

NATIONAL INTEGRITY SYSTEM (NIS) ASSESSMENT



ACKNOWLEDGMENTS

Within the Kingdom of the Netherlands, Aruba was the sole country for which a National Integrity Assessment study had not yet been carried out. For this very reason the Foundation Good Governance Aruba (SDBA), with the assent of the Government of Aruba, initiated such a NIS Aruba study. A baseline measurement on the functioning of central institutions in practice is a prerequisite to start any improvement trajectories. Approximately AWG 200.000,- was needed to cover the costs for the analysis itself and the corresponding travel, accommodation and printing costs. Funding for the NIS Aruba was therefore sought and collected. The generous contributions by the Aruba Bank, the Caribbean Mercantile Bank, the Central Bank of Aruba and the VNO (Vertegenwoordiging van Nederland Overzee) covered half of the funding needed. The Government of Aruba financially contributed to this NIS Aruba study by providing remainder funding from the FDA Fund. Besides that, the Government approved civil servants working for the various departments to cooperate with the NIS research team by means of an interview.

Both SDBA, who ordered the NIS Aruba study and the NIS research team would like to thank all those who contributed to this report, and in particular: those who were interviewed by the NIS Aruba researchers, some of whom have asked to remain anonymous. All of the interviewees have offered valuable insights into their institutions and the integrity system as a whole and spent quite some time on discussing integrity and corruption in Aruba. We are grateful that Prime-Minister Wever-Croes accepted our invitation to talk to us. A special word of gratitude goes to the University of Aruba, more in particular the Centre for Lifelong Learning and the Faculty of Arts and Science and lecturers and students from the bachelor Organization, Governance and Management.

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Interviewees:

A full list of persons who have been interviewed can be found in the Annex.

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SYSTEM (NIS) ASSESSMENT**



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Oranjestad, 30th of March 2022

Our reference: MTINO/NIS-001

Subject: Letter of appreciation

Esteemed National Integrity System Group,

It is a prime goal and responsibility of the Government to establish rule of law, secure fundamental human rights, and ensure equality of opportunity and dispensation of economic and social justice.

Therefore, the Ministry of Transport, Integrity, Nature & Senior affairs is developing the Aruba Integrity Strategy (AIS) 2022-2025. The AIS 2022-2025 is the high-level commitment of the Government of Aruba to promote integrity, transparency, accountability, and to prevent and tackle integrity fails.

Towards this end, the State takes appropriate measures to promote good governance. A national strategy for emancipation of the state and the society is essential for realizing the vision.

In the preparation of this Strategy, all available documents will be consulted. Towards this end, the National Integrity System report 2022 (NIS ARUBA 2022) report will also be consulted.

The Minister of Transport, Integrity, Nature & Senior affairs extends his sincere thanks to the NIS report group for the NIS Aruba 2022 report. The NIS Aruba 2022 report has collected suggestions and valued opinions of different ministries, stakeholders, government officials, different professional bodies, civil society organizations and citizen groups and provided practical recommendations. Therefore, the NIS Aruba 2022 report provides helpful insights in the preparation and implementation of the AIS 2022-2025.

Respectfully,

Ursell Arends
Minister of Transport, Integrity,
Nature & Senior affairs

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ABOUT THE NATIONAL INTEGRITY SYSTEM (NIS) ASSESSMENT

The NIS assessment approach used in this report provides a framework to analyze the effectiveness of Aruba's institutions in preventing and fighting corruption and in fostering transparency and integrity. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sectors, the media, and civil society (the "pillars" as represented in the NIS-model below). The concept of the NIS has been developed and promoted by the international anticorruption NGO, Transparency International, as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.

A NIS assessment is a powerful advocacy tool that delivers a holistic picture of a country's institutional landscape with regard to integrity, accountability and transparency. A strong and functioning NIS provides effective safeguards against corruption and acts as a guarantor of accountability. However, when the institutions are characterized by a lack of appropriate regulations and by unaccountable behavior, corruption is likely to thrive, with negative knock-on effects on important goals such as good governance, sustainable development and quality of life. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the NIS promotes

better governance across all aspects of society and, ultimately, contributes to a more just society.

Definitions

The following definition of corruption is used by Transparency International:

The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.¹

"Grand corruption" is defined as "Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good". "Petty corruption" is defined as "Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies". "Political corruption" is defined as "Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth".² Integrity is a broader concept which goes beyond the mere absence of corruption and can best be described as "morally accepted behavior". This can be understood as good governance or the accepted use of power. While corruption is considered to be a criminal act, not all integrity violations are of a criminal nature.

Objectives

The key objectives of the assessment of Aruba's NIS are to generate:

- an improved understanding within the anti-corruption community and beyond of the
- strengths and weaknesses of Aruba's NIS momentum among key anti-corruption stakeholders in Aruba for addressing priority areas in the NIS



1 Transparency International, The Anti-Corruption Plain Language Guide, (Transparency International, 2009), p.14.

2 Transparency International, 2009: 23, 33, 35.

The primary aim of the assessment is therefore to evaluate the effectiveness of Aruba’s institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action within the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Aruba to advocate for sustainable and effective reform.

Methodology

Transparency International’s methodology, the National Integrity System (NIS), is to a large extent a qualitative research tool based on a combination of desk research (primary and secondary literature) and approximately 70 interviews.³ The interviews were held with persons either active within a pillar or with a proven record of expertise in monitoring of or working with one or more of them. For each pillar or part thereof a qualitative judgment is given to help bring to the forefront both the strong points as well as those requiring attention. The NIS is formed of 13 pillars representing all key public and private institutions in a country’s government system. The Aruba NIS report addresses 12 pillars. The anti-corruption agencies are officially absent in Aruba.

Government	Public sector	Non-governmental
<ul style="list-style-type: none"> • Legislature • Executive • Judiciary 	<ul style="list-style-type: none"> • Public Sector • Law Enforcement Agencies • Electoral Management Body • Ombudsman • Supreme Audit Institution 	<ul style="list-style-type: none"> • Media • Civil Society • Political Parties • Business

Each of the 12 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence;
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent and accountable and act with integrity;
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfill their assigned role with regard to preventing and fighting corruption.

Each dimension is measured by a set of indicators. For every dimension the assessment examines both the legal framework of each pillar and the actual institutional practice. When assessing compliance, discrepancies between formal provisions and reality in practice will become transparent.

Dimension	Indicators (law and practice)
Capacity	<ul style="list-style-type: none"> • Resources • Independence
Governance	<ul style="list-style-type: none"> • Transparency • Accountability • Integrity
Role	<ul style="list-style-type: none"> • Pillar specific indicators

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks a broad overview covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritize areas for reform.

3 List of all interviewees can be found in the Annex

In order to take account of important contextual factors, the evaluation is embedded in an analysis of the overall political, social, economic and cultural conditions, referred to as the “foundations” in which the pillars operate and on which the entire integrity system is established.

Limitations

The NIS methodology is designed to produce a comprehensive study, although adaptations can be made for every country’s specific situation such as scale, time and budget limitations.

The Aruba assessment faced additional limitations because of the small scale of its society, its limited academic tradition and lack of extensive country or pillar data. The NIS research team did come across references to pieces of (new) legislation. However not all of the pieces of legislation were easily and publicly available when finalizing the research in January 2022. The research team invites stakeholders and counterparts, after this NIS Aruba becomes digitally available, to submit (legislation and documents) to enhance the follow-up of the NIS study.

Additionally the restrictions in terms of field work due to the COVID-19 pandemic and due to the initial pillar experts’ hesitancy to contribute in the form of an interview. The NIS researchers therefore had to conduct interviews via on-line communication channels. Laws and practices change and therefore the NIS Aruba report is a description and analysis of the country’s state of affairs at a certain moment in time. COVID-19 has caused unprecedented disruption to Aruba’s economic activity, triggering Aruba’s deepest recession in history, but also led to a swift policy response. The coming years will be all about significant policy changes needed to receive the financial and fiscal support from the Dutch government. Striving for good governance and eradicating corruption will be a prerequisite.

In most countries Transparency International, in conducting the assessment, makes use of local organizations or national chapters. Aruba does not have such a chapter and therefore the assessment could not benefit from the support of such an in-country organization. The SDBA, which has ordered the

NIS Aruba research, is the most active Civil Society Organization (CSO) in the field of anti-corruption. However, to ensure an impartial and independent NIS Aruba report, the researchers have taken on a restrictive approach in using the SDBA’s reports as a source for this NIS study. The researchers have tried to use other objective sources of information and decided to interview additional pillar experts to ensure a double-check of the data collection and to cover the broadness of the NIS as a whole. Despite these limitations, this report is seen as an important contribution to positive change in the transition process Aruba is undergoing.

CORRUPTION PROFILE

Existing research on corruption and integrity

The recent corruption research carried out in Aruba is done by watchdog institutions such as the Central Bank of Aruba (CBA) and the civil society organization Stichting Deugdelijk Bestuur Aruba (SDBA).

Several international organizations, such as Transparency International, frequently execute surveys on the perceived level of corruption in specific countries. As Aruba is not part of these international surveys, and important data on corruption is not available, the CBA decided to conduct a corruption survey, using the same methodology and questions applied by Transparency International in its Corruption Perception Index and added some questions related to Aruba's own situation. By means of this annual survey, the CBA aims to acquire valuable information on the experience and perception of Aruban residents with regard to corruption and gain insight on possible remedial actions and/or effective measures to counteract this phenomenon.

Up till now three of such corruption surveys have been carried out (2018, 2019, 2020). In 2020 a total of 1,236 residents participated in this survey.⁴ The 2020 Central bank of Aruba's annual survey revealed 94% of respondents believed corruption was "widespread", up from 81% in 2019 and 76% in 2018. The percentage of people who paid a bribe, favor or gift doubled from 3 percent in 2019 to 6 percent in 2020.⁵ The overall key findings are⁶:

- Widespread and increasing corruption as said by the majority of survey respondents.
- Government seen as doing badly in fighting corruption as stated by three-quarter of respondents.
- Corruption acts considered unacceptable by on average 95 percent of respondents.
- Higher bribery rate compared to previous corruption surveys.
- Rise in the share of respondents who knew someone who paid a bribe compared to previous corruption surveys.

- Reporting corruption stated as the most effective thing that ordinary people can do to fight corruption by almost half of respondents.
- Enacting a whistleblowing policy within the public sector perceived to be the most important measure to mitigate corruption.
- Public Prosecutor's Office and Bureau Integrity Aruba seen as the two top organizations that should lead in fighting corruption.

When respondents were asked about who should lead the effort to combat corruption, the answer given most often by survey respondents was the Public Prosecutor's Office. Noticeably, Bureau Integrity Aruba is the second most selected answer, indicating the high expectation of the respondents with regard to this relatively new organization. NGOs were considered to be the least logical actor to lead the fights against corruption.⁷

When asked about the most important measures to mitigate corruption, respondents provided the following answers:

- 16 percent answered: the enactment of a whistleblowing policy within the public sector.⁸
- 14 percent answered: implementing a code of conduct for ministers, Parliament members and civil servants.
- 13 percent answered: delegating the hiring of civil servants to the respective departments with an oversight committee.
- 12 percent answered: implementing a policy for dealing with conflict of interest in the public sector, including the disclosure of business and financial interests of public officials.
- 11 percent answered: introducing two separate elections, i.e., one for electing the prime minister of Aruba and one for electing the members of Parliament.

The concluding remarks of the CBA in its 2020 Corruption Survey point at the crucial role played by the government when trying to eradicate corruption.

4 Central Bank of Aruba (2021). Report Corruption Survey 2020.

5 Ibid. p.7

6 Ibid. p.2

7 Ibid. p.11

8 Ibid. p.10

The CBA also underlines the importance of working together as a community in the fight against corruption.

“Fighting corruption should, therefore, be one of the top priorities of the government of Aruba (GoA), because corruption has negative consequences for all economic actors, the whole economy, and society in general. For instance, corruption affects negatively the drivers of (inclusive) economic growth, influences negatively income equality, discourages financial development, weakens tax base, debilitates public finances, and undermines outcomes in, e.g., education and health. The CBA acknowledges steps taken by the GoA but more decisive steps need to be taken to effectively and measurably achieve a major reversal in the current systemic corruption problem in the public sector.

One precondition for terminating corruption in Aruba is by building a community that is resistant to corruption. This could be achieved by, among others, promoting a whole-of-society culture of integrity, and educating everyone on how to prevent and deter corruption from occurring in the future, but also by creating the conditions necessary for ordinary people to report corruption when they see or hear about it without fearing the negative consequences of doing so.”⁹ SDDBA is an NGO seeking to strengthen the integrity of the public sector and good governance in general in Aruba, by providing objective information by various means, including conferences and short information clips on YouTube and solid reports. Whereas the CBA carries out surveys, the SDDBA’s reports are based on media coverages, local court (GEA) and appeal courts (GHJ) orders and reports by official institutions. Several reports have been made publicly available between the year 2001 and 2020.

Corruption Cases

The CBA Corruption Survey was first carried out in 2018, following the corruption scandals regarding former minister of Labor P. Croes. Decades before, rumors of alleged corruption could be heard which concerned the various governments and ministers from the major political parties.

Ibis

This case started in 2017 when the National Police Force,

the Special Police Force Aruba and the Special Police Task Force conducted investigation into irregularities surrounding permit issue, financial embezzlement, corruption and other felonies committed by former labor Minister P. Croes, being the head of a criminal organization. Initially Croes firmly denied the accusations, but after numerous testimonies it appeared that he was structurally bribed in several cases, mostly related to the informal issuing of labor permits to foreign workers. Furthermore Mr. Croes was convicted for defrauding with a personal foundation. Initially Mr. Croes was convicted to four years of imprisonment, in appeal this was reduced in to three years. Additionally Mr. Croes is banned from active political activities for 9 years. Mr. Croes testified that his activities were common procedure in Aruba.

Ostrich (Avestruz)

This case started in 2018 when the National Police Force, the Special Police Force Aruba and the Special Police Task Force conducted investigation into irregularities surrounding government land and long lease rights, committed by former Minister B. Sevinger who allegedly money laundered bribes received. Several other persons are involved in the investigations, among which real estate agents and business people. The period involved stretches from 2009 until 2017, after Mr. Sevinger lost elections and had to give up his position in office. Mr. Sevinger denies allegations and claims prosecution is a political trial. Mr. Sevinger was detained in national prison (KIA) when he was elected for Parliament. After fighting his detention in court, Mr. Sevinger was released to await start of the trial procedure. Unclear is when Public Prosecutor Office starts trial procedure.

Flamingo

This case started in 2019 when the Special Police Force Aruba and Special Police Task Force conducted investigation in illegitimate issue of land and acts of corruption in the period 2017-2019 by former Minister O. Oduber, public officials and business entities. Two house searches took place in 2019 and 2020. Although investigations are ongoing, it is unclear if Oduber is also suspect in corruption allegations regarding Serlimar LLC (integrity issues related to landfill Parkietenbos), of which he was responsible as a Minister in the cabinet EWC I. Mr. O. Oduber denies all allegations.

⁹Ibid. p.12

FOUNDATIONS

Country profile

Aruba is a relatively small Caribbean island – measuring 180 square kilometers (69.5 square miles) – located on the South-American continental shelf in the Caribbean Sea, 23 kilometers north of the Paraguaná peninsula of the Venezuelan state of Falcón. It belongs to the so-called ABC-islands of the Lesser Antilles (Aruba, Bonaire and Curaçao) and is an autonomous country within the Kingdom of the Netherlands. Aruba has a population of 107,204 inhabitants (United Nations data, July 2021).¹⁰ The average age of its residents is 39.9 years.¹¹ Aruba's capital city is Oranjestad, which also is the largest city in the country due to its approximately 30,000 inhabitants. The country Aruba has a length of 30 and a width of 9 kilometers, is divided into eight districts – see the image below – and has a population density of an average of 593.144 inhabitants per square kilometer (2020).¹²



Regions of Aruba¹³

The island is quite arid with little of the lush tropical vegetation common in the Caribbean. Characteristics of the weather and climate in Aruba are the low temperature differences all year round, relatively little rainfall and a lot of sun. The average temperature throughout the year is 28 °C.¹⁴ The so-called rainy season runs from late October into the beginning of January, while hurricane season runs from June to November. Aruba is a constantly windy island; tropical storms however rarely hit Aruba.¹⁵

The official currency in Aruba is the Aruban florin – introduced in 1986, which was the year that Aruba acquired the so-called separate status within the Kingdom of the Netherlands. The Aruban florin is related to the exchange rate of the US dollar, which also is a legal tender in Aruba.

The COVID-19 pandemic affected Aruba since 2020, but until then Aruba could be regarded as a prosperous country with one of the highest GDP's – gross domestic product – in the Caribbean.¹⁶ The country also had one of the highest standards of living in the Caribbean area, with a low unemployment rate and well-paid jobs which, inter alia, contributed to an increasing level of immigration and refugees – mostly from Venezuela, due to the economic and political crisis. Although Aruba can be considered a prosperous country, it should also be noted that its structural increase in national debt is, to say the

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- 10 United Nations 2021, 'United Nations World Population Prospects', worldpopulationreview.com (search for: Aruba), accessed on 14-10-2021. <https://worldpopulationreview.com/countries/aruba-population>
 - 11 IndexMundi 2021, 'Aruba Demographics Profile', www.indexmundi.com (source: CIA World Factbook), accessed on 14-10-2021 (search for: Aruba). https://www.indexmundi.com/aruba/demographics_profile.html
 - 12 World Bank 2020, 'Population density (people per sq. km of land area) – Aruba', World Bank 2020, data.worldbank.org (source: World Bank population estimates 2020), verkregen op 14 October 2021. <https://data.worldbank.org/indicator/EN.POP.DNST?locations=AW>
 - 13 Image source: <https://en.populationdata.net/maps/aruba-regions/>
 - 14 Weersvoorspelling Aruba 2021, 'Weersvoorspelling Aruba', weersvoorspelling.nl (search for: Aruba), accessed on 14-10-2021. <https://www.weersvoorspelling.nl/weer-aruba/aw>
 - 15 Tripadvisor 2016, 'Aruba weather and when to go', tripadvisor.com (search for: Aruba), accessed on 16-6-2021. <https://www.tripadvisor.com/Travel-g147247-s208/Aruba:Caribbean:Weather.And.When.To.Go.html>
 - 16 International Monetary Fund 2019, 'World Economic Outlook October 2019', gfmag.com (search for: world's richest and poorest countries / World Inequality Database 2019), accessed on 16-6-2021. <https://www.gfmag.com/global-data/economic-data/worlds-richest-and-poorest-countries>

least, worrying (see: Socio-economic foundations). About 62% of the Aruban population aged 15 to 75 had paid work in 2016. Although unemployment slightly increased before COVID-19, it was relatively low compared to other Caribbean countries (8.9% in 2017).¹⁷ In 2019, Aruba had an average per adult national income of USD 57,808.¹⁸ However, there was – and still is – a considerable income inequality in Aruba. While a large group has little or no income, a small elite has high incomes.¹⁹

Furthermore, Aruba is known for having one of the highest levels of education in the Caribbean. The educational system is organized along similar lines as the system in the Netherlands and pursues the corresponding high standards. It should be noted, however, that the quality of education in Aruba is being called into question. Critics say the educational system is outdated. Furthermore, there are concerns about corruption putting a strain on the quality of education and, related to this, more noticeable class distinctions.²⁰ The Aruban educational system provides education for approximately 22,000 students in over 80

schools at all levels, from primary education – in small classes – to tertiary education.²¹ The literacy rate of the population of Aruba – almost 98% percent in 2018 – is relatively steady and high compared to the world adult and youth literacy rate as well as the adult and youth literacy rate of the Caribbean region.²² Within the Aruban population, the secondary educated are in the majority (62 percent in 2016). The low-educated are the second largest group (in 2016 about a quarter of the population), followed by the highly educated (in 2016 about a sixth of the population).²³

Four languages are used by the population in Aruba: Papiamentu – as the general mother tongue, colloquial language and national language – English, Dutch and Spanish. In 2003 Papiamentu was introduced as an official language in Aruba, in addition to Dutch.²⁴ Papiamentu (69%) and Spanish (14%) are the most commonly used languages in Aruba.²⁵ In San Nicolas, English is the most commonly spoken language.²⁶

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- 17 Centraal Bureau voor de Statistiek 2019, 'Statistische Trends Beroepsbevolking op de Nederlands-Caribische eilanden', cbs.nl, accessed on 6-5-2021. <https://www.cbs.nl/nl-nl/longread/statistische-trends/2019/beroepsbevolking-op-de-nederlands-caribische-eilanden> and: SEO Economisch Onderzoek 2019, 'Kerncijfers Caribisch deel koninkrijk', tweedekamer.nl, p. 3, accessed on 15-10-2020. https://www.tweedekamer.nl/sites/default/files/atoms/files/kerncijfers_koninkrijk_definitief_19022019.pdf
- 18 World Inequality Database 2019, 'Aruba', wid.world, accessed on 22-10-2020. <https://wid.world/country/aruba/>
- 19 The Gini coefficient is a value between 0 and 1. The higher the number, the more unequal a society is. In 2016, Aruba had a Gini Coëfficiënt of 0,42 (CBS 2016): similar to that of the other Caribbean parts of the Kingdom of the Netherlands. See: SEO Economisch Onderzoek 2019, 'Kerncijfers Caribisch deel koninkrijk', tweedekamer.nl, p. 30, accessed on 15-10-2020. (https://www.tweedekamer.nl/sites/default/files/atoms/files/kerncijfers_koninkrijk_definitief_19022019.pdf)
- 20 Multiple respondents interviewed on behalf of this NIS-study expressed these concerns.
- 21 Departemento di Enseñansa Aruba 2021, 'Onderwijssysteem Aruba', ea.aw, accessed on 6-5-2021.
- 22 Arubademographics 2021, 'Education', arubademographics.com, accessed on 6-5-2021. <https://arubademographics.com/chapters/education/>
- Class size is an important aspect of the quality of education, see: Economisch Bureau Amsterdam 2020, 'Kleine eilanden Grote uitdagingen' (commissioned by the Tweede Kamer of the Netherlands), tweedekamer.nl, accessed on 6-5-2021, p. 30. https://www.tweedekamer.nl/sites/default/files/atoms/files/rapport_-_kleine_eilanden_grote_uitdagingen_-_eba_-_13052020.pdf
- 23 Centraal Bureau voor de Statistiek 2019, 'Statistische Trends Beroepsbevolking op de Nederlands-Caribische eilanden', cbs.nl, accessed on 6-5-2021. <https://www.cbs.nl/nl-nl/longread/statistische-trends/2019/beroepsbevolking-op-de-nederlands-caribische-eilanden>
- 24 Ons Erfdeel 2008, 'Op de Antillen en Aruba is Nederlands een vreemde taal', dbnl.org, accessed on 7-5-2021. https://www.dbnl.org/tekst/_ons003200801_01/_ons003200801_01_0011.php
- 25 Rabobank 2014, 'Country report Aruba', economics.rabobank.com, accessed on 7-5-2021. <https://economics.rabobank.com/publications/2014/june/country-report-aruba/>
- 26 The reason for this lies in the 1920's when the Lago refinery – owned by Standard Oil, an American company – was particularly eager to hire English-speaking workers.

(Political) history

In 1499 Aruba was discovered by Alonso de Ojeda, a Spanish explorer (conquistador) and conquered by the Spanish. In 1636, during the so-called Eighty Years' War, the Netherlands conquered Aruba from Spain on behalf of the Dutch West India Company (WIC). The WIC designated Aruba as a livestock plantation for food supply for Curaçao. Since 1636, apart from a small number of years of occupation by England, France and Venezuela, the island has been part of the Kingdom of the Netherlands. Although slavery in Aruba has had a less pronounced impact than in most other occupied Caribbean islands – due to its dry climate and therefore its unsuitability for the exploitation of plantations – the country certainly has a history of slavery. Original inhabitants were transported as slaves to other parts of the Caribbean by the Spanish and, during the WIC-period, the Dutch brought African slaves to land to strengthen and for resale. After the discovery of gold at the beginning of the 19th century, slaves were used as a labor force in gold mining in Aruba. After the abolition of slavery in 1864 the former slaves, as free people, often continued to do the same work.

The organization of governance of Aruba has been shaped in different ways over the centuries. For example, at the beginning of the nineteenth century, the island was controlled from Paramaribo together with the colony of Suriname. In the mid-twentieth century, the colonial status came to an end when the Netherlands Antilles, a Dutch island federation which also included Aruba, and Suriname were officially recognized as independent countries within the kingdom. This new constitutional structure was laid down in the Statute for the Kingdom of the Netherlands in 1954.²⁷ The Statute embodies the formalization of the postcolonial relationship between the European and Caribbean parts of the kingdom. After decades of increasing desire for independence within – or even separation from – the kingdom, the island on January 1st 1986 acquired autonomy (the so-called status aparte) within the kingdom. On that date Aruba was separated from the Netherlands Antilles and acquired the status of an independent and autonomous country within the kingdom. As of 1986

the country conducts its internal affairs autonomously. For a period of 24 years the Kingdom of the Netherlands consisted of three countries: the Netherlands, the Netherlands Antilles and Aruba. On October 10th in 2010, the Netherlands Antilles were dissolved and Curaçao and Sint Maarten continued as autonomous countries within the Kingdom. Simultaneously, the status aparte of Aruba ended and the BES-islands - Bonaire, Sint Eustatius and Saba - in 2010 received the status of public bodies within the country of the Netherlands. Until 1986, the island – as a part of the Netherlands Antilles - fulfilled tasks that were comparable to those of a Dutch municipality. As of January 1st, 1986 the Aruban government had to fulfill the former duties of the Antillean government itself; therefore country tasks such as health care, higher education, police and social security were added.²⁸ Aruba thus acquired a high degree of internal autonomy, excluding matters such as the defense of the kingdom, foreign affairs and regulations on Dutch nationality.²⁹ However, even after the obtained status aparte a certain degree of systematical interference and conditions imposed by the Kingdom Council of Ministers (Rijksministerraad) and the Netherlands has remained.

Because of the obtained status aparte, Aruba since 1986 has its own Parliament – the 'Staten' – and its own governor (representative of the king). The government is formed by the ministers and the governor. Once elected, the twenty-one members of Staten indirectly elect the Prime Minister, also for a four year term. The political system of Aruba can be defined as a parliamentary democracy, in which power rests with the government (consisting of the governor and ministers), the ministers and Parliament. Aruba solely has a central government, which means that the country has just one government layer. As described, the country consists of eight regions – these regions have their own government offices, yet they are not municipalities.

Political-institutional foundations

Aruba's legal framework guarantees fundamental democratic processes. However, not all of these provisions are applied effectively and/or as intended in practice.

27 State Gazette of the Kingdom of the Netherlands (Staatsblad), 1954, no. 503.

28 Weenink e.a. 2011, De staat van bestuur van Aruba (WODC), p. 71.

29 Article 3 of the Statute for the Kingdom of the Netherlands (Statuut voor het Koninkrijk der Nederlanden)

Civil liberties

The constitution of Aruba (Staatsregeling van Aruba – StregAr) provides civil rights for every citizen in Aruba (chapter I). The right to seek redress in case of violation of their rights with an independent judicial institution is provided in article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms; as of January 1st 1986 this treaty also applies to Aruba.³⁰ In general, citizens can seek redress by seeking judicial protection.

Although several studies have been conducted into the extent to which political and civil rights are guaranteed in different countries, little or no explicit distinction is made between the four different countries within the Kingdom of the Netherlands. Whether this is due to the Kingdom's overall responsibility for human rights compliance on all six Caribbean islands³¹ or to the scale of the country of Aruba, the Kingdom usually is considered as a whole in studies. Therefore no actual or only partly concrete conclusions can be drawn with regard to the specific situation in the individual countries, with the exception of the Netherlands itself.³² For example, the most recent study by Freedom House (2021) concluded that 'the Netherlands' should be

awarded an almost maximum score - 98 out of 100 points. The maximum score (40 out of 40) has been awarded for the political rights-aspect. According to the 2020 study, the deduction on the civil liberties-aspect is attributable to the inadequate housing and asylum procedures for Venezuelan refugees who have fled to the countries in the Caribbean part of the kingdom.³³ Thousands of Venezuelan refugees were refused any kind of permit to stay and many have been expelled on a regular basis or kept in long-term detention with little perspective of their asylum application being properly processed. Nowadays, Aruba is keeping its border with Venezuela closed since May 2019 owing to Venezuela's economic and political crisis.³⁴ Although Curaçao – due to its location – has an even larger influx of Venezuelan refugees, there are about 12,000 to 16,000 living in Aruba according to unofficial estimates.³⁵ The lack of proper asylum procedures has led to criticism by the Netherlands Red Cross, but also by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³⁶ Since 1986, when Aruba became an autonomous country within the Kingdom, the UN Convention relating to the status of refugees (Genève 1951) also applies to this country.³⁷

30 Verdragenbank 2021, 'Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden' (see: Koninkrijk), verdragenbank.overheid.nl, accessed on 7-5-2021. <https://verdragenbank.overheid.nl/nl/Treaty/Details/005132.html>

31 Freedom House 2021, 'Overview', freedomhouse.org, accessed on 14-10-2021. <https://freedomhouse.org/country/netherlands/freedom-world/2021>

32 This West-European country is generally considered to be the main country and therefore specifically addressed in several studies. Various studies and reports conducted by different organizations – for example the Assessment Sustainable Governance Indicators Project and The Global State of Democracy Indices - consider (and mention) only the specific situation in The Netherlands; the other countries are not explicitly mentioned. As such, it appears that the Caribbean countries within the kingdom have not been included in the studies.

33 This demonstrates that all four countries of the Kingdom were examined in this study and that the scores can therefore also be attributed to the individual countries - and not only to the Netherlands.

34 The Economist Intelligence Unit 2019, 'Democracy Index 2019: A year of democratic backsliding and popular protest', www.eiu.com, accessed on 22-10-2020.

Also see news websites such as: Algemeen Dagblad 2019, 'Aruba sluit grens met Venezuela', ad.nl, accessed on 15-10-2022 and Aruba.nu 2020, 'Grens met Venezuela blijft gesloten', accessed on 15-10-2020.

<https://www.eiu.com/n/campaigns/democracy-index-2019/> ; <https://www.ad.nl/buitenland/aruba-sluit-grens-met-venezuela~a1b67b32/> and <https://aruba.nu/2020/03/11/grens-met-venezuela-blijft-gesloten-2/>

35 Rode Kruis 2020, 'De toestroom aan vluchtelingen vormt, 15.000 en 25.000 op Curaçao', rodekruis.nl, accessed on 15-10-2020.

[https://www.rodekruis.nl/dossiers/venezuela/#:~:text=De toestroom aan vluchtelingen vormt,15.000 en 25.000 op Curaçao.](https://www.rodekruis.nl/dossiers/venezuela/#:~:text=De%20toestroom%20aan%20vluchtelingen%20vormt,15.000%20en%2025.000%20op%20Curaçao.)

Freedom House 2020, 'Rule of Law', freedomhouse.org, accessed on 6-5-2021. In this context it should be noted however that not

36 only the asylum procedures within the Caribbean parts of the kingdom, but also the procedures in the Netherlands have long drawn criticism for being harsh. <https://freedomhouse.org/country/netherlands/freedom-world/2020#PR>

Unlike in Sint Maarten and Curacao, the two other countries within the Kingdom (since 2010).

37

Political rights

Before 1986, the citizens of Aruba elected the Island Council of the Netherlands Antilles. Since the obtained status aparte Aruba has its own Parliament, the 'Staten', which consists of 21 members and is directly elected to terms of four years.³⁸ The most recent elections took place in 2021. Since 1986 most voters have been voting for a number of years either on the green party (Arubaanse Volkspartij / Christen Democraten Aruba (AVP)) or on the yellow party (Movimiento Electoral di Pueblo (MEP)). In the past decades Aruban politics have been polarized between these two major parties.³⁹ Both parties were able to form independent governments alternately during the past decades. As a consequence each of those successive governments had an absolute majority – and therefore the support of a majority – in Parliament.⁴⁰ That is why, until the 2017 elections, the Aruban government system could be considered as a one-tier system. Since neither MEP nor AVP achieved an absolute majority in the 2017 elections (9 seats each)⁴¹, for the first time in 20 years a coalition was necessary. In November 2017 MEP, POR and RED formed a coalition that led to the current government led by Evelyn Wever-Croes (MEP). She is the fourth Prime Minister of Aruba. It is the first government in which POR and RED participate. In March 2021 the Prime

Minister offered the resignation of the government to the acting Governor of Aruba, after the public prosecutor's office announced investigating POR in relation to misappropriating public money.⁴² As a consequence, early elections were held in June 2021.

The constitution of Aruba and other national laws ensure that democratic principles form the basis for political processes. This constitution stipulates, among other, that ministers must be accountable to the Parliament.⁴³ The members of Parliament also have powers to hold the government to account by asking questions, requesting information and conducting investigations.⁴⁴ Despite the fact that Aruba is not always considered as a separate country, several studies confirm the actual ensuring of political rights in Aruba.⁴⁵

Several distinctive characteristics of the Aruban political culture can be highlighted. Firstly, fierce polarization between the political parties – in particular the two major parties, MEP and APV – is a distinctive feature of the Aruban political culture. In practice it expresses itself in an unwillingness to compromise with the other party's positions, even on non-controversial issues.⁴⁶ Polarization is amplified by the one-party governments. It has also been a key factor though before these periods – and it still exists nowadays. In Aruban politics points of view are

38 Chapter III of the constitution of Aruba (StregAr)

39 Weenink e.a. 2011, *De staat van bestuur van Aruba* (WODC), p. 287

40 Ibid. pp. 80 and 81

41 Gobierno Aruba 2017, 'Certification election results 2017', [overheid.aw](https://www.government.aw/governance-administration/certification-election-results-2017_46280/), accessed on 22-10-2020. https://www.government.aw/governance-administration/certification-election-results-2017_46280/

42 Gobierno Aruba 2021, 'Ontslagaanvraag Kabinet Wever-Croes', [overheid.aw](https://www.overheid.aw/actueel/nieuws_46856/item/ontslagaanvraag-kabinet-wever-croes_56254.html), accessed on 31-3-2021. https://www.overheid.aw/actueel/nieuws_46856/item/ontslagaanvraag-kabinet-wever-croes_56254.html

43 Article II.1 section 3 of the constitution of Aruba (StregAr)

44 Article III.17, III.18 and III.19 of the constitution of Aruba (StregAr)

45 On a total of 167 countries the Netherlands – based on a 9.01 score – took eleventh place in the Economist Democracy Index 2019 (EIU 2019) and tenth place in 2020 (EIU 2020); its regime type is – as in previous years – classified as a 'full democracy'. In this study also no distinction was made between the different countries within the kingdom. No specific conclusions were drawn regarding Aruba. To what extent the score assigned to the Netherlands can also be attributed to each individual country, including Aruba, could therefore be open to discussion to a certain extent. In a recent study, also by the Economist Intelligent Unit, Aruba however has been studied as a separate country, which is why a comparison can be made. In this study Aruba scores an 0,813 on 'Voice and accountability' (in which aspect the Democracy Index is included); the Netherlands score a 0,919 (EIU 2019). Aruba takes nineteenth place on a total of 183 countries; The Netherlands rank fourth. Although the aspect 'Voice and accountability' includes more than just the Democracy Index, this Aruban score and ranking and the fact that the top parts of this ranking by the Economist Intelligent Unit and the Democracy Index ranking are nearly the same, confirm the effective implementation of political rights in Aruba.

46 Weenink e.a. 2011, *De staat van bestuur van Aruba* (WODC), p. 101

mainly determined by political color, not so much by substantive arguments.⁴⁷ This polarization hinders the functioning of Parliament and therefore can be regarded as a paralyzing feature of – and one of the causes of the lack of confidence in – the Aruban political system.⁴⁸ Another distinctive feature of the Aruban political culture is the virtually automatic appointing of ministerial posts to the elected candidates who received the most votes.⁴⁹ As a result, the elected candidates fulfill the position of minister instead of the position for which they have been elected: representative of the people.⁵⁰ Therefore the identification of the voters is not with those who in Parliament will ultimately represent them.

Apart from the abovementioned characteristics, the ‘vote getters system’ leads (and has led) to a less critical attitude of the members of Parliament towards their own party’s ministers.⁵¹ It is said that there is an unwritten rule that members of one’s own political party are not criticized,⁵² even when it seems clear that right decisions are not being made.⁵³ The public interest thereby is subordinate to that of the party and its constituency and the plausibility of being elected or re-elected in the upcoming elections.⁵⁴ Party solidarity is given priority over the principle of the separation of powers.⁵⁵ As a result critical remarks, comments and motions from

members of the opposition parties are unlikely to be supported by parliamentarians of the party concerned. Therefore, obtaining a majority in Parliament to form an opposition to the government is nearly impossible.⁵⁶ In addition to the previous mentioned characteristic, it must be noted that a significant portion of the information needed for Parliament to fulfill its controlling tasks is not proactively shared by the executive. Furthermore, it has been found that over the years a considerable number of questions from parliamentarians remain unanswered.⁵⁷ Apart from this, the governments budgets repeatedly were submitted to Parliament with delay and moreover often incomplete⁵⁸, leading to a less decisive actual exercise of Parliament’s budget right in practice, or none at all. This problem is still present today: the 2020 budget was submitted to Parliament more than six months late.⁵⁹ All in all, a longtime and structural sense of lack of budgetary discipline and supervision is being perceived.

Information is accessible neither to members of Parliament nor to citizens. Published information often is incomplete and/or out of date. Decisions, enforcement of these decisions and the policies of the government and the individual ministers and

47 Albers & Milliard 2003, *De Staten van Aruba op weg naar volwassenheid*, FESCA 2003, p. 16

48 Ibid. pp. 15-18

49 Furthermore, the position of Chair of Parliament is – similar to the ministerial posts - part of the coalition formation, with the consequence that the Parliament’s Chair is not elected by the members of Parliament, but appointed by the (future) executive.

50 Albers & Milliard 2003, *De Staten van Aruba op weg naar volwassenheid*, FESCA 2003, p. 13. This issue has often been labeled as undesirable and a concern, amongst others by the current Prime Minister (quote from a 2016 interview, published on ArenaPoliti.co: “Om dit te bereiken moeten we breken met traditie en moeten we wetten wijzigen zodat statenleden met autoriteit de ministers kunnen aanspreken; zodat de politici met de meeste stemmen in het parlement komen te zitten om daadwerkelijk de regering te kunnen controleren;...”).

51 Weenink e.a. 2011, *De staat van bestuur van Aruba* (WODC), p. 97

52 Ibid. p. 93

53 This was also confirmed by numerous respondents interviewed on behalf of this NIS-study.

54 Rasmijn A., <https://www.dencayente.com/post/poppetje>

55 Albers & Milliard 2003, *De Staten van Aruba op weg naar volwassenheid*, FESCA 2003, p. 14

56 Whether and to what extent all this has changed with the installation of the 2017 coalition government is difficult to say. According to media reports motions have been submitted, including motions of no confidence (even by members of the party or coalition party concerned), but only questions and motions up to and including 2016 have been published on the Parliament’s website (www.parlamento.aw). Since a complete and recent overview is not available it is hard to make a statement about a possible change in the extent to which Parliament actually and critically uses its supervisory powers since the installation of the current government.

57 Weenink e.a. 2011, *De staat van bestuur van Aruba* (WODC), p. 91 - based on Staten’s own official data.

58 <https://deugdelijkbestuuraruba.org/wp-content/uploads/2016/04/Abstract-Rapport-Financieel-beheer.pdf> p.26

59 <https://caribischnetwerk.ntr.nl/2020/02/14/aruba-houdt-zich-niet-aan-afspraak-met-nederland-toch-geen-aanwijzing/>

advice given by advisory committees, but also the way in which Parliament uses its powers and fulfills its supervisory function, are not sufficiently transparent – despite legal obligations.⁶⁰ Members of government and the ministerial civil servants are not particularly inclined to disclose information. This reduces the extent to which the work of the government, ministers and Parliament is transparent and visible to citizens. According to the National ordinance open government (Landsverordening openbaarheid van bestuur) requests for information can be submitted by citizens or organizations.⁶¹ However, these requests often are rejected by (civil servants on behalf of) the government or ministers – because of the legal grounds for refusal⁶² or, more frequently, confidentiality – or simply remain unanswered.⁶³ After a refusal, the applicant may bring an action before the administrative court who then can force the publication of the requested specific information. The question remains however: when information is not or just partially available and not easily accessible, how will a citizen know specifically what to request for?

All in all, Parliament has its powers, but does not use them decisively. Although democratic principles technically apply, Parliament does not fulfill its independent, supervising and controlling role regarding the executive in practice. In fact, Parliament often is considered a ‘stamp parliament’.⁶⁴

Elections

The Aruban elections regarding the national Parliament (Staten) take place in an identical way and are based

on the same system as in the other countries of the kingdom: by a proportional representation vote.⁶⁵ Elections are free and held – by secret ballot – every four years, see article III.3 section 1 and article III.4 section 2 of the constitution of Aruba (Staatsregeling van Aruba - StregAr). All twenty-one members of Parliament are directly elected by the residents of Aruba with the age of eighteen years and up who have Dutch nationality.⁶⁶ In order to be a member of Parliament it is required that one is a resident of Aruba, has Dutch nationality, has reached the age of twenty-one and is not excluded from the right to vote. In article III.7 the constitution of Aruba lists various functions that cannot be combined with membership of Parliament, such as the position of Minister or member of the Aruba Court of Audit. The following article lists restrictions on consanguinity and married couples.⁶⁷ Within the frameworks given in the constitution of Aruba, every inhabitant of Aruba of twenty-one years or older who has Dutch nationality therefore can stand for election and be elected as a member of Parliament. This leads to conclude that the legal framework provides for free competition in elections. In practice, however, one’s family ties, network and party membership are of decisive importance when it comes to the degree of probability of being elected. Other characteristics such as education, experience and merits appear to be of less importance in practice.⁶⁸

The elections of 2017 and earlier were well administered. In 2017, 58,652 valid votes were cast on a total of 70,750 voters (84%).⁶⁹ Eight political parties took part in the elections; four of them won

60 Article V.19 of the constitution of Aruba (StregAr) and article 5, 6 and 7 of the National ordinance open government (Landsverordening openbaarheid van bestuur - LOB)

61 Article 2 section 1 of the National ordinance open government (Landsverordening openbaarheid van bestuur - LOB)

62 Incidentally, not all rejection decisions are necessarily unjustified.

63 SDBA 2017, Naar transparant openbaar bestuur in Aruba, p. 6 and 11. Also, participants in the webinars regarding this NIS-study confirmed their letters and petitions often were ignored.

<http://deugdelijkbestuuraruba.org/wp-content/uploads/2016/04/Naar-transparant-openbaar-bestuur-in-Aruba.pdf>

64 Amongst others by Mrs. Wever-Croes, the current Prime Minister (2016 interview ArenaPoliti.co, Het toerisme fonds levert weer geen jaarrekening in).

65 Article III.4 section 1 of the constitution of Aruba (StregAr)

66 Article III.5 of the constitution of Aruba (StregAr)

67 Article III.8 of the constitution of Aruba (StregAr)

68 This was also confirmed by the participants in the third NIS Aruba webinar.

69 https://www.government.aw/governance-administration/certification-election-results-2017_46280/

seats in the Parliament.⁷⁰ As indicated earlier, the political parties that received most seats – nine seats each – are Movimiento Electoral di Pueblo (MEP) and Arubaanse Volkspartij / Christen Democraten Aruba (AVP). The other parties represented in the current Parliament are Pueblo Orguyoso y Respecta (POR) and Red Democrático (RED) with respectively two seats and one seat. All parties accepted the results of the elections. As said, MEP, POR and RED joined in a coalition government. As of September 2021 MEP and RAIZ (‘Roots’) joined in a coalition government, once again led by Prime Minister Wever-Croes (MEP). Both parties together obtained a majority of eleven seats in Parliament in the early elections of June 2021.

Socio-political foundations

Political patronage, polarization and the concentration of power within a small number of families result in an exclusive political elite with oligarchic features.

Inhabitants and language

Aruba has a rich ethnically-diverse history. A large part of the Aruban population descends from the original Caquetio-Indian inhabitants, members of the South-American tribe of the Arawaks. During the Spanish and Dutch domination and the arrival of the Dutch West India Company many original inhabitants (forced or otherwise) left Aruba and people from other countries settled on the island. Also during the 1920s, people from all over the world moved to Aruba because of the island’s emerging oil industry. All this has resulted in the current Aruban population which reflects the history of the colonial past and immigration. Many of the current Aruban inhabitants have a multicultural background due to a combination of Indian, European and African roots. Because of this ethnical diversity it is difficult to pinpoint who can be considered an

‘Aruban’ – or not – and as the clustering of certain groups within Aruban society changes over time, so do the perspectives on Aruban citizenship.⁷¹ The current Aruban population consists of 40 other nationalities in addition to Arubans.⁷² The Arubans make up about 80 percent of the population; the other residents are mainly European Dutch and South-American immigrants (mostly from Colombia, Peru and Venezuela).⁷³ According to estimates an additional 12,000 to 16,000 (mostly Venezuelan) refugees live on the island without status or residence permit.⁷⁴ The majority (81%) of Arubans are Roman Catholic, a remnant of the period during which the Spaniards occupied the country.⁷⁵ Religion has a decisive role in both Aruban culture and politics, for example with regard to views on children’s rights and same-sex marriages.

Citizens with similar backgrounds, origins, families and labor sectors live more or less clustered in regions, cities and in the countryside spread across the island. The communalities on the basis of which groups formed over the centuries – such as shared history, culture, origin, branch in the labor market, residence and religion – changed from time to time. Some groups gradually faded and, based on other commonalities, new groups arose over time.⁷⁶ In general, the groups within the Aruban society are not inaccessible: members of different groups do not lead separate lives. Although association with members of other individual groups initially existed on an individual basis, integration – both business and personal – increased in recent decades.⁷⁷ In politics, however, a stricter separation between certain families, groups and regions/neighborhoods, each linked to a specific political party, can be seen. Furthermore, when it comes to leading or determining positions in politics, it is more difficult or even nearly impossible for an outsider to join.

70 Ibid.

71 Alofs, L. 2001, Ken ta Arubiano? Sociale Integratie en natievorming op Aruba (www.academia.edu/38986273/KEN_TA_ARUBIANO)

72 Some websites – by example aruba.com and nationalgeographic.nl – indicate that the Aruban population consists of 80 to even 100 different nationalities.

73 <https://www.aruba.com/nl/ons-eiland/geschiedenis-en-cultuur/de-bevolking-van-aruba>

74 <https://www.rodekruis.nl/dossiers/venezuela/#:~:text=De%20toestroom%20aan%20vluchtelingen%20vormt,15.000%20en%2025.000%20op%20Cura%C3%A7ao.20>

75 United Nations World Population Prospects (2019), worldpopulationreview.com (search for: Aruba)

76 Alofs, L. 2001, Ken ta Arubiano? Sociale Integratie en natievorming op Aruba, from p. 179. (www.academia.edu/38986273/KEN_TA_ARUBIANO)

77 Ibid.

Although some groups live more or less isolated professional and family lives – for instance, the Chinese society – the Aruban society is not divided because of differences in backgrounds such as religion and language. Obviously, differences can lead to controversies to a certain degree, yet initiates emphasize there is little to no racism in Aruba.⁷⁸ Nevertheless, residents with certain ethnic backgrounds are disadvantaged because of their origin.⁷⁹ Therefore, one can speak of discrimination to a certain level. Because of the described clustering, prosperity and income vary from region to region as well. This also applies to membership of political parties.⁸⁰ However, a significant nuance to the abovementioned must be noted, since particularly one's family ties and commitment to a political party are crucial for the opportunity to obtain key positions in business and, as indicated earlier, politics. It only takes a quick look at the list of last names of ministers in the successive governments to draw this conclusion. Family ties can be seen over the decades: members of certain families – grouped in individual political parties – consecutively held (and hold) high public offices for over a century.⁸¹ The political elite in Aruba is exclusive and has oligarchic features: it is a carousel at the top of power in which a limited number of families and their circles rule.⁸² It should be noted, however, that this can also be seen in other small Caribbean countries; despite democracy-stimulating tendencies of smallness, oligarchic politics seem to develop and sustain in these small settings.⁸³

Due to the small scale of the country, where family ties and professional roles are very much interrelated because of network connections, voting behavior is more personal and might be based on the principle 'what's in it for me' rather than on ideological motives. Personal bonds between politicians and their supporters are stronger than the cohesion within the political parties. In the event of a conflict within a political party it is not uncommon for politicians to transfer to another party.⁸⁴ All in all, the link between society and the political system is based on personal relations – you are who you know, jeopardizing critical advocacy from within society. Individuals, groups, families and districts are affiliated to politicians and parties through private benefits. Political patronage persistently remains a prevalent manner in which Aruban politicians attain political support and – in return – voters attain personal favors within the overlapping networks of business and politics, often funded by state resources. It is an ongoing prevailing public perception that voters and financiers must be rewarded for their support by the acts of the elected politicians: mutual loyalty runs thick within the Aruban clusters of 'friends and families'. By example, loyal supporters are offered promotion, grants, scholarships, jobs in the semi-public or private sector or (newly created) civil service jobs. A remarkable consequence of the political patronage is the significant growth of the civil service – and the resulting adverse effect on public finances – in recent decades.⁸⁵ The mainstream view is that cabinet members and politicians are entitled to and in fact should take full

78 Inter alia, interview G.Thodé, February 2nd 2021.

79 By example, the Haitian, Venezuelan, Colombian, Dominican or European Dutch nationality can be considered disadvantageous to someone's potential in the Aruban political, semi-public or business-sector.

80 For example, the region of Malmok (north-western part of Aruba) is above average rich, whereas the more southernly region of San Nicolas should be described as less prosperous. And while in Malmok political party AVP has many supporters - just as in Oranjestad, capital city and administrative center of the country – the people's party MEP prevails in the central part of the country (Santa Cruz).

81 Obstacles to 'Good governance' in the Caribbean – 2015 (Alders), p. 40

For instance, the Eman-family is connected to the AVP, whereas the Croes-family – with few exceptions – traditionally participates in the MEP.

82 There are about ten powerful families in Aruba. Multiple respondents even describe the Aruban social model as an 'entitlementocracy', meaning a society in which certain individuals are considered (and consider themselves) entitled to fulfill high offices based on their family ties, party memberships and connections.

83 For illustration: see ERLACS 2016, 'We Take Care of Our Own': The Origins of Oligarchic Politics in St. Maarten

84 By example, Mrs. Marisol Lopez-Tromp – resigned as Minister in the current Wever-Croes cabinet – started her political career as a MEP-member, then switched to AVP and – in 2017 – POR. She is currently the party leader of the MAS-party.

<https://antilliaansdagblad.com/aruba/23510-marisol-lopez-tromp-lijsttrekker-mas>

85 Weenink e.a. 2011, De staat van bestuur van Aruba (WODC), chapter 4

advantage of their powers in the interests of their supporters. As a result, personal, short-term and individual interests outweigh the general and long-term interests and ideologies for which the political party stands.⁸⁶ During the past decades the patronal system has been identified multiple times as a characteristic of the Aruban political culture and recommendations, plans and road maps have been drawn since the Calidad-report of 1997.⁸⁷ Despite these plans and intentions, it is still present today.⁸⁸ The biggest obstacle in effectively countering political patronage is expected to be the short-term benefit of continuing on the same path; this reflects the view of a lack of real will among politicians to fight corruption.⁸⁹ The small scale of the country can not necessarily be identified as the cause of political patronage, but it does provide a fertile soil for its continuing existence.⁹⁰ Furthermore, hierarchic social structures, the concentration of human capital in and landownership of certain families and the colonial past can be identified as causes for the survival of political patronage.⁹¹

Due to the tradition and tendency of groups and families to cluster there is not just an expectation of one taking care of another within his or her cluster, but also – as pointed out before – a highly polarized political culture. A substantive debate, based on the power of arguments, does not predominate. Parties – and thus their affiliated groups ('friends and families') – fight each other at every possible point.⁹² Politicians openly and publicly criticize other parties and their members in any way possible and blame them for negative developments. This political polarization certainly can

be noticed in the Aruban (social) media: some media channels are 'colored yellow' and present news from the perspective of the MEP, whereas others are 'green' (AVP) and present news from the opposite perspective and interests.⁹³ The sound you hear depends on the station you are listening to or the channel you are watching.

Socio-economic foundations

The Aruban economic situation has been worrying for many years: the national debt increased far beyond the IMF's critical limit. Despite the country's autonomy, financial supervision on Kingdom level turned out to be necessary. COVID-19 pandemic made the situation worse, especially when compared to other countries. Although Aruba has a relatively high level of prosperity, its economy is vulnerable and considerable differences in prosperity and income as well as 'hidden unemployment' can be seen.

Economy and wealth

The period of poverty, which started during the colonial period, ended around 1800 with the discovery of gold and, after the mining industry waned, in 1924 with the rise of the oil industry. Until the 1980s, the Lago oil refinery in San Nicolas was the engine behind the Aruban economy. Since the global financial crisis in 2009 and the refinery's shutdown in 2012, tourism provided most of the country's income and led to a contraction of the gross domestic product (GDP).⁹⁴ After the refinery's shutdown Aruba had a blossoming tourist industry, but also became a less diversified economy, which is reflected in strong fluctuations in annual economic growth.⁹⁵

86 Schotborgh-van de Ven, N. 2019, De wortels van publieke fraude en corruptie in het Caribisch deel van het Koninkrijk, p. 103

87 Also by the current government (Result book Committee of Recovery and Innovation Aruba).

88 It should be noted that political patronage is not an exclusive Aruban issue; it is also seen in other countries in the Caribbean and elsewhere.

89 Corruption survey 2020 (CBA 2020), p. 5

90 Alberts & Milliard 2003, De Staten van Aruba op weg naar volwassenheid, FESCA 2003, par. 1.2 and Alders, A. 2015, Obstacles to 'Good Governance' in the Dutch Caribbean, p. 8

91 Schotborgh-van de Ven, N. 2019, De wortels van publieke fraude en corruptie in het Caribisch deel van het Koninkrijk, p. 107 and Alders, A. 2015, Obstacles to 'Good Governance' in the Dutch Caribbean, p. 40

92 Alberts & Milliard 2003, De Staten van Aruba op weg naar volwassenheid, FESCA 2003, p. 13

93 By example, newspaper 'Solo di Pueblo' can be labeled 'yellow', while 24ora.com can be qualified as a 'green' news website. Source: multiple interviews, amongst others interviews regarding the Aruban elections.

94 <https://economics.rabobank.com/publications/2014/june/country-report-aruba/>

95 Seo 2019, Kerncijfers Caribisch deel koninkrijk, p. 15 (https://www.tweedekamer.nl/sites/default/files/atoms/files/kerncijfers_koninkrijk_definitief_19022019.pdf)

Despite various far-reaching plans to reopen the oil refinery – main employer on the island for many years until the 1950s – the chance of reopening is nil at the moment, experts say.⁹⁶ Moreover, it does not fit into the economic vision and plans of the current (demissionary) Wever-Croes government.⁹⁷

Aruba has as a very open, less diversified and a strong services-oriented economy.⁹⁸ In comparison with the surrounding countries, Aruba has a considerably large import dependency for agricultural products. For those reasons, its economy is above average vulnerable to external economic shocks.⁹⁹

Until COVID-19 Aruba could be regarded as a prosperous country with one of the highest GDPs – gross domestic product – in the Caribbean region. Compared to other Caribbean countries unemployment was low.¹⁰⁰ According to the Labour Force Survey in 2016 most of the population (62%) aged 15 to 75 in Aruba was employed.¹⁰¹ Although youth unemployment was relatively high in that year – around a fifth of the young people in the labor force was unemployed back then¹⁰² – this percentage had fallen and could be considered relatively low in 2019.¹⁰³ In 2016, also a high unemployment rate could be seen among people

with a lower level of education, while on the other hand almost all higher educated Arubans were employed.¹⁰⁴ Whether this gap was attributable to higher educated people leaving the country to work elsewhere or perhaps accepting low-skilled jobs in Aruba is not certain. In 2016 most Arubans worked in tourism-related sectors: hospitality (22%) and trade (17%). 8% worked in the public administration sector. The vast majority was employed on the basis of a permanent contract (92%).¹⁰⁵ Given the decrease of the GDP per capita during the past decade, it is plausible that consumer spending power in Aruba has been reduced.¹⁰⁶ An important caveat regarding the unemployment rate has to be placed though. There is, as it were, redundant staff within the public sector which conceals a part of unemployment. Successive governments appointed new directors, heads of civil service and civil servants from their own constituencies, while incumbent officials remained or were put on a non-active basis.¹⁰⁷ This politically motivated personnel policy led to ‘hidden unemployment’: although paid, not all jobs were fully-fledged. At the same time it led to a significant growth of the civil service in recent decades and the associated adverse effect on public finances and social care.¹⁰⁸ Multiple advisory reports contain recommendations concerning this personnel policy originating from

96 <https://caribischnetwerk.ntr.nl/2020/02/06/kans-dat-arubaanse-raffinaderij-ooit-weer-open-gaat-is-minimaal/>

97 <https://caribischnetwerk.ntr.nl/2019/06/13/raffinaderij-al-zeven-jaar-dicht-maar-aruba-wil-nog-niet-loslaten/>

98 The open character of the economy and the earlier described relatively high level of prosperity have also contributed to the share of migrants in the Aruban population. EBA 2020, *Kleine eilanden Grote uitdagingen* (commissioned by the Tweede Kamer of the Netherlands), p. 32

99 EBA 2020, *Kleine eilanden Grote uitdagingen* (commissioned by the Tweede Kamer of the Netherlands), p. 25-27

100 EBA 2020, *Kleine eilanden Grote uitdagingen* (commissioned by the Tweede Kamer of the Netherlands), p. 28

101 CBS 2019, *Statistische Trends Beroepsbevolking op de Nederlands-Caribische eilanden*

102 CBS 2019, *Statistische Trends Beroepsbevolking op de Nederlands-Caribische eilanden*, p. 7

103 EBA 2020, *Kleine eilanden Grote uitdagingen* (commissioned by the Tweede Kamer of the Netherlands), p. 28

104 CBS 2019, *Statistische Trends Beroepsbevolking op de Nederlands-Caribische eilanden*, p. 8 and 14

105 Ibid.p. 11

106 Seo 2019, *Kerncijfers Caribisch deel koninkrijk*, p. 17 (https://www.tweedekamer.nl/sites/default/files/atoms/files/kerncijfers_koninkrijk_definitief_19022019.pdf)

107 Weenink e.a. 2011, *De staat van bestuur van Aruba* (WODC), p. 181

108 Weenink e.a. 2011, *De staat van bestuur van Aruba* (WODC), chapter 4 and SDBA 2018, *Naar een duurzaam sociaal-economisch beleid in Aruba*, chapter 4;

In addition, Alberts describes the continuous creation of new, above-average jobs in preferred sectors such as government and financial services, which subsequently are assigned to locals – resulting in an increasing number of well-paying (management) positions fulfilled by locals. Meanwhile, new immigrants fulfill new below-average jobs at the base of the pyramid. This segmentation and associated movements within the labor market can, however, only persist as long as the entire labor market – and, in particular, tourism – is growing. See: Alberts 2020, *Small island tourism economies and the tourism area lifecycle*, p. 113

political patronage. By example, the 1997 Calidad-report recommended to always monitor objectively whether the relevant appointment is necessary and the person in question suitable for the function and that all officials should be appointed, promoted, suspended and dismissed in the council of ministers.¹⁰⁹ More recently, the College Aruba Financieel Toezicht (CAft) made similar recommendations.

Although concrete data on poverty in Aruba are not available, considerable differences in prosperity and income can be seen within Aruban society.¹¹⁰ While a large group has little or no income, a relatively small elite has high incomes.¹¹¹ Certain families, districts and groups are wealthy and have a long tradition of fulfilling key positions in the political, semi-public and business-sector, whereas others are considerably less prosperous and influential.

Social safety nets and facilities

In Aruba it is customary to support less fortunate family members, for instance by letting them move in.¹¹² Social safety nets, such as a social assistance benefit (Bijstandsuitkering) and a retirement benefit (Algemeen ouderdomspensioen), are available – also during the COVID-19 recession.¹¹³ However, these safety nets have seriously suffered from the financial and economic management conducted by the successive governments.¹¹⁴ Budgets have been shortened and the retirement age has been gradually increased from 60 in 2015 to 65 in 2024.¹¹⁵ The access to primary healthcare in Aruba is regulated by the National ordinance on general health insurance (Landsverordening algemene ziektekostenverzekering - AZV). Under this law, every person registered as a resident of Aruba is automatically insured for medical

expenses.¹¹⁶ This AZV-insurance originally had an extensive insurance package. However, the most recent loan conditions by the Netherlands require a reduction of the costs for this insurance – the AZV-insurance has to be cut down by AWG 60 million Aruban – while the Aruban population is aging. Health care facilities and residents are worried this will lead to less accessible health services and healthcare in the near future. All in all, the question is how and to what extent the residents' social safety nets and healthcare will be guaranteed in the near future.

The current infrastructure can be described as moderate: roads are generally maintained. Nevertheless, there are delays in maintenance and improvement of parts of the Aruban infrastructure, which require substantial investments.¹¹⁷ In recent years several improvements have been made, also because of the tourist sector: several new roads, including a connecting road between the airport (Aeropuerto Internacional Reina Beatrix) and the country's tourist center of Pos Chiquito, and a cycle path along the boardwalk – known collectively as the 'Green Corridor' – have been constructed. Also a single-track tram line has been opened for passenger transport within Oranjestad: the Oranjestad Streetcar. All in all, the main roads between the Aruban cities are of good quality. Some of the domestic roads however are unpaved. These dirt roads are only passable with difficulty, especially during rainy season.

Apart from the cultivation of indigenous drought-loving plants like aloe (for pharmaceutical and skin care products) the agricultural prospects are limited in Aruba, due to the poor soil and low rainfall. The local agricultural sector – including livestock farming and fisheries – only

109 Arubaanse werkgroep Deugdelijkheid van Bestuur 1997, Calidad, p. 69

110 Schotborgh-van de Ven, N. 2019, De wortels van publieke fraude en corruptie in het Caribisch deel van het Koninkrijk, p. 104-105

111 Ibid.

112 Ibid. p.107

113 Since the beginning of the COVID-19 pandemic, the government also provided specific additional aid packages, subsidies and incentive tax measures (see below).

114 SDBA 2018, Naar een duurzaam sociaal-economisch beleid in Aruba, p. 56

115 Gobierno Aruba 2021, Algemeen ouderdomspensioen,

https://www.overheid.aw/informatie-dienstverlening/financien-subthemas_46982/item/algemeen-ouderdomspensioen_37444.html

116 Landsverordening AZV, article 3

117 SDBA 2018, Naar een duurzaam sociaal-economisch beleid in Aruba, p. 27

provides less than 0.5 % of gross domestic product. Food security therefore is vulnerable.¹¹⁸ As mentioned earlier, Aruba is heavily reliant on food imports. There are many supermarkets in Aruba, mainly run by Chinese entrepreneurs. As a consequence of the dependence on imports, daily groceries are expensive in Aruba. Utilities and internet, television and telecommunications are both adequate and affordable, thanks, in part to, competition. State-owned companies – like SETAR NV (internet, television and telecommunication), NV ELMAR (electricity and gas) and WEB Aruba NV (drinking water, made out of seawater) – are the main providers of these facilities. A peak load may occasionally result in an outage, but in general these basic necessities of life are well guaranteed.

In Aruba there are a number of nature reserves and parks, of which Parke National AriKok is the largest. There are several private organizations that are committed to preserving and protecting nature. Although nature in Aruba is reasonably well protected, there is, with some regularity, a political discussion on the possible extension of authorized activities, construction in or near nature reserves or the (lack of) enforcement action against possible illegal activities therein. Among other things, the landfill site of Parkietenbos – exploited by the state-owned company Serlimar – located next to a mangrove forest as well as a residential area is one of

the frequently recurring items of civil protest and a hot topic on the political agenda.¹¹⁹

Economy since COVID-19

Before the COVID-19 pandemic there had already been a need for structural economic reforms in Aruba. Governance finances were under more and more pressure due to the expansion of the civil service and structural problems concerning the financing of social security.¹²⁰ Aruba faced the task of putting finances in order while pushing through reforms and strengthening the public administration. Although the country lagged behind in the economic development of the Caribbean region,¹²¹ a slow-paced economic recovery was under way in Aruba due to thriving tourism, the government's ambitious fiscal and financial plans as well as its plan to diversify the country's economy.¹²² Whether the introduction of financial supervision by the CAft (see below) in 2015 also contributed as a positive force in this matter, and to what extent, is a topic of discussion.¹²³

Once COVID-19 made its entrance in the spring of 2020, the government responded rapidly and provided aid packages, subsidies and incentive tax measures in order to prevent a wave of bankruptcies and mass unemployment.¹²⁴ With that, the impact was reduced to a certain extent. Nevertheless, the pandemic caused the deepest recession in Aruban history. It has shaken the

118 SER 2020, Voedselzekerheid op Aruba, p. 23

119 By example: Caribisch netwerk 2016, Omwonenden Parkietenbos leven naast een tijdbom (<https://caribischnetwerk.ntr.nl/2016/08/06/omwonenden-parkietenbos-leven-naast-een-tijdbom/>)

120 Weenink e.a. 2011, De staat van bestuur van Aruba (WODC), p. 286

121 EBA 2020, Kleine eilanden Grote uitdagingen (commissioned by the Tweede Kamer of the Netherlands), p. 23

122 IMF 2021, Kingdom of the Netherlands—Aruba: Staff Concluding Statement of the 2021 Article IV Mission, (<https://www.imf.org/en/News/Articles/2021/03/08/mcs030821-kingdom-of-the-netherlands-aruba-staff-concluding-statement-of-the-2021-aiv-mission>)

123 Caribisch netwerk 2019, Financieel toezicht voor een 'zachte lening': Aruba krijgt tijd van Nederland om oplossing te zoeken voor impasse; quote speaker of Parliament A. Thijsen: "...because under the supervision of the Dutch Government Council and Caft, Aruba's debt quota increased from 70% to 93% of gdp in the previous cabinet." and <https://caribischnetwerk.ntr.nl/2019/08/30/financieel-toezicht-voor-een-zachte-lening-aruba-krijgt-tijd-van-nederland-om-oplossing-te-zoeken-voor-impasse/> and

Caribisch netwerk 2019, Ruzie over financieel toezicht: Nederlandse arrogantie versus Arubaanse kapsones; quote president CAft R. Gradus: "If we were not there, it might have been worse."

<https://caribischnetwerk.ntr.nl/2019/06/22/ruzie-over-financieel-toezicht-nederlandse-arrogantie-versus-arubaanse-kapsones/>

124 Packages and subsidies such as a temporary income support to those who lost their job or labor income (FASE), wage support to employers that maintained employment links, liquidity assistance to small and medium-sized enterprises and the financial support on behalf of the basic health insurance (AZV) and the social security bank (SVb).

IMF 2021, Kingdom of the Netherlands—Aruba: Staff Concluding Statement of the 2021 Article IV Mission, <https://www.imf.org/en/News/Articles/2021/03/08/mcs030821-kingdom-of-the-netherlands-aruba-staff-concluding-statement-of-the-2021-aiv-mission>

tourism-oriented economy and, above all, showed the vulnerability of Aruba's high dependency on tourism. Aruban economy depends for 80% on tourism which came to a complete standstill.¹²⁵ This in turn caused ripple effects across all sectors of the economy. Many islanders lost their jobs and became dependent on food aid. Whereas, globally, in 2020 the GDP decreased by 3.3 percent, the Aruban GDP decreased by more than a quarter (25,5%), see the image below.¹²⁶ Aruba's national debt rose to more than 2.5 billion euros in 2020.¹²⁷ According to the International Monetary Fund (IMF) this debt equates to 117 percent of the gross domestic product (GDP), more than double compared to a year earlier. The College Aruba Financieel Toezicht (CAft) speaks of an even higher figure: 124 percent of the GDP.¹²⁸



Annual percent change GDP (and specification 2020)¹²⁹

It should be noted that, since 2010, the national debt ratio of Aruba structurally has been well above the critical limit value of 55 percent (as used by the IMF), partly due to new loans taken out by successive governments. Effectively, it seems to be a situation of robbing Peter to pay Paul. Data of the Central Bank of Aruba (CBA) and the IMF seem to show a relation between the composition of the government on the one hand and the increase in national debt on the other: the debt increased significantly more during the reign of one-party governments than during the reign of coalition governments.¹³⁰

Until 2009, the Netherlands provided development aid to Aruba. However, after the termination of aid the country's debt increased rapidly. When it became clear that the growing debt burden and the interest obligations of Aruba would lead to unsustainable public finances, the governments of Aruba and the Netherlands finally, after tensions on Kingdom level, came to an agreement to set up the Aruba Financial Supervision Board (College Aruba financieel toezicht - CAft) in 2015.¹³¹ CAft is an independent body, consisting of three people, that supervises the government finances of the country, focusing on the establishment and implementation of budgets within agreed limits.¹³² CAft advises and reports to the government of Aruba - and, if necessary, the Parliament of Aruba (Staten), the Kingdom Council of Ministers (Rijksministerraad) and the Parliament of the Netherlands - on the financial policy pursued by the Aruban government.¹³³

125 WEF (World Economic Forum) 2020, weforum.org (search for: Caribbean tourism COVID-19), <https://www.weforum.org/agenda/2020/05/caribbean-tourism-has-been-decimated-by-covid-19-but-the-private-sector-can-cushion-the-blow/>

126 IMF (International Monetary Fund) 2021, https://www.imf.org/external/datamapper/NGDP_RPCH@WEO/OEMDC/ADVEC/WEOWORLD/ABW

127 Aruba is one of the countries with the highest debt ratios in the Caribbean region. EBA 2020, Kleine eilanden Grote uitdagingen (commissioned by the Tweede Kamer of the Netherlands), p. 17 and 32

128 NOS 2021, <https://nos.nl/artikel/2371859-diepste-recessie-ooit-voor-aruba-imf-adviseert-belastinghervormingen.html>

129 IMF (International Monetary Fund) 2021, https://www.imf.org/external/datamapper/NGDP_RPCH@WEO/OEMDC/ADVEC/WEOWORLD/ABW

130 Antilliaans Dagblad 2020, *Opinie: Autonomie Aruba: de weg naar welvaart of armoede?* <https://antilliaansdagblad.com/nieuws-menu/curacao/opinie/22494-opinie-autonomie-aruba-de-weg-naar-welvaart-of-armoede>

131 Akkoord Afspraken tussen de regeringen van Aruba en Nederland over de openbare financiën van Aruba, 2 mei 2015

132 Colleges financieel toezicht, <https://www.cft.cw/over-het-cft/aruba> (accessed on June 4th 2021)

133 The agreements meant that the CAft had a temporary character and would fulfill its supervisory role until 2018. In 2018, both countries decided to continue the financial supervision by CAft for a period of three years.

It can also advise the Kingdom Council of Ministers to intervene (by means of a so-called ‘aanwijzing’) in order to force the Aruban government to adopt certain recommendations.

Recently, the Aruban national debt has risen in particular due to the liquidity support of almost 100 million euros by the Netherlands (a zero-interest loan), requested by the Aruban government. This loan, to withstand the COVID-19 crisis, was granted under conditions implying an obligation for Aruba to implement reforms and allowing supervision by the Netherlands on the actual spending of the loan.¹³⁴ In exchange, the Dutch government provides the financial support and investments in the development of Aruba.¹³⁵ The already existing need for reforms and urge by the Netherlands to implement them – inter alia as part of loan terms – have only grown by the impact of the COVID-19 pandemic.¹³⁶ In November 2020, after a period of firm negotiations, the Aruban government agreed to the conditions attached to the loan, laid down in a packet of measures (third tranche liquidity support) in December 2020.¹³⁷ Although the provided (fiscal) support – partly funded by the loan from the Netherlands – was essential to save both lives and incomes, it increased Aruba’s already existing fiscal vulnerabilities. In March 2021 the IMF made recommendations for further recovery, inter alia: tax and social safety net reforms and more

permanent measures to contain the wage bill on a sustainable basis.¹³⁸

Budget process

Lastly, it is necessary to address the issue of the Aruban budget process. This is because Parliaments role in this process has been very limited since the acquired status aparte. On the one hand, due to loyalty to own party ministers (as described previously); it can be attributed to a weak budgetary discipline.¹³⁹ A structural significant delay – and/or occasional incompleteness – of the governments annual budget and lacking annual financial statements can be seen over the past decades and, as a consequence, a limited exercise of the budget right by Parliament.¹⁴⁰ Today, this is still the case.¹⁴¹ It does not only undermine Parliaments budgetary right, but also its essential control function in relation to the government’s policy.¹⁴² Furthermore, there has been a systematical disregard of the recommendations of the Advisory Council (Raad van Advies – RvA), Social and Economic Council (Sociaal Economische Raad – SER), Court of Audit (Algemene Rekenkamer Aruba – ARA) and Central Bank of Aruba (Centrale Bank van Aruba (CBA), which, combined with the constantly increasing national debt, consequent requests for financial support and the lack of clarity concerning the financial situation of the country, has repeatedly led to interventions by the kingdom’s Council of Ministers.¹⁴³

134 Among other things, salaries of government officials, directors of state-owned companies and civil servants had to be reduced. See: NOS 2020, Politici Curaçao, Sint Maarten en Aruba moeten inleveren voor coronasteun. The implementation of the required reforms will be supervised by the Caribbean institution for reform and development (Caribisch orgaan voor hervorming en ontwikkeling - COHO), an entity under guidance of the Minister of Kingdom Affairs of the Netherlands. The underlying legal construction still has to be finalized though. (<https://nos.nl/artikel/2334058-politici-curacao-sint-maarten-en-aruba-moeten-inleveren-voor-coronasteun>)

135 For example, the Aruban maritime borders will be strengthened. See: Ministerie van Defensie Nederland 2020 - <https://www.defensie.nl/actueel/nieuws/2020/11/18/versterking-rechtsstaat-aruba-dankzij-steunpakket>

136 <http://www.comitekoninkrijksrelaties.org/kleine-eilanden-grote-uitdagingen-aruba/> en <https://caribischnetwerk.ntr.nl/2020/09/01/druk-op-eigen-regering-groeit-om-akkoord-te-gaan-met-nederlandse-eisen/>

137 <https://koninkrijk.nu/2020/11/03/ook-regering-aruba-door-de-bocht-akkoord-met-voorwaarden/> and https://www.overheid.aw/actueel/nieuws_46856/item/politiek-akkoord-tussen-aruba-en-nederland_55127.html

138 IMF 2021, Kingdom of the Netherlands—Aruba: Staff Concluding Statement of the 2021 Article IV Mission, <https://www.imf.org/en/News/Articles/2021/03/08/mcs030821-kingdom-of-the-netherlands-aruba-staff-concluding-statement-of-the-2021-aiv-mission>

139 Weenink e.a. 2011, De staat van bestuur van Aruba (WODC), p. 87

140 Ibid. p.88

141 The 2020 budget was submitted to Parliament more than six months late.

142 Alberts & Milliard 2003, De Staten van Aruba op weg naar volwassenheid, FESCA 2003, p. 30

143 SDBA 2018, Naar een duurzaam sociaal-economisch beleid in Aruba, chapter 4. See also: Breeman 2020, De Bestuurlijke kaart van Nederland, p. 24

In addition to the reasons set out above (under ‘Political rights’) public confidence in the government, ministers and members of Parliament has been severely damaged due to the financial policy conducted – contributing to the increasing Aruban debt through the years – and several corruption cases involving politicians.

Socio-cultural foundations

In general there is a noticeable lack of collective awareness. Furthermore, Aruba can be best described as a low-trust society due to several causes. The development of good governance is impeded by these factors.

Socio-cultural aspects

As described earlier under ‘Socio-political foundations’, there is a clear division between an elite and the rest of Aruban society when it comes to wealth and fulfilling key positions. Due to the strong polarization within the political arena as well as to political patronage instant benefits seem of more importance than long-term developments. The prevailing sense of ‘what’s in it for me?’ and a consequent non-collective orientation obviously influence the development of good governance. Apart from the above-mentioned political patronage and polarization, a number of other aspects of culture can be pointed out. Firstly, a culture of ‘helping each other’ – which obviously also is a recognizable element of political patronage – can be seen in Aruba. Families take care of each other.¹⁴⁴ Secondly, a lack of reporting culture can be seen.¹⁴⁵ Not all decisions, agreements, treaties and policies are documented and therefore information – including information that, according to

the law, should be publicly accessible – simply is not easily accessible. On top of that, Aruba has a culture of silence: it is therefore highly unlikely that agreements, decisions and policies are discussed openly. This in particular applies to subordinates and can be directly related to a culture of fear. A fear for reprisals – towards the employee in question, but also to family members (or family business) – prevents the disclosure and sharing of information.¹⁴⁶ The Corruption surveys performed by the Central Bank of Aruba identify this fear as the main reason why in practice only few people actually report corruption when they experience it.¹⁴⁷ Several respondents interviewed on behalf of this study acknowledged the existence of this fear; they mentioned several cases in which this fear of retaliation came true in practice. The NIS-study team initially experienced a reluctance to provide input: many requests for interviews were rejected or simply remained unanswered. Some requests were not granted until after confirmation from on high. Furthermore, a number of requests were only granted under the condition that the respondent would remain anonymous.¹⁴⁸ It is unclear whether this restraint has to be solely attributed to the above-mentioned culture of silence and/or fear of retaliation or to one or more other causes as well, like strategy, unwillingness to cooperate in general, perhaps a certain degree of suspicion or reluctance towards foreign – or more specifically European Dutch – researchers or simply lack of time. As mentioned earlier, this culture of silence and the lack of debate definitely can be seen in politics as well.¹⁴⁹ Holding another person accountable, questioning a decision or making policy comments is invariably considered to be a sign of lack of

144 Schotborgh-van de Ven, N. 2019, De wortels van publieke fraude en corruptie in het Caribisch deel van het Koninkrijk, p. 107

145 Interview with a key expert who wished to stay anonymous..

Furthermore, during this study it appeared that information on official websites – for instance, the Parliament’s website – partly is not complete or not up-to-date. Obviously this, along with the culture of silence as well as the fear of reprisals, makes information gathering very difficult.

146 Schotborgh-van de Ven, N. 2019, De wortels van publieke fraude en corruptie in het Caribisch deel van het Koninkrijk, p. 108.

According to Schotborgh-van de Ven these aspects of culture, as well as the political patronage, can partly be seen as relics from the colonial past.

147 By example: Corruption survey 2018 (CBA 2018), p. 8

148 Apparently, cooperating under the condition of anonymity is definitely not unusual in practice. By example see a news item in which respondents are quoted who only wanted to share their experiences anonymously, out of fear for reprisals: Caribisch Netwerk 2020, Nieuwe regels op Aruba duwen ongedocumenteerden de armoede in. (<https://caribischnetwerk.ntr.nl/2020/05/26/nieuwe-regels-op-aruba-duwen-ongedocumenteerden-armoede-in/>)

149 Alberts & Milliard 2003, De Staten van Aruba op weg naar volwassenheid, FESCA 2003, p. 17

respect and loyalty – especially when directed at a higher-ranked person. Respect and loyalty towards people in key-positions are highly important in the Aruban culture, partly due to the public perception that one is entitled to take full advantage of an obtained position. In practice, criticism rapidly leads to an accusation of being disrespectful and with it comes conflict: emotions quickly run high in Aruba. Also, corruption is part of the business culture in Aruba. According to the 2020 Corruption survey-respondents the level of corruption has increased in recent years. The great majority of these respondents are of the opinion that the government is doing badly in fighting corruption, indicating a lack of willpower to combat corruption as these same politicians are likely to benefit from it.¹⁵⁰ Nowadays, bribery and the use of connections seem to be the easiest way to obtain public services in Aruba.¹⁵¹ The World Bank's World Development Indicators show that – compared to other countries in the Caribbean – law enforcement in Aruba is considerably stronger and the quality of the administration is relatively high.¹⁵² Nevertheless, the Corruption surveys indicate that Aruba can be best described as a low-trust society: there still are a lot of challenges ahead. This conclusion follows partly from the earlier described inability of Parliament to execute their supervising, controlling and budget rights – a Parliament made up of members with whom, moreover, most voters do not necessarily identify. All this has resulted in an imbalance between the executive and legislative powers, in favor of the former. Furthermore, the low-trust level can also be

attributed to the financial crises and political scandals: these form serious causes for concerns about governance and economic viability. It goes without saying that deficient political integrity and unviable public expenses are not just sources of agitation for the Kingdom's Council of Ministers, but also for Aruban society.¹⁵³ It is true that individual government officials and politicians are (and have been) persecuted and convicted for fraudulent acts.¹⁵⁴ However, not all fraudulent acts actually lead to prosecution – and even less if notifications are not made due to a fear of consequences, as mentioned above.

Lastly, the previously mentioned polarization manifests itself also in a certain form of opportunism. In general, reports, conclusions and findings which suit one's party's own agenda are welcomed, whereas criticisms and comments regarding own policies are dismissed relatively fast – in the strongest terms and emotional responses in public and in (social) media. The latter applies all the more if the criticism isn't 'home-grown', but from European Dutch origin (at times referred to as 'macambas'), due to the colonial history and – the still existing – dependence on the Netherlands.¹⁵⁵ From the Aruban perspective, the relationship between the two countries is a delicate matter and is best described as a love-hate relationship.¹⁵⁶ Despite the obtained autonomy, there has remained a structural financial dependence on the Netherlands and, along with this, a continued involvement of and interference by the latter country. The Netherlands provided for development aid, vouched for loans and granted loans at

150 Corruption survey 2020 (CBA 2020), p. 5

151 Corruption survey 2018 (CBA 2018), p. 4 and 8. According to the 2020 survey, the bribery rate has only increased since then, see: Corruption survey 2020 (CBA 2020), p. 7

152 EBA 2020, Kleine eilanden Grote uitdagingen (commissioned by the Tweede Kamer of the Netherlands), pp. 34-35

153 Alders, A. 2015, Obstacles to 'Good Governance' in the Dutch Caribbean, p. 3

154 By example, in 2019 a former minister has been convicted for large-scale corruption with regard to labor exemptions (Ibis-case). See: OM Aruba 2021, Zaak Ibis in hoger beroep (<https://omaruba.com/zaak-ibis-in-hoger-beroep/>)

A second example: recently, in May 2021, another former minister – nowadays member of Parliament – has been arrested for having granted government lots to friendly relations during his ministership. See: Curacao.nu 2021, Oud-minister Aruba gearresteerd voor corruptie (<https://curacao.nu/oud-minister-aruba-gearresteerd-voor-corruptie/>)

155 'Macamba' is the word that is used in Papiamentu to describe a person from European Dutch origin.

156 Multiple disputes in recent decades, sensitivities back and forth as well as the critical attitude of some Arubans towards the Netherlands have been reflected in, among others, the bundle 'Koninkrijk op eieren – reflecties op 10 jaar 10-10-10' by Berg and Zwart (2020).

attractive conditions. Generally, these forms of aid were accompanied by forms of interference and supervision by the Netherlands. Because of this, there is to this date an asymmetric balance of power between the rich country and ex-colony Aruba.¹⁵⁷ As a result of this, a significant part of the Aruban population has a critical attitude towards interference and the influence of European/Dutch civil servants.¹⁵⁸ Some politicians enhance this sentiment by reproaching the Dutch government for interfering and make accusations of post-colonial meddling with the autonomy of Aruba.¹⁵⁹

157 Schotborgh-van de Ven, N. 2019, De wortels van publieke fraude en corruptie in het Caribisch deel van het Koninkrijk, p. 107

158 However, there are also parts of society which are positive with regard to the Dutch interference. There also have been (and still are) calls for more supervision and control by the Netherlands within the Aruban society.

159 Breeman 2020, De bestuurlijke kaart van Nederland, p. 24

LEGISLATURE

Structure and organization

Legislative power is constitutionally attributed to the Aruban Parliament (de Staten), the legislature.¹⁶⁰ Parliament is the principal constitutional body whose members have a direct mandate from the Aruban population as they are elected based on proportional representation by means of free elections by secret ballot. Because of this democratic primacy, it is constitutionally considered to be the highest body within the Aruban state order.¹⁶¹ Parliament can adopt, reject, or amend draft national ordinances and can propose legislation with the right of initiative. Legislative power is shared with the executive power, the government of Aruba. In addition to this legislative

power, Parliament is the main political and budgetary controller of the government.^{162 163}

Resources

Members of Parliament are entitled to compensation according to the Aruban constitution.^{164 165} Practical support in the functioning of Parliament is provided by the Department of the Clerk to the Parliament.¹⁶⁶ The Clerk is accountable for his actions to the Committee on Domestic Affairs of Parliament.¹⁶⁷ The required number of officials is added to the Clerk by the government. Members of Parliament can appoint personal assistants, but this is restricted to political parties and not for independent Members.^{168 169 170} Parliament

160 According to art. 42 of the Kingdom Charter of the Netherlands (het Statuut), each country holds a constitution. For Aruba this is the Staatsregeling of Aruba (StregAr), founded in 1986 when Aruba received autonomy (Status Aparte) within the Kingdom.

The Staatsregeling addresses governance of the country Aruba (in [Dutch](#): staatsinrichting) and provides citizens and governing institutions with fundamental rights and authorities. Van Rijn, 2019, p. 37

161 Van Rijn, 2019, P. 491. Aruban Parliament consist of 21 members that form a single-chamber body. A full term of office lasts four years (artt. III.1, III.2, III.3 and III.4 StregAr.)

162 Within the Aruban Parliament there are various committees: a Central Commission, a Committee for National Expenditure, and several standing committees. Special committees can be set up to investigate specific subjects (art. 14 RvOStAr). The chair is solely responsible for assigning the members to the standing committees for the investigation of certain subjects and to the committee for petitions. Members of the special committees are also appointed by the chair.

163 At the time of this assessment, Parliament consisted of four political parties and one independent member. MEP, POR and RED, the governing coalition partners, led by Mrs. Wever-Croes (EWCI). AVP was and still is the main opposition party. Mrs. D. Lejuez was independent member after leaving the MEP. Election is scheduled every four years, both for legislative and executive power at the same time. Election was initially scheduled for September 2021, but after the fall of the coalition government in February 2021, early elections were scheduled for the 25th of June 2021. After MEP won the election, government EWC II consists of MEP (9 seats) and RAIZ (2 seats), having a majority of seats in Parliament. AVP holds 7 seats, MAS 2 and Accion 21 1 seat in Parliament.

164 Art. III.13 StregAr. Compensation, pension and other benefits are regulated through national ordinance, which can only be amended by parliament itself with a two-thirds majority.

165 art. 7 e.v. National Ordinance Voorzieningen Politieke Ambtsdragers (Lv VPA). In addition to a fixed salary, there are various allowances and an increase for certain functions within Parliament. Due to the Covid crisis and the necessary economizations, the remuneration of members of parliament is (voluntarily) reduced with 25%. This condition is part of a provision on Kingdom level of financial aid to Aruba (Landspakket Aruba).

166 The Clerk is appointed by Parliament itself, and cannot also be a member of Parliament (art. III.12 StregAr).

167 In Dutch: Commissie voor Huishoudelijke Aangelegenheden van de Staten.

168 Research showed that members of Parliament did not receive sufficient legal support in preparing agenda items. WODC report, Weenink e.a. 2011, p. 17 and p.85. The current state of support by the Department of the Clerk to Parliament remained unclear. Respondents indicated that there is support, but also state that the level of (technical legal) knowledge of individual members of Parliament falls short and therefore more specific support is needed for the drafting of initiative legislation.

169 Both President of Parliament nor the Clerk responded on repeated invitations for an interview with the research team. Additional invitations were sent through the government channel. In May 2021 the President was interviewed, but primarily in his role as member of the political party MEP and about developments in the field of integrity legislation.

170 Interview R. van Aller, d.d. 8 May 2020.

submits its own annual budget by initiative national ordinance. Parliament's power to approve and scrutinize the national budget theoretically guarantees that the government will not make budgetary changes independently.¹⁷¹ Although Parliament can submit its own budget and has the right to approve or reject the national budget, in practice rejection of the national budget hardly ever occurs. The national budget is frequently presented too late by government¹⁷², draft budgets are approved by Parliament without rebuttal and financial statements are insufficiently audited.¹⁷³

Independence

The Constitution safeguards the legislature's independence through several provisions.¹⁷⁴ Parliament can be dissolved by the government. This right to dissolve is subject to the obligation to call for new elections.¹⁷⁵ The President and vice-President of Parliament are appointed by the government by national decree and nominated by Parliament. Although by law the legislature is independent in its functioning towards the executive, in practice the relation is intertwined.

There is strong political discipline within the Aruban Parliament to follow guidance of the executive party minister(s).¹⁷⁶ Coalition agreements and the fact that the top of the largest party holds a central position within the government, weakens Parliament's control function.¹⁷⁷ ¹⁷⁸ In practice it has become custom that the appointment of the President of Parliament is part of the cabinet formation. As a result, the President is always a member of the governing political party(s).¹⁷⁹ Given the considerable influence of the President on parliamentary affairs, this does affect the appearance of parliamentary independence.¹⁸⁰

Transparency

There are provisions in place to ensure that the public can (directly) obtain relevant (on-line) information on the activities and decision-making process of the legislature, though in practice there are restrictions to access of information. In principle, Parliament meets in public, through law or a decision of the President can render

171 Van Rijn, 2019, p. 518-519.

172 Henriquez, 'Premier Aruba: 'Te laat indienen begroting geen schending van integriteit', Caribisch Netwerk.ntr.nl, 2 September 2019. The 2021 budget was in June 2021 still not presented by government and discussed in Parliament.

173 Previous reports mention this lack of budgetary control, e.g. Botting 1992, FESCA 2003, De Staten van Aruba op weg naar Volwassenheid; Hessels, 2020, p.140. The lack of budgeting control escalated in 2015 when the Kingdom government intervened, resulting in the establishment of a financial supervisory institution on Kingdom level (CAft). On June 1, 2021, in its quarterly comments on governments financial report (Q1 uitvoeringsrapportage, UR), CAft expressed its concerns about the lack of an approved budget for 2021. More about budget, control and financial audit in the pillar Supreme Audit Institution.

174 Members of Parliament vote without a burden (art. III.16 lid 3 StregAr). Every member is free to vote and is not bound by, for example, coalition agreements that govern the executive. Members of Parliament enjoy immunity of speech, as far as debates in Parliament or any committee of Parliament are concerned, implying that they cannot face charges for anything they say or any documents they present in the sessions mentioned.

175 Art. III.14 StregAr; Van Rijn, 2019, p.438-440.

176 7 Van Rijn, 2019, p.543 and reported in various interviews with respondents. This bias in the system was already signaled in various previous reports, e.g. WODC, Weening et al, 2011 Chapter 5. After election the top party members become minister. The lower ranked members become members of Parliament and follow top party orders out of loyalty, not in the least in order to obtain a successful political career. See also Foundations.

177 Van Rijn, 2019, p.446.

178 Mentioned in interview with several respondents. This phenomenon is coined by some respondents as "stempelparlement", where party majority 'stamps' executive decisions. Respondent described Parliament as an "executive agency" of the government. Others indicate that "stempelparlement" disqualifies the role of Parliament and its individual members, but acknowledged, like other respondents, that quality and knowledge of MoP's is sometimes lacking. Interview A. van Rijn, d.d. 11 mei 2020. Van Aller, 8 mei 2020 (more critical on the disfunctioning of the Trias Politica, the separation of powers in Aruba).

179 Interview G. Hoogers d.d. 13 May 2020. E.g. currently it is a MEP President of Parliament.

180 D.J. Elzinga, former professor on the University of Aruba (1987-2019), mentions this as an effect of Aruban (constitutional) law being a 'legal transplant' of the Dutch law. Elzinga (and other respondents) suggests to adapt the system to local conditions, e.g. by organizing separate elections for executive and for Parliament, like elsewhere on small scale Caribbean islands is institutionalized.

a meeting of a closed character.¹⁸¹ The President may set (safety) rules for visitors to the building and those interested in public meetings, as long as these are not restrictive in nature. Parliamentary documents up to 2016 have been partly published on the website. As far as known no post-2016 documents have been published on the website. As far as could be established, minutes of public meetings and other documents are difficult or impossible to obtain online.¹⁸² There is no national legislation on archiving public documentation.¹⁸³ The actual accessibility of parliamentary documents is therefore limited.¹⁸⁴

Accountability

Within the (legal) system there are several provisions in place to ensure that the legislature is accountable.

As an elected representative institution, Parliament is primarily accountable to the voters. Petitions for requests to address matters of concern can be submitted to Parliament, although such request is not always granted.¹⁸⁵

Any piece of legislation or administrative measures approved by Parliament may not conflict with higher regulations or interests of which the care or guarantee is a matter of affair of the Kingdom of The Netherlands.¹⁸⁶ How Kingdom affairs cause tensions became clear in the developments regarding the in-stallation of the Board of financial supervision Aruba (CAft). This caused severe turmoil as budgetary supervision was imposed on Aruba, thereby side-setting the role of the Parliament.¹⁸⁷

- 181 Art. III.15 StregAr. A meeting can be closed for public at the request of the President of Parliament or four members. A two-third majority of Parliament must then agree to continue the meeting behind closed doors. In principle, meetings of the Central Commission are also open to the public. The meetings of the Committee on National Expenditure and the other standing committees are always closed unless they determine otherwise (art. 17 lid 4 RvOStAr). The exchange of views in a committee meeting that takes place behind closed doors is confidential, with the exception of what the committee states about this in the report to Parliament (art. 17 RvOStAr). Minutes are taken of every public meeting (art. 28 RvOStAr). These minutes include, among other things, the names of members present, a brief content of incoming documents and the decisions taken. Questions asked and their answers should be made public as part of these minutes (art. 59a RvOStAr). Minutes of closed meetings are kept locked by the registry but are available to other members of Parliament (art. 70 RvOStAr).
- 182 Upon personal request documents can be obtained by the Clerk. Various respondents mentioned this.
- 183 Drafting a National Ordinance on Archiving was suggested (a.o. by Mrs. Lejuez) as an improvement of enhancing transparency, not only within the legislature, but within the public sector.
- 184 One respondent indicates that the legal framework for public access to this information is almost identical to the Dutch one, but the authorities in the Caribbean part of the Kingdom traditionally share less information. See also Elzinga, referring to the concept of a 'legal transplant'.
- 185 Van Rijn, 2019, p. 537-538 and 561-562. The Constitution stipulates that everyone has the right to submit written requests to the competent authority (art. I.14 StregAr). The constitution emphasizes the obligation of Parliament to investigate and respond to petitions addressed to them within a reasonable period of time (art. III.23 StregAr). In contrast to Curaçao and Sint Maarten, the Aruban constitution does not contain the specific possibility for a referendum. One respondent mentioned to have petitioned the chair of Parliament to address environmental incidents on Aruba (e.g. the Parkietenbos dump case which caused severe smoke and pollution hindrance) but was not heard and did not receive official notification. This issue was discussed in the first NIS Aruba Webinar on 19th October 2020.
- 186 The Kingdom government (with majority of The Netherlands) can suspend or annul these measures on the recommendation of the Kingdom Council of Ministers (art. 50 Kingdom Charter (Statuut)). The Kingdom Charter also stipulates that an amendment to the constitution within the areas of the realization of fundamental human rights and freedoms, legal certainty and good governance must first be submitted to the government of the Kingdom for permission (art. 43 and 44). In addition, a draft country ordinance amending any of these subjects may not be presented to Parliament, and Parliament may not examine an initiative proposal, before seeking the opinion of the government of the Kingdom in this area. This 'waarborg-functie' touches upon the autonomy of the island, and is a sensitive topic in politics and society.
- 187 Parliament adopted an amendment that limited the Kingdom's supervision by CAft. At the urging demand of the Dutch State Secretary for the Interior and Kingdom Relations, the Aruban government did not present this amendment to the Governor for ratification. This example shows the effect of different legislative levels within Aruba and the Kingdom and that this can cause tensions within the constitutional law system of Aruba. Currently a new Kingdom Ordinance is drafted to direct financial supervision in relation to reform in the public sector of Aruba. (Rijkswet financieel toezicht Aruba)

In practice, the Court of Audit and the Advisory Council provide independent, often unsolicited, critical advice on budgetary matters within the public sector.¹⁸⁸ Advice of these institutions could lead to critical parliamentary questions or inquiries. In practice however, Parliament hardly applies these critical comments.¹⁸⁹

Integrity mechanisms

There are several basic integrity mechanisms in place for Parliament and individual members, e.g., the duty to swear an oath, incompatibility standards, scrutiny by letter of credence, remuneration deductions and even criminal provisions.¹⁹⁰ No specific rules of conduct were found for members of Parliament with regard to protecting integrity. In practice remuneration deductions seldom take place.¹⁹¹ Concrete and public integrity mechanisms seem lacking, and it is, because of insufficient

transparency, not clear whether the existing mechanisms are sufficiently respected.¹⁹²

Executive oversight

Legally, Parliament has adequate control mechanisms to oversee executive powers, by means of asking questions, scheduling interpellations and by right of investigating governmental executive acts (right to inquiry).¹⁹³ Parliament can give its opinion on policy matters or other topics, by adopting motions. The government may decide whether a motion is executed or not.¹⁹⁴ Individual ministers should resign by a majority vote on a 'motion of no confidence' in Parliament, which, incidentally, happened in a turbulent parliamentary meeting with apparent voting irregularities in late 2020.¹⁹⁵

188 Confirmed in several interviews with respondents.

189 Interviews with various respondents about the pillar.

190 Members of Parliament must take an oath when taking office (art. III.11 StregAr). To ensure that parliamentarians do not act for reasons other than the representation of their voters, incompatibilities for parliamentarians have been included in the constitution. This concerns the restriction of the filling of a number of positions within the government in addition to the Parliament membership and the restriction of family ties between members (art. III.7 and III.8 StregAr). When a candidate has been elected as a member of Parliament they must send their letter of credence to Parliament (art. 105 Kiesverordening). Together with this letter, the elected person submits a signed declaration containing all public relations they hold (art 106 Kiesverordening). Parliamentarians are accountable for the income they receive in addition to their employment as a member of Parliament. Based on this, the fixed salary is partially deducted (art. 6 lid 1 sub 3 LVPA). Parliament members must inform the chair of Parliament as soon as possible about the above-mentioned amount (art. 20 lid 1 LVPA). This ancillary income is not made public, reason why respondents remark that it is often not declared. Finally, the Criminal Code of Aruba contains criminal provisions for official crimes and offenses, including increased maximum penalties when committed by parliamentarians.

191 As far as could be established there are no rules in the field of registering gifts, lobby contacts, asset declarations and other interests besides Parliament membership. There were also no codes of conduct found. As mentioned above, parliamentarians must report their additional income to the chair of Parliament. Since these declarations are not made public, so far it could not be determined with certainty whether this actually happens in practice. See interview R. van Aller, 8 May 2020.

192 There is, for instance, no registration of donations, no formal registration of side-activities of member. Although there were mentioned plans to establish legislation with regard to integrity and a code of conduct, this was not yet established.

193 Art. III.19 StregAr. Annually an overview of activities in Parliament is published by the Department of the Clerk. The overview over year 2019-2020 (UG 20-21/003 Overzicht werkzaamheden ZJ 2019-2020) shows that majority of questions to executive remain unanswered.

194 Van Rijn, 2019, p. 539 v. Each member of Parliament can ask parliamentary questions to the ministers. The minister must answer the questions within a reasonable period of time, but does not have to answer a question if this would be contrary to the national or Kingdom interests. With interpellation Parliament can invite ministers to attend a meeting to provide information. Parliament also has the right of inquiry (art. III.19 StregAr). This inquiry goes further than possible with questions or interpellation. Filing a motion involves strict procedural rules, art. 33 RvO.

195 With regard to Minister M. Lopez-Trump this was covered broadly in the local media as it was related to apparent corruption accusations of former Minister Oduber, and the voting procedure in Parliament was far from transparent and subject of criticism in the (social) media.

Members of Parliament of the majority coalition make limited use of their available rights. Besides, when critical questions are raised by opposition members to the executive, they often go unanswered, without political consequences.¹⁹⁶

Legal reforms

Preventing corruption and promoting integrity played a key role ('spearhead') in both the former coalition agreement 2018-2021 (EWC I) and in the current government (EWCII).¹⁹⁷ Several ambitious measures are part of new government plans to achieve enforced good governance in all public institutions, including legislature.^{198 199} In practice not all of these plans are concrete or have not yet been implemented.²⁰⁰ Reforms are also part of a separate agenda in accordance with

a financial support program set up in agreement with the Netherlands which is going to be supported and monitored by a Caribbean Organ for Reform and Development (COHO).²⁰¹

Sub-conclusion

Overall, it must be concluded that the legislature is a vulnerable pillar within the integrity system of Aruba.²⁰² Several factors play a role in weakening this pillar. Firstly, that the legal system of Aruba does not specifically match with the local environment, because it is considered a legal transplant of the system from donor country the Netherlands.²⁰³ Secondly, there is a fundamental polarization within Aruban politics between the two leading political parties MEP and AVP and this political division is strongly intertwined in Aruban society.^{204 205} Individual parliamentarians in Aruba have many responsibilities and courage is needed to make critical statements that can have political and practical consequences in their career.²⁰⁶

196 As a consequence, various respondents reported, parliamentary members of opposition parties sometimes submit complaints about Ministers to the Public Prosecution Service as an alternative to holding persons politically responsible within Parliament. This example demonstrates how flawed the usual political control mechanisms can work in practice.

197 First government led by PM E. Wever-Croes, hereafter EWC I.

198 During the Covid crisis GOA made a draft reform plan in July 2020 and a steering commission was installed to review reforms within Aruban democracy. A number of suggestions were made, mainly resizing and restructuring the public sector. Measures mentioned related to Parliament are, for example: a more independent and impartial Parliament, a code of conduct for members of Parliament and the introduction of the Act on Financing of Political Parties.

199 An interview (December 2021) with newly appointed Minister of Integrity Mr. U. Arends learned that that there is a broad number of issues mentioned in the coalition agreement 2021- 2024. Elaboration and implementation, however, still has to take place in the coming governing period.

200 As far as has been researched, there is as of yet no code of conduct for parliamentarians. The Country Ordinance Financing Political Parties has been implemented in Aruba. The restructuring of the position of the Parliament is part of reform plans, but outcomes remained unclear.

201 This entity initially was intended to independently initiate (budgetary) reforms in Aruban society on a number of key fields in relation to agreed upon reform plans. The installation of this Caribbean reform entity COHO, under supervision of the Kingdom government, caused tensions within the Kingdom relations and was finally agreed upon in Augustus 2021. After negotiations, it includes an Aruban member and it has a supportive role towards government, which remains responsible for setting up and execute the reform agenda.

202 Previous reports and responses in interviews with various law scholars, e.g. WODC report 2011.

203 Elzinga, farewell speech University of Aruba 2019. According to article 39 Kingdom Charter (Statuut), to be largely in concordance with Dutch legislation. This principle of concordance has advantages, but also limits input of 'couleur locale' in small island state legislation ('legal transplant').

204 Interview G. Hoogers d.d. 13 May 2020.

205 The small scale of the island plays a role in this polarization, A. Alderts, Obstacles to good governance in the Dutch Caribbean, Master thesis University of Utrecht, 2015.

206 Interview A. van Rijn, d.d. 11 May 2020. It can lead to an information backlog compared to the government as information will not easily be shared. Career opportunities in politics within the own party structure might be affected.

The small scale of Aruba also creates practical limitations, as capacity of qualified candidates is limited and therefore it is more difficult to find competent persons for governing positions.²⁰⁷ Critical comments from High Institutions of State are often insufficiently applied. Legislative reforms are announced but still have to be drafted, approved and implemented in an efficient way.

²⁰⁷ Interview G. Thodé and G. Pesselse, d.d. 18 May 2020.

EXECUTIVE

Structure and organization

The executive power of Aruba is the government, which consists of the King of the Kingdom of the Netherlands and ministers.²⁰⁸ The King is represented by the governor of Aruba. The governor is appointed by royal decree for a period of six years, with the possibility to be reappointed only once.²⁰⁹ The government adapts laws together with Parliament and is responsible for the execution of these laws.²¹⁰ Aruba, due to its scale, is a centralized unitary state, led by the government. There are no state secretaries in Aruban government, only ministers.²¹¹ The internal structure of the different ministries is determined by National Ordinance.²¹² Most ministerial cabinets within the executive have civil service departments at their disposal, sometimes

several, to effectively carry out duties. Typical in Aruban government structure is the existence of numerous 'coordinators' and 'advisers' within a ministerial cabinet, with a (chief of) staff, although the maximum number of extra staff for a cabinet is limited. Although the number of intermediaries in the previous governments was higher, the phenomenon still exists.²¹³ Ministers together make up the Council of Ministers, which is chaired by the Prime Minister. The powers and responsibilities of the executive are laid down in the Constitution and in the Rules of Procedure of the Council of Ministers. The Council is supported by a secretariat, headed by a secretary.²¹⁴ The ministers are to be appointed and dismissed by national decree.

208 Article II.1-1 StregAr. The King is formally the head of the government of the Kingdom of the Netherlands and of each of the countries overseas, including Aruba.

209 Currently mr. A. Boekhoudt is Governor. The powers and responsibilities of the governor are laid down in the Charter for the Kingdom of the Netherlands, a Kingdom Act and in the Constitution of Aruba (Staatsregeling). In the process of government formation, the governor appoints an (in)formateur to form a coalition government which is supported by Parliament (Staten). Politically, the governor is shielded by the Constitution. At the country level, apart from his role in the process of government formation, he does not have a political responsibility of his own. Although the governor is required to sign country ordinances and country decrees, the countersignature of one or more individual ministers means they, and not the governor, are politically responsible in relation to Parliament for the governor's acts as head of government (article II.1-3 Constitution of Aruba).

210 www.overheid.aw provides information from GOA.

211 Aruba does not have provinces or municipalities with governing power.

212 National ordinance Installation of Ministries 2018. The ordinance of 2021 was not found online. It remained unclear whether Ministers have authority before they are officially installed. This recently raised questions in media regarding an high stake energy deal closed by the former Minister of Labor, now Energy, apparently without previous discussion in Parliament and without being able to provide contractual information, raising concerns on transparency and integrity. Newly appointed Minister of Integrity was apparently not informed. A motion on lack of confidence against PM Wever-Croes was rejected in Parliament as there was no majority in votes. <https://antilliaansdagblad.com/aruba/24865-premier-aruba-overleeft-debat-over-gascontract>

213 Although ministers can appoint their own staff, currently up to a maximum of 25 employees due to Human Resource policy, the status of some coordinators and advisers (by some called 'influencers' or 'intermediaries') remain unclear and their functioning is criticized. Often these persons are intimates in a close relation to a Minister, although it is by some seen as a political reward for offered support during campaign. The authorities of these persons remain often unclear, causing (sometimes) uncertainty, as they (sometimes) claim authority towards the ministerial departments, causing unclarity. Some civil servants reported 'a culture of fear' in relation to certain coordinators/ advisers. The Council of Advice, June 2020, advised a severe reform of ministerial cabinets, appointing an independent Secretary General, as is customary structure elsewhere in small island states. Unclear is how these suggested reforms will be addressed in the new coalition EWC II.

214 Aruba had ten cabinets, mostly dominated by one party, MEP or AVP. The current coalition Cabinet Wever-Croes I was in office since 17 November 2017 until February 2021 and consisted of the prime minister and seven other ministers, each in charge of a ministry. Aruba has a plenipotentiary minister, who is seated in the Netherlands. This Minister is a member of the State Council of Ministers and looks after the interests of Aruba. The plenipotentiary minister is not a member of the Aruban government. He/she has the opportunity to attend meetings of the Council of Ministers, but only has consultative powers (article II.10-4 Constitution of Aruba).

Decision-making power and responsibility remain with the individual minister concerned, in accordance with the coalition agreement and executive decisions made within the Council of Ministers.²¹⁵

Resources

The number of civil servants within the public sector is extremely high.²¹⁶ This overhead causes budgetary constraints and rising financial shortages. The situation worsened due to COVID-19 pandemic, which has led to a necessity of restructuring the public sector.²¹⁷ The annual government budget is determined by national ordinance.²¹⁸ Every year before September 1st the government should present its annual budget to Parliament, but these deadlines are repeatedly not met, which is subject to constitutional criticism.²¹⁹ Revenues mostly come from taxes and custom charges. Additionally needed funds come from

external loans.²²⁰ Tax compliance is mentioned as a structural issue and subject to re-form.²²¹ Due to the COVID-19 crisis tourism income dropped and financial resources of the Aruban government became largely insufficient.²²² Funds were borrowed from the Kingdom Council of Ministers up to an amount of AWG 414 million divided over three tranches, with strict conditions for national reforms, laid down in country packages (lands-pakketten) with detailed executive agendas (uitvoeringsagenda's) agreed upon with the Netherlands.²²³

Independence

Aruba's executive has a hybrid relation with Parliament, as it shares the legislative power to make national ordinances. The government can independently is-sue national decrees.²²⁴ Executive decisions are either taken by the government, through the council of ministers, or by individual

215 The assessment in this chapter focuses on the Council of Ministers and its individual ministers as 'the Executive', and only addresses the governor where it is thought relevant to refer to his/her capacity as representative of the Kingdom government.

216 In comparison with neighboring country island Curacao which has more inhabitants, Aruba has nearly a third more civil servants.

217 This restructuring is part of the reform plan under supervision of COHO and governmental departments. Salaries were temporarily reduced by law, Landsverordening tijdelijke versoering bezoldigingen en voorzieningen overheid AB 2020, no 8. See critical also interview G. Hoogers d.d. 13 May 2020. See also interview G. Hoogers d.d. 13 May 2020.

218 This national ordinance on compatibility (Comptabiliteitsverordening) is an authorization for government to make expenses and guarantees that the government will not spend funds without approval of Parliament. Van Rijn 2019, p. 608. Article V.12-1 Constitution of Aruba.

219 Budgeting is currently severely monitored by the financial supervisory board, CAft, as part of the liquidity support conditions laid down in the first Landspakket Aruba, dec 2020. Min. of Finance sends a quarterly overview of budgetary goals (uitvoeringsrapportage, UR) to CAft, that subsequently responds by letter, often critical. See <https://www.cft.cw/?island=aruba>.

220 Aruba structurally borrowed funds to finance the excessive public sector and some PPP projects, exceeding budget, which was both heavily criticized in numerous reports and by national advisory institutions supreme audit institution (ARA), internal accountancy service (CAD), social economical advisory council (SER) and the Council of Advice (RvA) on annual budget laws. The national debt rose to AWG 5 billion in 2020. GOA also borrowed in the Covid crisis, criticized because this was against 6 % interest while the Netherlands offered interest free loans (liquidity support) against reform conditions.

221 Far-reaching plans to improve the tax system, prevent non-compliance and tax-evasion, were already presented in the past (2015 plan Vermeend), yet never carried out. Recommendations stemmed, amongst others, from the IMF. Critics respond that reform plans were not carried out as it would affect campaign financing of the governing parties; e.g. A. Hessels, Helder, Eenvoudig, Eerlijk en Effectief. www.knipselkrant-curacao.com, 4 May 2021.

222 For 2021 a shortage of around 1 billion Aruban florin was estimated. Source: CAft March 2021. According to the CAft chairman, Aruba has a good market position as well as a sound level of safety. Shrinkage of economy in 2020 was estimated on 26%.

223 e.g. Samson, 'Dreigende aanwijzing uitgesteld: 'Aruba krijgt kans om vertrouwen te herwinnen van Den Haag', caribischnetwerk.ntr.nl, 22 November 2019. In March 2021 the government of Sint Maarten, another small island state within the Kingdom, protested before the UN, causing tensions in Kingdom Relations.

224 Art. V.9 StregAr. authorizes the executive. General powers to realize fundamental rights (e.g. care health, welfare etc..) can also be found in the StregAr; Ratification of national ordinances is a power of the executive, art. V.2. StregAr. Rules for criminal charges have to be laid down in a national ordinance, therefore with approval of Parliament.

ministers.²²⁵ Ministers historically tend to act independently, which in several cases has been subject to criticism of lack of transparency and control.²²⁶ Political relations are strongly intertwined in Aruban society. Ministers are (sometimes) directly approached and citizens and companies actively reach out for personal contact with individual ministers. Favoritism (clientelism or patronage) and nepotism (e.g. appointing friends and family in leading positions) are the direct consequences of interwoven relations in small territories, and also occur in Aruba.²²⁷ A clarifying example of this form of corruption is the criminal court case 'Ibis,' where in exchange for financial gifts, a former Labor minister provided companies (through in-

termediaries, 'tramidores') with (illegal) work permits for foreign workers and other favors.²²⁸ In return, the minister testified 'that all politicians returned such administrative attention in exchange for a gift or favor'.²²⁹ To restore confidence and transparency in ministerial decision-making, a national ordinance on the financing of political parties was passed through Parliament and ratified.²³⁰ Additionally, national inquiries on the existence of corruption in Aruban society were executed by the Central Bank of Aruba.²³¹ Recently, a national ordinance on integrity of Ministers came into force.²³² After coalition negotiations, in the EWC II government a new Minister is appointed, holding responsibility for structural reforms in the field of Integrity in a broad

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- 225 National decree, Landsbesluit. Individual ministerial decrees come from an individual minister, which most of the time need internal approval of the council of ministers. Reportedly it incidentally happens that a minister acts without internal approval, or even outside budgetary agreements.
- 226 According to the respondents on the Executive.
- 227 This typical ministerial power-behavior is broadly criticized by respondents and in the media, often described as inherent abuse of power. Favoritism, patronage and nepotism can become structural in ministerial behavior and are apparently seen as an 'automatism', coming with the job, respondents mentioned. Abuse takes various forms, in many ways leading to feelings of unsettlement or fear with civilians, companies and civil servants. Some ministers do not hesitate to govern outside their ministry. Patronage, a structure of tit for tat in which the minister helps out (e.g. issues permits, cancels unfavorable inspections or directs controls) a befriended relation (even on small scale in good faith) for a favor (e.g. vote or (financial) support for party or personal campaigning) is a common trait in small state Caribbean islands, including Aruba.
- 228 Former Minister Croes (AVP) was in 2019 convicted to four years imprisonment, but appealed his conviction which is currently pending. Pending criminal cases in hands of Public Prosecution are Avestruz and Flamingo, both cases in which former ministers, coordinators and civil servants are investigated for corruptive practices, related to unauthorized issuing of government land and other forms of favoritism. More about corruption cases in the Dutch Caribbean islands can be found in the dissertation of Mrs. N. Schotborgh, 2019.
- 229 P. Croes therefore claimed to be an innocent victim of the lack of clear rules and appealed his conviction. Henriquez, 'Geen corruptiezaak van de eeuw, maar slachtoffer van ontbreken wet partijfinanciering', caribischnetwerk.ntr.nl, 23 May 2018. Other criminal cases investigating corruption within the public sector are the Ostrich and Flamingo case, both pending in 2021. Mr. Croes was in appeal convicted to 3 years imprisonment, losing the right for 8 years to be politically nominated.
- 230 National ordinance on the financing of political parties 2020, approved in January 2021, but on content criticized by, among others, MP Mrs. Lejuez, claiming it still has loopholes and others, stating it is, and will or cannot not be, effectively enforced. A National Ordinance on the enhancement of integrity for ministers was approved in December 2021. The draft ordinance was also criticized on content by Mrs. Lejuez, as it does not screen deeper (family and business) relations.
- 231 Effects of the outcome of the CBA corruption reports (2018, 2019 and 2020) were additional reason for structural reform in public sector governance and are part of the guiding plan of the Commission Reinforcement Democratic Order Aruba, a governmental steering group established in 2019, to prevent corruption and enforce integrity on Aruba. The recommendations are accordingly part of reform plans.
- 232 National ordinance integrity of Ministers came into force on January 1st 2022. Candidate Ministers are screened in various fields (justice, national safety, tax, unusual financial transactions) before they can be appointed. They have to report financial interests and ancillary activities and functions to the formator, which is the MP Mrs. Wever-Croes. Changes in their position after appointment also have to be monitored and reported. Additionally, this obligation to report also include new business interests of family members of the Minister (art. 10 and further). A Minister that violates the ordinance can be criminally prosecuted. Documentation regarding the Ministers and or family members is preserved at the Supreme Audit Agency (Algemene Rekenkamer), which is explicitly in the ordinance not made accessible for public scrutiny.

sense, not only within the public sector but also within governmental legal persons in public and private sector.^{233 234}

The Constitution contains several functions that are incompatible with the ministerial office. In practice, however, ministers are screened, but it cannot be publicly checked whether a minister carries out additional activities that could influence the independent exercise of the ministerial office. There is no public register for conflicting positions held by members of the executive. The recently adopted national ordinance on the integrity of ministers stresses confidentiality of the gathered information on the screening of ministers.²³⁵

Transparency

Government is constitutionally required to observe the right of public access to information in the exercise of their duties.²³⁶ There is a proactive and passive obligation of disclosure in the National Ordinance on public access to government information.²³⁷ Ministers are required to disclose information about their policy including preparation and actual execution. According to this Ordinance every individual person can request public information from ministers (and departments) to disclose information in documents.²³⁸ The national ordinance on public access to government information does not sanction a violation of the active disclosure obligation, which makes it ineffective in providing transparency in practice.²³⁹ To enhance transparency of the legislative process, ministers are required to publicly disclose all draft ordinances when submitting these for approval to Parliament, together with the Council of State and the

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- 233 Minister U. Arends (RAIZ). The responsibility for the reforms therefore shifted from Prime Minister Mrs. Wever-Croes to Mr. Arends. The coalition agreement stresses the responsibility of each individual Minister to maintain integrity and implement and enforce the suggested reforms. Unclear remained how the reforms will take place and have effect in detail.
- 234 A short additional meeting with Minister Arends in December 2021 learned that reforms can be expected in the constitution of Aruba, giving High Councils of State a stronger constitutional position in the system of checks and balances. The national ordinance on public access to government information (Lob) will be adopted to give citizens more possibilities of control towards decision making in the public sector. Governmental dominated legal persons will be screened on integrity. Loopholes in political party finance, especially the financing of individual persons through foundations, will be legally closed and stronger monitored. Detailed information could not be provided as these reforms are subject of development in both policy and legislation.
- 235 It remained unclear whether this ordinance is broadly discussed in Parliament. Information could not be obtained online. Mentioned was why the ordinance only became in force after appointment of the recent government EWC II, which was therefore not scrutinized according to the new rules.
- 236 According to article V.19 StregAr. The government does have a website to inform the public about its activities, services, products, organization and current affairs. Also country ordinances, reports and documents can be consulted on that website. Legislation – and also those administrative decisions required to be published – is published in Aruba’s online official bulletins (Official Gazette or the National Gazette). Besides that on the website current country ordinances can be found and also an overview of country and ministerial decrees. Until 2017 government’s budget was publicized on the website.
- 237 The ordinance (Landsverordening openbaarheid bestuur) provides exception clauses which allows the Executive to refuse these requests if, for example, the unity of the Crown (government) or safety of the state is at stake, or if providing the information does not outweigh economic or financial interests of the country or when personal identity of servants or internal deliberations should remain for internal use. A refusal to provide information needs to be motivated according to administrative law, which apparently does not happen.
- 238 The general response was that information in departments is not easily shared. Transparency is often avoided both by ministers as well as in the departments. There are no statistics available about how often citizens’ requests for disclosing information based on the ordinance occurred, how often the government rejected such requests, how many requests lead to a law suit nor the outcomes of the procedures.
- 239 Ministers are not sanctioned when they do not provide legally required information or provide it too late. When ministers decide not to publicize policy information, citizens cannot be aware about information they could have requested. Because of the lack of transparency about the number of requests it is difficult to judge the effectiveness of this Act. The fact that there is little information available about these requests could be an indication.

Supreme Audit Institution advice and government's reply.²⁴⁰

Deliberations in the meetings of the Council of Ministers take place behind closed doors and there is an obligation of secrecy regarding topics discussed at these meetings. All associated documents – for example, the agenda and minutes – are considered to fall within the scope of this secrecy and therefore are not made available to the public.²⁴¹

Accountability

Besides constitutional accountability to Parliament, government and individual ministers have to abide provisions regarding the High Councils of State, such as the Council of State on legislative and policy subjects and the Supreme Audit Institution (ARA) and the Central Accounting Service (CAD) of Aruba with regards to budgetary and other financial matters. These internal organizations provide a system of checks and balances.²⁴² In practice, recommendations and advice of these institutions are often neglected or followed up

with a certain delay. The executive has the fundamental right to ignore advice, though structural deviation or ignorance received over the years structural and ongoing criticism.

Financial accountability is, as mentioned, a structural problem in Aruba. Without sufficient parliamentary control budgetary regulations are repeatedly violated²⁴³, which lead to a (temporary) installation of the Aruba Financial supervisory board (CAft) in order to enhance budgetary discipline and accountability of the executive.²⁴⁴

Integrity mechanisms

After several integrity scandals in the past years, integrity is the focus of attention, not only within the government EWC I and new government EWC II²⁴⁵, but also at Kingdom level.²⁴⁶ To ensure the integrity of the executive, the government aimed to establish a code of conduct for acts of ministers. So far, there is no such code of conduct.²⁴⁷ The integrity screening of candidate ministers is recently adapted by National

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- 240 According to Hessels 'To a transparent public administration in Aruba', 2017 p.7, the disclosure of all draft ordinances, together with the Council of State's and the Court of Audit's advice and government's reply to these advices, does not occur often.
- 241 Often, a press conference is given in which the PM highlights the outcome of a meeting. The minutes and internal discussions are kept secret, as is the case in other countries within the Kingdom.
- 242 Although staffing in the CAD and ARA is an issue. Both these control bodies are understaffed, which is done intentionally some respondents mentioned, to undermine the system checks and balances. More on this in the pillar regarding the Supreme Audit Institution
- 243 Parliament structurally ignores critical notes published by the Supreme Audit Institution (ARA). Internal checks on annual accounts (jaarrekeningen) do not take place on time. Departments do not contribute in an efficient way to present numbers in time, and therefore the understaffed accounting service (CAD) cannot execute its task in a proper manner. A formal declaration (accountantsverklaring) is not given nor needed by law. Therefore the cycle of budgeting is not effective and coherent. The legal system regarding compatibility (Comptabiliteitsverordening) is rather outdated, according to several respondents. Suggested is that each ministerial department will have a coordinating officer for budget affairs, in order to have timely presentation of required account information. The Minister can be held accountable.
- 244 The CAft is installed for three years, then evaluation will take place. After a balanced budget has been achieved, powers will return to Parliament. This supervisory construction is more detailed, which is not discussed in this assessment, as its final construction was recently debated on Kingdom level. As part of negotiations about reform plans, CAft will have its authority based on a Kingdom Ordinance. Although an agreement was reached on executive level, the Parliament still has to approve the Kingdom ordinance.
- 245 In the new government 2021, the responsibility for 'integrity' was transferred from PM Mrs. Croes to Minister U. Arends, leader of coalition partner RAIZ. This transfer was apparently critically commented by the Council of Advice in the National Ordinance Installation of Ministers 2021.
- 246 Integrity enforcement is part of the reform requirements of the public sector laid down in Landspakketten for liquidity support from the Netherlands, starting in December 2020.
- 247 The general integrity rules for civil servants (LMA) do not apply for ministers. The newly appointed Minister Arends has plans for a ministerial code of conduct, but these still have to be materialized (December 2021).

Ordinance²⁴⁸, in order to strengthen integrity of ministers and take away concern in society.²⁴⁹ In the Constitution of Aruba rules are set out to safeguard the integrity and responsibility of ministers. Ministers are primarily accountable to Parliament. Furthermore there are specific regulations on incompatibility of positions, and before accepting office, ministers are constitutionally required to affirm or take an oath declaring that they have not given or promised anything to obtain their office and they will not do so, and will not be bought ('oath of purity') and will abide by the Constitution and promote the welfare of Aruba to the best of their ability ('oath of office').

Whistleblower protection regarding ministerial behavior does not exist, although this is mentioned as part of future governmental plans.²⁵⁰ There is no regulation requiring all gifts to be centrally registered, there are no restrictions on post-ministerial employment and there are no rules about registering contacts with lobbyists. This might change with the installation of the Bureau of Integrity Aruba (BIA), that will deal with integrity affairs.²⁵¹

Public Sector Management

The executive is responsible for integrity and good governance, including transparent decision-making, efficiency of state-owned business operations, compliance with the rules on public access to government information (both draft-legislations and

internal documents on policy) and the safeguarding and promotion of integrity.²⁵²

The rights of civil servants are guaranteed by law (Landsverorderening materieel ambtenarenrecht and/or civil code). Additionally, the executive adapted integrity rules. Failure to comply with rules set forth may lead to disciplinary measures, fines, or even criminal persecution. An executive minister does not hesitate to sanction, in person or through authority of the department heads, misbehavior of civil servants, although accordingly this is not always done in a consistent way but depends on all kinds of factors, some related to the background of the persons involved, which is subject of criticism. It even happens that a minister is hindered in taking measures to combat integrity violations.²⁵³

Despite rules on integrity, research by the Central Bank of Aruba showed that 79% of Arubans believe that there is corruption within the public sector, as evidenced in the pending criminal cases mentioned.²⁵⁴ Integrity rules and protocols are usually not present within the organization of Aruba or are insufficiently known or are not complied with. The trust in incorruptible civil service management by executive powers, represented by a minister (and his/her coordinators, advisors and personal staff) is not very high. Respondents mentioned suspicions of conflict of interest and personal enrichment, especially around licensing (e.g. business and director license, land issuing, residence- and labor permits), influenced by the number of

248 Since 2013, there was a national decree on screening of ministers (LB screening kandidaatsministers 2013). Recently the mentioned National Ordinance Integrity of Ministers became in force. Not completely clear is in how far the recent new ordinance is more elaborate in screening and in mandatory obligations for Ministers (and his family affairs) than the decree of 2013. Also not clear is how enforcement and supervision on ongoing compliance after appointment takes place.

249 The screening is therefore adapted. Overall trust in the integrity of ministers is not very high, amongst others due to several integrity scandals where ministers were involved.

250 According to plans set out by both government EWCI and II. Critical, Hessels, 2020, p.42.

251 Including whistleblowing, gifts registration, screening of behavior and raise awareness on integrity within society, according to the website of Aruban government. Due to the Covid-19 crises and lack of funds the active operation of the BIA still did not take place, though a Head of Office was appointed. Plans to install an additional Integrity Chamber were put on hold.

252 In the Kingdom Charter, the responsibility for good governance is laid down in art. 43 par 1. Guaranteeing that good governance is actually executed is a Kingdom responsibility, art. 43 par 2.

253 An example was mentioned by former Minister M. Tromp (at the time member of POR, now MAS). When she wanted to address corruptive practices within the department of infrastructure (DIP) she was obstructed by her own POR members and by losing party confidence, moved out of GOA EWC I after a dubious and heavily criticized voting procedure in Parliament.

254 Central Bank of Aruba, 2019, p.3.

pending criminal cases that show violation of integrity measures by minister(s) and civil servants.^{255 256} Another critical point that emerged is that the required levels of professional independent quality are not always met as leading civil servants are often appointed by ministers primarily because of their (political or family) background rather than their professional competences. After electoral change of government, officials in high positions are often replaced by officials of the same political color as the newly chosen government.^{257 258} Although the executive denies that appointments and dismissals are politically driven, most respondents reflect otherwise.

The Aruban court of first instance (GEA) created specific case law regarding employment contracts of civil servants of whom the contract was not renewed for political reasons after the change of government. Other case law deals with the opposite, the court declaring employment contracts that are closed just before change of government void.

Legal system

The past and current government EWC I and II emphasized the importance of integrity and anti-corruption.²⁵⁹ The coalition agreements listed corporate governance, transparency, and integrity as their main priorities. A considerable number of developments were listed aimed at supporting integrity, including an operational Integrity Office and Chamber, a new Corporate Governance Code that is also applicable for state-owned companies, enhanced legislation regarding the screening of ministers, a code of conduct for ministers and

parliamentarians, legislation regarding the financing of political parties campaigning, a promised whistle blower legislation and the future establishment of an Ombudsman amongst others.²⁶⁰ Future plans of government include a stronger participation of civil society. A considerable number of respondents (43%) in the Central Bank of Aruba survey on corruption believe government is not taking sufficient practical action in the fight against corruption.²⁶¹ Despite the fact that the government underlines good governance, transparency, and integrity as high priorities, in practice it hardly seems that the measures mentioned in the government's program are being implemented or effectively enforced.²⁶² Respondents indicated they did not (yet) notice a considerable practical improvement in preventing corruption and promoting integrity.^{263 264}

Sub-conclusion

Overall, the functioning of the Aruban executive power has several vulnerable issues. Serious integrity scandals in the past years, but also structural operational and managerial issues within Ministries and the functioning of the public sector over the years, ongoing from the start of Aruban autonomy, together with a recent upcoming urgent need for financial budgeting due to the effect of the Covid pandemic, called for reforms within the executive power and the public sector. Integrity reform plays a key role and is

255 Respondent indicates that there are not necessarily more corrupt civil servants than in the Netherlands, but that the impact of this corruption is a lot higher due to the small scale of Aruban society.

256 More critical information can be found in the pillar on the Public Sector and the pillar on Business.

257 Several respondents confirmed. Discharged officials are placed in a redundancy 'pool', with pay of salary. See more on this in the pillar on the public sector.

258 Confirmed by several respondents.

259 ANP Producties, 'Aruba: meer aandacht bestrijding corruptie' Noordhollandsdagblad.nl, 8 October 2019.

260 The coalition agreement 2017-2021 'Hunto pa Aruba', together for Aruba, mentions several general aspects of improvement. Current detailed plans of the newly installed government EWC II were due to the closing of this NIS assessment, not found.

261 Centrale Bank van Aruba, 2019, p.5.

262 The lack of effective enforcement is repeatedly mentioned to be an even more important issue than drafting and approving laws. Without effective enforcement, laws appear to be made for 'window dressing'.

263 Several respondents confirmed. See also A. Hessels, 'Towards integrity and public administration in Aruba', p.42 published in December 2019, the SDBA concluded that little has yet come of the promises made by the government EWCI.

264 More skeptical respondents in various interviews in various pillars mention that the gulf of legislation to strengthen integrity is merely window-dressing in order to obtain needed funding in times of covid-crises. Actual enforcement of change is not practiced and will not be enforced.

again a spear-point in governmental plans. Integrity, transparency and accountability of executive and public sector have to be enhanced, legally but also in practical implementation and enforcement, in order to restore broader confidence of the Aruban people.

JUDICIARY

Structure and organization

An independent judiciary is the final piece of the trias politica.²⁶⁵ According to the sixth chapter of the Constitution of Aruba the judiciary consists of the Joint Court of Justice and the Public Prosecutor's Office. However, in this study the pillar 'judiciary' only refers to the Joint Court of Justice. The Public Prosecutor's Office is described under pillar Law Enforcement Agencies.

The judicial organization and the administration of justice of the islands are regulated in the Kingdom Act Joint Court of Justice. The Joint Court of Justice of Aruba, Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba (hereinafter: the Joint Court of Justice) is the judicial body for the islands. The Joint Court of Justice is responsible for the administration of justice in first instance and in appeal.²⁶⁶ The members of the Joint Court of Justice also work together in judicial tribunals. The Joint Court of Justice consists of a presiding judge, the other members and their substitutes.²⁶⁷ The highest court is the Supreme Court of the Netherlands.²⁶⁸ The Supreme Court has the authority to annul verdicts of the Court of Appeal.²⁶⁹

Resources

The judicial salaries are regulated in the Kingdom Decree Legal Position Joint Court of Justice. This Kingdom Decree contains an overview of the salary scales of the Joint Court of Justice. The salary scales are based on the different positions and the degree of work experience.²⁷⁰ In addition, the Joint Court of Justice is responsible for its

own budget management. The costs of the Joint Court of Justice are provided by the four different countries.²⁷¹ The judiciary participates in the annual budget allocation process; there is financing per case. Once every three years cost prices of cases are determined. According to a respondent, payments are fulfilled and the financing system is adequate enough for independent and impartial jurisprudence.²⁷² The draft budget is drawn up on the basis of a proposal from the executive board of the Joint Court of Justice.²⁷³ Each year the final budget will be sent to the ministers of justice of the four countries before March 15th.²⁷⁴ In practice, financial and human resources appear to be inadequate. The Court had a budget cut of AWG 1.5 million (4%) in 2019. The total allocated budget was AWG 34,986,000 in 2019, of which the contribution of Aruba was budgeted at AWG 12,386,000. Due to incidental revenues the Court achieved a positive result of AWG 147,000,-.²⁷⁵ In addition, the evaluation of the Kingdom Act Joint Court of Justice has shown that various countries do not fully and/or timely fulfil their obligations to make financial resources available to the Court. This threatens the efficient functioning of the Court.²⁷⁶ Moreover, the quality of the legal support does not seem to be very strong.²⁷⁷ Therefore investments in the training and development of legal support are permanently needed to optimally support judges in writing judgments.²⁷⁸

Independence

The judiciary is anchored in the Constitution of Aruba and the Kingdom Act Joint Court of Justice and it is not easy to change the provisions regarding the judiciary.²⁷⁹ The

265 Van Rijn 2019, p. 663.

266 Article 2 RvGHVJ.

267 'Gemeenschappelijk Hof van Justitie', gemhofvanjustitie.org, obtained on 16 April 2021.

268 Article 1 RwrHR.

269 'Gemeenschappelijk Hof van Justitie', gemhofvanjustitie.org, obtained on 16 April 2021.

270 Stb. 2010, 358.

271 Van Rijn 2019, p. 674.

272 According to the respondent of the judiciary system

273 Article 56 RvGHVJ.

274 Kamerstukken II, 2008/09, 32017 (R1884), nr. 3 (MvT).

275 Jaarverslag GHVJ 2019, p. 42.

276 Begina & Brouwer 2015, p. 24.

277 Interview M. van Haren d.d. 12 May 2020.

278 Jaarverslag GHVJ 2018, p. 13.

279 Kamerstukken II, 2008/09, 32017 (R1884), nr. 3 (MvT).

Constitution and the Kingdom Act contain several provisions to ensure the formal independence of the judiciary. Articles VII.2.2 StregAr and 2.2 RwGHVj protect judges from undue influence. Furthermore, article 26.1 RwGHVj includes the positions that are incompatible with membership of the Joint Court of Justice. This is an extensive list, because a judge has a vulnerable position in a small scale country like Aruba and every appearance of partiality must be prevented.²⁸⁰ Although the publication of appointments is not required by law, the appointments are published on the website of the National Government. At the installation of the members, the president of the Court gives a speech explaining the skills and experience of the new members.²⁸¹ Article 26.3 RwGHVj stipulates that the members of the Court are obliged to report their additional positions to the executive board. The executive board keeps a register of these additional positions which can be found on the website of the Court. Moreover, the appointment and dismissal of judges is accompanied by special guarantees.²⁸² The appointment procedure guarantees an appointment based on expertise and political independence.²⁸³ The independence of judges is furthermore ensured by taking additional positions into account in the allocation of cases.²⁸⁴ According to a respondent there are no unauthorized connections between judges and members of the Legislature and Executive. The members of the Court are appointed for life by Royal Decree by the State Council of Ministers.²⁸⁵ However, this is different for Dutch judges. To ensure their independence, Dutch judges are appointed for a period of five years.²⁸⁶ About half of the members of the Court

are Dutch. The Court aims to attract more local judges ('Caribisering'). However, it has proven to be difficult to attract local judges.²⁸⁷ To protect the independence of judges, they can only be dismissed and suspended by the Supreme Court for serious reasons.²⁸⁸

Transparency

At first sight, the transparency within the judiciary appears to be sufficiently safeguarded. In practice, court sessions - under penalty of nullity - are open to the public.²⁸⁹ In exceptional cases, the judge may decide to have the hearing wholly or partially take place behind closed doors. This decision must be motivated.²⁹⁰ However, when the language barrier is taken into account, the real accessibility of information to the average citizen falls short. For many citizens, the threshold to actually attend a court session is very high.²⁹¹ The Joint Court of Justice rules in Dutch and many citizens do not master this language sufficiently. As a result, the legibility and comprehensibility of court rulings is limited.²⁹² Another respondent holds the opinion that, in general, citizens understand and respect the verdicts of the judiciary. Furthermore, article 44 RwGHVj stipulates that the executive board is required to draw up its management rules (bestuursreglement). The management rules of the Court were published on 8 November 2013.²⁹³ The Court has its own website, which includes information about the organization of the court, court rulings and the code of conduct. Although publication of the annual report²⁹⁴ is not required by law, the annual report is published annually on the Court's

280 Kamerstukken II, 2008/09, 32017 (R1884), nr. 3 (MvT).

281 For example 'Toespraak Hof president Eunice Saleh bij installatie nieuwe rechters Aruba', dutchcaribbeanlegalportal.com, d.d. 14 February 2020.

282 Van Rijn 2019, p. 674.

283 Kamerstukken II, 2008/09, 32017 (R1884), nr. 3 (MvT).

284 Interview M. van Haren d.d. 12 May 2020.

285 Article 25.1 RwGHVj.

286 Interview G. Hoogers d.d. 13 May 2020.

287 Interview A. van Rijn d.d. 11 May 2020 and Jaarverslag GHVj 2019, p. 8. According to Jaarverslag GHVj 2020, p. 7 approximately 50% of the Court's judges is of local origin.

288 Articles 29-33 RwGHVj.

289 Article 5.1 RwGHVj.

290 Kamerstukken II, 2008/09, 32017 (R1884), nr. 3 (MvT) and article 5.2 RwGHVj.

291 Interview G. Thodé & G. Pesselse d.d. 18 May 2020.

292 Interview G. Thodé & G. Pesselse d.d. 18 May 2020.

293 Stcrt., 2013, 31044 & Kamerstukken II, 2008/09, 32017 (R1884), nr. 3 (MvT).

294 Article 48 RwGHVj.

website. The annual report of 2019 was published on 12 June 2020 and contains information about current developments, case numbers and finance.²⁹⁵ Finally, the legal framework does not contain any provisions that require judges to disclose their financial interests, nor does it contain the obligation that information about the appointment and dismissal of judges is to be made public. The legal framework also does not contain any provisions to inform the public proactively about important aspects of the judiciary's activities.

Accountability

There are a number of legal provisions in place to ensure that the judiciary has to report and be answerable for its actions. For example, judges must – under penalty of nullity – motivate their verdicts.²⁹⁶ If a decision is not properly motivated, it is possible to lodge an appeal with the Court²⁹⁷ and, if necessary, to lodge an appeal in cassation with the Supreme Court.²⁹⁸ In practice, however, little use is made of the possibility of lodging an appeal. The Court supervises the proper prosecution of criminal offenses²⁹⁹ and the executive board ensures the quality and administrative and organizational working methods of the Court.³⁰⁰ Furthermore, article 39 RvGHVJ creates the obligation to draw up rules regarding the handling of complaints. Everyone has the right to file a complaint with regard to the manner in which the Court acted towards him/her in a certain matter.³⁰¹ This regulation is further elaborated in the 'Complaint Arrangement Joint Court of Justice' that came into effect on 1 September 2013. This complaint agreement can be consulted on the website of the Court. The complaint agreement is regularly reviewed for adjustment and improvement. Citizens can also download a complaint form from the

website, which can be used when submitting a complaint.³⁰² In 2019, four of the fifteen complaints were declared well-founded.³⁰³ Complaints are not handled by an independent complaints body, but by the board. The complaint arrangement does not contain any provisions aimed at protecting the complainant. Finally, members of the Court are not immune from prosecution of corruption and other criminal offenses. Article 2:130 of the Criminal Code of Aruba criminalizes active bribery of a judge and article 2:352 of the Criminal Code of Aruba criminalizes passive bribery of a judge.

Integrity mechanisms

There is extensive regulation to ensure the integrity of members of the judiciary. For example, in order to safeguard the integrity of members of the judiciary, all persons who register for the Rio-training must undergo an integrity assessment.³⁰⁴ Furthermore, article 3.1 under b RbGHVJ stipulates that the executive board must draw up a Judicial Code of Conduct. The Judicial Code of Conduct of the Joint Court of Justice came into effect on 1 September 2013.³⁰⁵ The code of conduct complements the legal provisions regarding impartiality and additional positions. The provisions of the code of conduct emphasize the personal responsibility of judges and their own awareness of the consequences and impact of their behaviour as a judge.³⁰⁶ Moreover, judges are forbidden to engage with parties or their lawyers in cases pending before him. However, according to the Aruban community, judges and lawyers often seem to be too closely linked. This creates the image that judges are not completely impartial.³⁰⁷ According to a respondent integrity courses are mandatory within the judiciary but it is eligible to offer such courses on a more structural basis.

295 Jaarverslag GHVJ 2019, p. 2.

296 Interview M. van Haren d.d. 12 May 2020. Also articles 5.3 RvGHVJ and VI.5 StregAr.

297 Article 17.1 RvGHVJ.

298 Article 1 RwrHR.

299 Article 19 RvGHVJ.

300 Article 45 paragraph 1 under a RvGHVJ.

301 Article 53 RbGHVJ.

302 'De klachtenregeling van het hof', gemhofvanjustitie.org/klachtenregeling, obtained on 16 April 2021.

303 Jaarverslag GHVJ 2019, p. 16.

304 Stb. 2010, 358 and article 36.2 RbGHVJ.

305 Gedragscode GHVJ, p. 4.

306 'Gedragscode rechterlijke macht', gemhofvanjustitie.org/gedragscode, obtained on 16 April 2021.

307 Interview G. Thodé & G. Pesselse d.d. 18 May 2020.

Furthermore, a judge is obliged to take the oath or promise before taking up employment.³⁰⁸ The oath or promise contains a rule that prohibits the acceptance of gifts or presents. In addition, there are a number of legal regulations regarding the prevention of conflicts of interest. For example, article 26 RwGHVJ appoints the positions that are incompatible with membership of the Court and paragraph 3 of this article stipulates that a judge must inform the board of his additional positions.³⁰⁹ The Kingdom Act Joint Court of Justice contains provisions that ensure the impartiality of judges. A judge may in no way intervene in cases pending before him with parties, their lawyers, members of the public prosecutor's office and suspects.³¹⁰ A judge who fulfils a position that could prejudice his impartiality in a particular case may not participate in the decision of that case.³¹¹ When one of the parties in a lawsuit suspects that the judge is no longer impartial, the judge can be challenged.³¹²

Finally, in practice, cases in first instance, even the most serious criminal cases, are handled by a single judge (enkelvoudige rechtspraak). This entails a number of vulnerabilities. First, the principle of due diligence may mean that several judges must be involved in more serious cases.³¹³ In addition, single judgments carry an integrity risk,

because in theory it is easier to influence one judge than it is to influence multiple judges.³¹⁴

Executive oversight

The judiciary reviews the actions of the executive by administrative law. The regulations regarding administrative law are included in the National ordinance administrative justice (Lar).³¹⁵ In 2019, 957 administrative cases were brought before the Joint Court of Justice. This is an increase of 41% compared to 2018.³¹⁶

As mentioned before in the previous pillars, in practice Parliament does not exercise effective oversight over the government. This means that the courtroom, rather than Parliament, is often the political arena. As a result, judges are often expected to make decisions in certain (political) issues.³¹⁷ Unlike Parliament, the judiciary often exercises effective oversight over the government. According to a respondent there are no unlawful connections between members of the judiciary, executive and legislature. His impression is that, in general, the executive accepts decisions of the judiciary. When the judiciary makes a decision unfavourable to the government, however, the practical execution of the verdict can be (made) problematic, according to various respondents.^{318 319 320 321}

308 Article 28.1 RwGHVJ.

309 Kamerstukken II, 2008/09, 32017 (R1884), nr. 3 (MvT).

310 Article 6 RwGHVJ.

311 Van Rijn 2019, p. 671-672 and article 12.4 RwGHVJ.

312 Article 31 Code of Civil Procedure Aruba and article 508 Criminal Procedure Code Aruba.

313 Begina & Brouwer 2015, p. 24.

314 Begina & Brouwer 2015, p. 24.

315 Van Rijn 2019, p. 682.

316 Jaarverslag GHVJ 2019, p. 32.

317 Interview A. van Rijn d.d. 11 May 2020.

318 Interview G. Hoogers d.d. 13 May 2020.

319 'DVG-directeur Aruba weer in functie', antilliaansdagblad.com, 20 May 2019.

320 Interview G. Thodé & G. Pesselse d.d. 18 May 2020. Example, in 2018 the minister suspended the director of the Public Health Department for malfunctioning. However, the court ruled that the suspension request was insufficiently motivated and the director could only be relieved of his duties for a period of twelve weeks, so that an investigation into his performance could take place. After this case was taken to court for the third time, the court ruled that the minister had to re-employ the director. However, even after the judge's decision, efforts were made to make it impossible for the director to perform his duties

321 In addition, the Aruba Birdlife Conservation foundation has brought a number of cases to court against the minister of Infrastructure. The minister (O. Oduber) transferred (sold or donated, unclear) large areas of land in the Bubali wetland areas, despite the fact that, according to the Spatial Development Plan, these areas were green areas and despite the fact that the States had decided to protect these areas. Aruba Birdlife Conservation has since won several lawsuits, but the government still does not seem to have any intention of protecting these nature reserves. E.g. Peterson, 'Schoonheid op Aruba, de negende rechtszaak', 23 May 2020, <https://antilliaansdagblad.com/nieuws-menu/curacao/opinie/17706-de-bubali-wetlands-op-aruba-before-en-after>.

Corruption prosecution

The judiciary contributes to the fight against corruption. No information was found on separate statistics on the number of corruption cases handled by the judiciary. Nor are corruption cases presented as a separate case category in the Court's annual report. This makes it difficult to judge to what extent the judiciary contributes to the fight against corruption. In addition, the judiciary only has limited possibilities to contribute to the fight against corruption. In this context, the judiciary is dependent on the Public Prosecutor's Office. The Public Prosecutor's Office is charged independently with the investigation and prosecution of perpetrators of criminal offenses and is the only body that can bring people to a criminal court. The Public Prosecutor's Office determines whether prosecuting a corruption case is feasible and expedient, the recent years with effect.^{322 323}

Sub-conclusion

The Judiciary is a rather strong pillar within the NIS Aruba because it is a safe harbour for critical civilians and in general those who seek legal protection. Although administrative procedures related to good governance

are slow, the overall functioning of legal proceedings is solid and guaranteed. Its independence can be seen in its decisions of annulment of contracts (labour, land and property rights) in the transitional phase between old and new governments.

322 Weenink e.a. 2011, p. 241.

323 More on this matter in the pillar 3.5 regarding Law Enforcement Agencies. In the Ibis case, Labor Minister Paul Croes was sentenced to four years' imprisonment for large-scale corruption involving job waivers. In addition, Croes is no longer allowed to hold a political position for the next nine years. In this case, the political culture of Aruba came into play. Granting a favor or gift in exchange for administrative attention seems to be the prevailing custom in Aruba. "Every politician does it," said Croes.



PUBLIC SECTOR

Structure and organization

The public sector in Aruba includes the national government, ministries and an array of public governmental departments. Besides these institutions a number of entities with a national interest can be distinguished that are not directly influenced by the government because of their independent position, but do hold a public interest.³²⁴ Additionally a number of privatized state-owned legal persons (Foundations and Limited Liability Companies (LLC)) execute services that also are of public interest, and in which the Land Aruba is the majority shareholder.³²⁵ Furthermore there are a number of Public-Private projects (PPP) in which the public sector (Ministry or Department) cooperates with commercial partners in the private sector.³²⁶ In some of these projects the private partner is fully

responsible for the execution of the phases in the project, in others the public partner (Ministry and/or department) remains responsible.³²⁷

Ministries and departments

Aruban government EWCI consisted of nine (9) ministries, of which one plenipotentiary in the Netherlands.³²⁸ Each ministry holds a cabinet to provide the minister with political advice, a staff bureau for policy development and controlling executing entities, and supporting services for the supervision of rules and regulations.³²⁹ Unlike other islands in the Dutch Caribbean, there is no secretary general that is responsible for the management of the staff bureau. The minister is responsible for the annual policy plan and the budgeting.³³⁰ Often a minister appoints a consultant, advi-

324 The collective sector has to be established by law every two year, which was done in June 2019. It consists of the Land Aruba, the Public Health insurance (AZV), Social Insurancebank (SVB), Aruba Tourism Authority (ATA), University of Aruba (UA), Serlimar, Foundation Education Profesional Basico (SEPB), Central Bank (CBA) and others.

325 Mentioned can be Aruba Airport Authority N.V. (AAA), Aruba Port Authority N.V. (APA), Aruba Utilities N.V., Setar N.V., Arubus N.V. , WEB N.V and others. The country Aruba is (majority) shareholder in these legal entities and therefore these are also considered to be part of public sector.

326 According to the Executive report (Uitvoeringsrapportage) 2^e quartile 2020 there exist currently nine (9) PPS projects, Government of Aruba (GOA), by means of the Minister of Finance. Highly critical on numerous projects, SDBA, Naar integer Openbaar Bestuur in Aruba 2020, p. presenting a list of financial irregularities in 40 projects in the period until 2009.

327 In this NIS report the collective sector, the privatized legal persons and the PPS projects were not thoroughly researched. The research team interviewed a number of (former) public service officials active within the governmental departments, mainly in middle and senior (legal and policy) positions that wished to stay anonymous. Due to the small scale of the island and the interconnection of public affairs the functioning of the Public Sector is nevertheless affected by the running of organizations in the collective sector, the PPS projects and the privatized entities in which the country is a stakeholder. Irregularities were mentioned by different interviewees. Besides, directors of independent public entities and private SOEs are sometimes politically related to leading political parties. Members of supervisory boards often have political ties.

328 The installation of government and ministries EWC II could not be thoroughly researched. The coalition agreement is not online available nor is the national ordinance installation of minister 2021.

329 Accordingly, Ministers informally appoint an extra of max. 25 full time employees in cabinet staff (e.g. consultants, advisors, coordinators), but respondents mentioned this number was incidentally exceeded. Costs are reportedly extra-budgetary, adding up spending of resources as remuneration of these intermediaries can be (incidentally disproportionately) high. The Department of Central Accounting (CAD) already officially advised to end this practice in 1998, a year after the first major national publication on good governance, the Quality Report (Rapport Calidad 1997). The Council of Advice, a non-binding advisory High Council of State, repeatedly demanded restrictions on these extra-budgetary formations, most recently in June 2020. Respondents report this phenomena as 'shadow staffing'.

330 Although there are laws in place for accountability, in practice problems were signaled by respondents. Compatibility procedures are not always followed by Ministers, looking for ways to circumvent budget. Accordingly budget is not always effectively allocated over departments. Publishing of annual accounts is often done far too late.

sor or coordinator ('intermediaries') to support him/her in the execution of policies or projects. The appointment of these intermediary persons is not always according to state regulations or policy and is generally not considered to be very transparent.³³¹ The legal shape, form of cooperation and authority of the coordinators, advisors or consultants varies.³³² These intermediaries are sometimes given an independent position, apparently related to independently governed projects within the cabinet of a minister as a result of political bargaining.³³³ Sometimes intermediaries are employed relatives of a Minister.³³⁴ In the daily operation of government departments, the tasks and authority of coordinators, advisors or consultants were reported to be unclear, also with regards to their responsibilities and authority in relation to heads of

department and the functioning of civil servants within departments, regularly causing tensions in labor relations.³³⁵

Resources

Financial resources are limited and staff costs are of great concern due to the Covid-19 pandemic, which had an impact on the government plans of restructuring the public sector. Aruba's public sector has a large overhead of civil servants and government has been advised to reduce the overall capacity of government staff, reduce the number of governmental departments effectively and restructure the formation of ministries efficiently.³³⁶ ³³⁷The income of civil servants in the public sector and the executive is reduced in order to budget resources during the Covid crisis.³³⁸

331 Mentioned by various respondents. Furthermore there is hardly information about these appointments available and individual Ministers in EWC I did not cooperate in the research.

332 Respondents indicated that the position can be arranged through employment or an independent contractual position, sometimes consultancy or advice takes place through legal entities with a representative.

333 Political bargaining apparently led to a former Minister holding a position as coordinator in the GOA EWCI PM cabinet of General Affairs, which gave the coordinator direct influence on departments. After being the subject of an investigation in corruption procedure by the Public Prosecutor he resigned. The role of this coordinator caused a lot of concern, as he was related to several integrity risks.

334 In GOA EWC I there were strong family ties into ministerial departments. Respondents mentioned the Minister of Labor, uncle of the PM, is advised by his sister. Another niece is his assistant, two nephews 'coordinator'; Respondent mentions that PM frequently uses the help of these advisors and coordinators; the former Clerk of Parliament is senior advisor in the PM's cabinet; other ministers are mentioned using consultants in their cabinets. Recent appointed (intermediate) directors or supervisors of SOE's are family members of PM (e.g. in RDA and WEB N.V., causing doubts on integrity regarding the recent energy deal closed by the former Labor Minister and state-owned company WEB N.V., taking over the energy portfolio of the PM before being formally installed). Cabinet EWC II even has an additional family Croes minister on Education and Sports, criticized by opposition and media for not having a background in education.

335 Especially after elections, when there is a regime change: these nominations are by respondents seen as 'political patronage'. Various annual reports by high councils of state confirm this apparent system of patronage within government.

336 Social Economical Council (SER) 2002: Sanering van de Overheidssector: een absolute noodzaak. The Council of Advice in June 2020 laid out a number of strict measures to restructure the public sector. Also the Kingdom Minister Council insisted on reforming the public sector. Over the years numerous reports (from different national institutions) have been issued in which the overcapacity within the sector is stressed. Recently a consensus Kingdom Ordinance on Caribbean Supervision (Rijkswet COHO) was established in which a Supervisory entity (COHO) under authority of Dutch Ministry of Kingdom affairs monitors reforms, a 'landpakket', with executive agenda, 'uitvoeringsagenda'. The Ordinance was heavily criticized by the Kingdom Council of State, that advised to amend the Ordinance and give Aruba more autonomy in the execution of the reform package. This Ordinance still has to pass parliamentary approval, both in the Netherlands as in Aruba;

337 Oddly enough, government budget for staff in public sector for 2022 was not reduced, but rose, according to Minister of Finance due to not fulfilled 'roll-over' positions from the previous governing year and to execute necessary plans of reform (sic!), severely criticized by CAft. <https://antilliaansdagblad.com/en/aruba/25010-personeelskosten-overheid-aruba-stijgen-in-2022> .

338 Reportedly 12.5% for civil servants up to 25% for ministers. Government ordered legislation in order to prevent that salaries of heads and/or directors of state-owned entities would earn more than 130% of the salary of the minister-president. Unclear and doubted remained if this new regulation was actually and effectively implemented for the directors of the SOE's. Due to pressure of the unions

Resource and budgetary limitations create a tension in the further building of a public sector of high quality that can effectively carry out its duties, and resources are therefore not considered sustainable.³³⁹ Use of public resources on project base was repeatedly reported being a financial risk for Aruba.³⁴⁰ Due to the Covid crisis in 2020 resources had to be borrowed from the Netherlands, which was reason for the Kingdom Council of Ministers to demand further structural reform of the public sector.³⁴¹ Supervision on the execution of these reform plans was made on Kingdom level by creating a Caribbean organization for reform and development (COHO) and effectively enlarge the powers of the CAft. The government is primarily responsible for drafting and concluding of action plans needed to execute the agreements in the package deal. The draft-

ing and supervising execution of the action plan is not a primary responsibility of the COHO, as at first was intended. The powers of the COHO are limited, its task is primarily to support the execution of the reforms set in an action plan made by the executive power.³⁴²

Attracting qualified staff for top-level and specialized positions in the public sector is considered to be difficult. Respondents in senior level positions indicated wages are acceptable, but limited in combination with higher costs of living and travel off and on island. Most respondents reported labor related issues with a minister, his/her coordinator, advisor or department head as a reason to consider a position within the private sector. For lower and mid-level staff salary is adequate, though respondents³⁴³ reported that it occurs that em-

the 12.5% deduction was diminished by government EWC II with 50%, against advice of CAft.

- 339 The overall financial situation of Country Aruba in 2020 was very delicate with a national debt of Afl. 5.6 billion. A (temporary) Board of financial supervision Aruba (CAft) was, after political turmoil on Kingdom level, installed by National Ordinance in 2015 in order for budgetary control and to monitor accountability. The Board reports half-yearly (to Aruban executive and legislative power and Kingdom minister council) and is highly critical on budgetary measures taken (max. 1% annual deficit) in order to bring back the national debt. The GOA closed in 2018 a Protocol with the Dutch government in order to bring back personnel costs by reducing the number of civil servants and employees.
- 340 The General Audit Chamber of Aruba (Algemene Rekenkamer) published in 2018 a highly critical report on 'Bo Aruba' (covering 2011-2016), which contained 11 private-public sector projects and 241 subprojects. Over the years numerous reports have been published about the expenditure (and loss) of public resources in (state and mixed) projects and the lack of good governance (also within state owned entities), of which Rapport Calidad in 1997 was a start. A highly critical view on numerous projects and the functioning of the executive, legislative and public sector can be found on the webpage of Foundation for Good Governance Aruba (Stichting Deugelijk Bestuur Aruba). The Foundation published six (6) reports that address failure of good governance within different governments and the public sector from the start of the Country Aruba in 1986;
- 341 Loans, free from interest, were issued by the Dutch government to Aruba in two tranches up to around 80 million Euro. The third tranche (around 100 million) was issued after negotiations about placement of an independent supervising reform entity (CHE, later OPP, currently COHO) that has to monitor the budgeting and spending of the borrowed funds, setting aside executive and legislative powers in Aruba. For GOA, this tension in negotiations was reason to borrow money on the private market (against 5.5% interest) and for the Central Bank of Aruba to issue two bond loans. Criticism on these loans and bond issues appeared in various newspaper articles, among others 'Het perverse verdienmodel van de Caribische elite', Dick Draayer, October 19 2020, AchterkantvanCuracao. blog. Negotiations between GOA and GON about conditions for a third tranche and the placement of CHE (OPP) continue.
- 342 The powers of the COHO were subject of fierce discussion between the individual Kingdom countries, as reform also needs to take place on Curacao and Sint Maarten. Agreement was found in a mix between respecting the sovereignty of the individual countries, responsible for their own action plans, and strict supervision of these plans on budgetary compliance by the CAft, the financial supervisory body that holds its authority no longer on national level, but on Kingdom level. The COHO has primarily a supportive task, although there is the possibility that it receives instructions from the Dutch Minister of Foreign and Kingdom Affairs. The Kingdom Ordinance formally still has to be approved in Parliament of Aruba, but first in the Parliament of the Netherlands. See for more <https://caribischnetwerk.ntr.nl/2021/09/17/negen-vragen-over-de-coho-waarom-de-eilanden-nu-bij-kamerleden-gaan-lobbyen>
- 343 Senior level respondents, external academic experts and (former) parliamentarians were interviewed about the public sector. Due to Covid a visit to Aruba was not made and no lower level staff, heads of departments and or ministers nor his/her cabinet staff members were interviewed about the public sector, although this was requested by mail and in online meeting with PM mrs. E. Wever-Croes in March 2021.

ployees have side jobs and often underperform in their position.³⁴⁴ Wages have to be set according to procedure by law and being approved by Department of Human Resources (DRH)³⁴⁵.

The general response is that public services in governmental departments are not (always) being delivered effectively. There is bureaucracy (red tape), service is generally considered slow, not being very efficient and for civilians or businesses obtaining of necessary information can be a troublesome experience as information is not or slowly made available, and instruments and efficient procedures to enforce publication are insufficient. Due to the large number of government departments, there is a difference in functioning. Mentioned was that within certain departments, sections or divisions are understaffed or function less effective due to personal capacity, while other sections function acceptable. Overall, the productivity and service within the public sector is considered to be under par.³⁴⁶

Independence

There are by law provisions to ensure the independence of the public sector, but there are flaws exposed in the prevention of unauthorized political interference.³⁴⁷ When external parties such as independent contractors or businesses interfere with the activities of the public sector, this can have significant consequences, as was demonstrated in the Ibis case.^{348 349}

The constitution stipulates that all persons of Dutch nationality have equal rights to be appointed in public service. In addition, the law prescribes certain (general) conditions for appointing public sector employees, such as being of good standing.³⁵⁰ Civil servants and employees are appointed by national decree. Selection criteria for appointments and promotions of public sector employees exist. Vacancies are, normally, publicly advertised in order to ensure open competition, though practical irregularities were mentioned.^{351 352}

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- 344 Job creation as a form of 'political patronage' was repeatedly mentioned by respondents as a reason for the extensive number of (lower and midlevel) civil servants. Respondents mentioned an informal 'carrot and stick culture' that has been the case since the start of independence of Aruba. Some respondents mentioned the governmental body is therefore largely politically engaged with the state's founding father's political party MEP, though in the past both main political parties AVP and MEP were involved in the island practice of job creation by patronage ('carrot') and job loss, replacement or informal sanctions for 'non-loyals' ('stick');
- 345 National decree on remuneration (Bezoldigingsregeling) 1986, regularly updated, lastly in 2008. Reportedly ministers do not always stick to the procedures and appoint without permission of human resources department DHR. This omission was already extensively reported by Central Accountancy Department in 2001 and critically elaborated in a report on Good Governance and Political Reality by the Foundation Infuca, in 2001.
- 346 In 2017 costs for personnel were reportedly 34% of the annual budget, e.g. Van Aller & De Vries 2018. GOA recognizes addressed the issue recently in the Draft Master Plan for Economic Recovery & Resilience, July 2020
- 347 National Ordinance Legal and Material Rights and Obligations of Civil Servants/ Landsverordening Materieel Ambtenarenrecht Aruba (LMA Aruba).
- 348 Resulting in the prosecution and conviction of the former minister, see Ibis case. Other cases were mentioned, including issues with other Ministers or "coordinators" within departments (e.g. DIP; DOW; DIMAS), resulting in public prosecution cases Ostrich and Flamingo, currently being in investigation. Another former member of Parliament (POR) and business person was prosecuted in 2021, Diamant case, accordingly for unauthorized interference within public funds.
- 349 This is a general problem on other small (Dutch Kingdom) island states, like for instance Sint Maarten.
- 350 Art. 6 LMA Aruba.
- 351 Respondents mentioned that 'window dressing' appears to happen in procedures. Formally there is a vacancy published, but internal choice for a related candidate was already made, making the procedure in fact redundant.
- 352 In practice, certain procedures – not necessarily required by law – regarding appointments and dismissals of civil servants are followed. Function profiles are set up and in some cases selection committees prepare for decisions on appointments. However, respondents noticed an inconsistent recruitment and appointment process across the public sector, and ministers may finally decide different to the advice of a selection committee or appoint a candidate outside the selection procedure, given a nomination procedure the character of window-dressing. It was remarked by respondents that decisions to get the best people for the job are often "political" or based on whichever network the favored applicant is part of.

Regarding arbitrary dismissal the law offers protection: employees can only be dismissed by the same authority that is responsible for their appointment. Nonetheless there were reports of political interference in dismissals – or at least the threat of political interference. Respondents state that they intentionally hold back their opinions in discussion with the minister to “guarantee their job security”. The grounds for dismissal are, however, limited by law and respondents laud protection of unfair dismissal by the judiciary power.^{353 354} As a general rule, after political regime change, high ranked civil servants or employees who are deemed opponents (and therefore considered to be disloyal to the new executive) are removed from their position in the public sector and placed in a ‘redundancy pool’, in which they keep their salary to a large extent for a limited period, without having to perform on the job.³⁵⁵

Regarding the impartiality of public sector employees, several regulations are included in the law. All employees are required to take an oath upon accepting their

position; however, there are no mechanisms for monitoring whether such an oath is adhered to and effective. Also, there are rules regarding the acceptance of gifts, additional positions and discretion. Political activity of public sector employees is not prohibited.³⁵⁶

Regarding parliamentary lobbying in public procurement cases, no regulations were found. In general, the execution of works and the purchasing of goods or services by the government are contracted by means of public tenders.³⁵⁷ Within financial limits no public tendering is required.³⁵⁸ The public tendering in procurement cases was a mentioned reason of concern, as the procedures are not always followed or circumvented.³⁵⁹

Regulations for the appointment and dismissal of public company managers by or through a minister are part of a corporate governance code. Supervisory boards of state owned entities (SOE) are appointed by the minister.³⁶⁰ A Corporate Governance Council was set up to oversee whether procedures are being followed and to assess which reforms have to be made for an

353 Art. 98 v. LMA Aruba. Court Judges are especially alert on dismissals or nominations after change of regime by elections. See more in the pillar on Judiciary.

354 The current laws do not establish a specific institution to protect public sector employees from arbitrary dismissals, as there is not yet nominated (like in other countries within the Kingdom) an Ombudsman for advice and support if employees feel they have been treated unfairly, or in a way that is not in line with the law. The National Ordinance Ombudsman was approved by Parliament but not yet put into action. A Bureau of Integrity is installed but not yet operational.

355 Interviewees mentioned that measures are taken by the Aruban Human Resources Department (DHR) to prevent ‘pooling’ (e.g. by replacement at other Departments), but that to an extent this still happens, especially in higher level positions where leadership and control are a political issue. ‘Pooling’ is therefore related to government change and the role a minister sees for appointed intermediaries to get grip on a department formerly controlled by the advisory party.

356 Civil servants can be politically active and are in practice. According to those respondents, the government also allows time off to be able to participate in election campaigning.

357 National Ordinance on Comptability (art. 25), elaborated in the National decree Public Procurement (AB 1996 no. 58). Furthermore National Ordinances regarding empowerment in special projects, e.g. Green Corridor (Lv 2011. No 50) and Watty Vos Boulevard (Lv 2013 no. 82) and National decree competitive dialogue 2013 (hotel area and Ponton). These projects and claimed legal omissions in the procedure have not been researched in depth.

358 For up to 100.000 Aruban guilders there is no need for public tendering. The Minister of Finance has the authority to deviate from these rules by national decree, in case of disasters and tenders where the public interest is opposed to any further delay. Such public decrees need directly be sent to Parliament for political approval.

359 In October 2020 minister of Justice was criticized for not following a procurement procedure, against advice of the DOW Department; Parliamentary interference in appointing a tender of security at Serlimar (Parkietenbos) was mentioned by respondents; Serlimar is still a matter of concern as was mentioned by CAft, January 2021;

360 These Board appointments are often political according to respondents. Furthermore appointment was used by ministers as an excuse for lack of supervision, as it is a duty of the independent Board of that SOE. SOE lack transparency as financial annual accounting is often not (in time) adhered to.

actualized and modernized corporate governance code.³⁶¹ ³⁶² Reforming SOE and enhancing integrity is part of the portfolio of the newly appointed Minister that holds Integrity in his portfolio.

Transparency

While legal provisions concerning transparency in public management are in place, provisions regarding the decision-making process in government and the availability of annual reports and accounts in public procurement are not. The government is formally re-quired by law to make its budget, annual accounts and an overview of its finances accessible to the public on time.³⁶³ Administrative bodies need to exert openness in the performance of their duties and to provide information for that purpose, as anyone may request information recorded in documents on administrative matters from the public sector.³⁶⁴

Although the public can obtain information on the or-organization and functioning of the public sector, and vacancies are publicly advertised, transparency

in decision-making processes and public procurement is considered insufficient.³⁶⁵ The Aruban government website contains information on the structure and or-organization of all ministries, budgets per ministry and the annual state budget. In addition, some other institutions, such as the General Audit Chamber, make specific information on public management related to their expertise available to the public.³⁶⁶

Disclosure of personal assets and financial interests of public sector officials in practice does not occur. Although public tenders are advertised in local news-papers, public information on the application of sched-uled time frames is (sometimes) lacking. Information on the decision-making process in public tendering is not publicly made available, increasing the existing tendency for misinterpretation and rumor around the correctness of the tender procedure in projects, thus enhancing sentiments of unfairness in parts of society.

The public sector lacks legislation on privacy protection, which is widely seen as a shortcoming and is part

361 Following recommendations of Former chair of Chamber of Commerce, Mrs. L. de Souza, Private company, public responsibility: The Aruban government-owned LLC between company interest and public responsibility, Master thesis University of Aruba 2010.

362 A report on Corporate Governance in the public and semi-public sector was published by Themis Institute for Governance & Leadership in January 2020. The results were mixed. The entities that were externally supervised abide to the rules. Others, up to 40%, were not compliant on essential parts of the good governance regulations. According to respondents the Corporate Governance regulation and company law is not effective in practice. Now book 2 of the Civil Code is published and governance regulation is in place the rules have to be enforced for improvement.

363 As mentioned, this does not happen (annual accounting) or not in time and is fundamentally criticized, e.g. both by CAft and ARA. See more in the pillar of the Supreme Auditing Institution (ARA).

364 National Ordinance open government/ Landsverordening Openbaarheid Bestuur, 1999, amended 2006 no 16. National Ordinance Administrative Law/ Landsverordening administratieve rechtspraak (LAR). Citizens or business that want to obtain information can make a request by law, but in practice information is not easily obtained. Reports of the Council of Advice and the Social Economic Council are to be published by the minister of general affairs, with the exception of specified confidential information and cases concerning the unity and security of the government. The government is also responsible for regularly issuing new editions of the National Gazette and official publications. Kingdom Acts, national ordinances and decrees are to be published as official publications (Afkondigingsblad), all other official publications and announcements to be communicated to the public will be recorded in the National Gazette. No specific regulations regarding the management of records pertaining to public procurement were found. The Corporate Governance Code does not explicitly mention the publishing of reports of public-owned companies or foundations, but under new book 2 of the Civil Code that might be the case. The Minister is responsible for all documentation that has been drawn up as part of the tasks for all organizations falling under his/her ministry.

365 Most State Departments have their own website where news and general information on procedures can be found. Laws on procedures are in place, but how decisions are made is, according to respondents, nontransparent. Procedures (e.g. for obtaining permits) often take longer than legally is allowed. Information on the status of the procedure is hard to obtain. Respondents mention this to be a "public secret". If a person has an "entrance" in the department, that might help to obtain key information.

366 Although overall information on the activities of ministers is available on the government website, detailed information on the activities on governmental tasks of public sector entities was not found and not made publicly available.

of the reform plans to strengthen the rule of law in Aruba.

Accountability

There are provisions in place to ensure that public sector employees must report and be answerable for their actions. Under the National Ordinance Civil Servants (LMA), public officials have several legal responsibilities. Furthermore, the Criminal Code of Aruba offers possibilities for prosecution of corrupt civil servants and government employees.³⁶⁷ Internally, some departments accordingly apply a four-eye principle, to avoid irregularities.³⁶⁸ However, respondents mentioned examples of abuse within departments and lack of effective control. Ministers and heads of departments do not always lead by example. Core problems are identified by the Government and concisely described. The outcome of an ideal scenario is described in a masterplan for the restructuring of the public sector.³⁶⁹

Integrity mechanisms

Although there used to be training programs on integrity in the past, these apparently no longer were applied in recent years. Because of integrity scandals in the past and, most likely, existing structural issues regarding (political) patronage, deficient financial budgeting and accounting, project management, tendering in procurement and the procedures regarding issue of land, labor and business permits, the need for integrity training in public sector seems urgent. Core values in public sector are not on a regular basis communicated or are even unknown within departments, let alone practiced in daily operations. Values might formally be included in contracts and/or in codes of conduct, but there is a clear need to make these more transparent in practical daily functioning within the public sector.

Sub-conclusion

Overall, the public sector has major flaws due to historical, cultural and constant shifting political influences after electoral changes. Top down strong executive influence of ministers and/or intermediary persons can cause unrest or even fear for repression within governmental departments, enhancing a non-critical stance to irregularities in (e.g. permit, tender or nomination) procedures. The urge of financial reform demands integer operational functioning of the entire public sector on a uniform sufficient service level. An existing culture of 'carrot and stick' in nomination and functioning of civil servants, causing or enhancing a culture of fear and critical silence, should be abolished by creating an atmosphere of transparency, fairness and justice. There is awareness for required public sector reform within government EWC II that needs to address these stipulated issues in an efficient and effective manner.

367 Not all workers in government service hold a legal position as civil servant (ambtenaar). Employees hold an employment contract with the Government. In both legal relations there are integrity clauses, although differences were not researched in this assessment.

368 This 4-eye principle was mentioned as an approval measure by PM Mrs. Croes, after corruption investigation within departments, but could not be researched in practice.

369 Draft Masterplan July 2020, Committee for Economic Recovery and Innovation, Repositioning our sails. Ultimately this will be part of the executional agenda (uitvoeringsagenda) under supervision of the COHO. According to PM Wever Croes, alignment has taken place.



LAW ENFORCEMENT AGENCIES

Structure and organization

The main law enforcement agencies in Aruba are the Aruba Police Force (Korps Politie Aruba/KPA), the Special Police Force Aruba (Landsrecherche Aruba/LR) and the Public Prosecutor's Office Aruba (Openbaar Ministerie Aruba). Furthermore, there are several agencies that actively and directly assist in the enforcement of the law. In this respect, the Special Police Task Force (Recherche Samenwerkingsteam/RST) and the customs authority of Aruba (douaneautoriteit van Aruba/DAA) must be mentioned. The assessment of the law enforcement agencies in Aruba will be limited to these five institutions.

The task of the Aruba Police Force is to provide for the enforcement of the legal order and to give assistance to those who need this, in subordination to the competent authority and in accordance with the applicable legislation.³⁷⁰ The Special Police Force Aruba has a more limited set of tasks. This agency investigates possible criminal conduct of government officials and civil servants.³⁷¹

The Public Prosecutor's Office has the authority over the Aruba Police Force. It is in charge of the enforcement of legislation, the detection and the prosecution of criminal offences and it also monitors the execution of criminal judgements.³⁷² The Public Prosecutor's Office is a separate organization in the judiciary, but in a functional sense is it a part of the law enforcement. The Public Prosecutor's Office is headed by a prosecutor general (PG).³⁷³ The prosecutor general is responsible for all business processes, from finances to human resources, and it is the prosecutor general who is accountable to the Minister of Justice, Safety and Integration.

The Special Police Task Force is a cooperation organization comprising the different countries in the Caribbean part of the Kingdom of the Netherlands aimed at combating serious, cross-border crime and crime which infringes the legal order. The staff of the Special Police Task Force is appointed as extraordinary police officers and placed within the serious crime department of the Aruba Police Force.³⁷⁴ Where in the past the Special Police Task Force comprised four offices in Aruba, Bonaire, Curaçao and St. Maarten, its staff nowadays work in the local police forces. Additionally, the staff of the Special Police Task Force will work on tackling cross-border crime for the entire Caribbean part of the Kingdom from a central location in Curaçao.

The customs authority of Aruba oversees the import, export and transit of cross-border goods. It is responsible for raising and collecting customs and excise. In addition, the customs authority of Aruba is responsible for the enforcement of the rules in the field of the so-called VGEM. VGEM is an abbreviation for safety, health, economy and environment. By means of prohibitions, restrictions and controls of cross-border goods, the financial-, economic- and health interests of Aruba are protected. The customs authority also promotes improvements to the safety of international logistics and the Aruban society.³⁷⁵ The customs authority of Aruba operates as an autonomous entity and it is accountable to the Minister of Finance, Economic Affairs and Culture.³⁷⁶ In the following sections the Law Enforcement Agencies are assessed along three dimensions.³⁷⁷ First the institution's overall capacity to function will be described, by focusing on resources and independence. From there, their internal governance will be assessed by reviewing three indicators: trans-

370 National Ordinance Police (Landsverordening Politie), AB 1988, no. 18, art. 2.

371 National Decree Tasks Special Police Force Aruba (Landsbesluit taken Landsrecherche), AB 2000, no. 13, art. 3.

372 National Ordinance on Public Prosecution (Landsverordening op het openbaar ministerie), AB 1993, no. 9, art. 3.

373 Constitution, AB 1987, no. 1, art. VI.26.

374 National Decree Appointment and Dismissal of Extraordinary Police Officers (Landsbesluit aanstelling en ontslag buitengewoon agenten van politie), AB 1988, no. 64.

375 See: <http://www.douane.aw/en/organization>.

376 National Decree on special legal status provisions customs officers (Landsbesluit bijzondere rechtspositionele bepalingen douaneambtenaren), AB 1995, no. 59.

377 NIS Assessment Toolkit 2012, p. 17-18.

parency, accountability and integrity. At the end, the role of the Law Enforcement Agencies in contributing to the overall integrity of the national governance system – by the detection and investigation of corruption cases – will be assessed. For the purpose of this assessment the capacity, governance and the role of the Law Enforcement Agencies will be discussed in general, unless specified. In that case, the remarks will be explicitly dedicated to a specific institution or specific institutions.

Resources

The Law Enforcement Agencies are funded from the state budget determined by the Minister of Justice, Safety and Integration in accordance with the minister of Finance. Lack of adequate human resources are an issue for all the institutions, but the situation within the Aruba Police Force is problematic. Capacity in terms of financial and human resources is lacking and with that, there is a need for specialized expertise, especially in the field of financial investigations.³⁷⁸ In an attempt to bridge the gap, the Aruba Police Force was supported by the Special Police Force Aruba (LR) and the Special Police Task Force (RST) for several years. This method did not pay off as expected. The Aruba Police Force made insufficient use of the contribution offered. As a consequence, the Aruba Police Force mainly carries out ad hoc investigations instead of project-based investigations. Many cases result in an administrative settlement since there is no capacity for criminal investigation.³⁷⁹

Furthermore, the deployment of the existing capacity can be questioned. In 2018 the Aruba Court of Audit – one of the permanent advisory councils – conducted a research on the main reasons for overtime within, among others, the Aruba Police Force.³⁸⁰ Indications

were found that overtime within the Aruba Police Force was often associated with activities performed in addition to its actual tasks - the enforcement of the legal order and the assistance of people in need. Examples given are the presence during sporting events, religious parades and other public activities. The customs authority of Aruba assigns priority to controls in Barcadera, the fishing harbor, even though the majority of the goods – representing over 80% of the excise - are processed in the container terminal. Here the customs authority almost completely relies on technical assistance by way of a scanner. If this device does not operate, which is the case in daily practice, effective control is lacking.³⁸¹ A valuable suggestion made is to organize the physical controls by the customs authority in a more effective manner and to focus on follow-up.³⁸²

In the light of the Landspakketten Curaçao, Aruba and Sint Maarten, that are aimed at lowering the public wage bill and improving the quality and the effectiveness of the public sector, a comment must be made about the crime fund Aruba (criminaliteitsfonds Aruba). This fund offers the opportunity to use confiscated capital for the strengthening of the criminal investigation, for instance by investing in vehicles and computers. Crime fund Aruba can offer additional resources and for that reason management and supervision have to be in order.³⁸³

Independence

The National Ordinance Legal and Material Rights and Obligations of Civil Servants (Landsverordening Materieel Ambtenarenrecht) stipulates rules regarding appointment, suspension or dismissal.³⁸⁴ For the police forces, additional rules on the legal position and the requirements for eligibility are in place. The National Ordinance on Police (Landsverordening politie) is applicable to the police officers of the Aruba Police Force

378 Several interviews conducted by the authors with respondents from the Law Enforcement Agencies.

379 Several interviews conducted by the authors with respondents from the Law Enforcement Agencies.

380 Aruba Court of Audit 2018, Focusonderzoek: Oorzaken overwerk uit perspectief van het Korps Politie Aruba (KPA), het Korrektie Insituut Aruba (KIA) en de Cuerpo Especial Arubano (CEA).

381 Interview with person Z, Business Consultant d.d. October 29, 2020.

382 Ibid.

383 Landspakketten Curaçao, Aruba and Sint Maarten, H.12.

384 National Ordinance Legal and Material Rights and Obligations of Civil Servants (Landsverordening materieel ambtenarenrecht), AB 1989, no. GT 37.

(KPA), but also to the extraordinary police officers that are appointed by National Decree.³⁸⁵ In the National Decree Legal Position Police (Landsbesluit rechtspositie politie) the different ranks within the police forces are clearly defined and these are related to specific criteria for appointment and promotion.³⁸⁶

From the outset, the abovementioned rules guarantee a certain degree of independence. The chief of the Aruba Police Force, police officers, the head of the Special Police Force (LR) and his staff are all appointed, suspended and dismissed by National Decree however. This allows political interference to play a role. The Public Prosecutor's Office is headed by a prosecutor general (PG). The prosecutor general is appointed, suspended and dismissed by Kingdom Decree. This is not the case for the substitute prosecutor general. Like other members of the Public Prosecutor's Office, the substitute prosecutor general is appointed, suspended and dismissed by National Decree. Once more, this allows political interference to play a role. In the activities of the Law Enforcement Agencies, the prosecutor general is the central actor. It is the prosecutor general who has the authority to give instructions and directions to the chief of the Aruba Police Force and the head of the Special Police Force in the prevention and the investigation of criminal acts. Nevertheless, the Minister of Justice, Safety and Integration plays an evident role in the processes of the Law Enforcement Agencies since he may issue directives to the office of the prosecutor general, who eventually is accountable to him.

The Minister of Finance, Economic Affairs and Culture can offer tax facilities, so-called Tax Holidays, to entrepreneurs that are willing to invest on the island.³⁸⁷ On the basis of an individual exemption, these entrepreneurs for instance can import construction materials without paying customs or excise. This is

another example where political interference might come into play and where the independence of the customs authority Aruba is put to the test.³⁸⁸

Transparency

With an appeal to the National Ordinance Open Government (Landsverordening openbaarheid van bestuur)³⁸⁹ the public can access information on the organization of the Law Enforcement Agencies. This information can partly be found through social media and the websites of the institutions concerned, but the information presented there is not always comprehensive. The information on the functioning of these institutions is limited. This can be explained by the legal framework that requires the Law Enforcement Agencies to ensure confidentiality of certain types of information.³⁹⁰ This involves for instance Information on activities performed and the decision-making processes. The routing is that the Law Enforcement Agencies report annually to the competent Minister - the Minister of Justice, Safety and Integration or the Minister of Finance, Economic Affairs and Culture - about the general management and the effectiveness of the activities performed. It is through the parliamentary process, in which the ministers are accountable to the legislature, that this information is made available to the public. In practice however, this system does not operate properly. Parliament doesn't perform its supervisory task sufficiently and as a result, the public remains deprived of relevant information.³⁹¹

In a criminal procedure, the defendant can be granted access to the relevant case files from the moment there is a criminal charge. The president of the court can also give access to the relevant case files to victims but he has the authority to exclude files for reasons like the protection of privacy and the protection of ongoing investigations.³⁹² The public is informed by way of press releases and with that, court hearings are open to the public.

385 National Ordinance on Police (Landsverordening politie), AB 1988, no. 18, art. 1.

386 National Decree Legal Position Police (Landsbesluit rechtspositie politie), AB 2011, no. 46.

387 National Ordinance to promote business establishment and hotel construction (Landsverordening ter bevordering van de bedrijfsvestiging en hotelbouw).

388 Interview with person Z, Business Consultant.d.d. October 29, 2020.

389 National Ordinance Open Government (Landsverordening openbaarheid van bestuur), AB 1999, no. 12.

390 See for instance the relevant provisions in the Code of Criminal Procedures Aruba.

391 Several interviews conducted by the authors with respondents from the Law Enforcement Agencies.

392 Code of Criminal Procedure Aruba.

There are no provisions in place requiring the officials of Law Enforcement Agencies to disclose their assets.

Accountability

In a way, all the Law Enforcement Agencies are accountable to the minister concerned. The Aruba Police Force and the Special Police Task Force (RST) are accountable to the Minister of Justice, Safety and Integration. The same applies to the Special Police Force (LR) and the Public Prosecutor's Office, but here the prosecutor general plays an important role. It is the prosecutor general who is accountable to the Minister of Justice, Safety and Integration on behalf of the institutions mentioned. The customs authority of Aruba is accountable to the Minister of Finance, Economic Affairs and Culture. Aruba has several laws that grant the right to file complaints against Law Enforcement Agencies. For example, article 3(7) of the National Ordinance on Police (Landsverordening politie) and the National Decree Complaints Police Action (Landsbesluit klachten politieoptreden)³⁹³ provide for a procedure in which citizens have the right to file a complaint about misconduct in police action. Furthermore, the Law Enforcement Agencies provide for internal complaints procedures, to handle misconduct by its staff and which can result in disciplinary sanctions.³⁹⁴

Title IV of the Code of Criminal Procedure of Aruba provides a procedure in which direct stakeholders can file a complaint to the Court of Justice in case the Public Prosecutor's Office decides not to prosecute a criminal offence, or in case the prosecution does not start within a reasonable period of time. The Court of Justice has the authority to instruct for (further) prosecution, but it also has the authority not to do so for weighty reasons of general interest.³⁹⁵

The staff of the Law Enforcement Agencies do not benefit from any form of immunity for corruption and other criminal offences. The Criminal Code is equally applicable to them, alongside the disciplinary sanctions like suspension and dismissal.³⁹⁶

Integrity mechanisms

The National Ordinance Legal and Material Rights and Obligations of Civil Servants (Landsverordening materieel ambtenarenrecht) gives guidance on the incompatibility of functions and prohibited acts.³⁹⁷ Furthermore, the Law Enforcement Agencies provide for an integrity policy directed towards increasing integrity awareness, preventing the abuse of power and conflicts of interest. For instance, in the code of conduct of the Public Prosecutor's Office Aruba the value of professionalism, integrity, transparency and accuracy are emphasized.³⁹⁸ In daily practice, the codes of conduct play a minor role however. It is all about common sense, for instance in the situation where the staff of the Law Enforcement Agencies are offered gifts or where they are confronted with confidential information.³⁹⁹

No evidence was found that the staff of the Law Enforcement Agencies have to declare their assets, nor were any post-employment restrictions (like provisions regarding a cooling-off period) found.

As mentioned above, the prosecutor general has the authority to investigate violations of integrity and criminal conduct of government officials and civil servants. For these purposes he can give orders to the Special Police Force (LR). The prosecutor general also can bring cases of misconduct to the attention of the internal offices of the Law Enforcement Agencies. For example, the Police Force Aruba has access to an Internal Affairs and Investigations Office (bureau

393 National Decree Complaints Police Action (Landsbesluit klachten politieoptreden), AB 1988, no. 71.

394 National Ordinance Legal and Material Rights and Obligations of Civil Servants (Landsverordening materieel ambtenarenrecht), chapter VIII.

395 Code of Criminal Procedure Aruba, art. 25(1) and art. 25(2).

396 Several interviews conducted by the researchers with respondents from the Law Enforcement Agencies.

397 See art. 55 – 57. Article 55 is elaborated in more detail in the National Decree Relations and Ancillary Activities (Landsbesluit nevenbetrekkingen en nevenwerkzaamheden), AB 1996, no. GT 54.

398 Code of conduct Public Prosecutor's Office Aruba, Oranjestad 1 November 2016.

399 Several interviews conducted by the researchers with respondents from the Law Enforcement Agencies. In the Corruption Survey 2019, the CBA advises the government to implement an effective anti-corruption framework, with a focus, among others, on enforcing integrity in the public sector by introducing a code of conduct for civil servants, members of Parliament and ministers.

interne zaken en onderzoeken/BIZO), while the customs authority of Aruba has its own investigations department (douanerecherche). In short, the prosecutor general determines the approach. Minor cases, often resulting in disciplinary actions, are dedicated to the internal offices of the Law Enforcement Agencies and the remaining workload is assigned to the Special Police Force (LR).

Corruption prosecution

In the Corruption Survey of the Central Bank of Aruba in 2019 almost 76 percent of the 824 people surveyed agreed that corruption exists in public institutions in Aruba.⁴⁰⁰ A study by the Research and Documentation Centre performed in 2011, 'De staat van bestuur van Aruba', identified several governmental domains that are vulnerable to corruption. These vary from the issuing of licenses, to the issuing of permits to work and stay in Aruba and the lease of buildings for government use.⁴⁰¹ With that, in the Aruba National Money Laundering Risk Report of 2021, bribery and corruption are indicated as high threat predicate offences for money laundering.⁴⁰²

Despite these indications for the presence of corruption in Aruba, the number of cases brought to court is limited. In practice, it is difficult to obtain the amount of evidence to start an investigation, eventually resulting in a prosecution. With that, the accusations of corruption partly arise from the political constellation on the island. With two leading parties, the opposition accuses the government of favoring friends and family by means of state contracts or employment. Political control is absent, since the majority of the parliament simply supports the government. It is often after a change of government, that this issue will be on the agenda again and from there it is brought to the attention of the Public Prosecutor's Office.⁴⁰³

A distorted image would arise if the focus exclusively lies on the number of corruption cases brought to court, or on the number of convictions for corruption. Aruba is rather a small island and it has a relatively

small numbers of inhabitants. It is self-evident that this is reflected in the size of Law Enforcement Agencies. With that, the investigation in corruption cases often drags on for years, consuming the existing capacity of the Special Police Force (LR). Despite all this, annually three to four minor cases are brought to court. On average, the larger and more complicated cases take two years of preparation. Striking examples from this category are the IBIS case and the Avestruz case.

Sub-conclusion

The pillar Law Enforcement Agencies is relatively strong. The Public Prosecutor's Office has shown to investigate and prosecute in corruption cases, thereby showing effective cooperation with the Special Police Force Aruba and Special Police Task Force. Although the Public Prosecutor's Office formally is placed under the authority of the Minister of Justice and Social Affairs, it operates independently.

400 <https://www.cbaruba.org/cba/readBlob.do?id=6820>.

401 <https://www.wodc.nl/onderzoeksdatabase/onderzoek-naar-de-staat-van-bestuur-van-aruba-en-rechtshandhaving-in-het-bijzonder.aspx>.

402 <https://www.overheid.aw/document.php?m=55&fileid=87625&f=aaeff2930ae5218cd656d58376606&attachment=0&c=56144>.

403 Several interviews conducted by the researchers with respondents from the Law Enforcement Agencies.



ELECTORAL MANAGEMENT BODY

Structure and organization

The Electoral Council (Electorele Raad), the electoral management body of Aruba, is responsible for the fair and just elections of the national Parliament (Staten). As described earlier – see the paragraph on ‘elections’ under ‘political-institutional foundations’ – these elections take place by a proportional representation vote, similar to the elections held in the other countries of the kingdom of the Netherlands. The elections are free and held – by secret ballot – every four years⁴⁰⁴. All twenty-one members of Parliament are directly elected by the residents of Aruba with the age of eighteen years and up who have Dutch nationality.⁴⁰⁵ In order to stand for election and be elected as a member of Parliament, one has to be an Aruban inhabitant with Dutch nationality of twenty-one years of age or older.⁴⁰⁶ There are no other elections or elections at decentral level: Aruba solely has a central government.

In short, the Electoral Council is responsible for preparing and overseeing the elections and for publishing the results. The council’s tasks include: the registration of political parties, the receipt of lists with the nominations of candidates and ensuring their eligibility to stand, regulating voters’ credentials, preparing and sending out ballot papers, ascertaining the results and logistical aspects such as organizing polling stations, compiling and announcing the results.⁴⁰⁷

According to the law, the Electoral Council operates independently from the legislature and executive.⁴⁰⁸ The Electoral Council consists of five persons: a chair, a deputy chair and three members, which each have a

substitute. The chair is selected by the presiding judge of the Joint Court of Justice of Aruba, Curacao, Sint Maarten, Bonaire, Saint Eustatius and Saba and the vice-chair by the chair of the General Audit Chamber; each for a period of four years. The three political parties that received the largest vote share at the last parliamentary elections are to select each a member and deputy member to serve on the Electoral Council until a month after the subsequent elections.⁴⁰⁹ The Electoral Council also acts as the central electoral office for the Aruban parliamentary elections and is responsible in that capacity for the tasks entrusted by the National Ordinance on Elections (Kiesverordening).⁴¹⁰ The head of the Civil Service and population Register (Dienst Burgerlijke Stand en Bevolkingsregister – DBSB) is an advisory member of the central electoral office.⁴¹¹

In January 2021 new legislation on party funding came into force, containing rules on party funding, including donations (also see the chapter on ‘Political parties’).⁴¹² The Political Party Funding Supervision Committee (Commissie financiën politieke partijen), a new to be established organ as a result of this regulation, has to monitor whether the financing of political parties and their candidates meets the objectives of and restrictions within the new regulatory framework. This committee is supposed to consist of the chair and deputy chair of the Electoral Council, supplemented with a maximum of three independent and impartial accounting experts.⁴¹³ As a result, there will be a significant overlap between the two organs (the Electoral Council and The Political Party Funding Supervision

404 See article III.3 section 1 and article III.4 section 2 of the constitution of Aruba (Staatsregeling van Aruba - StregAr)

405 Article III.5 of the constitution of Aruba (Staatsregeling van Aruba - StregAr)

406 See article III.6 section 1 of the constitution of Aruba (Staatsregeling van Aruba - StregAr)

407 See, among others, articles 16 and 22 of the National Ordinance on Elections (Kiesverordening).

408 National Ordinance Political Parties (Landsverordening politieke partijen AB 2001 no.96), article 3 section 1.

409 National Ordinance Political Parties (Landsverordening politieke partijen AB 2001 no.96), articles 5 and 6.

410 National Ordinance Political Parties (Landsverordening politieke partijen AB 2001 no.96), article 4 section 2 and National Ordinance on Elections (Kiesverordening), article 14 section 1 and 3.

411 National Ordinance on Elections (Kiesverordening), article 14 section 2.

412 This new regulation is included in the National Ordinance Political Parties (Landsverordening houdende regels inzake politieke partijen).

413 See article 20 section 4 of the Landsverordening tot wijziging van de Landsverordening politieke partijen. In September 2021 the Electoral Council had not yet managed to find experts willing to fill these positions (see also the chapter on ‘Political parties’)

Committee). Incidentally, the other three members of the Electoral Council - appointed by the three political parties which received the largest vote share at the most recent elections - will have no role of influence in the supervisory and enforcement powers of the Political Party Funding Supervision Committee.

Resources

As mentioned before, the Electoral Council also acts as the central electoral office for the Aruban parliamentary elections. Its seat is located at the head office of the Civil Service and population Register (DBSB - Censo) in City Hall in Oranjestad. This building functions as the head polling station.⁴¹⁴

The Electoral Council does not have its own secretariat, neither does it have its own residence, staff or budget.⁴¹⁵ None of the members of the Electoral Council receives any of compensation or a refund of expenses made; it is an entirely voluntary additional function.⁴¹⁶ In the case of upcoming elections, it receives ad-hoc support from the entire staff of the Civil Service and population Register (Censo). The preparation and practical implementation of the Electoral Council's tasks - with the exception of the registration of political parties and the decoration of the polling stations - is carried out by the employees of Censo.⁴¹⁷ During the months prior to and during the elections, Censo carries out these tasks in addition to its normal tasks, such as providing passports, drivers licenses and certificates of residence, registering births and processing address mutations. This results in a significantly increased workload and long working days for the approxi-

mately thirty Censo-employees.⁴¹⁸

The web page of the Electoral Council - a page on the governments website - reports that the Electoral Council, in accordance with the above mentioned legislation, consists of a chair, a substitute-chair and an advisory member. As mentioned, the head of the Civil Service and population Register (DBSB, also called Censo) is the advisory member to the central electoral office. He or she is added when elections take place. A description of the composition of the council can be found on this web page. The names mentioned, however, are those of the previous chair and substitute-chair of the Electoral Council. Furthermore, the names of the other three members of the Electoral Council - appointed by the three political parties which received the largest vote share at the most recent elections - are not included. The Electoral Council does not have a website of its own. Relevant information regarding the last two elections (2017 and 2021) can be found at the website of the Aruban government.⁴¹⁹ Of each election a specific web page on this website provides information such as: a calendar of activities, the voter's register, the candidates lists, information on the election night, the provisional election results and the certification of election results.⁴²⁰ More detailed information regarding the elections since 2013 can be found on the website of the Civil Service and population Register (Censo).⁴²¹ Not only general information like procedures and regulations with regard to the Aruban elections and guidelines for members of polling stations can be found on this website, but also more specific information - categorised by election year - on how legal pro-

414 See article 14 section 1 of the Kiesverordening

415 Multiple interviews with regard to the elections and Electoral Council, among which an interview with the chair of the Electoral Council, mister Glenn Thodé, held 25 March 2021

416 Incidentally, the former substitute-chair indicated that a fee could be requested from the official who appointed him (the chair of the General Audit Chamber); he however never made use of this opportunity. Interview with the substitute-chair of the Electoral Council, mister H. Maduro, interview held 3 December 2021.

417 The registration of political parties is done by the chair and substitute-chair of the Electoral Council; the decoration of the polling stations is done by the department of Public Works (Dienst Openbare Werken). Multiple interviews with regard to the elections and Electoral Council, among which the interview with the previous substitute-chair (and former chair) of the Electoral Council, H. Maduro, interview held 3 December 2021

418 Anonymous interview with regard to the elections, held 15 December 2021. Also see: DBSB (2019). Knelpunten in het proces van de verkiezingen van 22 September 2017', Dienst Burgerlijke Stand en Bevolkingsregister (Censo)

419 The website is: https://www.government.aw/governance-administration/elections_46112/

420 By example, the information regarding the 2021 elections can be found via: www.overheid.aw/bestuur-organisatie/verkiezingen_41139/item/verkiezingen-2021_56353.html, accessed on September 23rd 2021

421 Censo.aw/main, under 'Verkiezingen' (accessed on 15 December 2021)

cedures have been followed in practice. A multitude of documents can be found on this website, such as public announcements, press releases, minutes of proceedings, decisions taken by the Electoral Council and preliminary results. The information is fully disclosed, transparent, partly provided with explanatory notes and easily accessible for third parties.

Independence

Article 3 of the National Ordinance Political Parties (Landsverordening politieke partijen) states that the Electoral Council is independent of the Staten and the government. As mentioned, the chair is appointed by the presiding judge of the Joint Court of Justice of Aruba, Curacao, Sint Maarten, Bonaire, Saint Eustatius and Saba and the substitute-chair is appointed by the chair of the Central Audit Institution for the duration of four years.⁴²² The three members who are temporarily added to the Electoral Council – temporarily, i.e. during the period of elections – will remain in position until a month after the newly elected Parliament (Staten) has had its first plenary meeting.⁴²³ These three members are added to the Electoral Council as a means to ensure the body's independence.⁴²⁴ However, in reality this does not have the desired effect. Several respondents in this NIS-study expressed their serious concerns that these members, because they are a representative of their political party, foremost use this newly acquainted position for their political party's interest.⁴²⁵ In 2021 this led to a court case because the council's member of the AVP requested the entire register of voters (70.281 persons).⁴²⁶ According to this member of the Electoral

Council this was needed to monitor whether the elections were organized and taking place in a fair and honest way. The chair of the Electoral Council was of a different opinion and regarded this not only to pose a risk for the citizen's privacy but also feared that it would be used by this and other political parties to visit those voters who had not voted in the last year. Intimidation and vote buying would be a realistic risk.⁴²⁷ The current composition of the Electoral Council is therefore problematic and has not proven to be a safeguard for its independence. Incidentally, all interviewees with regard to the Electoral Council mentioned the unwanted side-effect of providing an entire register of voters to the political parties.⁴²⁸ Up to the 2017 elections it was common use for – in particular the largest – political parties to check, on the basis of the provided complete register of voters, whether its members, sympathizers and others who were expected to vote for the party indeed casted their votes yet. If not, the so-called 'checkers' at the polling stations arranged for these persons to be picked up at home and brought to the polling station to vote.⁴²⁹ One respondent described how an elderly family member was missing for a while during the 2017 elections after members of a political party picked her up to cast her vote.⁴³⁰ Basically, despite the secret ballot, until 2021 it was not a secret whether someone had voted or not.⁴³¹ The pressure imposed by political parties to vote might even have led to voters deliberately casting invalid votes as a kind of protest.⁴³² All in all, the provision of registers of voters containing unnecessarily large amounts of personal data can be considered unwanted from a privacy protection viewpoint. On this ground

422 Article 5 section 2 and article 6 section 1 of the National Ordinance Political Parties (Landsverordening politieke partijen)

423 Article 6 paragraph 2 of Landsverordening houdende regels inzake politieke partijen

424 Articles 5 and 6 Landsverordening houdende regels inzake politieke partijen; Interview with the chair of the Electoral Council, G. Thodé, interview held 30 August 2021

425 Multiple interviews with regard to the Electoral Council, among which an interview with the (previous) chair of the Electoral Council, G. Thodé, held 30 August 2021

426 'Verdict of the Court of First Instance of Aruba (Gerecht in eerste aanleg van Aruba), 23 June 2021, AUA202101610 LAR

427 Interview with the chair of the Electoral Council, mister G. Thodé, interview held 30 August 2021

428 Provision in accordance with article 10 section 2 of the National Ordinance on Elections (Kiesverordening)

429 This is also described as the normal course of business in a news item of Aruba.nu; see Aruba.nu 2021 (<https://aruba.nu/2021/06/rechtszaak-om-kiezersregister/>)

430 Anonymous interview with regard to the elections, held 15 December 2021

431 Interview with the substitute-chair of the Electoral Council, H. Maduro, interview held 3 December 2021

432 Interview with the substitute-chair of the Electoral Council, H. Maduro, interview held 3 December 2021

the provision of a shortened form of the register of voters (including less personal information - solely the last name and the constituency of each voter) in 2021 was approved by the Court of First Instance of Aruba in a summary proceeding.⁴³³ This recent development can be regarded as an increase of the secret character of the elections and therefore as an improvement. Moreover, the associated reduced possibility to monitor individual voters has not led to a lower turnout in the 2021 elections.⁴³⁴

All interviewees with regard to the Electoral Council indicated there is an increasing resistance and distrust towards the council's decisions and the practical implementation of the legal electoral process. The criticism, mainly coming from the largest non-ruling political party, is expressed over (social) media, demonstrations and also in lawsuits. Over the past decade, the criticism has become more and more personally addressed to the members and support staff (Censo) of the Electoral Council. Moreover, it is increasingly perceived as threatening.⁴³⁵ This development has led to members and support staff no longer wanting to continue performing their legal tasks in the current way. Therefore, following the 2017 elections, a report was presented by the head of Censo to the Prime Minister, describing the experienced bottlenecks and incorporating proposals for changing and improving the electoral process.⁴³⁶ The proposals contained in this report are motivated by the improvement of free and fair elections and transparency, but also to ensure the Electoral Council's independency and reduce the political interference with authorities implementing the electoral process.⁴³⁷ Some of the measures proposed require legislative amendments. Except for a small number, the requested changes have not yet been initiated and therefore still apply.⁴³⁸

In short, the Electoral Council in practice does not come into its own as the independent, neutral authority as described in the law. The fact that the Electoral Council does not have its own resources in terms of budget, bureau of staff is labeled as a pressing problem - not only in the report mentioned, but also by all interviewees. They all stress the need for an effectively independent Electoral Council and strongly support the recommendations stated in the report. To quote a respondent: "If nothing changes, we will reach a point when fair, secret and free elections and democracy can no longer be guaranteed."⁴³⁹ As indicated, the fact that the Electoral Council does not have its own resources in terms of budget, bureau or staff implies a limitation of its independence. As is described in the pillar on Political Parties, this is also the case with the - in composition partly overlapping - Political Party Funding Supervision Committee. The expressed need to adopt the recommendations included in the Censo's 2019 report therefore can only be underlined considering the recent assignment of additional legal tasks to the chair and deputy chair of the Electoral Council as members of this Committee. Although the National Ordinance Political Parties describes this organ to have important tasks in monitoring and supervising the finances of political parties, the committee has yet to be established. The chair of the Electoral Council at the time indicated that there was little to no interest of Aruban experts to take on a position within this commission because such position would be without any form of compensation. To the contrary, accepting such a position would harm such a person's reputation. Monitoring finances of political parties and their individual candidates is problematic and would be considered disloyal, posing a realistic threat of retributions.⁴⁴⁰

433 See the above-mentioned ruling.

434 As in previous years, the turnout in the 2021 elections was high: 85%.

435 Several interviewees indicated that physical threats were addressed to them individually during the 2021 elections.

436 DBSB 2019, 'Knelpunten in het proces van de verkiezingen van 22 September 2017', Dienst Burgerlijke Stand en Bevolkingsregister (Censo)

437 The specific recommendations concern, inter alia, the composition of the Electoral Council (replacement of the three members appointed by the political parties by paid independent, legal experts), the establishment of its own permanent secretariat and budget, the effectuation of a systematic and continuous informational and training function of the council, but also the abolition of the personal submission of the candidate lists, the codification of the QR-code as a component of the voter's pass, more extensive digitizing of the electoral process and shifting Censo's current executing role to a supporting role.

438 Anonymous interview with regard to the elections, held 15 December 2021

439 Anonymous interview with regard to the elections, held 15 December 2021

440 Ibid.

Transparency

The formal requirements regarding the preparation of elections results, the carrying out of elections and the publishing of elections results are all clearly prescribed in the National Ordinance on Elections (Kiesverordening)⁴⁴¹ and – more detailed – the Government decree on Elections (Kiesbesluit)⁴⁴² and are governed by the Electoral Council. As indicated, the carrying out of the elections in practice is implemented by the Civil Service and Population Register (Dienst Burgerlijke Stand en Bevolkingsregister – Censo).⁴⁴³ This government agency performs the tasks in terms of the elections which are specifically assigned to the head of the agency,⁴⁴⁴ as well as the tasks assigned to the Electoral Council. The Kiesverordening has strict deadlines and timeframes for political parties and their candidates wishing to register at the Electoral Council for upcoming elections.⁴⁴⁵ Via the government's and Censo's websites (see above) the public is informed about these important dates, but also about – inter alia – the location of the polling stations, voter's cards, decisions of the Electoral Council and election results. In particular a multitude of documents can be found on Censo's website, such as public announcements, press releases, minutes of proceedings, decisions taken by the Electoral Council and preliminary results. As mentioned earlier, the information regarding the preparation and carrying out of the elections in practice is easy accessible and fully disclosed. Remarkable, in a positive way, given the often limited accessibility of information regarding other Aruban public authorities. Each election there are incidents of alleged irregularities in the preparations of elections, the carrying out

of elections and the publishing of elections results. In Aruba it is common for political parties who have lost to cause doubts about the integrity of the election procedure. During the 2021 elections again such irregularities were reported to the Public Prosecution Services by political party AVP, which transferred the reports to the Electoral Council.⁴⁴⁶ The Electoral Council invited two representatives from all political parties registered to physically attend the meeting during which the result of the elections were determined. Other representatives were offered to attend the meeting via a streaming. Requests for a recount of the votes which were void initially were rejected by the Electoral Council;⁴⁴⁷ In its verdicts the Court of First Instance of Aruba subsequently confirmed that a second recount was not necessary nor should the votes be kept for future checking.⁴⁴⁸ According to the chair of the Electoral Council the alleged irregularities were simply an attempt of political parties to discredit other parties. This was mostly done via social media platforms. The Electoral Council did not encounter any irregularities in the minutes of the polling stations. Of the 59.500 votes casted, 890 were void. On social media, political parties posted screenshots of voter's cards which would imply that these votes were not counted if you compared them to the elections results of a given polling stations. Such reports are common and often a form of manipulated content and fake news. One event in the build-up for the 2017 elections illustrates the transparency of the Electoral Council in practice. The law prescribes political parties to submit their lists in person (the authorized representative) at the head polling station in Oranjestad.⁴⁴⁹ In the previous years it

441 Official title: Landsverordening, houdende regelen betreffende het kiesrecht en de verkiezingen van de leden van de Staten van Aruba

442 Official title: Landsbesluit, houdende algemene maatregelen, tot vaststelling van modelformulieren en stemdistricten ter uitvoering van de Kiesverordening

443 With the exception of the registration of political parties and the decoration of the polling stations, see above.

444 For instance, the head of Censo sends out the voter's cards to the various polling stations, in accordance with article 51 of the National Ordinance on Elections (Kiesverordening)

445 Article 15 and beyond of the National Ordinance on Elections (Kiesverordening)

446 Antilliaans Dagblad (2021). Kiesraad Aruba geen hertelling stemmen. 30 June 2021. Via: <https://antilliaansdagblad.com/aruba/23891-kiesraad-aruba-geen-hertelling-stemmen> (Accessed 19/08/21)

447 Aruba Hoofdstembureau (2021). Proces-verbaal van de zitting van het Hoofdstembureau tot het vaststellen van de uitkomst van de stemming, p. 8. 30 June 2021. Via: www.censo.aw/main/wp-content/uploads/2021

448 Antilliaans Dagblad (2021). Rechter wijst hertelling stemmen op Aruba af. 6 July 2021. Via: <https://antilliaansdagblad.com/aruba/23918-rechter-wijst-hertelling-stemmen-op-aruba-af> (Accessed 30/08/21). Also see: Court of First Instance of Aruba (Gerecht in eerste aanleg van Aruba), 11 August 2021, nr. AUA202101822

449 Article 16 section 2 of the National Ordinance on Elections (Kiesverordening)

was common practice for political parties to submit their lists with candidates by means of a parade, thereby generating as much publicity as possible. In 2017 the Electoral Council did not allow political parties to submit it by means of a parade at a place other than the head polling station. Political parties reacted angry and the chair of the Electoral Council was intimidated following this decision and both the police and the minister of Justice became involved because it was believed that the Electoral Council had created a security issue with its decision to respect the law.⁴⁵⁰ In the end the decision of the Electoral Council was upheld after both the police and the Governor became involved. One of the members of the Electoral Council (member of a political party) did not agree with the decision of the Electoral Council and supported the opinion of its political party. In the build-up for the 2021 elections, the chair of the Electoral Council wanted to deviate from the statutory time period to allow new political parties to complete the administrative process and thereby being able to submit their candidate list and effectively taking part in the elections. This led to tensions between the Electoral Council and the established political parties.⁴⁵¹ Also prior to the 2021 elections there were accusations of irregularities in the preparations by the Electoral Council, with regard to the newly introduced unique QR-code on each voter's card. The election process - in accordance with the ordinance and Government decree, see above - remained unchanged, but the introduction of this QR-code enabled an acceleration of the electoral process in the interest of public health.⁴⁵²

It also led to a better guarantee of the fairness of the elections, because this addition on the voter's card allows an individual to vote only once, while in the past it was possible under circumstances to vote in several polling stations.⁴⁵³ The reluctance to this innovation was supported by arguments based on reliability, transparency and privacy. However, all individuals interviewed regarding the elections expressed their belief that the resistance was actually motivated by the reduced possibility of acquiring additional votes.

In the 2021 elections, there were 72 polling stations, each staffed by a chair and two members.⁴⁵⁴ The Electoral Council has to trust that the elections are in fact conducted in accordance with the regulations and the ballot counting is done properly. The council however, obviously, can not monitor this everywhere. In addition, multiple respondents made reservations on the quality of the polling stations' staff and the execution of their work in general.⁴⁵⁵

As indicated, the chair of the Electoral Council is appointed by the presiding judge of the Joint Court of Justice of Aruba, Curacao, Sint Maarten, Bonaire, Saint Eustatius and Saba; the vice-chair is appointed by the chair of the General Audit Chamber.⁴⁵⁶ However, the path towards these appointments is not further specified and differed in practice over the past decades. Where one official was approached by his predecessor, another was directly asked by the presiding judge or chair of the said authorities. With regard to the most recent appointments of the current chair and deputy chair it is not clear how they were established in practice. The predecessors were not informed about

450 Interview with the chair of the Electoral Council, G.Thodé, interview held 25 March 2021

451 Ibid.

452 Henriquez (Caribisch netwerk) 2021, 'Aruba digitaliseert deels verkiezingscodes: 'door corona noodgedwongen'', via: <https://caribischnetwerk.ntr.nl/2021/04/16/aruba-digitaliseert-deels-verkiezingsproces-door-corona-noodgedwongen>, 16 April 2021

453 Anonymous interview with regard to the elections, held 15 December 2021.

A brief commentary: every polling station could scan the voter's QR-code in combination with his or hers ID-card to monitor if a citizen did not use several voting cards. The introduction of the QR-code did bring to light examples of voters trying to cast double votes.

454 Gobierno Aruba 2021, 'Stembureau's', overheid.aw, accessed on 14 December 2021, via: https://www.overheid.aw/bestuur-organisatie/stembureaus_41185/

455 On the one hand due to the lack of knowledge, on the other hand because of the possible hidden agenda of members of the polling stations. For instance, members could influence the count in the interests of their own political party. Among others, anonymous interview with regard to the elections, held 15 December 2021

Initiatives to counting the votes electronically instead of manually met with resistance and have not yet been implemented.

Incidentally, the former (substitute-)chair of the Electoral Council emphasizes that it is essential that many people remain actively involved in the elections. Mister Hubert Maduro, interview held 3 December 2021

456 In accordance with article 5 section 2 of the National Ordinance Political Parties (Landsverordening politieke partijen AB 2001 no.96)

approached candidates or intended appointments. The appointment of the successors came as a surprise during the completion of the 2021 elections.⁴⁵⁷

Accountability

The register of voters is kept up-to-date under responsibility of the Minister of State (the Prime Minister).⁴⁵⁸ Each person can turn to the Court of First Instance if they think the information in the voter's register requires addition or changes. This can be done via a form and there are no costs to be made.⁴⁵⁹ The Court will decide on the proposed amendments within 18 days after receiving the request.⁴⁶⁰ The Electoral Council has to hold a meeting on the fifth day after the elections, to establish the results.⁴⁶¹ Citizens can be present if they do not disturb the meeting. The chair of the Electoral Council is responsible for maintaining the order.⁴⁶² The decision of the chair during the 2017 elections – with regard to the submission of the lists of candidates – is an example of the way the Electoral Council tried to respect the law and maintain order. The Electoral Council is responsible for reporting all elections results, and any appeals made in their minutes.⁴⁶³ All members of the Electoral Council present need to sign these minutes and the minutes are made available to the public at the head polling station.⁴⁶⁴ Immediately after, the elections result are officially determined.⁴⁶⁵ In addition to these formal documents and procedures related to the elections, there are no statutory provisions for the Electoral Council to make a work plan, annual report. The accountability is limited to the various phases in the elections.

There have been occasions during which chair of the Electoral Council expressed accountability for the functioning of the Electoral Council. This was mostly done via the media or before the Parliament (Staten). On

such occasion the chair explained the importance of the independence of the Electoral Council.⁴⁶⁶

Integrity mechanisms

There are no statutory provisions in place which seek to safeguard the integrity of the Electoral Council other than those described under the indicator independence. As described, the Electoral Council has no resources of its own. There is no code of conduct nor other integrity instruments.⁴⁶⁷

Campaign regulation

There is no role for the Electoral Council in regulating political parties and their candidates finance. This responsibility will be attributed to the still to be established Political Party Funding Supervision Committee. For more information, please refer to the pillar Political Parties.

Election administration

As described earlier, detailed information regarding the preparation and carrying out of elections in practice, as well as the results is easy accessible and fully disclosed for interested parties. During the past decade, parts of the electoral process were automated. Decisions to automate, digitize or innovate components of the elections process, led to public unrest and tensions. For a more detailed description of the unrest due to the introduction of the QR-code on voter's cards in 2021, see above under 'Transparency'. The National Ordinance on Elections (Kiesverordening) allows the use of voting computers when they ensure the privacy of the voters and do not pose a threat to the election procedure.⁴⁶⁸ During the 2021 elections the Electoral Council wanted to introduce the use of a ballot box scanner, which is a piece of technology which scans the voter's cards and notifies voters if their vote is void.

457 Anonymous interview with regard to the elections, held 15 December 2021

458 Article 6 Kiesverordening

459 Article 11 Kiesverordening

460 Article 12 paragraph 5 Kiesverordening

461 Article 82 Kiesverordening

462 Article 83 Kiesverordening

463 Article 86 Kiesverordening

464 Article 86 paragraph 2 and article 87 Kiesverordening

465 Article 90 Kiesverordening

466 Interview with the chair of the Electoral Council, mister Glenn Thodé, interview held 30 August 2021

467 Interview with the substitute-chair of the Electoral Council, mister Hubert Maduro, interview held 3 December 2021

468 Articles 52-57 National Ordinance on Elections (Kiesverordening)

This does not only offer voters a notification to ensure their voting card is filled in in a correct way, it also makes it possible to present the elections results much faster. This idea as part of a pilot led to public discussions instigated by some of the political parties, which considered this to increase the risk of election fraud.⁴⁶⁹ Because of the public concerns raised, the Electoral Council decided not to continue with this plan. As described, the Electoral Council did introduce the usage of QR-codes during the 2021 elections.

Sub-conclusion

In summary, the regulations relating to the Electoral Council and the electoral process are clear and detailed. However, a further elaboration or amendments in parts are advisable. All concrete information regarding the specific elections is fully disclosed, transparent and easily accessible. Innovations or decisions for privacy or transparency reasons in practice often lead to resistance. Over the past decade, this resistance has become more extensive, personal and even partly threatening. In practice, the Electoral Council does not come into its own as the independent, neutral authority as described in the law. In light of the above, adjustments to the composition, support and independence of the electoral Council are urgently required, if not essential. This is all the more true given the fact that the chair and deputy chair of the Electoral Council have been given a new legal supervisory task regarding the financing of political parties. Concrete proposals for improvement of the electoral process and strengthening the independence of the Electoral Council were presented to the Prime Minister in 2019.

469 Henriquez, S. (2021). Caribisch Netwerk. 23 April 2021. Onrust over digitalisering bij verkiezingen: zorgen over stemgeheim <https://caribischnetwerk.ntr.nl/2021/04/23/onrust-over-digitalisering-bij-verkiezingen-zorgen-over-stemgeheim/> (Accessed 30/08/21)

OMBUDSMAN

History

The idea to establish an institution of the Ombudsman has been on the political agenda since 2004/2005.⁴⁷⁰ Additionally a draft National ordinance for the constitution of a (children)ombudsman has been completed in 2016 but due to political unwillingness, the establishment of the ombudsman has been postponed several times. The current coalition agreement⁴⁷¹, “Together for Aruba” (2017-2021), lists the establishing of the ombudsman as a main spear point.⁴⁷² In practice, it took years to implement this institution mentioned in the coalition agreement. Finally, the ombudsman in Aruba was established as a new institution, being one of the High Councils of State, in September 2020, when the National ordinance Ombudsman was adopted unanimously.⁴⁷³

The absence of an ombudsman the past decades is due to a difference of opinion between the government and Parliament.⁴⁷⁴ The government apparently did not consider this topic important enough to take the initiative; Parliament did. The draft National ordinance Ombudsman has been criticized by the Council of Advice in 2015. Legal technical, but also policy analytical topics had to be changed. Finally, two members of Parliament submitted a new draft National ordinance in which the anchoring of the ombudsman in the Constitution was taken into account. Also, the ombudsman’s remit and the extension of the legal protection that he/she offers, were covered in that new draft.

One respondent⁴⁷⁵ mentioned that the other ombudsmen within the Kingdom (The Netherlands, Sint Maarten and Curacao) have actively contributed to the promotion of this institution in Aruba in the last years. For example, they have spoken with members

of Parliament and the governor. It was argued by respondents that to be able to operate as a democracy all checks and balances need to be in place; the ombudsman is an important institution which needs to be part of that.

Complaints handling before the institution of the Ombudsman

A lot of persons and institutions in Aruba, among which are politicians/members of Parliament, took on the role of complaints handler the past few years (mostly via social media). Those persons and institutions sometimes did this for reasons of political fame and gain.⁴⁷⁶ One respondent argued that there is nothing wrong with this, but the ombudsman deserves a more structured and a solid (legal) foundation. With the institution of the ombudsman inhabitants of Aruba receive an extra and a more structured shaped independent legal protection body which deals with complaints on the basis on clear standards. Respondents indicated that especially the vulnerable citizens of Aruba society did not have the possibility to file their complaint within such an objective institution, although there is a strong need for that.

Maybe one can say that the Executive’s accountability and transparency are not ensured adequately in practice due to the weakness of other bodies such as Parliament and the long-lasting absence of an ombudsman. This has consequences for the fairness and inclusiveness of decision-making but also implies that the ability to improve the executive’s accountability and transparency bases on an Ombudsman’s decisions and advice is lacking.

470 <https://caribischnetwerk.ntr.nl/2015/01/22/in-2015-installeert-aruba-haar-eigen-ombudsman>.

471 On March 30, 2021 the government has resigned.

<https://nos.nl/artikel/2374786-kabinet-aruba-gevallen-premier-wever-croes-heeft-ontslag-aangeboden>.

472 Together for Aruba, p. 4 and 11.

473 Landsverordening houdende regels inzake de taken, samenstelling, inrichting en bevoegdheden van de Ombudsman (National ordinance Ombudsman). 24 September 2020. Official Publication of Aruba 2020 no. 145.

474 Interview R. van Zutphen and S. Sjouke, d.d. 1 December 2020, and interview F. Goedgedrag, d.d. 11 March 2021.

475 R. van Zutphen, d.d. 1 December 2020.

476 F. Goedgedrag, d.d. 11 March 2021.

Structure and organization

In the National ordinance the ombudsman is a one-headed, independent institution⁴⁷⁷ that is authorized to investigate upon request/complaints filed by the public. The ombudsman can present proposals to the complainant and the governing body to resolve the pending issue or actual problem. He/she may also act proactively by initiating its own investigations, in the case it suspects an improper conduct in the way a specific governmental organization behaves towards a natural or legal person. It can report its objective findings and make concrete recommendations.⁴⁷⁸ There are legal exceptions, in which the ombudsman is not authorized to initiate an investigation or investigate a complaint, relate to issues that are part of general government policy, generally binding regulations, and administrative, civil or criminal procedures that are in progress or being decided upon.

Resources

In executing his/her tasks the ombudsman will be supported by a bureau. The ombudsman determines the working procedures and organization of the office. Staff of the ombudsman's office are recruited and removed on recommendation by the ombudsman.⁴⁷⁹ The deputy ombudsman is appointed by Parliament on recommendation by the ombudsman.⁴⁸⁰ The quantity and quality of personnel are laid down by parliamentary regulation and agreed upon by the ombudsman in observance of the country's regulations concerning legal positions of civil servants.⁴⁸¹

Independence

The ombudsman of Aruba is appointed by Parliament. A recommendation out of at least three nominees is made by a committee of three (the chair of the Council of Advice, the chair of the General

Audit Chamber and the president of the Joint Court of Justice). Article 5 of the National ordinance formulates some (professional) criteria in the selection procedure referring mostly to criteria such as: an individual's background, work experience and knowledge of legislation and administration. At the moment of this assessment the first ombudsman of Aruba has yet to be appointed. The ombudsman and staff are not subordinate to any government body with regard to the performance of their duties. The ombudsman is authorized to manage his/her own budget and personnel.

The term of office of the ombudsman should not align with that of Parliament.⁴⁸² There should be confidence in the person of the ombudsman⁴⁸³, maybe even more than in the institute itself. The ombudsman should seize the legal opportunities for functioning well. With the minimal resources that probably will be available, the ombudsman has to build his/her authority. Only under these circumstances the ombudsman in Aruba has a chance of succeeding.

Interviewees in this assessment have noted that the person of the first ombudsman in Aruba will be very important for the success of this High Council of State. The nomination of the ombudsman must be a non-political one. The ombudsman should be someone who clearly stands above political parties. He/she should be impeccable and must not have or have had connections with politics on the island. The National ordinance requires that the ombudsman is a resident of Aruba.⁴⁸⁴ The ombudsman should be appointed by Parliament after the elections in June 2021; one interviewee⁴⁸⁵ considers this to be crucial to avoid any appearance of a conflict of political interests.

477 Ombudsman National ordinance, Articles 11-1. It is not clear how many years a full term of office lasts.

478 The ombudsman of St. Maarten is the only ombudsman within the Kingdom who is authorized to assess whether regulations are in conflict with the Constitution of St. Maarten through the Constitutional Court.

479 National ordinance Ombudsman, Article 14.

480 National ordinance Ombudsman, Article 11.

481 National ordinance Ombudsman, Articles 13 and 14.

482 R. van Zutphen, d.d. 1 December 2020.

483 National ordinance Ombudsman, Article 8-1.

484 National ordinance Ombudsman, Article 5-2-b.

485 F. Goedgedrag, d.d. 11 March 2021.

The ombudsman needs a building at his/her disposal⁴⁸⁶ and the people in Aruba should have the opportunity to visit that building (for office hours), because Aruba as a young country is known for its face-to-face and verbal communication as a tradition. To ensure its independence the ombudsman's office should not be (built) next to a governments' building.

Other challenges in terms of dependence exist due to the ombudsman's financial relationship with Parliament. The ombudsman's budget is set by Parliament.⁴⁸⁷ Parliament is formally responsible for the ombudsman and the ombudsman is required by law to make his/her annual reports publicly available so he/she can be held accountable for his/her actions to Parliament. This is a delicate balance because this implies Parliament's willingness to support an institution which will monitor its own conduct.⁴⁸⁸ Another respondent⁴⁸⁹ argued that the ombudsman cannot function effectively when Parliament does not follow up on the recommendations with regard to the incoming complaints. Its decisions are in practice not legally-binding and will only have effect if Parliament ensures their follow-up. Government bodies have to explain and justify their (failure of) actions. In a rule of law democratic country, accountability should be self-evident, also within the administrative bodies.

Despite that fact that according to the National ordinance the ombudsman has several assessment tools (for example his/her annual reports with recommendations) there is a risk that the ombudsman will remain a paper tiger. In this context one respondent in this assessment does not consider it realistic that government bodies will always listen to the ombudsman and follow his/her recommendations to take measures.⁴⁹⁰ As noted above the relationship between the ombudsman and Parliament is a delicate one. Therefore it is of major importance that the ombudsman and Parliament evaluate on a periodic

basis about the incoming complaints so bottlenecks within society can be tackled at an early stage. Members of Parliament can identify problems in society through/ via the ombudsman and hold the responsible minister to account.

Transparency

The National ordinance requires the ombudsman to report to Parliament annually and make such a report public.⁴⁹¹ Also Parliament is authorized to summon the ombudsman to answer questions before Parliament.⁴⁹² The ordinance is not specific on the type of information that should be included in the annual reports or in what way the information should be made public, except that the reports should be made generally available. The public is entitled to obtain a copy of a complaint report upon request.⁴⁹³ No legal regulation could be found on the involvement of the public in the activities of the ombudsman, like public consultation or a public council or advice committee.

Respondents emphasized the importance of transparency of additional functions of the ombudsman and/or personal assets (business trips, telephone usage, gifts, etc.). That information should be available on the website or in the annual reports. Annual reports must contain information on activities, tasks, a list of complaints handled, and financial reporting. Annual reports, outcomes of individual investigations, including recommendations, and the research agenda should be published on the website. To increase confidence in the ombudsman it is recommended to make the research process/interview reports transparent/available for the public, so that they are involved with the results of the process.

Accountability

In general, there are provisions to ensure that the ombudsman has to report and be answerable for its actions, although the law does not include specifications

486 R. van Zutphen, d.d. 1 December 2020.

487 National ordinance Ombudsman, Article 13.

488 R. van Zutphen, d.d. 1 December 2020.

489 F. Goedgedrag, d.d. 11 March 2021.

490 F. Goedgedrag. See for example the complaints of Curacao's ombudsman about the little respons of the government.

491 National ordinance Ombudsman, Article 37.

492 National ordinance Ombudsman, Article 38.

493 National ordinance Ombudsman, Articles 33 and 34. It is not clear whether a copy of a complaint report should be anonymised.

on the content of the accountability. The ombudsman's (external) complaint procedure is explained in detail in the National ordinance. Internal complaint procedures or internal whistleblowing provisions have not been put down in the law.

Integrity mechanisms

The ombudsmen within the Kingdom are willing to provide support by sharing their knowledge and experience for the startup of Aruba's ombudsman.⁴⁹⁴ Therefore it is advisable to make several visits abroad by the ombudsman and his/her staff. As for the future staff members of the ombudsman's office, they should know what is in the law. Future staff members should be informed of required standards of proper conduct. Specific training, workshops and education, for example in cooperation with the office of the National ombudsman in The Hague, on the issue of integrity needs to be executed in the future. It is important to discuss relevant (integrity/moral) dilemmas with each other. Furthermore, it is of added value to participate in a network with other ombudsmen in the region, and to seek cooperation, because the position of an ombudsman could be an isolated one.

Investigation

To make the public aware of the institution of the ombudsman and his/her activities it will be necessary to inform the public on the tasks and complaint procedure of the ombudsman. The public will probably not completely know all the services provided by the ombudsman, so a comprehensive public education campaign/program should be realized in the coming years (training, development of brochures, (social) media, etc.).

According to respondents it is important that the ombudsman, when in office/function, starts with individual complaints handling (instead of investigations of its own volition). One respondent argued that the ombudsman should go into the barrios, talk to people, get to know what is going on in society and protect the people that need it the most (e.g. refugees, children that live in poverty, victims of domestic violence). Another respondent mentioned

that in the first 100 days in office the ombudsman needs to tackle pressing complaints about the allocation of leasehold land and the Tax Office. Relevant in this context is that a deficiency of the Ombudsman is that it can only investigate a case. The "acts of corruption", "illegal acquisition of property" etc., by public functionaries are up to now kept outside the jurisdiction of the ombudsman. It will have to turn out whether recommendations of the ombudsman will be effective. Nevertheless, it is important to ascertain the effectiveness of actions/recommendations.

Promoting good practice

The ombudsman can play a role in tackling the (abovementioned) culture of fear⁴⁹⁵ on the island. With the institution of the ombudsman, people will no longer be dependent on the judiciary only in order to get access to justice. There will be an extra, accessible way for legal protection. A well-functioning ombudsman leads to a better functioning government. Other challenges for the ombudsman will be the developing of standards of proper conduct (behoorlijkheidsnormen) for the functioning of government bodies⁴⁹⁶, a specific code of conduct for the ombudsman or his/her staff (related to transparency, accountability and integrity) and powerful recommendations so governing bodies take proper measures.

494 Interview conducted by the authors with respondents from the National Ombudsman.

495 See pillar Legislature and Executive.

496 National ordinance Ombudsman, Article 33.

SUPREME AUDIT INSTITUTION

Structure and organization

The position of the Supreme Audit Institution (hereinafter: SAI) is anchored in the Constitution of Aruba and further elaborated in the National Ordinance Court of Audit Aruba.⁴⁹⁷ The SAI Aruba is a High Council of State, responsible for examining the legality and effectiveness of the revenue and expenditure of the country of Aruba.⁴⁹⁸ This examination applies to all public entities and all organizations in which the government has a financial interest.⁴⁹⁹

The Constitution of Aruba states that SAI Aruba should conduct compliance and performance audits on the revenues and expenditures of the Government of Aruba. Furthermore, the National Ordinance Court of Audit Aruba explains that the SAI investigates and supervises the country's national financial statement and that of public entities.⁵⁰⁰

The Head of SAI consists of three members, including a chairman. The Head of SAI is supported by a Secretary-General and staff members that are appointed as civil servants. The organization of SAI Aruba is completed by a policy department, a research department and an operations department.⁵⁰¹

Resources

The SAI manages its budget independently, but it needs to comply with the compliance regulation.⁵⁰² This regulation sets conditions that the SAI needs to meet for certain expenditures. With that, the SAI is dependent on the executive for the approval of certain categories of expenditures. Examples are the recruitment of personnel and the closing of long term contracts. In practice, this leads to tension between SAI and the executive occasionally. The remuneration of the acting chairman of the Head of SAI is still not paid in full, even after six years of continuous follow up.⁵⁰³

The SAI Performance Report Court of Audit Aruba indicates the SAI obtains sufficient resources on a yearly basis.⁵⁰⁴ At the same time, this self-assessment gives evidence of a low audit coverage for performance and compliance audits. One of the reasons for the low audit coverage is the limited staff capacity, especially within the research department. This limited staff capacity is due to the long and delayed recruitment process and not finding suitable auditor candidates to fill the open vacancies. The delay in the recruitment process is attributable to not having a legal mandate to appoint staff. Also, the remuneration of the SAI staff is linked to the government's conditions, which is not attractive for the recruitment of suitable candidates.⁵⁰⁵

497 Constitution of Aruba, AB 1987 no. GT. 1 and the National Ordinance Court of Audit Aruba (Landsverordening Algemene Rekenkamer Aruba), AB 1998, no. GT 20.

498 Constitution of Aruba, art. IV.5.

499 National Ordinance Court of Audit Aruba, art. 31 (1). The SAI has the authority to carry out investigations in institutions, associations, corporations, public limited liability companies, foundations, or other bodies in the benefit of subsidies to the government or the management of funds and goods provided by the government of Aruba.

500 National Ordinance Court of Audit Aruba, art. 24.

501 Court of Audit Aruba, Strategic Policy plan 2019-2022.

502 Compliance Regulation (Comptabiliteitsverordening), AB 1989, no. 72.

503 Interview conducted by the authors with respondents from the SAI. See furthermore: SAI Performance Report Court of Audit Aruba – Assessment of the performance of the Court of Audit Aruba against the requirement of the International Standards for Supreme Court Institutions, July 1st 2021, p. 36. Available from: www.rekenkamer.aw.

504 SAI Performance Report Court of Audit Aruba – Assessment of the performance of the Court of Audit Aruba against the requirement of the International Standards for Supreme Court Institutions, July 1st 2021, p. 32. Available from: www.rekenkamer.aw.

505 SAI Performance Report Court of Audit Aruba – Assessment of the performance of the Court of Audit Aruba against the requirement of the International Standards for Supreme Court Institutions, July 1st 2021, p. 9. Available from: www.rekenkamer.aw.

Independence

The establishment of the SAI Aruba is laid down in the Constitution of Aruba. The Constitution of Aruba regulates the duties of the SAI and it states that further elaboration on the structure and powers may be set out by National Ordinance⁵⁰⁶, which is the National Ordinance Court of Audit Aruba.

Even though the Constitution of Aruba does not explicitly state that SAI Aruba is an independent organization, the independence of the SAI can be found in its references throughout the articles. For instance in article IV.6 the independence of the board members is named, related to the proper fulfillment of their positions. The Parliament can request a specific audit, but the Head of SAI decides whereas to conduct the requested audit and in what capacity.

The National Ordinance Court of Audit Aruba sets conditions for the appointment of the members of the Head of the SAI. These members may not be related to any other public office to which a fixed remuneration, an allowance, or attendance fee is payable by the Government or by an institution created by or according to statutory regulations, and they may not hold any other positions of which the exercise is undesirable with a view to the proper fulfillment of their office or the maintenance of their impartiality and independence or confidence in them.⁵⁰⁷ The Constitution of Aruba states that the chairman and other members of the Head of SAI Aruba are appointed for life by National Ordinance. Nevertheless, the National Ordinance Court of Audit Aruba contains a limited list of grounds for dismissal, including amongst other bankruptcy.⁵⁰⁸ The National Ordinance Court of Audit Aruba does not grant immunity to prosecution for the Head of the SAI for any act that results from the normal discharge of their duties.

Neither the Constitution, nor the National Ordinance Court of Audit Aruba clearly states the relationship between the SAI and the Executive. The Constitution states the SAI is an advisory body and that the recommendations of the SAI have the purpose to improve the financial administration of Aruba and that the Government therefore should embrace all advice provided by the SAI. The SAI is free from direction and interference in selecting audit issues, planning, conducting, reporting and the follow-up of their audit.⁵⁰⁹ In conjunction with an external party, the Head of SAI has been working for several years on a proposal to update and modernize the National Ordinance Court of Audit Aruba to further ensure the independence and autonomy of the SAI Aruba.⁵¹⁰ The progress on this matter, eventually leading to an improvement of the legal framework, is limited so far.

Transparency

The Constitution of Aruba states that the SAI is responsible to audit the efficiency and compliance of the revenues and expenditures of Aruba. The National Ordinance Court of Audit Aruba states that the SAI is responsible for the audit of the financial statement of the state and for the audit of all the entities. The National Ordinance Court of Audit Aruba requires that the SAI reports on its work in an annual report.⁵¹¹ In this, the SAI reports to the Governor. Afterward the annual report is presented to Parliament. After Parliament receives the annual report, the report is made public.⁵¹²

The SAI has the authority to report on essential and significant findings during the year. It has the obligation to report its findings to the Council of Ministers and is authorized to report to the Governor and Parliament all findings that the SAI considers in the interest of the general public.⁵¹³ There are no restrictions regarding the

506 Constitution of Aruba, IV.7.

507 National Ordinance Court of Audit Aruba, art. 3-5.

508 National Ordinance Court of Audit Aruba, art. 6.

509 SAI Performance Report Court of Audit Aruba – Assessment of the performance of the Court of Audit Aruba against the requirement of the International Standards for Supreme Court Institutions, July 1st 2021, p.39/40. Available from: www.rekenkamer.aw.

510 SAI Performance Report Court of Audit Aruba – Assessment of the performance of the Court of Audit Aruba against the requirement of the International Standards for Supreme Court Institutions, July 1st 2021, p. 35. Available from: www.rekenkamer.aw.

511 National Ordinance Court of Audit Aruba, art. 27.

512 National Ordinance Court of Audit Aruba, art. 24a.2.

513 National Ordinance Court of Audit Aruba, art. 28 and 29.

content of the audit reports. However, the SAI cannot report findings that may implicate national security.⁵¹⁴

The law does not state that the Parliament is required to debate on the submitted reports by the SAI. In practice, even the annual reports are hardly ever debated.⁵¹⁵ These are published on the SAI's website and communicated with the press. The SAI's website contains all the SAI audit work, activities, annual reports and other reports.

Accountability

The SAI is required by law to submit an annual report to the Governor, before the 1st of March of each year and to the Parliament before the 1st of May. The annual reports include all activities and a summary of the SAI financial accountability. The SAI's mandate does not specifically mention the information that the annual report should contain.

The SAI does not have policies or procedures in place regarding its communication with Parliament. There is no systemic dialogue with the legislature. In practice, the Head of SAI and the Secretary-General communicate with Parliament. The SAI plans to strengthen to relationship with administrative stakeholders through formal and informal meetings.⁵¹⁶ These intentions did not have yet converted into actions however.⁵¹⁷

Integrity mechanisms

In 2020 a new Code of Ethics was created and approved by the Head of SAI.⁵¹⁸ This Code of Ethics is aligned with ISSAI 130, an international standard which includes aspects of integrity, objectivity, transparency and professionalism. With that, the Code of Ethics covers independency and impartiality. The SAI also has an Integrity Policy plan in place.⁵¹⁹

The Code of Ethics was presented to all personnel and signed. Since the Code of Ethics was recently approved, there have been no cases of misconduct for which the principles of the Code of Ethics were applied.⁵²⁰ Some of the staff members have received training and attend workshops related to integrity aspects.⁵²¹

Effective financial audits

The SAI is required to report on the review of the national financial statement, and on the financial statement of public entities, legal established companies and institutions established by National Ordinance and of the budgetary funds. However, its mandate does not address specifically that the SAI should conduct financial audit on these entities. The mandate refers to the Compliance Regulation 1989, for further elaboration on the criteria that need to be examined. The Compliance Regulation 1989 does not include an acceptable financial framework that can be used to conduct a financial audit even though. For instance, it is not clear from the Compliance Regulation 1989 which basis of valuation and result determination should be applied.⁵²² Therefore the SAI cannot assess whether preconditions have been met. For this reason, the SAI decided that it cannot perform financial audits until an acceptable financial framework is introduced. With that, the national financial statement has many deficiencies in the areas of internal control and financial management. Consequently, the SAI does not have proper criteria to audit the national financial statement. The review of the national financial statement therefore is limited. The SAI investigates whereas the national financial statement complies with the requirements stated in the Compliance Regulation 1989. The SAI Performance Report Court of Audit Aruba indicates that a commission was installed, with the SAI as observer, that had the objective to tackle the shortcomings regarding the national financial state-

514 National Ordinance Court of Audit Aruba, art. 14a.1. Findings regarding the national security should be presented to the national security commission. This entity decides on the findings that can be published.

515 Interview conducted by the authors with respondents from the SAI. Furthermore, interview d.d. May 27, 2021.

516 Court of Audit Aruba, Strategic Policy plan 2019-2022.

517 SAI Performance Report Court of Audit Aruba – Assessment of the performance of the Court of Audit Aruba against the requirement of the International Standards for Supreme Court Institutions, July 1st 2021, p. 102/103. Available from: www.rekenkamer.aw

518 Code of Ethics, 1 July 2020.

519 Integrity Policy plan, 1 July 2020.

520 Interview conducted by the authors with respondents from the SAI.

521 Interview conducted by the authors with respondents from the SAI.

522 Interview with A. Bermudez, former Minister of Finance d.d. June 8, 2021.

ment, including the reporting framework, but that unfortunately little progress was made.⁵²³

In practice, the review of the national financial statement takes more the form of a compliance audit. The annual audit plan includes topics that are subject to a compliance audit and these are included in the investigation on the national financial statement when relevant. Topics that were included in the SAI's annual audit plan during recent years were for instance related to payroll, overspending and sustainability of the government finance.⁵²⁴

Detecting and sanctioning misbehavior

The SAI can access all records related to financial management and it has the power to request necessary information. During an audit the SAI can also investigate misbehavior. The SAI informs Parliament on irregularities based on its audit findings, but it does not apply sanctions for misbehavior.⁵²⁵

Improving financial management

Each year when reporting on the national financial statement, the SAI reports on the financial management of the Government. SAI Aruba does not have a follow-up system to address the observations and recommendations in the compliance audit reports. The final report includes recommendations to the Minister of Finance and Parliament. However, no evidence was found that the SAI did a follow-up in the same year.⁵²⁶ In practice, most of the investigating topics related to compliance are addressed and reassessed every year. When reporting in the following year, the SAI then refers to previous recommendations, so the legislature can determine whereas correctives measures were taken.⁵²⁷ It is essential to update the audit cycle and to develop an follow-up system on audit recommendations according to the ISSAI-standards.⁵²⁸

Sub-conclusion

Overall the Supreme Audit Institution is a potentially strong pillar. The formal provisions are in place but because of other pillars, such as the Legislature (the Staten) lack in following-up of SAI's recommendations and advice, its impact remains limited.

523 SAI Performance Report Court of Audit Aruba – Assessment of the performance of the Court of Audit Aruba against the requirement of the International Standards for Supreme Court Institutions, July 1st 2021, p. 56. Available from: www.rekenkamer.aw

524 Interview conducted by the authors with respondents from the SAI.

525 Interview conducted by the authors with respondents from the SAI.

526 SAI Performance Report Court of Audit Aruba – Assessment of the performance of the Court of Audit Aruba against the requirement of the International Standards for Supreme Court Institutions, July 1st 2021, p. 11-12. Available from: www.rekenkamer.aw

527 Interview conducted by the authors with respondents from the SAI.

528 Interview conducted by the authors with respondents from the SAI. Furthermore, interview d.d. May 27, 2021 and interview d.d. June 8, 2021.

POLITICAL PARTIES

Structure and Organization

Political parties are at minimum 'any political group identified by an official label that presents themselves at elections, and is capable of placing through elections (free or not free), candidates for public office.'⁵²⁹ Political parties are relatively weak institutions in Aruba, parties are more groups of individual politicians with their own supporters⁵³⁰, which is amongst others demonstrated in the easiness that politicians and their supporters switch party affiliation. Political parties in Aruba have no strong ideological foundation.⁵³¹ Parties tend to have low numbers of paying members.

Aruba has an open list proportional representation electoral system with a single nationwide constituency without electoral threshold.⁵³² Every four years the Aruban unicameral legislature is elected.⁵³³ Since 1985 between four to twelve parties competed in these parliamentary elections. Aruba's multiparty system is dominated by two parties, namely the Aruban's People's Party (AVP) and the People's Electoral Movement (MEP). The Aruban People's Party is a Christian Democratic party founded in 1942. The People's Electoral Movement is a Social Democratic party, a split-off from the AVP established in 1971. These two oldest and largest political parties of Aruba's multiparty system tend to alternate as governing party every two terms. The other parties are of lesser importance, unless they are needed as coalition partners.⁵³⁴ The last elections were held on 25 June 2021, after Cabinet-

Wever resigned on 30 March 2021 in response to an investigation directed towards the POR fraction on the suspicion of embezzlement of funds. Due to the resignation the elections were held 6 months prior to the regular and expected timeframe and because of these early elections new parties were disadvantaged as they struggled to register their political party on time and to recruit candidates for their candidate list.⁵³⁵ Due to the early elections the legal deadlines to register new parties were extremely short. Consequently, only one new political party was able to register on time, namely Pueblo Prome. Politician Marisol Lopez-Tromp decided to run under the banner of MAS (Movimiento Arubo Soverano) instead of establishing a new party. She made an agreement with Holmo Henriquez, the former party leader of MAS, who did not plan to run with the registered party anymore.⁵³⁶ In the 2021 elections a record of 12 parties participated, see Table 1 for an overview.⁵³⁷ There are three parties that have not been part of parliament before, namely RAIZ, MAS, A21 (Accion 21), that received enough votes for parliamentary seats these elections.⁵³⁸

529 Sartori, G. (1976). *Parties and party systems. A framework for analysis*. Cambridge: Cambridge University Press.

530 Alberts, A. J. en Milliard, C. L. (2003). *De staten van Aruba op weg naar volwassenheid*. p. 11. Aruba: FESCA

531 Alberts, A. J. en Milliard, C. L. (2003). *De staten van Aruba op weg naar volwassenheid*. p. 8. Aruba: FESCA

532 Constitution, Staatsregeling van Aruba (AB 1987 no. GT 1), article III.4.

533 Constitution, Staatsregeling van Aruba (AB 1987 no. GT 1), article III.2 and III.3.

534 WODC report (2011). *De staat van bestuur van Aruba. Een onderzoek naar de deugdelijkheid van bestuur en de rechtshandhaving*, p. 82

535 Interview G.Thodé, 22 April 2021.

536 Marisol Lopez-Tromp Lijsttrekker MAS, *Antilliaans Dagblad*, 22 April 2021. <https://antilliaansdagblad.com/aruba/23510-marisol-lopez-tromp-lijsttrekker-mas>, visited 6 September 2021.

537 Twaalf partijen melden zich voor verkiezingen Aruba, 7 May 2021, <https://antilliaansdagblad.com/aruba/23584-twaalf-partijen-melden-zich-voor-verkiezingen-aruba>

538 *Algemeen Dagblad* (2021). *Partij van premier Wever-Croes wint parlementsverkiezingen op Aruba*, 26 June 2021, <https://www.ad.nl/buitenland/partij-van-premier-wever-croes-wint-parlementsverkiezingen-op-aruba-ae28512e/>, visited on 26 August 2021.

Table 1: Participation and election results 2021

Parliamentary Elections

Abbreviation	Full party name	Percentage of votes 2017	Percentage of votes 2021
A21	Accion21	-	5.82
AVP	Arubaanse Volkspartij	39.86	31.28
CURPA	Cristiannan Uni Reforzando Potencial di Aruba	0.80	0.53
HTC	Hubentud Treciendo Cambio	-	0.42
MAS	Movimiento Aruba Soberano	0.49	7.99
MEP	Movimiento Electoral di Pueblo	37.61	35.32
POR	Pueblo Orguyoso y Respeta	9.43	1.13
PPA	Partido Patriotico di Aruba ⁵³⁹		3.09
PP	Pueblo Prome	-	0.98
RAIZ	RAIZ	3.59	9.34
RED	Red Democratico	7.10	3.04
UPP	Union Patriotico Progresista		1.06
UPP-PPA	Union Patriotico Progresista- Partido Patriotico di Aruba	1.12	

Source: Censo⁵⁴⁰

For the 2021 elections, 70,281 persons were eligible to vote and there was a 84.66 per cent turnout.⁵⁴¹ Since 1979 Aruba does not allow voters to vote by representation or power of attorney to prevent misuse.⁵⁴² Since 1985 in 5 out of the 11 elections the AVP or MEP did not receive a majority and a coalition

government was needed, see Table 2.⁵⁴³ The coalition government always consists of one of these two main parties (AVP or MEP) and one or two smaller parties. The 2021 elections resulted in a coalition government between MEP and RAIZ.⁵⁴⁴ Aruban governments are relatively stable, they are most of the time able to govern the full four-year term.⁵⁴⁵

Name	Constellation	Governing Period	
Wever-Croes II	MEP, RAIZ	2021-	
Wever-Croes I	MEP, POR, RED	2017-2021	Premature dissolution
Mike Eman II	AVP	2013-2017	
Mike Eman I	AVP	2009-2013	
Oduber IV	MEP	2005-2009	
Oduber III	MEP	2001-2005	
Henny Eman III	AVP, OLA	1997-2001	
Henny Eman II	AVP, OLA	1994-1997	Premature dissolution
Oduber II	MEP, ADN, PPA	1993-1994	Premature dissolution
Oduber I	MEP, ADN, PPA	1989-1993	
Henny Eman I	AVP	1985-1989	Premature dissolution

Table 2: Overview governments since 1985

Aruban election campaigns are relatively long, the 2021 campaign was shorter due to the early elections.⁵⁴⁶ Political parties and their candidates start their preparations approximately one year in advance of the elections. The campaigns tend to be candidate centered. Voters tend to vote for the candidate more than the party.⁵⁴⁷ Parties run offensive campaigns, i.e. aimed at winning votes in the opponents' territory. Aruba has a strong polarized political culture, which

539 While PPA did unite with UPP in the previous election, they did not unite with UPP in this last election, but with a new political group which was too late to register, namely 'Transforma'.

540 https://www.censo.aw/main/wp-content/uploads/2021/06/v02_Voorlopig-resultaat-totaal-2021.pdf, visited 26 August 2021

541 https://www.government.aw/governance-administration/electoral-register-2021_48216/, visited 23 June 2021.

542 Afschaffing volmachtsysteem, Amigoe, 12 februari 1979, <https://www.delpher.nl/nl/kranten/view?coll=ddd&identifier=ddd:010639578:mpeg21:a0065>, visited 20 April 2021.

543 www.overheid.aw (2005-2017), www.caribbeanelections.com (1985-1997), visited 30 April 2021.

544 Henriquez, S. (2021). Regeerakkoord getekend, ministerposten nog niet bekend, 19 August 2021, <https://caribischnetwerk.ntr.nl/2021/08/19/regeerakkoord-getekend-ministerposten-nog-niet-bekend/>, visited 26 August 2021.

545 WODC report (2011). De staat van bestuur van Aruba. Een onderzoek naar de deugdelijkheid van bestuur en de rechtshandhaving, p. 82

546 WODC report (2011). De staat van bestuur van Aruba. Een onderzoek naar de deugdelijkheid van bestuur en de rechtshandhaving, p. 98.

547 Interview M. Lopez-Tromp, 29 April 2021.

is reflected by the presence of negative campaigning, consisting primarily of personal attacks.⁵⁴⁸ Although public acceptance is decreasing, practices such as vote buying are still present in Aruban elections.⁵⁴⁹

Although for this assessment representatives of all political parties participating in the 2021 Aruban parliamentary elections were approached several times, we were unsuccessful in securing interviews with representatives of all twelve political parties. We were unable to retrieve articles of association of all parties, the parties' articles of association are not yet publicly available through the website of the Electoral Council. Published academic work on Aruban political parties and the Aruban party system is almost absent. In addition, public opinion research in Aruba is limited.⁵⁵⁰ Aruba is not part of any international surveys, such as the Americas Barometer.

Resources

Political parties are private organizations. Political parties are not specifically mentioned in the constitution (Staatsregeling van Aruba), other than through the recognition of the right of association. This right can only be restricted to protect public health and to prevent public disorder.⁵⁵¹ A political party must be established as an association by notarial deed, in which the articles of association must be included.⁵⁵² The articles of association need to list the name of the political party, the party objectives, the membership obligations and the enforcement thereof, details of (dis)enrollment of party membership, the procedure of appointment and dismissal of administrators, the procedure of calling a General Assembly, the powers of the General

Assembly, the regulations for power of representation, the restriction of voting rights to members that are also eligible to vote at the parliamentary elections, the management of finances, the obligation to publish a party manifest in time for the elections, the procedure of candidate selection for members for the election of members of parliament, the authority to revise the articles and the dissolution of the association.⁵⁵³

A request for registration is required to be sent to the Electoral Council at least six weeks before the elections.⁵⁵⁴ "An Electoral Management Body is an organization or body that has the sole purpose of, and is legally responsible for, managing some or all of the elements that are essential for the conduct of elections and direct democracy instruments—such as referendums, citizens' initiatives and recall votes—if those are part of the legal framework. These essential (or core) elements include determining who is eligible to vote; receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates); conducting polling; counting the votes; and tabulating the votes."⁵⁵⁵ The Electoral Management Body of Aruba is called Kiesraad (Electoral Council). The Electoral Council will review a party's registration application and will decide upon registration within three weeks.⁵⁵⁶ If a registration is found not to comply with the regulations, the Electoral Council will grant the party the opportunity to comply with the rules. The Electoral Council will decide upon the revised registration submission within three weeks.⁵⁵⁷ The articles of the political party and revisions of these articles are made public by official publication in *Landscourant Aruba*, which is the

548 Interviews with various party candidates. Rasmijn, Ariën (2017). Groot deel stemmers Aruba nog onbeslist naar verkiezingen, Caribisch Netwerk, 20 September 2017, <https://caribischnetwerk.ntr.nl/2017/09/20/groot-deel-stemmers-aruba-nog-onbeslist-naar-verkiezingen/>, visited 16 June 2021.

549 Nauta, O. (2011). *Goed bestuur in de West. Institutionele en maatschappelijke beperkingen voor goed bestuur in de Caribische rijkdelen*. P. 196. Universiteit Utrecht: Utrecht

550 Veenendaal, Wouter (2016). *Eindrapport CCC-Opinieonderzoek*. Leiden: KITLV

551 Constitution, Staatsregeling van Aruba (AB 1987 no. GT 1), article I.13.

552 National Ordinance Political Parties (Landsverordening politieke partijen AB 2001 no.96), article 9 part 1.

553 *Ibid.* article 9 part 2.

554 *Ibid.* article 10

555 ACE Electoral Knowledge Network, <https://aceproject.org/ace-en/topics/em/ema/ema01>, visited 6 September 2021.

556 National Ordinance Political Parties (Landsverordening politieke partijen AB 2001 no.96), article 10.

557 *Ibid.* article 13.

official 'national gazette'.⁵⁵⁸ Decisions of the Electoral Council with regard to registration can be appealed before the court of first instance within six days of official publication. The decision of the court is binding.⁵⁵⁹ No minimum number of founders is needed to establish a political party and no legal restrictions exist with regard to party ideology. No political parties are banned by law.

The Electoral Council operates independently from the legislature and executive.⁵⁶⁰ The Electoral Council consists of a chair, a deputy chair and three members, which each have a deputy. The chair is selected by the presiding judge of the Joint Court of Justice of Aruba, Curacao, Sint Maarten, Bonaire, Saint Eustatius and Saba and the vice-chair by the General Audit Chamber for a period of four years. The three political parties that received the largest vote share at the last parliamentary elections are to select a member and deputy member each to serve on the Electoral Council until a month after the subsequent elections.⁵⁶¹ The Electoral Council is the Central Electoral Bureau for the Aruban parliamentary elections.⁵⁶²

Before every election a candidate list of a maximum of 29 candidates is submitted to the Electoral Management by the political party representative.⁵⁶³ An amount of AWG 1,000/ US\$554 is required to be deposited with the receiver's office, and a receipt of this is to be attached to the candidate list submitted.⁵⁶⁴ This amount is returned to the payee after the election outcome is determined, with exception of when the list

is declared invalid, or the party received a total vote share lower than the electoral quotient. Political parties that did not receive one or more parliamentary seats in the last parliamentary elections need to demonstrate that their candidate list submission is supported by a number of voters equal to 1 per cent of the total vote determined by the Central Electoral Bureau at the previous elections.⁵⁶⁵ Voters can support the candidate list by signing the list at the Civil Registry during a time frame of 7 days after the submission date. Voters can only support a single candidate list.⁵⁶⁶ Parties that do not reach the 1 per cent threshold will not be eligible to participate in the elections and therefore will not appear on the ballot form. In 2017 the registered party ABO (Aruba su Bienestar Organizacion) was unable to reach the 1 per cent threshold and thus could not participate in the elections.⁵⁶⁷

The Aruban state does not subsidize political parties or candidates, but the law provides all registered political parties competing in the parliamentary elections with indirect support by allocating equal television and radio election broadcast time.⁵⁶⁸ Consequently, political parties are therefore completely dependent on private funding, which might come from membership fees, fundraising, sponsors or gifts, contributions on the basis of salaries and remunerations of those party members elected or appointed to public office. In January 2021 legislation on funding of political parties as part of the National Ordinance Political Parties came into force, the legislation was published on 5 October 2020 in *Afkondigingsblad Aruba* (Abbreviation AB).⁵⁶⁹ The law provides political parties with rules regarding

558 Ibid. article 18.

559 Ibid. article 19.

560 Ibid. article 3.

561 Ibid. article 5-6.

562 Ibid. article 4.

563 Election Ordinance (Kiesverordening AB 1987 no. 110), article 16, article 18.

564 Ibid.

565 Ibid. article 17.

566 Ibid.

567 <https://www.censo.aw/main/wp-content/uploads/2014/10/Kandidatenlijst-ABO.pdf>, <https://www.censo.aw/main/verkiezingen-2017/>, visited 3 September 2021.

568 Landsbesluit voorschriften televisie-uitzendingen politieke partijen (AB 1994 no. GT 7); Landsbesluit voorschriften radio-uitzendingen politieke partijen (AB 1991 no. GT. 37).

569 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen).

party funding, including donations. Private donations from a singular sponsor are restricted to a maximum amount of AWG30,000/US\$16,662 for a political party or AWG20,000/US\$11,108 for a single candidate per year, with a total amount of AWG50,000/US\$27,770 for a political party and its candidates.⁵⁷⁰⁵⁷¹ Gifts in cash are restricted to a maximum amount of AWG3,000/US\$1,666.⁵⁷² Price reduction offered for services are also considered private donations.⁵⁷³ Political parties and their candidates may not accept gifts from organizations in which the government is a stakeholder or from organizations that receive government subsidies.⁵⁷⁴ One of the goals of the legislation on party funding is to level the financial playing field between political parties and their candidates and to stimulate fairness and equality within political competition.⁵⁷⁵

At present, the exact resources available to Aruba's political parties are still unknown to the general public. The information collected in our assessment seems to suggest that the conditions of party competition are unequal as the (financial) resources between parties and their candidates strongly differ.⁵⁷⁶ The relative importance of the sources for party funding are heterogeneous across parties.⁵⁷⁷ The parties and their

representatives in government benefit from the spoils of office, such as media attention, permits and more income on the basis of salaries and remuneration of party members elected or appointed to public office.⁵⁷⁸ The two oldest and also largest parties, the AVP and MEP, have a privileged position when it comes to attracting donations from investors. One of these two parties is always (part of) the government and thus they will be able to provide favors, such as jobs, permits and tenders through public procurement at a later stage.⁵⁷⁹ Aruban politics is characterized by a culture of political patronage.⁵⁸⁰ Most investors donate to both parties to secure these favors.⁵⁸¹ The main parties are rumored to receive funding from foreign donors.⁵⁸²

Parties also actively engage in fundraising activities, such as selling lottery tickets, merchandise and barbeque meals during campaigns.⁵⁸³ Income from membership fees is limited to nonexistent depending on the party surveyed. Although political parties in Aruba have large numbers of supporters, they have small numbers of paying members or no paying members at all. Even when parties have membership fees, they do not always collect these.⁵⁸⁴ Frequently membership fees are not collected in practice or nonexistent

570 Ibid. article 28.

571 All calculations are based on exchange rate 1 florin is 0.56 dollar.

572 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), article 29.

573 Ibid. article 26, part 2.

574 Ibid. article 27.

575 Ibid. Memorie van Toelichting, no. 3.

576 Interview M. Lopez-Tromp, 29 April 2021; Interview A. Lampe, 12 May 2021; Interview D. Agius Cesareo-Lejuez; Interview J. Wernet, 16 June 2021

577 Interview M. Lopez-Tromp, 29 April 2021; Interview A. Lampe, 12 May 2021; Interview D. Agius Cesareo-Lejuez; Interview J. Wernet, 16 June 2021

578 Interview M. Lopez-Tromp, 29 April 2021.

579 Interview J. Wernet, 16 June 2021; Interview M. Wever, 17 June 2021; Interview M. Lopez-Tromp, 29 April 2021; Interview A. Lampe, 12 May 2021. See also WODC report (2011). De staat van bestuur van Aruba. Een onderzoek naar de deugdelijkheid van bestuur en de rechtshandhaving, p. 99.

580 Schotborgh-van de Ven, P.C.M. (2009). De 'verwijtenroute'. Over de achtergronden van fraude en corruptie in het Caribische deel van het Koninkrijk. Justitiële Verkenningen, De Nederlandse Cariben, Vol. 35, No. 5, pp. 93. Alberts, A. J. en Miljard, C. L. (2003). De staten van Aruba op weg naar volwassenheid, p. 9. Aruba: FESCA

581 Interview M. Wever, 17 June 2021; Interview A. Lampe, 12 May 2021; Interview M. Lopez-Tromp, 29 April 2021. 582 Interview A. Lampe, 12 May 2021.

582 Interview A. Lampe, 1 May 2021.

583 See also WODC report (2011). De staat van bestuur van Aruba. Een onderzoek naar de deugdelijkheid van bestuur en de rechtshandhaving, p. 98. Interview Marisol Lopez-Tromp, 29 April 2021; Interview J. Thijssen, 6 May 2021.

584 Interview D. Agius Cesareo-Lejuez, 21 May 2021; Interview anonymous

as these parties want all Arubans to be able to participate and not be hindered by their financial circumstances.⁵⁸⁵ In addition, in Aruban candidate-centered politics, voters are more likely to financially support individual candidates than to pay party membership fees.⁵⁸⁶ Most parties do ask their party members elected or appointed to public office to donate part of their salary to the party, in addition to financing their personal election campaign.⁵⁸⁷

Although registered parties are all allocated free broadcast time on the public television and radio stations by law, in practice this is not the case.⁵⁸⁸ There are complaints of violation of the provision of free airtime.⁵⁸⁹ During election campaigns political parties and their candidates can buy airtime. In practice, not all political parties can buy airtime at every radio station, as some radio stations have exclusive contracts with political parties, which do not only include airtime, but also the guarantee that they will not sell airtime to other parties.⁵⁹⁰ Political parties and their candidates do not only pay for airtime on television and radio stations, but also for coverage in magazines and online broadcasts and podcasts.⁵⁹¹ Political parties and candidates that cannot afford or are unwilling to spend money on airtime and media coverage tend to run campaigns that are primarily dependent on social media and canvassing. Leaders of all parties (including the small new parties) were invited to the two 2021 broadcasted election debates that were held by the Chamber of Commerce in partnership with the University of Aruba.⁵⁹² Candidates do not only campaign for their political party, but also

run their own personal campaign. Most political parties provide their candidates with flags and merchandise for their individual campaigns.⁵⁹³ Candidates are responsible for funding acquisition for the remaining costs of their campaign.⁵⁹⁴ Candidates often spend large amounts of their time raising funds for their personal campaign by selling lottery tickets, baked goods at constituent meetings and food at barbecues. The candidate's personal network is crucial for raising the resources needed for their individual campaign.⁵⁹⁵ With the exception of the party RED that does not allow its candidates to spend more than AWG 5,000/US\$2,777 and the party Action21 that does not allow candidates to accept gifts of more than AWG1,000/US\$555 we are unaware of any specific rules within parties about limitations on the amount of money candidates are allowed to spend on their campaign or receive as gifts.⁵⁹⁶ The new political party HTC claims to have ran their 2021 campaign without any cash flow.⁵⁹⁷ Small, new parties and their candidates are at a resource disadvantage and thus lack the appropriate resources to seriously challenge the established parties. Without the introduction of legislation that also provides these parties with party subsidy this is unlikely to change.

Independence

In Aruba there is no specific legislation regarding state monitoring of political parties, such as mandatory state attendance of meetings, nor do state authorities have the power to ban a political party. By law political parties are monitored in their financial operations by the Party Funding Supervision Committee. The revised National

585 Interview J. Thijssen, 6 May 2021; Interview M. Wever, 17 June 2021; Interview J. Wernet, 16 June 2021.

586 Anonymous interview, 19 May 2021

587 Interview M. Lopez-Tromp, 29 April 2021; Interview J. Thijssen, 6 May 2021; Interview A. Lampe, 12 May 2021; Interview M. Wever, 17 June 2021.

588 Interview M. Lopez-Tromp, 29 April 2021; Interview A. Lampe, 12 May 2021; Interview J. Wernet, 16 April 2021. UPP leader Booshi Wever would have complained in the past about providing television material, but it was never aired.

589 Interview A. Lampe, 12 May 2021.

590 Interview J. Wernet, 16 April 2021.

591 Interview M. Lopez-Tromp, 29 April 2021; Interview J. Wernet, 16 April 2021; Interview M. Wever, 17 June 2021. 592 Aruba Today, <https://www.arubatoday.com/aruba-election-2021-2/>; Interview J. Wernet, 16 June 2021.

593 Interview M. Lopez-Tromp, 29 April 2021; Interview J. Thijssen, 6 May 2021.

594 All party representatives interviewed.

595 Interview J. Thijssen, 6 May 2021; Interview M. Wever, 17 June 2021

596 Interview A. Lampe, 12 May 2021; Interview D. Agius Cesareo-Lejuez, 21 May 2021.

597 Interview J. Wernet, 16 April 2021.

Ordinance Political Party provides rules on party funding (see the section on resources).⁵⁹⁸ Penalties for not abiding these regulations range from fines to a maximum imprisonment sentence of three months (see the section on accountability). The registration of new political parties is the responsibility of the Electoral Council, which is an independent administrative body and thus political decisions are avoided.⁵⁹⁹

Political parties in Aruba generally appear to be free to conduct their activities and no parties have been dissolved or prohibited by the state.⁶⁰⁰ Sources of financial donations to political parties have not been transparent or known. Political parties are not always treated similarly by state authorities, for instance with the provision auto parade permits and selective law enforcement.⁶⁰¹ In the 2021 election campaign claims were made that the COVID regulations were selectively enforced.⁶⁰² Within parliament not all parties feel that they are treated similarly. For example, when opposition parties request a meeting, the Speaker of the House will delay scheduling this meeting if it is not in the government's interest.⁶⁰³ In the polarized Aruban political culture in which most parties have an adversarial style of politics verbal attacks are common. However, some politicians are subject to other forms of intimidation, such as vandalism of cars and physical abuse.⁶⁰⁴

Transparency

All registered political parties are required to have a financial administration that provides at minimum an overview of all donations, other income, the financial assets of the party and any debts. The financial administration and related records, including registry of donations should be kept for a minimum of ten years.⁶⁰⁵ Every year before the first of April, an annual report should be sent to the Political Party Funding Supervision Committee (Commissie financieën politieke partijen) by all registered political parties, which states for the previous year the constellation of the party board, number of paying members at the beginning and end of the year, the contribution amounts and the party activities conducted.

The annual report should also include a financial statement with the party's financial position at the beginning and the end of the year, a detailed overview of all income and expenditure and an accountant's certificate of confirmation.⁶⁰⁶ Donations exceeding AWG 3,000/ US \$1,666 and the total value of donations received are also included in the statement. General information on donations, like the date of donation, the precise amount and the name of the donor, will be included in the report.⁶⁰⁷ Although the new legislation on party funding came into force 1 January 2021, political parties are under no legal obligation to submit an annual report about the previous calendar year and

598 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen)

599 National Ordinance Political Parties (Landsverordening politieke partijen AB 2001 no.96), article 10.

600 Interview G. Thodé, 22 April 2021; Interview J. Thijssen, 6 May 2021; Interview A. Lampe, 12 May 2021; Interview M. Lopez-Tromp, 29 April 2021.

601 Henriquez, S. (2021)., Tien partijen in verkiezingsrace: boosheid over beperkingen campagnevoering 9 April 2021, <https://caribischnetwerk.ntr.nl/2021/04/09/tien-partijen-in-verkiezingsrace-boosheid-over-beperkingen-campagnevoering/>, visited 18 April 2021. Interview J. Wernet, 16 April 2021; Interview M. Wever, 17 June 2021.

602 Henriquez, S. (2021)., Tien partijen in verkiezingsrace: boosheid over beperkingen campagnevoering 9 April 2021, <https://caribischnetwerk.ntr.nl/2021/04/09/tien-partijen-in-verkiezingsrace-boosheid-over-beperkingen-campagnevoering/>, visited 18 April 2021. Interview M. Wever, 17 June 2021.

603 Interview D.Agius Cesareo-Lejuez, 21 May 2021.

604 Interview J. Wernet, 16 April 2021

605 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen) (AB 2020 no.153), article 21 and article 30.

606 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen) (AB 2020 no.153), article 22.

607 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen) (AB 2020 no.153), article 30.

parties and candidates do not have to report election donations received prior to 1 January 2021.⁶⁰⁸

The Political Party Funding Supervision Committee has the task to make the annual report and financial statement publicly available.⁶⁰⁹ The parties' annual reports and financial statements should be published on the webpages of the Committee.⁶¹⁰ The Electoral Council does provide transparency on the candidate list submission by publishing the submitted candidate lists online and informing the public about the collection of signatures in support of these candidate lists and other aspects of the electoral process.⁶¹¹ Although the legal requirement exists since 2021, information about political parties' funding, both electoral as well as non-electoral expenses is still not publicly available.⁶¹² At the time of assessment the Electoral Council was still in the process of establishing the Political Party Funding Supervision Committee required by law. The Political Party Funding Supervision Committee is supposed to consist of the chair and deputy chair of the Electoral Council and a maximum of three independent and impartial accounting experts.⁶¹³ The Electoral Council has failed to find these impartial accounting experts to fill these positions. The accounting experts approached by the Electoral Council did not wish to be part of the

Political Party Funding Committee for the reasons that the job not only entails a large amount of unpaid work, but also potentially makes them a target of verbal attacks and is likely to negatively affect their accounting business on the small island.⁶¹⁴ On June 10th, 2021 the Electoral Council has sent a letter to all parties and candidates reminding them of their obligations since the legislation on funding of political parties came into force. The Electoral Council also sent out a press release in Papiamentu. In response to this letter, many candidates and a handful parties have submitted financial reports. The absence of accounting experts has prevented the Electoral Council from verifying the submitted statements and making this information publicly available.⁶¹⁵

Before the introduction of the new legislation political parties could have also demonstrated their commitment to the principle of transparency by revealing their financial status voluntarily. Only RED (Red Electoral Democrático) has revealed their campaign expenses in the past, they voluntarily submitted a report in 2009 as part of the adherence to the code of conduct of the Comision Bon Boluntad.⁶¹⁶ All party representatives contacted were aware of the new legislation and its obligations.⁶¹⁷ When asked about their compliance to this legislation, many mentioned the

608 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), Memorie van Toelichting, no. 3, article II.

609 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen) (AB 2020 no.153), article 23.

610 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), Memorie van Toelichting, no. 3, article 24.

611 https://secure.overheid.aw/bestuur-organisatie/kandidatenlijsten-2021_48188/?previewcode=17eb133af9b4215cde3a674454e7ecd7&preview=2&contentid=56356&pub=0000-00-00&exp=0000-00-00, visited 24 June 2021. See also <https://www.censo.aw/main/verkiezingen-2021/>, visited 3 September 2021.

612 Interview Glenn Thodé, 22 April 2021. See also LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen) (AB 2020 no.153)

613 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen) (AB 2020 no.153), article 20.

614 Interview G. Thodé, 30 August 2021.

615 Interview G. Thodé, 30 August 2021.

616 Interview with G. Thode, 22 April 2021, also mentioned by A. Rasmijn (2013). Arubaans Verkiezingsblog: Goede Wil, Caribisch Netwerk, 27 June 2013, <https://caribischnetwerk.ntr.nl/2013/06/27/arubaans-verkiezingsblog-goede-wil/>, visited 25 May 2021

617 Interview M. Lopez-Tromp, 29 April 2021.

transition period or expressed doubts that the legislation adopted would not be enforced.⁶¹⁸ We do have to remark that because of their recent foundation new parties do not always have an annual report or financial statement of the previous year to submit.⁶¹⁹ Party representatives signaled that not all parties have an up-to-date membership registry and donation registry, which would enable submitting a yearly report.⁶²⁰ Parties have become more active in informing their candidates about party funding and desirable behavior, such as keeping a register of the donations and gifts.⁶²¹

As a result of all of the above mentioned factors there is still a complete lack of transparency on the funding of political parties. Apart from an increased awareness that transparency of funding of political parties is desirable and subsequent submission of financial documents by several candidates and parties, the introduction of the new legislation on the funding of political parties has not yet led to any changes in transparency. While the Aruba legislator did introduce legislation containing rules regarding financing of political parties and politicians participating in elections, no resources are allocated to the committee created for and charged with supervision and application of these rules. In that sense, the legislation appears to be of more symbolic than practical value.

Accountability

Since 2021 it is set by law that political parties are monitored in their financial administration, including donations by the Political Party Funding Supervision Committee, which operates independently from the legislature and executive.⁶²² The Political Party Funding Committee consists of the chair and deputy chair of the Electoral Chair and a maximum of three independent and impartial accounting experts.⁶²³ Through the chair and deputy chair the Committee has a direct connection with the Electoral Chair, but the members of the Electoral Chair appointed by three largest political parties are not involved.⁶²⁴ Every year before the first of April, an annual report should be sent to the Political Party Funding Supervision Committee, including a financial statement with an overview of all income and expenditure and a detailed registration of donations. See section Transparency for more details on what is to be included in this report. The Political Party Funding Committee has the authority to send the report to the General Audit Chamber for auditing.⁶²⁵ Regulations regarding electoral accounting focus on donations, which are restricted to maximum amounts for a political party and for a single candidate per year.⁶²⁶ Gifts in cash are restricted to a maximum amount.⁶²⁷ Political parties and their candidates may not accept gifts from organizations in which the government is a stakeholder or from organizations

618 Interview A. Lampe, 12 May 2021; Interview M. Wever, 17 June 2021; Interview M. Lopez-Tromp, 29 April 2021; Interview J. Wernet, 16 April 2021.

619 Interview M. Lopez-Tromp, 29 April 2021.

620 Interview J. Thijssen, 6 May 2021; Interview M. Wever, 17 June 2021.

621 Interview J. Thijssen, 6 May 2021; Interview M. Wever, 17 June 2021.

622 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen) (AB 2020 no.153)

623 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen) (AB 2020 no.153), article 20.

624 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), Memorie van Toelichting, no. 3, toelichting op artikel 20.

625 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), Memorie van Toelichting, no. 3, p. 5.

626 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), article 28.

627 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), article 29.

that receive government subsidies.⁶²⁸ Between the 21st and 14th day before Election day candidates are required to submit a copy of the registration of donations he/she received in the last 12 months, accompanied by a written statement. In addition, candidates are required to submit within 7 days after the Election Day a copy of the registration of gifts he/she received in the period of the 20th day before Election Day until the day after Election Day.⁶²⁹

The Political Party Funding Supervision Committee has the authority to investigate the compliance with the regulations and to request all information and inspect all related documentation it deems relevant. Political parties are obliged to comply to these requests.⁶³⁰ The Political Party Supervision Funding Committee has the authority to impose fines of a maximum of AWG5,000/US\$2,777 for each single violation of the regulations that have occurred not more than 5 years ago.⁶³¹ The fine needs to be paid within 6 weeks.⁶³² Before the Committee imposes fines the suspect has the opportunity to defend him or herself verbally or in writing.⁶³³ In case of acceptance of gifts of a higher amount than allowed by these regulations and non-compliance with requests of information and documentation inspection by the Political Party Funding Supervision Committee, the Committee has the authority to impose imprisonment for a maximum of three months or a fine of the third category or both.⁶³⁴ The current legislative framework does not cover foundations. Individual candidates with their own

foundations are therefore under no legal obligation to report the origin of income of these foundations.

At the moment of assessment the Political Party Supervision Committee in charge of financial oversight of the political parties was not yet in place (see also the section on Transparency).⁶³⁵ In addition, the Political Party Supervision Committee had no legal basis yet to hold the parties accountable, as there is a transition period in place before the new legislation has to be enforced.⁶³⁶ Consequently, no parties and candidates have been held accountable for their financial administration yet.

The Electoral Council was already strained performing other tasks before the adoption of the new party funding legislation, as the members of the Electoral Council do not receive remuneration, with exception of the chair for part of the campaign period and the Electoral Council does not have their own staff (see section on the Electoral Management Body).⁶³⁷ The Electoral Council was part of the consultation process of the new legislation on funding of political parties but claims not to have been kept informed adequately of the prospective time frame and adoption and implementation of the legislation, and therefore was somewhat taken by surprise. In addition, as no funding accompanied the new legislation, the Electoral Council is struggling to facilitate the implementation of the law.⁶³⁸ Some political parties also openly question the ability of the

628 Ibid. article 27.

629 Ibid. article 20.

630 Ibid. article 36.

631 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), article 37, article 41.

632 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), article 40.

633 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), article 38.

634 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), article 43.

635 Interviews Glenn Thodé, 22 April 2021 and 30 August 2021.

636 LANDSVERORDENING van 5 Oktober 2020 tot wijziging van de Landsverordening politieke partijen (AB 2001 no. 96) (Regeling financiën politieke partijen), Memorie van Toelichting, no. 3, article II.

637 On request a small remuneration for the campaign period can be provided to the chair of the Electoral Management Body by the Department of General Affairs according to H. Maduro, Interview H. Maduro, 2 December 2021.

638 Interview G. Thodé, 22 April 2021.

Political Party Supervision Committee to hold political parties accountable due to this lack of means. In addition, they raise concerns about the impartiality of this Political Party Supervision Committee.⁶³⁹ Some suggest that the law deliberately was passed without the provision of means to uphold it as the law is not in the interest of the main political parties while the transition period is being used by political parties to establish private foundations to allow the practice of unregistered donations to continue.⁶⁴⁰

Members of parties are not keen to blow the whistle on financial misconduct as reporting misconduct can have serious consequences, such as losing your position on the candidate list or termination of party membership. Politicians in office are even less keen to blow the whistle as they do not wish to lose their position, they often have gotten accustomed to the living standard that comes with their position, do not wish to endanger their access to the hundred per cent state pension they receive after eight years in government or twelve years in parliament, nor do they wish to face the limited reemployment options on the island.⁶⁴¹ Moreover, politicians that blow the whistle are often subject to intimidation, such as receiving threatening phone calls and mail.⁶⁴²

Integrity mechanisms

At the time of assessment none of the political parties had yet submitted an annual report or voluntarily

published membership records. Therefore, we are unable to provide an overview of membership numbers of the political parties. On the basis of the handful of interviews conducted and without access to the organizational regulations of parties, we could not systematically determine whether political parties have and follow provisions for internal democratic governance in practice.

Challenger parties mention that they face difficulties recruiting candidates. Candidate recruitment is hindered by the relatively small recruitment pool due to the size of the island, the low education standard of the Aruban population⁶⁴³ and the polarized political culture.⁶⁴⁴ Challenger parties mention that candidacy for their party can hinder the candidate's and their family's (future) job opportunities.⁶⁴⁵ Candidates running for challenger parties working within the government apparatus are frequently bullied and hampered in their ability to do their job, for instance they are sometimes excluded from active projects, restricted in their information access and sometimes even sent on holiday for a period of time.⁶⁴⁶ In 2021 some parties struggled to fill the candidate list due to the early elections.⁶⁴⁷ We were unable to find records of or research on the social strata of Aruban politicians, and therefore cannot give a reliable assessment to what extent the political elite resembles the general population.⁶⁴⁸ Historically the Aruban political elite consists of various families of Dutch and Spanish origin.⁶⁴⁹

639 Interview A. Lampe, 12 May 2021; Interview J. Wernet, 16 April 2021; Interview D. Agius Cesareo-Lejuez, 21 May 2021; Anonymous interview, 19 May 2021.

640 Interview D. Agius Cesareo-Lejuez, 21 May 2021; Interview A. Lampe, 12 May 2021; Interview J. Wernet, 16 April 2021; Anonymous interview, 19 May 2021.

641 Interview M. Lopez-Tromp, 29 April 2021; Interview J. Wernet, 16 April 2021; Nauta, O. (2011). *Goed bestuur in de West. Institutionele en maatschappelijke beperkingen voor goed bestuur in de Caribische rijkdelen*, p. 201. Universiteit Utrecht: Utrecht

642 Interview M. Lopez-Tromp, 29 April 2021; Interview A. Lampe, 12 May 2021.

643 Nauta, O. (2011). *Goed bestuur in de West. Institutionele en maatschappelijke beperkingen voor goed bestuur in de Caribische rijkdelen*, p. 195. Universiteit Utrecht: Utrecht

644 Interview A. Lampe, 12 May 2021; Interview D. Agius Cesareo-Lejuez, 21 May 2021

645 Interview D. Agius Cesareo-Lejuez, 21 May 2021; Interview J. Wernet, 16 June 2021

646 Interview D. Agius Cesareo-Lejuez, 21 May 2021; Interview A. Lampe, 12 May 2021.

647 Henriquez, Sharina (2021)., Tien partijen in verkiezingsrace: boosheid over beperkingen campagnevoering 9 April 2021, <https://caribischnetwerk.ntr.nl/2021/04/09/tien-partijen-in-verkiezingsrace-boosheid-over-beperkingen-campagnevoering/>, visited 18 April 2021.

648 Nauta, O. (2011). *Goed bestuur in de West. Institutionele en maatschappelijke beperkingen voor goed bestuur in de Caribische rijkdelen*, p. 195. Universiteit Utrecht: Utrecht

649 Cole, S. (1993). *Cultural Accounting in Small Economies*. *Regional Studies*, 27(2), 121 - 136

The political parties do not have quota to ensure equal representation of women on their candidate lists. All parties consulted mention that women are still more reluctant than men to run.⁶⁵⁰ The main reasons provided are the political polarization and masculine Aruban culture that tends to attack and ridicule women more than men.⁶⁵¹ Political parties try to actively recruit women, but parties still tend to place women more frequently on a non-electable position (not in the top ten of the candidate list) than men.⁶⁵² In the 2021 elections 4 of the 12 parties had a female first candidate running, namely MEP, MAS, UPP and PPA. Parties tend to screen their candidates. Nevertheless, it remains unclear what the screening of the candidates entails. Some parties put forward candidates that have been accused of misconduct, such as Benny Sevinger.⁶⁵³

Interest aggregation and representation

Aruba has a multiparty system in which always at minimum four political parties compete.⁶⁵⁴ In 2021 a record twelve parties ran for office. The electoral turnout at the Aruban parliamentary elections is always above 84 per cent.⁶⁵⁵ The number of parties and the high turnout suggest that the party system provides the people with choices, nevertheless the parties are not that distinct. In 2016, 52 per cent agreed and 34.2 per cent of Aruban people disagreed with the statement 'All political parties on the island look alike.'⁶⁵⁶ Political parties in Aruba have no strong ideological foundation and are not part of party families as known in European politics.⁶⁵⁷

Parties and candidates claim to represent all voters.⁶⁵⁸

Candidates often represent a neighborhood on the candidate list and therefore when elected represent also geographical interests.⁶⁵⁹ In addition, the personalistic and clientelist nature of Aruban politics and the candidate's own responsibility to raise sufficient funds for his/her personal campaign stimulate that when elected they need to ensure the interests of their own supporters is represented. The Aruban people perceive that parties and their representatives do not always represent all Aruban people and their interests. 63 per cent of Aruban people stated in 2016 that Aruban politicians did not act in the common interest of Aruba.⁶⁶⁰ In 2016, 66 per cent of the Aruban people stated that Aruban politicians acted more in their own interest than the interests of their voters.⁶⁶¹

Political parties do not have ties with civil society groups, but do consult civil society groups from time to time, for instance when writing their party manifests. Some parties have ties with political parties in the Netherlands, such as AVP with CDA, MEP with D66 and PvdA, RED with GL.

The Aruban party system does not have many special interest parties, i.e. a party that acts on a specific group of voters. Three special interest parties intended to participate in the 2021 election campaign, namely a party for the advancement of women, called MUHE ("Muhernan Uni Huntu y Emancipa"), the party for animal rights MBA ("Mehoracion pa Bestia na Aruba") and

650 Interview A. Lampe, 12 May 2021, Interview J. Wernet, 16 June 2021; Interview M. Wever, 17 June 2021.

651 Interview A. Lampe, 12 May 2021, Interview J. Wernet, 16 June 2021; Interview M. Wever, 17 June 2021.

652 Interview M. Wever, 17 June 2021

653 Henriquez, S. (2021). Nieuw parlement én wellicht snel nieuwe regering voor Aruba, 8 July 2021, <https://caribischnetwerk.ntr.nl/2021/07/08/nieuw-parlement-en-wellicht-snel-nieuwe-regering-voor-aruba/>, visited 26 August 2021

654 www.overheid.aw (2005-2017), www.caribbeanelections.com (1985-1997), visited 30 April 2021.

655 WODC report (2011). De staat van bestuur van Aruba. Een onderzoek naar de deugdelijkheid van bestuur en de rechtshandhaving, p. 80 (1985-2009); www.overheid.aw (2013-2017).

656 Veenendaal, Wouter (2016). Eindrapport CCC-Opinieonderzoek. Leiden: KITLV

657 WODC report (2011). De staat van bestuur van Aruba. Een onderzoek naar de deugdelijkheid van bestuur en de rechtshandhaving, p. 81.

658 All party representatives interviewed.

659 Interview G. Thodé, 22 April 2021.

660 Veenendaal, Wouter (2016). Eindrapport CCC-Opinieonderzoek. Leiden: KITLV

661 Veenendaal, Wouter (2016). Eindrapport CCC-Opinieonderzoek. Leiden: KITLV

the HTC (“Hubentud Treciendo Cambio”), of which only the HTC eventually did register.⁶⁶²

Anti-corruption commitment

Public accountability and corruption are issues frequently mentioned in the campaigns of political parties and their candidates. Although all political parties and their candidates profess to be committed to fight corruption, the Aruban people do not perceive this commitment to be strong. In 2021, 94 per cent of the Aruban populations perceived the problem of corruption to be widespread⁶⁶³ and 71 per cent of the respondents in 2021 agreed with the statement that politicians have no real will to fight corruption as they may benefit from it.⁶⁶⁴ Although Aruba has a strong tradition of clientelism, including vote buying, public opinion about the acceptability of this practice seems to be changing; particularly among young people this practice is increasingly frowned upon.⁶⁶⁵ In 2020 about 3 per cent of respondents agreed that it is acceptable in an election campaign for politicians to pay electricity or water bills for voters and to distribute gifts and money. This percentage represents around 2,700 people of the 18+ population. Aruban people are susceptible for practices such as vote buying and party patronage due to poverty, which has increased due to the pandemic.⁶⁶⁶ The Aruban people hope that the legislation of funding of political parties will help to bring about the desired change. In 2018, 86 per cent of the Aruban people thought that corruption could be mitigated with the introduction of legislation with regard to campaign financing.⁶⁶⁷ The 2021 elections were not free of electoral manipulation, as incidents were mentioned of voters offering their vote for sale on social media, voters posting pictures of their ballot cast on social media (required by political parties as evidence in vote buying transactions) and voters caught trying to vote more than once.⁶⁶⁸

Sub-conclusion

It is fair to conclude that the political parties strongly influence the NIS Aruba in a negative way. Although its power is felt within the legislature and the executive, its power stretches across nearly all other pillars. The original role of political parties as interest aggregates is weak and political parties have a weak reputation in terms of their anti-corruption commitment.

662 The Daily Herald, 2 April 2021, <https://www.thedailyherald.sx/islands/aruba-elections-on-june-25>, visited on 23 June 2021.

663 Centrale Bank van Aruba (2021). Report Corruption Survey 2020 Centrale Bank Aruba, page 3, <https://www.moneylaundering.com/wp-content/uploads/2021/03/Aruba.Report.Corruption.020821.pdf>, visited 24 April 2021.

664 Centrale Bank van Aruba (2021). Report Corruption Survey 2020 Centrale Bank Aruba, page 5, <https://www.moneylaundering.com/wp-content/uploads/2021/03/Aruba.Report.Corruption.020821.pdf>, visited 24 April 2021.

665 Interview J. Wernet, 16 June 2021; Interview D. Agius Cesareo-Lejuez, 21 May 2021.

666 Nauta, O. (2011). *Goed bestuur in de West. Institutionele en maatschappelijke beperkingen voor goed bestuur in de Caribische rijkdelen*. P. 196. Universiteit Utrecht: Utrecht

667 Corruption Survey 2018 Centrale Bank Aruba, page 9, <https://www.cbaruba.org/cba/readBlob.do?id=5773>, visited 24 April 2021.

668 Interview G. Thodé, 30 August 2021.



Structure and Organization

Aruba has distinct types of media organizations, of which newspapers, the national TV channel and radio stations are the most influential, although the impact of social media (e.g. Facebook, Instagram) is rising. There are numerous private radio stations, some overly critical on government due to their own political views.⁶⁶⁹ There are several newspapers in Papiamentu (e.g. *Diario*, *Bon dia*, *24 Ora*, *NoticiaCla*, *Solo di Pueblo*), one in Dutch (*Amigoe*) and one printed in English (*Aruba Today*), although on social media there are columnists active in English (e.g. *Bati Bleki*) and in Dutch (e.g. *Den Cayente*). Most media also have a digital version of their output online. In addition, newspapers from Curaçao (in Dutch) are available (*Antilliaans Dagblad*, *Caribisch Netwerk*) with a separate section on Aruba. Furthermore, there are new initiatives covering kingdom affairs that also report on Aruba (e.g. *Dossier Koninkrijk*). There is a national television channel (*TeleAruba*) providing daily news and general and governmental information on the country. There are private channels (e.g. *Canal 22* and *15 ATV*), but these broadcast online. It remains unclear if *15 AV* is still operational, after it previously declared bankruptcy. Internet is widely available on the island, provided by State (*Setar*) and private sector (*Digicel*).

Resources

Aruba's legal framework does not render significant hurdles to achieve a diverse and independent media sector. As the media outlets are registered businesses, they are subject to general requirements and require business permits. There are no legal restrictions on setting up a print media entity, nor is entry into the journalistic profession restricted

by law. Although in general the press enjoys the freedom to report, journalists mention to be careful in directly criticizing government and/or ministers and related advisors. Journalists run the risk of a boycott in directly receiving desired information from governing politicians and the departments under their responsibility. Besides, the government can exert pressure by limiting the placement of public advertisements in media that are too critical, affecting access to sufficient resources.⁶⁷⁰

Broadcast media is subjected to license regulations by country ordinance, in the interest of a diverse broadcasting environment. According to the legislation on telecommunication services, a license is required for technical infrastructure, maintenance, and operation of a broadcast medium. Each license includes the appointed frequencies that are coupled with that license.⁶⁷¹

Media outlets get their financial resources mainly from financiers and (public and private) advertisements, which makes them vulnerable to external influences.⁶⁷² Financial resources are not (always) adequate to operate effectively as desired and salaries for employed and freelance journalists are considered to be (too) low. Journalistic education is not provided on the island, so future journalists must study off island (often Netherlands or USA) and learn by training on the job. Aruba currently does not have a professional organization for journalists, although it had one in the past (*Aruba Press Club*), of which membership was not mandatory.

669 More than twenty radio stations were mentioned. The tone on some of these channels (bashing politicians and/or government entities and their staff) is not always appreciated. See e.g. *De Krabbenmand*, M. Laclé, *DossierKoninkrijk*, 8 augustus 2021.

670 This was mentioned by respondent, but could not be researched in depth nor checked with government policy.

671 National decree, AB 2003 no. 83 (LANDSBESLUIT, houdende algemene maatregelen, ter uitvoering van artikel 2a, van de Telegraaf- en telefoonverordening (AB 1996 no. GT 2)) art. 1 v. See more https://www.overheid.aw/bestuur-organisatie/09-verkeer-vervoer-en-telecommunicatie_3475/item/0911-omroep_3651.html

672 *De bende rond Mike Eman*, *De Telegraaf*, 31 Oktober 2011. Criticizing the independency of some journalists, as they have private interests in relation to government.

Independence

According to the Aruban constitution, everyone is allowed to express their opinions or feelings by way of press, and nobody is required to have prior approval to collect and research information. Freedom of expression is strongly anchored in the constitution, although this freedom can be limited in the case of publication of discriminatory remarks or slander.⁶⁷³

Printed and broadcasting media are diverse and cover a broad social spectrum. Newspapers and radio stations provide a variety of news items, including politics. Newspapers, in covering news items on politics, generally focus on representing views, where some have a critical opinion on the performances of politicians. Newspapers and radio stations do sometimes have a political bias (pro or against the ruling party) in covering news items and also make selective choices in covering the political news, although this does not include all media. Regarding broadcast media, some radio stations transmit programs that are both positive and (highly) critical of the government, depending on the political stance of the station.

Censorship is explicitly prohibited, as it is contrary to the fundamental right of freedom of expression as laid down in the constitution.⁶⁷⁴ In Aruba the establishment and operation of private or community media, regardless of the format (e.g. print, broadcast or internet), is not prohibited but can be subject of restrictions. The Minister of Justice in government EWC I expressed the intention to make a media law to combat the publishing of ‘fake news,’ which was criticized by the press. Government EWC II, by its Minister of Communication, recently announced plans

to reform supervision on the media by introducing a national ordinance and a media council. This initiative met immediately with resistance and criticism from media outlets, being a violation of the freedom of independent press, much needed as a watchdog in a democratic society.⁶⁷⁵

Politicians often do not directly respond to requests for information from the media. According to the national ordinance on open government (the ‘Lob’), anyone can have access to government information by filing a request.⁶⁷⁶ However, in Aruba those requests can easily be filed but are in practice not always granted. Certain restrictions apply, such as in case provision of information would jeopardize the unity of government, or if policy views can be traced to individual civil servants, violating their privacy. Apart from these legal restrictions, there is the earlier mentioned tendency by the government to not provide the requested information on time (“old news is no news”) or, in fact, at all.⁶⁷⁷

Broadcast media are under supervision of the Telecom department (DTZ), which is also responsible for granting licenses to broadcast organizations.⁶⁷⁸ DTZ is a public entity and is to operate independently regarding its internal organization and management of its assets and its advocacy. The minister of transport, communication and primary process holds political responsibility for DTZ. Licensing to broadcasting agencies deals solely with technical aspects such as assigned frequencies, there is no oversight on program content prior to broadcasting. Except for broadcasting of commercials or printing of advertisements, there are currently no rules allowing government to control media information at any time.

673 Penal Code, titel V Felonies against public order, par. 2:49 v. and Titel XV Slander par. 2:223 v.

674 Art. 10 Stregg Aruba.

675 https://www.bondia.com/periodista-sharina-henriquez-minister-wever-no-sa-suficiente-kico-ta-e-rol-di-prensa-den-democracia/?fbclid=IwAR2GAznxwg4iodDht6jUMmb1_zUe6TcmVqCEvODf5SBfRsYbktSjqW2vSTM . Reason for enhanced control are apparently recent integrity issues in a TV show (“Pueblo ta Papia Johnny Habibe”), though in the past other integrity issues in press are mentioned as a reason for stricter regulation (e.g. privacy violations, fake news, illegal use police radio’s, aggressive confrontation and provocation of political opponents a.o.). See also independent online outlet Den Cayente (once part of daily newspaper Amigoe) on the topic of controlling the media and political motives for control.

676 Art. 3 National ordinance on open government. Limitations of access are laid down in articles 10, 11 and 12.

677 E.g. August 7 2021, Den Cayente, Balashi Blues. Media expects not to receive demanded information on criticized governmental nomination of new intermediate director (family member governing Ministers) at the WEB N.V., the state-owned but privatized water management company. See also the pillar on Public Sector.

678 Directie Telecommunicatiezaken. www.dtz.aw

Despite the fact that law and regulations regarding freedom of speech and unwarranted interference are in place, indirect influence does exist in some media and is related to private ownership of certain media (written and radio). Some newspapers are exclusive family businesses. According to media experts consumers are acutely aware of the political divisions within the media landscape and follow those media which are sympathetic to their own political convictions.⁶⁷⁹

There are examples of harassment of journalists in the past. One reporter was banned access to Parliament by the president, which he successfully fought in Court.⁶⁸⁰ Another journalist was arrested and detained after violating the Covid evening curfew.⁶⁸¹ In 2011 a journalist was murdered, after being personally threatened.⁶⁸² Although critical journalists do receive negative responses from civilians and politicians, in general there is no indication of structural harassment of journalists.

Transparency

Print media and broadcast companies are not required to disclose their ownership, other than as part of the registration with the Chamber of Commerce. As they are registered as NVs (limited liability companies), their capital is divided into shares. There are no requirements for media companies to disclose their financial information. The general business legislation applies.

Media entities are also not required by law to disclose any information relating to internal staff, reporting and editorial policies. Media entities do not publish any information on their ownership, finances, staff or editing policies. With regard to broadcasting license holders, a request for information can be submitted at DTZ.⁶⁸³

Accountability

Broadcast media, if registered, are supervised by DTZ, which is also procedurally responsible for granting them their permits, on behalf of the minister. Apart from supervising the stations, the bureau ensures the technical infrastructure and its compliance with the prescribed standards, as laid down in the permits. In this regard, the bureau has the authority to ask questions, review financial accounts and perform inspections. If the broadcast organizations are not complying with the regulations, DTZ is authorized to impose a fine or retract the license. Consumers have the possibility to file a complaint with the DTZ, who then responds on behalf of the minister.

For print media no supervising organizations and/or regulations exist. Accountability regulations for publication of erroneous information are provided in the Civil Code (tort law) and in the Penal Code. If the press spreads erroneous information on persons or entities, a judge may require a public correction of this information. Sometimes politicians go to court to require correction.⁶⁸⁴ The judge may impose requirements for the publication of corrected information, such as deadlines and the manner in which this should take place.

It is not common for media entities, both broadcasting and print, to account explicitly for their journalistic activities. Some media outlets do have set up online fora through which the public can interact with editors and reporters, like blogs or chats. However, open letters to the editor are frequent practice and offer possibilities to give one's opinion or reply on a matter.

Different media organizations and their staff are also easily and directly accessible due to the small scale of Aruban society. As for broadcasting entities such as

679 It is a public secret in Aruba that ownership might determine the political stance of a media outlet. Ownership sometimes passes in new hands, changing the political color. As an example the daily newspaper Amigoe was mentioned, recently changing ownership and with it apparently other interests came along. See <https://www.dencayente.com/post/afscheid-van-de-oude-dame>

680 GEA kort geding 20 December 2017, Speed Andrade 24 Ora v Land Aruba. Apparently, the reporter took a 'selfie' in the seat of the president of Parliament, who was not amused.

681 Sharina Henriquez, Caribisch Netwerk. Miss Henriquez responded with a fierce demand for freedom of press, even during Covid measurements. <https://nederlands.24ora.com/2021/05/03/journalist-kritisch-op-politie-en-regering>

682 <https://koninkrijk.nu/2021/04/21/onderzoek-moord-poentje-castro-op-aruba-opnieuw-opgestart>

683 Not clear is whether DTZ provide detailed information on the broadcast stations to private entities.

684 E.g. PM Mrs. Wever-Croes did in 2021 after being accused in the press of being involved of illegal land issue. The foundation had to correct the information publicly after losing the court case. <https://nederlands.24ora.com/2020/12/23/rectificatie-jan-de-ruijter>

the radio stations, there are call-in programs in which the public can respond live by phone to topics discussed.⁶⁸⁵

Integrity mechanisms

In Aruba there is no sector-wide code of conduct for the media, nor does there appear to be any code of conduct within individual media organizations or ethics committees for these organizations. There is no legislation, like elsewhere in the Kingdom, that provides rules on safeguarding personal information acquired for journalistic purposes, such as regarding truth and accurateness.⁶⁸⁶ Therefore, media that acquire personal information on persons or businesses are formally not required to safeguard this information from loss and any kind of illegal (further) processing.

In practice media entities do not have overall integrity codes and individual codes of ethics are not standard in the process of hiring new employees. In general, the subject of ethics is more focused on work processes or specific issues. Each media outlet has its own moral framework, and these are not transparent. Examples are media outlets that cover explicit details (of casualties) of car accidents that are controversial. Some media outlets do not seem to always (double) check the various sides of an issue and do not always rely on several sources because news must be quick in following up on events. Others do not always give an accused politician the opportunity of rebuttal before printing or otherwise emitting the news. Some media are politically biased and intentionally bring false news or do not check sources on trustworthiness and validity.

The media in Aruba are active in investigating cases of corruption through following closely the movements of police and special forces (landsrecherche) in corruption cases. However, independent investigative journalism is not common, as this is time consuming and expensive. Newspapers are dependent on businesses for funding through advertisements and do not want to jeopardize their financial resources. The media is open for civil reports and accusations of corruption of politicians, and this can be helpful for the prosecution

office to start investigations. However, independent investigative journalism can be a difficult matter in Aruba as citizens and businesses do not easily cooperate with the press in these matters, out of fear of retaliation or obtaining a negative image in society. Due to Aruba's small scale and the close family ties and network relations between its citizens – a characteristic shared by other islands in the Kingdom – it is easy for citizens to close the ranks against radio and newspaper reporters investigating specific cases.

Inform the public on corruption and its impact

Recently, different corruption related cases have been broadly and intensely depicted in the media. The Ibis case, and in its footsteps Avestruz and Flamingo cases were widely covered. However, in general, media entities do not see themselves as watchdogs of corruption and often primarily stick to covering the news. So it could hardly be concluded that the media are fulfilling the role of public educator on corruption and how to curb it. Nevertheless, the media pay significant attention to the research and reports of the Central Bank of Aruba and explain or comment on the outcomes to the public. Developments of the government on making policy and legislation in the field of integrity and the fight against corruption are also covered and questioned.

Inform the public on governance issues

Media outlets are active in reporting activities of the government and government actors although access to government information can be difficult and depends to a substantial extent on the professional and social networks journalists have. In that view it is important to have a good relationship with a responsible minister in charge and the departments that execute activities. Sometimes information is not shared with the media, due to lack of availability or even due to a suspected unwillingness of government to provide information about certain topics. From that perspective, journalists suggested having the opportunity to start a legal court procedure in order to obtain required information, an option the current national ordinance on open govern-

685 Although the level of criticism is not always very nuanced and eloquent, see M. Laclé, Krabbenmand, in online outlet Dossier Koninkrijk.

686 European Privacy regulation (GDPR) applied in the Netherlands (AVG). Other islands have their specific ordinances on the protection of personal data.

ment (Lob) does not provide.

Sub-conclusion

Aruba does not have restrictive laws on the establishment and operation of media entities. There is no specific legislation on controlling media, no media chamber nor mandatory organization of journalistic professions in the media, although recently plans for stricter regulation were announced. The legal framework pertaining to the existence and operations of independent media does not hamper printed media, but does require a license for broadcast media.

A highly varied media landscape offers content in different languages, Papiamentu, Dutch and English, although the majority is in Papiamentu. In practice the media does not always seem to operate in a transparent way.

Its independence, although different for broadcast and written media, is generally safeguarded in the constitution, but media incidentally fear retaliation for a critical attitude towards ministers and/or senior staff, coordinators or advisors. During the Covid period, some media found themselves obstructed in carrying out their critical role due to curfew restrictions which even led to fining, arresting, and briefly detaining a journalist.

Despite a limited budget for independent investigative journalism, Aruban media spent time and energy in covering cases of corruption. National television broadcasts (TeleAruba) are public and controlled by the state. The small scale of Aruban society gives rise to a culture of self-censorship on the part of its journalists. Nevertheless, it has been possible to develop a critical media culture on Aruba, although some media outlets are considered to be politically biased.

Operations in public broadcast media, however, are dependent on the state budget. There were not found legal provisions or individual rules and codes of media outlets to seek transparency, except for general registration requirements with the Chamber of Commerce and Industry. Broadcast media do have some provisions in place to ensure their accountability, although provisions to regulate the work of the print media are limited.

Legal provisions to safeguard the integrity of media employees are limited. In general, the media are active in investigating and exposing cases of corruption but largely follow the movements of police forces and public prosecution in investigations. Media outlets do pay attention to informing the public on corruption cases and inform the public on government issues, although (quick) access to relevant information can be difficult.



CIVIL SOCIETY

Structure and organization

Civil society organizations include a variety of organizations that are traditionally labelled 'interest groups': not just NGOs but also religious groups, cultural societies, sport clubs and community groups. Civil society is made up by those organizations which lie outside the formal state apparatus. A strong NIS consists of a state that is open to meaningful civil society engagement and cooperation.

The larger part of civil society is composed of non-governmental organizations. In Aruba there are various small and medium sized NGOs which are well-known, have a strong reputation and a formal governance structure. These organizations are devoted to good causes varying from serving children and communities and elderly care to the protection of specific animals such as donkeys and turtles and from the broader cause of Aruban nature conservation to eradicating corruption. Kiwanis Club of Palm Beach Aruba⁶⁸⁷, for instance, is such an NGO which has 60 members and recently launched a project aimed to raise awareness among parents to use the proper child seat for their children and a project to improve the Aruban playgrounds. The Donkey Sanctuary Aruba⁶⁸⁸ is a small NGO but part of a global organization which seeks to protect donkeys and mules by improving their living conditions. Its website states that the organization is sponsored, amongst others, by the Kiwanis Club of Palm Beach Aruba. There are also small interest groups which are established by one person for one cause. These interest groups are believed to have little impact and usually do not opt for any form of cooperation. NGOs in the well-being and social work sector play

an important and decisive role. The larger part of poverty eradication, youth care, care for individuals with disabilities and elderly care are in the hands of these NGOs. CEDE Aruba (Centro pa Desaroyo di Aruba) is a development and funding agency active in the social-economic and cultural sector.⁶⁸⁹ It stimulates the cooperation of organizations and is also assisting organizations in their search for funding. A major part of the funding comes from The Samenwerkende Fondsen Cariben, which annually support more than 50 projects in the Caribbean part of the Dutch Kingdom.⁶⁹⁰ The largest Dutch charities in the field of social welfare have joined forces and provide financial support to local social initiatives. CEDE Aruba regularly has conversations with professionals and organizations in the field as well as the government.

Resources

The legal framework in Aruba is conducive to civil society and its organizations. Freedom of association is guaranteed by the Staatsregeling van Aruba.⁶⁹¹ Every individual and legal person may participate in the establishment of a CSO and be a member. The law defines basic provisions concerning associations and foundations, which are the most common legal forms of CSOs. The Landsverordening op Stichtingen entails the legal provisions on foundations. Foundations and associations are established by a notarial deed that includes the statutes, without governmental involvement. Informal associations do not need to be established by notarial deed and have limited legal capacity.⁶⁹² Informal associations cannot be heir to an inheritance or acquire real estate or other registered goods. Both forms of legal entities must be

687 The website of Kiwanis Club of Palm Beach Aruba is: [https://www.kiwanispalmbeach.com/\(S\(04xuiuicyj\)0h4vnxabfx1at\)\)/history](https://www.kiwanispalmbeach.com/(S(04xuiuicyj)0h4vnxabfx1at))/history) (accessed 14/01/22).

688 The website of Donkey Sanctuary Aruba is: <http://main.arubandonkey.org/portal/index.php/about-the-donkeys/history> (accessed 14/01/22)

689 The website of CEDE Aruba is: <https://cedearuba.org/over-cede/?lang=nl>; Europese Unie (2021) Centro pa Desaroyo di Aruba. Available from: https://europa.eu/youth/volunteering/organisation/54341_nl (accessed 04/01/22)

690 The website of Samenwerkende Fondsen Cariben is: <https://www.samenwerkendefondsenariben.org/en/projects>

691 Art. Artikel I.11 Staatsregeling van Aruba

692 Articles 2:26 BW and 2:286 BW

registered at the Trade Registry (Handelsregister) of the Chamber of Commerce (Kamer van Koophandel).⁶⁹³ The registration fee for foundations and associations is AWG 96,-.⁶⁹⁴

In general, CSOs rely heavily on donations, subsidies and additional funding and will always search for adequate financial and human resources. There are many CSOs active in the social domain. These organizations provide the care and services needed which are not delivered by government or governmental organizations. CEDE Aruba is one of the major funding organization. CSOs in the field of Neighborhood & Community, Individual & Family, Children & Young People, Senior Citizens and People with Disabilities and Vulnerable Groups can apply for funding via CEDE Aruba. CEDE Aruba offers budgets for: regular projects, neighborhood centers, neighborhood initiatives and holiday camps. Its funds are received via donations, The Samenwerkende Fondsen Cariben, Dutch government and VNO, Superfood and EU financing.⁶⁹⁵

Any foundation or association can be established for public and private benefit purposes. If any CSO wants to be eligible for fiscal CSO privileges, it has to comply with particular requirements to obtain public benefit status. The Dutch Tax Authority can give the status 'public benefit organization' (ANBI-Algemeen Nut Beogende Instelling) upon request to Aruban organizations whose purpose and actual activities serve the public interest. The fiscal authority decides about rewarding the ANBI-status. For the taxpayers it is important that gifts to these CSOs is not taxed at the receiving end, but that these gifts are tax deductible for the donor. At the start of the year 2022, four CSOs had such an ANBI-status.⁶⁹⁶

Generally speaking the government financing of these important NGOs which provide basic care, is rather problematic. For instance, the Stichting Algemene Bejaardenzorg Aruba (- Foundation General Elderly Care - Saba) which provided care for approximately 300 elderly persons, publicly expressed that it no longer was able to provide the care needed due to the minimum of subsidies it received and the poor conditions of its real estate (owned by the state).⁶⁹⁷ NGOs in the field of nature conservation also lack adequate public funding via subsidies.⁶⁹⁸

Independence

Freedom of association is limited exclusively in the interest of public order.⁶⁹⁹ Citizens are free to get engaged in groups regardless of political ideology, religion, gender, race, education, occupation or objectives. Discrimination against a citizen, i.e. not allowing membership if someone belongs to any of these categories, is not allowed. Legal and natural persons have to respect the same rules and regulations, public authorities and the law. All CSOs with a limited number of sources of income depend, in one way or another, strongly on their relationship with the donor(s). Potentially, this is a threat to independence. A membership CSO with a broad membership base is mostly free from this potential threat. However, not many Aruban CSOs have that large a number of members. If the financial resources of a CSO depend heavily on public subsidies, changes in the political orientation of the government may influence the focus and activities of the CSO, thereby limiting its independence. In order to safeguard income, a CSO might be more inclined to deliver governmental priorities or to limit a critical attitude or advocacy. It can additionally lead to practical issues; social work services, for instance, can be put under

693 The law does make an exception for associations with limited legal capacity. For these associations there is no legal obligation to register at the Chamber of Commerce.

694 Aruba Chamber of Commerce (2021). Link: <https://arubachamber.com/pages/business-in-aruba/establishing-a-business-in-aruba/> (accessed 11/01/22)

695 CEDE Aruba (2019). Jaarverslag 2019. p.13. Via: <https://cedearuba.org/wp-content/uploads/2020/06/Jaarverslag-CEDE-Aruba-2019-1.0.pdf> (Accessed 10/01/22).

696 Belastingdienst (2022). Link: https://www.belastingdienst.nl/rekenhulpen/anbi_zoeken/ (accessed 11/01/22).

697 Henriquez, S. (2016). SABA-oudere ligt in fors ondergesubsidieerd bed. Caribisch Netwerk 10 maart 2016. Link: <https://caribischnetwerk.ntr.nl/2016/03/10/saba-oudere-ligt-in-fors-ondergesubsidieerd-bed/> (accessed 11/01/22).

698 Sieben, H. (2019). Is de Natuurbeheersubsidiesystematiek in Europees Nederland ook toepasbaar op de Nederlands Caribische eilanden? In Dutch Cariben Nature Alliance.

699 Art. 1.11 Staatsregeling van Aruba

pressure. Like many of the other NIS-institutions, this pillar also is vulnerable to the political patronage phenomenon which appears to be dominant in Aruba. On the other hand, this same phenomenon can be used to knowingly bring damage to a CSO's reputation when making allegations about political ties or linkages to political parties.

Transparency

CSOs strongly depend on public trust; members and donors should know what happens to their donations, i.e. how much is put aside for overhead costs, and where and how subsidies, donations and contributions are spent. Overall CSOs appear to lack transparency regarding their business. This is partly due to the fact that many small-size 'one-person' CSOs only have a limited capacity to professionalize and adhere to the general norms of transparency. The well-known CSOs do express some transparency about their activities, funds received and projects funded in their Annual Report and Mission and Vision documents. Generally speaking, most CSO websites are not updated regularly; information on projects and the extent to which goals were achieved, selection procedures and rewards paid to directors and members of management boards are not publicly available.

Accountability

Most well-known CSOs intend to observe principles of democracy and accountability in their formal internal structures. This applies in particular to the CSOs providing social welfare services which publish their annual reports on their websites.⁷⁰⁰ Unfortunately some of the links to these annual reports were missing or not functioning.⁷⁰¹ The preparation of a good annual report takes considerable time which is often needed for other core tasks. Many of the smaller CSOs do not have the capacity or experience needed to become a professional organization with the desired accountability standards.

Integrity

A quick look at the websites of the well-known Aruban CSOs, suffices to see that integrity is not a standard theme on CSOs websites. While these CSOs do mention their board members, budget and annual report, they all lack codes of conduct, integrity statements, confidential counselors or other basic integrity instruments. The Stichting Deugdelijk Bestuur Aruba (SDBA) has some of these documents on its website.

Hold government accountable

Aruban CSOs are active in various sectors. They intervene with the appropriate authorities in defense of real or imagined rights, advocating particular proposals and their initiatives to solve problems. Environmental issues are campaigned for by CSOs. Patients, health care staff and organizations defend their rights to good health care, and demand more means to establish better cure and care. Churches and trade unions maintain solid positions and try to steer public policies in directions they desire. In 2021/2022 the trade unions Simar (education), Sada (border control), Seppa (civil servants), SPA (police), and FTA (foundations) have demonstrated against the government decision to cut the income of employees with 12.6 percent thereby following up article 8 of the Landsverordering tijdelijke versoering bezoldigingen en voorzieningen overheid. Part of this law is the duty for the government to report on the effectiveness of the income cut. The government had not lived up to this obligation leading to the protests of the trade unions which in their response announced that their members will work two days fewer each month.⁷⁰²

Some Aruban issue-based CSOs follow state activities critically. Numerous organizations push their desired outcomes by influencing politicians and policies. There are a few CSOs who exact action by communicating with and supplying information to both media and the Staten for matters for which they hold the government accountable. There are nonetheless also great concerns regarding the role CSOs play in Aruba. Because of

700 CEDE Aruba (n.d.). Annual Reports. Link: <https://cedearuba.org/publications/> (accessed 14/01/22)

701 Kiwanis Club of Palm Beach Aruba (n.d.) Annual Report. Link: [https://www.kiwanispalmbeach.com/\(X\(1\)S\(azlpmgeo1u10n1lqi3wi0rxu\)\)/Page/42490](https://www.kiwanispalmbeach.com/(X(1)S(azlpmgeo1u10n1lqi3wi0rxu))/Page/42490) (accessed 14/01/22)

702 Antilliaans Dagblad (2022). Vakbonden Aruba: twee dagen per maand minder werken. 6 January 2022. Link: <https://antilliaansdagblad.com/aruba/24974-vakbonden-aruba-twee-dagen-per-maand-minder-werken> (accessed 11/02/22)

their limited resources most of these CSOs have only limited opportunities to raise a critical voice and to hold government accountable. More problematic is the fact that CSOs themselves are constantly subjected to corruption allegations.

The underlying political patronage mechanisms become apparent here: unjustified allegations against CSOs are made by those in power or other CSOs to strengthen their own position.

Although CSOs have tried to bring environment pollution to a hold, the well-known case of Parkietenbos seems to be symptomatic for the lack of rule of law in Aruba and the weak position to hold government accountable for its actions. The safety concerns regarding the illegal dumping of asbestos in San Nicolas and the nuisance experienced by Aruban people living nearby the landfill Parkietenbos have been going on for some time without individual citizens and civil society being able to bring this to a halt. The Aruban government is violating the laws by allowing both situations to go on. Moreover, governmental organizations do not respond to requests by civil society asking for public documents such as permits or other documents which provide an insight in the decision-making in these cases. Citizens who had appealed to the governmental decision to provide permits in both cases never heard anything back from the government when they appealed. Individual attempts to report the Parkietenbos practices as a criminal offence under the legislation which seeks to protect the environment (natuurbeschermingverordening) also failed. It took the public prosecution services one year to reply to this request, eventually declining it.⁷⁰³⁷⁰⁴

In general, CSOs are active but not all of them successful in holding government to account for its actions.

Policy reform

Transparency International Netherlands is the Dutch chapter of Transparency International, the non-governmental organization which aims at promoting good governance and integrity, raising awareness of corruption and contributing to fighting corruption. This chapter does focus on relevant developments in Aruba and its latest publications concerned (alleged) corruption cases there, some of which concerned Dutch business involvement.⁷⁰⁵ This chapter is sometimes contacted by Aruban individuals (whistleblowers) seeking advice in individual cases, as there is no specific chapter of Transparency International Aruba.

The major Aruban CSO engaged in anti-corruption policy reform is the Stichting Deugdelijk Bestuur Aruba (SDBA - Quality Governance Foundation)⁷⁰⁶ which ordered this NIS Aruba report after contacting Transparency International Netherlands about it. This foundation was established in 2016 and its goal is to promote good governance in the small democratic state Aruba. Its board consists of a chair, secretary and treasurer. Before establishing SDBA, the chair was already active in advocating for good governance and eradicating corruption for more than 20 years.⁷⁰⁷

On its website the SDBA states it is there to:

- A. to provide information on the quality of governance, taking into account the principles of Rapport Calidad;
- B. to provide general information on the necessity to strive for good public governance, being a prerequisite for a sustainable Aruba;
- C. to stimulate the community to take responsibility in observing the principles of good public governance;
- D. to report on concrete cases of poor public governance and striving for improvement by means of talks with stakeholders;

703 Henriquez, S.(2021). Caribisch Netwerk 25 May 2021. Dumpbewoners blijven doorvechten ondanks tegenwerking: vele rechtszaken op komst. Link: <https://caribischnetwerk.ntr.nl/2021/05/25/dumpbewoners-blijven-doorvechten-ondanks-tegenwerking-vele-rechtszaken-op-komst/> (accessed 12/01/22)

704 Recent appointed Minister responsible for Nature and Integrity did respond by stating that Aruba lacks an alternative and that fires were caused illegal, but did not address matters of operational illegality of the responsible SOE Serlimar LLC. Furthermore government does not proactively prevent nuisance, but lets protesting civilians (against severe payment) use a bailiff to file claims of nuisance.

705 Transparency International Netherlands (n.d.) Link: <https://www.transparency.nl/?s=aruba> (accessed 11/01/22)

706 Stichting Deugdelijk Bestuur Aruba's website: <https://deugdelijkbestuuraruba.org/> (accessed 12/01/22)

707 Stichting Deugdelijk Bestuur Aruba (n.d.) Link: <https://deugdelijkbestuuraruba.org/over-ons-armand-hessels/>

E. to accomplish concrete improvement on the topic of public governance, with or without judicial proceedings;

F. search for cooperation with third parties within and outside Aruba to accomplish effective improvement of the public sector;

G. advice requested and at its own initiative regarding concrete improvements for the public sector, partly based on a concrete vision on the development of Aruba.⁷⁰⁸

The SDBA has published several books and reports on the broader topics of poor governance and corruption in Aruba and more specific topics such as the ongoing deficits in the annual state budgets, election fraud and bid rigging.⁷⁰⁹ SDBA also organizes conferences and symposia with local and international speakers. SDBA has a small annual budget which is the result of donations and the NIS Aruba research was partly subsidized by the central government.⁷¹⁰

Policy reform

SDBA is a CSO which is actively engaging with government, governmental organizations and other stakeholders such as the Central Bank Aruba, Supreme Audit Institution and Social Economic Council striving for anti-corruption policy reform initiatives. Working as a CSO on anti-corruption always brings with it the risk that those in power try to defame the watchdog CSO by means of false accusations. Generally speaking SDBA is a small but active and well-known CSO on anti-corruption. It is too small to realize a system change on its own yet its impact might be much bigger if the reforms and COHO become effective.

Another CSO active in anti-corruption is Foundation Nos Ta Aruba. This Foundation has recently filed a case against a family member of the prime-minister because of alleged corruption in the trading of land.

The judge ruled that their allegations were false, the Foundation had to rectify its claims.⁷¹¹

Sub-conclusion

The pillars civil society organizations consists of a wide range of CSOs in terms of nature, size, level of professionalization and social impact. It is therefore difficult to conclude with the overall strength of this pillar. There are very important CSOs which provide essential services and care in the social domain. However, in some cases their functioning is depending on subsidies and donations, which make them weak in terms of sustainability. On the other hand, there are individuals who actively initiate activities to hold government accountable, especially in relation to environment protection and anti-corruption. Their impact in terms of policy reform is still limited.

708 Stichting Deugdelijk Bestuur Aruba/ Over de Stichting. Link: <https://deugdelijkbestuuraruba.org/over-de-stichting/> (accessed 12/01/22)

709 Stichting Deugdelijk Bestuur Aruba (2022). Publications. Link: <https://deugdelijkbestuuraruba.org/nieuws/> (accessed 12/01/22)

710 Stichting Deugdelijk Bestuur Aruba. Jaarrekeningen 2020 and 2019.

711 24 Ora. 16 December 2020. FUNDACION NOS TA ARUBA MOET RECTIFICEREN. Link: <https://nederlands.24ora.com/2020/12/16/fundacion-nos-ta-aruba-moet-rectificeren/> (accessed 14/01/22)



Structure and Organization

The Chamber of Commerce and Industry (COCI) in Aruba is the official body where businesses need to be registered.⁷¹² There is a broad variety of legal business identities to facilitate doing business in Aruba. On its website the COCI offers general information on the economy of Aruba as well as registration procedures for businesses. Information on specific or individual businesses or overall (business) statistics can be obtained upon request.

Several public duties are privatized in several state-owned entities (SOE), with a legal form of LLC and foundation.⁷¹³ Collectively the government owned LLC are responsible for a large part of Aruba's GDP. Because these LCC are businesses with a public interest they are subject to governmental budget and audit legislation.⁷¹⁴

Aruba has several business associations, such as the Aruba Hotel and Tourism Association (AHATA) and Aruba Trade and Industry Association (ATIA), representing the tourism and

the trade sector, the Aruban Bankers' Association (ABA), representing the financial sector.⁷¹⁵

In the following sections the business sector is assessed along three dimensions.⁷¹⁶ First the institution's overall capacity to function will be described, by focusing on resources and independence. From there, their internal governance will be assessed by reviewing three indicators: transparency, accountability and integrity. At the end, the role of the business sector in contributing to the overall integrity of the national governance system will be assessed. From a legal perspective there is an enabling environment for the formation and operations of individual businesses, though in practice there are some burdens. The laws governing the establishment, operation and closing down of businesses are laid down in the recently adapted Book 2 of the Aruban Civil Code and more specifically in several national ordinances, that can all be found on the website of the COCI.⁷¹⁷ In most cases, businesses need a general business license and several specific licenses to be

712 Businesses that are legal persons (rechtspersonen) have additional requirements, e.g. registration of the notary deed of establishment. Bearer shares are with the introduction of book 2 Civil Code no longer accepted, as they lack transparency in determining beneficial ownership of the business.

713 State owned LLC (Overheidsvennootschappen, ONVs), in which the country of Aruba is the major shareholder. See for a more extensive account: Mrs. Lorraine de Souza, Private Zaak, publieke taak, Overheids-NV tussen ondernemingsbelang en publieke verantwoording, University of Aruba 2010.

714 Country of Aruba holds a majority of the shares (51% or more) in these state-owned LLC (ONVs). See also pillar 4 on the Public Sector. There are more or less 13 ONVs and 20 Foundations in which government participates, according to Mrs. De Souza 2010. Often these ONVs hold a monopoly. A general reluctance within the governmental departments for opening up the market (e.g. telecom) was mentioned by respondents.

715 The role of these associations on stimulating integrity in business was not investigated in this study. Membership of these associations is not mandatory by law.

716 NIS Assessment Toolkit 2012, p. 17-18.

717 Mandatory regulations with regard to legal entities under private law, such as private limited liability companies (BVs), limited liability companies (NVs), VBA's, foundations and associations are since January 1st, 2021 contained in the Civil Code, Book 2. All requirements to establish a legal entity can be checked with the Chamber of Commerce. The incorporation of legal persons is done by the execution of a notarial act. The founder of an LLC does not have to be a citizen of Aruba but one of the directors – a limited liability company is allowed to have more than one director – has to be registered on the island. Legal entities like NV, BV and VBA do need a business permit that needs, according to National Ordinance establishment of business, to be requested at the Ministry of Economic Affairs. Apparently this can be a lengthy procedure (red tape), as for some licenses operational inspections and clearances are needed that are controlled through the justice department.

operational, depending on the branch of activity.⁷¹⁸ Sole proprietors and partnerships of Aruban national descent are exempted from the general business license requirement.⁷¹⁹

With regard to the issuing of business licenses the Minister of Economic Affairs is legally authorized to set conditions regarding the nature and the place of business, and also concerning the financial ability of the applicant and the way the business will be financed.⁷²⁰ A business license can legally be refused, or even revoked, in the interest of public order, peace and general interest of Aruba, but it is unclear if this actually happens in practice.⁷²¹ Separate trade permits are issued by several ministers, depending on the business activity. Several licenses are needed for one business, depending on the line of business in which the entity is operational, like food business, tourism, financial service or construction. A separate National Ordinance on Permits regulates the issue of permits per trade, authorizing various ministers.⁷²² Restaurants, bars, cafés, nightclubs must apply for a license at the Ministry of Public Health. Permits for starting a hotel fall under the authority of the Ministry of Justice.

Although establishing or operating a business without the required permits is officially not allowed, in practice it is possible that businesses are allowed to be operational without a permit, but with a permission letter (locally called 'permiso') which is specifically issued by the respective minister in charge.⁷²³ This personal circumvention of the permit regulations is severely criticized as it enhances the risk of integrity violations or corruption.

After the business license and required additional licenses have been granted, businesses are registered at the Chamber of Commerce and Industry.⁷²⁴

The Civil Code contains provisions regarding compliance with contract procedures. The protection of intellectual property owned by businesses (e.g. tradename, brand, copyright) in Aruba is arranged by law and in practice by the installation of a Bureau where complaints can be made.⁷²⁵

Resources

Aruba's legal framework is business-friendly, although costs to start a business may add up due to the required licenses. In practice, procedures for obtaining all the necessary permits are time-consuming and lengthy and

718 Business Licensing Ordinance (Vestigingsverordening AB 1990 no. GT 55) Aruba, art 2 v. Guidelines on the Business Licensing Ordinance are given by the Department of Economic Affairs, Commerce and Industry, which can be found online. Several licenses are needed for one business, depending on the line of business in which the entity is operational, like food business, tourism, financial service or construction. A separate Ordinance on permits (Vergunningenverordening AB 2002 no 2) regulates the issue of permits per trade, authorizing various ministers. Control by the Department is needed to ensure that a business operates within their established goals and according to the permit requirements. Business licenses have to be renewed annually. More information on the requirements of each required permit can be found on the site of the Chamber of Commerce and Industry.

719 Although the rules apply for 'landskinderen', born nationals, the respondent mentioned that there are some persons to whom exactly this exemption applies. Some nationals with south American roots can apparently be excluded from the exemption, which was reported as unjust discrimination.

720 Art. 6 Business Licensing Ordinance (Vestigingsverordening AB 1990 no. GT 55) Aruba.

721 Ibid. Art. 5 and 7

722 National ordinance on permits (Vergunningenverordening), AB 2002 no 2

723 In practice it happens that before officially issuing the permit, the Minister is already contacted by an entrepreneur, sometimes even through department officials, for a 'permiso', a permission letter issued personally by a minister for the business to be operational before the permit is issued. Some respondents mention this happens especially for befriended connections of a minister. Also for residence permit it happens that a permission letter is used to travel in and out the island. Some permits are temporarily and minister might demand loyalties or financial contributions for campaigning. Although these personal ministerial permissions might have practical advantages, these practices limit transparency and provide a context for corruption, as was demonstrated in the Ibis case.

724 For registration there are fees to be paid by law. Not verified was if registration at Labor department needs to take place too, as is the case on other islands in the region.

725 There is a Bureau for Intellectual Property and Aruba is a member of international IP treaties.

(sometimes, judging by the complaints) without sufficient transparency on reasons of delay. It is common for companies to have to wait unreasonably long before receiving the necessary documents. The delay is believed to be a result of bureaucracy but some claim the permit system is intentionally set up this way so that entrepreneurs need to circumvent the procedures by falling back on personal contact with a minister or his intermediaries, enhancing a system of clientelism.⁷²⁶ Legally, an administrative procedure (LAR procedure) can be started to speed up licensing procedures, but in practice this can be a troublesome, as conditions to start procedure are not always clear and are not always met.⁷²⁷

In practice, also because of the absence of transparency in the licensing process, instead of filing a legal objection, entrepreneurs will try to follow up with the official requirements, or try personally, some by means of recommended legal aid with an entrance, to contact the minister in charge, in order to speed things up.⁷²⁸

In the media it was mentioned that governmental initiatives were taken to reduce red tape (bureaucracy), but

it remained unclear how, by which departments and to what extent.⁷²⁹ Nor is clear what will be the effect of measurements of the newly installed government that will address good governance in the public and private sector.

Independence

There are legal safeguards to prevent unwarranted external interference in the activities of private businesses. Public officials can legally be excluded from being a board member or a shareholder in organizations that are in regular contact with the department of public administration.⁷³⁰ As mentioned before, in practice, due to red tape in procedures, some entrepreneurs directly address a minister to obtain the required permission. The Ibis case is a clear example of unwarranted interference of a minister in private businesses, not only in the phase of establishing a business, but also in regard to obtaining labor permits for foreign employees.⁷³¹

Once established and registered, public officials in general do not actively interfere in activities of private businesses, nor influence the registration procedure within the Chamber of Commerce and Industries.^{732 733} How-

726 Land issue for business purpose was mentioned as an example. Currently part of criminal investigation in the Avestruz case. In the Ibis case labor permits issued by the minister were an example of clientelism.

727 Administrative procedure is set by National Ordinance (Landsverordening administratieve rechtspraak, LAR) and is twofold, first objections have to be made with the governmental department, which leads through a separate administrative procedure in front of a commission (LAR commissie) before appeal at the Court is possible. In case of a partially rejected objection, it is legally not (always) possible to appeal in Court. According to respondents this loophole is sometimes abused by departments, causing deliberate delay to frustrate the issuing of a license. Delay causes vulnerability for corruption, as business owners get demotivated and try to circumvent the permit system and besides, legal costs add up.

728 Respondents mentioned legal professionals sometimes market their qualities, claiming to have direct access to a minister and/or authorities.

729 Respondents mentioned practical issues, divided over several governmental departments, without effective coordination and transparency about the process or outcome. There is, nevertheless, some room for optimism, especially after the recent developments in the bilateral reform agenda with the Netherlands; Hessels, 'from red tape to red carpet', April 2021, website SDBA. In a press conference, the PM mentioned improvements.

730 National Ordinance Legal and Material Rights and Obligations of Civil Servants (LMA), art. 55, 56, 57. There is also a safety screening for delicate positions, set by National decree, both in public sector but also within SOE and foundations. See LANDSBESLUIT, houdende algemene maatregelen, van 12 mei 2006 ter uitvoering van de artikelen 15 en 16, derde lid, van de Landsverordening Veiligheidsdienst Aruba (AB 2002 no. 115) (Landsbesluit aanwijzing vertrouwensfuncties en veiligheidsonderzoeken).

731 After investigations in several criminal cases (e.g. Ibis, Flamingo, Avestruz, Diamante) it can be concluded that confidence about absence of interference of public officials in the business sector is not very high in Aruban society, as is confirmed in the outcome of the Corruption Survey 2018 held by the Central Bank of Aruba. Entrepreneurs in Ibis declared they had no other alternative than bribing the Minister and his cronies;

732 However, a respondent mentioned a situation in which a new hired staff member provided internal information to a Minister on a regular basis.

733 Financial detective Mrs. Banis (Landsrecherche) is currently in the final phase of publishing a master thesis in Dutch law at the Open University on 'Bribery in business in Aruba'. The preliminary outcomes of her research are not part of this assessment.

ever, this cannot be said about the activities and operations of the public, state-owned LLC, as ministers like to have an influence in their affairs, for (achieving) political goals.⁷³⁴

Although the registration and the granting of licenses are based upon clear rules, public officials are involved in the execution of the licensing and permitting process for private businesses, as well as the actual registration of a business at the COCI. They accept or withhold applications by assessing the completeness of required data.

When assessing the independence of the business sector, there is an uneven playing field noticeable. Regularly governmental information (department or ministry) is selectively shared (by ministers or their trusted staff) with individual (state-owned or private) companies.⁷³⁵ There is no (competition) authority which monitors whether competition is fair or whether there are examples of unfair competition such as the establishment of cartels or mergers.⁷³⁶

The National Ordinance on administrative law (LAR) and the Civil Code have provisions on complaint procedures for businesses which seek redress in the case of undue external interference. There is no complaint procedure

before an Ombudsman, as this institution has not been established in Aruba yet.⁷³⁷ Compensation procedures in case of undue state interference are not explicitly laid down in ordinances and decrees; however, financial compensation is legally accessible in civil law court procedure.⁷³⁸ The COCI sometimes practically functions as a complaints institution for businesses, but officially it does not hold such a position.⁷³⁹

Transparency

Although there are a few legal provisions to ensure transparency in the activities of the business sector, businesses are not required by law to make their annual financial accounts publicly available.⁷⁴⁰ According to the law, businesses must file their annual account at the COCI but can opt to make their accounts not publicly available. Many business entities do not have their annual accounts publicly available; this includes the government-owned LLC (SOE) and the various governmental foundations.⁷⁴¹ Accordingly, there are no uniform rules on the form and content of these annual accounts, nor is the official declaration by a registered accountant mandatory. A legal requirement is that accounts must be registered within eight months after the end of the financial year.⁷⁴² In general, businesses, including the government-owned, do not make their financial accounts publicly available.⁷⁴³

734 See for a more extensive account on the ONVs, Mrs Lorraine de Souza, Private Zaak, publieke taak, Overheids-NV tussen ondernemingsbelang en publieke verantwoording, University of Aruba 2010. Especially the lack of adequate corporate governance legislation and absence of uniform policy on governmental participations (deelnemingenbeleid) was signaled. Ministers do not always act 'at arm's length' towards the ONVs (as is OESO required for these public enterprises), and accordingly relate these (financially) in personal political objectives. Several respondents mentioned this. See also extensively A. Hessels on website SDBA of unlawful (political) intervention within SOE. SOE participate financially in numerous projects set up by ministers.

735 Mentioned by respondents in various pillars. The waste management company Serlimar and state-owned telecom company Setar were given as examples. Digicel complained in the past about unfair treatment. Actual depth of difference in the playing field was not further investigated.

736 A respondent suggested to establish such an authority or to make an instrument for the Chamber of Commerce.

737 However, there is a National Ordinance Ombudsman, but not an independent person nominated.

738 It does not seem to take place often that business hold government liable for state interference, and was not studied in this assessment.

739 According to former Director of the Chamber and by other respondent.

740 Accordingly the financial statements must contain at least a balance sheet and profit & loss account, including explanatory notes. Audit reporting standards depend on the type of organization. This was not extensively part of this study.

741 Respondent mentioned this, though a legal source could not be found.

742 This period is extendable with six months. Civil code, book 2. See <https://arubachamber.com/pages/business-in-aruba/filing-of-the-annual-financial-statement/>

743 Most companies do have an accountant, as their administration needs to be accurate by law (e.g. civil code). Only larger companies lawfully need a statement of approval issued by a registered accountant. Nevertheless, articles of association (statuten) of a company can demand an approved statement and discharge by its shareholders.

The COCI demands that companies register some specific company data in their company register.⁷⁴⁴ The COCI monitors the follow-up of this requirement itself and has the option to file a fraud complaint when information is submitted incorrectly.⁷⁴⁵ There is no register for ultimate beneficial ownership in businesses.⁷⁴⁶ There is a register for Foundations.⁷⁴⁷

Having drafted specific guidelines per sector for the filing of quarterly reports, the Central Bank of Aruba (CBA) monitors compliance by means of auditing the businesses individually. CBA is a professionally staffed regulator that oversees the financial sector on compliance with financial integrity regulation, including credit institutions, institutional investors, insurance brokers, investment institutions and administrators, and trust service providers. In addition, the Financial Intelligence Unit (FIU) oversees any unusual transaction reported. The FIU is also – by membership of the Kingdom – a member of the Financial Action Task Force, an intergovernmental body to combat money laundering and terrorist financing.⁷⁴⁸

Accountability

General rules to govern oversight of the business sec-

tor are established by recent new company law (Civil code book 2) on legal persons. Companies are allowed to address their internal issues by their own established charters.⁷⁴⁹ The recently adapted company law provides general provisions on the roles of boards of directors, supervisory boards, and shareholders for legal persons. These provisions are in general applicable to all legal persons (e.g. Foundations, LLC etc.). A supervisory board is not mandatory by law, but internal charters set up by a notary may prescribe the presence and tasks of such a board.⁷⁵⁰

Specific corporate governance provisions are not applicable for government-owned companies (SOE) and foundations, including a Corporate Governance Council, as well as a corporate governance code, which may both be absent.⁷⁵¹ ⁷⁵² It is therefore unclear how, for example, these SOE are managed (good governance), what appointment and discharge procedures are in place for board members and supervisors (commissioners) and how each organ is supervised. It is also important to see what authorities different stakeholders have, how and when shares are obtained and when these can be transferred. Furthermore, the legal and practical role

744 The operation of the Chamber itself is laid down in a National decree on the company register (Handelsregisterbesluit).

745 Not filing is a punishable crime. The Chamber can report at the Public Prosecutor's office (O.M.)

746 Which is an important measure to combat money laundering. Aruba is a medium-high risk country regarding money laundering, according to the National Risk Assessment approved in February 2021. See for more the website of FIU Aruba.

747 Respondents mentioned that most politicians have their own private foundation, which is used, among others for collecting campaign donations. Control and audit on the activities for which the foundation was established is reportedly marginal to zero. The Ibis case showed abuse of foundation goals by a corrupt Minister.

748 Respondent mentioned that supervision on compliance with pension fund contribution is currently lacking in the private sector. Suggested was to let the Social Insurance Bank (SVB) supervise this.

749 Called also articles of association (Statuten). E.g. art. 18 book 2 CC of Aruba gives companies the opportunity to organize governance in the legal person.

750 The board will at least supervise the management of the company, and has the authority to appoint, suspend and dismiss any manager. If the constitution of the board of supervisory directors is not specified in the articles of association, the members can be appointed, suspended and dismissed by the annual general meeting of stakeholders.

751 Towards the end of 2020, by order of the commission Corporate Governance Aruba, the Themis Institute for Governance & Leadership executed a basic research (Nulmeting) about compliance of the basic principles of corporate governance within the (semi-) public sector (accordingly 30 out of 42 selected entities replied). An existing draft decree on Corporate Governance, made by the Central Bank of Aruba, was referenced for the research. More or less 40% of entities were not compliant with basic principles of governance. Furthermore there were large differences found between entities; entities under supervision of the CBA in particular scored better.

752 A Corporate Governance Code on SOE and governmental is present in other countries by National Ordinance. Reportedly this is duly needed in Aruba and is present in all other countries within the Kingdom. Respondents reflected skeptically on the legislative plans of the commission that should prepare a draft ordinance. Moreover, according to the respondent there is no guarantee for (uniform) enforcement of non-conformity after legislation is made, approved and ratified. Supervision and enforcement of new integrity legislation is repeatedly mentioned as an important issue.

and influence of the politically responsible minister towards these entities should be clarified in order to enhance transparency and accountability.⁷⁵³

There is insufficient supervision of the enforcement of corporate governance, especially within government owned companies and foundations.⁷⁵⁴ The fact that annual financial accounts of SOE and governmental foundations do not have to be made public adds to the lack of transparency and accountability.⁷⁵⁵ As transparency is not met with regard to information from supervising boards and oversight bodies, it is difficult to determine whether good corporate governance is being ensured in practice and being effective or not in the private sector. As argued by respondents, compliance with corporate governance rules is not common in Aruba.

Integrity mechanisms

While the financial sector in Aruba, by law, does need to have integrity mechanisms in place, in general individual businesses do not have regulations or codes to ensure integrity. Government legally established a Bureau of Integrity as a force against integrity violations in both public and private sector, but this institution is still not operational.⁷⁵⁶ An Integrity Chamber was also promised but was not yet established.⁷⁵⁷

The business sector at large in Aruba does not have a general code of conduct or anti-corruption code. However, the financial sector entities have codes of conduct and some larger companies outside this sector do have internal codes, although these are usually

more focused on working processes.⁷⁵⁸ Overall, integrity promotion is not seen as a priority on the agenda of most common businesses. This might change now that a number of criminal proceedings against public officials have been instigated which concern undue involvement in business affairs. This at least raised integrity awareness.

Some professional associations have a system of self-regulation on integrity. Accountants (chartered), registered with the Dutch accountant's organization (NBA), are bound to their code of conduct.⁷⁵⁹ Attorneys usually join a bar association. Complaints regarding unprofessional behavior of individual lawyers may be subjected to the supervisory council of the bar.⁷⁶⁰ In addition, the country ordinance allows complaints against a lawyer to be filed with a supervisory council.⁷⁶¹

No whistleblowing policies exist, not in the public sector nor in the private sector. Nor are there blacklists of companies involved in corruption and money laundering. No provisions are in place that require bidders for tender contracts with the government (procurement) to have ethical programs, such as anti-corruption agreements or business principles and corresponding compliance mechanisms.

The legal system does contain provisions regarding private sector bribery. As mentioned earlier, under the Penal Code this is a punishable offence and may be punished with a prison sentence or a monetary fine.

753 See for example the National Ordinance on Corporate Governance for state owned LLC and foundations in Curacao or Sint Maarten.

754 Several respondents mentioned this. In that regard, suggestions were made to give the Supreme Audit Institution (ARA) more authority to supervise companies on compliance with the legislation.

755 Ministers are reportedly always well informed about the financial status but may choose not to disclose or disclose for political gain.

756 Apparently due to lack of funding, as an effect of the Covid-19 pandemic. Integrity supervision is also part of the negotiation between the Netherlands and Aruba about the tasks and functions of the COHO, the reform entity that will be established on Kingdom level.

757 Promised by government WCI. Critics doubt if this Chamber will be established and running, due to the fact that reform and supervision for the coming years will be established on Kingdom level (COHO).

758 E.g. Employee guideline Digicel was mentioned. Moreover, the notion of what a code of conduct exactly needs to articulate, in terms of ethics, seems lacking. The effectiveness of sectoral rules can only be measured by the number of complaints within that sector and related information is not sufficiently available nor was it studied for this purpose.

759 The code covers issues such as integrity and objectivity. Complaints regarding professional behavior of individual accountants may be subjected to the 'Accountantskamer'.

760 Although this membership is not mandatory in order to be an attorney on Aruba, unlike in the Netherlands.

761 Raad van toezicht. See: <https://www.ova.aw/nl/klachten-en-geschillen/>

Businesses can also lose their permit in an administrative procedure.⁷⁶²

Overall, the priority given to integrity in ordinary businesses is low, both in law and in practice. While there are obligatory integrity instruments for the financial sector, other sectors remain unregulated when integrity is at stake. The integrity promotion and thereby corruption prevention in these sectors is underdeveloped.

Integrity supervision by Central Bank of Aruba (CBA)

The CBA has a central role on regulation and supervision of compliance with regulation of money transfer companies and trust service providers.⁷⁶³ Integrity supervision, including the prevention of money laundering and terrorism financing, takes place on a broader range of entities.

Integrity supervision on credit institutions, insurance companies, money transfer companies, trust service providers and company pension funds

Integrity supervision is geared towards controlling the integrity risks at the financial institutions. Integrity risk management comprises prevention of involvement in criminal activities (including but not limited to money laundering and terrorist financing) and other breaches of the law or acting contrary to the generally accepted standards. In addition, it promotes ethical behavior and an ethical corporate culture and the prevention of conflicts of interests. Integrity supervision is grounded in the various sectoral supervisory state ordinances and related regulations and directives.⁷⁶⁴

In addition, credit institutions, life insurance companies, money transfer companies, trust service providers and a large number of non-financial professionals (e.g. legal professions, accountants, trading companies, real estate agents) must also comply with the State Ordinance on the Prevention and Combating Money Laundering and Terrorist Financing and (international oriented) financial sanctions regulations, which CBA supervises in practice by random selection or when it signals specific red flags.⁷⁶⁵

Ethical conduct of the business

Acting with integrity is the institution's own responsibility and is in the interest of the institution itself. Institutions should pursue an adequate policy on the ethical conduct of their business and organize their business operations in such a way that the ethical conduct of their business is safeguarded.⁷⁶⁶ The above entails the awareness, promotion, and maintenance of ethical conduct within all layers of the organization. The institution itself decides how substance will be given to the policy and how the business operations will be organized, albeit that the supervisory state ordinances indicate the minimum objectives of the policy and business operations, avoiding conflicts of interests, combating money laundering and terrorist financing, complying with the rules laid down by or pursuant to the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing (AML/CFT State Ordinance) or any other statutory regulation concerning the prevention and combating of money laundering and terrorist financing, discouraging criminal offenses or other violations of the law by the institution or its employees, which could prejudice the confidence in

762 Unclear is whether this actually happens in practice.

763 The Integrity Supervision Department of CBA is entrusted with the execution of the State Ordinance on the Supervision of Money Transfer Companies and the State Ordinance on the Supervision of Trust Service Providers. This means that the Integrity Supervision Department is primarily responsible for the licensing / registration and supervision of money transfer companies and trust service providers. The information used in this part of the research is taken directly from the website of the CBA.

764 State Ordinance on the Supervision of the Credit System (Landsverordening toezicht kredietwezen) (SOSCS); State Ordinance on the Supervision of the Insurance Business (Landsverordening toezicht verzekeringsbedrijf) (SOSIB); State Ordinance Supervision Money Transfer Companies (Landsverordening toezicht geldtransactiebedrijven) (SOSMTC); State Ordinance on the Supervision of Trust Service Providers (Landsverordening toezicht trustkantoren) (SOSTSP); State Ordinance on Company Pension Funds (Landsverordening ondernemings pensioenfondsen) (SOCPF). All these Ordinances are placed on the website of the CBA, most in both Dutch and English. Supervisory directives and other regulation (e.g. questionnaires, guidelines, policy papers), all placed on the website of the CBA.

765 The information used in this part of the research is (largely) taken directly from the website of the CBA.

766 Directive on Sound Business Operations (Richtlijn integere bedrijfsvoering Aruba (Rib)) , enforceable as of September 2015. The directive comes with a list of annexes on criminal, financial, supervision, tax and other antecedents.

the institution or the financial markets, discouraging relationships with clients or other business relations that could prejudice the confidence in the institution or the financial markets and discouraging other acts by the institution or its employees, which are contrary to what is accepted according to unwritten law to such an extent that the confidence in the institution or in the financial markets could be prejudiced by it.

These standards are further specified in the Directive on Sound Business Operations (art. 2 till 16). The institution should carry out a systematic analysis of the integrity risks. Based on the outcome of such an analysis, the integrity policy and the related procedures and measures are drawn up and implemented.⁷⁶⁷

Integrity and suitability

Reliable and suitable directors, other (co-)policymakers, members of the supervisory board or of the body of the institution that has a task similar to that of the supervisory board, and reliable holders of a qualified holding contribute to a stable and ethical financial sector. The purpose thereof is that clients and other stakeholders can rely on financial institutions. For that reason, the integrity and/or suitability of aforementioned persons is/are screened by the CBA. The integrity screening is based on facts, circumstances, and antecedents showing that the behavior exhibited by the person concerned is not in line with an ethical performance of the duties of the person concerned. The suitability screening is aimed at the assessment of the knowledge, skills, and professional conduct of the person concerned. The suitability screening takes into account the (intended) position of the person, the nature, size, complexity, and risk profile of the institution, and the composition and performance of the collective. The statutory requirement of integrity and suitability should be met on an ongoing basis.⁷⁶⁸

All these requirements, whether laid down in sectoral State Ordinances or the Directive on Sound Business Operations are supervised in practice by the CBA. CBA has the authority to impose sanctions, including high fines. Overall this supervision on integrity is a strong factor within the business pillar, which should be lauded.⁷⁶⁹

Anti-corruption policy engagement

In general, the business sector does not engage with or provide support to civil society in combating corruption. Business organizations, like ATIA as a civil society organization, do take part in governmental planning, but it remained unclear whether associations or individual businesses are directly involved in establishment and/or execution of anti-corruption policies.⁷⁷⁰

Sub-conclusion

Overall, the business sector is a vulnerable pillar in the national integrity system of Aruba. The legal framework for starting a business in Aruba is thorough, although corporate governance legislation is still in development. In practice, however, lengthy permit procedures might hamper the establishment of new businesses and are in practice reason for entrepreneurs to circumvent procedures and requirements via personal contact with public officials and ministers.

Although the independence of private businesses is to a large extent ensured by law, in practice there are several examples of undue interference by public officials, including ministers, which have been investigated in several criminal cases, leading to the convictions and ongoing criminal investigations into businesses, officials and politicians involved. This called for reforms on integrity, which is a spearhead in the policy plans of the current government.

767 The information used in this part of the research is (largely) taken directly from the website of the CBA.

768 Supervised institutions lay the implementation of statutory requirements down in a Handbook, including practical compliance procedures. A compliance officer is internally appointed to guard effective implementation and report integrity issues to the CBA.

769 CBA developed an enforcement policy on compliance with legislation. The policy includes various instruments on repairing violations, punishing and publication of imposed sanctions.

770 www.atiaruba.org: "ATIA is involved in several government advisory and consultative committees and also on the board of several public entities and enterprises. ATIA also maintains informal and formal contacts with the government, politicians, local social entities and international associations." We did not find practical engagement in anti-corruption programs, nor in other CSO's within the business sector.

Rules on integrity exist within some larger companies and the financial sector, but not in broad extent and not in the smaller businesses. In practice there is insufficient awareness of integrity in the private sector, although there is more awareness in those financial branches that are supervised by CBA or through self-regulation (e.g. accountancy and the legal sector). Although there is a need for it in order to create transparency and monitoring, corporate governance legislation within (privatized) business entities with a public interest is still missing, but is part of reform plans by the current government. Practical implementation and enforcement of actual compliance are matters that deserve special attention.

Currently, the business sector is not involved in anti-corruption policies and there is no collective action together with civil society or government in fighting corruption. However, in reform plans of the government, set up in cooperation with the Kingdom Council, there is specific attention to structural and ongoingly strengthen the rule of law, integrity awareness, good governance and the prevention and combatting of corruption, which includes cooperation and active participation of the private sector.⁷⁷¹

771 Masterplan Repositioning our sails, November 2020 and Landspakket Aruba, Uitvoeringsagenda's till 30 June 2021, section H. The complicated permit system is also matter of analysis, section E.



CONCLUSIONS FROM THE NIS ARUBA ASSESSMENT 2022

The previous chapters provided an overview of the extent to which the pillars of the Aruban National Integrity System contribute to ensuring integrity and good governance in Aruba. The assessment indicated whether formal provisions were present that are oriented towards promoting integrity and preventing corruption. At the same time we looked into how these provisions actually work out in practice.

The foremost conclusion that can be drawn is that the judiciary is a relatively strong pillar within the NIS Aruba and institutions like the Central Bank of Aruba and the Landsrecherche are strong organizations within other pillars. Nevertheless the NIS Aruba is relatively weak. There are promising developments to be noted but at this moment in time the political, social, economic and cultural foundations and most of the pillars do not provide the environment needed to bring about a strong national integrity system. As such our conclusions are not new. Weaknesses and challenges on this aspect have been highlighted in various reports, both in the past and more recently, and various suggestions were made to improve the system of checks and balances. In 2011 the WODC already presented an analysis of good governance and integrity in Aruba. In its analysis it reported on the absence of independent information and transparency, malfunctioning of the dualistic/hybrid system of power in a small scale society where parliament did not effectively control government; a rigid hierarchy with ministers claiming absolute and unlimited power and being indifferent towards criticism from civil society, high councils of state and the media. This does not mean that there are no promising developments which can become the important incentive for the NIS Aruba to develop in the right direction. Current government has declared integrity to be one of its main priorities. Various law(s) proposals have been initiated or enacted such as the laws on the financing of political parties, the establishment of the Integrity Bureau Aruba and the Ombudsman. December 2021, the Landsverordening integriteit ministers was enacted. If these and other legal provisions will be implemented accordingly and enforced effectively, thereby strengthening the public

trust in the integrity of the government, this might have a positive effect on the entire NIS Aruba. At the same time final agreements are made between the Netherlands and Aruba about the conditions of the financial support provided by the Dutch government. Many of the weaknesses within the NIS Aruba were already mentioned in the Masterplan 'Repositioning Our Sales' and are therefore part of the required conditions for reform.

A remark which is deemed appropriate, is that as the size of the pillars differ, it is easier to assess integrity safeguarding of a pillar which comprises of one institution, as is the case with the Supreme Audit Institution, compared to pillars composed of countless organizations. Here one can think of the pillars such as the business sector, political parties or civil society organizations. In these pillars nuances at the meso- or organizational level are present.

When reading the descriptions of the pillars, it is important to realize that the NIS methodology is a system analysis. Every strength or weaknesses within the foundations or pillars has an immediate effect on other pillars and the system as a whole. This implies that any positive development or effective policy reform in the coming years can bring about reinforcing mechanisms which will have a positive effect on the NIS Aruba as a whole.

In general, there is a mechanism noticeable in Aruba whereby reports, conclusions and findings which suit one's party's own agenda are well embraced, whereas criticisms and comments regarding own policies are dismissed relatively fast – in the strongest terms and emotional responses in public and in (social) media. The latter applies all the more if the criticism isn't 'home-grown', but from European Dutch origin, due to the colonial history and – the still existing – dependence on the Netherlands. The NIS-team is well aware this also applies to this study. Therefore, it can be expected that critical remarks, findings and conclusions of this NIS-study that will not go down well, will be questioned or – whether or not politically motivated

- even denied, possibly under the pretext of being nothing more than demonstrations of prejudice and ignorance. By using Transparency's NIS methodology, the strengths and weaknesses of individual pillars and the integrity system as a whole are recognized. This way opportunities on how to strengthen the national integrity system become concrete.

The NIS Aruba has the following distinctive features.

The unique characteristics of a small island

In all the available literature and research about Aruba the special position as a small island state receives attention. Throughout history Aruba has had to deal with turbulent times of colonialism and forces of nature. Its geographic location means that whatever the circumstances, its people had to be resilient and find their solitude within the family communities. The insularism has had the effect that its people experienced and considered Aruba as the center of the world, making it difficult to accept criticism from outsiders, in particular when this is criticism voiced by the Netherlands. Another related mechanism is the distance and critical approach towards any non-Arubans.

Informal circuits and family networks are stronger than the formal structures

Although the NIS Aruba formally consists of 13 more or less isolated pillars, the reality is somewhat different. Aruba is known for its strong family ties. These family ties go back a long way and form the actual structure and social fabric in its society. Family networks form relatively closed, strong and powerful communities which actually are in power and have ties across all pillars. Leading families form the important social capital in the Aruban society, but their strength is also a weakness to the NIS Aruba. Their power and influence stretches across all important (democratic) institutions and organizations. This implies that if you are not part of such a leading family network, you are at a disadvantaged position and will have more difficulty in obtaining important information, being eligible for public positions and public services. These networks have an exclusive effect and directly minimize the formal democratic checks and balances. Key institutions within the NIS Aruba are ruled by leading families and their political parties. This becomes apparent in the

many examples of revolving doors and cases of conflicts of interest. There are various cases where this mechanism takes on the form of political patronage or collusion because the norms of loyalty, solidarity and exclusiveness lead to a general principle of preferential treatment of network members among one another. Their influence on politics and the business sector is immense. For any policy reform to have effect, it is a necessity that these family ties remain strong bonds without undermining democratic principles such as constitutional rights, independent decision-making and fair competition.

Aruba's public sector is organized in a formal and hierarchical way with a top-down approach. The ministers have a lot of power within the public sector and in relation to parliament (the Staten). In practice, the Staten do not carry out their controlling role adequately and too often support governmental decisions without any form of criticism. In practice Parliament does not exercise effective oversight over the government. This means that the courtroom, rather than Parliament, is often the political arena. As a result, judges are often expected to make decisions in certain (political) issues. Those who are part of a minister's network gain from this strong position and receive preferential treatment in various sectors. This undermines the checks and balances within pillars and the national integrity system as a whole. The way the major political parties have been operating, has led to a form of polarization which has had an enormous effect in various sectors (public sector, private sector and civil society).

Low trust within society

When it comes to safeguarding integrity an important prerequisite is the high level of trust people have in each other and in their institutions. The way the pillars function directly influences the level of trust. Although COVID-19 and the economic recession likely has had an effect on public trust, the decrease in public trust was not as severe as one might have expected. This mainly has to do with the fact that Aruba already was a low trust society. The general public's trust in the legislature and the executive is low because of the ongoing (corruption) scandals and politicization of society. Too often politicians are appointed because of their (family)connections instead of proven quality or expertise. The media is an example of a pillar which

should have several important roles such as informing and educating the public on public issues and political decision-making. However, in practice most media are in favor of either of the two major political parties and have a clear agenda. Amigoe and several online journalists appear to provide objective high-quality news. This leads to polarization which has an even stronger negative effect on the public trust. Another watchdog pillar is also suffering from this low level of trust, namely the civil society sector. There is a wide range of civil society organizations which have the potential to challenge the government by speaking on behalf of the people. However, the extent to which civil society plays a role in demanding accountability from government and contributes to a robust public debate, is limited because many of these NGOs are either 'one-man' or 'one-woman' organizations or generally are not inclined to working together to increase impact for the specific good cause.

Culture of fear/ fear of reprisals (patronage is cause and effect)

The Aruban people love their country, its beautiful landscape and the pace and rhythm of life on the island. This positive feeling exists besides a culture of fear which many of the interviewees referred to. This fear is caused by the widespread patronage and strong family networks that influence private life but also professional careers and success in business. These informal bonds are strong and centralized around solidarity, loyalty and trust. Once you as a citizen question or criticize a member of such a bond this will backfire professionally or personally. This is a systemic reinforcing mechanism which is strong and is both the cause of the fear but also the effect. As a citizen it is wise to become part of similar network or community and experience the protection of the collective. Aruba is not unique in its system of patronage. Although there are negative effects it is also the reality of a small island with a long standing history. These strong family bonds and networks have the potential to ensure interest representation and address issues of common concern in a fair way and build up the social and cultural capital from the bottom.

This culture of fear is related to the culture of shame. The strong family ties and community bonds also imply that one does not speak up when there are concerns

or wrongdoings taking place within ones' community. The general idea is "what happens in the family, stays in the family". As a consequence there are many taboos for which there is a reluctance to speak-out. Here one can think of domestic violence and financial economic crimes.

Decisive role played by political parties

Political parties indicate that it is difficult to find suitable candidates because there is only a small number of educated individuals and the current political culture is not attractive. Politicians suffer from verbal threats and vandalism involving their possessions. Most political parties only have a small group of dedicated individuals but hardly any members which pay a contribution. The decision-making is in the hands of a small group of party members. It is difficult to end up in the top positions of candidates' lists. It is unclear which screening procedures these political parties use in their selection process. The lack of public financing of political parties contributes to a climate where political parties need money and therefore are willing to accept gifts. This is also why it is necessary that individual candidates find funds and donations for their political campaign. This strengthens a network culture; the personal networks are necessary to finance personal campaigns. This strengthens the political patronage culture. The level playing field for new political parties is uneven. They often lack these means of financing and suffer from negative media coverage.

No culture of transparency and reporting

When looking at the overall NIS Aruba, it is fair to say that there is not yet a culture of transparency about formal aspects and daily operations of the pillars and the institutions they are composed of. It is not common to publicly disclose aspects of the decision-making processes, budget, figures, compositions, integrity policies or sources of financing. For example, there are no provisions that require judges to disclose their financial interests, nor does it contain the obligation that information about the appointment and dismissal of judges is to be made public. There is no such thing as a reporting culture, whereby pillars and their institutions report their organizational activities. This has an effect on the accessibility of information for the respective institutions and organizations but also makes

it difficult for citizens and other (watchdog) organizations such as the media, civil society and the, still to be appointed, National Ombudsman to evaluate or monitor other pillars. Checks and balances are thereby weakened.

No urge for accountability

Closely related to this lack of transparency is the aspect of accountability. Each pillar and the organizations it is composed of has an accountability to observe the legal procedures and, at the very least, to take responsibility for the effective implementation of the laws and policies. The NIS Aruba assessment shows that there are various laws and rules in place which are not effectively implemented and nobody is held accountable for this lack of implementation. This is a serious concern and can be used as an excuse by other pillars and organizations to minimize their accountability as well. There is a risk of indifference becoming the norm. On the other hand it can also imply that once the current developments bring about a renewed sense of accountability, this will be an incentive for others.

Supervision is lacking (or only ad-hoc)

The key pillars of the NIS either experience lack of effective forms of supervision or do not carry out their role as supervisor effectively. The dualistic system between the Legislature and Executive in practice does not form an effective way of controlling and monitoring and holding to account the way tax money is spent and policies are made. The Central Audit Institution is one of the high councils of state whose advice is not taken into account by parliament. This is also the reason why the supervision of financial integrity is now done externally. Due to the absence of adequate resources the Electoral Council (including the Commission Finances of Political Parties) hardly plays a role in the supervision of the elections campaign and the financing of political parties. The Ombudsman still needs to be established and appointed. It takes a lot of courage to apply for such a position if there is low public trust in institutions and the culture is one of fear. However, such an institution can only have an impact in its supervision and monitoring of governmental decisions if the basic requirements of available budget, public trust, availability of information and the controlling role of parliament are guaranteed.

Development has been lacking over the years

Because of its small scale, the ongoing social economic concerns, the limited labor market and lack of opportunities for higher educated professionals, the island experiences a continuous brain drain. For qualified students and professionals there are limited career paths and therefore many leave the country to work and reside in North and Latin America or Europe. The Aruban economy remains vulnerable as it is resting on just one sector: tourism. All other sectors are directly related to and thereby depending on tourism. This has had a detrimental effect on the development of Aruba and its people. The way forward has to be supported by an adequate number of qualified people. The University of Aruba has worked hard to educate the younger generation via its bachelor programs and master program but currently is still limited in its means to contribute to the ideal climate for residency. If in the near future, the Aruba Institute for Good Governance & Leadership will be able to reach out to more students and professionals, this can be a strong system impetus for the NIS because this would imply strengthening the integrity, responsibility and sustainability of governance in various public and private sectors.

No academic tradition or international research concerning Aruba: academic insights are lacking

There is no real academic tradition in Aruba. National journals of academic writings from Aruban scholars are almost absent. Most qualitative or quantitative research available was carried out, for instance, by the Central Bank of Aruba. This lack of publications from scholars implies that scientists and scholars have a limited influence on the NIS Aruba. Generally speaking a strong academic tradition can strengthen a NIS because hard and reliable data supports policy-makers and watchdogs in their decision-making and the coming into existence of well-augmented points of view. In addition to that international (comparative) studies can have a similar effect. Aruba, probably because of its size, is often absent in international research. What is a promising development is the position the University of Aruba takes on. In the recent years it has organized and hosted many webinars and conferences on the topic of good governance and integrity. Again, there are promising plans of the University of Aruba and the Aruba Institute for Good Governance & Leadership to strengthen, together with stakeholders, their multi-disciplinary research program.

Lack of information

Somewhat related to the lacking academic tradition and minimal international research on Aruba is the lack of other sources of information. The role for journalism is limited, let alone investigative journalism. Social media plays an important role in the day-to-day lives of Aruban people. The information posted and shared via these means can best be described as contributing to the polarization of the Aruban society. The dominant political parties and their affiliates use these media channels to disqualify other parties. This is mostly done by video, vlogs and images and the intent is to harm the reputation of the competitor. Means such as manipulation, intimidation etc. are used and reliable information is lacking. There are nonetheless also high-quality and fact-based contributions, but their impact has to be made amidst the storm of allegedly fake news and subjective news. Additionally the majority of the Aruban people is lower educated. This makes general public education a concern. Vote casting, developing opinions, effective interest representation and legal protection are less likely if a large part of the population is not able to receive objective information.

Limited number of exemplary figures

With all these distinctive features of the NIS Aruba described above one can understand there is only a limited number of individuals which can be an exemplary figure and that has the ability to motivate people, rebuild trust and be the bridge between the various family networks and thereby creating momentum for change.

No role for ethics and integrity education

Of all governance indicators, the absence of integrity policies and culture and the limited priority given to ethics is lacking the most. In nearly all pillars the integrity policies were either absent or limited. Where there were integrity policies in place, this did not lead to a widely supported culture of integrity. Arrangements on paper are discarded in practice and are merely a form of window-dressing. Integrity as such is not a priority within the public, private or NGO sector, nor is it prioritized in education.

People's indifference towards corruption

Aruba has been dealing with its corruption for a long time. Corruption and bribery are common and as such there is no trust in politics. The corruption is not limited to politics and nearly all other pillars and the institution they are composed of suffer from patronage, conflicts of interest and bribery. Each new government makes the promise to eradicate corruption and part of the policy reform required by the Netherlands is that Aruba works hard to establish a form of good governance. However, the Aruban people are so used to hearing about and experiencing corruption that it has become a mantra which is widely seen as an empty shell ('corruption-tiredness'). If initiatives are taken, such as the integrity plans by the current government Wever-Croes, any investigation or prosecution of a politician, even if it is from another political party, is a confirmation of the systemic corruption. It is therefore essential that small but effective steps are taken which tackle the root cause of corruption.

Legal transplant

Several reform plans have been investigated in recent years, some directly supported by the Netherlands, to ensure rule of law was strengthened. Among others, laws were effectively aimed at strengthening the independence, accountability and integrity of the various pillars. The NIS assessment has found that this led to some issues which can best be ascribed to the phenomenon of legal transplant. Many laws are Dutch law or based on similar laws effective in the Netherlands. There is always a risk that these laws which fit into a legal system and culture of a country such as in this case donor country the Netherlands, in reality form a mismatch in another country with a somewhat different legal system and other culture. This seems to be the case in Aruba as well.

Technical assistance

While in many countries technology has accelerated the road to good governance by using technology in procedures such as public procurement (e-tendering), court proceedings (online documents exchange between parties), transparency of financing (income and expenses of political parties in open data), acquiring licenses and permits (via apps), the pillars and institutions in Aruba appear to sometimes lack a form of technical assistance to implement such technologies.

This is particular the case with monitoring, as there are no adequate systems present, it is all depending on people. The official archiving of parliamentary documents is still done manually, making them not easily accessible. Also the networks of the departments are not connected.

Overall NIS Aruba

Overall it is fair to say that the NIS Aruba is relatively weak. This might not come as a surprise and parts of this conclusion have been communicated before in other reports about Aruba. Most pillars are weak and not able to fulfill their unique and defining role. As a result the shortcomings within each individual pillars weaken other pillars too and thereby the overall NIS deteriorates. Although integrity and corruption are sensitive issues, the researchers experienced that most interviewees were willing to be interviewed and dared to speak out about the strengths and weaknesses of one or more pillars.

There is a strong wish among those interviewed to contribute to the strengthening of the NIS. If in the coming years, the Aruban government sets the example by actively showing it lives up to its own integrity standards, this 'tone from the top' can be the beginning of building public trust and allowing other institutions, such as the Legislature (the Staten) and the Public Sector to function independently and effectively. Systems can improve if several incentives bring about reinforcing mechanisms for the good. A particular responsibility lies with political parties which to a great extent determine the NIS Aruba. Their influence is felt in nearly all pillars.

RECOMMENDATIONS

In the light of the findings of the NIS evaluation, the NIS research team has the following recommendations;

1. There is no quick fix or Grand Model to change a national integrity system overnight. Nevertheless any small step in the direction of strengthening a NIS, reinforces other parts. Therefore it is important for representatives of all pillars, to acknowledge that any good initiative can be the beginning of reinforcing the entire Aruban NIS.
2. A public discussion should be initiated about the role of (friends and family) networks within the Aruban society and the main question to explore is how to keep the positive aspects of these networks without it leading to political patronage and polarization.
3. Despite good intentions to address the political patronage, there is a plausible risk the patronal system will sustain itself on the basis of the short-term benefits and expectations raised. One must remain aware of this obstacle to bring about a change.
4. The public and private sector and also the civil society organizations are to cooperate to reduce corruption and improve the importance of integrity.
5. Thereby the social and economic impact of corruption should be made visible in a qualitative and quantitative way.
6. Furthermore, the electorate's identification with the members of Parliament can be improved by ending the virtually automatic appointing of ministerial posts to the most elected candidates and letting those with the least votes to automatically end up in Parliament.
7. Parliament must use the means available to fulfil its controlling tasks.
8. The archiving, active disclosure, public accessibility and actualization of information by Aruban public authorities in general can be considerably improved. The proactive and reactive disclosure of public information should be ensured by public sector's change in attitude as well as ensuring implementation of technical applications which make archiving and disclosure easier. The way in which the Electoral Council fully discloses its up-to-date information can serve as an example for other public authorities.
9. Reform of the constitutional system of checks and balances by reforming the Staatsregeling, by: 1) separating the election of Parliament and government and by 2) giving the High Councils of State extra authority to strengthen their position.
10. In order to enhance absolute legal independence, the Public Prosecutor's Office should, like elsewhere in the Kingdom, legally be separated from hierarchical influence of the ministry of Justice and Social Affairs.
11. Financial reform should be in line with findings, conclusions and recommendations by Caft and SAI (ARA).
12. Investments in training and development of legal support are permanently needed to optimally support judges in writing judgments.
13. Transparency provisions that require judges to disclose their financial interests should be implemented and integrity courses for judges should be offered in a more structural way.
14. An independent Ombudsman should be appointed. This should be someone without political connections from the past to ensure its independence.
15. It is recommended to further elaborate and provide insight into the procedure prior to the appointment of the chair and deputy chair of the Electoral Council.
16. There is a need for investments in specialized expertise, especially in the field of financial investigations.
17. Abolish the existing practice whereby a Minister can provide temporary authorization of (business) permits by personal approval letter ('permiso').

18. The financial reporting framework has to be strengthened, in order to enable effective financial audits.

19. Government should appoint a press spokesperson who regularly organizes press meetings in an efficient and transparent way and who is authorized, on behalf of the government, to provide content on issues that are addressed by the media.

20. The public education in the form of public campaigns about the damage caused by corruption should coincide with hopeful messages on how the entire Aruban population could gain from more integrity. Local heroes are needed which are successful because they act with integrity.

21. Despite some positive developments in improving integrity and transparency, corruption prevention systems are not widespread enough in either the business or the public sector. Representatives and directors of all pillars and institutions belonging to the public sector should be made accountable for their own integrity.

22. Civil society has to strengthen its efforts towards more transparency, integrity and accountability.

23. Government needs to actively involve CSOs when designing, implementing and evaluating policies.

24. The University of Aruba has initiated education and research on the important subjects of integrity and good governance. Especially the Aruba Institute for Good Governance & Leadership has drafted an important coherent program in which the cooperation with stakeholders is sought and concrete activities planned which focus specific on integrity and leadership but also on the broader picture of bringing global goals in practice. This can be the start of academic research in line with the methodology used in the NIS Aruba. Ideally, lecturers and students use this baseline document to write future NIS Aruba (pillar) reports to evaluate the developments over time. This is a way to start an academic tradition in integrity research.

25. In terms of security, the border control should be strengthened and the location of customs officials should be considered thoughtfully on a risk based approach.

26. Adjustments to the composition, support, resources and independence of the Electoral Council are urgently required, if not essential. Initiation and implementation of the concrete proposals for improvement of the electoral process and strengthening the independence of the Electoral Council, presented to the Prime Minister in 2019, are to be implemented accordingly.

27. A more protected environment for (potential) whistleblowers both in the private and the (semi) public sector ought to be assured. Laws on whistleblower protection should be strengthened across all sectors. Employees should be able to obtain advice and counselling as a whistleblower.

28. Taking into account the need to inform the Aruban people about public sector activities and decision-making, the modernization process to increase transparency should be enhanced, both in terms of technical solutions as well as the general attitude within the public and governmental sector to disclose important non-confidential information for the public.

29. Executive should be transparent about the use of intermediary persons (e.g. coordinators, advisers, consultants) within ministerial departments, and provide clarity within the public sector about their authorities.

30. Technological innovation can be implemented to ensure transparency, independence and integrity in all institutions. However, this has to be implemented with an equal investment in moral deliberation, ethics and integrity within the respective organizations. This is to ensure that the technical solutions do not replace the ethical reflections and ownership for acting with integrity. Investing in the moral compass and moral culture within institutions remains the most sustainable way to strengthen the NIS Aruba.

The list of interviewees

Foundations

- Mr. G. Thodé, (former) rector at the University of Aruba and former Chair Person of the Electoral Council of Aruba and Board Member of the Board of Financial Supervision Bonaire, Sint Eustatius & Saba (BES Islands), interviews held the 2th of February and 25th of March 2021
- Mr. A. Hessels, President of the Stichting Deugdelijk Bestuur Aruba (SDBA), 16th of September 2021
- Ms. M. Steenvoorde-Laclé, interview held the 4th of March 2021
- Ms. M. Louwé, interview held the 4th of March 2021
- Mr. J. Beaujon, interview held the 4th of March 2021

Overall perspective

- Ms. A. Flanegin, General Manager Supervision & Legal Affairs, interview held the 23rd of January 2021
- Ms. E. Matos-Pereira, Division Manager Strategy, Planning & Information at the Central bank of Aruba, interview held the 17th of September 2021
- Ms. L. Buckley, Manager Integrity Supervision Department, interview held the 17th of September 2021
- Mr. L. Alofs, Senior Research Lecturer at the University of Aruba, interview held the 20th of May 2021
- Ms. M. de Droog, Dean Faculty Arts and Science at University of Aruba, interview held the 20th of May 2021

Legislature

- Ms. R. van Aller, former Lecturer Constitutional and Administrative Law at the University of Aruba, former Attorney at the Government of Aruba and Lawyer at a Law Firm Amsterdam and Aruba, interview held the 8th of May 2020
- Mr. A. v. Rijn, Professor of Constitutional Law at the University of Curaçao and lawyer at De Clercq Advocaten in The Hague, interview held the 11th of May 2020

- Mr. G. Hoogers, Senior lecturer constitutional law/honorary professor in comparative constitutional law, Carl von Ossietzky- University of Oldenburg, interview held the 13th of May 2020
- Mr. G. Thodé, (former) rector at the University of Aruba and former Chair Person of the Electoral Council of Aruba and Board Member of the Board of Financial Supervision Bonaire, Sint Eustatius & Saba (BES Islands), interview held the 18th of May 2020
- Mr. G. Pesselse, Assistant professor of Criminal Law and Criminal Procedure at the University of Aruba, interview held 18th of May 2020
- Ms. D. Agius Cesareo-Lejuez, MP at the Staten of Aruba, interview held the 11th of October 2020
- Mr. G. Croes, Government Department Director, interview held the 23rd of October 2020
- Mr. F. Goedgedrag, interview held 18th of February 2021 (a personal perspective)
- Mr. M. Schwengle, interview held the 25th of May 2020 (a personal perspective)

Executive

- Ms. R. van Aller, former Lecturer Constitutional and Administrative Law at the University of Aruba, former Attorney at the Government of Aruba and Lawyer at a Law Firm Amsterdam and Aruba, interview held the 8th of May 2020
- Mr. A. v. Rijn, Professor of Constitutional Law at the University of Curaçao and lawyer at De Clercq Advocaten in The Hague, interview held the 11th of May 2020
- Mr. G. Hoogers, Senior lecturer constitutional law/honorary professor in comparative constitutional law, Carl von Ossietzky-University of Oldenburg, interview held the 13th of May 2020
- Mr. G. Thodé, (former) rector at the University of Aruba and former Chair Person of the Electoral Council of Aruba and Board Member of the Board of Financial Supervision Bonaire, Sint Eustatius & Saba (BES Islands), interview held the 18th of May 2020
- Mr. G. Pesselse, Assistant professor of Criminal Law and Criminal Procedure at the University of Aruba, interview held 18th of May 2020
- Mr. U. Arends, Minister of Integrity, interview held 1st of December 2021

- Ms. D. Agius Cesareo-Lejuez, MP at the Staten of Aruba, interview held the 11th of October 2020
- Mr. G. Croes, Government Department Director, interview held the 23rd of October 2020
- Mr. F. Goedgedrag, interview held 18th of February 2021 (a personal perspective)

Judiciary

- Ms. R. van Aller, former Lecturer Constitutional and Administrative Law at the University of Aruba, former Attorney at the Government of Aruba and Lawyer at a Law Firm Amsterdam and Aruba, interview held the 8th of May 2020
- Mr. A. v. Rijn, Professor of Constitutional Law at the University of Curaçao and lawyer at De Clercq Advocaten in The Hague, interview held the 11th of May 2020
- Ms. M. van Haren, (former) Legal Trainer at the Joint Court of Justice, interview held the 12th of May 2020
- Mr. G. Hoogers, Senior lecturer constitutional law/honorary professor in comparative constitutional law, Carl von Ossietzky- University of Oldenburg, interview held the 13th of May 2020
- Mr. G. Thodé, (former) rector at the University of Aruba and former Chair Person of the Electoral Council of Aruba and Board Member of the Board of Financial Supervision Bonaire, Sint Eustatius & Saba (BES Islands), interview held the 18th of May 2020
- Mr. G. Pesselse, Assistant professor of Criminal Law and Criminal Procedure at the University of Aruba, interview held 18th of May 2020
- Ms. D. Agius Cesareo-Lejuez, MP at the Staten of Aruba, interview held the 11th of October 2020
- Mr. G. Croes, Government Department Director, interview held the 23rd of October 2020
- Mr. F. Goedgedrag, interview held 18th of February 2021 (a personal perspective)
- Mr. J. Verhoeven, judge at the Joint Court of Justice, interview held the 11th of March 2020

Public Sector

- Ms. R. van Aller, former Lecturer Constitutional and Administrative Law at the University of Aruba, former Attorney at the Government of Aruba and Lawyer at a Law Firm Amsterdam and Aruba, interview held the 8th of May 2020

- Mr. A. v. Rijn, Professor of Constitutional Law at the University of Curaçao and lawyer at De Clercq Advocaten in The Hague, interview held the 11th of May 2020
- Mr. G. Hoogers, Senior lecturer constitutional law/honorary professor in comparative constitutional law, Carl von Ossietzky- University of Oldenburg, interview held the 13th of May 2020
- Mr. G. Thodé, (former) rector at the University of Aruba and former Chair Person of the Electoral Council of Aruba and Board Member of the Board of Financial Supervision Bonaire, Sint Eustatius & Saba (BES Islands), interview held the 18th of May 2020
- Mr. G. Pesselse, Assistant professor of Criminal Law and Criminal Procedure at the University of Aruba, interview held 18th of May 2020
- Ms. D. Agius Cesareo-Lejuez, MP at the Staten of Aruba, interviews held the 11th and 18th of October 2020
- Mr. G. Croes, Government Department Director, interview held the 23rd of October 2020
- Mr. F. Goedgedrag, interview held 18th of February 2021 (a personal perspective)
- Civil servant A, who wants to remain anonymous, interviews held the 11th and 15th of May 2020
- Civil servant B, who wants to remain anonymous, interviews held the 8th and 13th of May 2020
- Civil servant C, who wants to remain anonymous, interviews held the 13th of May and 3rd of June 2020

Law Enforcement Agencies

- Mr. G. Thodé, (former) rector at the University of Aruba and former Chair Person of the Electoral Council of Aruba and Board Member of the Board of Financial Supervision Bonaire, Sint Eustatius & Saba (BES Islands), interview held the 18th of May 2020
- Mr. G. Pesselse, Assistant professor of Criminal Law and Criminal Procedure at the University of Aruba, interview held 18th of May 2020
- Person X, who wants to remain anonymous, interview held June 2020
- Mr. H. Wierda, Team Leader of the Special Task Force (RST), interview held the 1st of December 2020
- Person Y, from the RST Netherlands, who wants to remain anonymous, interview held the 1st of December 2020

- Person Z, Business Consultant, who wants to remain anonymous, interview held the 29th of October 2020
- Ms. L. Banis, from the Special Police Force Aruba (LR) and the Special Police Task Force (RST), interview held the 20th of May 2021
- Mr. M. Maduro, Head of the Special Police Force Aruba (LR), interview held the 3rd of June 2021
- Ms. M. Steenvoorde-Laclé, interview held the 4th of March 2021
- Ms. M. Louwé, interview held the 4th of March 2021
- Mr. J. Beaujon, interview held the 4th of March 2021
- Electoral Management Body
- Mr. G. Thodé, (former) rector at the University of Aruba and former Chair Person of the Electoral Council of Aruba and Board Member of the Board of Financial Supervision Bonaire, Sint Eustatius & Saba (BES Islands), interviews held the 2nd of February, 25th of March, 1st of April and 30th of August 2021.
- Mr. H. Maduro, (former) vice- Chair Person of the Electoral Council of Aruba, interview held the 3rd of December 2021
- Civil servant, who wants to remain anonymous, interview held 15th of December 2021
- Civil servant, who wants to remain anonymous, interview held 15th of December 2021

Supreme Audit Institution

- Mr. B. Marapin, former General Secretary of the Social Economic Council Aruba, interview held the 27th of May 2021
- Mr. A. Bermudez, former Minister of Finance, interview held the 8th of June 2021
- Mr. F. Nuboer, (former) Acting President Supreme Audit Institution, interview held 11th of June 2021
- Ms. M. de Jong-Curet, General Secretary of the Supreme Audit Institution, interview held the 11th of June 2021
- Mr. L. Koolman, Senior Researcher-Head of Operations of the Supreme Audit Institution, interview held the 11th of June 2021

Ombudsman

- Mr. R. van Zutphen, National Ombudsman of the Netherlands, interview held 1st of December 2020.
- Mr. F. Goedgedrag, interview held 18th of February 2021 (a personal perspective)

- Mr. S. Sjouke, Head International Affairs at the Bu-reau National Ombudsman, interview held 1st of December 2020.

Political Parties

- Ms. R. van Aller, former Lecturer Constitutional and Administrative Law at the University of Aruba, former Attorney at the Government of Aruba and Lawyer at a Law Firm Amsterdam and Aruba, interview held the 8th of May 2020
- Mr. A. v. Rijn, Professor of Constitutional Law at the University of Curaçao and lawyer at De Clercq Advocaten in The Hague, interview held the 11th of May 2020
- Mr. G. Hoogers, Senior lecturer constitutional law/honorary professor in comparative constitutional law, Carl von Ossietzky- University of Oldenburg, interview held the 13th of May 2020
- Mr. G. Thodé, (former) rector at the University of Aruba and former Chair Person of the Electoral Council of Aruba and Board Member of the Board of Financial Supervision Bonaire, Sint Eustatius & Saba (BES Islands), interviews held the 25th of March and the 1st and 22nd of April and 30th of August 2021
- Ms. M. Lopez-Tromp, MP at the Staten of Aruba for the political party MAS, interview held the 30th of April 2021
- Mr. J. Thijssen, President at the Staten of Aruba and member of political party MEP, interview held the 6th of May 2021
- Mr. R. Lampe, former Minister of Education, Science and Sustainable Development during WC I and former MP at the Staten of Aruba for the political party RED, interview held the 19th of May 2021
- Ms. D. Agius Cesareo-Lejuez, MP at the Staten of Aruba for the political party Accion21, interview held the 21st of May 2021
- Person X, who wants to remain anonymous, interview held the 19th of May 2021
- Person X, who wants to remain anonymous, interview held the 26th of May 2021
- Ms. M. Wever, member of the political party AVP, interview held the 17th June 2021

Media

- Person X, journalist who wants to remain anonymous, interview held the 4th of March 2021
- Mr. L. Maduro, former Policy Advisor Chamber of Commerce Aruba., former Director Labor Department, former Chief Editor newspaper Bon Dia and former Secretary SDBA, interview held the 25th of March 2021

Civil Society

- Mr. G. Thodé, (former) rector at the University of Aruba and former Chair Person of the Electoral Council of Aruba and Board Member of the Board of Financial Supervision Bonaire, Sint Eustatius & Saba (BES Islands), interview held the 18th of May 2020
- Mr. L. Alofs, Senior Research Lecturer at the University of Aruba, interview held the 20th of May 2021
- Ms. M. de Droog, Dean Faculty Arts and Science at University of Aruba, interview held the 20th of May 2021
- Mr. R. Mezas, Managing Director at Harmony in Motion and Builers Club Advisor at Kiwanis Palm Beach, interview held the 30th of June 2021
- Person X, working for the Donkey Sanctuary, interview held Spring 2020
- Person X, working for the Fundacion Pa Nos Muchanan (FPNM), interview held Spring 2020

Business

- Ms. L. de Sousa, former Chair Person Chamber of Commerce Aruba and independent business professional, interview held the 26th of May 2021
- Person X, Business Consultant who wants to remain anonymous, interview held the 28th of May 2021
- Mr. L. Maduro, former Policy Advisor Chamber of Commerce Aruba., former Director Labor Department, former Chief Editor newspaper Bon Dia and former Secretary SDBA, interview held the 28th of March 2021



