

The Global Anti-Corruption Regime: The Case of Papua New Guinea

by Hannah Harris

[Routledge, 2019, xiii + 252 pp, ISBN 9781138298927 (hardback), 115 GBP]

Neil Boister*

Hannah Harris's path-breaking study explores the effectiveness of the global anti-corruption framework, and in particular the *United Nations Convention against Corruption* ("UNCAC"),¹ through a case study of Papua New Guinea ("PNG"). The book steers a path between two potentially conflicting realities. Harris understands that corruption is a complex concept that is easily hijacked for ulterior purposes by external state actors wishing to achieve their foreign policy and economic goals in developing countries like PNG. But she is also aware that graft and corruption are significant problems in PNG, as is recognised by both local civil society and government.

Harris's analysis rests heavily on Nadelmann and Andreas's² five-stage model for the evolution of global prohibition regimes (14): an initial stage during which the target activity is deemed legitimate, a de-legitimation stage, a dissemination stage and a criminalisation stage. In the final stage, the now-prohibited action is suppressed. In simple terms, Harris's thesis is that the global anti-corruption framework, at least as far as it operates in PNG, is stuck in fourth gear — it gets to criminalisation but never to suppression. The PNG case study is used to explore why this has occurred.

Before she does so, however, in Chapter one Harris engages in a well-theorised account of the evolution of the global anti-corruption system, leading to the development of the *UNCAC*. She is aware of the problem that constructing the crime of corruption through law constructs the social reality of corruption (28), and that there are intrinsic problems, which could bluntly be described as being of a neo-colonial kind, in the transfer of norms developed

* Professor and Head of School of Law, University of Canterbury, New Zealand.

1 *United Nations Convention against Corruption*, opened for signature 9 December 2003, 2349 UNTS 41 (entered into force 14 December 2005).

2 Ethan A Nadelmann, "Global Prohibition Regimes: The Evolution of Norms in International Society" (1990) 44(4) *International Organization* 479; Peter Andreas and Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations* (Oxford University Press, 2006).

in metropolitan countries to countries like PNG. She notes that action against transnational crime in the South Pacific has largely been the result of the activities of more powerful neighbours seeking to protect themselves from the threat of crime emanating from island states, rather than a consequence of concern about the conditions in those states (32). Corruption may be different in that corrupting influences often come from metropolitan states and thus implicate potentially powerful individuals in those states. Undertaking a thorough survey of the literature, she shows a coalescence of ideas around four risk factors for the building of prohibition regimes (34): diversity among the target states, links to organised crime, an obsession with criminalisation as a solution to all problems and the limits of a universal and consistent approach. These disruptive factors produce enormous variance in prohibition regimes. Perhaps the most important research question she asks is how the expression of the anti-corruption regime in PNG — including the manifestation of these risk factors in different degrees — feeds back into insights in regard to *UNCAC* and the global anti-corruption regime (38).

The *UNCAC* itself is set out in Chapter 2 against the background of the theoretical framework set up in Chapter 1. The consensus that corruption is so threatening stands in nice opposition to the non-participation of Pacific states in the process of the development of the Convention (61). Her analysis of the treaty provisions themselves makes up the bulk of the chapter, in which she provides a useful concise guide to the treaty. Importantly she shows how the focus on criminalisation in the treaty was complemented in the first cycle of review, which focused on criminalisation and international cooperation (88).

Chapter 3 then shifts this tale of corruption and anti-corruption to the region, where Harris sets the regional scene in what constitutes a very informative introduction to those unfamiliar with the region. The asymmetry of the relationship between Australia and New Zealand, on the one hand, and the 15 island states who make up the other members of the Pacific Islands Forum, on the other, is highlighted. One striking fact is how corruption really only came onto the South Pacific agenda in parallel with the rise of the global anti-corruption regime (96) and yet is now paradoxically considered endemic, suggesting long-term entrenchment. Another factor which has increased global concern about corruption has been the significant increase in the flow of aid to the region. Anti-corruption is clearly linked to the development agenda. She sets out how the regional institutions have mediated between the *UNCAC* and states in the region. The net result is heavy external influence combined with poor local influence or interest (110). One unexplored question is how the nature of these regional institutions reflects, in itself, the hesitant nature of local compliance.

In Chapter 4 the book gets into the case study of PNG. In order to achieve fifth gear the *UNCAC* must achieve local support and enforcement across diverse contexts, and in this regard the incredible tribal, linguistic and political complexity of PNG provides perhaps the ultimate test for such a global prohibition regime. Harris shows how the legal response has been relatively sophisticated, at least on paper (131). She shows that even fourth gear is difficult to get into purely as a technical exercise of law on paper because of the staggering challenges that modern law-making faces in a place like PNG (144). Yet, when looked at more closely, the cracks begin to show. The debacle around the establishment and then disbandment of the anti-corruption “Task Force Sweep” by the Prime Minister, who was subject to its enquiries, is an object lesson in the limitations of the normative strength of anti-corruption measures in PNG (137).

Chapter 5 digs a little deeper, based on interviews of key local and foreign players in anti-corruption in PNG. There is too much here to summarise in this review, but Harris does illustrate comprehensively that *UNCAC* has had limited actual impact (155). Personally, I found the transformation of the hard legal nature of the obligations in the minds of local and United Nations officials into a soft policy document particularly interesting because of what it says about the nature of these large framework treaties when seen from the national perspective (157). But sometimes the story is one of simple non-enforcement, predatory foreign investment, lack of political will, turf wars among law enforcement agents, lack of cooperation.... It's a familiar tale. Harris draws from this the insight that critics of prohibition regimes should not overestimate the impact of these regimes at a national level; indeed, these hard-edged international norms appeared to defuse under local conditions, pointing to the obvious but difficult-to-answer question: is this softness a result of local flexibility or local defection?

Chapter 6 further explores the *UNCAC* in the context of the PNG case study, by bringing back the theoretical framework she introduced in Chapter one. Although it is challenging to synthesise the many different views into a single point of view, Harris characterises *UNCAC* as playing a supporting role rather than a central role in the fight against corruption in PNG and suggests that perhaps globally, it is a flexible framework leading to diverse interpretations at the national level.

Overall Harris provides readers interested in anti-corruption with a rich and detailed story which makes a significant contribution to the existing literature. She has gathered material from a range of available sources to give a nuanced picture of the operation of *UNCAC* in PNG. Refreshingly, she does not become obsessed with failure, unlike many foreign critics of PNG. Getting stuck in

fourth gear is a common problem for prohibition regimes like that used against corruption. They face two challenges: the appearance of adherence and the non-reality of that adherence, on the one hand, and the fact that actual reform is inappropriate to the domestic context, on the other. For Harris, treaty frameworks such as the *UNCAC* are powerful tools, but they must engage in a dynamic way with the local context. Harris drives home the point that only if they gain and maintain local legitimacy and avoid co-optation by external political actors or manipulation by local corrupt governments will they ever get out of fourth into fifth.