the Commissioner's possession when the restraining order is made or registered, the Commissioner may apply to the Court for an order that the Commissioner retain possession of the property.
- (4) The Court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a relevant offence, order that the Commissioner may retain the property for as long as the property is so required as evidence.
- (5) In proceedings for an order under subsection (4), the Court may order that a witness need not-
 - (a) answer a specified question; or

(b) produce a specified document,
if the Court is satisfied that answering the question, or producing the document, may prejudice the investigation of, or the prosecution of a person for, an offence.

Restraining orders

54. Administrator may satisfy pecuniary penalty order

(1) This section applies if –

(a) a pecuniary penalty order is made against a defendant in reliance on the defendant's conviction of a serious offence; and

(b) a restraining order is made in reliance on the defendant's conviction, or alleged commission, of the offence, against property of:

(i) the defendant; or

(ii) another person for whom an order made under subsection 32(4) is in force.

(2) The Court may direct the Administrator to satisfy the pecuniary penalty order by a payment to the Crown out of the property –

(a) on the making of the later of the orders; or

(b) on application by the Solicitor-General, at any time while the restraining order remains in force.

(3) To enable the Administrator to comply with a direction under subsection (2), the Court may –

(a) direct the Administrator to sell or otherwise dispose of a part of the property that the Court specifies; and

(b) order that the Administrator may execute, and do anything necessary to give validity and effect to, any deed or instrument in the name of a person who owns or has an interest in the property.

(4) If the Court makes an order of the kind mentioned in subsection (3)(b), the execution of a deed or instrument by the Administrator in accordance with the order has the same force and validity as if the deed or instrument had been executed by the person in whose name the Administrator executed it.

(5) The Administrator must not take action to sell property under a direction made under subsection (2) until –

(a) the periods for the lodging of an appeal against the relevant conviction, and the making of the relevant pecuniary penalty order and restraining order, have expired without any appeal having been lodged; or

(b) if an appeal is lodged against a relevant conviction, or the making of the relevant pecuniary penalty order or restraining order, the appeal lapses in accordance with the rules of court or is finally determined.

100. Confiscated Assets Fund –

(1) There is a fund known as the Confiscated Assets Fund ("the Fund").

(2) Without further appropriation than this section, the following must be paid into the Fund -

(a) money paid to the Crown instead of a forfeiture order under section 23;

(b) money paid to the Crown under a pecuniary penalty order under section 26;

(c) money paid to the Crown by a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise.

(3) The Financial Secretary, with the approval of the Minister of Finance, may authorise payments to be made out of the Fund -

- (a) for purposes related to law enforcement, including in particular the investigation of suspected cases of money laundering;
- (b) to satisfy an obligation of the Crown to a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise;
- (c) to meet the remuneration and expenses of the Administrator;
- (e) to pay compensation or costs awarded under this Act;
- (f) to cover costs associated with the administration of the Fund.”

102. Appointment of Administrator –

Under this Act, the Attorney-General may, by instrument, appoint a person to administer property that is forfeited or subject to a restraining order.

CRIMINAL PROCEDURE ACT 1980-81

PART I. PROCEDURE FOR PROSECUTION OF OFFENCES

Search

97. Disposal of things seized –

- (1) Where any constable seizes anything under section 96 of this Act, it shall be retained under the custody of a constable, except while it is being used in evidence or is in the custody of the Court, until it is disposed of under this section.
- (2) In any proceedings for an offence relating to the thing seized, the Court may order, either at the trial or on a subsequent application, that the thing be-
 - (a) Delivered to the person appearing to the Court to be entitled to it; or
 - (b) Forfeited, defaced, or destroyed (in the case of counterfeit coin, or forged bank notes, or instruments or things for making such coins, notes, or instruments); or
 - (c) Otherwise disposed of in such manner as the Court thinks fit.
- (3) Any constable may at any time, unless an order has been made under subsection (2) of this section, return the thing to the person from whom it was seized or apply to a Justice for an order as to its disposal, and on any such application the Justice may make any order that a Court may make under subsection (2) of this section.
- (4) If, upon the expiry of a period of 3 months after the date of seizure, proceedings have not been brought for an offence relating to the thing seized and the thing is still in the custody of a constable, any person claiming to be entitled to the thing may apply to a Justice for an order that it be delivered to him; and on any such application the Justice may adjourn the same on such terms as he thinks fit for proceedings to be brought, or make any order that a Court may make under subsection (2) of this section.
- (5) Where any person is convicted in any proceedings for an offence relating to any thing to which this section applies, and any order is made under this section, the operation of the order shall be suspended until the expiration of the time for appeal or, where an application for leave to appeal or a notice of appeal is filed, until the refusal of the application or the determination of the appeal; and on the determination of an appeal, the Court determining the appeal may annul or vary the order made under this section.

(b) Observations on the implementation of the article

- 281. The Solicitor-General acts as an Administrator responsible for the administration of the seized, restrained and forfeited property and also for the execution of forfeiture orders

(sections 3, 40, 46, 54 of the Proceeds of Crimes Act 2003). The Attorney-General may also appoint another person to act as an Administrator (section 102 of the Act).

282. Additionally, a special Confiscated Assets Fund was created based on section 100 of the Act to administer money paid instead of a forfeiture order under section 23, money paid to under a pecuniary penalty order under section 26 and money paid by a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise.

283. The police constable is responsible for the administration of the property seized pursuant to the provisions of the Criminal Procedure Act 1980-81 (section 97 of the Criminal Procedure Act).

284. The Cook Islands has legislatively implemented the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

285. The Cook Islands has referred to its responses under paragraph 1 above.

(b) Observations on the implementation of the article

286. Please see the observations under paragraph 1 above.

Article 31 Freezing, seizure and confiscation

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

287. The Cook Islands has referred to section 23 of the Proceeds of Crimes Act 2003, as cited under paragraph 1 above.

(b) Observations on the implementation of the article

288. Under section 23 (d) of the Proceeds of Crimes Act 2003, where property was mingled with other property that cannot be divided without difficulty, the Court may order to pay the amount equal to the value of the property instead of ordering its forfeiture.

289. The Cook Islands has legislatively implemented the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

290. The Cook Islands has referred to section 3 of the Proceeds of Crimes Act 2003, as cited under paragraph 1 above.

(b) Observations on the implementation of the article

291. As clarified under paragraph 1 above, the definition of “proceeds” under section 3 of the Proceeds of Crimes Act 2003 also includes income, capital or other economic gains derived or realized from tainted property. “Proceeds” are subject to all the relevant measures under the Proceeds of Crimes Act 2003.

292. The Cook Islands has legislatively implemented the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

293. The Cook Islands has referred to the information cited under paragraph 2 above.

294. The Cook Islands has additionally cited the following implementation measures.

FINANCIAL TRANSACTIONS REPORTING ACT 2003

30. Power to examine

(1) The FIU or any person authorised by the FIU may examine the records and inquire into the business and affairs of any reporting institution for the purpose of ensuring compliance with Parts 2 and 3 and, for that purpose, may, - (a) at any reasonable time without warrant, enter any premises in which the FIU or the authorised person believes, on reasonable grounds, that there are records relevant to ensuring compliance with Parts 2 and 3; (b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;

(c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other output for examination or copying; (d) use or cause to be used any copying equipment in the premises to make copies of any record. (2) The owner or person in charge of premises referred to in subsection (1) and every person found there must give the FIU or any authorised person all reasonable assistance to enable them to carry out their responsibilities and must furnish them with any information that they may reasonably require with respect to the administration of Parts 2 and 3 or any regulations made under this Act. (3) Any person who willfully obstructs or hinders or fails to cooperate with the FIU or any authorised person in the lawful exercise of the powers under subsection (1) or any person who does not comply with subsection (2) commits an offence punishable by, - (a) in the case of an individual, to a fine of up to \$20,000 or a term or imprisonment of up to 2 years, or both; (b) in the case of a body corporate, to a fine of up to \$100,00. (4) The FIU may send any information from, or derived from, an examination to - (a) a supervisory authority; (b) the Solicitor-General; (c) a law enforcement agency or a foreign supervisory authority; if the FIU has reasonable grounds to suspect that the information is suspicious or is relevant to an investigation for non-compliance with this Act, a serious offence, a money laundering offence or a financing terrorism offence.

PART 5. OTHER MATTERS

35. Overriding of secrecy

For the avoidance of doubt, a financial institution must comply with the requirements of this Act despite any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.

36. Act to prevail if conflict with other specified Acts

If there is a conflict between the provisions of this Act and any other Act including the following Acts, this Act prevails - (a) International Companies Act 1980-82; (b) International Partnership Act 1984; (c) International Trusts Act 1984; (d) Banking Act 2003; (e) Off-Shore Insurance Act 1981-82; (f) Trustee Companies Act 1981-82.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 3. ASSISTANCE WITH TAKING EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES

11. Requests by foreign countries for assistance with evidence

(1) If a foreign country (the “requesting country”) asks that evidence be taken in the Cook Islands for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney-General may authorise -

- (a) the taking of the evidence; and
- (b) the transmission of the evidence to the requesting country.

(2) If the requesting country asks that a document or other article in the Cook Islands be produced for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney-General may authorise -

- (a) the production of the documents or articles; and
- (b) their transmission to the requesting country.

13. Production

(1) If the Attorney-General authorises the production of a document under section 11(2), a Judge or Justice -

(a) may require the document to be produced to him or her; and

(b) if it is produced, must send it, or a copy of it certified by the Judge or Justice to be a true copy, to the Attorney-General.

(2) If the Attorney-General authorises the production of an article (other than a document) under section 11(2), a Judge or Justice -

(a) may require it to be produced to him or her; and

(b) if the article is produced, must send it to the Attorney-General.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS AMENDMENT ACT 2004

8. Secrecy provisions over-ridden

The principal Act is amended by inserting after section 60, the following new section -

"60A. Secrecy provisions over-ridden - (1) For the avoidance of doubt, a reporting institution must comply with the requirements of this Act despite any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise. (2) For purposes of this section, "reporting institution" has the same meaning given by section 2 of the Financial Transactions Reporting Act 2004."

(b) Observations on the implementation of the article

295. As explained in more detail under paragraph 2 above, the Cook Islands law enforcement agencies, based on the Proceeds of Crimes Act 2003, have a wide range of tools enabling them to request information from financial institutions including search warrants, as well as production and monitoring orders.

296. Additionally, the Financial Transactions Reporting Act 2003 gives to the FIU the power to request information from financial institutions and share it with law enforcement authorities (section 30 of the Act). The Financial Transactions Reporting Act 2003 specifically stipulates that for the avoidance of doubt, a financial institution must comply with the requirements of this Act despite any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise (section 35 of the Act).

297. Additionally, the Mutual Assistance in Criminal Matters Act (section 60A) contains the provisions allowing the Attorney-General to share relevant information obtained from financial institutions with foreign jurisdictions.

298. During the country visit, it was confirmed that financial institutions are usually cooperative in sharing with the Police requested information and records based on corresponding warrants and orders.

299. The Cook Islands has legislatively implemented the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

300. The Cook Islands has clarified that they had considered but decided not to implement the provision under review due to its incompatibility with the fundamental principles of their domestic law, such as section 40(1) of the Constitution that is interpreted in the Cook Islands as the principle that the confiscation of any property from the accused is only allowed based on the guilty verdict against him issued by the court.

COOK ISLANDS CONSTITUTION

40. No property to be taken compulsorily without compensation

(1) No property shall be taken possession of compulsorily, and no right over or interest in any property shall be acquired compulsorily, except under the law, which of itself or when read with any other law-

(a) Requires the payment within a reasonable time of adequate compensation therefor; and

(b) Gives to any person claiming that compensation, a right of access, for the determination of his interest in the property and the amount of compensation, to the High Court; and

(c) Gives to any party to proceedings in the High Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a Court of original jurisdiction.

(2) Nothing in this Article shall be construed as affecting any general law-

(a) For the imposition or enforcement of any tax, rate or duty; or

(b) For the imposition of penalties or forfeitures for breach of the law, whether under civil process or after conviction of an offence; or

(c) Relating to leases, tenancies, mortgages, charges, bills of sale, or any other rights or obligations arising out of contracts; or

(d) Relating to the vesting and administration of the property of persons adjudged bankrupt or otherwise declared insolvent, of infants or persons suffering under some physical or mental disability, of deceased persons, and of companies, other corporate bodies and unincorporated societies, in the course of being wound up; or

(e) Relating to the execution of judgments or orders of Courts; or

(f) Providing for the taking of possession of property which is in a dangerous state or is injurious to the health of human beings, plants or animals; or

(g) Relating to trusts and trustees; or

(h) Relating to the limitation of actions; or

(i) Relating to property vested in statutory corporations; or

(j) Relating to the temporary taking of possession of property for the purposes of any examination, investigation, or inquiry; or

(k) Providing for the carrying out of work on land for the purpose of soil conservation or for the protection of water catchment areas.

(b) Observations on the implementation of the article

301. The Cook Islands has considered but opted not to implement the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

302. The Cook Islands has cited the following implementation measures.

PROCEEDS OF CRIMES ACT 2003

PART 2. FORFEITURE ORDERS PECUNIARY PENALTY ORDERS AND RELATED MATTERS

17. Forfeiture order on conviction –

...

(4) In considering whether to make a forfeiture order against property, the Court may take into account -

(a) any right or interest of a third party in the property;...

20. Protection of third parties

(1) If an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under subsection (2).

(2) If a person applies to the Court for an order in respect of that person's interest in the property, the Court must make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied -

(a) that the applicant was not in any way involved in committing an offence for which forfeiture of the property is sought, or a forfeiture order against the property was made; and

(b) if the applicant acquired the interest at the time of, or after, the offence was committed:

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances so as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, tainted property.

(3) If a forfeiture order has already been made against property, a person who claims an interest in the property may, within 6 months starting on the day when the order is made, apply to the Court for an order under subsection (2).

(4) A person may not make an application under subsection (3), except with the leave of the Court, if the person -

- (a) knew about the application for the forfeiture order before the order was made; or
- (b) appeared at the hearing of that application.
- (5) A person who applies to the Court under subsection (1) or (3) must give reasonable written notice of the application to the Solicitor-General.
- (6) The Solicitor-General -
 - (a) is a party to the proceedings in an application under subsection (1) or (3); and
 - (b) may make an application under subsection (1) for a person.
- (7) An appeal lies to the Court of Appeal of the Cook Islands from an order made under subsection (2).
- (8) On application by a person who has obtained an order under subsection (2), if the period allowed for appeals has expired and any appeal from that order has been determined or has lapsed, the Administrator must -
 - (a) return the property, or the part of it to which the interest of the applicant relates, to the applicant; or
 - (b) pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.

53. Ancillary orders and further orders

...

- (3) If a person who has an interest in property against which a restraining order is made applies to the Court for a variation of the order to exclude the person's interest from the order, the Court must grant the application if the Court is satisfied that -
 - (a) the interest is not tainted property and that it cannot be required to satisfy a pecuniary penalty order; or
 - (b) the applicant was not in any way involved in the commission of the offence for which the restraining order was made and, if the applicant acquired the interest at the time of or after the commission (or alleged commission) of the offence, the applicant acquired the interest:
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances so as not to arouse a reasonable suspicion, that the property was tainted property; or
 - (c) it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.

(b) Observations on the implementation of the article

303. Based on section 20 of the Proceeds of Crimes Act 2003, bona fide third parties may apply to the Court for a declaration as to the nature, extent and value of their interest in the property that is sought to be forfeited or was forfeited. Third parties would need to demonstrate to the court that they were not involved in the commission of the offence, and that if the applicants acquired the interest at the time of, or after, the offence, such acquisition was conducted for sufficient consideration, and without knowing, and in circumstances so as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, tainted property. If the court is satisfied he may order the return of the property to the third parties.

304. Additionally, section 53 of the Act provides protection for the parties who have interests in property against which a restraining order is applied. If the court is satisfied that such interests are not tainted and cannot be used to satisfy a pecuniary penalty order,

the parties acquired the interest at the time of, or after, the offence was committed for sufficient consideration, and without knowing, and in circumstances so as not to arouse a reasonable suspicion that the property was, at the time of the acquisition, tainted property and it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order, then the interests of such parties can be excluded from the restraining order.

305. The Cook Islands has legislatively implemented the provision under review.

(c) Successes and good practices

306. The adoption of the comprehensive Proceeds of Crimes Act providing detailed regulation of different aspects of freezing, seizure and confiscation of illicit assets can be regarded as a good practice.

307. The creation of the Confiscated Assets Fund managed by the Financial Secretary and the Ministry of Finance to administer the money paid as a result of pecuniary penalty orders or paid by foreign jurisdictions can be regarded as a good practice.

Article 32 Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

308. The Cook Islands has indicated the only applicable provisions in the national legislation are the provisions on witness protection in the Police Act 2012, and cited the following implementation measures.

POLICE ACT 2012

67 Witness in Police witness protection programme

If, at any time after the events that are the subject of a charge, a witness under a police witness protection programme assumes a new identity, the witness is not required in any proceeding concerning the charge to disclose an assumed name or any particulars likely to disclose the new identity.

(b) Observations on the implementation of the article

309. The Cook Islands does not have detailed provisions on the protection of witnesses, experts and victims. Section 67 of the Police Act, 2012 provides for the protection of the identity of witnesses under police protection programmes.

310. It was further explained during the country visit that the Cook Islands had not seen a practical need in adopting extensive legislative provisions to that effect. It was also noted that in the past extensive witness protection was provided on ad hoc basis, particularly, in international drug trafficking cases involving other jurisdictions.

311. The Cook Islands is recommended to introduce detailed legislative provisions providing effective protection for witnesses, experts and victims who give testimony concerning offences in line with the requirements of article 32 of UNCAC.

(c) Challenges

312. The Cook Islands has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
2. Limited capacity (e.g. human/technological/institution/other);
3. Limited resources for implementation (e.g. human/financial/other).

(d) Technical assistance needs

313. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Capacity-building programmes for authorities responsible for establishing and managing witness, expert and victim protection.

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

314. The Cook Islands has indicated that they do not have appropriate measures in place as required by the provision under review.

(b) Observations on the implementation of the article

315. The Cook Islands is recommended to consider incorporating into its domestic legal system measures against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning corruption offences in line with article 33 of UNCAC.

316. However, it should be noted that, as shown under paragraph 8 of article 30 above, the Cook Islands does have some limited measures of whistleblower protection which involve the application of disciplinary sanctions to public employees retaliating against whistleblowers through detrimental acts, recommendation or threats. Nevertheless, these measures appear to be very limited taking into account the scope of the provision under review

(c) Challenges

317. The Cook Islands has identified the following challenge and issue in fully implementing the provision under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.).

(d) Technical assistance needs

318. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Other assistance (legislative drafting).

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

319. The Cook Islands has cited the following implementation measures.

ILLEGAL CONTRACTS 1987

3. "Illegal contract" defined

Subject to Section 4, for the purposes of this Act the term "illegal contract" means any contract that is illegal at law or in equity, whether the illegality arises from the creation or performance of the contract; and includes a contract which contains an illegal provision, whether the provision is severable or not.

4. Breach of enactment

A contract lawfully entered into shall not become illegal or unenforceable by any party by reason of the fact that its performance is in breach of any enactment, unless the enactment expressly so provides or its object clearly so requires.

5. Illegal contracts to be of no effect

Notwithstanding any rule of law or equity to the contrary, but subject to the provisions of this Act and of any other enactment, every illegal contract shall be of no effect and no person shall become entitled to any property under a disposition made by or pursuant to any such contract; Provided that nothing in this Section shall invalidate-

(a) Any disposition of property by a party to an illegal contract for valuable consideration; or

(b) Any disposition of property made by or through a person who became entitled to the property under a disposition to which paragraph (a) of this proviso applies - if the person to whom the disposition was made was not a party to the illegal contract and had not at the time of the disposition notice that the property was the subject of, or the whole or part of the consideration for, an illegal contract and otherwise acts in good faith.

(b) Observations on the implementation of the article

320. A contract would be viewed as illegal in the Cook Islands if it was entered to by means of corruption based on the common law principles and Illegal Contracts Act, 1987. Yet, no practical examples of such were provided.

321. The Cook Islands has partially implemented the provision under review. The Cook Islands is recommended to include more detailed provisions on making corruption a relevant factor in legal proceedings to annul or rescind a contract or withdraw a concession in relevant domestic legislation; particularly, in the Tender and Procurement Act.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

322. The Cook Islands has cited the following implementation measures.

Crimes Act 1969

415. Compensation for loss of property

(1) On the conviction of any person for any offence the Court may order the offender to pay to any person such sum as it thinks fit by way of compensation for any loss of or damage to property suffered by that person through or by means of the offence.

(2) Where on the arrest of the offender any money was taken from him the Court may in its discretion order the whole or any part of the money to be applied to any such payment.

(3) Any order for payment under this section may be enforced in the same manner as a fine.

(4) An order under this section shall not affect the right of any person to recover by civil proceedings any sum in excess of the amount recovered under the order.

416. Restitution of property

(1) Where any one is convicted of any offence, any property found in his possession, or in the possession of any other person for him, may be ordered by the Court to be delivered to the person who appears to the Court to be entitled thereto.

(2) Where an order is made under subsection (1) of this section, and it appears to the Court that a purchaser has bought the property in good faith and without knowledge that it was dishonestly obtained, the Court may order that on the restitution of the property the offender shall pay to the purchaser a sum not exceeding the amount paid by him. The provisions of subsections (2) to (4) of section 415 of this Act shall apply to any such order

(3) Where any one is convicted of having stolen or dishonestly obtained any property, and it appears to the Court that the property has been pawned to a pawnbroker, the Court may order the pawnbroker to deliver it to the person appearing to the Court to be entitled to it, either on payment or without payment to the pawnbroker of the amount of the loan or any part thereof, as the Court in all the circumstances of the case deems just:

Provided that before an order is made for the delivery of the property without payment to the pawnbroker, he shall be given an opportunity to be heard.

(4) If the person in whose favour any order under subsection (3) of this section is made thereby obtains the property, he shall not afterwards question the validity of the pawn.

(5) Except as provided in subsection (4) of this section, no order made under this section shall have any further effect than to change the possession, and no such order shall prejudice any right of property, or any right of action in respect of any property, existing or acquired in the goods either before or after the offence was committed.

417. Civil remedy not suspended

No civil remedy for any act or omission shall be suspended by reason that such act or omission amounts to an offence.

Civil remedies for damages and loss are available in respect of civil suit for damages, exemplary damages, actions in tort.

Judicature Act 1980-81

8. Practice and Procedure

Subject to the provisions of this Act, the Code of Civil Procedure Act 1972, the Criminal Procedure Act 1980-81, and of any other enactment, the practice and procedure of the High Court in the exercise of its civil and criminal jurisdiction shall

be such as the Court thinks in each case to be the most consistent with natural justice and convenience.

Code of Civil Procedure

PART I - PRELIMINARY

3. Construction

These rules shall be so construed as to secure the just, speedy, and inexpensive determination of any proceeding.

4. Procedure and practice of Court

(1) Subject to the provisions of this Part, no practice which is inconsistent with these rules shall prevail in the Court.

(2) If any case arises for which no form of procedure has been provided by the Act or the Cook Islands Act 1915 or these rules, the Court shall dispose of the case as nearly as may be practicable in accordance with the provisions of the Act or Cook Islands Act 1915 or the rules affecting any similar case, or in such manner as the Court deems best calculated to promote the ends of Justice.

(b) Observations on the implementation of the article

323. The Cook Islands' Crimes Act 1969 allows for the compensation to the victims of offences (including corruption offences) in the criminal proceedings (sections 415 and 416 of the Act). Victims can advise the prosecutor whether compensation is desirable and the prosecutor can ask for compensation on behalf of the victim. Additionally, the victims can always request compensation in the civil proceedings based on the common law grounds, e.g. negligence.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

324. The Cook Islands has indicated that it used a multi-agency approach to fight corruption coordinated by the "Anti-Corruption Committee".

325. The Committee is headed by the Solicitor-General and consists of the Commissioner of Police, Head of the FIU, Director of the Cook Islands Audit Office, Financial Secretary of the Ministry of Finance and Economic Management, Public Service Commissioner, Chief of Staff of the Office of the Prime Minister and the Ombudsman.

326. The Cook Islands further indicated that one specialized agency to fight corruption may be established in the future under the auspices of the Ombudsman Office.

327. The Cook Islands has cited the following implementation measures.

Crown Law Office

Crown Law Office Act 1980

10. Principal functions of the Office

(1) The principal function of the office shall be to advise the Government of the Cook islands on legal matters that may be referred to it by the Queen's Representative, the Prime Minister, a Minister, the Ombudsman, a head of department, or Statutory body or Corporation.

(2) The Attorney-General shall have power, exercisable in his discretion, to institute and conduct any civil or criminal proceedings and may discontinue any criminal proceedings whether instituted by him or otherwise.

The Cook Islands Police

The Cook Islands Police Force is governed by the Police Act 2012.

POLICE ACT 2012

Part 2. Organisation and Governance

Principles and functions

Functions of Police

(1) The functions of the Police include-

- (a) Keeping the peace;
- (b) Maintaining public safety;
- (c) Law enforcement;
- (d) Crime prevention;
- (e) Community support and reassurance;
- (f) National security;
- (g) Participation in authorised regional and international policing operations outside the Cook islands;
- (h) Emergency management.

(2) Nothing in sections 6 to 7 –

- (a) Imposes particular duties on, or gives particular powers to, the Police, the Commissioner, any member of Police or the Minister; or
- (b) Affect the powers, functions, or duties of any agency other than the Police, or any person who is not the Commissioner, a member of Police, or the Minister.

Responsibilities and independence of Commissioner

(1) The Commissioner is responsible to the Minister for

- (a) carrying out the functions and duties of Police;
- (b) The general conduct of Police;
- (c) The effective, efficient and economical management of Police;
- (d) Tendering advice to the minister.

(2) The Commissioner is not responsible to, and must act independently of, any Minister of the Crown (including any person acting on the instruction of a Minister of the Crown) regarding-

- (a) Maintenance of law and order in relation to any individual or group of individuals;

- (b) Enforcement of the law;
 - (c) The prevention, detection, investigation, and prosecution of offences;
 - (d) Decisions about individuals employees.
- (3) Except as expressly provided in this act, the Commissioner has all of the rights, duties, and powers of an employer in respect of all members and employees of Police.

Financial Intelligence Unit (FIU)

The Cook Islands FIU is governed by the Financial Transactions Reporting Act 2003.

FINANCIAL TRANSACTIONS REPORTING ACT 2003

PART 1. PRELIMINARY

2. Definitions

(1) In this Act, unless the context otherwise requires, -...

"FIU" means the Financial Intelligence Unit established under section 20;

"Head" means the Head of the FIU appointed under section 21;

"Minister" means the Minister of Finance, and includes any member of Cabinet or Minister of the Cook Islands Government acting for him or her or in his or her place;

...

PART 4. FINANCIAL INTELLIGENCE UNIT

20. FIU established

The FIU is established.

21. Minister to appoint Head

The Minister must appoint a Head of the FIU on any terms and conditions the Minister may determine in consultation with Cabinet.

22. Functions, powers and duties of Head

(1) The Head may exercise all of the functions, powers and duties of the FIU under this Act.

(2) The Head may from time to time, appoint such other officers and employees of the FIU as are necessary for the efficient exercise of the duties, functions and powers of the FIU.

(3) The Head may authorise any person, subject to any terms and conditions that the Head may specify, to carry out any power, duty, or function conferred on the Head under this Act.

24. Head to hold no other office

The Head must not be -

(a) a member of Parliament; or

(b) a member of a local authority; or

(c) a director, officer or employee of, or hold any shares in any financial institution or be the spouse or immediate family of any such person,

and must not, without the approval of the Minister, hold any other office or take on any other occupation.

25. Removal or suspension from office

The Head may at any time be removed or suspended from office by the Minister for disability affecting the performance of duty, neglect of duty, incompetence or misconduct proved to the satisfaction of the Minister.

26. Head must report to Minister

(1) The Head -

(a) must report to the Minister on the exercise of the Head's powers and the performance of his or her duties and functions under this Act; and

(b) advise the Minister on any matter relating to money laundering.

(2) The Head may not disclose any information, except in accordance with this Act, that would directly or indirectly identify an individual who provided a report or information to the FIU, or a person or an entity about whom a report or information was provided under this Act.

27. Functions and powers of FIU

The FIU has the following functions-

(a) it must receive reports made under sections 5, 8, 10, 11 and 12 and information provided to the FIU by any agency of another country, information provided to the FIU by a law enforcement agency or a Government institution or agency, and any other information voluntarily provided to the FIU about suspicions of a serious offence or a money laundering offence;

(b) it may collect information that the FIU considers relevant to serious offences or money laundering activities and that is publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored in databases maintained by the Government;

(c) if the FIU has reasonable grounds to believe a serious offence or a money laundering offence has been, is being or may be committed, the FIU must refer the matter to the Police for investigation;

(d) it may request information from any law enforcement agency and supervisory authority for the purposes of this Act;

(e) it may analyse and assess all reports and information;

(f) it may send any report, any information derived from that report or any other information it receives to the appropriate law enforcement authorities if, having considered the report or information, the FIU also has reasonable grounds to suspect that the transaction is suspicious;

(g) it must destroy a suspicious transaction report received or collected on the expiry of 6 years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report or 6 years from the date of the last activity relating to the person or to the report;

(h) it may ask for further information relating to any suspicious transaction report received by it from a financial institution;

(i) it may instruct any financial institution to take any steps that may be appropriate in relation to any information or report received by the FIU to enforce compliance with this Act;

(j) it may compile statistics and records, disseminate financial information and intelligence to domestic authorities within the Cook Islands or elsewhere for investigation or action if there are grounds to suspect money laundering;

(k) it must issue guidelines to financial institutions;

- (l) it may provide training programmes for financial institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;
- (m) it may provide feedback to financial institutions and other relevant agencies regarding outcomes relating to the reports or information given under this Act;
- (n) it may conduct research into trends and developments in the area of money laundering and improved ways of detecting, preventing and deterring money laundering;
- (o) it may educate the public and create awareness of matters relating to money laundering;
- (p) it must undertake compliance audits for entities not regulated by a supervisory authority; it may transmit any information from, or derived from, a compliance audit or supervisory review or suspicious transaction report to the appropriate domestic or foreign law enforcement authority, if the FIU has reasonable grounds to believe that the information is suspicious or is relevant to an investigation for non-compliance with this Act, a serious offence or a money laundering offence.

Cook Islands Audit Office

The Cook Islands Audit Office is governed by the Constitution.

THE CONSTITUTION OF THE COOK ISLANDS

PART V. THE PUBLIC REVENUES OF THE COOK ISLANDS

71. Audit

(1) The Audit Office of [the Cook Islands] shall be the auditor of the Cook Islands Government Account and of all other public funds or accounts, and of the accounts of all Departments and offices of executive government and of such other public, statutory, or local authorities or bodies as may be provided by law.

(2) The Audit Office shall, at least once annually, forward to the Speaker of [Parliament] for presentation to [Parliament] a report containing such information as is required to be submitted by any enactment, together with such other information relating to the Cook Islands Government Account or other funds or accounts which under this Constitution or under any other enactment are required to be audited by the Audit Office as that Office considers desirable.

[(3) There shall be established by enactment a Public Expenditure Committee comprising-

(a) a Chairman who shall not be a member of Parliament; and

(b) such number of members of Parliament as shall be prescribed by enactment each of whom shall not, while a member of the Committee, be a member of Cabinet.

(4) The enactment referred to in subclause (3) of this Article shall provide to the Public Expenditure Committee sufficient powers to investigate expenditure from the Cook Islands Government Account and other public funds or accounts of executive government and such other public statutory or local authorities or bodies as may be prescribed by law, and shall have such other functions, duties, powers, and responsibilities as shall be provided by enactment.]

Ministry of Finance and Economic Management

Ministry of Finance and Economic Management Act 1995-96

Ministry of Finance and Economic Management –

There is hereby established a department of state to be called the Ministry of Finance and Economic Management which shall be charged with the general administration of this Act, and with such other functions as may from time to time be lawfully conferred on it.

4. Financial Secretary

(1) There shall be from time to time appointed as a member of the Public Service, a Financial Secretary who shall be the Executive Head of the Ministry and who shall be principal Financial and Economic Advisor to the Government.

(2) The Financial Secretary shall be appointed pursuant to the Public Service Act 1995-96.

5. Responsible Minister

The Financial Secretary shall report and be responsible to the Minister for compliance by the Ministry with the Ministry's obligations under this Act.

6. The Financial Secretary may delegate powers

The Financial Secretary may from time to time in writing either generally or particularly, delegate to any employee of the Ministry as he thinks fit all or any of the powers exercisable by him under this or any other Act, including the powers delegated to him under this or any Act, including this present power of delegation.

23. Principles of responsibility fiscal management

(1) Subject to subsection (4) of this section, the Government shall pursue its policy objectives in accordance with the principles of responsible fiscal management specified in subsection (2) of this section.

(2) The principles of responsible fiscal management are –

- (a) managing total Crown debt at prudent levels so as to provide a buffer against factors that may impact adversely on the level of total Crown debt in the future, by ensuring that, unless such levels have been achieved, the total operating expenses of the Crown in each financial year are less than its total operating revenues in the same financial year; and
- (b) achieving and maintaining levels of Crown net worth that provide a buffer against factors that may impact adversely on the Crown's net worth in the future; and
- (c) managing prudently the fiscal risks facing the Crown; and
- (d) pursuing policies that are consistent with a reasonable degree of predictability about the level and stability of tax rates for future years.

(3) The Government shall agree on the fiscal limits that shall apply to the current and future financial needs.

(4) The Government may depart from the principles of responsible fiscal management specified in subsection (2) of this section only in cases of exceptional circumstances, and when the Government does so –

- (a) any such departure shall be temporarily; and
- (b) the Minister shall, in accordance with this Act, specify –
 - (i) the detailed reasons for the Government's departure from those principles including justification of those exceptional circumstances; and
 - (ii) the approach the Government intends to take to return to those principles; and

- (iii) the period of time that the Government expects to take to return to those principles.
- (5) Should any such circumstances arise which forces departure from these principles during the financial year, these must be disclosed in accordance with the provisions of this Act.

Public Service Commission

The Cook Islands Public Service Commission is governed by the Constitution and the Public Service Act.

THE CONSTITUTION OF THE COOK ISLANDS

PART V. THE COOK ISLANDS PUBLIC SERVICE

74B. Functions of the Public Service Commissioner

(1) Subject to the provisions of Article 74BB hereof and of subclauses (3) and (4) of this Article and except as may otherwise be provided by enactment, the Public Service Commissioner shall be responsible for the appointment, promotion, transfer, termination of appointment, dismissal, and disciplinary control of employees of the Cook Islands Public Service, and shall have such other functions as may be prescribed by law.]

(2) Repealed by section 2(2)(a) of the Constitution Amendment (No 13) Act 1992.

(3) An Act shall make provision for the grading of positions in the Cook Islands Public Service and, except as provided in Article 74BB hereof and in [subclause (4)] of this Article, any promotion or appointment to such graded positions shall be made by the Public Service Commissioner and 2 heads of departments of the Cook Islands Public Service. The appointment of those heads of departments for the purpose of this subclause shall be as prescribed by Act.

(4) An Act may provide for the appointment of persons from outside the Cook Islands to positions in the Cook Islands Public Service and the conditions on which such appointments are to be made, and the appointment of any such person shall be made with the concurrence of Cabinet.

(5) A decision of Cabinet under subclause (4) of this Article shall be deemed to be a decision to which Article 25 hereof (which relates to reconsideration of Cabinet decisions by the Executive Council) applies.

(6) In the performance of their functions under this Article-

(a) The Public Service Commissioner when acting alone; and

(b) Repealed by section 2(2)(d) of the Constitution Amendment (No 13) Act 1992;

(c) The Public Service Commissioner and the heads of Departments when acting together-

shall have regard to the general policy of Cabinet relating to the Cook Islands Public Service, and shall give effect to any decision of Cabinet defining that policy conveyed to him or them, as the case may be, in writing signed by the [Prime Minister].

74C. Procedure of Public Service Commissioner

(1) Subject to the provisions of this Constitution and of any law, the Public Service Commissioner may-

(a) Exercise his functions in such manner as he sees fit; and

(b) Delegate any of his functions to any person or persons.

(2) When acting with the heads of departments for the purposes of making promotions or appointments to or in graded positions pursuant to [[subclause (3)]] of Article 74B of this Constitution, the Public Service Commissioner and the heads of departments shall regulate their own procedure and exercise their functions in such manner as they think fit.]

PUBLIC SERVICE ACT 2009

Part 2. Public service commissioner and office of the public service commissioner Functions of commissioner

(1) The functions of the Commissioner are-

- (a) To review the machinery of government, including –
 - (i) The allocation of functions to and between departments; and
 - (ii) The desirability of, or need for, the creation of new departments and the amalgamation or abolition of existing departments; and
 - (iii) The coordination of the activities of departments; and
- (b) To ensure compliance with the code of conduct and values of the public service set out in Schedule 4;
- (c) To issue written instructions to heads of departments relating to the implementation of government policies to ensure uniformity and cohesion in the Public Service;
- (d) To carry out inquiries relating to the administration of the public service or any other matters relating to the public service in accordance with section 11;
- (e) To investigate any dispute between an employer and an employee and make recommendations as to how the dispute should be settled;
- (f) To ensure heads of departments discharge their responsibilities specified in section 16;
- (g) To review the performance of heads of departments, including the performance of their contracts of employment and compliance with their performance agreements;
- (h) To ensure the heads of departments are not subjected to unlawful or improper pressure from Ministers of the Crown or members of the Parliament, in particular with regard to public expenditure;
- (i) To act as an intermediary between Ministers of the Crown and heads of departments in relation to the functions specified in paragraphs (f), (g), and (h);
- (j) To appoint heads of departments and negotiate with the successful candidates conditions of employment;
- (k) To develop and promote personnel policies and standards, including performance management systems for heads of departments and the Public Service;
- (l) To provide advice on the training and career development of staff in the Public Service;
- (m) To determine salary ranges for positions in the Public Service in accordance with the remuneration system for the time being approved by Cabinet;
- (n) To tender advice to the Minister and other Minister of the Crown as necessary in relation to the Commissioners' functions.

- (o) In carrying out his or her functions, the Commission must give effect to the policies of the Government relating to the Public Service as communicated to the Commissioner from time to time by the Prime minister in writing.

Office of the Ombudsman

The Cook Islands Office of the Ombudsman is governed by the Ombudsman Act 1984.

OMBUDSMAN ACT 1984

OMBUDSMAN

3. Ombudsman

(1) There may be appointed, an Ombudsman, who shall be an officer of and responsible to Parliament.

(2) Subject to the provisions of section 7 of this Act, the Ombudsman shall be appointed by the Queen's Representative on the advice of the Prime Minister who shall convey the recommendations of Parliament.

(3) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1975 by reason of his appointment as an Ombudsman.

4. Ombudsman to hold no other office

The Ombudsman shall not be capable of being a member of Parliament or of an Island Council, and shall not, without the approval of the Prime Minister, hold any office of trust or profit, other than his office as the Ombudsman, or engage in any occupation for reward outside the duties of his office.

5. Term of office of Ombudsman

(1) Except as otherwise provided in this Act, the Ombudsman shall hold office for a term of 3 years.

(2) Unless his office sooner becomes vacant, every person appointed as an Ombudsman shall hold office until his successor is appointed. Every such person may from time to time be reappointed.

(3) The Ombudsman may at any time resign his office in writing addressed to the Speaker of Parliament or to the Prime Minister if there is no Speaker or the Speaker is absent from the Cook Islands, and shall so resign his office on attaining the age of 72 years.

6. Removal or suspension from office

(1) The Ombudsman may be removed from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or misbehaviour by the Queen's Representative on the advice of the Prime Minister who shall convey the recommendation of Parliament.

(2) The Ombudsman may be suspended from the Queen's Representative in Executive Council for inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or misbehaviour proved to the satisfaction of the Queen's Representative but any such suspension shall not continue in force beyond 2 months after the commencement of the next ensuing session of Parliament.

7. Filling of vacancy

- (1) If the Ombudsman dies, or resigns his office, or is removed from office, the vacancy thereby created shall be filled in accordance with this section.
- (2) If any vacancy in the office of the Ombudsman occurs at any time while Parliament is in session, it shall be filled by the appointment of an Ombudsman by the Queen's Representative on the advice of the Prime Minister who shall convey the recommendation of Parliament. Provided that if the vacancy occurs less than 2 months before the close of that session and no such recommendation is made in that session, the provisions of subsection (3) of this section shall apply as if the vacancy had occurred while Parliament was not in session.
- (3) If any such vacancy occurs at any time while Parliament is not in session, the following provisions shall apply:
 - (a) The Queen's Representative in Executive Council may appoint an Ombudsman to fill the vacancy, and the person so appointed shall, unless his office sooner becomes vacant, hold office until his appointment is confirmed by Parliament;
 - (b) If the appointment is not so confirmed within 2 months after the commencement of the next ensuing session, the appointment shall lapse and there shall be deemed to be a further vacancy in the office of the Ombudsman.

8. Salaries and allowances of Ombudsman

- (1) There shall be paid to the Ombudsman out of the Government Account, without further appropriation than this section, a salary at such rate as the Queen's Representative, by Order in Council, from time to time determines.
- (2) The salary of the Ombudsman shall not be diminished by an Order in Council under this section during the continuance of his appointment.
- (3) Any Order in Council under this section, and any provision of any such Order, may be made so as to come into force on a date to be specified in that behalf in the Order, being the date of the making of the Order or any other date, whether before or after the date of the making of the order or the date of the commencement of this Act.
- (4) Every Order in Council under this section, and every provision of any such order, in respect of which no date is specified as aforesaid shall come into force on the date of the making of the order.
- (5) There shall be paid to the Ombudsman, in respect of time spent in travelling in the exercise of his functions, travelling allowances and expenses in accordance with the Civil List Act 1984, and the provisions of that Act shall apply accordingly as if the Ombudsman were a Minister.

9. Oath to be taken by Ombudsman

Before entering upon the exercise of the duties of his office the Ombudsman shall take an oath before the Speaker or Clerk of Parliament, namely:

I will faithfully and impartially perform the duties of my office and that I will not, except where I am required to do so by enactment of the Parliament of the Cook Islands, divulge any information received by me in the performance of my functions.

10. Staff

- (1) Subject to the provisions of this section, the Ombudsman may appoint such officers and employees as may be necessary for the efficient carrying out of his functions, powers, and duties under this Act.

(2) The number of persons that may be appointed under this section, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Minister for Parliamentary Services.

(3) The salaries of persons appointed under this section and the terms and conditions of their appointments, shall be such as are approved by Cabinet.

(4) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1975 by reason of his appointment under this section

FUNCTIONS OF OMBUDSMAN

11. Functions of Ombudsman

(1) It shall be a function of the Ombudsman to investigate any decision or recommendation made, or any act done or omitted, whether before or after the passing of this Act, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the Departments or organisations specified in the Schedule to this Act, or by any officer, employee, or member of any such Department or organisation in his capacity as such officer, employee, or member.

(2) Without limiting the generality of subsection (1) of this section, it is hereby declared that the power conferred by that subsection includes the power to investigate a recommendation made, whether before or after the passing of this Act, by any such Department or organisation or any committee, subcommittee, officer, employee, or member thereof.

(3) The Ombudsman may make any such investigation either on a complaint made to him or of his own motion; and where a complaint is made he may investigate any decision, recommendation, act or omission to which the foregoing provisions of this section relate, notwithstanding that the complaint may not appear to relate to that decision, recommendation, act, or omission.

(4) Without limiting the preceding provisions of this section, it is hereby declared that any Committee of Parliament may at any time refer to the Ombudsman for investigation and report by him, any petition that is before that Committee for consideration, or any matter to which the petition relates. In any such case, an Ombudsman shall, subject to any special direction of the Committee, investigate the matters so referred, so far as they are within his jurisdiction, and make such report to the Committee as he thinks fit. Nothing in section 15 or section 20 or section 22 of this Act shall apply in respect of any investigation or report made under this subsection.

(5) Without limiting the foregoing provisions of this section, it is hereby declared that at any time the Prime Minister may refer to the Ombudsman for investigation and report any matter, other than a matter concerning a judicial proceeding, which the Prime Minister considers should be investigated by the Ombudsman. Where a matter is referred to an Ombudsman pursuant to this subsection, he shall, notwithstanding anything to the contrary in this Act, forthwith investigate the matter and report thereon to the Prime Minister, and may thereafter make such report to Parliament on the matter as he thinks fit. Nothing in section 20 of this Act shall apply in respect of any investigation or report made under this subsection.

(6) The powers conferred on the Ombudsman by this Act may be exercised notwithstanding any provision in any enactment to the effect that any such decision, recommendation, act, or omission shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the person or organisation whose

decision, recommendation, act, or omission it is shall be challenged, reviewed, quashed, or called in question.

(7) Nothing in this Act shall authorise the Ombudsman to investigate-

(a) Any decision, recommendation, act, or omission in respect of which there is under the provisions of the Constitution or any Act or regulation, a right of appeal or objection, or a right to apply for a review, available to the complainant, on the merits of the case to any Court, or to any tribunal constituted by or under any enactment, whether or not that right of appeal or objection or application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired:

Provided that the Ombudsman may conduct an investigation (not being an investigation relating to any decision, recommendation, act, or omission to which any other paragraph of this subsection applies) notwithstanding that the complainant has or had such right if by reason of special circumstances it would be unreasonable to expect him to resort or have resorted to it;

(b) Any decision, recommendation, act, or omission of any person in his capacity as a trustee within the meaning of the Trustee Act 1956;

(c) Any decision, recommendation, act, or omission of any person acting as legal adviser to the Crown or as Counsel for the Crown in relation to any proceedings;

(d) Any decision, recommendation, act, or omission of any member of the Police that may be the subject of an inquiry under the Police Act 1981 unless a complaint in relation thereto has been made or conveyed to a member of the Police superior in rank to the member to whom the complaint relates; and

(i) The complaint has not been investigated; or

(ii) The complaint has been investigated and the complainant is dissatisfied with the final result.

(8) If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the High Court for a declaratory order determining the question in accordance with the Declaratory Judgements Act 1908, and the provisions of that Act shall extend and apply accordingly.

(b) Observations on the implementation of the article

328. The Cooks Islands considered the establishment of a specialized anti-corruption authority. A Special Committee was created chaired by the Solicitor-General consisting of representatives of the Crown Law Office, Commissioner of Police, Head of the FIU, Director of the Cook Islands Audit Office, Financial Secretary of the Ministry of Finance and Economic Management, Public Service Commissioner, Chief of Staff of the Office of the Prime Minister and the Ombudsman. The Committee does not operate under statute, it does not exercise any additional powers other than those already provided to its members through their particular functions. The emphasis of the Committee is firstly to ensure a whole of Government coordinated approach to address corruption in the public sector, particularly in policy development and strategic planning. Secondly, it ensures communication and updates for the primary agencies that address corruption and to ensure there is a consistent message to the public regarding the steps that Government are taking to address corruption.

329. Due to the specificities of the local situation (small population, low awareness of government capacities with regard to fight corruption), it was decided that the specialized

authority will be established in the future and possibly located at the Office of Ombudsman.

330. The Crown Law Office focuses on the prosecution and legal advice, while investigation is conducted by other agencies.
331. During the country visit, it was highlighted that some agencies had special units that were focusing on economic crime including corruption. Particularly, there is a Fraud Unit in the Police that also hosts specialists from the other agencies when special expertise is needed, e.g. with regard to financial and tax crime.
332. The FIU operates within the Financial Supervisory Commission that also includes the Register Office. The FIU works well with other law enforcement authorities and foreign counterparts, in particular with New Zealand, Australia and the US. Its personnel also attend regular training sessions organized by foreign FIUs.
333. The Ministry of Finance and Economic Management focuses on the corruption issues in public procurement. In order to ensure transparency in the process the tender rules are regularly published. At the time of the country visit, the Ministry was working on the preparation of the drafting of public complaints manual together with the Ombudsman's Office
334. The Public Service Commissioner specifically focuses on the process of recruitment of officials, ensuring the process is fair and transparent. In case there are suspicions regarding possible abuses, the case is transferred to the Audit Office.
335. The Audit Office focuses on public expenditures and conducts financial audit of all Government entities. It also receives complaints from citizens regarding the misappropriation of public resources. An effort is being made to redirect such complaints to the Ombudsman's Office. The Audit Office representatives also highlighted that some of their functions were duplicating with the Public Expenditure Review Committee, an entity that monitors the accountability of public expenditures. Additionally, the need to ensure a greater independent and separate budget line was also highlighted.
336. Some of the main challenges that were highlighted during the meeting with Ombudsman and his staff, in the course of the country visit, were the inadequate resources and the lack of adequate capacity. The role of Ombudsman is important, as it also investigates cases relevant to corruption. In 2013, the Ombudsman investigated corruption allegations against a former Minister of Marine Resources. In total, the Ombudsman's Office investigates around 300 cases per year; however, only some of them are relevant to corruption.
337. Although, the Cook Islands has taken certain steps to implement the provision under review, it is recommended to finalize the process of the creation of the independent specialized anti-corruption authority, in particular ensuring its independence, as well as the adequate capacity of its staff in line with article 36 of UNCAC.

(c) Challenges

338. The Cook Islands has identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human and financial).

(e) Technical assistance needs

339. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Other assistance: Enhancement of existing resources in relation to specialized authorities and cooperation between national authorities.

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

340. The Cook Islands has clarified that cooperation with relevant authorities can be a relevant mitigating factor at sentencing for which the Court can give a substantial discount on otherwise appropriate sentence

341. Additionally, the Cook Islands has indicated that it adopted the Prosecution Guidelines issued by the Solicitor-General of New Zealand. The Guidelines includes strict conditions based on which the Solicitor-General will exercise the discretion to grant immunity from prosecution. One of the factors to grant such immunity is cooperation with authorities that can also be used to encourage the cooperation of the persons who participate or have participated in the commission of an offence to supply information to competent authorities (please see paragraph 3 below).

342. The Cook Islands has also cited a case relevant to the implementation of the provision under review.

The case involved the prosecution of a member of Parliament (who at the time of the offending was a Minister), a prominent local businessman and the Secretary of an Outer Island Administration.

The witness given prosecutorial immunity was an officer in the Ministers office and a key witness in the prosecution. The Minister along with the 2 others was charged with various charges from theft by conversion, conspiracy to commit fraud, charges against secret commissions offences for corruptly accepting or soliciting consideration.

The witness was granted immunity in relation to the conspiracy and bribery offences. All defendants were acquitted.

(b) Observations on the implementation of the article

343. As explained by the Cook Islands, the Prosecution Guidelines issued by the Solicitor-General of New Zealand that provide for a possibility of granting an immunity, which can also be granted based on the cooperation with the authorities and can be viewed as a measure encouraging the offenders to supply information to competent authorities.

344. The Cook Islands has partially implemented the provision under review. The Cook Islands is recommended to take additional measures, particularly in its legislation to encourage persons who participate or who have participated in the commission of corruption offences to supply information and provide help to competent authorities in line with article 37(1) of UNCAC.

Article 37 Cooperation with law enforcement authorities

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

345. The Cook Islands has clarified that the cooperation of an accused person in the investigation or prosecution of an offence is an established principle of the Cook Islands court practice and is included as such in the New Zealand Sentencing Act that is accepted by the Cook Islands' courts as a guideline on the matter.

346. This is reflected indirectly by section 8(h) of the Sentencing Act, relating to principles of sentencing or otherwise dealing with offenders. It states "in sentencing or otherwise dealing with an offender the court...

...

(h) must take into account any particular circumstance of the offender that mean that a sentence or other means of dealing with the offender that would otherwise be appropriate, would in the particular instance, be disproportionately severe".

347. This provision enshrines the well-recognized scope for the exercises of judicial discretion to ameliorate the penalty for the crime having regard to the unique circumstances of the offender that may be taken into account. While no categories exist allowing for a broad discretion to the court, the following circumstances have been accepted by the court as warranting consideration on a case-by-case basis:

- I. Prompting of mercy;
- II. Potential for rehabilitation;
- III. Cooperation with authorities;
- IV. Hardship to the offender;
- V. Hardship to offender's family;
- VI. Offenders in ill-health.

348. The above factors have so far been accepted by the courts of the Cook Islands (there is authoritative case law) as being a "particular circumstance" under section 8(h) of the New Zealand Sentencing Act 2002.

(b) Observations on the implementation of the article

349. The Cook Island clarified that the principle of mitigating punishment of an accused person is an established practice; however, no practical examples to that effect were provided.

350. The Cook Islands is recommended to consider explicitly including the provision on the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of a corruption offence in the relevant legislation and/or sentencing guidelines in line with article 37(2) of UNCAC.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

351. The Cook Islands has clarified that prosecutions by the Solicitor-General are conducted in accordance with the New Zealand Prosecution Guidelines 2013. Part 12 of which provides for immunity from prosecution as follows:

IMMUNITIES FROM PROSECUTION

12.1 On occasions the prosecution case will depend upon the evidence of an accomplice or participant in an offence in order to proceed against a defendant considered to be more culpable or a greater risk to public safety.

12.2 Unless that potential witness has already been charged and sentenced he or she may be justified in declining to give evidence on the grounds of self-incrimination.

12.3 In such a case it will be necessary for the prosecutor to consider giving the witness immunity from prosecution. Immunity takes the form of a written undertaking from the Solicitor-General to exercise the power to stay if the witness is prosecuted for

nominated offences. It thus protects the witness from both public and private prosecutions.

12.4 The only person able to give such an undertaking is the Solicitor-General.

12.5 The only purpose in giving immunity is to enable the prosecutor to use otherwise unavailable evidence.

12.6 Immunities are to be used sparingly and only in cases where it is demonstrably clear that without the evidence given under immunity the prosecution case is unlikely to succeed, or there is a risk it will be significantly weakened.

12.7 Before agreeing to give immunity, the Solicitor-General will almost invariably need to be satisfied of at least the following matters:

12.7.1 That the offence in respect of which the evidence is to be given is serious;

12.7.2 That there are no other reasonably available avenues of gaining sufficient evidence to bring a successful prosecution other than relying upon the evidence to be given under immunity;

12.7.3 That the evidence to be given under immunity is admissible, relevant and significantly strengthens the prosecution case;

12.7.4 That the witness, while having committed some identifiable offence, is not an equal or greater risk to the public safety than the person to be tried;

12.7.5 That the evidence to be given under immunity is apparently credible and, preferably, supported by other admissible material;

12.7.6 That no inducement, other than the possibility of an immunity, has been suggested to the witness; and

12.7.7 That admissible evidence exists, sufficient to charge the witness with the offences he or she is believed to have committed.

12.8 The formal opinion of the senior prosecutor (almost invariably the Crown Solicitor) regarding the merits of the immunity will be required.

12.9 The witness who is to testify under immunity should provide a brief of the evidence he or she is to give. That person should be advised that they should seek independent legal advice, the reasonable cost of which will be met by the prosecution. The witness should be advised that should the application for immunity be declined the brief of evidence and any other information obtained from that person in connection with a promise to apply for immunity cannot be used against that person by the prosecution. The brief of evidence will be subject to the ordinary rules of disclosure.”

(b) Observations on the implementation of the article

352. Part 12 “Immunities from Prosecution” of the New Zealand Prosecution Guidelines adopted by the Cook Islands provides detailed requirements under which immunity from prosecution can be granted to a an accomplice or participant in an offence who provides evidence against a defendant considered to be more culpable or a greater risk to public safety. No immunity may be provided in the investigation stage.

353. The Cook Islands is recommended to consider extending immunity from prosecution to the cases where persons who provide substantial cooperation during the investigation of a corruption offence in line with article 37(3) of UNCAC.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

354. The Cook Islands has indicated that the provisions of the legislation relevant to the implementation of article 32 of UNCAC are mostly outside of the scope of article 37.

(b) Observations on the implementation of the article

355. The standards regarding the immunity of an accused as a witness can generally be applied only in exceptional cases and are different in scope with the generic provisions on witness protection.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

356. The Cook Islands has indicated that they have not entered into such arrangements before.

(b) Observations on the implementation of the article

357. The Cook Islands further clarified that it may consider entering into agreements or arrangements with other States parties as stipulated in the provision under review, if such a need would arise in the future.

(c) Challenges

358. The Cook Islands has identified the following challenge and issue in fully implementing the provision under review:

1. Specificities in its legal system.

(d) Technical assistance needs

359. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Legislative drafting.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

360. The Cook Islands has clarified that the information, as stipulated in the provision under review, is exchanged within the Anti-Corruption Committee, as described under UNCAC article 36 above.

361. Additionally, law enforcement agencies coordinate their activities at the operational level for any multi-agency investigation within the Combined Law Agencies Group (CLAG) under the supervision of the Cook Islands Police. CLAG has an operational focus designed at sharing of intelligence and the development of effective relationship to enhance the sharing of information.

362. The member agencies of CLAG (Police, Customs, Ministry of Marine Resources, Ministry of Trade Labour and Transport, Immigration, Biosecurity, Airport Aviation Security, Ministry of Health - Public Health Division) regularly share information depending on the nature of the case. CLAG has a special intelligence arm called the Cook Islands National Intelligence Unit (CINIU) and consists of (Immigration, Police, Ministry of Marine Resources, Customs) that is coordinating the development of operational intelligence reports for endorsement and appropriate action by the Board of CLAG.

363. The Cook Islands has referred to an international corruption investigation in the course of which the information was shared between domestic and foreign agencies. The investigation related to a Minister of the Crown. Domestic agencies were involved, namely the Police, Immigration, Customs, FIU and Crown Law. Foreign agencies were involved, including the New Zealand Police Force and Serious Fraud Office. In addition, the investigation involved a mutual legal assistance request to New Zealand.

(b) Observations on the implementation of the article

364. The Cook Islands Anti-Corruption Committee conducts regular meetings. Information regarding possible corruption offences and corresponding illicit conduct is exchanged between the Committee members regularly in due course. Yet, there are no specific provisions in legislation requiring public officials to report instances of corruption to the corresponding authorities.

365. Law enforcement authorities also developed an effective system of sharing operational information within the framework of CLAG under the supervision of the Cook Islands Police.

366. The Cook Islands is recommended to adopt specific legislative provisions requiring public officials to report suspected instances of corruption to the authorities responsible for anti-corruption law enforcement.

(c) Successes and good practices

367. The development of an effective system of sharing operational information within the framework of CLAG between the Cook Islands law enforcement authorities under the supervision of the Cook Islands Police can be regarded as a good practice conducive to the efficient fight against corruption.

(d) Challenges

368. The Cook Islands has identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human and financial).

(e) Technical assistance needs

369. The Cook Islands has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Other assistance: enhancement of existing resources.

None of these forms of technical assistance has been provided to the Cook Islands to-date.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

370. The Cook Islands has cited the following implementation measures.

FINANCIAL TRANSACTIONS REPORTING ACT, 2004

PART 1

PRELIMINARY

...

2. Definitions

(1) In this Act, unless the context otherwise requires, -

...

“reporting institution” means any person or entity who conducts as a business one or more of the following activities for or on behalf of a customer -

(a) accepting deposits and other repayable funds from the public or banking business as defined in the Banking Act 2003;

(b) lending, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions;

(c) financial leasing;

(d) providing transfer of money or value, including:

(i) collecting, holding, exchanging or remitting funds or the value of money, or otherwise negotiating transfers of funds or the value of money, on behalf of other persons;

(ii) delivering funds; or

(iii) issuing, selling or redeeming travellers’ cheques, money orders or similar instruments;

(e) issuing and administering means of payment (for example, credit cards, travellers’ cheques and bankers’ drafts);

(f) entering into or issuing guarantees and commitments;

(g) trading in money market instruments (for example cheques, bills, certificates of deposit), foreign exchange, financial and commodity futures and options, exchange and interest rate instruments, and transferable securities;

(h) participation in securities issues and the provision of financial services related to those issues;

(i) money-broking;

(j) providing portfolio management and advice;

(k) safekeeping and administration of cash, liquid investments and securities;

(l) providing safe custody services;

(m) underwriting or placement of life insurance and other investment related insurance, including insurance intermediation;

(n) trustee administrator or investment manager of a superannuation scheme but excluding closed-ended schemes;

(o) dealing in bullion;

(p) operating a gambling house, casino Or lottery, including an operator who carries on operations through the internet;

(q) acting as a trust or company service provider, including acting as a trustee company as defined in the Trustee Companies Act 1981, in relation to –

(i) the formation or management of legal persons;

- (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner in a partnership or a similar position in relation to some other legal persons or arrangements;
- (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or some other legal persons or arrangements;
- (iv) acting as (or arranging for another person to act as) a trustee of an express trust;
- (v) acting as (or arranging for another person to act as) a nominee shareholder for another person;
- (r) acting as a lawyer, a notary or some other independent legal profession, or an accountant, when they prepare or carry out transactions for their clients in relation to –
 - (i) buying and selling of real estate;
 - (ii) management of client money, securities or other assets;
 - (iii) management of bank, savings or securities accounts;
 - (iv) organisation of contributions for the creation, operation or management of companies; or
 - (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- (s) dealing in real estate;
- (t) dealing in motor vehicles or high-value items above a prescribed threshold, including antiques, pearls, precious stones and precious metals;
- (u) acting as a friendly society;
- (v) otherwise investing, administering or managing funds or money on behalf of another person;
- (w) money and currency changing;
- (x) acting as investment advisers;
- (y) any other legal entity that is registered or incorporated in the Cook Islands pursuant to the International Companies Act 1981-82 and carrying on any type of business referred to in this subsection;
- (z) any other business that maybe prescribed by the Minister;

“serious offence” has the same meaning given by section 3 of the Proceeds of Crimes Act 2003;

...

PART 3 OBLIGATIONS TO REPORT

...

11. Reporting institution must report suspicious transactions

(1) If a reporting institution suspects or has reasonable grounds to suspect that information that the reporting institution has concerning any transaction or attempted transaction may be -

- (a) relevant to an investigation or prosecution of a person or persons for a serious offence, a money laundering offence or a financing of terrorism offence; or
- (b) of assistance in the enforcement of the Proceeds of Crimes Act 2003; or
- (c) related to the commission of a serious offence, a money laundering offence or a financing of terrorism offence, the reporting institution must, as soon as practicable after forming that suspicion but no later than 2 working days, report the transaction or attempted transaction to the FIU.

- (2) If a reporting institution fails without reasonable excuse to comply with subsection (1), the reporting institution commits an offence punishable by, -
- (a) in the case of an individual, to a fine of up to \$20,000 or a term of imprisonment of up to 2 years, or both;
 - (b) in the case of a body corporate, to a fine of up to \$100,000.
- (3) A report under subsection (1) must -
- (a) except as provided for in subsection (4), be in writing and may be given by way of personal delivery, fax, or electronic mail. or any other manner that may be prescribed; and
 - (b) be in any form and contain any details that may be prescribed; and
 - (c) contain a statement of the grounds on which the reporting institution holds the suspicion and
 - (d) be signed or otherwise authenticated by the reporting institution.
- (4) If the urgency of the situation requires, a report under subsection (1) may be made orally but the reporting institution must, within 3 working days, forward to the FIU a report that complies with subsection (3).
- (5) If requested to do so by a law enforcement agency, a reporting institution that has made a report to the FIU must give the law enforcement agency that is carrying out an investigation arising from, or relating to, the information contained in the report any further information that it has about the transaction or attempted transaction or the parties to the transaction.
- (6) If a reporting institution fails without reasonable excuse to comply with subsection (5), the reporting institution commits an offence punishable by, -
- (a) in the case of an individual, to a fine of up to \$20,000, or a term of imprisonment of up to 2 years; or
 - (b) in the case of a body corporate, to a fine of up to \$100,000.

(b) Observations on the implementation of the article

371. The Financial Transactions Reporting Act 2004 requires a wide range of private sector actors including financial institutions (section 2) to report to the FIU information on suspicious transactions relevant to the commission of “serious offences”, which also include corruption offences (section 11).
372. The Cook Islands’ FIU has on record 419 suspicious transaction reports. Steps actioned involved requests for information (pursuant to section 27) from both the private (banking and offshore industry) and public (Customs, Police, Immigration) stakeholders and if required, information from foreign counterparts, as determined by circumstances of the case.
373. The Cook Islands has legislatively implemented the provision under review.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

374. The Cook Islands has indicated that individuals can make complaints to the Police, FIU and Ombudsman, either in person or in writing (also anonymously).

375. Additionally, once a week, there is a Police report on local television that encourages individuals to report criminal activity, which includes corruption. Similar reports also appear in other mass media including press.

(b) Observations on the implementation of the article

376. Although the Cook Islands disseminate information relevant to the possibility of reporting criminal offences to authorities, they are recommended to continue making more targeted steps to encourage citizens to report on corruption offences, as well as to raise general awareness of the public of the problem of corruption and powers of relevant anti-corruption authorities in line with article 39(2) of UNCAC.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

377. The Cook Islands has referred to the information provided under paragraph 7 of UNCAC article 31 above.

(b) Observations on the implementation of the article

378. Please see observations to paragraph 7 of UNCAC article 31 above.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

379. The Cook Islands has cited the following implementation measure.

EVIDENCE ACT, 1968

PART I - GENERAL RULES OF EVIDENCE

Discretionary Power

3. Discretionary power of admitting evidence

Subject to the provisions of this Act, a Court may in any proceeding admit and receive such evidence as it thinks fit, and accept and act on such evidence as it thinks sufficient, whether such evidence is or is not admissible or sufficient at common law.

(b) Observations on the implementation of the article

380. The Cook Islands does not have specific provisions on taking into consideration any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings. However, according to section 3 of the Evidence Act 1968, a Cook Islands court can receive this information as evidence as it thinks fit.

381. The Cook Islands is encouraged to consider the need to adopt legislative measures to better implement article 41 of UNCAC.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

382. The Cook Islands has cited the following implementation measures.

CRIMES ACT 1969

PART I. JURISDICTION

4. Application of Act

(1) This Act applies to all offences for which the offender may be proceeded against and tried in the Cook Islands.

(2) This Act applies to all acts done or omitted in the Cook Islands.

6. Place of commission of offence

For the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary to the completion of any offence, occurs in the Cook Islands, the offence shall be deemed to be committed in the Cook Islands, whether the person charged with the offence was in the Cook Islands or not at the time of the act, omission, or event.

(b) Observations on the implementation of the article

383. The Cook Islands has implemented the provision under review.

Article 42 Jurisdiction

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

384. The Cook Islands has cited the following implementation measures.

CRIMES ACT 1969

PART I. JURISDICTION

7. Jurisdiction in respect of crimes on ships or aircraft beyond the Cook Islands

(1) This section applies to any act done or omitted beyond the Cook Islands by any person -

- (a) On board any Commonwealth ship; or
- (b) On board any Cook Islands aircraft;

(b) Observations on the implementation of the article

385. The Cook Islands has implemented the provision under review.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

386. The Cook Islands has indicated that they did not implement the provision under review.

(b) Observations on the implementation of the article

387. The Crimes Act 1969 does not provide for passive nationality principle.

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

388. The Cook Islands has indicated that it partially implemented the provision under review and cited the following implementation measures.

CRIMES ACT 1969

PART I. JURISDICTION

7. Jurisdiction in respect of crimes on ships or aircraft beyond the Cook Islands

(1) This section applies to any act done or omitted beyond the Cook Islands by any person -

...

(e) Being a person ordinarily resident in the Cook Islands, on board any aircraft:

(b) Observations on the implementation of the article

389. The Cook Islands has established jurisdiction over their residents who commit offences on board of any aircraft.

390. The Cook Islands has partially implemented the provision under review.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

391. The Cook Islands has cited the following implementation measures.

The Crimes Act 1969

6. Place of commission of offence

as cited under subparagraph 1(a) above

7A. Extraterritorial jurisdiction in respect of certain offences with transnational aspects

(1) Even if the acts or omissions alleged to constitute the offence occurred wholly outside the Cook Islands proceedings may be brought for an offence against section 109A, section 109C, section 109D, any of sections 111 to 116, section 127, section 128, or section 280A -

(a) if the person to be charged -

(i) is ordinarily resident in the Cook Islands; or

(ii) has been found in the Cook Islands and has not been extradited; or

(iii) is a body corporate, or a corporation sole, incorporated under the law of the Cook Islands;

(b) if any of the acts or omissions is alleged to have occurred -

(i) on board a ship registered or required to be registered under the Shipping Act 1998; or

(ii) on board a Cook Islands aircraft; or

(iii) on board an aircraft that is leased to a lessee whose principal place of business is in the Cook Islands, or who is a person ordinarily resident in the Cook Islands;

(c) if a person in respect of whom the offence is alleged to have been committed is ordinarily resident in the Cook Islands;

...

7B. Attorney-General's consent required where jurisdiction claimed under section 7A

(1) Proceedings for an offence against section 109A, section 127, section 128, or section 280A cannot be brought in the High Court against a person without the Attorney-General's consent, if jurisdiction over the person is claimed by virtue of section 7A.

(2) A person over whom jurisdiction is claimed by virtue of section 7A may be arrested for an offence against section 109A, section 127, section 128, or section 280A or a warrant for the person's arrest for the offence may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General's consent to the bringing of proceedings against the person has not been obtained."

Section 280A 2(d) of the Crimes Act in the part of aiding, as cited under paragraph 1 of article 23 above.

(b) Observations on the implementation of the article

392. Section 280A 2(d) of the Crimes Act 1969 criminalizes the rendering assistance to another person for money-laundering purposes, including instances where such assistance is provided outside of the Cook Islands, but where any act or omission forming part of the offence of money-laundering, or any event necessary to the completion of the offence, occurs in the Cook Islands based on section 6 of the Crimes Act.

393. Additionally, even in cases where an offence of money-laundering does not have any connection to the Cook Islands, but where an offender who is providing assistance in the commission of that criminal act is ordinarily resident in the Cook Islands, or has been found in the Cook Islands and has not been extradited, or is a body corporate, or a corporation sole, incorporated under the law of the Cook Islands, or if any of the acts or omissions is alleged to have occurred - (i) on board a ship registered or required to be

registered under the Shipping Act 1998; or (ii) on board a Cook Islands aircraft; or (iii) on board an aircraft that is leased to a lessee whose principal place of business is in the Cook Islands, or who is a person ordinarily resident in the Cook Islands, he may also be held liable based on section 7A of the Crimes Act 1969 and with the consent of the Attorney-General based on section 7B of the Act.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

394. The Cook Islands has indicated that it did not implement the provision under review.

(b) Observations on the implementation of the article

395. The Cook Islands did not establish its jurisdiction as stipulated in the provision under review.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

396. The Cook Islands has cited the following implementation measures.

EXTRADITION ACT 2003

PART 9. MISCELLANEOUS

62. Prosecution in the Cook Islands instead of extradition

(1) If-

(a) a country requests the surrender of a person because of conduct the person engaged in outside the Cook Islands; and

(b) the Attorney-General refuses to order the surrender of the person because of a circumstance listed in subsection (2); and

(c) the person would have committed an offence against a law in force in the Cook Islands if the person had engaged in the conduct, or equivalent conduct, in the Cook Islands at that time, the person may be prosecuted and punished in the Cook Islands for the offence.

(2) The following are the circumstances for the purpose of paragraph (1)(b)-

(a) the person is a national of the Cook Islands

...

(3) For the purpose of the prosecution, the person must be taken to have engaged in the conduct in the Cook Islands.

(4) A person must not be prosecuted unless the Attorney-General or other appropriate body, e.g. the Solicitor-General, -

(a) considers that there is sufficient evidence in the Cook Islands to justify prosecuting the person for the offence; and

(b) consents to the person being prosecuted for the offence.

(5) A person may be prosecuted whether the person engaged in the conduct before or after the commencement of this Act.

(6) A person to whom subsection (1) applies may be -

(a) arrested for an offence mentioned in subsection (1)(c); and

(b) charged with the offence; and

(c) remanded in custody or on bail,

although the Attorney-General has not given consent under subsection (4).

(b) Observations on the implementation of the article

397. Based on section 62 (1) of the Extradition Act 2003, the Cook Islands may prosecute the alleged offender who is present in their territory and they do not extradite such person solely on the ground that he or she is one of its nationals (section 62 (1) of the Extradition Act).

398. The Cook Islands has implemented the provision under review.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

399. The Cook Islands has clarified that they do not take the measures as stipulated in the provision under review.

(b) Observations on the implementation of the article

400. The Cook Islands did not take measures as stipulated in the provision under review.

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

401. The Cook Islands has clarified that although it does not have specific legislation requiring the consultations, as stipulated in the provision under review, it would conduct such consultations if needed.

(b) Observations on the implementation of the article

402. The Cook Islands is recommended to consider including in its domestic legislation the requirement to consult with foreign counterparts as stipulated in paragraph 5 of article 42 of the Convention.

Article 42 Jurisdiction

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

403. The Cook Islands has clarified that it has not established other grounds for exercising criminal jurisdiction besides those indicated in their responses under corresponding paragraphs of UNCAC article 42.

(b) Observations on the implementation of the article

404. The Cook Islands has not established additional grounds for criminal jurisdiction.

IV. International cooperation

Article 44. Extradition

Paragraph 1 of article 44

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

405. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

EXTRADITION ACT 2003

PART 1. PRELIMINARY

5. Extradition offence

(1) An offence is an extradition offence if-

(a) it is an offence against a law of the requesting country punishable by death or imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000; and

(b) the conduct that constitutes the offence, if committed in the Cook Islands, would constitute an offence (however described) in the Cook Islands punishable by death or imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000.

(2) In determining whether conduct constitutes an offence, regard may be had to only some of the acts and omissions that make up the conduct.

(3) In determining the maximum penalty for an offence for which no statutory penalty is imposed, regard must be had to the level of penalty that can be imposed by any court in the requesting country for the offence.

(4) An offence may be an extradition offence although –

(a) it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters, or relating to foreign exchange control; and

(b) the Cook Islands does not impose a duty, tax, impost or control of that kind.

406. The Cook Islands became part of the Commonwealth in 1965 and in principle, could use the London Scheme for Extradition within the Commonwealth (incorporating amendments agreed to in Kingstown in November 2002), but has not used this Scheme to date.

THE LONDON SCHEME FOR EXTRADITION WITHIN THE COMMONWEALTH incorporating the amendments agreed at Kingstown in November 2002.

1. (1) The general provisions set out in this Scheme will govern the extradition of a person from the Commonwealth country, in which the person is found, to another Commonwealth country, in which the person is accused of an offence.

(2) Extradition will be precluded by law, or be subject to refusal by the competent executive authority, only in the circumstances mentioned in this Scheme.

(3) For the purpose of this Scheme a person liable to extradition as mentioned in

paragraph (1) is described as a person sought and each of the following areas is described as a separate country:

- (a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country designates, and
- (b) each country within the Commonwealth, which, though not sovereign and independent, is not a territory designated for the purposes of the preceding subparagraph.

EXTRADITION OFFENCES AND DUAL CRIMINALITY RULE

2. (1) A person sought will only be extradited for an extradition offence.

(2) For the purpose of this Scheme, an extradition offence is an offence however described which is punishable in the requesting and requested country by imprisonment for two years or a greater penalty.

(3) In determining whether an offence is an offence punishable under the laws of both the requesting and the requested country, it shall not matter whether:

(a) the laws of the requesting and requested countries place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) under the laws of the requesting and requested countries the elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting country constitute an offence under the laws of the requested country.

(4) An offence described in paragraph (2) is an extradition offence notwithstanding that the offence:

(a) is of a purely fiscal character; or

(b) was committed outside the territory of the requesting country

where extradition for such offences is permitted under the law of the requested country.

407. There have been no extradition requests received or sent in respect of any matter in the last 5 years.

408. An inquiry but no formal request has just been received from Australia; however, this is not a corruption-related inquiry.

409. The Crown Law Office is the responsible authority for extradition.

(b) Observations on the implementation of the article

410. Pursuant to section 5 of the Extradition Act 2003, double criminality is required in order for the Cook Islands to entertain an extradition request. The reviewers were informed that the death penalty has been abolished and therefore the minimum penalty requirement is 'imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000'.

411. It was noted that the London Scheme for Extradition within the Commonwealth is only applicable to Commonwealth Countries, but the Scheme has not been used to date.

412. During the country visit, it was confirmed that Crown Law Office is the responsible authority for extradition, but a formal request would come through the diplomatic channels (Ministry of Foreign Affairs). However, there have been no extradition requests received or sent in the last 5 years, so there are no existing practices to rely on.

Paragraph 2 of article 44

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

413. The Cook Islands indicated that it has not implemented the provision under review.

(b) Observations on the implementation of the article

414. While this is an optional measure, the reviewers recommended that the Cook Islands may wish to consider granting extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

Paragraph 3 of article 44

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

415. The Cook Islands indicated that it has not implemented the provision under review.

416. However, this would be subject to section 13 of the Extradition Act (if the person consent to the surrender in respect of the non-extradition offences).

EXTRADITION ACT 2003

PART 2. EXTRADITION FROM THE COOK ISLANDS GENERAL PROVISIONS

13. Consent to surrender

(1) At any time, the person remanded may advise the Judge or Justice that the person consents to being surrendered to the requesting country for the extradition offence for which that country seeks his or her surrender.

(2) If-

(a) a person consents to being surrendered for the extradition offence; and

(b) the requesting country has asked that the person also be surrendered for another offence that is not an extradition offence, the Judge or Justice must ask the person whether the person also consents to being surrendered for that other offence.

(3) If –

(a) the person informs the Judge or Justice that he or she consents to being surrendered; and

(b) the Judge or Justice is satisfied that the consent was given voluntarily,

The Judge or Justice must advise the person that the effect of consenting will be that-

(c) the person will be committed to prison without any extradition proceedings to determine whether the person may be surrendered for an extradition offence; and

(d) after the Attorney-General issues a surrender warrant, the person will be surrendered to the requesting country.

(4) If the person again consents to being surrendered, the Judge or Justice must-

(a) issue a warrant ordering that the person be committed to prison; and

(b) advise the Attorney-General, in writing, that the person has been committed to prison and the offence for which the person has consented to be surrendered.

(5) The Attorney-General may then issue a surrender warrant for the person.

(b) Observations on the implementation of the article

417. The reviewers recommended that the Cook Islands consider granting extradition requests that include several separate offences, one of which is extraditable.

Paragraphs 4 – 7 of article 44

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

418. The Cook Islands indicated that it has partially implemented the provision under review and referred to the following measures.

419. The Cook Islands does not make extradition conditional on the existence of a treaty. However, in order for an offence to be extraditable it must come within the definition of sections 4 and 5 of the Extradition Act.

420. The definition of an 'extradition country' (pursuant to section 4 of the Extradition Act)

"extradition country" means –

- (a) a Commonwealth country; or
- (b) a South Pacific country; or
- (c) a treaty country; or
- (d) a comity country that is declared by regulations made under this Act to be an extradition country; or
- (e) A comity country certified by the Attorney - General to be an extradition country for the purpose of a particular extradition request;

421. Pursuant to section 7(2), extradition from the Cook Islands to another country is as follows -

- (a) to a Commonwealth country, in accordance with Part 3; and
- (b) to a treaty country, in accordance with Part 5; and
- (c) to any other country, other than a South Pacific country-in accordance with Part 6.

This is detailed below.

EXTRADITION ACT, 2003

PART 1. PRELIMINARY

4. Definitions

(1) In this Act, unless the context otherwise requires -
 "comity country" means a country other than a Commonwealth country, a South Pacific country or a treaty country;

"Commonwealth country" means a country that is specified in Schedule 1;

"country" includes -

- (a) a State or province or other part of a country;
- (b) a colony, territory or protectorate of a country;
- (c) a territory for the international relations of which a country is responsible; and
- (d) a ship or aircraft owned by, or registered in, a country;

...

"extradition country" means -

- (a) a Commonwealth country; or
- (b) a South Pacific country; or
- (c) a treaty country; or
- (d) a comity country that is declared by regulations made under this Act to be an extradition country; or
- (e) A comity country certified by the Attorney - General to be an extradition country for the purpose of a particular extradition request;

...

"extradition treaty", in relation to a country, means a treaty -

- (a) to which the country and the Cook Islands are parties (whether or not any other country is also a party); and
- (b) that relates wholly or partly to the surrender of persons accused of convicted of offences;

...

"requesting country" means a country that is seeking the surrender of a person from the Cook Islands;

"South Pacific Country" means a country that is -

- (a) is a member of the Pacific Islands Forum; and
- (b) specified in Schedule 2; ...

"treaty country" means a country -

- (a) with which the Cook Islands has an extradition treaty; and
- (b) that is specified in Schedule 3;

PART 2. EXTRADITION FROM THE COOK ISLANDS GENERAL PROVISIONS

7. Object of Part 2

(1) The object of this Part is to provide for the extradition from the Cook Islands to other countries of persons accused or convicted of extradition offences in other countries.

(2) This Part applies to extradition from the Cook Islands to another country as follows -

- (a) to a Commonwealth country, in accordance with Part 3; and
- (b) to a treaty country, in accordance with Part 5; and
- (c) to any other country, other than a South Pacific country-in accordance with Part 6.

PART 3. EXTRADITION FROM THE COOK ISLANDS TO COMMONWEALTH COUNTRIES

23. Object of Part 3

The object of this Part is to provide for the extradition from the Cook Islands to Commonwealth countries of persons accused or convicted of extradition offences in those countries.

24. Application of Part 2

Part 2 applies to the extradition of a person from the Cook Islands to a Commonwealth country.

25. Application of different evidentiary requirements

(1) The evidentiary requirements set out in section 26 (the prima facie evidence scheme) apply to all extradition proceedings conducted at the request of a Commonwealth country listed in Part 1 of Schedule 1.

(2) The evidentiary requirements set out in section 27 (the record of the case scheme) apply to all extradition proceedings conducted at the request of a Commonwealth country listed in Part 2 of Schedule 1.

26. The prima facie evidence scheme

In addition to any evidentiary requirements in Part 2, a Judge or Justice must not determine that a person may be surrendered to a requesting country unless the evidence before the Court is such that, if the offence for which surrender is sought was committed in the Cook Islands, there would be sufficient evidence to place the person on trial.

...

PART 4. EXTRADITION FROM THE COOK ISLANDS TO SOUTH PACIFIC COUNTRIES - BACKING OF WARRANTS PROCEDURE

28. Object of Part 4

The object of this Part is to provide for the extraction from the Cook Islands to South Pacific countries of persons accused or convicted of extraction offences in those countries by means of the procedure known as "backing of warrants".

34. Extradition proceedings

If -

- (a) either-
- (i) a person has been remanded after being arrested under an endorsed warrant; or
 - (ii) a person has been remanded after being arrested under provisional arrest warrant and the original warrant has been endorsed; and
- (b) a request is made to a Judge or Justice by or on behalf of the person or the South Pacific country for extradition proceedings to be conducted in relation to the person; the Judge or Justice must conduct proceedings as soon as practicable to determine whether the person may be surrendered to the South Pacific country.

PART 5. EXTRADITION FROM THE COOK ISLANDS TO TREATY COUNTRIES

42. Object of Part 5

The object of this Part is to provide for the extradition of persons from the Cook Islands to countries with which the Cook Islands has an extradition treaty.

43. Application of Part 2

Part 2 applies to the extradition of a person to a treaty country subject to any limitations, conditions, exceptions or qualifications that are contained in the extradition treaty between the Cook Islands and the treaty country and the provisions of this Act.

PART 6. EXTRADITION FROM THE COOK ISLANDS TO COMITY COUNTRIES

44. Object of Part 6

The object of this Part is to provide for extradition from the Cook Islands to comity countries.

45. Application of Part 2

Subject to this Part, Part 2 applies to the extradition of a person from the Cook Islands to a comity country.

46. When comity country becomes an extradition country

(1) The Queen's Representative may, by Order in Executive Council made on the recommendation of the Attorney-General, specify a comity country as an extradition country.

(2) If an extradition request is received from a comity country that is not specified as an extradition country by Order in Executive Council, the Attorney-General may certify that the country is an extradition country for the purpose of that extradition request.

(3) When the Attorney-General certifies that a country is an extradition country, he or she may also specify the provisions of this Act that apply to the extradition request.

(4) In recommending whether a comity country is to be an extradition country, the Attorney-General must consider -

- (a) the public interest of the Cook Islands; and
- (b) if the country is to be certified, the seriousness of the offence for which extradition of the person is sought; and
- (c) the public interest of the requesting country.

SCHEDULE 1. Commonwealth Countries

Part 1. Countries to which prima facie evidence scheme applies

Bahamas

Bangladesh

Barbados
Botswana
Canada
Cyprus
Dominica
The Gambia
Ghana
Grenada
Guyana
India
Jamaica
Kenya
Lesotho
Malawi
Malaysia
Malta
Mauritius
Nigeria
St Lucia
St Vincent and the Grenadines
Seychelles
Sierra Leone
Singapore
Sri Lanka
Swaziland
Tanzania
Trinidad and Tobago
Uganda
United Kingdom
Zambia
Zimbabwe

Part 2. Countries to which the record of the case scheme applies

Anguila
Antigua and Barbuda
Belize
Bermuda
British Antarctic Territory
British Indian Ocean Territory
British Virgin Islands
Brunei Darussalam
Cameroon
Cayman Islands
Cyprus (Sovereign Base Areas of Akrotiri and Dhekelia)
Falkland Islands
Gibraltar
Maldives
Montserrat
Mozambique
Namibia

Northern Ireland
Pakistan
Pitcairn Islands
St Helena and Dependencies
St Kitts and Nevis
St Vincent and the Grenadines
Seychelles
South Africa
South Georgia and South Sandwich Islands
Turks and Caicos Islands

SCHEDULE 2. SOUTH PACIFIC COUNTRIES

Australia
Cook Islands
Federated States of Micronesia
Fiji Islands
Kiribati
Marshall Islands
Nauru
New Zealand
Niue
Palau
Papua New Guinea
Samoa
Solomon Islands
Tonga
Tuvalu
Vanuatu

SCHEDULE 3. TREATY COUNTRIES

Albania
Argentina
Australia
Austria
Belgium
Bolivia Brazil
British
Solomon Islands
Chile
Colombia
Cuba
Czechoslovakia
Ecuador
Estonia
Fiji Finland France
German Colonies
Germany
Gilbert and Ellice Islands Colony

Guatemala
Hungary
Iceland
India
Iraq
Italy
Latvia
Liberia
Lithuania
Luxembourg
Mexico
Monaco
Nauru
Netherlands
New Guinea
New Zealand
Nicaragua
Norfolk Island
Panama
Papua
Paraguay
Peru
Poland
Portugal
Romania
Salvador
Samoa
San Marino
Serbia
Siam
Spain
Sweden
Switzerland
Tonga
Tunisia
United States
Uruguay

422. In relation to paragraph 4 of UNCAC article 44, section 12 of the London Scheme is to be noted.

**THE LONDON SCHEME FOR EXTRADITION WITHIN THE
COMMONWEALTH
POLITICAL OFFENCE EXCEPTION**

12. (1) (a) The extradition of a person sought will be precluded by law if the competent authority is satisfied that the offence is of a political character; (b) Sub paragraph (a) shall not apply to:

(i) offences established under any multilateral international convention to which the requesting and the requested countries are parties, the purpose of which is to prevent or repress a specific category of offences and which imposes on the parties an obligation either to extradite or to prosecute the person sought;

(ii) offences for which the political offence or offence of political character ground of refusal is not applicable under international law.

(c) If the competent executive authority is empowered by law to certify that the offence of which a person sought is accused is an offence of a political character, and so certifies in a particular case, the certificate will be conclusive in the matter and binding upon the competent judicial authority for the purposes mentioned in this clause.

(2) (a) A country may provide by law that certain acts shall not be held to be offences of a political character including:

(i) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State or any related offence (i.e. aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit such an offence),

(ii) an offence against the life or person of a Head of Government, or of a Minister of a Government, or any related offence as described above,

(iii) murder, or any related offence as described above, (iv) any other offence that a country considers appropriate.

(b) A country may restrict the application of any of the provisions made under sub paragraph (b) to a request from a country which has made similar provisions in its laws.

13. The extradition of a person sought also will be precluded by law if -(a) it appears to the competent authority that:

(i) the request for extradition although purporting to be made for an extradition offence was in fact made for the purpose of prosecuting or punishing the person on account of race, religion, sex, nationality or political opinions, or

(ii) that the person may be prejudiced at trial or punished, detained or restricted in personal liberty by reason of race, religion, sex, nationality or political opinions.

(b) the competent authority is satisfied that by reason of (i) the trivial nature of the case, or

(ii) the accusation against the person sought not having been made in good faith or in the interests of justice, or

(iii) the passage of time since the commission of the offence, or (iv) any other sufficient cause,

it would, having regard to all the circumstances be unjust or oppressive or too severe a punishment for the person to be extradited or, as the case may be, extradited before the expiry of a period specified by that authority.

(c) the competent authority is satisfied that the person sought has been convicted (and is neither unlawfully at large nor at large in breach of a condition of a licence to be at large), or has been acquitted, whether within or outside the Commonwealth, of the offence for which extradition is sought.

(b) Observations on the implementation of the article

423. The reviewers noted that the Cook Islands does not make extradition conditional on the existence of a treaty. However, it was provided in section 4(1) of the Extradition Act 2003 that an 'extradition country' is defined as:

(a) A Commonwealth country; or

(b) A South Pacific country; or

(c) A treaty country; or

(d) A comity country that is declared by regulations made under this Act to be an extradition country; or

(e) A country certified by the Attorney - General to be an extradition country for the purpose of a particular extradition request.

424. The reviewers recommended that the Cook Islands recognize UNCAC offences as being extraditable offences.

425. During the country visit, it was discussed that a number of foreign States require a treaty-basis to entertain extradition requests. The Cook Islands may therefore wish to also consider using the Convention as a legal basis in such circumstances. This would require domesticating this in law.

Paragraph 8 of article 44

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

426. The Cook Islands indicated that it has implemented the provision under review and referred to the section 5 of the Extradition Act, as cited above.

(b) Observations on the implementation of the article

427. Noting that the Cook Islands has abolished the death penalty, the offence would be ‘not less than 12 months or the imposition of a fine of more than \$5,000’ and the double criminality requirement is fulfilled.

428. The reviewers deemed the Cook Islands to have implemented the provision under review.

Paragraph 9 of article 44

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

429. The Cook Islands indicated that it has partially implemented the provision under review and referred to the following measures.

EXTRADITION ACT, 2003

PART 2. EXTRADITION FROM THE COOK ISLANDS GENERAL PROVISIONS

15. Conduct of extradition proceedings

(1) Extradition proceedings must be conducted in the same manner as criminal proceedings. In particular, the rules that apply in criminal proceedings to the following

matters apply to extradition proceedings:

- (a) summoning witnesses;
 - (b) remanding defendants;
 - (c) ordering the production of documents;
 - (d) administering oaths and affirmations;
 - (e) paying witness expenses;
 - (f) contempt of court, privilege and other matters relating to the administration of courts;
 - (g) the imposition and level of fines for offences.
- (2) In the proceedings, the person is not entitled to adduce, and the Judge or Justice is not entitled to receive, evidence to contradict an allegation that the person has engaged in conduct that constitutes the offence for which extradition is sought.

19. Surrender determination by Attorney-General

(1) If -

- (a) a Judge or Justice has reported to the Attorney-General that a person may be held for a person may be held for surrender; and
- (b) the period during which an appeal may be lodged has ended and no appeal was lodged or, on appeal the court ordered that the person be held for surrender, the Attorney-General must, within such time as may be prescribed, make a final decision as to whether the person must be surrendered.

20. Form of surrender warrant

(1) The surrender warrant must-

- (a) be in writing; and
- (b) state the offences for which the person must be surrendered; and
- (c) require any person who has custody of the person to hand the person over to a police officer; and
- (d) authorise a police officer to-
 - (i) transport the person from the place where the police officer takes custody of the person to another place within the Cook Islands for the purpose of handing the person over to the custody of a foreign escort officer; and
 - (ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign officer; and
- (e) authorise the foreign escort officer to transport the person out of the Cook Islands.

(2) If the person -

- (a) is serving a custodial sentence; or
- (b) has been admitted to bail in the Cook Islands for an offence committed in the Cook Islands; or
- (c) is liable to be detained in prison because of a custodial sentence imposed for an offence committed in the Cook Islands, the surrender warrant must not be executed until -
 - (d) the person has been released from custody; or
 - (e) the recognisance has been discharged; or
 - (f) the person ceases to be liable to be detained.

21. Temporary surrender warrant

(1) The Attorney-General may issue temporary surrender warrant in Form 4 of Schedule 4, instead of a surrender warrant if-

- (a) the person is serving a custodial sentence in the Cook Islands; and
- (b) surrender is sought for an offence of which the person accused but of which the

person has not been convicted; and

(c) the Attorney-General is satisfied that the requesting country has given an adequate undertaking that-

(i) the person will be given a speedy trial in the requesting country; and

(ii) the person will be returned to the Cook Islands after the trial; and

(d) the Attorney-General is satisfied that adequate provision has been made for the travel of the person to the requesting country and for his or her return to the Cook Islands.

(2) The temporary surrender warrant must-

(a) be in writing; and

(b) state the offences for which the person is to be surrendered; and

(c) require any person who has custody of the person to hand the person over to a police officer; and

(d) authorise a police officer to -

(i) transport the person from the place where the police officer takes custody of the person to another place within the Cook Islands for the purpose of handing the person over to the custody of a foreign escort officer; and

(ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign escort officer; and

(e) authorise the foreign escort officer to transport the person out of the Cook Islands.

(3) If a person who was the subject of a temporary surrender warrant-

(a) has been returned to the Cook Islands after trial and sentence in the requesting country;

and

(b) has completed his or her custodial sentence in the Cook Islands,

the Attorney-General may issue a surrender warrant for the surrender of the person to the requesting country, unless the Attorney-General is satisfied that it would be unjust or oppressive to surrender the person because of changed circumstances in the requesting country.

(4) Any time the person spends in custody in the requesting country as a result of the temporary surrender warrant is taken to be time spent in custody in the Cook Islands for the purpose of completing the sentence for which the person was in custody in the Cook Islands.

(5) If-

(a) time spent in custody in the requesting country is taken into account as mentioned in subsection (4); and

(b) because of this, the person's sentence in the Cook Islands is concluded,

the Attorney-General must advise the requesting country that the undertakings given by that country about the speedy trial and return of the person no longer apply.

22. Execution of surrender warrant

(1) If a person is not surrendered under a surrender warrant within 2 months after -

(a) the date the surrender warrant was issued; or

(b) if the person is serving a custodial sentence or has been admitted to bail in the Cook Islands, or is liable to be detained in prison because of a custodial sentence imposed for an offence committed in Cook Islands- the person has been released from custody; or the recognisance has been discharged; or the person ceases to be liable to be detained, the person may apply to a Judge or Justice to be released from custody authorised under the surrender warrant. The person must advise the Attorney-General of the application.

(2) If the Judge or Justice is satisfied that -

- (a) the Attorney-General has been advised of the application; and
- (b) there is no reasonable cause for delay in surrendering the person, the Judge or Justice must order that the person be released from custody.
- (3) Without limiting paragraph (2)(b), reasonable cause for delay exists if -
 - (a) it would have been a danger to the person's life, or prejudicial to the person's health, to surrender the person; or
 - (b) there was no suitable means of transporting the person to the requesting country, and all reasonable steps were taken to obtain suitable transport; or
 - (c) there was delay by a country in responding to a request by the requesting country for permission to transport the person, and all reasonable steps were taken to obtain the permission;or
 - (d) because of the remoteness of the requesting country, it would be unreasonable to expect the person to have been surrendered within the period mentioned in subsection (1).

430. However, depending on what category the requesting States would fall will determine the additional requirements –
- For Commonwealth Countries, see: ss 25-27, Extradition Act;
 - For South Pacific Countries, see: ss. 35, 39 and 40, Extradition Act; and
 - For Treaty Countries, see: s. 43, Extradition Act (noting that the requirements will be set out in the extradition treaty between the Cook Islands and the treaty country).

431. No additional requirements for Comity Countries, see: s. 45, Extradition Act.

PART 3. EXTRADITION FROM THE COOK ISLANDS TO COMMONWEALTH COUNTRIES

Sections 25 and 26 are cited above.

27. The record of the case scheme

- (1) In this section "record of the case", in relation to an offence for which surrender is sought, means -
 - (a) a document containing a recital of the evidence acquired to support the request; and
 - (b) an authenticated copy, reproduction or photograph of all exhibits and documentary evidence.
- (2) In addition to any evidentiary requirements in Part 2, a Judge or Justice must not determine that a person may be surrendered to a requesting country unless a record of the case is produced for the offence for which surrender is sought.
- (3) The record of the case must be accompanied by-
 - (a) an affidavit of an officer of the authority that investigated the matter, or of the prosecutor, as the case may be, stating that -
 - (i) the record of the case was prepared by him or her, or under his or her direction; and
 - (ii) the evidence in the record of the case has been preserved for use in the person's trial; and
 - (b) a certificate of the principal law officer of the requesting country stating that, in his or her opinion, the record of the case discloses the existence of evidence that is sufficient under the law of the requesting country to justify a prosecution in the requesting country.

PART 4. EXTRADITION FROM THE COOK ISLANDS TO SOUTH PACIFIC COUNTRIES - BACKING OF WARRANTS PROCEDURE

35. Conduct of extradition proceedings

(1) A Judge or Justice must not conduct extradition proceedings unless he or she is satisfied that both the person sought and the South Pacific country have had reasonable time to prepare for the conduct of the proceedings.

(2) Extradition proceedings must be conducted in the same manner as criminal proceedings. In particular, the rules that apply in criminal proceedings in relation to the following matters apply to the extradition proceedings-

- (a) summoning witnesses;
- (b) remanding defendants;
- (c) ordering the production of documents;
- (d) administering oaths and affirmations;
- (e) paying of witness expenses;
- (f) contempt of court, privilege and other matters relating to the administration of courts;
- (g) the imposition and level of fines for offences.

(3) In the proceedings, the person is not entitled to adduce, and the Judge or Justice is not entitled to receive, evidence to contradict an allegation that the person has engaged in conduct that constitutes the offence for which extradition is sought.

39. Surrender warrant

(1) The surrender warrant must –

- (a) be in writing; and
- (b) require any person who has custody of the person to hand the person over to a police officer; and
- (c) authorise a police officer to -
 - (i) transport the person from the place where the police officer takes custody of the person to another place within the Cook Islands for the purpose of handing the person over to the custody of a foreign escort officer; and
 - (ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign escort officer; and
- (d) authorise the foreign escort officer to transport the person out of Cook Islands.

(2) if the person is -

- (a) serving a custodial sentence; or
 - (b) has been admitted to bail in the Cook Islands for an offence committed in the Cook Islands; or
 - (c) is liable to be detained in prison because of a custodial sentence imposed for an offence committed in the Cook Islands,
- the surrender warrant must not be executed until -
- (d) the person has been released from custody; or
 - (e) the recognisance has been discharged; or
 - (f) the person ceases to be liable to be detained.

40. Temporary surrender warrant

(1) The such time as may be prescribed, issue a temporary surrender warrant if -

- (a) the person is serving a custodial sentence in the Cook Islands; and
- (b) surrender is sought for an offence of which the person is accused, but of which the person has not been convicted; and
- (c) the Attorney-General is satisfied that the South Pacific country has given an adequate undertaking that:

- (i) the person will be given a speedy trial in the South Pacific country; and
- (ii) the person will be returned to the Cook Islands after the trial; and
- (d) the Attorney-General is satisfied that adequate provision has been made for the travel of the person to the South Pacific country and for his or her return to the Cook Islands.
- (2) The temporary surrender warrant must -
 - (a) be in writing; and
 - (b) state the offences for which the person is to be surrendered; and
 - (c) require any person who has custody of the person to hand the person over to a police officer; and
 - (d) authorise a police officer to -
 - (i) transport the person from the place where the police officer takes custody of the person to another place within the Cook Islands for the purpose of handing the person over to the custody of a foreign escort officer; and
 - (ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign escort officer; and
 - (e) authorise the foreign escort officer to transport the person out of the Cook Islands.
- (3) If a person who was the subject of a temporary surrender warrant -
 - (a) has been returned to the Cook Islands after trial sentence in the South Pacific country; and
 - (b) has completed his or her sentence in the Cook Islands,
 a Judge or Justice must issue a surrender warrant for the surrender of the person to the South Pacific country.
- (4) Any time the person spends in custody in the South Pacific country is taken to be time spent in custody in the Cook Islands for the purpose of completing the sentence for which the person was in custody in the Cook Islands.
- (5) If -
 - (a) time spent in custody in the South Pacific country is taken into account as mentioned in subsection (4); and
 - (b) because of this, the person's sentence in the Cook Islands is concluded,
 the Attorney-General must advise the requesting country that the undertakings given by that country about the speedy trial and return of the person no longer apply.

PART 5. EXTRADITION FROM THE COOK ISLANDS TO TREATY COUNTRIES

Section 43 is cited above.

PART 6. EXTRADITION FROM THE COOK ISLANDS TO COMITY COUNTRIES

Section 45 is cited above.

Extradition Regulations 2004

3. Surrender determination by Attorney-General

Pursuant to section 19(1), the Attorney-General must make a final decision as to whether a person is to be surrendered within 6 days of section 19(1)(a) and (b) being satisfied.

432. There are no examples of implementation, as there have been no extradition requests sent or received in the last 5 years.

(b) Observations on the implementation of the article

433. After discussions had during the country visit, the reviewers recommended that the Cook Islands consider simplifying and streamlining procedures and evidentiary requirements (such as internal guidelines and/or a request management system) in order to allow for extradition requests to be dealt with efficiently and effectively.

Paragraph 10 of article 44

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

434. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

EXTRADITION ACT, 2003

PART 1. PRELIMINARY

4. Definitions

(1) In this Act, unless the context otherwise requires -...

"provisional arrest warrant" means,-

(a) where the expression is used in Part 2, a warrant, in accordance with Form 1 in Schedule 4, issued under section 8; or

(b) where the expression is used in Part 4, a warrant, in accordance with Form 2 in Schedule 4, issued under section 29;

...

PART 2. EXTRADITION FROM THE COOK ISLANDS - GENERAL PROVISIONS

8. Issue of provisional arrest warrant

(1) If -

(a) a country, either directly or through ICPO-Interpol, notifies the Cook Islands that -

(i) a person whose surrender is desired is, or is believed to be, in or on his or her way to the Cook Islands; and

(ii) the requesting country intends to make a formal request for the extradition of the person; and

(b) an application on behalf of the requesting country is made to a Judge or Justice for a provisional arrest warrant,

the Judge or Justice must issue the provisional arrest warrant for the person if-

(c) the application is supported by the required documents mentioned in subsection (2); and

(d) the Judge or Justice is satisfied that the offence is an extradition offence; and

(e) the Judge or Justice is satisfied that the request is mad by an extradition country.

(2) The required documents are-

(a) a copy of the warrant for the arrest of the person issued in the requesting country;

and

- (b) a description of the person sought; and
- (c) a description of the acts and omissions that constitute the offence; and
- (d) the text of the law creating the offence or, if the offence is not created by statute, a statement of the offence; and
- (e) the text of the law of the requesting country that prescribes the penalty or, if the penalty is not prescribed by statute, a statement of the penalty that may be imposed.

9. Arrest and remand on provisional arrest warrant

- (1) A person arrested under a provisional arrest warrant must be brought before a Judge or Justice as soon as practicable.
- (2) The Judge or Justice must -
 - (a) remand the person in custody; or
 - (b) if the Judge or Justice is satisfied that the person is unlikely to abscond, remand the person on bail, until the Attorney-General issues an authority to proceed under section 11.
- (3) A Judge or Justice who remands a person on bail,
 - (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of the Cook Islands; and
 - (b) may order that the person's passport and other travel documents be surrendered to the Court until the extradition proceedings in relation to the person are concluded.
- (4) A person must not be remanded in custody or on bail for a period of longer than 42 days or if the extradition treaty between the Cook Islands and the requesting country provides for another period, for that period.
- (5) As soon as possible after remanding the person, the Judge or Justice must-
 - (a) advise the Attorney-General -
 - (i) that the person has been remanded; and
 - (ii) the name of the requesting country; and
 - (iii) the offence for which surrender will be sought; and
 - (b) give a copy of the documents on which the issue of the provisional arrest warrant is based to the Attorney-General and to the person.
- (6) If the Attorney-General considers that the request for extradition of the person for the offence will not be granted, he or she must order -
 - (a) the person to be released; or
 - (b) the discharge of the recognisance on which bail was granted.

435. Measures for extradition to South Pacific Countries -

PART 4. EXTRADITION FROM THE COOK ISLANDS TO SOUTH PACIFIC COUNTRIES - BACKING OF WARRANTS PROCEDURE

29. Provisional arrest warrant

If -

- (a) an application is made to a Judge or Justice on behalf of the South Pacific country for the issue of a warrant for the arrest of a person; and
- (b) the Judge or Justice is advised by affidavit of an officer of the authority that investigated the matter, that:
 - (i) an original warrant for the arrest of the person has been issued in the South Pacific country, but the warrant is not available in the Cook Islands; and
 - (ii) the person named in the original warrant may be in or on his or her way to the Cook Islands; and
- (c) the Judge or Justice is satisfied that it is reasonable in the circumstances to issue a

warrant,
the Judge or Justice must issue a provisional warrant for the arrest of the person in Form 2 of Schedule 4.

30. Arrest and remand on provisional arrest warrant

- (1) A person arrested under a provisional arrest warrant must be brought before a Judge or Justice as soon as practicable.
- (2) The Judge or Justice must -
 - (a) remand the person in custody; or
 - (b) if the Judge or Justice is satisfied that the person is unlikely to abscond, remand the person on bail,
for the period that is necessary for proceedings under section 34 (dealing with extradition proceedings) or 36 (dealing with consent to surrender), or both, to be conducted.
- (3) A Judge or Justice who remands a person on bail -
 - (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of the Cook Islands; and
 - (b) may order that the person's passport and other travel documents be surrendered to the Court until the extradition proceedings in relation to the person are concluded.
- (4) A person must not be remanded in custody or on bail for a period longer than 28 days.

THE LONDON SCHEME FOR EXTRADITION WITHIN THE COMMONWEALTH incorporating the amendments agreed at Kingstown in November 2002.

WARRANTS, OTHER THAN PROVISIONAL WARRANTS

3. (1) A person sought will only be extradited if a warrant for arrest has been issued in the country seeking extradition and either -
 - (a) that warrant is endorsed by a competent judicial authority in the requested country (in which case, the endorsed warrant will be sufficient authority for arrest), or
 - (b) a further warrant for arrest is issued by the competent judicial authority in the requested country, other than a provisional warrant issued in accordance with clause 4.
- (2) The endorsement or issue of a warrant may be made conditional on the competent executive authority having previously issued an order to proceed.

PROVISIONAL WARRANTS

4. (1) Where a person sought is, or is suspected of being, in or on the way to any country but no warrant has been endorsed or issued in accordance with clause 3, the competent judicial authority in the destination country may issue a provisional warrant for arrest on such information and under such circumstances as would, in the authority's opinion, justify the issue of a warrant if the extradition offence had been an offence committed within the destination country.
- (2) For the purposes of paragraph 1, information contained in an international notice issued by the International Criminal Police Organisation (INTERPOL) in respect of a person sought may be considered by the authority, either alone or with other information, in deciding whether a provisional warrant should be issued for the arrest of that person.
- (3) A report of the issue of a provisional warrant, with the information in justification or

a certified copy thereof, will be sent to the competent executive authority.

(4) The competent executive authority who receives the information under paragraph (3) may decide, on the basis of that information and any other information which may have become available, that the person should be discharged, and so order.

COMMITTAL PROCEEDINGS

5. (1) A person arrested under a warrant endorsed or issued in accordance with clause 3(1), or under a provisional warrant issued in accordance with clause 4, will be brought, as soon as practicable, before the competent judicial authority who will hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, including power to remand and admit to bail, as if the person were charged with an offence committed in the requested country.

(2) The competent judicial authority will receive any evidence which may be tendered to show that the extradition of the person sought is precluded by law. (3) Where a provisional warrant has been issued in accordance with clause 4, but within such reasonable time as the competent judicial authority may fix:

(a) a warrant has not been endorsed or issued in accordance with clause 3(1), or

(b) where such endorsement or issue of a warrant has been made conditional on the issuance of an order to proceed, as mentioned in clause 3(2), no such order has been issued,

the competent judicial authority will order the person to be discharged.

(4) Where a warrant has been endorsed or issued in accordance with 3(1) the competent judicial authority may commit the person to prison to await extradition if -

(a) such evidence is produced as establishes a prima facie case that the person committed the offence; and

(b) extradition is not precluded by law but, otherwise, will order the person to be discharged.

(5) Where a person sought is committed to prison to await extradition as mentioned in paragraph (4), notice of the fact will be given as soon as possible to the competent executive authority of the country in which committal took place.

OPTIONAL ALTERNATIVE COMMITTAL PROCEEDINGS

6. (1) Two or more countries may make arrangements under which clause 5(4) will be replaced by paragraphs 2-4 of this clause or by other provisions agreed by the countries involved.

(2) Where a warrant has been endorsed or issued as mentioned in clause 3(1), the competent judicial authority may commit the person sought to prison to await extradition if -

(a) the contents of a record of the case received, whether or not admissible in evidence under the law of the requested country, and any other evidence admissible under the law of the requested country, are

sufficient to warrant a trial of the charges for which extradition has been requested; and

(b) extradition is not precluded by law, but otherwise will order that the person be discharged.

(3) The competent judicial authority will receive a record of the case prepared by an investigating authority in the requesting country if it is accompanied by -

(a) an affidavit of an officer of the investigating authority stating that the record of the case was prepared by or under the direction of that officer, and that the evidence has been preserved for use in court; and

(b) a certificate of the Attorney General of the requesting country that in his or her

opinion the record of the case discloses the existence of evidence under the law of the requesting country sufficient to justify a prosecution.

(4) A record of the case will contain -

(a) particulars of the description, identity, nationality and, to the extent available, whereabouts of the person sought;

(b) particulars of each offence or conduct in respect of which extradition is requested, specifying the date and place of commission, the legal definition of the offence and the relevant provisions in the law of the requesting country, including a certified copy of any such definition in the written law of that country;

(c) the original or a certified copy of any document of process issued in the requesting country against the person sought for extradition ;

(d) a recital of the evidence acquired to support the request for extradition; and

(e) a certified copy, reproduction or photograph of exhibits or documentary evidence.

436. There are no examples of implementation, as there have been no extradition requests sent or received in the last 5 years.

(b) Observations on the implementation of the article

437. The reviewers deemed the Cook Islands to have legislatively implemented the provision under review.

438. However, it was noted that the current procedures in place are unclear and the given time frames might be challenging (i.e. the extradition of a person from the Cook Islands to South must not be remanded in custody or on bail for a period longer than 28 days: s. 30(4)), which the Cook Islands may wish to consider.

Paragraph 11 of article 44

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

439. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

EXTRADITION ACT 2003

PART 9. MISCELLANEOUS

62. Prosecution in the Cook Islands instead of extradition

(1) If-

(a) a country requests the surrender of a person because of conduct the person engaged in outside the Cook Islands; and

(b) the Attorney-General refuses to order the surrender of the person because of a circumstance listed in subsection (2); and

(c) the person would have committed an offence against a law in force in the Cook Islands if the person had engaged in the conduct, or equivalent conduct, in the Cook Islands at that time, the person may be prosecuted and punished in the Cook Islands for the offence.

(2) The following are the circumstances for the purpose of paragraph (1)(b)-

(a) the person is a national of the Cook Islands

(b) on surrender, the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liability, because of his or her race, religion, nationality, political opinions, sex or status;

(c) the person has been subjected in the requesting country to torture or cruel, inhuman, or degrading treatment or punishment;

(d) the judgement has been given in the person's absence and there is no provision in the law of the requesting country entitling the person to appear before a court and raise any defence the person may have;

(e) the offence for which surrender has been ordered is punishable by death in the requesting country but not in the Cook Islands and the requesting country has not given a sufficient undertaking that the penalty either will not be imposed or, if imposed, will not be carried out;

(f) the person has been sentenced or would be liable to be tried or sentenced in the requesting country by an extraordinary or ad hoc court or tribunal.

(3) For the purpose of the prosecution, the person must be taken to have engaged in the conduct in the Cook Islands.

(4) A person must not be prosecuted unless the Attorney-General or other appropriate body, e.g. the Solicitor-General, -

(a) considers that there is sufficient evidence in the Cook Islands to justify prosecuting the person for the offence; and

(b) consents to the person being prosecuted for the offence.

(5) A person may be prosecuted whether the person engaged in the conduct before or after the commencement of this Act.

(6) A person to whom subsection (1) applies may be -

(a) arrested for an offence mentioned in subsection (1)(c); and

(b) charged with the offence; and

(c) remanded in custody or on bail, although the Attorney-General has not given consent under subsection (4).

63. Provision of evidence for prosecution by other countries. If-

(a) another country has refused to order that a person be surrendered to the Cook Islands; but

(b) the country is prepared to prosecute the person for the offence for which the Cook Islands sought surrender of the person, the Attorney-General of the Cook Islands must give the other country all available evidence to enable the other country to prosecute the person.

440. There are no examples of implementation to date.

(b) Observations on the implementation of the article

441. Pursuant to section 62(2)(a) of the Extradition Act 2003, the Attorney-General can refuse to order the surrender of a person based on the person being a national of the Cook Islands.

442. The reviewers therefore deemed the Cook Islands to have legislatively implemented the provision under review.

Paragraph 12 of article 44

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

443. The Cook Islands indicated that it has implemented the provision under review and referred to the following measure.

EXTRADITION ACT 2003

PART 9. MISCELLANEOUS

64. Surrender for purposes of trial only

(1) If -

(a) the Cook Islands refuses to surrender a person because:

(i) the person is a national of the Cook Islands; or

(ii) the person has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment; or

(b) a Judge or Justice determines under section 37(2)(e) that a person should not be surrendered because the prison conditions in the requesting country are not substantially equivalent to the minimum standards for imprisonment in the Cook Islands; and

(c) the requesting country asks that the person be surrendered for the purposes of trial only, the Cook Islands may surrender the person to the requesting country for the purpose of being tried in the requesting country for the offence for which extradition is sought if the circumstances in subsection (2) exist.

(2) The circumstances referred to in subsection (1) are-

(a) that the law of the requesting country permits the transfer of convicted offenders to the Cook Islands; and

(b) that the Cook Islands is satisfied that, if the person is convicted, the person will be returned to the Cook Islands to serve the sentence imposed; and

(c) that the Cook Islands is satisfied that there is no likelihood that the person will be subjected to torture or cruel, inhuman or degrading treatment or punishment.

444. There are no examples of implementation to date.

(b) Observations on the implementation of the article

445. Pursuant to section 64(1)(a) of the Extradition Act, the reviewers deemed the Cook Islands to have legislatively implemented the provision under review.

Paragraph 13 of article 44

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

446. The Cook Islands indicated that it has implemented the provision under review and referred to section 13 (consent to surrender) of the Extradition Act (above).

447. There are no examples of implementation to date.

(b) Observations on the implementation of the article

448. During the country visit, it was confirmed that a Cook Islands national would not be extradited for the purposes of enforcing a sentence of a foreign State. However, if that foreign State were to apply to the Cook Islands to consider the enforcement of the sentence imposed or the remainder thereof, then the Cook Islands would consider this application. However, in practice, no such application/ request has been received.

449. The reviewers were therefore of the view that the Cook Islands has implemented the provision under review.

Paragraph 14 of article 44

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

450. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

EXTRADITION ACT 2003

PART 2. EXTRADITION FROM THE COOK ISLANDS GENERAL PROVISIONS

15. Conduct of extradition proceedings

(1) Extradition proceedings must be conducted in the same manner as criminal proceedings

...

THE CONSTITUTION OF THE COOK ISLANDS

PART IVA. FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

Article 64. Fundamental human rights and freedoms

(1) It is hereby recognised and declared that in the Cook Islands there exist, and shall

continue to exist, without discrimination by reason of race, national origin, colour, religion, opinion, belief, or sex, the following fundamental human rights and freedoms-

(a) The right of the individual to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with law;

(b) The right of the individual to equality before the law and to the protection of the law;

(c) The right of the individual to own property and the right not to be deprived thereof except in accordance with law:

Provided that nothing in this paragraph or in Article 40 of this Constitution shall be construed as limiting the power of Parliament to prohibit or restrict by Act the alienation of Native land (as defined in section 2(1) of the Cook Islands Act 1915 of the Parliament of New Zealand);

(d) Freedom of thought, conscience, and religion;

(e) Freedom of speech and expression;

(f) Freedom of peaceful assembly and association.

(2) It is hereby recognised and declared that every person has duties to others, and accordingly is subject in the exercise of his rights and freedoms to such limitations as are imposed, by any enactment or rule of law for the time being in force, for protecting the rights and freedoms of others or in the interests of public safety, order, or morals, the general welfare, or the security of the Cook Islands.

Article 65. Construction of law

(1) Subject to subclause (2) of this Article and to subclause (2) of Article 64 hereof, every enactment shall be so construed and applied as not to abrogate, abridge, or infringe or to authorise the abrogation, abridgement, or infringement of any of the rights or freedoms recognised and declared by subclause (1) of Article 64 hereof, and in particular no enactment shall be construed or applied so as to-

(a) Authorise or effect the arbitrary detention, imprisonment, or exile of any person; or

(b) Impose or authorise the imposition on any person of cruel and unusual treatment or punishment; or

(c) Deprive any person who is arrested or detained-

(i) Of the right to be informed promptly of the act or omission for which he is arrested or detained, unless it is impracticable to do so or unless the reason for the arrest or detention is obvious in the circumstances; or

(ii) Of the right, wherever practicable to retain and instruct a barrister or solicitor without delay; or

(iii) Of the right to apply, by himself or by any other person on his behalf, for a writ of habeas corpus for the determination of the validity of his detention, and to be released if his detention is not lawful; or

(d) Deprive any person of the right to a fair hearing, in accordance with the principles of fundamental justice, for the determination of his rights and obligations before any tribunal or authority having a duty to act judicially; or

(e) Deprive any person charged with an offence of the right to be presumed innocent until he is proved guilty according to law in a fair and public hearing by an independent and impartial tribunal; or

(f) Deprive any person charged with an offence of the right to reasonable bail, except for just cause; or

(g) Authorise the conviction of any person of any offence except for the breach of a law in force at the time of the act or omission; or

(h) Authorise the imposition on any person convicted of any offence of a penalty heavier than that which might have been imposed under the law in force at the time of

the commission of the offence.

(2) Every enactment, and every provision thereof shall be deemed remedial, whether its immediate purpose is to direct the doing of anything that the enacting authority deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment [[of the object]] of the enactment or provision thereof according to its true intent, meaning and spirit.

(3) In this Article the term "enactment" includes any Act of the Parliament of England or the Parliament of Great Britain or the Parliament of the United Kingdom, being an Act in force in the Cook Islands, and any regulation, rule, order, or other instrument made thereunder.

451. The words "of the object" were inserted in sub-clause (2) by section 9 of the Constitution Amendment (No 10) Act 1981 (CI).

452. There are no examples of implementation, as there have been no extradition requests sent or received in the last 5 years.

(b) Observations on the implementation of the article

453. The reviewers deemed the Cook Islands to have legislatively implemented the provision under review.

Paragraph 15 of article 44

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

454. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

EXTRADITION ACT 2003

PART 2. EXTRADITION FROM THE COOK ISLANDS - GENERAL PROVISIONS

Section 19 is cited above.

PART 4. EXTRADITION FROM THE COOK ISLANDS TO SOUTH PACIFIC COUNTRIES - BACKING OF WARRANTS PROCEDURE

37. Determination as to whether person may be surrendered

(1) At the extradition proceedings-

(a) the person may not bring evidence that the person did not commit the offence; but

(b) the person may bring evidence about the matters mentioned in subsection (2).

(2) The Judge or Justice must not make a determination that the person be surrendered for an offence if the Judge or Justice is satisfied that-

(a) the offence is of a trivial nature; or

- (b) if the offence is one of which the person is accused but not convicted, the accusation was not made in good faith and in the interests of justice; or
- (c) a lengthy period has elapsed since the offence was committed; or
- (d) it would be unjust, oppressive or too severe a punishment to surrender the person; or
- (e) the prison conditions in the requesting country are not substantially equivalent to the minimum standards for imprisonment in the Cook Islands.

...

455. There are no examples of implementation to date.

(b) Observations on the implementation of the article

456. The reviewers further noted that pursuant to section 62(1)(b) and (2) of the Extradition Act, the Attorney-General would refuse to order the surrender of a person if ‘the person may be prejudice at his or her trial, or punished, detained or restricted in his or her personal liability, because of his or her race, religion, nationality, political opinions, sex or status’.

457. During the country visit, it was confirmed that the ‘ethnic origin’ of an individual could be covered by ‘status’ (s. 62(2)) on a case-by-case basis; confirmation would be required from the Attorney-General.

458. The reviewers deemed the Cook Islands to have implemented the provision under review.

Paragraph 16 of article 44

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

459. The Cook Islands indicated that it has implemented the provision under review and referred to the following measure.

EXTRADITION ACT, 2003

PART 1. PRELIMINARY

5. Extradition offence

...(4) An offence may be an extradition offence although -

- (a) it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters, or relating to foreign exchange control; and
- (b) the Cook Islands does not impose a duty, tax, impost or control of that kind.

460. There are no examples of implementation, as there have been no extradition requests sent or received in the last 5 years.

(b) Observations on the implementation of the article

461. The reviewers deemed the Cook Islands to have legislatively implemented the provision under review.

Paragraph 17 of article 44

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

462. The Cook Islands indicated that it has implemented the provision under review and noted section 7 of the London Scheme.

THE LONDON SCHEME FOR EXTRADITION WITHIN THE COMMONWEALTH SUPPLEMENTARY INFORMATION

7. (1) If it considers that the material provided in support of a request for extradition is insufficient, the competent authority in the requested country may seek such additional information as it considers necessary from the requesting country, to be provided within such reasonable period of time as it may specify.

(2) Where a request under paragraph (1) is made after committal proceedings have commenced the competent judicial authority in the requested country may grant an adjournment of the proceedings for such period as that authority may consider reasonable for the material to be furnished, which aggregate period should not exceed 60 days.

(b) Observations on the implementation of the article

463. During the country visit, it was confirmed that, as a matter of practice, before an extradition request is refused, the Cook Islands would consult with the foreign State.

464. The reviewing experts therefore deemed the Cook Islands to have implemented the provision under review.

Paragraph 18 of article 44

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

465. The Cook Islands indicated that it has implemented the provision under review.

(b) Observations on the implementation of the article

466. It was noted that the Cook Islands does not make extradition conditional on the existence of a treaty. For this reason, the provision under review was deemed inapplicable.

(c) Challenges

467. The Cook Islands identified the following challenge and issue in fully implementing the provision under review:

1. Other issues: Complex nature of the Extradition Act could be reviewed.

(d) Technical assistance needs

468. The Cook Islands indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned (in particular from other Small Island States);
2. Other: Great understanding about how other such States deal with international cooperation - sharing of experiences;
3. Other: Legislative drafting;
4. Other: Assistance in providing extradition templates/precedence that can apply to all requests, pursuant to the Extradition Act 2003 and its amendments.

The Cook Islands indicated that no forms of technical assistance mentioned above have been provided.

Article 45. Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

469. The Cook Islands indicated that it has partially implemented the provision under review. However, as a member of the Commonwealth, the Cook Islands could, in principle, rely on the Scheme for the Transfer of Convicted Offenders within the Commonwealth, but this has not been used to date. The relevant provisions of the Scheme are outlined below.

SCHEME FOR THE TRANSFER OF CONVICTED OFFENDERS WITHIN THE COMMONWEALTH GENERAL PRINCIPLES

1. A person convicted and sentenced to a term of imprisonment in one country ("the sentencing country") for an offence may be transferred, in accordance with the provisions of this scheme, to another country ("the administering country") in order that he may serve the remainder of that sentence in that other country.

DEFINITIONS

2. For the purposes of this Scheme -

(a) each of the following is a separate country, that is to say -

(i) each sovereign and independent country within the Commonwealth, together with any dependent territories which that country designates, and

(ii) each country within the Commonwealth which, although not sovereign and independent, is not designated for the purposes of the preceding sub-paragraph;

(b) (i) "administering country" means the country to which the convicted offender" may

- be, or has been, transferred in order to serve his sentence;
- (ii) "convicted offender" means a person upon whom a sentence has been imposed.
 - (iii) "judgement" means a decision or order of a court or tribunal imposing a sentence;
 - (iv) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time in the exercise of its criminal jurisdiction;
 - (v) "sentencing country" means the country in which the sentence was imposed on the convicted offender who may be, or has been, transferred.

TRANSFER OF CONVICTED OFFENDER

- 3.** (1) A convicted offender to whom this Scheme may apply shall be informed by the sentencing country of the substance of the Scheme.
- (2) A convicted offender may only be transferred following a request by either the sentencing country or the administering country, but the convicted offender may apply for transfer.
- (3) When a convicted offender applies for his transfer, the country which receives that application shall, as soon as practicable, so inform the other country.

CONDITIONS FOR TRANSFER

- 4.** (1) A convicted offender may be transferred under the Scheme only on the following conditions
- (a) if that person -
 - (i) is a national of the administering country, notwithstanding that he may also be a national of any other country, including the sentencing country, or
 - (ii) has close ties with the administering country of a kind that may be recognised by that country for the purposes of this Scheme; and
 - (b) if the judgment is final; and
 - (c) if at the time of receipt of the request for transfer, the convicted offender still has at least six months of the sentence to serve or if the sentence is indeterminate; and
 - (d) if the transfer is consented to by the convicted offender or, where in view of his age or his physical or mental condition one of the two countries considers it necessary, by a person entitled to act on behalf of the convicted offender; and
 - (e) if the sentencing and administering countries agree to the transfer.
- (2) In exceptional cases it is open to the sentencing and administering countries to agree to a transfer even if the time to be served by the sentenced person is less than that specified in sub-paragraph (1)(c).
- (3) A country may, at any time, define as far as it is concerned the term "national" for the purposes of this Scheme.

OBLIGATIONS TO FURNISH INFORMATION

- 5.** (1) For the purposes of enabling a decision to be made on a request or an application under this Scheme, the sentencing country shall send the following information and documents to the administering country, unless either country has already decided that it will not agree to the transfer -
- (a) the name, date and place of birth of the convicted offender; (b) his address, if any, in the administering country;
 - (c) a certified copy of the judgment and a copy or account of the law on which it is based;
 - (d) a statement of the facts upon which the conviction and sentence were based;
 - (e) the nature, duration and date of commencement of the sentence;
 - (f) whenever appropriate, any medical or social reports on the convicted offender,

information about his treatment in the sentencing country and any recommendation for his further treatment in the administering country; and

(g) any other information which the administering country may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the prisoner and the sentencing country of the full consequences of transfer for the prisoner under its law.

(2) The administering country, if requested by the sentencing country, shall send to it a document or statement indicating whether the convicted offender satisfies the requirements of paragraph 4(1)(a).

REQUESTS AND REPLIES

6. (1) Requests and applications for transfer and replies shall be made in writing.

(2) Communications between sentencing and administering countries shall be conducted through the channels notified in pursuance of paragraph 19.

SUPPORTING DOCUMENTS

7. Except as provided in paragraph 5(1)(c), documents sent in accordance with this Scheme need not be certified.

CONSENT AND ITS VERIFICATION

8. (1) The sentencing country shall ensure that the person required to give consent to the transfer in accordance with paragraph 4(1)(d) does so voluntarily and in writing with full knowledge of the legal consequences thereof. The procedure for such consent shall be governed by the law of the sentencing country.

(2) The sentencing country shall afford an opportunity to the administering country to verify that the consent is given in accordance with the conditions set out in sub-paragraph (1).

NOTIFICATION OF DECISIONS

9. A convicted offender shall be informed, in writing, of any action taken by the sentencing country or the administering country, as well as of any decision taken by either country, on a request for his transfer.

EFFECT OF TRANSFER FOR SENTENCING COUNTRY

10. The enforcement of the sentence by the administering country shall, to the extent that it has been enforced, have the effect of discharging that sentence in the sentencing country.

EFFECT OF TRANSFER FOR ADMINISTERING COUNTRY

11. (1) The competent authorities of the administering country shall continue the enforcement of the sentence immediately or through a court or administrative order under the conditions set out in paragraph 12.

(2) Subject to the provisions of paragraph 13, the enforcement of the sentence shall be governed by the law of the administering country and that country alone shall be competent to take all appropriate decisions.

(3) Any country which, according to its national law cannot avail itself of the procedure referred to in sub-paragraph (1) to enforce measures imposed in another country on a person who, for reasons of mental condition, has been held not criminally responsible for the commission of an offence, and which is prepared to receive such a person for further treatment, may indicate the procedure it will follow in such a case.

CONTINUED ENFORCEMENT

12. (1) The administering country shall be bound by the legal nature and duration of the sentence as determined by the sentencing country.

(2) If, however, the sentence is by its nature or duration incompatible with the law of the administering country, or its law so requires, that country may, by court or administrative order, adapt the sanction to a punishment or measure prescribed by its own law. As to its nature the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the sentencing country. It shall not aggravate, by its nature or duration, the sanctions imposed in the sentencing country.

PARDON, AMNESTY, COMMUTATION, REVIEW

13. (1) Unless the sentencing and the administering countries otherwise agree the sentencing country alone may grant pardon, amnesty or commutation of the sentence in accordance with its constitution or other laws.

(2) The sentencing country alone may decide on any application for review of the judgment.

TERMINATION OF ENFORCEMENT

14. The administering country shall terminate enforcement of the sentence as soon as it is informed by the sentencing country of any decision or measure as a result of which the sentence ceases to be enforceable.

INFORMATION ON ENFORCEMENT

15. (1) The administering country shall notify the sentencing country –

(a) when it considers enforcement of the sentence to have been completed; or
(b) if the convicted offender escapes from custody before enforcement of the sentence has been completed.

(2) The sentencing country may, at any time, request a special report from the administering country concerning the enforcement of the sentence.

TRANSIT

16. Each country shall afford reasonable co-operation in facilitating the transit through its territory of convicted offenders who are being transferred between other countries pursuant to this Scheme. Advance notice of such transit shall be given by the country intending to make the transfer.

COSTS

17. The cost of the transfer of a convicted offender shall be defrayed by the sentencing country and the administering country in such proportions as they may agree either generally or in regard to any particular transfer.

TEMPORAL APPLICATION

18. The Scheme shall be applicable to the enforcement of sentences imposed before as well as after its adoption.

ACCEPTANCE OF SCHEME

19. Any country which enacts legislation to give effect to this Scheme shall notify the Commonwealth Secretary-General of that fact and shall inform him of the proper

channel for communication and deposit with him a copy of the legislation.

(b) Observations on the implementation of the article

470. The reviewers noted that the Scheme for the Transfer of Convicted Offenders within the Commonwealth only applies to Commonwealth countries, and it has not been used to date.

471. During the country visit, the challenge of deportees returning to the Cook Islands was discussed. In the past few years, 2-3 deportees have been returned to the Cook Islands without prior notification. This challenge was of concern to the reviewers.

472. In light of these limitations, the reviewers noted that the Cook Islands may wish to consider entering into bilateral or additional multilateral agreements or arrangements on the transfer of convicted persons for UNCAC-related offences.

(c) Challenges

473. The Cook Islands identified the following challenge and issue in fully implementing the provision under review:

1. Other issues: Inadequate legal provisions.

(d) Technical assistance needs

474. The Cook Islands indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Other assistance: Legislative drafting.

The Cook Islands indicated that no forms of technical assistance mentioned above have been provided.

Article 46. Mutual legal assistance

Paragraph 1 of article 46

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

475. The Cook Islands indicated that it has implemented the provision under review.

476. As a member of the Commonwealth, the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth could, in principle, be applied, but the Scheme has not been used to date.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 1. PRELIMINARY

2. Objects of Act

The objects of this Act are -

(a) to regulate the provision by the Cook Islands of international assistance in criminal matters when a request is made by a foreign country for any of the following:

(i) the taking of evidence, or the production of a document or other article, for a proceeding in the foreign country;

(ii) the issue of a search warrant and seizure of any thing relevant to a proceeding or investigation in the foreign country;

(iii) the forfeiture or confiscation of property for the commission of a serious offence against the law of the foreign country;

(iv) the restraining of dealings in property that may be forfeited or confiscated because of the commission of a serious offence against the law of the foreign country; and

(b) to facilitate the Cook Islands providing international assistance in criminal matters when a request is made by a foreign country to make arrangements for a person who is in the Cook Islands to travel to the foreign country -

(i) to give evidence in a proceeding; or

(ii) to give assistance for an investigation; and

(c) to facilitate the Cook Islands obtaining similar international assistance in criminal matters.

3. Definitions

In this Act, unless the context otherwise requires, -

“criminal matter” means an offence against a provision of -

(a) any law of the Cook Islands, for which the maximum penalty is imprisonment for a term of up to 12 months or a fine of up to \$5,000;

(b) a law of a foreign country, in relation to acts or omissions, which had they occurred in the Cook Islands, would have constituted an offence for which the maximum penalty is imprisonment for a term of up to 12 months, or a fine of up to \$5,000;

“proceeding” or “proceedings” has the same meaning given to the term “proceedings” in section 3(1) of the Proceeds of Crimes Act;

“serious offence” has the same meaning given by section 3(1) of the Proceeds of Crimes Act;

4. Act does not limit other provision of assistance

This Act does not prevent the provision or obtaining of international assistance in criminal matters other than assistance of a kind that may be provided or obtained under this Act.

5. Application of Act

This Act applies for all foreign countries.

In relation to the definition above -

PROCEEDS OF CRIMES ACT 2003

PART 1. PRELIMINARY

3. Definitions

(1) In this Act, unless the context otherwise requires, -

"proceedings" includes any procedure (including an inquiry, investigation, or preliminary or final determination of facts) conducted by or under the supervision of a

Judge or Justice or Registrar of the Court in connection with -

- (a) an alleged or proven offence; or
- (b) property derived from that offence;

"serious offence" means -

- (a) acts or omissions that constitute an offence against the law of the Cook Islands punishable by imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000; or
- (b) acts or omissions that constitute an offence against the law of another country that, had those acts or omissions occurred in the Cook Islands, they would have constituted an offence against the law of the Cook Islands punishable by imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000;

477. The subsequent amendment is to be noted -

MUTUAL ASSISTANCE IN CRIMINAL AMENDMENT ACT 2004 (No. 8 of 2004)

3. Act does not limit other Provision of assistance

Section 4 of the principal Act is amended by adding a new subsection (2) as follows -

"(2) The Cook Islands may render international assistance in criminal matters notwithstanding the absence of any treaty, agreement or other arrangement between the Cook Islands and the foreign country."

**SCHEME RELATING TO MUTUAL ASSISTANCE IN CRIMINAL MATTERS WITHIN THE COMMONWEALTH
PURPOSE AND SCOPE**

1. (1) The purpose of this Scheme is to increase the level and scope of assistance rendered between Commonwealth Governments in criminal matters. It augments, and in no way derogates from existing forms of co-operation, both formal and informal; nor does it preclude the development of enhanced arrangements in other fora.

(2) This Scheme provides for the giving of assistance by the competent authorities of one country (the requested country) in respect of criminal matters arising in another country (the requesting country).

(3) Assistance in criminal matters under this Scheme includes assistance in a) identifying and locating persons;

b) serving documents; c) examining witnesses; d) search and seizure; e) obtaining evidence;

f) facilitating the personal appearance of witnesses;

g) effecting a temporary transfer of persons in custody to appear as a witness;

h) obtaining production of judicial or official records;

i) tracing, seizing and confiscating the proceeds or instrumentalities of crime; and

j) preserving computer data.

478. There have been a number of requests received that are also corruption-related within the last 2 years. Previously, requests had also been received from Pakistan, Tunisia, Libya and other Asian countries. These have been responded to within the requested timeframe and the documents were provided.

479. The Crown Law Office is the responsible authority for MLA. The Attorney-General has delegated his statutory obligations under the MLA Act to the Solicitor-General.

(b) Observations on the implementation of the article

480. The reviewers noted that the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth only applies to Commonwealth countries, and has not been used to date.

481. During the country visit, it was confirmed that MLA requests are commonly sent through diplomatic channels. In the last two years, 21 requests have been received (16 from the USA, 1 from the United Kingdom, 1 from Australia, 1 from Argentina, 1 from Vietnam and 1 from Hungary. All of these requests were responded to and primarily related to financial information being requested.

482. Only 1 request has been sent by the Cook Islands to New Zealand. The information requested was sent.

483. The reviewing experts therefore deemed the Cook Islands to have implemented the provision under review.

Paragraph 2 of article 46

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

484. The Cook Islands indicated that it has implemented the provision under review.

485. There is nothing in the MLA Act to exempt the category of person to whom the Act applies.

486. There are no examples of implementation to date.

(b) Observations on the implementation of the article

487. During the country visit, it was confirmed that MLA would equally be as applicable to legal persons, noting that the connection to the offence will need to be proved. It was noted that a Court order would need to be granted to seek information in relation to legal persons.

488. The reviewing experts therefore deemed the Cook Islands to have implemented the provision under review.

Subparagraphs 3 (a) to 3 (i) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

Taking evidence or statements from persons;

- (b) *Effecting service of judicial documents;*
- (c) *Executing searches and seizures, and freezing;*
- (d) *Examining objects and sites;*
- (e) *Providing information, evidentiary items and expert evaluations;*
- (f) *Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) *Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) *Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) *Any other type of assistance that is not contrary to the domestic law of the requested State Party;*
- (j) *Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) *The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

489. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 1. PRELIMINARY

2. Objects of Act

The objects of this Act are -

- (a) to regulate the provision by the Cook Islands of international assistance in criminal matters when a request is made by a foreign country for any of the following:
 - (i) the taking of evidence, or the production of a document or other article, for a proceeding in the foreign country;
 - (ii) the issue of a search warrant and seizure of anything relevant to a proceeding or investigation in the foreign country;
 - (iii) the forfeiture or confiscation of property for the commission of a serious offence against the law of the foreign country;
 - (iv) the restraining of dealings in property that may be forfeited or confiscated because of the commission of a serious offence against the law of the foreign country; and
- (b) to facilitate the Cook Islands providing international assistance in criminal matters when a request is made by a foreign country to make arrangements for a person who is in the Cook Islands to travel to the foreign country -
 - (i) to give evidence in a proceeding; or
 - (ii) to give assistance for an investigation; and
- (c) to facilitate the Cook Islands obtaining similar international assistance in criminal matters.

3. Definitions

In this Act, unless the context otherwise requires, -

“document” has the same meaning given by section 3(1) of the Proceeds of Crimes Act;

“property” has the same meaning given by section 3(1) of the Proceeds of Crimes Act;

490. In relation to the definitions above -

PROCEEDS OF CRIMES ACT 2003

PART 1. PRELIMINARY

3. Definitions

(1) In this Act, unless the context otherwise requires, -

"document" means a record of information in any form, including -

(a) a written or printed thing (including a map, plan, graph or drawing); and

(b) a computer file, including a record that is kept in electronic form and can be accessed in the Cook Islands; and

(c) a photograph; and

(d) a disk, tape, film soundtrack or other thing in which sound or other data is embodied; and

(e) a film, negative, tape or other thing in which a visual image is embodied;

"property" includes money and all other property, real or personal, whether situated in the Cook Islands or elsewhere, including an enforceable right of action and other intangible or incorporeal property;

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 3. ASSISTANCE WITH TAKING EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES

10. Requests by the Cook Islands for assistance with evidence

(1) The Attorney-General may request the appropriate authority of a foreign country to arrange, for a proceeding or investigation in a criminal matter in the Cook Islands, for -

(a) evidence to be taken in the foreign country under the law of that country; or

(b) a document or other article in the foreign country to be produced under the law of that country.

(2) When making a request under subsection (1), the Attorney-General may also request that an opportunity be given for the person giving the evidence, or producing the document or other article, to be examined or cross-examined, through a video or internet link, from the Cook Islands by -

(a) a party to the proceeding, or the party's legal representative; or

(b) a person being investigated, or the person's legal representative.

11. Requests by foreign countries for assistance with evidence

(1) If a foreign country (the “requesting country”) asks that evidence be taken in the Cook Islands for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney-General may authorise -

(a) the taking of the evidence; and

(b) the transmission of the evidence to the requesting country.

(2) If the requesting country asks that a document or other article in the Cook Islands be produced for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney-General may authorise -

(a) the production of the documents or articles; and

(b) their transmission to the requesting country.

12. Taking evidence

(1) If the Attorney-General authorises the taking of evidence under section 11(1), a

Judge or Justice may take, on oath, the evidence of each witness in the matter, and the Judge or Justice who takes that evidence must -

(a) cause the evidence to be put in writing and certify that he or she took the evidence; and

(b) send the evidence and certificate to the Attorney-General.

(2) The evidence of a witness may be taken in the presence or absence of the person to whom the proceeding in the requesting country relates or in the presence or absence of his or her legal representative (if any).

(3) A certificate issued by a Judge or Justice under paragraph (1) (a) must state whether, when the evidence was taken, any of the following persons were present -

(a) the person to whom the proceeding in the requesting country relates or his or her legal representative (if any);

(b) any other person giving evidence or his or her legal representative (if any).

13. Production

(1) If the Attorney-General authorises the production of a document under section 11(2), a Judge or Justice -

(a) may require the document to be produced to him or her; and

(b) if it is produced, must send it, or a copy of it certified by the Judge or Justice to be a true copy, to the Attorney-General.

(2) If the Attorney-General authorises the production of an article (other than a document) under section 11(2), a Judge or Justice -

(a) may require it to be produced to him or her; and

(b) if the article is produced, must send it to the Attorney-General.

15. Exceptions to compulsion

(1) The laws of the Cook Islands about -

(a) compelling a person to attend before; a Judge or Justice; and

(b) giving evidence, answering questions and producing documents or other articles on the hearing of a charge against a person for an offence against the law of the Cook Islands, apply, so far as they are capable of applying, to the compelling of a person under this Part -

(c) to attend before a Judge or Justice; and

(d) to give evidence, answer questions and produce documents or other articles.

(2) However, for this Part, -

(a) the person to whom the proceeding in the requesting country relates is competent, but not compellable, to give evidence; and

(b) the person is not compellable to answer a question or to produce a document or article if the person would not be compellable to do so in the requesting country or other foreign country to which the request relates.

PART 4. ASSISTANCE FOR SEARCH AND SEIZURE

17. Requests by the Cook Islands for search and seizure

(1) This section applies to a proceeding or investigation for a criminal matter involving a serious offence against the law of the Cook Islands if the Attorney-General believes, on reasonable grounds, that a thing relevant to the proceeding or investigation may be located in a foreign country.

(2) The Attorney-General may request the appropriate authority of the foreign country to obtain a warrant or other instrument that, under the law of the foreign country, authorises -

(a) a search for a thing relevant to the proceeding or investigation; and
(b) if that a thing or any other thing that is or may be relevant to the proceeding or investigation is found as a result of the search, the seizure of that thing.

(3) A thing that -

(a) is relevant to the proceeding or investigation; and

(b) has been obtained by the appropriate authority of the foreign country by a process authorised by the law of that country other than the issue (as requested by the Cook Islands) of a warrant or other instrument authorising the seizure of the thing,

may be admissible in evidence in the proceeding or used in the investigation despite having been obtained otherwise than in accordance with the request.

18. Requests by foreign countries for search and seizure

(1) The Attorney-General may direct an authorised officer to apply to a Judge or Justice for a search warrant if -

(a) a proceeding or investigation for a criminal matter involving a serious offence has commenced in a foreign country; and

(b) the Attorney-General believes, on reasonable grounds, that a thing relevant to the investigation or proceeding is located in the Cook Islands; and

(c) the foreign country requests the Attorney-General to arrange for the issue of a search warrant for that thing.

(2) The authorised officer may apply to the Court for the issue of a warrant to search land or premises in the Cook Islands for a thing relevant to the proceeding or investigation.

19. Search warrants

(1) If an application is made under section 18 for a warrant for a thing relevant to an investigation or proceeding in a foreign country, the Court may issue the warrant authorising the authorised officer, with any assistance, and by any force, that is necessary and reasonable -

(a) to enter the land or premises; and

(b) to search the land or premises for that thing and to seize it.

(2) A warrant issued under this section must include -

(a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the relevant offence; and

(b) a description of the kind of thing authorised to be seized; and

(c) a time at which the warrant ceases to have effect; and

(d) a statement as to whether entry is authorised at any time or at specified times.

(3) If, in the course of searching under a warrant issued under section 18 for a thing of a kind specified in the warrant, an authorised officer finds another thing, the warrant is taken to authorise the authorised officer to seize the other thing if the officer believes, on reasonable grounds, the other thing -

(a) to be relevant to the proceeding or investigation in the foreign country or to provide evidence about the commission of a criminal offence in the Cook Islands; and

(b) to be likely to be concealed, lost or destroyed if it is not seized.

PART 5. ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

21. Requests for removal of certain persons to the Cook Islands

(1) The Attorney-General may request a foreign country to authorise the attendance at a hearing, for a proceeding that has commenced in the Cook Islands, of a person who is in

the foreign country if -

- (a) the proceeding relates to a criminal matter; and
- (b) the Attorney-General is of the opinion that the person -
 - (i) is a foreign prisoner; and
 - (ii) is capable of giving evidence relevant to the proceeding; and has consented to being removed to the Cook Islands to give evidence in the proceeding.
- (2) The Attorney-General may request a foreign country to authorise removal of a person who is in the foreign country to the Cook Islands to give assistance investigation that has commenced in the Cook Islands if -
 - (a) the investigation relates to a criminal matter; and
 - (b) the Attorney-General is of the opinion that the person:
 - (i) is a foreign prisoner; and
 - (ii) is capable of giving assistance in the investigation; and
 - (iii) has consented to being removed to the Cook Islands to give assistance in the investigation.
- (3) If the Attorney-General makes a request under subsection (1) or (2), the Attorney-General may arrange with an appropriate authority of the foreign country for -
 - (a) the removal of the person to the Cook Islands; and
 - (b) the custody of the person while in the Cook Islands; and
 - (c) the return of the person to the foreign country; and
 - (d) Other relevant matters.

25. Limitation on use of evidence given by certain persons

- (1) This section applies to a person who is in the Cook Islands to give evidence in a proceeding or assistance in an investigation -
 - (a) either
 - (i) because of a request under section 21; or
 - (ii) because of a request (other than a request under that section) made by the Attorney-General for international assistance in a criminal matter; and
 - (b) if the person has given the evidence or assistance in the proceeding to which the request related or in a proceeding certified by the Attorney-General, in writing, to be a proceeding in which it is desirable that the person give evidence.
- (2) The evidence must not be admitted or otherwise used in a prosecution of the person for an offence against Cook Islands law, other than for perjury in giving that evidence.
- (3) Anything the person says or does when giving the assistance may not be admitted or otherwise used in any prosecution of the person for an offence against Cook Islands law.

30. Requests for giving of evidence at hearings in foreign countries

This section and sections 31 to 33 apply if -

- (a) a proceeding or an investigation about a criminal matter has commenced in a foreign country; and
- (b) the foreign country makes a request for the removal of a prisoner who is in the Cook Islands (whether or not in custody) to the foreign country to attend at the proceeding or to assist in the investigation; and
- (c) the Attorney-General believes, on reasonable grounds, that the prisoner is capable of giving evidence relevant to the proceeding or assistance relevant to the investigation; and
- (d) the Attorney-General is satisfied that -
 - (i) the prisoner has consented to giving evidence or assistance in the foreign country; and

(ii) the foreign country has given adequate (whether or not unqualified) undertakings about the matters mentioned in section 32.

PART 7. ASSISTANCE REGARDING PROCEEDS OF CRIME

36. Requests for enforcement of orders made in the Cook Islands

(1) The Attorney-General may request an appropriate authority of a foreign country to make arrangements for the enforcement of -

(a) a forfeiture order for a serious offence, made in the Cook Islands, against property that is believed to be located in the foreign country; or

(b) a pecuniary penalty order for a serious offence, made in the Cook Islands, if some or all of the property available to satisfy the order is believed to be located in the foreign country; or

(c) a restraining order for a serious offence, made in the Cook Islands, against property that is believed to be located in that foreign country.

(2) The Attorney-General may enter an arrangement with the foreign country to share with the country the amount forfeited under paragraph (1)(a) or paid under paragraph (1)(b).

37. Requests for issue of orders in foreign countries

If a proceeding or investigation has commenced in the Cook Islands for a serious offence, the Attorney-General may ask an appropriate authority of a foreign country for the issue, for the offence, of an instrument similar in nature to any of the following instruments under the Proceeds of Crimes Act -

(a) a search warrant for tainted property;

(b) a restraining order;

(c) a production order for a property-tracking document;

(d) a search warrant for a property-tracking document.

38. Requests for enforcement of foreign orders

(1) Subsection (2) applies if-

(a) a foreign country requests the Attorney-General to make arrangements for the enforcement of -

(i) a foreign forfeiture order, for a serious offence, against property that is believed to be located in the Cook Islands; or

(ii) a foreign pecuniary penalty order, for a serious offence, if some or all of the property available to satisfy the order is believed to be located in the Cook Islands; and

(b) the Attorney-General is satisfied that -

(i) a person has been convicted of the offence; and

(ii) the conviction and the order are not subject to further appeal in the foreign country.

(2) The Attorney-General may apply for the registration of the order in the Court.

(3) If a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign restraining order for a serious offence against property that is believed to be located in the Cook Islands, the Attorney-General may apply for the registration of the order in the Court.

44. Requests for search and seizure warrants for tainted property

The Attorney-General may direct an authorised officer to apply to the Court under the Proceeds of Crimes Act for a search warrant for property if -

(a) a proceeding or investigation has commenced in a foreign country for a serious offence; and

- (b) the Attorney-General believes, on reasonable grounds, that tainted property for the offence is located in the Cook Islands; and
- (c) the foreign country requests the Attorney-General to obtain the issue of a search warrant for the property.

46. Requests for information gathering orders

- (1) Subsection (2) applies if -
 - (a) a proceeding or investigation has commenced in a foreign country for a serious offence; and
 - (b) a property-tracking document for the offence is reasonably believed to be located in the Cook Islands; and
 - (c) the foreign country requests the Attorney-General to obtain the issue of
 - (i) an order requiring the documents to be produced or made available for inspection under the law of the Cook Islands; or
 - (ii) a search warrant for the offence.
- (2) The Attorney-General may direct an authorised officer to apply to the Court for a production order under the Proceeds of Crimes Act for the offence to obtain possession of the property-tracking document; or, a search warrant under that Act for the property-tracking document.

PART 8. REQUESTS BY ATTORNEY-GENERAL FOR A DEFENDANT

47. Requests by Attorney-General for defendant

- (1) Subsection (2) applies if a defendant in a proceeding (the “original proceeding”) in the Cook Islands for a criminal matter thinks that it is necessary for the proceeding that -
 - (a) evidence be taken in a foreign country; or
 - (b) a document or other article in a foreign country be produced; or
 - (c) a thing located in a foreign country be seized; or
 - (d) arrangements be made for a person who is in a foreign country to come to the Cook Islands to give evidence relevant to the proceeding.
- (2) The defendant may apply to the Court for a certificate stating that it would be in the interests of justice for the Attorney-General to make an appropriate request to the foreign country under Part 3, 4 or 5 so that -
 - (a) the evidence may be taken; or
 - (b) the document or article may be produced; or
 - (c) the thing may be seized; or
 - (d) the arrangements may be made.

...

491. The following amendments are to be noted.

MUTUAL ASSISTANCE IN CRIMINAL AMENDMENT ACT 2004

4. Requests by the Cook Islands for search and seizure

Section 17 of the principal Act is amended by deleting from subsection (1), the words "involving a serious offence".

5: Requests by foreign countries for search and seizure

Section 18 of the principal Act is amended by deleting from subsection (1), the words "involving a serious offence".

SCHEME RELATING TO MUTUAL ASSISTANCE IN CRIMINAL MATTERS WITHIN THE COMMONWEALTH

1. PURPOSE AND SCOPE

- (3) Assistance in criminal matters under this Scheme includes assistance in
- a) identifying and locating persons;
 - b) serving documents;
 - c) examining witnesses;
 - d) search and seizure;
 - e) obtaining evidence;
 - f) facilitating the personal appearance of witnesses;
 - g) effecting a temporary transfer of persons in custody to appear as a witness;
 - h) obtaining production of judicial or official records;
 - i) tracing, seizing and confiscating the proceeds or instrumentalities of crime; and
 - j) preserving computer data.

3. CRIMINAL MATTER

(1) For the purposes of this Scheme, a criminal matter arises in a country if the Central Authority of that country certifies that criminal or forfeiture proceedings have been instituted in a court exercising jurisdiction in that country or that there is reasonable cause to believe that an offence has been committed in respect of which such criminal proceedings could be so instituted.

(2) "Offence", in the case of a federal country or a country having more than one legal system, includes an offence under the law of the country or any part thereof.

(3) "Forfeiture proceedings" means proceedings, whether civil or criminal, for an order (a) restraining dealings with any property in respect of which there is reasonable cause to believe that it has been

(i) derived or obtained, whether directly or indirectly, from; or (ii) used in, or in connection with, the commission of an offence;

(b) confiscating any property derived or obtained as provided in paragraph (a)(i) or used as provided in paragraph (a)(ii); or

(c) imposing a pecuniary penalty calculated by reference to the value of any property derived or obtained as provided in paragraph (a)(i) or used as provided in paragraph (a)(ii).

16. IDENTIFYING AND LOCATING PERSONS

(1) A request under this Scheme may seek assistance in identifying or locating persons believed to be within the requested country.

(2) The request shall indicate the purpose for which the information is requested and shall contain such information as is available to the Central Authority of the requesting country as to the whereabouts of the person concerned and such other information as it possesses as may facilitate the identification of that person.

17. SERVICE OF DOCUMENTS

(1) A request under this Scheme may seek assistance in the service of documents relevant to a criminal matter arising in the requesting country.

(2) The request shall be accompanied by the documents to be served and, where those documents relate to attendance in the requesting country, such notice as the Central Authority of that country is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.

(3) The Central Authority of the requested country shall endeavour to have the

documents served:

(a) by any particular method stated in the request, unless such method is incompatible with the law of that country; or

(b) by any method prescribed by the law of that country for the service of documents in criminal proceedings.

(4) The requested country shall transmit to the Central Authority of the requesting country a certificate as to the service of the documents or, if they have not been served, as to the reasons which have prevented service.

(5) A person served in compliance with a request with a summons to appear as a witness in the requesting country and who fails to comply with the summons shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or the requested country notwithstanding any contrary statement in the summons.

18. EXAMINATION OF WITNESSES

(1) A request under this Scheme may seek assistance in the examination of witnesses in the requested country.

(2) The request shall specify, as appropriate and so far as the circumstances of the case permit:

(a) the names and addresses or the official designations of the witnesses to be examined;

(b) the questions to be put to the witnesses or the subject matter about which they are to be examined;

(c) whether it is desired that the witnesses be examined orally or in writing;

(d) whether it is desired that the oath be administered to the witnesses (or, as the law of the requested country allows, that they be required to make their solemn affirmation);

(e) any provisions of the law of the requesting country as to privilege or exemption from giving evidence which appear especially relevant to the request; and

(f) any special requirements of the law of the requesting country as to the manner of taking evidence relevant to its admissibility in that country.

(3) The request may ask that, so far as the law of the requested country permits, the accused person or his legal representative may attend the examination of the witness and ask questions of the witness.

19. SEARCH AND SEIZURE

(1) A request under this Scheme may seek assistance in the search for, and seizure of property or computer data in the requested country.

(2) The request shall specify the property or computer data to be searched for and seized and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required to be adduced in an application under the law of the requested country for any necessary warrant or authorization to effect the search and seizure.

(3) The requested country shall provide such certification as may be required by the requesting country concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the property or computer data seized.

20. OTHER ASSISTANCE IN OBTAINING EVIDENCE

(1) A request under this Scheme may seek other assistance in obtaining evidence.

(2) The request shall specify, as appropriate and so far as the circumstance of the case permit:

(a) the documents, records, property or computer data to be inspected, preserved, photographed, copied or transmitted;

- (b) the samples of any property or computer data to be taken, examined or transmitted; and
- (c) the site to be viewed or photographed.

22. PRODUCTION OF JUDICIAL OR OFFICIAL RECORDS

- (1) A request under this Scheme may seek the production of judicial or official records relevant to a criminal matter arising in the requesting country.
- (2) For the purposes of this paragraph "judicial records" means judgements, orders and decisions of courts and other documents held by judicial authorities and "official records" means documents held by government departments or agencies or prosecution authorities.
- (3) The requested country shall provide copies of judicial or official records which are publicly available.
- (4) The requested country may provide copies of judicial or official records not publicly available, to the same extent and under the same conditions as apply to the provision of such records to its own law enforcement agencies or prosecution or judicial authorities.

492. One of the MLA requests received was for the taking of evidence and necessitated a ruling from the High Court as to the means by which the person giving evidence could be compelled to attend Court to give the evidence in the absence of any regulations dealing with that process. Most of the other MLA requests received involved the production of documents only.

(b) Observations on the implementation of the article

493. In relation to sub-paragraph (a), the applicable provision is section 2(a)(i) of the MLA Act. During the country visit, it was confirmed that this section can include the taking of statements of persons. This is also specifically covered when the request is made by the Cook Islands (s. 10(2) and by the foreign State (s.11(1)). There have been 2 MLA requests received from the USA to take statements in Court from a number of witnesses that worked at one of the trust companies.

494. In relation to sub-paragraph (b), the applicable provision is section 2(a)(i) of the MLA Act, relying on the broad definition of 'document' (s. 3(1), Proceeds of Crimes Act 2003) and the Code of Criminal Procedure. There was at least one MLA request for a restraining order to be made by the Court on behalf of a foreign State.

495. In relation to sub-paragraph (c), the applicable provisions are sections 2(a)(ii) and (iii) of the MLA Act, and in particular Part 4. It is to be noted that pursuant to amendment in the MLA Amendment Act 2004, the crime need no longer be a 'serious offence' in relation to search and seizure.

496. In relation to sub-paragraph (d), the applicable provisions are sections 18(2) and 19(1) of the MLA Act. There have been no MLA requests received in this regard.

497. In relation to sub-paragraph (e), the applicable provision is section 2(a)(i) of the MLA Act. In the case of 2 MLA requests received from the USA, experts provided information on the procedures followed in the trust company structure.

498. In relation to sub-paragraph (f), the applicable provisions are sections 2(a)(i) and 13 of

the MLA Act. Most of the MLA requests received relate to this sub-paragraph, whereby production orders are sought, such as certified records of bank accounts. During the country visit, reference was also made to sections 78-84 of the Proceeds of Crimes Act 2003.

Proceeds of Crimes Act 2003

79. Application for production orders –

(1) Subsection (2) applies if -

a person has been convicted of a serious offence and there are reasonable grounds for suspecting that a person has possession or control of a property-tracking document or property-tracking documents for the offence; or

there are reasonable grounds for suspecting that a person has committed a serious offence and that a person has possession or control of a property-tracking document or property-tracking documents for the offence.

(2) A police officer may apply to a judge for a production order against the person.

(3) The application -

may be made ex parte; and

must be in writing and must be accompanied by an affidavit.

(4) Subsection (5) applies if a police officer applies for a production order for a serious offence, and includes in the affidavit a statement to the effect that there are reasonable grounds for believing that -

the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and

the property specified in the affidavit is under the effective control of the person mentioned in paragraph (a).

(5) For this section, the Judge hearing the application may treat any document relevant to identifying, locating or quantifying that property as a property tracking document for the offence.

(6) In deciding whether to treat a document as a property-tracking document for an offence, the Judge may take into account the matters mentioned in section 32(2).

80. Production orders –

(1) The Judge may, if satisfied that there are reasonable grounds for doing so, make a production order requiring a person -

to produce to a police officer, at a specified time and place, any documents of the kind mentioned in section 79(1) that are in the person's possession or control; or

to make available to a police officer for inspection, at a specified time or times and place or places, any documents of that kind that are in the person's possession or control.

(2) The order has effect despite any law that prohibits disclosure of information.

(3) If a production order requires a person to produce or make available a document that is a computer file, the order is taken to require the person -

to allow the police officer named in the order, or a person acting under the direction of that officer, to use a computer on which the document is held; and

to give the officer any password necessary to provide the officer with access to the document; and

to enable the officer to use any computer software necessary to provide the officer with access to the document.

81. Scope of police powers under production order –

(1) If a document is produced to a police officer, or made available to a police officer for inspection, under a production order, the police officer may do any of the following - inspect the document;

take extracts from it;

print it;

make copies of it;

for an order made under section 80(1)(a), keep the document if, and for as long as, reasonably necessary for the purposes of this Act.

(2) If a police officer keeps a document, the police officer must - make a copy of the document, certify the copy in writing to be a true copy, and give the copy to the person to whom the order was addressed; or

allow the person:

to inspect the document; or

to take extracts from it; or

to make copies of it.

82. What use can be made of information –

(1) If a person produces or makes available, a document under a production order, - the production or making available of the document; or

any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document,

is not admissible against the person in any criminal proceedings except a proceeding for an offence under section 84.

(2) A person required by a production order to produce or make available a document is not excused from doing so on the ground that producing the document or making it available -

might tend to incriminate the person or make the person liable to a penalty; or

would be in breach of an obligation (whether imposed by an Act or otherwise) not to disclose the existence or contents of the document.

83. Variation of production order –

(1) If a production order requires a person to produce a document to a police officer, the person may apply to a Judge to vary the order.

(2) If the Judge is satisfied that the document is essential to the person's business activities, the Judge may vary the production order so that it requires the person to make the document available to a police officer for inspection.

84. Failure to comply with production order –

(1) If a production order requires a person to produce a document to a police officer, or make a document available to a police officer for inspection, the person commits an offence if the person –

contravenes the order without reasonable excuse; or

in purported compliance with the order, produces or makes available a document that the person knows to be false or misleading in a material particular without:

telling the police officer that the document is false or misleading, and the way in which it is false or misleading; and

giving correct information to the police officer if the person has, or can reasonably obtain, the correct information.

(2) An offence against subsection (1) is punishable by, -

if the offender is a natural person, a fine of up to \$30,000 or a term of imprisonment of

up to 5 years, or both; or
if the offender is a body corporate, a fine of up to \$150,000.

499. In relation to sub-paragraph (g), the applicable provisions are in Part 7, which also covers the proceeds of crime and property used in connection with the commission of an offence.
500. In relation to sub-paragraph (h), the applicable provisions are sections 15 and 30, as well as in Part 5 (especially, section 21(2)(iii)). During the country visit, it was confirmed that ‘consent’ is implicit. No MLA requests in relation to this sub-paragraph have been received. However, when requesting a production order, the certifying person is notified that he or she may be required to give evidence in the jurisdiction from where the request came (explicitly provided for).
501. In relation to sub-paragraph (i), the applicable provision is section 2(c) of the MLA Act.
502. In relation to sub-paragraphs (j) and (k), the applicable provisions are in Part 7. There have been MLA requests received requiring production, restraining and forfeiture orders. In 2011, based on one MLA request received from the USA, the Cook Islands was able to return the proceeds of a crime (through a restraining order and then forfeiture order) up to the value of NZ\$20 million. The Cook Islands only recovered the costs that it had incurred to return the proceeds, which the reviewers deemed to be a good practice.
503. The reviewing experts therefore deemed the Cook Islands to have implemented the provision under review.

Paragraph 4 of article 46

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

504. The Cook Islands indicated that it has implemented the provision under review.

(b) Observations on the implementation of the article

505. During the country visit, it was confirmed that competent authorities (i.e. TCU, FIU) proactively transmit information to a foreign competent authority, without a prior MLA request, where such information could assist in the investigation of offences. This is carried out through informal networks and arrangements. The FIU can also proactively transmit information through EGMONT (i.e. to Pakistan in relation to Wall Street banking).
506. The reviewing experts therefore deemed the Cook Islands to have implemented the provision under review.

Paragraphs 5 – 7 of article 46

5. *The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restriction on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

6. *The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.*

7. *Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.*

(a) Summary of information relevant to reviewing the implementation of the article

507. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 10. MISCELLANEOUS

60. Restriction on use of information, etc.

(1) Any material (whether it is evidence, a document, an article or a thing) that is sent to the Cook Islands by a foreign country -

(a) because of a request made by the Attorney-General under this Act; and

(b) for a proceeding or investigation in a criminal matter,

must not be used intentionally for any other purpose without the approval of the Attorney-General.

(2) The material is inadmissible in evidence in any proceeding other than the proceeding for which it was obtained unless the Attorney-General approves its use for that other proceeding.

(3) Any information, document, article or thing obtained directly or indirectly from a person by making use of the material -

(a) otherwise than for the proceeding or investigation for which it was obtained; and

(b) without the approval of the Attorney-General, is inadmissible in evidence in any other proceeding and may not be used for any other investigation.

(4) A person who contravenes sub-section (1) or (3) is guilty of an offence punishable by,-

(a) if the person is a natural person ,a fine of up to \$10,000 or a term of imprisonment up to 2 years, or both; or

(b) if the person is body corporate, a fine of up to \$50,000.

(5) For this section, disclosure of any material is taken to be a use of that material.

61. Requests for international assistance must not be disclosed

(1) Subsection (2) applies to a person who, because of his or her office or employment, has knowledge of -

(a) the contents of a request for international assistance made by a foreign country to the

Cook Islands under this Act; or

(b) the fact that a request has been made; or

(c) the fact that a request has been granted or refused.

(2) The person must not intentionally disclose those contents or that fact unless-

(a) it is necessary to do so in the performance of his or her duties; or

(b) the Attorney-General has given his or her approval to the disclosure of those contents or that fact.

(3) A person who contravenes subsection (2) is guilty of an offence punishable by-

(a) if the person is a natural person, a fine of up to \$10,000 or a term of imprisonment of up to 2 years, or both; or

(b) if the person is a body corporate, a fine of up to \$50,000.

MUTUAL ASSISTANCE IN CRIMINAL AMENDMENT ACT 2004

6. Delegation

Section 58 is repealed and the following new section substituted -

"58: Delegation - Without limiting the provisions of section 4 of the Acts Interpretation Act 1924, the Attorney General may delegate to the Solicitor General, any of the Attorney General's powers under this Act."

(b) Observations on the implementation of the article

508. During the country visit, it was confirmed that the Cook Islands does comply with MLA requests where the said information is to remain confidential/ temporarily/ with restrictions in its use. There have been numerous examples of this. While the Cook Islands is not prevented from disclosing in its proceedings information that is exculpatory to an accused person, the Crown Law Office would notify the transmitting State of this in advance/without delay.

509. The reviewers therefore deemed the Cook Islands to have implemented the provision under review.

Paragraph 8 of article 46

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

510. The Cook Islands indicated that it has implemented the provision under review and referred to the following measure.

MUTUAL ASSISTANCE IN CRIMINAL AMENDMENT ACT 2004

8. Secrecy provisions over-ridden

The principal Act is amended by inserting after section 60, the following new section -

"60A. Secrecy provisions over-ridden

(1) For the avoidance of doubt, a reporting institution must comply with the requirements of this Act despite any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.

(2) For purposes of this section, "reporting institution" has the same meaning given by

section 2 of the Financial Transactions Reporting Act 2004."

511. The requests for documents referred to above were documents in the possession of financial institutions in the Cook Islands.

(b) Observations on the implementation of the article

512. During the country visit, it was confirmed that a Court (production) order is required to lift bank secrecy in relation to receiving requested information. The Crown Law Office has frequently filed for production orders. The process is that the Office would file the application and respective affidavit (a Constable would need to swear the affidavit that contains the particulars of the application for the production order) in relation to banks (and trust companies). The banks have complied with all such orders to date.

513. However, it was noted that there have been complaints made by banks in relation to the application of production orders. For example, there was one case where the bank disputed the parties that were included in the application, as the lawyer requested for his/her client to be included; the Court disagreed and rule in favour of the Crown Law Office. Another example was where a bank argued that a 'fishing expedition' could not be conducted; the Court ruled that the specificities needed to be detailed in the application (i.e. needs to be limited to certain documents).

514. The reviewers therefore deemed the Cook Islands to have implemented the provision under review.

Paragraph 9 of article 46

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

515. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

**MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003
PART 1. PRELIMINARY**

3. Definitions

In this Act, unless the context otherwise requires, -

“criminal matter” means an offence against a provision of -

(a) any law of the Cook Islands, for which the maximum penalty is imprisonment for a term of up to 12 months or a fine of up to \$5,000;

(b) a law of a foreign country, in relation to acts or omissions, which had they occurred in the Cook Islands, would have constituted an offence for which the maximum penalty is imprisonment for a term of up to 12 months, or a fine of up to \$5,000;

PART 2. REQUESTS FOR ASSISTANCE GENERALLY

7. Requests by foreign countries for assistance generally

(1) Under this Act a request by a foreign country for international assistance in a criminal matter may be made to the Attorney-General.

...

516. See above the threshold requirement contained in the definition of a "criminal matter", but assistance may be rendered that does not involve coercive action but whether assistance is or is not provided is fact dependent (case-by-case basis to be determined by the Solicitor-General).

(b) Observations on the implementation of the article

517. During the country visit, it was confirmed that the Cook Islands would refused MLA requests that involve matters of a de minimis nature as it would not meet the threshold of a 'serious offence'. Moreover, despite the double criminality requirement in the Cook Islands, the Government can take measures as may be necessary to ensure that MLA involving non-coercive measures is afforded in the absence of double criminality, in line with article 46(9)(b) of the Convention. There have been examples of this, such as the MLA request that was received from Hungary. Hungary requested information on the directors and shareholders of a given company. The kind of the offence was deemed irrelevant and the information was passed on. The information was deemed open to the public but was not available online.

Paragraph 10 of article 46

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

518. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 5. ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

Sections 21 and 30 are cited above.

26. Conditions of imprisonment

For a person who is in the Cook Islands because of a request under section 21 and who has been kept in custody in the Cook Islands under a direction of the Attorney-General under section 22, the laws of the Cook Islands about the following matters apply (so far as they are capable of application) -

- (a) the conditions of imprisonment of persons imprisoned for offences against the law of the Cook Islands; and
- (b) the treatment of the persons during imprisonment.

**SCHEME RELATING TO MUTUAL ASSISTANCE IN CRIMINAL MATTERS
WITHIN THE COMMONWEALTH
PERSONAL APPEARANCE OF WITNESSES IN THE REQUESTING
COUNTRY**

25. (1) A request under this Scheme may seek assistance in facilitating the personal appearance of the witnesses before a court exercising jurisdiction in the requesting country.

(2) The request shall specify

- (a) The subject matter upon which it is desired to examine the witnesses;
- (b) the reasons for which the personal appearance of the witnesses is required; and
- (c) details of the travelling, subsistence and other expenses payable by the requesting country in respect of the personal appearance of the witnesses.

(3) The competent authorities of the requested country shall invite persons whose appearance as witnesses in the requesting country is desired; and (a) ask whether they agree to appear;

(b) inform the Central Authority of the requesting country of their answer; and

(c) if they are willing to appear, make appropriate arrangements to facilitate the personal appearance of the witnesses.

(4) A person whose appearance as a witness is the subject of a request and who does not agree to appear shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or requested country.

PERSONAL APPEARANCE OF PERSONS IN CUSTODY

26. (1) A request under this Scheme may seek the temporary transfer of persons in custody in the requested country to appear as witnesses before a court exercising jurisdiction in the requesting country.

(2) The request shall specify:

- (a) the subject matter upon which it is desired to examine the witnesses;
- (b) the reasons for which the personal appearance of the witnesses is required.

(3) The requested country shall refuse to comply with a request for the transfer of persons in custody if the persons concerned do not consent to the transfer.

(4) The requested country may refuse to comply with a request for the transfer of persons in custody and shall be under no obligation to inform the requesting country of the reasons for such refusal.

(5) A person in custody whose transfer is the subject of a request and who does not consent to the transfer shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or requested country.

(6) Where persons in custody are transferred, the requested country shall notify the requesting country of:

- (a) the dates upon which the persons are due under the law of the requested country to be released from custody; and

(b) the dates by which the requested country requires the return of the persons and shall notify any variations in such dates.

(7) The requesting country shall keep the persons transferred in custody, and shall return the persons to the requested country when their presence as witnesses in the requesting country is no longer required, and in any case by the earlier of the dates notified under sub-paragraph (6).

(8) The obligation to return the persons transferred shall subsist notwithstanding the fact that they are nationals of the requesting country.

(9) The period during which the persons transferred are in custody in the requesting country shall be deemed to be service in the requested country of an equivalent period of custody in that country for all purposes.

(10) Nothing in this paragraph shall preclude the release in the requesting country without return to the requested country of any person transferred where the two countries and the person concerned agreed.

IMMUNITY OF PERSONS APPEARING

27. (1) Subject to the provisions of paragraph 24, witnesses appearing in the requesting country in response to a request under paragraph 23 or persons transferred to that country in response to a request under paragraph 24 shall be immune in that country from prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions before the time of their departure from the requested country.

(2) The immunity provided for in that paragraph shall cease:

(a) in the case of witnesses appearing in response to a request under paragraph 23, when the witnesses having had, for a period of 15 consecutive days from the dates when they were notified by the competent authority of the requesting country that their presence was no longer required by the court exercising jurisdiction in the criminal matter, an opportunity of leaving have nevertheless remained in the requesting country, or having left that country have returned to it;

(b) in the case of persons transferred in response to a request under paragraph 24 and remaining in custody when they have been returned to the requested country.

(b) Observations on the implementation of the article

519. During the country visit, the definition of a 'foreign prisoner' was provided, namely 'a person who is being held in custody pending trial or sentence for, or is under a sentence of imprisonment for, an offence against a law of a foreign country; but does not include a person who is at large after having escaped from lawful custody' (section 3, MLA Act). It was confirmed that this definition would include a Cook Islander as it simply provides for any person held in custody pending a trial or sentence or serving sentence.

520. The reviewers therefore deemed the Cooks Islands to have implemented the provision under review.

Paragraph 11 of article 46

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

521. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 5. ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

22. Custody of certain persons

(1) This section applies -

(a) to a person who is to be brought to the Cook Islands from a foreign country in response to a request under section 21; and

(b) if the foreign country requests that the person be kept in custody while he or she is in the Cook Islands.

(2) The person must be kept in the custody that the Attorney-General directs, in writing, while the person is in the Cook Islands, or travelling to or from the Cook Islands, under the request.

Section 26 is cited above.

27. Release of certain persons on request by foreign country

The Attorney-General must direct that a person be released from custody if -

(a) the person is kept in custody under a direction of the Attorney-General under section 22; and

(b) the foreign country from which the person has been brought requests the release of the person from custody.

31. Travel of prisoner or person

(1) If the prisoner is being held in custody, the Attorney-General may make a transfer order and that order-

(a) must set out the name of the prisoner person and his or her current place of confinement; and

(b) must order the person who has custody of the prisoner to deliver him or her into the custody of a person who is designated in the order or who is a member of a class of

persons that are designated; and

(c) must order the person receiving the prisoner into custody to take him or her to the foreign country and, on return of the prisoner to the Cook Islands, to return the prisoner to a place of confinement in the Cook Islands specified in the order, or to any other place of confinement as the Attorney-General may notify to the foreign country; and

(d) must state the reasons for the transfer; and

(e) must fix the period of time at or before the expiration of which the prisoner must be returned, unless varied, for the purposes of the request by the Attorney-General.

(2) The time spent in custody by a prisoner under a transfer order counts towards any sentence required to be served by that prisoner, as long as the prisoner remains in custody and is of good behaviour.

(3) If the prisoner has been released from custody on a parole or other order or licence to be at large, the Attorney-General may -

(a) approve the travel of the prisoner to the foreign country to give evidence or assistance and obtain any necessary approvals, authorities, permissions or variations to the order or, licence; and

(b) subject to obtaining the approvals, authorities, permissions or variations, arrange for the prisoner to travel to the foreign country.

(4) The Attorney-General may arrange for a person (other than a prisoner) who is in the Cook Islands to travel to a foreign country if -

(a) a proceeding or an investigation about a criminal matter has commenced in the foreign country; and

(b) the foreign country requests that the person travel to the foreign country to give evidence at the proceeding or assistance at the investigation; and

(c) the Attorney-General believes, on reasonable grounds, that the person is capable of giving evidence relevant to the proceeding or assistance relevant to the investigation; and

(d) the Attorney-General is satisfied that-

(i) the person has consented to travel to the foreign country to give evidence or assistance; and

(ii) the foreign country has given adequate (whether or not unqualified) undertakings about: the matters mentioned in section 32.

32. Undertakings to be given

(1) For section 30(d)(ii) and section 31(4)(d)(ii), this section sets out the matters about which undertakings are to be given.

(2) The person will not -

(a) be detained, prosecuted or punished for an offence against the law of the foreign country committed, or alleged to have been committed, before the person's departure from the Cook Islands; or

(b) be subjected to any civil suit for any act or omission of the person that occurred, or is alleged to have occurred, before the person's departure from the Cook Islands, being a civil suit to which the person could not be subjected if the person were not in the foreign country; or

(c) be required to give evidence in a proceeding in the foreign country other than the proceeding to which the request relates, unless:

(d) the person has left the foreign country; or

(e) the person has had the opportunity of leaving the foreign country and has remained in that country for a purpose other than giving evidence in the proceeding to which the request relates.

(3) Evidence given by the person in the proceeding to which the request relates will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than for perjury in giving that evidence.

(4) The person will be returned to the Cook Islands under arrangements agreed to by the Attorney-General.

(5) If the person is being kept in custody in the Cook Islands and the Attorney-General requests the foreign country to make arrangements to keep the person in custody while the person is in the foreign country, -

(a) appropriate arrangements will be made for that purpose; and

(b) the person will not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Cook Islands law; and

(c) if the person is released in the foreign country after notice by the Attorney-General under paragraph (b), the foreign country will pay for the person's accommodation and expenses pending the completion of the proceeding to which the request relates.

(6) The Attorney-General may require undertakings about any other matters that he or she thinks appropriate.

33. Effect of removal to foreign country on prisoner's term of imprisonment

(1) This section applies to a prisoner who -

(a) is serving a term of imprisonment for an offence against a law of the Cook Islands; and

(b) is released from a prison because of a request by a foreign country under section 31(4) (b).

(2) The prisoner is taken, while in custody because of the request (including custody outside the Cook Islands), to be continuing to serve the term of imprisonment.

(b) Observations on the implementation of the article

522. The reviewers deemed the Cooks Islands to have legislatively implemented the provision under review.

Paragraph 12 of article 46

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

523. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 5. ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

23. Immunities

- (1) This section applies to a person who is in the Cook Islands -
- (a) because of a request under section 21; or
 - (b) to give evidence in a proceeding, or to give assistance in an investigation, because of a request made by the Attorney-General (except a request under section 21) for international assistance in a criminal matter.
- (2) The person must not -
- (a) be detained, prosecuted or punished in the Cook Islands for any offence committed, or alleged to have been committed, before he or she left the foreign country in response to the request; or
 - (b) be subjected to any civil suit for any act or omission of the person that occurred, or is alleged to have occurred, before he or she left the foreign country under the request, being a civil suit to which the person could not be subjected if the person were not in the Cook Islands; or
 - (c) be required to give evidence in any proceeding in the Cook Islands other than any proceeding to which the request relates; or
 - (d) be required, in any proceeding to which the request relates, to answer any question that the person would not be required to answer in a proceeding relating to a criminal matter in the foreign country; or
 - (e) be required, in any proceeding to which the request relates, to produce any document or article that the person would not be required to produce in a proceeding in the foreign country relating to a criminal matter.
- (3) A foreign law immunity certificate is admissible in proceedings of the matter stated in the certificate.
- (4) Subsection (2) ceases to apply to a person -
- (a) when the person leaves the Cook Islands; or
 - (b) if the person has had the opportunity of leaving the Cook Islands and has remained in the Cook Islands otherwise than -
 - (i) for the purpose to which the request relates; or
 - (ii) to give evidence in a proceeding in the Cook Islands certified by the Attorney-General, in writing, to be a proceeding in which it is desirable that the person give evidence; or
 - (iii) to give assistance in an investigation in the Cook Islands certified by the Attorney-General, in writing, to be an investigation in which it is desirable that the person give assistance.
- (5) A certificate given by the Attorney-General for subparagraph (4) (b) (ii) or (iii) has effect from the day specified in it (which may be a day before the day on which the certificate is given).

24. Status of person prosecuted for offence committed after leaving foreign country

- (1) This section applies to a person who has come to the Cook Islands in response to a request under section 21.
- (2) For this Act, the person is taken to be in the Cook Islands because of the request during any period when he or she remains in the Cook Islands to be tried for a criminal offence against the law of the Cook Islands that he or she is alleged to have committed after he or she left the foreign country.
- (3) Without limiting subsection (2), the person must be kept in the custody that the Attorney-General directs under section 22.

(b) Observations on the implementation of the article

524. The reviewers further noted section 32(2)(a) of the MLA Act, namely that the person will not 'be detained, prosecuted or punished for an offence against the law of the foreign country committed, or alleged to have been committed, before the person's departure from the Cook Islands'.

525. The reviewers therefore deemed the Cooks Islands to have legislatively implemented the provision under review.

Paragraph 13 of article 46

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

526. The Cook Islands indicated that it has implemented the provision under review.

527. The Cook Islands notified the Secretary-General of the United Nations of the following in relation to UNCAC article 46 (13) and (14):

“The Cook Islands Mutual Assistance in Criminal Matters Act 2003 is administered by the Crown Law Office which also serves as the competent authority responsible for receiving, executing and transmitting any mutual legal assistance request (which must be in writing and can be transmitted by email) on behalf of the Attorney General to the relevant designated central authority such as the Cook Islands Police for implementation”.

528. The information provided also in relation to UNCAC article 6(3) is to be noted:

“The Crown Law Office has been designated as the competent authority to receive and execute all Mutual Legal Assistance Requests. Their contact details are as follows:

Solicitor General, Crown Law Office, PO Box 494, Avarua, Rarotonga, Cook Islands;
Tel: (682) 29 337; Fax: (682) 20 839; Email: kimsaunders@crownlaw.gov.ck.

The Cook Islands has established an Anti-Corruption Committee chaired by the Solicitor General, Ms. Kim SAUNDERS. Members of the Committee include the following officials:

Mr. Maara TETAVA, Commissioner of Police, Cook Islands Police, PO Box 101, Avarua, Rarotonga, Cook Islands; Tel: (682) 22 499; Fax: (682) 21 499; E-mail:

maara.tetava@police.gov.ck (whose Office will be responsible for any investigations under the Convention);

Mr. Bob WILLIAMS, Head, Cook Islands Financial Intelligence Unit, PO Box 3219, Avarua, Rarotonga, Cook Islands; Tel: (682) 29 182; Fax.: (682) 29 183; Email: head@cifiu.gov.ck (currently the Secretary to the Committee, the Unit would have an intelligence gathering role and would facilitate any investigation by any law enforcement agency);

Mr. Allan PARKER, Director, Cook Islands Audit Office, PO Box 659, Avarua, Rarotonga, Cook Islands; Tel: (682) 21 231; Fax: (682)25 231; Email: perca@auditoffice.gov.ck (whose Office would play a detection role in corrupt activities);

Mr. Richard NEVES, Financial Secretary, Ministry of Finance & Economic Management, PO Box 120, Avarua, Rarotonga, Cook Islands; Tel: (682) 22 878; Fax: (682) 23 877;

Mr. Russell THOMAS, Public Service Commissioner, Office of the Public Service Commission, PO Box 24, Avarua, Rarotonga, Cook Islands; Tel: (682) 29 421; Fax: (682) 21321;

Mr. Vaine MOKOROA, Chief of Staff, Office of the Prime Minister, Private Bag, Avarua, Rarotonga, Cook Islands; Tel: (682) 25 494; Fax: (682) 20 856; and

The Ombudsman (currently vacant), Office of the Ombudsman, PO Box 748, Avarua, Rarotonga, Cook Islands; Tel: (682) 20 605; Fax: (682) 21 605.

It is proposed that the primary contact person for the Convention will be the Solicitor General, in her capacity as the Chair of the Anti-Corruption Committee, whose details have been provided above.

The Secondary contact person is the Head of the Cook Islands Financial Unit, in his capacity as the Secretary of the Anti-Corruption Committee, whose details have been provided above.”

The above action was effected on 26 June 2012.

Reference: C.N.359.2012.TREATIES-XVIII.14 (Depositary Notification) - deposited on 10 July 2012

(b) Observations on the implementation of the article

529. The reviewers noted that the Cook Islands has notified the UN Secretary General that the Crown Law Office is the competent authority in relation to MLA. However, it was confirmed that diplomatic channels are commonly used to receive and send MLA requests through the Ministry of Foreign Affairs, in particular with countries that the Cook Islands has never dealt with. Countries who have worked with the Cook Islands often send a copy of the request to the Crown Law Office in advance, but the Office would wait for the official request through the Ministry of Foreign Affairs before i.e. a Court order is applied for. Also, due to the arrangement of visiting judges and limited time on-island (generally, 2 weeks), matters can only be heard during that period.

530. It was further provided that the Cook Islands has made requests through INTERPOL, so it is likely that it would also be able to receive such requests through INTERPOL.

531. The reviewers therefore deemed the Cooks Islands to have implemented the provision under review.

Paragraph 14 of article 46

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

532. The Cook Islands indicated that it has partially implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 2. REQUESTS FOR ASSISTANCE GENERALLY

7. Requests by foreign countries for assistance generally

...

(2) A request must be in writing or by e-mail and must include, or be accompanied by, the following information

...

533. Of the requests received, all were in writing and in English.

534. The Cook Islands indicated that it has not notified the Secretary-General of the UN in relation to the language acceptable for MLA requests.

(b) Observations on the implementation of the article

535. During the country visit, it was confirmed that in urgent circumstances, where the Cook Islands has dealt with a foreign State before, an oral request may be considered (written requests are preferred) but the official request is required prior to going to Court.

536. The reviewers recommended that the Cook Islands notify the Secretary-General of the United Nations of the acceptable language for executing MLA requests.

Paragraphs 15 and 16 of article 46

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

537. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 2. REQUESTS FOR ASSISTANCE GENERALLY

7. Requests by foreign countries for assistance generally

...

(2) A request must be in writing or by e-mail and must include, or be accompanied by, the following information -

(a) the name of the authority concerned with the criminal matter to which the request relates;

(b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

(c) a description of the purpose of the request and of the nature of the assistance being sought;

(d) any information that may assist in giving effect to the request.

(3) Failure to comply with subsection (2) is not a ground for refusing the request, but the Attorney-General is not obliged to consider the request until that subsection is complied with. ...

**SCHEME RELATING TO MUTUAL ASSISTANCE IN CRIMINAL MATTERS
WITHIN THE COMMONWEALTH
CONTENTS REQUEST FOR ASSISTANCE**

14. (1) Except in the case of a request for the preservation of computer data under Article 1 (3) (j) of this Scheme, a request under the Scheme shall:

(a) specify the nature of the assistance requested;

(b) contain the information appropriate to the assistance sought as specified in the following provisions of this Scheme;

(c) indicate any time-limit within which compliance with the request is desired, stating reasons;

(d) contain the following information:

(i) the identity of the agency or authority initiating the request;

(ii) the nature of the criminal matter; and

(iii) whether or not criminal proceedings have been instituted.

(e) where criminal proceedings have been instituted, contain the following information:

(i) the court exercising jurisdiction in the proceedings;

(ii) the identity of the accused person;

(iii) the offences of which he stands accused, and a summary of the facts;

(iv) the stage reached in the proceedings; and

(v) any date fixed for further stages in the proceedings.

(f) where criminal proceedings have not been instituted, state the offence which the Central Authority of the requesting country has reasonable cause to believe to have been committed, with a summary of known facts.

(2) A request shall normally be in writing, and if made orally in the case of urgency, shall be confirmed in writing forthwith.

538. The requests received complied with section 7(2) of the MLA Act and were not requests in terms of UNCAC article 46(15)(e).

(b) Observations on the implementation of the article

539. During the country visit, it was confirmed that sub-paragraph 16(e), ‘Where possible, the identity, location and nationality of any person concerned’ would be covered by section 7(2)(d) of the MLA Act, ‘(d) any information that may assist in giving effect to the request’.

540. The reviewers therefore deemed the Cook Islands to have legislatively implemented the provision under review.

Paragraph 17 of article 46

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

541. The Cook Islands indicated that it has implemented the provision under review and referred to the measures above (section 7(3) of the MLA Act).

(b) Observations on the implementation of the article

542. During the country visit, it was confirmed that as a matter of practice an MLA request would be executed in accordance with the domestic law of the Cook Islands and where possible, in accordance with the procedures contained in the specific request.

543. The reviewing experts therefore deemed the Cook Islands to have implemented the provision under review.

Paragraph 18 of article 46

18. Whenever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

544. The Cook Islands indicated that it has implemented the provision under review. It permits hearings of individuals mentioned above to take place by video-conference and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 1. PRELIMINARY

3. Definitions

In this Act, unless the context otherwise requires, -

“video or internet link” means a system, including an internet connection, that lets persons assembled in a place see, hear and talk to persons assembled in another place.

PART 3. ASSISTANCE WITH TAKING EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES

Section 10 is cited above.

14. Conduct of proceedings

(1) The Judge or Justice conducting a proceeding under section 11, 12 or 13 may permit any of the following to have legal representation at the proceeding -

- (a) the person to whom the proceeding in the requesting country relates;
- (b) any other person giving evidence or producing a document or other article at the proceeding before the Judge or Justice;
- (c) the relevant authority of the requesting country.

(2) If the requesting country has so requested, the Judge or Justice may permit examination or cross-examination, through a video or internet link from the requesting country, of any person giving evidence or producing a document or other article at the proceeding by -

- (a) any person to whom the proceeding in the requesting country relates or by that person's legal representative; or
- (b) the legal representative of the relevant authority of the requesting country.

545. There has been no such request to date.

(b) Observations on the implementation of the article

546. During the country visit, it was confirmed that telephone conferencing has been used. However, if video conferencing services were available, then the Cook Islands could also use this service.

547. Pursuant to sections 10(c) and 14(2) of the MLA Act, the reviewing experts deemed the Cook Islands to have legislatively implemented the provision under review.

Paragraph 19 of article 46

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

548. The Cook Islands indicated that it has partially implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 10. MISCELLANEOUS

Section 60 is cited above.

**SCHEME RELATING TO MUTUAL ASSISTANCE IN CRIMINAL MATTERS
WITHIN THE COMMONWEALTH**

LIMITATION OF USE OF INFORMATION OR EVIDENCE

12. The requesting country shall not use any information or evidence obtained in response to a request for assistance under this Scheme in connection with any matter other than the criminal matter specified in the request without the prior consent of the Central Authority of the requested country.

549. There have been no examples of implementation to date.

(b) Observations on the implementation of the article

550. During the country visit, it was confirmed that as a matter of practice, the Cook Islands would not transmit or use information or evidence other than stated in the MLA request without the prior consent of the foreign State.

551. The reviewing experts therefore deemed the Cook Islands to have implemented the provision under review.

Paragraph 20 of article 46

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

552. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 10. MISCELLANEOUS

Section 61 is cited above.

**SCHEME RELATING TO MUTUAL ASSISTANCE IN CRIMINAL MATTERS
WITHIN THE COMMONWEALTH**

CONFIDENTIALITY

11. The Central Authorities and the competent authorities of the requesting and requested countries shall use their best efforts to keep confidential a request and its contents and the information and materials supplied in compliance with a request except for disclosure in criminal proceedings and where otherwise authorised by the Central Authority of the other

country.

553. There have been no examples of implementation to date.

(b) Observations on the implementation of the article

554. During the country visit, it was confirmed that if the Cook Islands were not able to comply with the requirement of confidentiality, then the Government would promptly inform the foreign State.

555. The reviewing experts therefore deemed the Cook Islands to have implemented the provision under review.

Paragraph 21 of article 46

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

556. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

PART 2. REQUESTS FOR ASSISTANCE GENERALLY

9. Refusal or postponement of assistance

The Attorney-General may, in respect of any request from a foreign country for mutual assistance in any investigation commenced or proceeding instituted in that foreign country relating to a serious offence -

(a) refuse the request, in whole or in part, on the ground that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of the Cook Islands; or

(b) after consulting with the relevant authority of the foreign country, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in the Cook Islands.

557. There have been no such examples to date.

(b) Observations on the implementation of the article

558. The reviewing experts deemed the Cook Islands to have implemented the provision under review.

Paragraph 22 of article 46

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

559. The Cook Islands indicated that it has partially implemented the provision under review and noted that the Mutual Assistance in Criminal Matters Act does not restrict the category of offending and note also section 8 (below).

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003

8. Assistance may be provided in whole or in part and subject to conditions

Assistance under this Act may be provided to a foreign country in whole or in part and subject to any conditions that the Attorney-General determines.

560. All the requests received in the last 2 years relating to fiscal matters were all addressed.

(b) Observations on the implementation of the article

561. The reviewers recommended that the Cook Islands, through legislative measures, ensure that MLA is not refused on the sole ground that the offence is also considered to involve fiscal matters.

Paragraph 23 of article 46

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

562. The Cook Islands indicated that it has implemented the provision under review and referred to section 9 (Refusal or postponement of assistance) of the MLA as cited above.

563. It is also to be noted that section 31 of the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth requires only consultations, but not reasons for a refusal to be given.

564. No requests have been refused within the last 2 years.

(b) Observations on the implementation of the article

565. During the country visit, it was confirmed that as a matter of practice the Cook Islands would provide reasons for refusing an MLA request.

566. The reviewing experts therefore deemed the Cook Islands to have implemented the provision under review.

Paragraph 24 of article 46

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

567. The Cook Islands indicated that it has partially implemented the provision under review. The MLA Act is silent on this point, but in practice, it is complied with.

568. In respect of all the requests received, the requesting State has been kept up to date with progress.

569. This will depend on nature of the request, but to date, has been responded to within the requested time - a period of months.

(b) Observations on the implementation of the article

570. During the country visit, consultations takes place by the Cook Islands together with foreign States informing them of the time-line that they wish to comply with.

571. The reviewers recommended that the Cook Islands consider simplifying and streamlining procedures and evidentiary requirements (such as internal guidelines and/or a request management system) in order to allow for MLA requests to be dealt with efficiently and effectively.

Paragraphs 25 and 26 of article 46

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

572. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003
PART 2. REQUESTS FOR ASSISTANCE GENERALLY

9. Refusal or postponement of assistance

The Attorney-General may, in respect of any request from a foreign country for mutual assistance in any investigation commenced or proceeding instituted in that foreign country relating to a serious offence -

...

(b) after consulting with the relevant authority of the foreign country, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in the Cook Islands.

SCHEME RELATING TO MUTUAL ASSISTANCE IN CRIMINAL MATTERS
WITHIN THE COMMONWEALTH
CONSULTATION

31. The Central Authorities of the requested and requesting countries shall consult promptly, at the request of either, concerning matters arising under this Scheme.

573. There have been no examples of an MLA postponement to date on the ground that it interfered with an ongoing investigation, prosecution or judicial proceeding.

(b) Observations on the implementation of the article

574. During the country visit, it was confirmed that as a matter of practice that the Cook Islands would consult with the foreign State prior to postponing MLA request interferes with an ongoing investigation, prosecution or judicial proceeding.

575. The reviewing experts therefore deemed the Cook Islands to have implemented the provision under review.

Paragraph 27 of article 46

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

576. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003
PART 5. ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST
INVESTIGATIONS

Sections 21 – 24 are cited above

577. There have been no examples of implementation to date.

(b) Observations on the implementation of the article

578. The reviewers deemed the Cook Islands to have legislatively implemented the provision under review.

Paragraph 28 of article 46

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

579. The Cook Islands indicated that it has implemented the provision under review. This situation has not arisen to date, but in practice, consultation on the costs would occur.

(b) Observations on the implementation of the article

580. During the country visit, it was confirmed by the national authorities that the Cook Islands would bear the ordinary costs of executing an MLA request. If expenses are substantial or extraordinary nature for a request, the Government would consult with the foreign State. This has been considered in a few MLA requests where the costs were substantial (i.e. MLA request mentioned above from the USA).

581. The reviewing experts deemed the Cook Islands to have implemented the provision under review.

Subparagraph 29 (a) of article 46

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

582. The Cook Islands indicated that it has implemented the provision under review and referred to sections 11 and 13 of the MLA Act.

(b) Observations on the implementation of the article

583. As described above, in the MLA request received from Hungary, information available to the general public was requested. This was provided by the Cook Islands.

584. The reviewers therefore deemed the Cook Islands to have implemented the provision under review.

Subparagraph 29 (b) of article 46

29. *The requested State Party:*

...

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

585. The Cook Islands indicated that it has implemented the provision under review.

(b) Observations on the implementation of the article

586. During the country visit, it was confirmed that information being requested in an MLA request that is not available to the general public could be provided through an official letter or Court order, depending on the nature of the information.

587. The reviewers therefore deemed the Cook Islands to have implemented the provision under review.

Paragraph 30 of article 46

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

588. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

MUTUAL ASSISTANCE IN CRIMINAL AMENDMENT ACT 2004

3. Act does not limit other Provision of assistance

Section 4 of the principal Act is amended by adding a new subsection (2) as follows -

"(2) The Cook Islands may render international assistance in criminal matters notwithstanding the absence of any treaty, agreement or other arrangement between the Cook Islands and the foreign country."

(b) Observations on the implementation of the article

589. It was noted that the Cook Islands does not make MLA conditional on the existence of a treaty. For this reason, the provision under review was deemed inapplicable.

(c) Challenges

590. The Cook Islands identified the following challenge and issue in fully implementing the provision under review:

1. Other issue: Process of compliance.

(d) Technical assistance needs

591. The Cook Islands indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned (in particular from other Small Island States);
2. Other: Because extradition and mutual legal assistance matters are commonly dealt with together, it is expedient that the technical assistance covers all.

The Cook Islands indicated that no forms of technical assistance mentioned above have been provided.

Article 47. Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

592. The Cook Islands indicated that it has not implemented the provision under review.

(b) Observations on the implementation of the article

593. The reviewers recommended that the Cook Islands consider the possibility of transferring criminal proceedings to and from a foreign State it were in the interests of the proper administration of justice, in particular where several jurisdictions are involved.

(c) Challenges

594. The Cook Islands identified the following challenge and issue in fully implementing the provision under review:

1. Inadequacy of existing normative measures (constitution, laws, regulations, etc.).

(d) Technical assistance needs

595. The Cook Islands indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned.

The Cook Islands indicated that no form of technical assistance mentioned above has been provided.

Article 48. Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

1. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures.

FINANCIAL TRANSACTIONS REPORTING ACT 2003

Section 11. Reporting institutions must report suspicious transactions.

If a reporting institution suspects or has reasonable grounds to suspect that information that the reporting institution has concerning any transaction or attempted transaction may be -

- a) Relevant to an investigation or prosecution of a person or persons for a serious offence, a money laundering offence or a financing of terrorism offence; or
- b) Of assistance in the enforcement of the Proceeds of Crimes Act 2003; or

c) Related to the commission of a serious offence, a money laundering offence or a financing of terrorism offence

PART 4. FINANCIAL INTELLIGENCE UNIT

Section 27 - Functions and powers of FIU

(a): it must receive reports made under sections 5,8,10, 11, and 12 and information provided to FIU by any agency of another country, information provided to the FIU by a law enforcement agency or a Government institution or agency, and any other information voluntarily provided to the FIU about suspicions of a serious offence, a money laundering offence or a financing of terrorism offence;

(b) it may collect information that the FIU considers relevant to serious offences, money laundering or terrorist financing activities and that is publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored in databases maintained by the Government;

(c): if the FIU has reasonable grounds to believe a serious offence, a money laundering offence or a financing of terrorism offence has been, is being or may be committed, the FIU must refer the matter to the Police for investigation;

(d) it may request information from any law enforcement agency and supervisory authority for the purpose of this Act;

...

(f): it may send any report, any information derived from that report or any other information it receives to the appropriate law enforcement authorities if, having considered the report or information, the FIU also has reasonable grounds to suspect that the transaction is suspicious; ...

(h) it may ask for further information relating to any suspicious transaction report received by it from a reporting institution

(i) it may instruct any reporting institution to take any steps that may be appropriate in relation to any information or report received by the FIU to enforce compliance with this Act.

(q): it may transmit any information from or derived from, a compliance audit or supervisory review or suspicious transaction report to the appropriate domestic or foreign law enforcement authority, if the FIU has reasonable grounds to believe that the information is suspicious or is relevant to an investigation for non-compliance with this Act, a serious offence or a money laundering offence;

28. Agreements and arrangements by FIU

(1) The FIU may, with the approval of Cabinet, enter into negotiations, orally or in writing, relating to an agreement or arrangement, in writing, with an institution or agency of a foreign state or an international organisation established by the governments of foreign states that has powers and duties similar to those of the FIU, regarding the exchange of information between the FIU and the institution or agency.

(2) Final agreements or arrangements entered into under subsection (1) must be approved by Cabinet.

(3) The information exchanged under subsection (1) must be information that the FIU, institution or agency has reasonable grounds to believe would be relevant to investigating or prosecuting a serious offence or a money laundering offence or an offence that is substantially similar to either offence.

(4) Agreements or arrangements entered into under subsection (1) must -

(a) restrict the use of information to purposes relevant to investigating or prosecuting a

serious offence, a money laundering offence or an offence that is substantially similar to either offence; and

(b) stipulate that the information must be treated in a confidential manner and must not be further disclosed without the express consent of the FIU.

2. Section 28: Agreements and arrangements by FIU - refers to agencies and institutions of a foreign State or an international organization established by the governments of foreign States, respectively MOA and the Egmont Group of Financial Intelligence Units.

a) MOA signed with 11 Countries - (AUSTRAC - Australia, Philippines, Chinese Taipei, New Zealand, United Arab Emirates, Malaysia, Ukraine, Fiji, Papua New Guinea, Vanuatu and Association of Pacific Islands Financial Intelligence Units);

b) Cook Islands Financial Intelligence Unit is a member of the Asia Pacific Group and the Egmont Group of Financial Intelligence Units (139 jurisdictions) since 2004. By virtue of this membership/charter we have shared intelligence, facilitated Mutual legal Assistance Requests, repatriated proceeds of crime with the following jurisdictions but not limited to; USA, New Zealand, Australia, Philippines, Argentina, Uruguay, England, Malaysia, Indonesia, Vanuatu, Fiji, Solomon Islands, Singapore, Canada, India, Pakistan, Switzerland, Sweden, Thailand. The Cook Islands is involved in the Annual Asia Pacific Group Plenary and Typologies Workshop - Presentation by Head and Senior Intelligence Officer; and the Head FIU currently co-chair - Typology for Trust and Company Service providers;

c) Biennial Census Report to Egmont.

3. The FIU has a standalone database accessible exclusively by FIU staff. It is not online and accessible by law enforcement agencies. Information is extracted and shared on the basis of in-house intelligence analysis (strategic, operational and tactical) and external requests (Domestic and International). In addition, FIU uses the Egmont Secure Website (available only for FIU's) to facilitate rapid and secure exchange of information with its foreign (International) counterparts.

4. Practical examples include:

1. Current Politically Exposed Person investigation - Minister of the Crown;

2. Operation Bread - Targeted the cross border transportation of cash between New Zealand and the Pacific Islands in order to form a risk assessment of cross border cash movements.

a. Cook Islands activity - 9 identified indications.

5. It does not consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention.

6. The Cook Islands the following measure in relation to paragraph 3 of UNCAC article 48.

Financial Transactions Reporting Act 2004.

Part 2 - Obligations to keep records and verify identity

Section 4 - Reporting Institution must identify and verify customer.

Financial Intelligence Unit issues guidelines (currently no legal requirement - addressed by FTRA Bill 2014) to reporting institutions to enforce the above provisions as measures to prevent the misuse of technological developments in money laundering, serious crimes

or terrorist financing schemes. For example Internet Banking - vulnerability is anonymity of the customer -non face-to-face business.

(b) Observations on the implementation of the article

7. Law enforcement cooperation is carried out through agreements and arrangements, as well as on a case-by-case/ ad-hoc basis.
8. The Transnational Crime Unit (TCU) cooperates internationally, not only through the Pacific Transnational Crime Network (PTCN), but also through other counterparts (including the New Zealand Police (NZP) and the Australian Federal Police (AFP)).
9. TCU also cooperates with INTERPOL through the Pacific Transnational Crime Coordination Centre (PTCCC) situated in Apia, Samoa and through the NZ Police.
10. PTCN is an important network that enhances law enforcement cooperation. It was established in July 2002. The PTCN was initiated by the Pacific Islands Chiefs of Police and is supported by AFP, NZP and United States Joint Interagency Taskforce West (JIATFW). It provides an interconnected, proactive criminal intelligence and investigative capability to combat transnational crime in the Pacific through a multi-agency and regional approach. This consists of:
 - A PTCN Board of Management consisting of five members (Chair, representatives from the three regions and the AFP);
 - PTCCC based in Samoa staffed by officers seconded from the Pacific Islands and advisors;
 - Eighteen TCUs based in thirteen Pacific Islands Countries. The TCUs include officers seconded from Police, Customs and Immigration Law Enforcement Agencies with close linkages to various other agencies including INTERPOL, Fisheries, FIUs and Patrol Boats;
 - AFP Advisors attached to the PTCCC and co-located with the Samoa TCU; Micronesia Region TCU (established in 2008, as an extension of the FSM TCU in Pohnpei, with Palau, Commonwealth of the Northern Mariana Islands and the Republic of Marshall Islands (RMI)); Solomon Islands TCU; Papua New Guinea TCU; Cook Islands TCU; Fiji TCUs (who also supports Kiribati, Vanuatu and Niue TCUs). As of 1 October 2014, the Micronesia Region TCU will be closed and the PTCC will be the hub.
 - The Pacific Islands Chiefs of Police;
 - Linkages to various other Pacific Islands Countries (including American Samoa, Nauru, Tuvalu and Guam), Asia (including Thailand and the Republic of Korea) and Europe;
 - Linkages to various other forums - Pacific Islands Forum Secretariat, Oceania Customs Organisation, Pacific Immigration Directors Conference, Pacific Patrol Boat Program (1 boat until 2018), JIATFW, the Pacific Islands Law Officer's Network, Pacific Association of Supreme Audit Institutions, various other international law enforcement agencies and the private industry (i.e. Fisheries Forum).
11. TCU in the Cook Islands was established in 2011. Initially, an AFP advisor advised the TCU during its establishment. Since its establishment, 5 TCU members have been seconded to the PTCCC in Apia. There is 1 member of the Police who is attached to the TCU. The director needs to approve the information sent to PTCCC.

12. The FIU has informal connections with other FIUs (incl. AUSTRAC, FBI, FINTRAC, NZ, Pacific Island Countries). The Cook Islands is part of the Pacific Association of FIUs. These connections provide for an informal mechanism in which to share information. Examples of FIU to FIU cooperation were highlighted also other off-shore financial centres (i.e. Singapore) and other (i.e NZ, Australia, USA); majority of cooperation requests come from the USA because of the asset protection trusts.
13. The Cook Islands has also been an Egmont member since 2003.
14. The Cook Islands' Crown Law Office and the NZ Prosecutor's Office and US State Department have collaborated on a number of occasions. Support has also been provided by the Attorney-General's Department of Australia. NZ prosecutors also provide advice and assist in complex (i.e. fraud, tax, litigation) cases. The NZ Fraud Office also provides cooperation (i.e. services of a forensic accountant).
15. The Ombudsman's Office is part of the Pacific Commonwealth Ombudsman Alliance. It has had 3 secondments into the Office from NZ Ombudsman's Office and also received cooperation from the Police Independent Complaints Authority.

(c) Successes and good practices

16. The reviewers commended the Cook Islands' international law enforcement cooperation, particularly in the region.

(d) Challenges

17. The Cook Islands identified the following challenges and issues in fully implementing the provision under review:
 1. Limited capacity (e.g. human/technological/institution/other);
 2. Limited resources for implementation (e.g. human/financial/other).

(e) Technical assistance needs

18. The Cook Islands indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:
 1. Capacity-building programmes for authorities responsible for cross-border law enforcement cooperation;
 2. Other assistance: Enhancing existing resources.

The Cook Islands indicated that technical assistance had been provided by:

1. Australia Federal Police;
2. New Zealand Police Force;
3. New Zealand Serious Fraud Office.

However, an extension of this would be desired.

Article 49. Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

19. The Cook Islands indicated that it has implemented the provision under review. It has the memoranda of understanding with:

1. New Zealand;
2. Australia – AUSTRAC;
3. Anti -Money Laundering Assistance Team (AMLAT) - Australia Attorney General's Office - Asia Pacific Group. AMLAT secured the assistance of Australian Federal Police.

20. FIU examples of implementation include:

1. Christopher Mussel - Convicted (Structuring transactions);
2. Minister of Crown - Politically Exposed Person investigation.

(b) Observations on the implementation of the article

21. The Cook Islands often undertakes joint investigations with foreign States, namely NZ, Australia and the USA, on a case-by-case basis. The practice has been to swear in foreign police officers. During the country visit, a number of examples were mentioned. In 2011, in undercover operation, 'Eagle One', the Cook Islands Police Force and NZP conducted the joint investigation that led to the conviction of 11 people, including 2 former police officers. In 2012, a joint investigation was conducted with the AFP regarding a transnational crime and drug trafficking. Joint investigations are also conducted by the FIU, such as one that was jointly by the FIU and FBI of the USA.

22. Joint prosecutions have also taken place. Prosecutors from foreign States are admitted to the Bar and then practice as a solicitor in the Cook Islands.

23. The reviewers therefore deemed the Cook Islands to have implemented the provision under review.

(c) Successes and good practices

24. The reviewers commended the Cook Islands' international joint investigations, in particular with New Zealand.

Article 50. Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

25. The Cook Islands indicated that it has implemented the provision under review and referred to the following measures, including the Proceeds of Crimes Act 2003: Part 6 Currency Reporting and Suspicious Currency Movements - Section 96 Currency reporting at the border.

26. There are memoranda of understanding with:

1. New Zealand;
2. Australia – AUSTRAC;
3. Anti-Money Laundering Assistance Team (AMLAT) - Australia Attorney General's Office - Asia Pacific Group. AMLAT secured the assistance of Australian Federal Police.

27. Examples of implementation included:

1. Christopher Mussel - Convicted (Structuring transactions) – FIU involvement;
2. Minister of Crown - Politically Exposed Person investigation – FIU involvement;
3. Operation Bread - Targeted the cross border transportation of cash between New Zealand and the Pacific Islands in order to form a risk assessment of cross border cash movements;
4. In relation to a major drugs operation, there was a joint Cook Island/ NZ police investigative team and evidence was obtained by undercover officers. The admissibility of the evidence was challenged at trial, but the High Court found that it was lawfully obtained and all identified offenders have been prosecuted successfully and convicted.

(b) Observations on the implementation of the article

28. During the country visit, it was confirmed that appropriate bilateral arrangements on the use of special investigative techniques have been used on a number of occasions with NZ, Australia and the USA. This has included controlled delivery, undercover operations and other forms of surveillance. While the law provides for wiretapping (pursuant to the Police Act and the Narcotics and Misuse of Drugs Act), this has not been used in practice. Special investigative techniques were used during operation 'Eagle One'.

(c) Challenges

29. The Cook Islands identified the following challenge and issue in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other).

(d) Technical assistance needs

30. The Cook Islands indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques;
2. Capacity-building programmes for authorities responsible for international cooperation in criminal/investigative matters.

The Cook Islands indicated that technical assistance mentioned above has been provided.