



PILON

**FRAMEWORK FOR
PROSECUTING CORRUPTION
IN THE PACIFIC:
EXPERIENCES, CHALLENGES
AND LESSONS LEARNT**

Updated May 2021

The **Pacific Islands Law Officers' Network (PILON)** is a network of senior law officers from Pacific countries. PILON has identified corruption as a strategic priority in its 2019-21 Strategic Plan. The Corruption Working Group supports PILON to address this strategic priority and has prepared this report as part of its efforts to strengthen the prosecution of corruption offences in the region.

Members of the Corruption Working Group are:

- American Samoa
- Australia
- Cook Islands
- Federated States of Micronesia
- Nauru (Chair)
- Palau
- Papua New Guinea
- Republic of the Marshall Islands
- Solomon Islands

Introduction	2
PART A: International and regional legal framework for prosecuting corruption	4
PART B: Overview of Pacific country experiences prosecuting corruption	7
Number and success of corruption cases prosecuted	8
Frequency of occurrence and prosecution of key corruption offences	8
Key challenges and lessons learnt	9
PART C: Country case studies on the prosecution of key corruption offences	12
Bribery	13
Cook Islands	14
Palau	14
Republic of the Marshall Islands	15
Vanuatu	16
Embezzlement	16
Samoa	16
Money Laundering	17
Papua New Guinea	18
Solomon Islands	18
ANNEX 1: Tables of bribery, embezzlement, trading in influence, abuse of functions and money laundering provisions by country	19
ANNEX 2: Survey questionnaire on Pacific country experiences in prosecuting corruption	39

Introduction

Corruption and financial crime are growing concerns for many countries around the world, including those across the Pacific. Countries in the Pacific have reported corruption as the most common predicate offence for money laundering in the region, and a 2016 Asia Pacific Group on Money Laundering (APG) survey found that ‘corruption and bribery appear to be widespread across the Pacific’.

These are concerning crimes because they divert national wealth away from communities in need and into the hands of corrupt officials and transnational crime syndicates.

Financial crime and corruption are becoming increasingly sophisticated. Due to the internet and other technological advances, they are becoming more transnational in nature. Furthermore, financial crimes are also often committed under the cover of legal entities that have complex corporate structures and involve the use of banks and other financial institutions. This involves a complex web of information and actors that is often spread across a number of different countries.

The increasingly transnational and complex nature of corruption and financial crime is making them more difficult to both investigate and prosecute, which is evidenced by the low levels of successful prosecutions across the Pacific region.

Purpose of this report

The Pacific Island Law Officers’ Network (PILON) Corruption Working Group has developed this report to provide a starting point to address the barriers to prosecuting corruption. Its purpose is to understand the challenges prosecutors face in prosecuting corruption across the region in order to identify capacity building needs and inform where to focus future efforts. For example, if gaps in legislation are causing difficulties for prosecutors then resources need to be directed to law reform to fill those gaps. Similarly, if investigations and evidence collection are causing difficulties then further resources may need to be directed to strengthening collaboration between investigators and prosecutors.

To answer these questions, this report first seeks to get a baseline understanding of PILON member countries’ legal frameworks for prosecuting corruption, and whether they have criminalised the key corruption offences as required by the main international and regional anti-corruption instruments – including the United Nations Convention Against Corruption (UNCAC). It then looks at prosecutors’ actual experiences in prosecuting corruption, drawing on a recent survey that asked prosecutors from across the region to identify the barriers to prosecuting corruption in their countries.

The final part of this report highlights successful cases of corruption being prosecuted across the region, including cases involving bribery, embezzlement and money laundering. It is hoped that these case studies will enable prosecutors to learn from other countries in the region by highlighting the relevant evidence used to support the charges, the defences raised by the accused and the specific sentence or fines imposed in each case.

Drawing on the results of this report, the PILON Corruption Working Group has identified a number of key issues and potential focus areas. It is clear that capacity building for both investigators and prosecutors and better information sharing are priorities to strengthen prosecution of corruption offences in the region.

Scope of this report and key concepts

This report will focus on the key corruption offences of bribery, embezzlement, trading in influence, abuse of function and money laundering. These are the mandatory and recommended offences that UNCAC requires countries to establish or consider establishing as crimes in their domestic law.¹ These offences are described below.

- **Bribery:** The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations, favours etc).
- **Embezzlement:** When a person holding office in an institution, organisation or company dishonestly and illegally appropriates, uses or traffics the funds and goods they have been entrusted with for personal enrichment or other activities.
- **Trading in Influence:** Using one’s influence in government or connections with persons in authority to obtain favours or preferential treatment for another, usually in return for payment.
- **Abuse of Functions:** Performance of, or failure to perform, an act, in violation of the law, by a public official for the purpose of obtaining an undue influence.
- **Money Laundering:** The process of concealing the origin, ownership or destination of illegally or dishonestly obtained money by hiding it within legitimate economic activities to make it appear legal.

¹ Illicit enrichment has not been included as most PILON member countries have not criminalised this in their domestic law, meaning that most countries do not have the legal basis to prosecute such an offence.

PART A: International and regional legal frameworks for prosecuting corruption

Over the past decade, the vast majority of PILON member countries have signed up to the following key international and regional anti-corruption instruments:

- the **United Nations Convention Against Corruption (UNCAC)**;
- the **United Nations Transnational Organised Crime Convention**; and
- the **Asian Development Bank (ADB) / Organisation for Economic Cooperation and Development (OECD) Anti-Corruption Action Plan for Asia and the Pacific**.

In addition, almost all PILON member countries are members or observers of the Asia Pacific Group on Money Laundering (APG), which works with countries in the Asia Pacific to generate wide regional commitment to implement anti-money laundering policies.

The table below shows which PILON member countries have ratified or acceded these anti-corruption conventions and action plan. It also shows which countries are APG members and observers.

PILON Member Country	UN Convention Against Corruption	UN Transnational Organised Crime Convention	ADB / OECD Anti-Corruption Action Plan for Asia and the Pacific	Asia Pacific Group on Money Laundering
Australia	Ratified in 2005	Ratified in 2004	Endorsed in 2003	Member
Cook Islands	Acceded 2011	Acceded in 2004	Endorsed in 2001	Member
Federated States of Micronesia	Acceded in 2012	Acceded in 2004	-	Observer
Fiji	Acceded in 2008	Acceded in 2017	Endorsed in 2001	Member
Kiribati	Acceded in 2013	Acceded in 2005	-	Observer
Nauru	Acceded in 2012	Ratified in 2012	-	Member
New Zealand	Ratified in 2015	Ratified in 2002	-	Member
Niue	Acceded in 2017	Acceded in 2012	-	Member
Palau	Acceded in 2009	Acceded in 2019	Endorsed in 2004	Member
Papua New Guinea	Ratified in 2007	-	Endorsed in 2001	Member
Pitcairn Islands	-	-	-	-
Republic of Marshall Islands	Ratified in 2011	-	-	Member
Samoa	Acceded in 2018	Acceded in 2014	Endorsed in 2001	Member
Solomon Islands	Acceded in 2012	-	Endorsed in 2012	Member
Tonga	Acceded in 2020	Acceded in 2014	-	Member
Tuvalu	Acceded in 2015	-	-	Observer
Vanuatu	Acceded in 2011	Acceded in 2006	Endorsed in 2001	Member

The above instruments require countries to take a series of measures against corruption, including creating domestic criminal offences for the key corruption offences of bribery, embezzlement and money laundering. UNCAC contains the most comprehensive requirements relating to the criminalisation of corruption. For example, if a country meets its obligations under Chapter III of UNCAC it will also comply with the criminalisation of money laundering as contained in the Financial Action Task Force (FATF) 40 Recommendations.²

² APG supports its member countries to comply with international standards against money laundering and counter terrorism financing (AML/CTF) as contained in the Financial Action Task Force (FATF) 40 Recommendations. These recommendations include the criminalisation of money laundering on the basis of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the UN Convention against Transnational Organised Crime (the Palermo Convention). The offences contained in UNCAC are equal to those in the Palermo Convention and broader than those provided for in the Vienna Convention.

UNCAC includes both mandatory provisions (the offences that States parties are required to establish as crimes) and recommended provisions (the offences that States parties are required to consider establishing). The mandatory and recommended provisions are summarised below:

Mandatory Offences		Recommended Offences
Bribery of:	national public officials	Trading in influence
	foreign public officials and officials of public international organisations	Abuse of functions Illicit enrichment
Embezzlement, misappropriation or other diversion of property by a public official		Bribery in the private sector
Laundering of proceeds of crime		Embezzlement in the private sector

Criminalisation of UNCAC offences in PILON member countries

Between 2010 and 2015, two thirds of PILON member countries³ participated in a review to assess the extent to which they had established the above offences. The review found that countries had generally criminalised the following offences, with some limitations:

- Bribery of national public officials
- Embezzlement, misappropriation or other diversion of property by a public official
- Embezzlement in the private sector
- Laundering of proceeds of crime

In contrast, the majority of PILON member countries reviewed had not criminalised illicit enrichment, bribery of foreign officials or bribery in the private sector. The implementation of offences relating to trading in influence and abuse of functions varied across the countries – these offences were partially criminalised but often contained significant gaps.⁴

An overview of the relevant legislation and provisions criminalising bribery, embezzlement, trading in influence, abuse of functions and money laundering from countries across the region is included in **Annex 1**.

These findings suggest that for most PILON member countries, a number of the key corruption offences such as bribery in the public sector, embezzlement and money laundering have been criminalised in domestic law. However, further work may need to be undertaken to identify if there are any other legislative barriers to the successful prosecution of these offences in practice.

³ Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Palau, Papua New Guinea, Republic of the Marshall Islands, Solomon Islands and Vanuatu.

⁴ See United Nations Development Program and United Nations Office on Drugs and Crime, Criminalization and Law Enforcement: The Pacific's Implementation of Chapter III of the UN Convention Against Corruption.

In mid-2019 the PILON Corruption Working Group surveyed Pacific countries to find out more about their recent experiences in prosecuting corruption related offences. The survey included questions on the frequency and success of prosecuting corruption, the rate of occurrence and prosecution of specific offences and the key challenges and lessons learnt. The survey questions are included in **Annex 2**.

PART B: Overview of Pacific country experiences prosecuting corruption

The survey was circulated amongst PILON Corruption Working Group members and the Pacific Prosecutor Association, which together include representatives of the heads of prosecution offices from the below countries:

1. American Samoa
2. Cook Islands
3. Federated States of Micronesia
4. Fiji
5. Kiribati
6. Nauru

7. Niue
8. Palau
9. Papua New Guinea
10. Pitcairn Islands
11. Republic of the Marshall Islands
12. Samoa
13. Solomon Islands
14. Tonga
15. Tuvalu
16. Vanuatu

Countries had the option of submitting their responses anonymously.

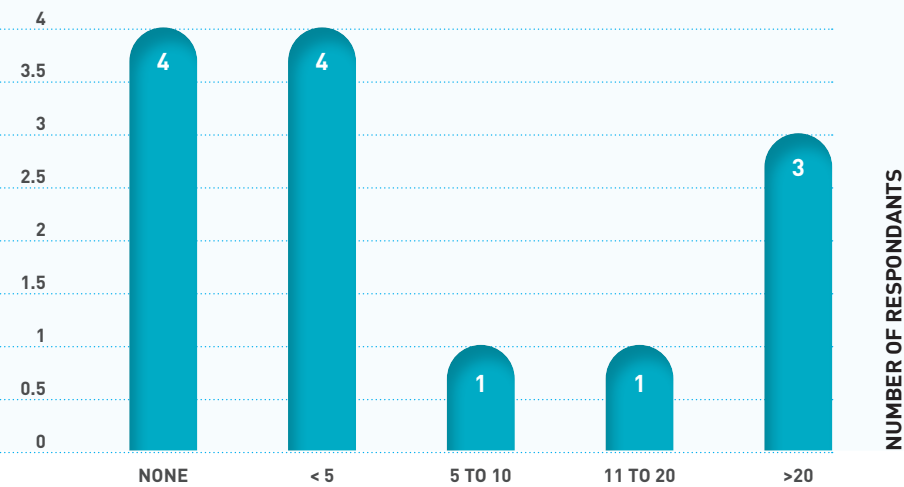
The Working Group received twelve responses to the survey. One further response only answered the first two questions.

The responses are analysed below.

Number and Success of Corruption Cases Prosecuted

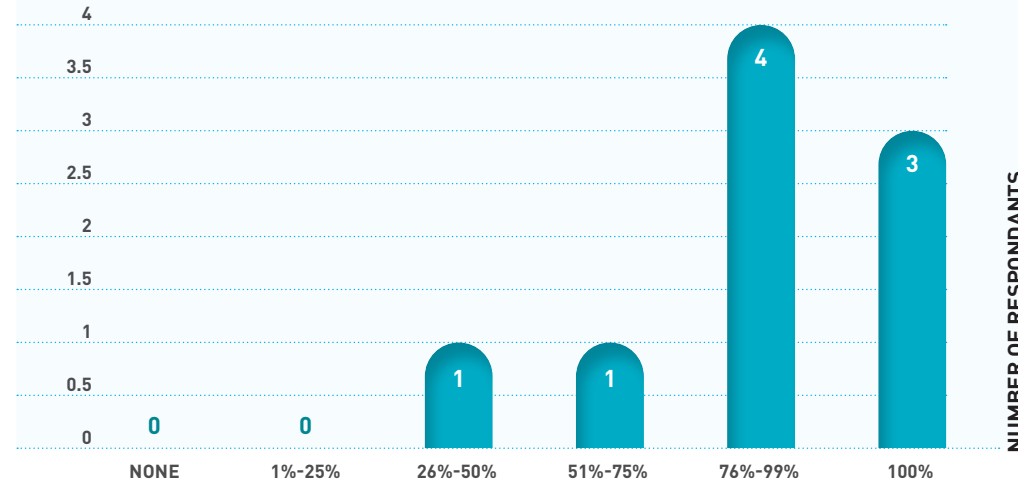
There is a large variation in the number of corruption cases prosecuted across the countries surveyed. Graph 1 below shows that four of the thirteen respondents had not prosecuted any corruption related offence in the past five years, while three had prosecuted more than 20.

Graph 1. Number of Corruption Related Offences Prosecuted in Countries in the Past 5 Years



Countries that had prosecuted corruption related offences appeared to have a relatively high success rate. Graph 2 below shows that, of the nine respondents who had prosecuted a corruption related offence in the past five years, seven respondents noted that more than 75 per cent of these cases had resulted in a conviction.

Graph 2. Proportion of Cases that Resulted in a Corruption Offence Related Conviction



Frequency of Occurrence and Prosecution of Key Corruption Offences

The survey asked countries to rate the offences of bribery, embezzlement, trading in influence, abuse of functions and money laundering based on how frequently they occurred and how frequently they were referred for prosecution in their jurisdiction over the past five years.

Respondents were asked to rate each offence on a scale from “1” to “5”, with “1” meaning least frequent and “5” meaning most frequent. A number of respondents instead rated the offences from “0” to “5”.

These questions seek to establish a snapshot of which corruption offences were occurring the most frequently across the region and whether these correspond with the most frequently prosecuted offences.

The survey responses showed that:

- Bribery, embezzlement and abuse of function were identified by respondents as the most frequently occurring corruption offences. Seven of the twelve respondents to this question rated bribery, embezzlement and abuse of function as “3”, “4” or “5” – with “5” meaning occurring most frequently.
- Bribery and embezzlement were also identified as the most frequently prosecuted offences. Seven of the eleven respondents to this question rated bribery as “3” or “4” (no one gave it a rating of “5”). Four of the eleven respondents to this question rated embezzlement as “4” or “5”.
- Trading in influence and money laundering were rated by respondents as the least frequently occurring corruption offence. Five of the twelve respondents to this question rated trading in influence as “0” or “1”. Four of the thirteen respondents to this question rated money laundering as “0” or “1”.
- Respondents also generally rated trading in influence as being prosecuted less frequently than other offences. However, the frequency of prosecution of money laundering offences was more variable. Six respondents rated money laundering as “0” or “1”, yet three respondents rated money laundering as “4” or “5” – which is almost the same number of respondents who rated embezzlement as “4” or “5”.
- Respondents also identified theft/larceny, misconduct, forgery and official corruption as “other” common corruption offences which occurred in their countries.

Key Challenges and Lessons Learnt

Key reasons why more corruption cases are not prosecuted

The survey asked respondents to outline the key reasons why more corruption cases have not been prosecuted in their countries. The responses are analysed below.

Evidentiary Issues

Insufficient evidence was the most common reason why more corruption cases have not been prosecuted. Seven of the twelve respondents referred to insufficient evidence in their responses. Comments included that “[m]ost cases of suspicious corruption brought to our office were never prosecuted due to insufficient evidence”, “evidence obtained is not sufficient enough to proceed with the charge”, and “evidence was difficult to obtain”.

Related to the difficulties in obtaining evidence, a number of responses also referred to the complexity of the cases, the lack of reporting and the transnational nature of cases where the offender or witnesses have left the country. For example, one respondent noted that the accused, at the point of discovery, would often escape to another country giving investigators “no or little time to gather enough evidence to secure probable cause in order to effect an arrest”.

Reluctance to Prosecute

Another common reason given by respondents was a reluctance by the authorities to prosecute. Respondents suggested that authorities sometimes prefer to find other avenues, such as administrative action, dismissal, transfer or recovering the amount stolen, as alternatives to prosecution. Other respondents commented that most prosecutions tend to involve low level officials.

Capacity of Investigators

Capacity of investigators and prosecutors was an issue identified by two respondents. One respondent identified a lack of investigation expertise within the police and lack of technical expertise or confidence within prosecution services. Another respondent noted the issue of a lack of resources and capacity.

Gaps in the Legislative Framework

Only one respondent identified gaps in the legislative framework as a reason for why more corruption cases have not been prosecuted. This related to the definition of “public official” not being comprehensive enough, which the review of Pacific implementation of UNCAC⁵ identified as a common gap in a number of countries in the region.

Challenges encountered in the prosecution of corruption cases

With regards to prosecutions that did move forward, the survey asked respondents to identify some of the challenges encountered by prosecutors during these cases. The responses are analysed below.

Evidentiary Issues

Evidentiary issues were identified as the most common challenge encountered by prosecutors when it came to prosecutions that did move forward. Respondents referred to issues in both the collection and use of evidence.

A number of respondents referred to issues in the collection of evidence by both investigation officers and financial intelligence units and identified a lack of understanding regarding the collection of evidence as a particular weakness. One respondent noted that evidentiary issues were a common barrier to prosecuting corruption-related offences. In particular, the respondent flagged a lack of capacity to collect relevant evidence from within and outside the countries.

Another respondent stated that a key challenge was “[e]videntiary issues resulting from the need for investigators to recognise or have knowledge of what specific and relevant evidence are, as well as knowing the legal/lawful procedures for obtaining them”.

The responses suggest that difficulties in collecting evidence are compounded by poor record keeping. One respondent noted that poor record keeping sometimes makes it “difficult to determine the full extent of the crime”. Another noted that defence counsel often ask for documents which either have been destroyed or are missing.

Furthermore, the evidence required in corruption cases is often highly technical and complex. One respondent emphasised that there is a lack of “technical understanding of the evidence, which in a great number of cases is not only financial, but complex financial in nature”.

A number of respondents also referred to the difficulties in obtaining evidence from overseas. One respondent noted that getting evidence from overseas involves a long process that sometimes results in charges being dismissed if the court is not willing to wait for the evidence to arrive. Other respondents referred to a lack of agency cooperation both within and outside the country and the need to better understand how evidence can be obtained both domestically and internationally and the proper processes to be followed particularly in cases involving privileged documents.

Even where evidence has been collected, one respondent emphasised the difficulties faced by prosecutors seeking to use such evidence. The respondent noted that there is a lack of “[a]bility to interrogate closely and meticulously existing evidence and identify gaps, and link the complex web of evidence”, a lack of “[u]nderstanding about how evidence can be analysed and distilled into structured formats that can subsequently be used by prosecutors” and also a lack of understanding about how to present admissible evidence in a format that can be easily understood and accepted by a court.

⁵ See UNDP and UNODC, *Criminalization and Law Enforcement: The Pacific’s Implementation of Chapter III of the UN Convention Against Corruption*, p.9-15.

Witness Cooperation

Another common challenge encountered in the prosecution of corruption cases is witness cooperation. One respondent noted that there were problems with witness interference, witnesses turning hostile and witnesses disappearing. Another respondent noted that witness cooperation is an issue as in some cases a level of self-incrimination may be required if the witness was involved in the alleged bribery or request for abuse of function. A third respondent reported that witnesses “tend to leave the country soon after the case is reported, and/or they would refrain from cooperating if the accused is a relative or friend”.

Small Communities

Two respondents identified the small size of their countries as challenges to prosecuting corruption cases as the people involved are often closely related to one another.

The small size is also likely to be a key reason why some corruption cases are not prosecuted at all. Respondents also noted the small size of their jurisdiction in their response to the other questions. One respondent identified fear of reprisals in a small community or country as a key reason for why more corruption cases have not been prosecuted and noted that it is “hard to obtain information because of close relations with those involved” who want to maintain confidentiality. Another respondent noted in response to the next question on lessons learnt that in a small society “such actions have considerable impact on society as a whole – stigma on the perpetrator and his or her family, ostracised – animosity toward authority.”

Lessons Learnt

Finally, the survey asked respondents to share their lessons learnt. The responses are analysed below.

Training

The most commonly identified lesson learnt was the need for training. Four separate respondents noted there is a need for more trainings in the area of corruption and all of those respondents emphasised that such trainings should involve investigators and law enforcement officers not just prosecutors. Two respondents also specified that such trainings should be practical “on the ground” trainings where the trainer works with investigators and prosecutors on a case from collecting evidence up to the stage of prosecution.

Specialised Agencies and Strengthened Cooperation between Agencies

Two respondents identified the need for prosecutors to work closely with investigators, with one of the respondents suggesting that their country should have a “specialist unit [comprised of] both investigations and prosecutions to deal with these matters”. The other respondent suggested that prosecutors “work with intelligent and reliable investigating officers who can assist in obtaining relevant evidence to assist in prosecuting the case as soon as possible to avoid the case pending in court for a long time”. A third respondent indicated that an ombudsman or an office for a special prosecutor may be beneficial in acting promptly and quickly in dealing with corruption matters.

Sharing Experiences between Countries in the Region

One respondent noted that they would like to learn from the experiences of other countries in the region on how they have successfully prosecuted corruption cases. Members of the PILON Corruption Working Group also emphasised the importance of information sharing between countries on issues such as how prosecutors have overcome specific evidentiary challenges and how they have worked most effectively with investigators.

PART C: Country case studies on the prosecution of Key corruption offences

Information sharing on how Pacific countries have successfully prosecuted corruption cases was identified as an important way to strengthen work in this area.

This Part seeks to facilitate better information sharing between Pacific countries by presenting a range of case studies on the successful prosecution of the following corruption offences:

1. Bribery;
2. Embezzlement; and
3. Money Laundering.

As noted in Part A, bribery, embezzlement and money laundering are the key UNCAC offences that have generally been criminalised across Pacific countries.

Although the survey results, analysed in Part B, show that most countries have prosecuted relatively few corruption cases over the past five years, the PILON Corruption Working Group has collected a diverse range of cases from across the region.

The case studies set out the relevant facts, the specific charges that were laid, the key evidence that prosecutors relied on, any defences raised and the result of the cases including the specific sentence or fines imposed in each case. These case studies will enable prosecutors to learn from other countries in the region by helping them to:

- identify where other countries have prosecuted cases involving similar facts;
- pinpoint what evidence has been relied on to support similar charges and how this evidence was collected;
- anticipate potential defences which may be raised and how these were dealt with; and
- compare sentences and fines imposed.

It is intended that these case studies may be used in future trainings on investigating and prosecuting corruption and that they will help initiate direct ongoing conversations between prosecutors across the region.

Bribery

Overview of the elements of bribery in UNCAC

Bribery involves the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust.

Article 15 of UNCAC on bribery of national public officials covers both passive and active forms of bribery:

- active bribery involves the promise, offering or giving of a bribe; and
- passive bribery involves the solicitation or acceptance of a bribe.

The benefit does not have to involve payment or even something tangible exchanging hands. It can take many forms including gifts, hospitality and offers of employment. Additionally, it can involve a third party such as providing a favour to a relative, friend or favoured cause.

UNCAC covers offences relating to bribery of national public officials, foreign public officials and bribery in the private sector. However, all the case studies below relate to bribery of a national public official, reflecting that the criminalisation of bribery in the region is focused on bribery of national public officials.

An overview of the relevant legislation and provisions criminalising bribery across the region is included in **Annex 1**.

Case Studies

Four case studies on bribery were collected from the Cook Islands, Palau, Republic of the Marshall Islands and Vanuatu. These case studies cover instances of both active and passive bribery, with the same charges generally used to prosecute the party who gave the bribe as well as those who received the bribe. Further, despite the survey responses suggesting that prosecutions tend to involve low level officials, two of the case studies demonstrate that a number of high level officials – including Ministers and Members of Parliament – have been successfully prosecuted for bribery across the region. Finally, the case studies reiterate the importance of credible and admissible evidence – in one case the evidentiary issues encountered by the prosecution led them to settle the case by way of a plea agreement. In the other cases, prosecutors mainly relied on witness testimony and the use of electronic communication to establish the defendant's guilt.

Cook Islands

On 25 August 2016, the Cook Islands' High Court sentenced Teinakore Bishop to 2 years and 4 months imprisonment on a charge of corruptly obtaining a bribe as a Minister of the Crown.

Mr Bishop was the Minister of Marine Resources and one of his functions was to issue licences for commercial fishing purposes. Between 14 October 2011 and 24 April 2013, 18 fishing licences were issued to Luen Thai Fishing Venture Limited, one of the largest fishing and seafood companies operating in the Asia-Pacific region. The Cook Islands Government had a close working relationship with Luen Thai and Mr Bishop also developed a personal business relationship with them.

In January 2013, Mr Bishop entered into negotiations with Luen Thai and in May 2013 Luen Thai advanced a loan of USD 256,745 to Mr Bishop's business partner in relation to their personal business ventures. The Crown case was that Mr Bishop had accepted or obtained a bribe from Luen Thai as a reward for the issuing of 18 commercial fishing licenses.

Evidence relied on included analysis of skype messaging and skype voice contact made between Mr Bishop and the Chief Operating Officer of Luen Thai to demonstrate that their relationship was not just confined to government business.

Palau

In November 2018, the Attorney General's Office filed charges against an immigration officer for bribery. Bribery is a Class B felony punishable by 1-10 years imprisonment and/or fines of up to USD 25,000.

The victim of this case was a worker from Bangladesh. The immigration officer went to the victim's place of employment, showed his immigration badge and asked to see the victim's work permit which is required under the law to be carried at all times. The victim informed the immigration officer that his permit was being processed. The immigration officer then became belligerent and started kicking things at the store and

throwing things at the victim. The immigration officer offered to accept two cases of beer in exchange for there not being any legal issues with the victim not carrying his work permit as required by law.

The case was tried on 3 June 2019 and the Court found the defendant guilty of bribery. The main evidence relied on in this case was the witness testimony provided by the victim.

On 9 August 2019 the immigration officer was sentenced to 5 years supervised probation on the condition that he wrote a letter of apology to the victim, serve three weekends in jail and comply with a number of mandatory conditions of probation.

Republic of the Marshall Islands

On 22 May 2014, the Office of the Attorney General charged Herminio Alfonso, Arjay Demayo and eight employees of the Ministry of Health, two of whom were Filipino nationals. The charges related to a bribery scheme run by the Genesis Island Enterprise, a pharmaceutical company headquartered in Pohnpei in the Federated States of Micronesia. Mr Alfonso was the owner of Genesis and Mr Demayo was a senior manager with the company.

The scheme was designed to influence Ministry of Health employees, through the payment of incentives, to favour the company in the bidding process for contracts to procure medical products and supplies for the Department of Health.

The bribery scheme continued for over two years, with Genesis monopolising the Ministry's contracts for equipment and supplies. The scheme was eventually reported by an accountant at Genesis to the Assistant Secretary of Health who immediately conveyed the information to the Office of the Attorney General.

The Office of the Attorney General interviewed the accountant who reported the scheme and, after obtaining sufficient evidence for probable cause, filed a search warrant in court. The Office of the Attorney General, the police, and the Office of the Auditor General worked jointly to secure all computers, equipment and documents from Genesis' office. These were inventoried before the auditor investigator was able to extract information from them including by the use of forensic investigative methods.

The two Ministry of Health employees, who were Filipino nationals, escaped arrest and fled to the Philippines when the cover of the scheme was blown and they came to suspect that they were about to be apprehended.

The remaining Ministry of Health employees were charged with bribery in official matters, under section 240.1 and misconduct in public office under section 240.6 of the *Criminal Code 2011*.

Both charges were second degree felonies and carried a term of imprisonment of up to 10 years each, and a payment of a maximum fine of USD 20,000.

Mr Alfonso and Mr Demayo were also charged with theft by deception under section 223.(1),(2) and (3), securing execution of documents by deception under section 224.15, and criminal conspiracy under sections 5.03, 5.05, 6.06 (2) of the *Criminal Code 2011*. Additionally, prosecution also filed under section 240.10 for an imposed prohibition upon Mr Alfonso and Mr Demayo from seeking any business and employment with the Republic of the Marshall Islands' Government for 10 years.

The case against both Mr Alfonso and Mr Demayo was settled out of court via plea agreement. Mr Alfonso, who at the time of filing in court remained in Pohnpei, paid a fine of \$400,000 as full settlement. Mr Demayo was convicted to a term of 7 years imprisonment. However, the government deported him back to the Philippines in return for a full confession and for providing evidence against another person involved in the scheme.

Attempts to prosecute those involved were weakened by the lack of credible written records to support the statement provided by the accountant at Genesis regarding the payments which had been made. Despite searching records at the Ministry of Health, the office and computers of the accused and the bank accounts belonging to Genesis and those involved, there was a lack of records evidencing that bribes had been paid. Furthermore, although there were numerous email exchanges of Mr Alfonso directing Mr Demayo to pay money to a procurement officer in exchange for securing a contract for Genesis, the Court ruled against the admission into evidence of all email communications.

These issues contributed to the prosecution's decision to settle the case by way of a plea agreement.

Vanuatu

On 22 October 2015, the Vanuatu Supreme Court sentenced 14 sitting Members of Parliament (MPs), including the Speaker of Parliament and the Deputy Prime Minister Moana Carcasses, to terms of imprisonment after their conviction on bribery charges. The MPs were convicted of the offence of “corruption and bribery of officials” under section 73 of the *Penal Code*.

The charges related to payments made in 2014 by Carcasses to 14 MPs, who were in the opposition party at the time, to secure their votes to oust the then Prime Minister through a no confidence motion, which succeeded on a second attempt. The payments amounted to a total of about 35 million vatu (about USD 316,000).

The Court did not accept Carcasses’ defence that the payments were development loans and found that the payments were designed to influence the MPs in their capacity as public officials.

Carcasses received a sentence of four years imprisonment after being found guilty of 18 counts of corruption and bribery. Thirteen of the bribe recipients were each sentenced to 3 years imprisonment; the fourteenth MP received a 20 month suspended sentence after pleading guilty at the start of the trial.

Nearly all of the MPs appealed to the Court of Appeal, but their appeals were dismissed.

The Office of the Public Prosecutor also applied to the Supreme Court for Orders, in relation to the convicted MPs, for their dismissal from office, their disqualification from future office and disentanglements to any future allowances under sections 41, 42 and 43 of the *Leadership Code Act*. Section 42 of the Act prevents leaders from holding public office for 10 years. The Orders were granted by the Court.

CASE STUDY 4

Embezzlement

Overview of embezzlement in UNCAC

Embezzlement involves the theft, misappropriation or other diversion of any property, funds or thing of value that has been entrusted to that person by virtue of his or her position.

UNCAC requires State parties to establish embezzlement by a public official as a crime and requires countries to consider establishing embezzlement in the private sector as an offence.

Most countries in the region have generally criminalised embezzlement in the public sector and the private sector.

In some cases, the same criminal provisions are broad enough to cover embezzlement in both sectors.

An overview of the relevant legislation and provisions criminalising embezzlement across the region is included in **Annex 1**.

Case studies

Three case studies on embezzlement were collected from Samoa, Papua New Guinea and the Solomon Islands. The case studies involve both embezzlement by a public official and embezzlement in the private sector. The case studies on Papua New Guinea and the Solomon Islands also involve the laundering of the proceeds of the embezzlement and are presented in the next section on money laundering.

Samoa

On 24 March 2014, the Court convicted Taylor Miti on charges of theft as a servant and sentenced him to 4 and a half years’ imprisonment.

Mr Miti was a senior accountant for the Ministry of Police. From January 2006 to January 2008, he stole almost \$300,000 Samoan tala (more than USD 100,000) from his workplace. He carried out the theft by generating false purchase orders and delivery slips and issuing fictitious invoices to a non-existent company.

The money obtained from these transactions was banked into a special bank account and divided between Mr Miti and another person.

As the theft took place between 2006 and 2008, Mr Miti was charged under the repealed *Crimes Ordinance 1961* where the maximum penalty of theft as a servant was 7 years. Under the *Crimes Act 2013*, the maximum penalty for theft as a servant has increased from 7 years to 14 years imprisonment.

CASE STUDY 1

Money Laundering

Overview of money laundering in UNCAC

Money laundering is the process of concealing the origin, ownership or destination of illegally or dishonestly obtained money by hiding it within legitimate economic activities to make them appear legal.

Article 23 of UNCAC requires States parties to establish the following four offences related to money laundering:

1. Conversion or transfer of proceeds of crime;
2. Concealment or disguise of proceeds of crime;

3. Acquisition, possession or use of proceeds of crime; and
4. Participation in, association with or conspiracy to commit and aiding, abetting, facilitating and counselling the commission of any of the foregoing offences.

The first two offences impose liability on the providers of illicit proceeds, whereas the third offence imposes liability on recipients who acquire, possess or use the property. In relation to the first three offences, the accused must have knowledge that the property is the proceeds of crime at the time of the act.

Most countries in the region have generally criminalised the laundering of proceeds of crimes.

An overview of the relevant legislation and provisions criminalising money laundering across the region is included in **Annex 1**.

Papua New Guinea

On 29 March 2017, the National Court convicted Eremas Wartoto of the offence of misappropriation of property under section 383A(1)(a) of the *Criminal Code Act 1974*.

Mr Wartoto was the sole shareholder and director of a company which was awarded a government contract of about 8 million kina (around USD 2.2 million) to renovate a high school. The company was paid 85 per cent of the contract price (around USD 1.9 million) up front and the balance of 15 per cent (around USD 34,370) near apparent completion of the contract.

Within five months after the 85 per cent payment was deposited into the company's account, the funds were depleted, but only a small proportion had been spent on the school project.

The Court established that the 85 per cent payment deposited into the defendant's company bank account remained the property of the State until it was used to renovate the school. Bank statements showed that Mr Wartoto had spent the bulk of the money on unintended and unapproved purposes, which he admitted were for his own personal use.

The Court did not accept Mr Wartoto's 'fungibility' defence that all funds from other sources become one. Mr Wartoto did not account for the use of the funds that his company had received from the government contract to renovate the school. The Court concluded that 95 per cent of the money that the company had received for this contract was used for purposes unconnected with the school renovation project and therefore the defendant had acted dishonestly. The State successfully proved the elements of the offence of misappropriation of property.

Mr Wartoto appealed against his conviction but the Supreme Court affirmed his conviction in August 2019.

The State also instituted proceedings under the *Proceeds of Crime Act 2005* against Mr Wartoto and restrained all property that were the subject of these proceedings. This included property in Papua New Guinea and in a foreign jurisdiction. The Office of the Public Prosecutor is now making an application for a forfeiture order or a declaration against the restrained property so that all property is forfeited to the State unless the Court is satisfied that it was derived from a lawful source.

Solomon Islands

On 10 August 2015, the High Court of Solomon Islands sentenced Philip Bobongi to 9 years imprisonment for larceny, embezzlement and money laundering.

Between 19 February 2001 and 30 April 2009, Mr Bogoni stole and embezzled \$1.7 million (USD 207,000) of old currency notes from the Central Bank of Solomon Islands (CBSI). Mr Bobongi was an employee of the CBSI and was responsible for the destruction of old currency notes. He systematically stole old currency notes during the course of his employment.

Between 2007 and 2009, Mr Bobongi then deposited the old currency notes in his and his wife's accounts at CBSP and ANZ Banks and used some of the money to buy properties.

Unbeknown to Mr. Bobongi the taking of the money was all recorded on CCTV, which was used as part of the prosecution's evidence against him. A former employee of the ANZ Bank also testified at trial that Mr Bobongi had made deposits on three occasions of amounts ranging from \$50,000 to \$65,000 (USD 6,000 to 7,900) and these deposits were a mix of old and new currency notes. The former ANZ employee was a relative of Mr Bobongi.

The Office of the of the Director of Public Prosecutions is now in the process of confiscating the stolen money and selling the properties that Mr Bobongi purchased to remit the proceeds into the State's consolidated account

ANNEX 1:

Tables of bribery, embezzlement, trading in influence, abuse of functions and money laundering provisions by country

Country	Public Sector Bribery			Private Sector Bribery		
	Legislation	Relevant Sections	Notes	Legislation	Relevant Sections	Notes
American Samoa	<i>American Samoa Code Title 46 Criminal Justice</i>	46.4701 on bribery of a public servant 46.4702 on public servant acceding to corruption	A person violates the act by offering or conferring a benefit to a public servant in exchange for an action or exercise of discretion. Class D Felony (0 – 5 years) A public servant violates the act by accepting a benefit in exchange for an official action or exercise of discretion. Class D Felony (0 – 5 years)	American Samoa Code Title 46 criminal Justice	46.4125 Commercial bribery.	A person commits the crime by accepting any benefit as consideration violating a duty of fidelity such as agent, trustee, lawyer, physician Class A Misdemeanor (0- 1 year)
Australia	<i>Criminal Code Act 1995</i>	Section 141.1 on bribery of a Commonwealth public official Section 142.1 on corrupting benefits given to, or received by a public official	See also: Section 135.1 on general dishonesty Section 139.1 on unwarranted demands of a Commonwealth public official Section 139.2 on unwarranted demands made by a Commonwealth public official	Australia has not criminalised private sector bribery as a distinct offence. However, bribery/corrupting benefits offences at the State and Territory level would apply to conduct between private parties within Australia.		

Public Sector Bribery				Private Sector Bribery		
Country	Legislation	Relevant Sections	Notes	Legislation	Relevant Sections	Notes
Cook Islands	<i>Crimes Act 1969</i>	Section 116 active and passive bribery of public officials Specific provisions with aggravated punishment for bribery of certain types of public officials including: <ul style="list-style-type: none"> Section 111 on judicial corruption Section 112 on bribery of judicial officers Section 113 on corruption and bribery of Minister of the Crown Section 114 on corruption and bribery of members of the Legislative Assembly Section 115 on corruption and bribery of law enforcement officers 		<i>Secrets Commission Act 1994-5</i>	Sections 4 and 5 on bribery of agents where "gifts" are given corruptly.	Concept of "agents" is broadly construed and covers persons with managerial functions. General employees of private sector entities cannot be prosecuted.
	<i>Secrets Commission Act 1994-5</i>	Sections 4 and 5 on bribery of agents where "gifts" are given corruptly.				
Federated States of Micronesia	<i>FSM Code 2014</i>	Section 516 on active and passive bribery	Cases involving 3rd party beneficiaries not clearly regulated.	Bribery in the private sector not criminalised.		
Fiji	<i>Crimes Act 2009</i>	Sections 134(1), 135(1), 136(1) and 137(1)		<i>Crimes Act 2009</i>	Section 149	
	<i>Prevention of Bribery Act 2007</i>	Sections 4(1) and 4(2)		<i>Prevention of Bribery Act 2007</i>	Section 9	
Kiribati	<i>Penal Code 1977</i>	Sections 85-87 and 366-369	Gaps in the definition of public servant as to whether the position of Ministers can be construed as public servant. The Constitution excludes President, Vice President and Ministers from the definition of persons employed in the public office.	Bribery in the private sector not criminalised.		

Public Sector Bribery				Private Sector Bribery		
Country	Legislation	Relevant Sections	Notes	Legislation	Relevant Sections	Notes
Nauru	<i>Crimes Act 2016</i>	Section 173 on bribery Section 174 on giving or receiving other corrupting benefits		See <i>Crimes Act</i> provisions for public sector bribery. Section 172 is the definition provision which applies to Section 173 – 'agent' is defined under section 172. This definition not only captures public officials, it captures private persons as well.		
	<i>Leadership Code Act 2016</i>	Section 14 on Code of Conduct Section 17 on undue influence Section 18 on bribery				
	<i>Public Service Act 2016</i>	Section 8 on Code of Conduct	Section 8 of the Act – provides the Code of Conduct of public service employees. This Code aims to discourage unethical behaviours by public service employees. The Code also aims to discourage corrupt behaviour by public service employees. Any failure by a public service employee to comply with the Code may result in disciplinary proceedings against such employee.			
	<i>Electoral Act 2016</i>	Section 123 on police officers influencing voters Section 124 on bribery				
New Zealand	<i>Crimes Act 1961</i>	Sections 100-105, 105C and 105D Sections 100-105 and 105D contain offences of persons holding legislative and judicial offices		<i>Secrets Commission Act 1910</i>	Section 3, 4 and 8	
Niue	<i>Niue Act 1966</i>	Sections 180 -180G 180A on judicial corruption 180B on bribery of judicial officer 180C on corruption and bribery of a Minister 180D on corruption and bribery of a Member of Assembly 180E on corruption and bribery of Law enforcement Officers 180F on corruption 180G on corrupt use of official information	Bribery of foreign public officials and officials of international organisations not criminalised.	Bribery in private sector not criminalised.		
Palau	<i>Penal Code 2014</i>	Sections 4101(a)(1) and (2) under Title 17 of the Palau National Code (PNC) and section 656 of Title 40 of PNC provisions on bribery Section 4101(d) of Title 17 on passive bribery deemed a class B felony	Gaps in definition of public servant.	<i>Penal Code 2014</i>	Section 3001 under Title 17 of PNC	

Public Sector Bribery				Private Sector Bribery		
Country	Legislation	Relevant Sections	Notes	Legislation	Relevant Sections	Notes
Papua New Guinea	<i>Criminal Code Act 1974</i>	Sections 61, 62, 87(1), 97B, 103, 119(2) and 120	The bribery provisions apply different terminology in reference to a bribe (i.e. property or benefit, gratification), which makes it unclear as to whether the definition of a bribe is affected by, inter alia, its value and the results of having promised, offered or given it. CCA covers a wide range of public officials, but it was unclear whether unpaid persons, performing a public function or providing a public service, were covered.			
Pitcairn Islands	<i>Bribery Act 2010 (UK)</i>		UK Statutes of General Application apply, subject to local circumstances, by virtue of s 42 of the Pitcairn Constitution.	<i>Bribery Act 2010 (UK)</i>		UK Statutes of General Application apply, subject to local circumstances, by virtue of s 42 of the Pitcairn Constitution.
Republic of the Marshall Islands	<i>Criminal Code 2011</i>	Section 240.1 on active and passive bribery of public officials		<i>Criminal Code 2011</i>	Section 224.9	Partially covers bribery in the private sector but scope of perpetrators (i.e. trustee, lawyer) is limited and offence is classified as a misdemeanour.
	<i>Ethics in Government Act 1993</i>	Section 1704 on passive bribery				

Public Sector Bribery				Private Sector Bribery		
Country	Legislation	Relevant Sections	Notes	Legislation	Relevant Sections	Notes
Samoa	<i>Crimes Act 2013</i>	Section 134 Section 135 Section 136 Section 137 Section 138 Section 149 Section 150 Section 151	Specific provisions with aggravated punishment for bribery by and of certain types of public officials including: - judicial officer; - Minister of Government; - Member of Parliament; - law enforcement officers; - Corruption and Bribery of officials; - bribery in Samoa foreign public officials; - bribery outside Samoa foreign public officials ss135 & 136 require consent from the Attorney-General	<i>Crimes Act 2013</i>		
	<i>Police Service Act 2009</i>	Section 71 on bribing members of the Police Service		<i>Secrets Commission Act 1975</i>	- Section 4 - Section 5 - Section 6 - Section 7 - Section 8 - Section 9 - Section 10	
	<i>Electoral Act 2019</i>					
Solomon Islands	<i>Penal Code 1963</i>	Section 96 on bribery Section 103 - Maximum penalty of: 2 years imprisonment for corrupt practice; 3 years imprisonment for illegal practice.		<i>Penal Code 1963</i>	Section 374	Applies exclusively to agency cases.
	<i>Leadership Code (Further Provisions Act) 1999</i>		Permits administrative sanctions and monetary penalties to be imposed against leaders who engage in bribery. Such administrative penalties supplement, and do not replace, criminal proceedings where appropriate.			
Tokelau	<i>Crimes, Procedure & Evidence Rules 2003</i>	Rule 72 on official corruption				

Public Sector Bribery				Private Sector Bribery		
Country	Legislation	Relevant Sections	Notes	Legislation	Relevant Sections	Notes
Tonga	<i>Criminal Offences Act</i>	Section 50 on acceptance of bribe by government servant Section 51 on bribery of government servant		<i>Act of Constitution of Tonga</i>	Clause 66 on threats and bribery	
	<i>Tonga Police Act</i>	Section 164 on members of police not to demand or accept bribes Section 165 on bribery of members of Tonga Police		<i>Public Procurement Regulations</i>	Regulation 71 on grounds for debarment	
	<i>Public Procurement Regulations</i>	Regulation 67 on conduct of Procurement Officers Regulation 71 on grounds for Debarment				
	<i>Electoral Act</i>	Section 21 on bribery Section 34 on votes to be struck off for bribery				
	<i>Anti Corruption Commissioner Act</i>	Section 65 on bribery of witness Section 71 on bribery of officer of Commissioner				
	<i>Bailiff Act</i>	Section 20 on bribery of bailiff officer				
	<i>Agricultural Commodities and Export Act</i>	Section 11 on Interfering with an Inspector Section 12 on offences of inspectors				
	<i>Intoxicating Liquor Act</i>	Section 75 on Officer taking bribe				
	<i>Manufacture of Intoxicating Liquor Act</i>	Section 7(3) on obstruction and bribery				
	<i>Act of Constitution of Tonga</i>	Clause 66 on threats and bribery				
	<i>Cabinet Manual</i>	Paragraph 90 on conflict of interest and corruption				

Public Sector Bribery				Private Sector Bribery		
Country	Legislation	Relevant Sections	Notes	Legislation	Relevant Sections	Notes
Tuvalu	<i>Electoral Provisions (Parliament) Act</i>	Section 41 Section 47	See case of Iosefa v Ielemia Case No.6/06. Persons to be deemed guilty of treating.	<i>Penal Code</i>	Section 367	Considered as misdemeanors and thus also reflect limitation in section 73 of the <i>Interpretation and General Provisions Act</i> which only extend liability to corporate entities but does not establish an offence of bribery of such persons.
	<i>Customs Revenue and Border Protection Act 2014</i>	Section 182				
	<i>Leadership Code Act</i>	Section 24	Applicable under section 85 of the <i>Penal Code</i> .			
	<i>Penal Code</i>	Section 26 Section 85-95	Applied in a case of assault (not corruption case). Third party rights are protected.			
Vanuatu	<i>Penal Code 1988</i>	Section 73(1) and (2)		Bribery in the private sector not criminalised.		
	<i>Leadership Code 1998</i>					
	<i>Representation of the Peoples Act 1982</i>		For bribes concerning votes.			

Country	Embezzlement by a Public Official			Embezzlement in the Private Sector		
	Legislation	Relevant Sections	Notes	Legislation	Relevant Sections	Notes
American Samoa	<i>American Samoa Code Title 46 Criminal Justice</i>	No specific crime for embezzlement by a public servant 46.4104 Embezzlement Stealing: 46.4104 Criminal Fraud: 46.4129	Class C Felony (0-7 years) Over \$100.00 – Class C Felony Through transactions with American Samoa Government a person obtains money by fraud. Class C Felony	Embezzlement provisions applicable to both the public and private sector.	Specific provisions for Food Stamps and WIC A.S.C.A. 46.4902	
Australia	<i>Criminal Code Act 1995</i>	Section 134.1 on obtaining property by deception Section 134.2 on obtaining a financial advantage by deception		<i>Corporations Act 2001</i>	Section 184(2) on dishonest use of position Sections 601FD(4), 601FE(4), 601UAA(1) and 601UAB(1) relating to the duties of company officers and employees	In addition, the <i>Corporations Act</i> includes a number of offences relating to the mishandling of client monies, falsification of books and fraud relating to insolvent companies or companies under administration.
Cook Islands	<i>Crimes Act 1969</i>	Sections 242, 244, 246 and 249 on embezzlement Other relevant provisions: • Sections 250, 251A and 255 on “crimes resembling theft” • Section 274 on fraud		Embezzlement provisions applicable to both the public and private sector.		
Federated States of Micronesia	<i>FSM Code 2014</i>	Sections 221 and 223 of Title 55 of the FSM Code (referred to as the <i>Financial Management Act of 1979</i>) Other provisions on theft, criminal mischief and unauthorised possession or removal of property also relevant.		<i>FSM Code 2014</i>	Addressed through provisions on theft and mischief.	
Fiji	<i>Crimes Act 2009</i>	Section 319		<i>Crimes Act 2009</i>	Sections 51-56 and section 319	For conduct that occurred after February 2010.
				<i>Prevention of Bribery Act 2007</i>	Section 9(2)	

Country	Embezzlement by a Public Official			Embezzlement in the Private Sector		
	Legislation	Relevant Sections	Notes	Legislation	Relevant Sections	Notes
Kiribati	<i>Penal Code 1977</i>	Section 121 on fraud and breaches Sections 251, 254-270 - general theft provisions Section 266 on larceny and embezzlement by clerks and servants Section 271 (1), (2) on conversion Section 299 on fraudulent falsification of accounts		Embezzlement provisions applicable to both the public and private sector.		
Nauru	<i>Crimes Act 2016</i>	Section 178(1) on abuse of public office Section 179 on embezzlement	Section 178 is relevant because it captures elements of embezzlement.	<i>Crimes Act 2016</i>	Section 154 on theft Section 155 on theft in fiduciary relationship	These two provisions are used to charge a person in the private sector who is suspected of committing an embezzlement offence.
	<i>Leadership Code Act 2016</i>	Section 14 on Code of Conduct Section 17 on undue influence	These 2 provisions are relevant as they capture to an extent elements which relate to embezzlement.	<i>Corporations Act 1972</i>	Section 214 on offences by corporations in liquidation Section 215 on fraud by officers	These provisions have some embezzlement elements considered under them.
New Zealand	<i>Crimes Act 1961</i>	Section 220 on theft by a person in a special relationship Section 229 on criminal breach of trust Section 240 on obtaining by deception or causing loss by deception		Embezzlement provisions applicable to both the public and private sector.		
Niue	<i>Niue Act 1966</i>	Sections 188, 191, 197, 200, 202, 203 and 227.	Definition of theft includes “misappropriating or disposing of or dealing in any other manner with” certain property. However theft is limited to movable things that are property of the person.	Embezzlement in the private sector not specifically criminalised.		
Palau	<i>Palau National Code (PNC)</i>	Sections 2301 and 2601(a)-(g) of Title 17 of the Palau National Code (PNC)	Theft and related offenses and offenses against property rights.	<i>Palau National Code (PNC)</i>	Chapters 23 and 26 (which include ss.2601(a)-(g)) also cover embezzlement in the private sector	
Papua New Guinea	<i>Criminal Code Act 1974</i>	Section 383A				

Embezzlement by a Public Official				Embezzlement in the Private Sector		
Country	Legislation	Relevant Sections	Notes	Legislation	Relevant Sections	Notes
Pitcairn Islands	<i>Fraud Act 2006 (UK); Theft Act 1968 (UK)</i>	See especially section 4 (Fraud by abuse of position)	UK Statutes of General Application apply, subject to local circumstances, by virtue of s 42 of the Pitcairn Constitution.	<i>Fraud Act 2006 (UK); Theft Act 1968 (UK)</i>	See especially section 4 (Fraud by abuse of position)	UK Statutes of General Application apply, subject to local circumstances, by virtue of s 42 of the Pitcairn Constitution.
	<i>Theft Act 1968</i>					
Republic of the Marshall Islands	<i>Criminal Code 2011</i>	Section 240.7 on embezzlement		<i>Criminal Code</i>	Section 224.14	Only covers "property that has been entrusted to such person as a fiduciary"
	<i>Ethics in Government Act 1993</i>	Section 1704(9) on embezzlement				
Samoa	<i>Crimes Act 2013</i>	Section 161 on theft Section 162 on theft special relationship Section 165 on penalties for theft (1, 2, 7, or 10 years) Section 170 on criminal breach of trust Section 171 on taking, obtaining, or copying trade secrets Section 172 on obtaining by deception		<i>Crimes Act 2013</i>	Sections 161, 162, 165	
Solomon Islands	<i>Penal Code 1963</i>	Section 91		<i>Penal Code 1963</i>	Section 374	Applies exclusively to agency cases.
	<i>Leadership Code (Further Provisions Act) 1999</i>					
Tokelau	<i>Crimes, Procedure & Evidence Rules 2003</i>	Rule 73 on abuse of office Rule 27 on theft (5)-(8) Rule 28 on receiving Rule 29 on conversion	There is no specific law on embezzlement but Rule 73 covers this offence.			

Embezzlement by a Public Official				Embezzlement in the Private Sector		
Country	Legislation	Relevant Sections	Notes	Legislation	Relevant Sections	Notes
Tonga	<i>Criminal Offences Act</i>	Section 53 on fraudulent conversion by government servant		<i>Criminal Offences Act</i>	Section 158 – Embezzlement Section 159 – Falsification of Accounts Section 162 – Fraudulent Conversion of Property Section 163 – Fraudulent conversion by trustee	
		Section 54 on false receipt issued by government servant				
	<i>Counter Terrorism and Transnational Organised Crimes Act</i>	Section 58 on embezzled or fraudulent obtaining of nuclear material				
	<i>Shipping Act</i>	Section 73 on the discharge and leaving behind of seamen				
	<i>Anti Corruption Commissioner Act</i>	Section 6 and schedule 2 on corrupt conduct				
	<i>Act of Constitution of Tonga</i>	Clause 75 on impeachment				
Tuvalu	<i>Penal Code</i>	Section 266	Only certain types of property are covered (see sections 250-251)	<i>Penal Code</i>	Section 252	Same limitation as in Public service
Vanuatu	<i>Penal Code 1988</i>	Sections 125(b), 126 and 128	Property is narrowly defined in the <i>Interpretation Act 1982</i> .	Embezzlement provisions applicable to both the public and private sector.		

Trading in Influence			
Country	Legislation	Relevant Sections	Notes
American Samoa	<i>American Samoa Code Title 46 Criminal Justice</i>	In addition to Bribery and Accessing to Corruption 46.4704 on official misconduct Public servant demands or receives fee or reward for execution of an official act.	
Australia	<i>Criminal Code Act 1995</i>	Section 142.2 on abuse of public office	See also bribery provisions.
Cook Islands	<i>Crimes Act 1969</i>	Section 116A on corrupt use of official information	This is in relation to abuse of functions.
Federated States of Micronesia	<i>FSM Code 2014</i>	Section 521	Trading in influence partially criminalised where conduct occurs with a view to influence a public official.
Fiji	<i>Prevention of Bribery Act 2007</i>	Sections 5(1) and 5(2)	
Kiribati	<i>Penal Code 1977</i>	Sections 85-87 and 366-369	Kiribati relies on the general bribery provisions to pursue cases of trading in influence. The abuse of "supposed influence" is not specifically covered.
Nauru	<i>Crimes Act 2016</i>	Section 173 on bribery Section 174 on giving or receiving other corrupting benefits Section 175 on bribery of foreign public officials Section 176 on bribery outside Nauru of foreign public officials Section 178(1) on abuse of public office	Nauru relies on general bribery to pursue cases of trading in influence. Section 174 applies to private sector as well as the provision is not specific to public service employees. See also relevant provisions from the <i>Leadership Code Act 2016</i> and <i>Public Service Act 2016</i> from the bribery table.
New Zealand	<i>Crimes Act 1961</i>	Section 105(2) and section 105F	
Niue		Trading in influence not specifically criminalised.	

Trading in Influence			
Country	Legislation	Relevant Sections	Notes
Palau	<i>Palau National Code (PNC)</i>	Sections 4101(a)(1) and (2) under Title 17 of the Palau National Code (PNC) and section 656 of Title 40 of PNC (provisions on bribery) Section 3918 of Title 17 covers offence of misconduct in public office.	Palau relies on general bribery and misconduct in public office provisions to pursue cases of trading in influence.
Papua New Guinea		Trading in influence not specifically criminalised.	
Pitcairn Islands		Trading in influence not specifically criminalised, but refer to offences under the bribery table.	
Republic of the Marshall Islands	<i>Criminal Code 2011</i>	Section 240.1 on active and passive bribery of public officials	RMI relies on general bribery provisions to pursue cases of trading in influence.
	<i>Ethics in Government Act 1993</i>	Section 1704 on passive bribery	Supposed influence is covered by section 240.1(2)(e) of the <i>Criminal Code</i> and through impersonating a public servant (s 241.9 of the <i>Criminal Code</i>).
Samoa	<i>Crimes Act 2013</i>	Section 169 on dishonestly taking and using documents Section 171 on taking or obtaining or copying trade secrets Section 172 on obtaining by deception or causing loss by deception	7 yrs imprisonment 7 yrs imprisonment 7 yrs imprisonment
Solomon Islands	<i>Penal Code 1963</i>	Section 91	But Statute omits the purpose that the person or public official exercises his or her "real or supposed influence" to obtain an undue advantage from an administration of public authority.

Trading in Influence			
Country	Legislation	Relevant Sections	Notes
Tokelau	<i>Crimes, Procedure & Evidence Rules 2003</i>	Rule 73 on abuse of office	There is no specific law on trading in influence but this offence can be also covered under rule 73 Abuse of Office.
Tonga	<i>Anti Corruption Commissioner Act</i>	Section 6 on corrupt conduct Schedule 2 on official misconduct including, breach of trust, fraud in office, misfeasance in public office, nonfeasance, malfeasance, oppression, extortion or imposition	
	<i>Cabinet Manual</i>	Paragraph 90 on conflict of interest and corruption	
Tuvalu	<i>Leadership Code Act</i>	Section 24	Limited to "solicited influence" (either by leader or official), which is only one type of bribery.
	<i>Penal Code</i>	Section 85	Active and passive bribery of persons employed in the public service is criminalised. The legislation requires that the act must have been done corruptly (with no clear definition of corruptly) and does not make any reference to acts of indirect bribery.
Vanuatu	<i>Penal Code 1988</i>	Sections 73 and 103B	
	<i>Leadership Code 1998</i>	Sections 22 and 23	

Abuse of Functions			
Country	Legislation	Relevant Sections	Notes
American Samoa	<i>American Samoa Code Title 46 Criminal Justice</i>	46.4704 on official misconduct Class A Misdemeanor 46.4705 on misuse of official information	Demands or receives fee or reward for execution of official act; pays over money for purpose other than purpose assessed. Uses official information to acquire pecuniary interest, wagers, or encourages others.
Australia	<i>Criminal Code Act 1995</i>	Section 142.2 on abuse of public office	
Cook Islands	<i>Crimes Act 1969</i>	Section 116 on active and passive bribery of public officials	See also additional provisions on general bribery.
Federated States of Micronesia	<i>FSM Code</i>	Section 512 on conflict of interest Section 513 criminalises break of post-employment restrictions Section 515 makes it a crime, among others, to speculate or wager on the basis of official action or information.	
Fiji			No references in UNCAC country report.
Kiribati	<i>Penal Code 1977</i>	Section 90	
Nauru	<i>Crimes Act 2016</i>	Section 178 on abuse of public office	See also relevant provisions from the <i>Leadership Code Act 2016</i> and <i>Public Service Act 2016</i> from the bribery table.
New Zealand	<i>Crimes Act 1961</i>	Section 105A relating to corrupt use of official information	Abuse of function is not otherwise criminalised as a separate offence. It may be caught under, for example, Section 240 (mentioned above) on obtaining by deception or causing loss by deception.
Niue		Abuse of functions not specifically criminalised.	
Palau	<i>Palau National Code (PNC)</i>	Section 3918 of Title 17	

Abuse of Functions			
Country	Legislation	Relevant Sections	Notes
Papua New Guinea	<i>Constitution</i>	Section 29	
	<i>Criminal Code Act 1974</i>	Sections 90 and 92	
	<i>Organic Law on the Duties and Responsibilities of Leadership</i>	Section 13	
Pitcairn Islands			There is a common law offence of misconduct in public office.
Republic of the Marshall Islands	<i>Criminal Code 2011</i>	Section 240.6	
Solomon Islands	<i>Penal Code 1963</i>	Section 96	
Tokelau	<i>Crimes, Procedure & Evidence Rules 2003</i>	Rule 73 on abuse of office	
Tonga	<i>Anti Corruption Commissioner Act</i>	Section 6 on corrupt conduct Schedule 2 on official misconduct including, breach of trust, fraud in office, misfeasance in public office, nonfeasance, malfeasance, oppression, extortion or imposition	
	<i>Cabinet Manual</i>	Paragraph 90 on conflict of interest and corruption	
Tuvalu	<i>Public Procurement Act</i>	Section 16	Links with prosecution under section 367 of the <i>Penal Code</i> , and as such, will be liable for a fine of \$10,000 if convicted.
	<i>Penal Code</i>	Section 90	Criminalises abuse of power but limited to arbitrary acts prejudicial to the rights of another Good practice- presumption of corrupt practices in section 369 of the <i>Penal Code</i> .
Vanuatu	<i>Leadership Code 1998</i>	Sections 22 and 23	

Money Laundering			
Country	Legislation	Relevant Sections	Notes
American Samoa	<i>No general money laundering statute</i>	46.4902. Money laundering involving food stamps	Administrative Malfeasance for conversion of public funds for food stamps. Class C Felony if more than \$100.00. Class A Misdemeanor less than \$100.00.
Australia	<i>Criminal Code Act 1995</i>	Division 400 on money laundering	
Cook Islands	<i>Crimes Act 1969</i>	Section 280A: <ul style="list-style-type: none"> S 280A(2)(a) - implements provisions on acquisition, possession or use of property S 280A(2)(b) - implements provisions on Conversion or Transfer of Proceeds of Crime S 280A(2)(c) - implements provisions on concealment or disguise of proceeds of crime S 280A(2)(d) - implements provisions on "aiding"; ss 68 and 72 (participation, abetting, counselling); s 334 (attempt); and s 333 (conspiracy) 	
Federated States of Micronesia	<i>FSM Code</i>	Section 918; see also s 903 for definitions	Some elements only comprised in one or the other section and therefore cause gaps and potential challenges in implementation.
Fiji	<i>Proceeds of Crime Act 1997</i>		
	<i>Crimes Decree 2009</i>	Sections 227-330	
Kiribati	<i>Proceeds of Crime Act 2003</i>	Sections 6, 12 and 13	
	<i>Penal Code 1977</i>	Sections 21-23 - Parties to the offences Sections 371-378 - Attempt and Conspiracies	

Money Laundering			
Country	Legislation	Relevant Sections	Notes
Nauru	<i>Anti-Money Laundering Act 2008</i>	Section 3 on offence of money laundering Section 4 on offence committed by a body corporate or unincorporated body of persons Section 5 on attempts; aiding and abetting; conspiracy	
	<i>Proceeds of Crime Act 2004</i>	The Act provides for the confiscation of the proceeds of serious offences	
	<i>Crimes Act 2016</i>	Section 165 on receiving Section 187 on using false document Section 188 on possessing false document Section 190 on false accounting	
New Zealand	<i>Crimes Act 1961</i>	Section 243-245. The relevant offences are in s 243.	
Niue	<i>Proceeds of Crime Act 1998</i>	Section 64 on money-laundering Section 65 on Possession of property suspected of being proceeds of crime	Money laundering defined as engaging in a transaction that involves proceeds of crime. Self laundering not criminalised.
	<i>Niue Act 1966</i>	Section 194: receiving stolen goods	
Palau	<i>Palau National Code (PNC)</i>	Section 33 of Title 17 on criminalises offence of money-laundering	
	<i>Money Laundering and Proceeds of Crime Act 2001</i>		Covers investigation of money laundering. Section 4(g) of MLPC defines a "crime" or "predicate offence" to be any act committed in Palau that is a felony, or any act committed abroad, which constitutes an offence in that country and could have constitutes a felony had it occurred in Palau.
Papua New Guinea	<i>Criminal Code Act (1974)</i>	Sections 508A - 508G	The offence of money laundering under ss 508B and 508C can be a standalone charge without charging a predicate offence.

Money Laundering			
Country	Legislation	Relevant Sections	Notes
Pitcairn Islands	<i>Proceeds of Crime Act 2002 (UK)</i>	Part 7	UK Statutes of General Application apply, subject to local circumstances, by virtue of s 42 of the Pitcairn Constitution.
Republic of the Marshall Islands	<i>Banking Act 1987</i>	Section 166 – but only penalises a person who "renders assistance" to the conversion or transfer of property and to concealing or disguising the true nature, origin, location, disposition, movement or ownership of such property Sections 166(1)(b) and (3) – together with CC provisions broadly cover "participatory acts"	Banking Act uses a "serious offence" threshold approach for predicate offences where "maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months", which includes most UNCAC offences.
	<i>Criminal Code 2011</i>	Sections 2.06, 5.01 and 5.03 – together with Banking Act provisions broadly cover "participatory acts"	
Solomon Islands	<i>Money Laundering and Proceeds of Crime Act 2002</i>	Section 17- Offence to convert, transfer, acquire, possess, use, conceal or disguise the true nature, origin, location, disposition, movement or ownership of any property or proceeds of any property, knowing or having reasonable grounds to believe or suspect that all or part of the property or proceeds was obtained or derived from the commission of an offence Subsection 17(4) - Offence to attempt, facilitate, aid and abet, conspire, counsel, procure or incite another person to commit money-laundering	Statute does not designate predicate offences, but applies to all proceeds of crime.
Tokelau	<i>Crime, Procedure & Evidence Rules 2003</i>	Rule 31 on fraud	There is no specific law on money laundering but this offence can be addressed under Fraud.
Tonga	<i>Money Laundering and Proceeds of Crime Act</i>	Section 17 on money laundering	
	<i>Counter Terrorism and Transnational Organised Crimes Act</i>	Section 37 on detention of goods suspected to be terrorist property	
	<i>Mutual Assistance in Criminal Matters Act</i>	Section 6 on mutual legal assistance requests by Tonga	

Money Laundering			
Country	Legislation	Relevant Sections	Notes
Tuvalu	<i>Proceeds of Crime Act</i>	Sections 13-16	Tuvalu follows 'serious offences' approach only offences subject to a maximum penalty of 12 months imprisonment or more qualify as predicate offences. 'Proceeds of crime' definition poses a challenge as it does not specify whether a person can be charged both with a predicate crime and the money laundering offence.
Vanuatu	<i>Proceeds of Crime Act 2012</i>	Section 11 See sections 28 to 35 for participation and attempt	

This Annex contains the original survey questionnaire sent to Pacific Prosecutors.

ANNEX 2: Survey questionnaire on Pacific country experiences in prosecuting corruption

The PILON Corruption Working Group is surveying PILON Member Countries on their experiences in prosecuting corruption. The survey will be used to better understand the key challenges and issues faced in prosecuting corruption in the region. Key regional level findings may be included in materials published by the Working Group, however individual country answers will not be published.

You will not be asked to identify your country in your answers.

Thank you for taking the time to complete this survey. This survey should only take about 10 minutes of your time.

Any questions marked with an asterisk (*) require an answer in order to progress through the survey.

Part 1: Frequency and Success of Prosecuting Corruption

Q1. How many corruption related offences has your country prosecuted in the past 5 years*?

- None
- < 5
- 5-10
- 11-20
- More than 20

Q 2. In what proportion of these cases, did the prosecution result in a corruption offence related conviction*?

- None were successful
- 1-25%
- 26-50%
- 51-75%
- 76-99%
- 100%
- N/A

Part 2: Specific Corruption Offences

Bribery: The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations, favours etc.).

Embezzlement: When a person holding office in an institution, organisation or company dishonestly and illegally appropriates, uses or traffics the funds and goods they have been entrusted with for personal enrichment or other activities.

Trading in Influence: Using one's influence in government or connections with persons in authority to obtain favours or preferential treatment for another, usually in return for payment.

Abuse of Functions: Performance of or failure to perform an act, in violation of the law, by a public official for the purpose of obtaining an undue influence.

Money Laundering: The process of concealing the origin, ownership or destination of illegally or dishonestly obtained money by hiding it within legitimate economic activities to make them appear legal.

Q3. Please rate, on a scale of 1 to 5, the frequency in which the following types of corruption offences occurred in your jurisdiction in the past 5 years:
(1 = Least frequent to 5 = Most frequent)

Corruption Offence	Frequency of occurrence in your jurisdiction
Bribery	
Embezzlement	
Trading in Influence	
Abuse of Functions	
Money Laundering	
Other (please specify)	

Q4. Please rate, on a scale of 1 to 5, the frequency in which the following types of corruption offences were referred for prosecution in your jurisdiction in the past 5 years:
(1 = Least frequent to 5 = Most frequent)

Corruption Offence	Frequency of prosecution in your jurisdiction
Bribery	
Embezzlement	
Trading in Influence	
Abuse of Functions	
Money Laundering	
Other (please specify)	

Part 3: Key Challenges and Lessons Learnt

Q5. In your opinion, what are the key reasons for why more corruption cases have not been prosecuted? (open answer)

Q6. For prosecutions that did move forward, what were some of the challenges encountered by prosecutors during these cases? (eg evidentiary issues, witnesses, inter-agency cooperation, courts and court processes)(open answer)

Q7. What lessons learnt can you share? (open answer)



Level 6, Tatte Building
Sogi, Apia, Samoa
www.pilonsec.org

