

Summary

Good governance and law enforcement in Aruba

An empirical study

The present report presents the findings of an empirical study of the state of governance and law enforcement in Aruba, an autonomous country in the Kingdom of the Netherlands. The study is the result of a joint research assignment agreed by the Prime Minister of Aruba and the then State Secretary of Interior and Kingdom Relations on 25 November 2009 in The Hague. The assignment originated from concerns that ‘with regard to good governance (including integrity/law enforcement) there is much room for improvement on Aruba’, despite the fact that studies of good governance and law enforcement agencies were frequently done in the past.

The present study focuses on two questions:

- a What efforts in the field of good governance (in particular as regards law enforcement and law enforcement agencies) has the Aruban government made since the conclusion of the Aruba-Netherlands Protocol of 1993? To what extent did these efforts lead to results?
- b What are the current strong and weak points in the fields of governance and law enforcement, in particular at the crossing of both, whereby good governance is necessary for adequate law enforcement?

In the present report, these questions have been elaborated into eight research questions that are addressed in Chapters 3 to 10. The summary below follows the sequence of these chapters.

The reason and structure of the present report are explained first in an *introductory* chapter. The research project focuses mainly on years prior to the assignment. In order to ensure that the conclusions are as up-to-date as possible, however the developments that occurred after the change of government in October 2009, have also explicitly been taken into account.

Then follows the framework on the basis of which this study is structured (Chapter 2), which discusses theory and methodology. Aruba being a small Caribbean island of just over 100,000 inhabitants, the theoretical framework in particular focuses on the consequences small scale conditions have for institutional performance and good governance. As for methodology, the data for the study are derived from various written sources and 86 interviews with key informants. Information from one source is always confronted with that provided from other sources. This multi-method approach strengthens validity and reliability. Although several specific integrity issues are discussed, it should be borne in mind that WODC (the Research and Documen-

tation Centre) is not a law enforcement agency, and that its investigative possibilities in this respect are therefore limited.

Chapter 3 discusses the findings from three key reports from the end of the nineties: the report of the Aarts(-Muyale) Committee; the report 'Calidad', of the Aruban working group on good governance; and the report 'With all Due Respect' concerning law enforcement. The findings of these reports reflect the state of governance in Aruba at that time. The reports also contain recommendations, some of which are still of value today. An overview of summaries of these and many other relevant reports can be found on www.wodc.nl.

The previous reports are a part of the context for the current study, which also applies to Chapter 4 (*Economy*), which deals with the state of Aruba's economy and government finances. As a small and open economy, Aruba has been able to benefit from the international division of labour by developing a buoyant tourism industry, but this also means that it is relatively vulnerable to external shocks. In the past decade, government finances have been under more and more pressure, due to the expansion of the civil service, the construction of a social security system that is highly dependent on government contributions and the world financial crisis. In 2010, the current government, employers and employees agreed on a number of reforms that are intended to reduce the structural problems concerning the financing of social security.

Chapter 5 focuses on the realm of politics. It deals with the performance of parliament (the 'Staten') vis-à-vis the executive over time. Following an overview of Aruba's political landscape since it acquired autonomy (the so-called 'status aparte') in 1986, the Staten's use of their constitutional rights is being assessed. It is important for the performance of the Staten that they are well-informed. Information should be available in time and as complete as possible. One means of obtaining information from the government lies in the right to ask questions. However, the government over time has left many questions unanswered or answered them only with significant delays. There does appear to be a gradual improvement. A condition for an effective use of parliamentary rights is adequate knowledge and resources on the part of MP's to assess the information available. There seems to be a bottleneck here, because the Staten count a mere 21 MP's, which restricts opportunities for specialising and in-depth investigation by individual MP's. Additionally, MP's receive hardly any support, including legal support, on behalf of the substantive preparation of agenda items. The Staten have the customary instruments to control the government, including the right of inquiry and interpellation. So far, the Staten have exercised their right of inquiry only once (in 2003). The right to speak has proven to be distributed in an unbalanced way, in the sense that MP's have limited and Ministers unlimited

speaking time. The Staten insufficiently use information from accountability institutions such as the Aruba Court of Audit and by doing so, they deny themselves an instrument for controlling and correcting government. The Staten hardly make use of their right to approve and amend budgetary policy, which also contributes to weak budgetary discipline. Ever since the *status aparte*, the Staten have not handled the annual accounts of the country. Efforts to solve this problem are being made, whereby the Staten receive support from the Netherlands.

Aruban politics have been highly polarised between the two major parties, the Aruban People's Party (AVP) and the People's Electoral Movement (MEP). Whereas in the highly polarised political relations in Aruba the opposition fought the party in government with all means available, it appeared that critically following the government by the MP's of the ruling party formed only a small part of the political culture. Seeing no means of organising a majority in parliament, opposition party MP's have appealed to the media, the Public Prosecution Service or Dutch representatives in order to address matters. However, according to a number of respondents, there has been a change for the good since the current government of the *Arubaanse Volkspartij* (AVP) came into office in 2009.

And finally, Chapter 5 discusses the manner in which the parties and candidates acquire the funds they need. Aruban law does not regulate party and campaign funding, yet, campaigns are costly. This entails the risk of clientelism according to several observers and respondents, whereby support for a party or politician may lead to the expectation of the provider that he or she is entitled to demand something in return.

In addition to the Staten, there are also more specific 'oversight', 'watchdog' or 'accountability' institutions on Aruba. These institutions check whether the government acts in accordance with the principles of, for example, regularity and efficiency. They constitute procedural-organisational conditions for good governance. Chapter 6 discusses the Aruba Court of Audit (ARA), the Advisory Council (RvA), the Central Audit Department (CAD) and the Directorate for Legislation and Legal Affairs, as well as several international organisations, some of which are active in oversight activities, such as the Council of Europe and the Financial Action Task Force. Chapter 6 assesses to what extent Aruban accountability institutions during the research period, disposed of the instruments their work required, shortcomings therein, their staffing and their relationship with the institutions that do have final authority: the government and the Staten. Our investigation shows that the accountability institutions generally dispose of the powers that should enable them to perform their role. An important problem, however, concerned the response of politicians to their reports. Not only the response by the members of government left much to be desired, but also MP's made little use of the findings of the accountability institutions. In this respect, there is room

for procedural-organisational adjustment and improvement. Furthermore, the ARA and the RvA have claimed to have insufficient control over the appointment of their own staff, more or less indicating that government control over appointments could be at odds with the autonomy oversight requires. All accountability institutions seem to be facing job vacancies, which can affect production, as has been the case with the ARA. As of 2000, the Staten, the ARA and the RvA have been formally able to set their own budget, but the Minister of Finance determines its implementation to a large extent. Finally, the quality and production of legislation suffered from shortages of personnel at (inter alia) the RvA and the Directorate for Legislation and Legal Affairs.

As regards the CAD and the ARA, the quality of the administrative data, on which they are supposed to base their findings, continues to be a cause for concern. This has threatened to create a vicious cycle, whereby defective recording of data obstructed checks of efficiency and regularity and rendering account. For example, the CAD already ceased the audit of the country's annual accounts a considerable time ago.

The relationship between Aruba and the Kingdom has been difficult to strained for years under the MEP government, that tended to emphasise autonomy. Nevertheless, since 2001 successive cooperation programmes were realised with Aruba under the umbrella of *Fondo Desarrollo Aruba*. Increasing Aruba's self-reliance was the object of these programmes, that were related to sustained economic development, good governance, education and later also social affairs. Dutch deposits have since stopped in accordance with the plan. The current government of Aruba has a more open attitude towards cooperation within the Kingdom and the European Union (EU), as appears from, amongst others, the drive for a strategic partnership and the status of 'ultraperipheral' area (UPG).

Legislation and advice in respect thereof, auditing activities and protocols and reports are essential to a democracy. But there is also 'everyday practice'. Chapter 7 (*integrity issues*) presents a number of case studies in connection with good governance. Some of the cases involved had given rise to controversy and contributed to the wish that the current investigation was carried out. Controversial cases concerned the allocation of various types of *tenders*, *licences* and *personnel appointments*. Based on the information that was available, it was not always possible to render an opinion in individual cases concerning the degree of truth of various allegations. Nevertheless, the types of problems proved to be fairly consistent throughout the years. This was partly related to room for discretion in legislation and regulations. This proved to be the case where: (a) criteria for deviating from the tendering rules were not elaborated in detail and there was no procedure for private tendering; (b) hardship clauses with respect to granting permits were not or insufficiently precise, while waiting lists of many years created 'distressing cases'

that sometimes seemed to justify deviations from the rules and (c) mixing of functions occurred.

(Re a) Violation of the tendering rules, if not the letter of rules then in any case the spirit, proved to be a constant factor. This was demonstrated by various studies of the ARA and the CAD and our case studies. Initially, it appeared that during the term in office of the MEP, Ministers more frequently issued rulings that motivated deviations from tendering rules. However, in 2008 it became clear that this discipline had disappeared again. Moreover, the substantiation contained in those rulings remained very thin indeed, according to the ARA. Findings of, inter alia, accountability institutions, gave the impression that violations might have had something to do with favouritism. Where politicians and parties are under no obligation to provide insight in money flows within the political system – and most of them do not provide it as long as this is the case – rumours and allegations can flourish.

(Re b) As regards the granting of permits, the risk of integrity violations increases as the statutory conditions subject to which a permit is granted leave more room for interpretation. This proved to be the case where hardship clauses were insufficiently precise in various systems. A long waiting list for the allocation of leasehold land enhances the likelihood that citizens will try to apply for preferential treatment. In the 2009 election year, the MEP government appeared to have favoured citizens when allocating land in order to gain votes. The AVP government states that it is busy resolving the backlog. Another matter that emerged was that enforcement with respect to granting permits appeared to be insufficient. And finally, room for discretion in administrative procedure in immigration matters entailed integrity risks.

(Re c) In a few criminal investigations, performed during the MEP government's term in office, there appeared to be fraud, forgery of documents and embezzlement of public funds. The CAD signalled a lack of proper separation of responsibilities at various services, in particular with respect to the management of petty cash.

Agencies such as the ARA, the CAD, and the Aruban Social and Economic Council (SER), as well as many of our respondents, have been pointing out the politically-motivated nature of many decisions in the field of appointments and dismissals in the civil service and the perks that come with public office. The MEP government in particular chose to replace higher ranking officials. This led to legal proceedings by the interested parties in which judgment was given against the Country. The AVP government has stated that it wants to break with this practice. Nevertheless, trust issues between members of government and members of their staff that were appointed before October 2009 have been reported. Heads of agencies have been suspended or saw the appointment of management teams overseeing their work.

During the past decade, there also appeared to be deviations from rules and regulations that were not so much related to improper use of discretion as to

ineffective checks. Accountability institutions indeed exercised supervision: they named structural weaknesses in the procedural-organisational provisions. However, the executive and legislative did little to nothing with the findings of these institutions, as a result of which these vulnerabilities continued to exist. On balance therefore, mere identification of defects by accountability institutions did not progress towards follow-up policy. As a result, the actual influence of checks remained very limited throughout the years.

The past and present performance of the chain of government agencies in the field of immigration has been charted in Chapter 8. This chain has been under stress related to a huge immigration flow ever since the *status aparte*. In this chapter, integrity violations, the improvements that have been implemented, the problems that still persist and the extent to which those problems are of a structural nature are discussed. It has been established that the activities of the various agencies that are involved in the granting of residence and work permits experienced serious shortcomings in the past decade in the field of registration and documentation. Partly as a result, the process of granting permits took longer than the statutory terms set in respect thereof. Recording of data in the country register left much to be desired. The same was true with regard to the reliability of data of other agencies, which put cooperation between agencies under strain.

Integrity risks arose where waiting lists were long, parties urgently needed a decision, and checks on the issuing process were inadequate. Moreover, inaccurate registration and documentation and a lack of separation of responsibilities or tasks increased the probability of integrity problems, as was evidenced by reports and experiences of respondents, and a number of criminal investigations.

Partly within the context of the 2006 protocol to improve the 'immigration chain', in recent years progress could be made in several areas (such as checks, separation of tasks, shorter lead times and employee training). Nevertheless, a lack of sufficiently qualified personnel hinders the implementation of improvements. Replacement of outdated software at the *Departamento di Integracion, Maneho y Admision di Stranhero* (DIMAS), the necessity of which has been acknowledged for a long time, has not been effected. Chapter 8 also shows that whereas the admissions policy for foreign nationals was subject to change, the corresponding legislation lagged behind. This led to uncertainties concerning the implementation of policy and to a strong increase in the number of legal proceedings. A consistent and documented aliens policy does not only provide citizens with more legal certainty, it also offers a solid footing for the several agencies involved in the implementation of policy.

Looking back over the past ten years, the conclusion is that, on balance, progress has been made, but that the changes are progressing slowly and that

there are still obstacles to the proper functioning of the immigration chain, in the field of personnel, automation, checks and cooperation.

Chapter 9 deals with the extent to which law enforcement can be a guarantee to good governance. Additionally, we examined to what extent political responsibility does not lead to interference in matters in which the government itself can be the subject of investigation.

Data on crime in Aruba do not provide indications of worrisome developments. However, Aruba does have an opportunity structure for organised crime in particular.

The powers and duties of the various actors within law enforcement largely appear to be in order. However, the public prosecution service and *Lands-recherche* (a department specializing in the investigation of offences committed by civil servants) were understaffed for a long time. One may wonder whether government set the right priorities in this matter, in view of the efforts it took to get staff at a level that is more acceptable for the organisations involved.

For a prolonged period of time, the Aruba Police Force (KPA) has been the object of evaluations and attempts to have it function more effectively. The KPA alleged its staffing levels were too low, but this matter is hard to assess in view of the questions that have been asked with respect to efficiency. The extent of integrity violations within the KPA and other organisations involved in law enforcement is difficult to establish. Within the KPA, such violations largely concerned cases of physical abuse and more incidentally cases of corruption. The legal position of employees and interference on the part of the responsible politicians seem to have complicated the handling of integrity violations.

The cooperation between the organisations in the law enforcement chain was very ad hoc several years ago. Incidents in the sphere of integrity and the small-scale nature of Aruban society led to caution in strengthening the cooperation required by the nature of the work. After 2009, working relations between agencies seemed to improve, as was illustrated by the reinstatement of the 'four-party consultations' between the government and law enforcement.

During the past decade, there was frequent tension between members of the public prosecution service on the one hand and the world of politics on the other. In incidental cases, the government kept insufficient distance from the functioning of the police. Tensions did not escalate as much as in the second half of the nineties. Yet, we also had to conclude that quite a large number of persons, including Procurators General, a chief public prosecutor and public prosecutors, left the public prosecution service early, which may have prevented that escalation. At the time of the MEP's term in office, the public prosecution service did not only encounter tensions with members of government. Supporters of the then opposition severely criticised the public

prosecution service in the press as well, including ad hominem. Parts of the political establishment appeared to already consider the judiciary to be a lame duck or even a biased institute. However, there are no indications that the MEP government prevented the public prosecution service during these years from investigating members of that government. Such investigations did in fact also take place.

In Chapter 10 the findings of this study are discussed in the context of the theoretical framework, the standards of good governance and, ultimately, the research questions of this study. Points for improvement have been identified in that regard. An overall conclusion is that structural vulnerabilities manifested themselves, in particular against the background of scale restrictions due to the small island geography. These were situated in a combination of intervention power and discretion on the part of government officials, that was insufficiently balanced by countervailing institutions – the Staten and other accountability organisations. Lack of transparency in decision making processes and in procedures followed, gave ground for questions concerning lawfulness. It also caused doubts about conformity with other characteristics of good governance, such as efficiency and effectiveness. The current AVP government has developed initiatives that appear to point in a different direction. Examples include the Social Agreement concluded in 2010, the intended formation of a *Good Governance/Compliance* agency, and the intention, with the assistance of the Netherlands, to end the problems concerning the outstanding annual accounts in 2011.

The small scale of Aruba, the limits this sets on the availability of human capital and a high ‘contact density’, remain factors that entail risks for good governance. Possible solutions to the question how, under the present circumstances, sustainability in changes can be achieved, are therefore not just located inside but also outside Aruba: in the cooperation with other countries and the Kingdom.