

Northwestern

PRITZKER SCHOOL OF LAW

NORTHWESTERN UNIVERSITY PRITZKER SCHOOL OF LAW

PUBLIC LAW AND LEGAL THEORY SERIES • NO. 18-13

Corruption in an Era of Climate Change: Rebuilding Sint Maarten after Hurricane Irma

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May 2018

EXECUTIVE SUMMARY

This report provides recommendations and suggests best practices in combatting corruption following Hurricane Irma's destruction in Sint Maarten. While focused on Hurricane Irma in particular, the report formulates its recommendations to be responsive to corruption in the wake of extreme weather events generally, especially in the era of climate change where such events are increasingly frequent.

The report focuses on four areas of law where the government is especially insecure in terms of corruption following an extreme weather event: (1) criminal law, (2) ethics and non-criminal anti-corruption law, (3) environmental law, and (4) building, zoning, and public procurement. First, it explores the criminal law relevant to corruption. The recommendations aim to address the influx of relief and aid money and the plentiful opportunities for money laundering and fraud that follow an extreme weather event. Second, the report analyzes the area of ethics and non-criminal anti-corruption law. It provides recommendations in the areas of accountability in government, the Integrity Chamber, and public awareness. Third, the report addresses the environmental legal framework. This section focuses on updating the Emergency Support Function (ESF); prioritizing prosecution of environmental crimes; passing legislation to address climate change; and generating funds for environmental education and cleanup. Finally, the report examines relevant building, zoning, and public procurement laws. Recommendations focus on emergency cleanup, post-disaster recovery, and public procurement.

While the recommendations are intended to address specific issues to which Sint Maarten is vulnerable, major themes applicable to all small island developing states (SIDS) are prevalent across all four issue areas. First, existing corruption is exacerbated by extreme weather, making corruption easier and more prevalent in the wake of an extreme weather event. Second, a culture shift is necessary to change focus to the long term, as climate change ensures more and more extreme weather events. Part of changing the culture is ensuring those on the Island have access to information, including the legal codes. Such access requires publishing information and the laws in languages understood by residents; in the case of Sint Maarten that would be English as well as Dutch. Another part of changing culture is to implement practices aimed at changing views of corruption, protecting against extreme weather, and decreasing the effects of climate change. Third, prevention and preparedness are key to ensure that the chaos and urgency that follows an extreme weather event is minimized as much as possible. When processes are in place to control this chaos, opportunities for corruption decrease. Keeping these lessons in mind, the government of Sint Maarten will be able to increase its ability to stave off corruption following extreme weather events into the future.

We feel that all of the recommendations are important and work in concert with one another. Therefore, we suggest considering them collectively. However, we recognize that resource constraints mean prioritization must take place, and have highlighted below the recommendations we feel should take precedence. Each priority recommendation is briefly outlined; a more detailed analysis can be found in the full report.

We recommend for prioritization (in no particular order):

1. **Prioritizing the prosecution of extreme weather-related corruption and environmental crimes;**
 - *Extreme Weather-Related Corruption:* Publicizing prosecutions of corruption in the wake of Irma will serve as a deterrent and help offset the lack of oversight. In the future, Sint Maarten may consider legislation criminalizing fraud in connection with emergency benefits. In the meantime, prosecutors can recommend harsher penalties characterizing the post-Irma context as an aggravating factor.
 - *Environmental Violations:* The number of environmental violations on the island is apparent. Openly flouting these rules undermines environmental values on the island and further perpetuates indifference towards long-term environmental goals. An equally public prosecution of especially powerful, visible, and egregious violators of waste laws would provide needed deterrence.
2. **Implementing public education campaigns on the importance of the environment and the negative effects of corruption;**
 - The goal of such programs would be to change the culture in Sint Maarten on the acceptability of corruption and the need for environmental protection.
 - Creating awareness about the effects of corruption and environmental damage on the island's economy and casting perceived "long-term" threats as much more immediate ones may further promote engagement on the island.
3. **Training the business community on the new public tender requirements attached to the recovery funding from the Netherlands;**
 - If the recovery funding from the Netherlands triggers stricter public tender requirements, it will be especially important that such changes are communicated to the business community through educational programs.
4. **Providing full independence to the Financial Intelligence Unit (FIU);**
 - Making the FIU a self-regulating body would allow it to avoid bureaucratic hold ups and hire personnel that are unlikely to be biased or to have conflicts of interest.
5. **Ensuring the future Integrity Chamber is a success;**

- Addressing the Integrity Chamber’s potential shortcomings, implementing assessment tools, such as surveys to assess the integrity framework’s effectiveness, and administering integrity trainings and tests for employees would help create effective governance and instill citizens with confidence in the Chamber.
6. **Joining the Small Island Developing States (SIDS) Anti-Corruption Research Platform (SACRP);**
 - Joining the SACRP will allow Sint Maarten to better promote good governance and put its limited resources to best use by gaining access to anti-corruption materials tailored to the small island context and participating in online forums to collaborate and share information.
 7. **Passing whistleblower legislation to incentivize reporting fraud;**
 - Such a law will provide two benefits. First, the financial incentive to “out” fraud can help mitigate the desire to “look the other way” for friends. Second, knowledge that people have a financial incentive to report fraud may itself act as a deterrent. Sint Maarten can model the whistleblower provision after a similar provision in the Dodd-Frank Act.
 8. **Moving from a cash-based economy to an electronic-based economy;**
 - Such a shift would make tracking money significantly easier and close opportunities for money laundering and bulk cash smuggling. One possibility is to gradually remove small bills from the currency. However, to ensure effectiveness, a slower move away from small bills to avoid an undue burden on lower income individuals and negative interest rates is best practice. Canada and Sweden may serve as models for determining the appropriate steps.
 9. **Revising and regularly updating the Emergency Support Function (ESF);**
 - Because the emergency response roles did not align with the government structure, it was challenging to respond to Hurricane Irma as contemplated by the ESF, rendering the ESF less useful. The ESF has since been revised as of September 2017. However, the ESF should be re-visited every six to twelve months to assess its functionality and alignment with the current government structure.
 10. **Establishing formal extreme weather policies within the Ministry of Public Housing, Spatial Planning, Environment & Infrastructure (VROMI).**
 - VROMI plays a major role in Sint Maarten’s natural disaster contingency plan. VROMI’s policies and procedures should be strengthened given its major role in emergency response and recovery processes. Sint Maarten may wish to prioritize establishing formal processes within VROMI to ensure that the government is prepared as the next hurricane season approaches.

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I. INTRODUCTION

In *Orlando-Figueroa v. United States*, a case involving the solicitation of bribes in exchange for disaster cleanup contracts following Hurricane Georges, the court opinion opens with a succinct statement: “Disasters are said to bring out the best and the worst in people.”¹ As climate change begets more and more extreme weather events, governments must rise to meet the challenge to combat “the worst” types of behavior such events bring out. Corruption is indeed one of “the worst” behaviors, resulting in negative economic consequences, poorer infrastructure, and, most importantly, significantly higher deaths following disasters.² Corruption literally kills.³

Where climate change has a large effect and where corruption is already the norm, governments are particularly susceptible. First, countries that are especially susceptible to the effects of climate change are vulnerable to extreme weather events. These events leave the country in a near constant state of exposure to corruption as laws are relaxed to expedite recovery, and relief money pours in. Second, extreme weather exacerbates existing corruption. Therefore, where corruption is already common practice in daily life, extreme weather only aggravates such practices. Thus, a vicious cycle begins where corruption in recovery produces worse outcomes in the wake of the next extreme weather event, which is sure to come soon due to climate change.⁴ As such, those governments must develop strong anti-corruption practices to protect against the behavior extreme weather events induce. Sint Maarten is one such country.

This report provides recommendations on how Sint Maarten can build a robust anti-corruption regime, specifically tailored to its unique environment, culture, and history. It begins with a brief overview of the recommendations that we consider the highest priorities. Then, the report is divided into four sections, exploring these and other recommendations in more depth. The recommendations track the four main areas of the law that are most relevant to promoting best anti-corruption practices following an extreme weather event. It begins by analyzing the criminal legal framework with a focus on anti-corruption, money laundering, and fraud, and how those areas may be strengthened to combat corruption in an era of climate change. Next, it evaluates non-criminal anti-corruption law, good governance, and integrity. It then explores the environmental law framework and how it may be used to combat and prepare for climate change and future extreme weather events. The report concludes with an examination of building, zoning, and public procurement

¹ *Orlando-Figueroa v. United States*, (1st Cir. 2000).

² Nikolas Ambraseys and Roger Bilham, *Corruption Kills*, NATURE (January 2011).

³ *Id.*

⁴ *See, e.g.*, John Phillips, “Italy Earthquake: Investigation Launched as Nation Mourns,” THE GUARDIAN (August 2016).

law and its unique role in combating corruption in the rebuilding phase following an extreme weather event.

II. CRIMINAL ANTI-CORRUPTION LAW

This section will address Sint Maarten’s criminal anti-corruption laws—and gaps in the criminal laws—that are most relevant to addressing the changes Sint Maarten faces following Hurricane Irma. It seeks to provide recommendations in the areas of anti-corruption laws, anti-money laundering laws, and anti-fraud laws. The recommendations in each section are based on independent research, interviews conducted in Sint Maarten, and resources provided by the Northwestern Pritzker Law School Library.

A. Address Money Laundering Issues Through Structural Changes

Money laundering is a key problem in Sint Maarten due its geographic location, cash-based economy, and weak gaming sector regulations. The largely cash-based economy makes income tracking particularly difficult. The island’s open border dual nation status, the French side being a trade free zone, and Sint Maarten’s proximity to other islands promotes easier bulk cash smuggling and trade-based money laundering. Lastly, the gaming sector is underregulated. Sint Maarten has yet to pass and implement legislation to regulate and supervise its casino, lottery, and online gaming sectors in compliance with international standards. Following natural disasters such as Hurricane Irma, money laundering becomes easier to conceal and anti-money laundering laws are more difficult to enforce due to lack of funds and personnel. All of the aforementioned issues are exacerbated by Sint Maarten’s small population. The fact that everyone knows each other incentivizes “looking the other way” in response to potential red flags that suggest money laundering.

1. Provide Independence to the FIU

A priority step that would both be relatively easy to implement and highly effective is to make the FIU, currently under the Ministry of Justice, a self-regulating body. This way the FIU can avoid bureaucratic hold ups and hire personnel that are unlikely to be biased or to have conflicts of interest.

2. Amend the “Unusual Transactions” Requirement

Relatedly, Sint Maarten should amend the “Unusual Transactions” requirement to account for a more subjective analysis.⁵ This would account for suspicious transactions that do not cross the 20,000 NAF threshold requirement.

3. Move from Cash-Based Economy to Electronic-Based Economy

A more challenging, but highly worthwhile long-term goal should be for Sint Maarten to move to a largely electronic-based economy. This would make tracking money significantly easier and close opportunities for money laundering and bulk cash smuggling, since integrating the fund will be more difficult to hide. One step toward an electronic-based economy may be to remove small bills from the currency. India, for example, recently took this step by removing small bills all at once.⁶ However, to ensure effectiveness, a slower move away from small bills to avoid burned on lower income individuals and negative interest rates should be implemented. Canada and Sweden serve as models for determining the appropriate steps that should be taken to move toward an electronic-based economy.⁷

B. Promote Anti-Corruption Best Practices in the Public and Private Sectors

Opportunities for corruption abound following extreme weather events such as Irma, due in part to the lack of oversight. This is a particular concern in Sint Maarten because of conflicts of interest, frequent governmental turn over, and the exodus from the island following extreme weather. One interview subject opined that since a large number of the European Dutch police (Recherche Samenwerkings Team) and prosecutors left the island in the wake of Irma, the deterrence effect for fear of being arrested and prosecuted for a crime was reduced. To compound matters, the frequency of government turnover makes planning ahead particularly challenging, and the people who remain on the island are incentivized to “look the other way,” since they likely have close relationships with the people they would otherwise investigate or report. Finally, based on our experience and research, the island culture makes it difficult for outside investigators to gather information investigations. Locals are often suspicious of outsiders, and there is a historical sentiment that Dutch outsiders are overly paternalistic.

1. Develop an Independent Body to Disperse Relief Funds

Following an extreme weather event, damaged areas are often in need of quick repair, but there is little opportunity for proper oversight of fund allocation. Planning ahead to develop an independent body to disperse relief funds and track

⁵ REPORTING GUIDELINES, FIU (last visited Apr. 19, 2018), <http://www.fiu-sxm.net/web/fiuweb/fiusxmweb.nsf/web/reporting?OpenDocument>.

⁶ Oishimaya Sen Nag, *Countries Leading The World In Cashless Transactions*, WORLD ATLAS (Jan. 4, 2018), <https://www.worldatlas.com/articles/which-are-the-world-s-most-cashless-countries.html>.

⁷ *Id.*

whether those funds are being used properly should be a top priority. A tracking agency can also help prevent duplication, thereby ensuring that funds are used efficiently. Transparency International provides an effective set of steps that can be taken to develop a tracking body.⁸ The Federal Emergency Management Agency can also serve as a model for proper pre-planning and relief aid tracking.⁹

2. Enforce Mandatory Hurricane Insurance

Relatedly, Sint Maarten should require citizens to purchase mandatory hurricane insurance. This will reduce incentives to cut corners on repairs.

3. Increase Penalties for Corruption Committed Following an Extreme Weather Event

Additionally, Sint Maarten should consider passing a law that increases the penalties for corruption following an extreme weather event. For example, some jurisdictions, like the United States implementation of 18 U.S.C. § 1040, specifically criminalize “[f]raud in connection with major disaster or emergency benefits.” This crime has a higher maximum penalty than general mail or wire fraud.¹⁰ Higher penalties will function as a deterrent and help offset the lack of oversight. In the meantime, prosecutors can take steps on their own to prioritize and pursue more forcefully cases of corruption following an extreme weather event, including recommending higher penalties at the sentencing phase.

C. Implement Measures to Prioritize Investigation and Prosecution of Fraud in the Context of Disaster Planning

Opportunities for fraud to go undetected are exacerbated following an extreme weather event, particularly because resources are often hastily placed without sufficient oversight. Although the anti-fraud laws on the books in Sint Maarten are adequate, they are underenforced. In Sint Maarten, tax fraud creates a double-edged sword. On the front end, tax fraud is relatively common.¹¹ On the back end, the lack of tax funds makes it difficult to properly rebuild infrastructure. This, in turn, leaves infrastructure more susceptible to damage following the next extreme weather event. Further, citizens do not have sufficient incentives to “out” fraudulent behavior for fear of social backlash.

⁸ *In the Wake of Disaster: Preventing Corruption*, TRANSPARENCY INTERNATIONAL (Apr. 9, 2005).

⁹ *Disaster Relief Fund: Monthly Report*, FEMA, <https://www.fema.gov/media-library/assets/documents/31789> (last visited Apr. 19, 2018).

¹⁰ A maximum of 30 years imprisonment under 18 U.S.C. § 1040(a)(2) compared to a maximum of 20 years imprisonment under both 18 U.S.C. §§ 1341 and 1343.

¹¹ Roughly just 35% of Sint Maarten citizens and companies pay taxes and hotels and casinos get large tax breaks. *See, e.g., Sint Maarten Corporate – Tax credits and incentives*, PRICE WATERHOUSE COOPERS (Dec. 14, 2017), <http://taxsummaries.pwc.com/ID/Sint-Maarten-Corporate-Tax-credits-and-incentives>. public source we can reference here?

1. Develop Whistleblower Legislation to Detect Fraud

A priority step to detect and deter fraud is to pass a whistleblower law that gives whistleblowers a financial incentive to “out” fraud. Whistleblowers can receive a percentage of the amount realized by the fraud that they out. Such a whistleblower program will provide two benefits. First, the financial incentive to “out” fraud can help mitigate the desire to “look the other way” for friends. Second, knowledge that people have a financial incentive to report fraud may itself act as a deterrent. Sint Maarten can model the whistleblower provision after the Dodd-Frank Act.¹²

2. Prioritize Tax Fraud

To prevent tax fraud, Sint Maarten should pass and enforce an explicit criminal law that is part of the country’s penal code and directly addresses tax fraud.¹³ Additionally, as further explained below, Sint Maarten can implement a small tourist tax to offset the dearth of tax revenue for repair. A small fee for each tourist that visits the island will generate a large amount of money and is unlikely to deter tourism. Sint Maarten could model a tourist tax based on the tax in Switzerland.¹⁴ Finally, to offset the lack of casino oversight and tax loopholes, Sint Maarten should give the FIU the power to audit casinos.

III. ETHICS AND NON-CRIMINAL ANTI-CORRUPTION LAW

The Charter of the Kingdom stipulates that good governance is a responsibility of the Kingdom.¹⁵ According to the United Nations Economic and Social Commission for Asia and the Pacific, “very few countries and societies have come close to achieving good governance in its totality, [but] to ensure sustainable human development, actions must be taken to work towards this ideal with the aim of making it a reality.”¹⁶

In the context of disaster management, legal frameworks must ensure sustainable institutional reforms aimed towards increasing community capacity and readiness, while also diminishing risks in the justice, equity, and accountability frameworks.¹⁷ In 2014, PricewaterhouseCoopers (US) International LLC’s (PwC) Integrity Report

¹² § 913(b)(1).

¹³ From our research, the penal code makes no mention of tax evasion or tax violation. However, the General National Taxes Ordinance (Algemene Landsverordening Landsbelastingen), P.B. 2001, no. 89 [Articles 49, 7, and 8] mentions penal law and prosecution.

¹⁴ *Tourist Tax in Switzerland*, MYSWISSALPS.COM (last visited Apr. 19, 2018), <https://www.myswissalps.com/accommodation/touristtax>.

¹⁵ STATUUT NED Charter of the Kingdom of the Netherlands art. 43.

¹⁶ U.N. Economic and Social Commission for Asia and the Pacific, *What is Good Governance?* (last visited Apr. 19, 2018), <https://www.unescap.org/sites/default/files/good-governance.pdf>.

¹⁷ DISASTER LAW: EMERGING THRESHOLDS, (Amita Singh ed. 2018).

identified gaps in Sint Maarten’s legal framework for integrity in public administration.¹⁸ For example, the Council of Ministers and additional Ministers have no formal integrity Code of Conduct governing their behavior.¹⁹ Additionally, Parliament does not have an explicit code of conduct.²⁰ Further, the integrity laws currently in place are inadequately enforced, which in turn leads to low accountability.²¹

On October 13, 2017, Ronald Plasterk, the Minister of the Interior and Kingdom Relations, wrote a letter to the Government of Sint Maarten outlining the conditions on which the Netherlands’ financial aid to Sint Maarten’s reconstruction were based.²² One condition was the establishment of an Integrity Chamber. The overarching goal of the Integrity Chamber is to promote sound, transparent, and reliable public administration. The National Ordinance of August 21, 2015 established the Integrity Chamber²³ (repealed by the judgment of the Constitutional Court as unconstitutional of July 7, 2016).²⁴ In 2015, the Integrity Chamber was given three tasks: “(i) to give solicited and unsolicited advice on alleged integrity violations, and to conduct concrete inquiry into integrity violations;

¹⁸ PricewaterhouseCoopers (PwC), INTEGRITY INQUIRY INTO THE FUNCTIONING OF THE GOVERNMENT OF THE SINT MAARTEN (2014) [hereinafter INTEGRITY INQUIRY].

¹⁹ *Id.* (Although civil servants are required to take an oath of office upon entering service, there is no formal written Code of Conduct for civil servants that clearly articulates their obligations, and includes an administrative, investigative, and disciplinary framework and expectations of integrity to which all employees are held accountable. However, abiding by the Constitution of Sint Maarten and promoting the welfare (of the people) to the best of one’s ability are part of this oath).

²⁰ TRANSPARENCY INTERNATIONAL, SINT MAARTEN 2015 NATIONAL INTEGRITY SYSTEM ASSESSMENT 34 (2015) (According to Transparency International, “there are no independent bodies required to deal with the legislature’s ethics and there are no requirements in the law concerning certain integrity aspects, like disclosure of assets and contacts with lobbyists, rules on gifts and hospitality, or post-employment restrictions”) [hereinafter INTEGRITY ASSESSMENT]; *But see* CONST. OF SINT MAARTEN, art. 56 (the Constitution requires members of parliament to take an oath declaring that they “not to have given or promised anything related to their election and will not do so and will not be bought” and that they will abide by the Constitution of Sint Maarten and promote the welfare of the people of Sint Maarten to the best their ability).

²¹ *See* GENERAL AUDIT CHAMBER, CODE OF CONDUCT (2013), <http://www.arsxm.org/EN/About/Organization/Documents/Code%20of%20conduct.pdf> (external supervisory institutions for the Sint Maarten include: Algemene Rekenkamer Sint Maarten (ARSXM), the General Audit Chamber which collaborates with Stichting Overheids Accountants Bureau (SOAB) charged with conducting internal audits (ex- post), as it is part of the monetary and material administration of government finances and properties and the College Financieel Toezicht (Cft) the Board of Financial Supervision was set up in 2008 to prepare the new financial constitution and to perform temporary financial supervision in Sint Maarten).

²² *See* Letter from Ronald Plasterk, Minister of the Interior and Kingdom Relations, to the Government of Sint Maarten (Oct. 13, 2017).

²³ *See* VanEps Kunneman Van Doorne, “The Much Discussed Integrity Chamber for Sint Maarten,” (last visited Apr. 19, 2018), <https://www.ekvandoorne.com/wp-content/uploads/2017/09/The-much-discussed-Integrity-Chamber-for-Sint-Maarten.pdf> [hereinafter The Much Discussed Integrity Chamber].

²⁴ *Id.* at 2.

(ii) to give solicited and unsolicited advice on integrity policy; and (iii) to oversee the implementation of advice given or proposals made.”²⁵

This section develops two recommendations for Sint Maarten to implement with an eye toward ethics and good governance in an era of climate change. The recommendations include: (1) increasing government accountability and strengthening the legal integrity framework through assessment tools, establishing a clear code of conduct, and increased transparency measures; and (2) addressing the newly formed Integrity Chamber’s shortcomings through communication strategies and whistleblower hotlines.

A. Increase Government Accountability through Assessment Strategies and Strengthening Legal Framework for Integrity

1. Code of Conduct and Increased Transparency.

A fundamental problem that Sint Maarten faces which emerged from the interviews is the lack of enforcement and Government accountability measures. While there are currently policies in place that set out expectations for integrity in the public sector, officials do not adhere to the legislation, because the legislation is outdated and underenforced. Additionally, there is an overemphasis on short-term planning, due in part to Sint Maarten’s reliance on tourism. Establishing a robust integrity framework will provide a foundation for effective governance, while assuring citizens that their government is working on their behalf.²⁶

In the context of disaster management, improving the legal framework on integrity through preventative measures—for example, assembling all integrity regulations into one uniform law—can help counter corruption in the public sector by beginning to foster accountability.²⁷ To achieve compliance, the uniform integrity policy should ensure that (1) the laws are clearly articulated, easily accessed, and published in both English and Dutch;²⁸ (2) disciplinary sanctions should be administered in a timely manner and monitored by the Integrity Chamber; (3) a clearly articulated policy is included, prohibiting conflicts of interest, identifying what constitutes a gift, permissible gift thresholds, and what gifts are considered “reportable gifts”; and (4) trainings focused on integrity related policies and consequences should be administered (test should be given at the end and taken until passed).²⁹ As studies

²⁵ *Id.* at 4.

²⁶ PROMOTING INTEGRITY: EVALUATING AND IMPROVING PUBLIC INSTITUTIONS 243, (Brian Head, A.J. Brown, and Carmel Connors eds. 2008) [hereinafter PROMOTING INTEGRITY].

²⁷ *Id.* at 253 (“Integrity systems are designed to prevent corruption before it occurs. . . . Well-constructed prevention systems can both help individuals and protect the integrity of government”).

²⁸ See OECD, BUILDING PUBLIC TRUST: ETHICS MEASURES IN OECD COUNTRIES 75-76 (2000) [hereinafter BUILDING PUBLIC TRUST].

²⁹ PROMOTING INTEGRITY, *supra* note 26 at 270-71 (The trainer can analyze the amount of time that each employee spends per question and administer an exit quiz to measure success. Additionally,

published by the Organization for Economic Co-operation and Development (OECD) show, high standards of conduct in the public sector are critical in preventing misconduct.³⁰

2. Measuring the Impact of Sint Maarten's Integrity Framework.

Implementing effective assessment tools to measure integrity frameworks is essential to good governance. In order to assess integrity policy effectiveness, Sint Maarten should administer biennial reports that include administering surveys, tracking progress, and ensuring compliance.

Between 1990 and 1998, the United States Congress required the U.S. Office of the Government Ethics to issue biennial reports.³¹ The reports measured the success of various programs by gathering aggregate data through surveys from several ethics officials.³² The data ranged from the number of advisory opinions issued, to the number of administrative and criminal measures taken against employees. The OECD Public Sector Integrity's Framework for Assessment provides criteria to ensure that the surveys adequately measure the effects of the integrity policies.³³ This includes ease of use, anonymity, a mechanism that analyzes results, feedback, and good techniques to ensure validity and reliability.

Self-reporting presents a challenge when using surveys to assess policy effectiveness because collaboration is integral in cases related to misconduct. This often leads to under-reporting.³⁴ The strengths of administering surveys to assess progress is that they can be replicated and, when collected over a long period of time, data analyses of the integrity policies in place can help assess their effectiveness.³⁵

B. Address the Integrity Chamber's Shortcomings.

The challenges facing Sint Maarten in relation to implementing the Integrity Chamber are considerable.³⁶ Allowing the Sint Maarten community to have a voice

more than one training should be administered in order to instill core values in employees); *See also*, BUILDING PUBLIC TRUST, *supra* note 28 at 75 (“Trainings facilitate s ethics awareness and can develop essential skills for ethical analyses and moral reasoning”).

³⁰ BUILDING PUBLIC TRUST, *supra* note 28 at 74.

³¹ PROMOTING INTEGRITY, *supra* note 26 at 248, 253 (administering surveys is inexpensive and replicable).

³² *Id.* at 254.

³³ OECD, PUBLIC SECTOR INTEGRITY: A FRAMEWORK FOR ASSESSMENT 92 (2005).

³⁴ *Id.* at 258.

³⁵ *Id.*

³⁶ *See* “The Much Discussed Integrity Chamber,” *supra* note 23 (The Constitutional Court identified several shortcomings of the Integrity Chamber in response to the 2015 National Ordinance which included in large part clearly setting out limits for the Integrity Chamber. Problems that were identified included: (1) Questioning Under Oath, “[T]he Integrity Chamber has been granted the

in its recovery planning, while implementing the Integrity Chamber without being paternalistic, is integral for ensuring sustainability.³⁷ A highlighted related to the efficacy of the Integrity Chamber is the disincentive to participate in the program due to part-time volunteer nature of the program. In addition, there is a fear of the social repercussions for assisting in an investigation or prosecution.³⁸ Mechanisms developed by the Response, Investigations, Compliance and Ethics (RICE) group in the U.S. can be replicated within the Integrity Chamber.³⁹ For example, inter-governmental participation is encouraged. As such, there should be collaboration between the Council of Ministers and the Integrity Chamber.⁴⁰

C. Implement a “Fight Against Corruption” Public Education Campaign

In addition to establishing full-time Integrity Chamber positions, Sint Maarten should launch a fight against corruption campaign. This can range from setting up a website where integrity breach cases are published, to implementing an anonymous and confidential complaint hotline. The hotline can be modeled after the Red Cross’ 1-800 hotline which was launched in response to Hurricane Katrina.⁴¹ The hotline’s goal was to encourage whistleblowers and bring forward allegations of potential fraud, waste, abuse, and safety concerns.⁴² Whistleblower hotlines are aimed at providing a “safe, independent outlet for reporting misconduct and receiving ethics advice.”⁴³ Where possible, Sint Maarten should distribute fraud hotline posters in high traffic areas, and air television and radio fraud alerts.⁴⁴

power to question people under oath (both subjects of an inquiry and third parties such as whistleblowers and compliance officers). The Integrity Chamber may mandate this power to its staff . . . In the criminal justice system, people are allowed be questioned under oath only by the judge or the investigating judge in view of the grave consequences thereof;” and (2) the power to enter premises and to bring equipment, “the Integrity Chamber is authorized under the National Ordinance 2015 to bring the necessary equipment and to access any location, if necessary with the assistance of the police, to claim access to data, modems or other information carriers and to make copies thereof, or to subject items to examination and inspection, or to take samples of those items”). The new Ordinance is in Dutch, thus we were unable to assess whether the issues identified by the Constitutional Court were addressed.

³⁷ See Sara Geale, *The Ethics of Disaster Management*, 21 DISASTER PREVENTION AND MANAGEMENT: AN INTERNATIONAL JOURNAL 404, 452 (2012).

³⁸ See *Id.*

³⁹ Department of Justice, HURRICANE KATRINA TASK FORCE: SECOND YEAR REPORT TO THE ATTORNEY GENERAL (2007), <https://www.justice.gov/sites/default/files/criminal-disasters/legacy/2012/07/30/09-04-07AG2ndyrprogrpt.pdf>.

⁴⁰ AB 2010, GT no. 25, Sect. 14, art. 82, 1 (the Ordinance states, “[t]he Minister of General Affairs shall appoint a civil servant as an integrity counsellor for each ministry. Integrity counsellors may be appointed for individual organisational units or for groups of organisational units, as required.” The integrity counsellor can collaborate with the Integrity Chamber).

⁴¹ HURRICANE KATRINA TASK FORCE, *supra* note 39 at 29.

⁴² *Id.*

⁴³ *Id.* at 23.

⁴⁴ *Id.*

D. Lobby the Kingdom of the Netherlands to Sign the United Nations Convention against Corruption (UNCAC) on Sint Maarten's behalf

While Sint Maarten is beholden to the Kingdom of the Netherlands in order to join the United Nations Convention against Corruption (UNCAC)⁴⁵ as a states party, the government may consider requesting that the Kingdom sign on its behalf. Becoming a states party would allow the government to better coordinate with other similarly situated governments on corruption issues, provide access to unique technical assistance and capacity, and signal to potential perpetrators of corruption, especially high-level officials, that Sint Maarten is taking corruption seriously.

E. Join the SACRP

The opportunity to collaborate and share information with similarly situated island nations on anti-corruption best practices is especially useful to a country like Sint Maarten that has limited resources and a unique context. This logic was the impetus behind the Small Island Developing States (SIDS) Anti-Corruption Research Platform (SACRP), developed by the Independent Commission Against Corruption (ICAC) Mauritius, and supported by the UN Office on Drugs and Crime (UNODC).⁴⁶

In order to better promote good governance and put Sint Maarten's limited resources to best use, Sint Maarten should consider joining the SACRP. Benefits of joining include access to "an array of anti-corruption related materials relevant to [SIDS] including best practice guides," increased "visibility of anti-corruption initiatives" in Sint Maarten, and participation in online forms for member SIDS to collaborate and share information.⁴⁷ The official launch of the SACRP will be in June 2018.⁴⁸

IV. ENVIRONMENTAL LAW

Protecting Sint Maarten's environmental assets is of paramount importance to the island's continued economic development.⁴⁹ Cruise ships are drawn to the island for its beautiful beaches and green hills, environmental assets which our sources painted as undervalued and threatened. We observed these threats firsthand: many

⁴⁵ United Nations Convention Against Corruption, 2349 U.N.T.S. 41, U.N. Doc. A/48/422 (2003), https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

⁴⁶ *The SIDS Anti-Corruption Research Platform*, ICAC MAURITIUS (2017), <https://sidsanticorruption.org/>.

⁴⁷ *Mauritius steps up the fight against corruption in SIDS through the creation of the SIDS Anti-Corruption Research Platform*, UNITED NATIONS OFFICE ON DRUGS AND CRIME (April 11, 2018).

⁴⁸ *Id.*

⁴⁹ Moody's Investors Service, *Government of Sint Maarten – Baa2 Stable: Annual Credit Analysis* (Jun. 8, 2016), <http://www.sintmaartengov.org/Policy%20and%20Reports/Sint%20Maarten%202016%20Annual%20Report.pdf>.

buildings remain badly damaged and apparently abandoned after Irma, and garbage and rubble piles remain visible throughout towns, along roadways, and even on the island's famed beaches. Perhaps most prominent and troubling amongst these environmental hazards is the island's landfill. Multiple sources discussed this feature as a pressing environmental issue in need of immediate action. Despite its prominence and these fears, along with trash fires burning every few weeks, no alternative waste management plan is under discussion.⁵⁰

These conditions would be problematic in any context; once the emergency conditions brought by climate change and extreme weather events are added, they become existential threats. Especially threatening to the island's economic health, cruise ships and tourists have been slow to return to the island in Irma's wake.⁵¹ Maintaining high levels of tourism is integral to Sint Maarten's economic health and recovery, and protecting the natural beauty on the island drawing those visitors is vital to achieve that goal.⁵²

Sint Maarten's beautiful natural resources and environmental treasures are under existential threat. The island's tourism industry, so heavily reliant upon those natural assets, faces a resulting danger which threatens to work severe damage to the island's economy. The new global normal of increasingly dramatic and unpredictable extreme weather events, in turn, exponentially expands that threat. The island's buy-in problem incentivizes short-term, environmentally damaging action over pursuit of environmental long-term health. The Emergency Support Function (ESF) on the island is likely to be relied upon more heavily as more extreme storms strike the island more often, and that function fails to adequately protect environmental assets. Sint Maarten's natural features present several conditions which further complicate protecting its environmental assets. And finally, prominently identifiable violations of the nation's environmental laws abound on the island, while an attitude of indifference to potential enforcement of those laws has taken hold. Despite these myriad threats, there are several opportunities to make meaningful and important steps towards protecting Sint Maarten's fragile beauty.

This Section explores possibilities for a way forward in addressing the unique environmental issues of Sint Maarten resulting from climate change. First, it recommends the establishment of an environmental educational program. Second, it suggests concrete revisions to the ESF in the environmental context. Third, it

⁵⁰ "Cruise ship cancels call due to big landfill blaze," THE DAILY HERALD (Apr. 13, 2018), <https://www.thedailyherald.sx/islands/75648-cruise-ship-cancels-call-due-to-big-landfill-blaze>.

⁵¹ Michelle Higgins, "St. Martin After Irma: The Beaches Are Dazzling but There's Work to Do," THE NEW YORK TIMES (Mar. 19, 2018), <https://www.nytimes.com/2018/03/19/travel/st-martin-after-hurricane-irma-.html>.

⁵² Natalie Meade, "St. Maarten is Still Striving to Recover From Its Worst Hurricane in a Century," THE NEW YORKER (Mar. 2, 2018), <https://www.newyorker.com/news/news-desk/st-maarten-is-still-striving-to-recover-from-its-worst-hurricane-in-a-century>.

provides areas for prioritization in enforcement of environmental laws. It concludes with the opportunity to collaborate with similarly situated island nations on environmental issues.

A. Implement an Environmental Education Program

The unique conditions and challenges facing Sint Maarten also provide meaningful opportunities for important developments. A stronger Sint Maarten is one that seeks to provide environmental education programs for its citizens. Environmental education is key to confronting the island's buy-in problem – an unwillingness to prioritize long-term goals on the island in the favor of immediate results – noted by sources and observed during our travel to the island.⁵³ Greater education regarding the island's natural assets and environment should be expected to promote a sense of ownership in the island.⁵⁴ The government of Sint Maarten should allocate resources to this pursuit.

A base of knowledge and expertise operating to protect and promote the nation's environmental assets already exists in the form of the nature organizations already operating on the island. Our research identified several nongovernment organizations who seek meet these conditions. The Dutch Caribbean Nature Alliance (DCNA) and Environmental Protection in the Caribbean (EPIC) are two such organizations. Both share commitments to expanding scientific study of the island's environmental assets and educating the public about conservation practices. While the buy-in problem presents problems in myriad ways on the island, it is especially obvious in the environmental context. Short-term convenience and cost-saving guide reckless and environmentally damaging decisions, which then go unpunished by a government showing little will to enforce its environmental laws.

The Sint Maarten government should work alongside EPIC and DCNA to develop educational programs aimed at promoting understanding and investment in Sint Maarten's environmental treasures for students and adults alike. Creating awareness about the environment's effects on the island's economy and casting perceived "long-term" threats as much more immediate ones may further promote support on the island.

Enticingly, this measure could be achieved without siphoning government funds from other efforts. A \$1 tourism conservation tax could be implemented on the

⁵³ *Islands of the Future: Building Resilience in a Changing World*, UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION at 6 (2014), <http://unesdoc.unesco.org/images/0022/002245/224512e.pdf>.

⁵⁴ Heather Zeppel, *Education and Conservation Benefits of Marine Wildlife Tours: Developing Free-Choice Learning Experiences*, 39 JOURNAL OF ENVIRONMENTAL EDUCATION 3 (Aug. 2010), <https://www.tandfonline.com/doi/abs/10.3200/JOEE.39.3.3-18>.

island, with all proceeds going directly towards environmental education and preservation work. Considering the costs required to reach the island by plane or cruise ship, an additional \$1 from each tourist visiting the island would not serve as a deterrent to visitors. However, the incredible number of visitors to the island would ensure a significant fund which could serve to promote environmental values and education.

B. Revise the ESF to Strengthen Environmental Protections in Emergencies

Another opportunity for promoting environmental values is revision of the ESF. Currently, the ESF seems to be implemented mostly through institutional knowledge and a common culture of ministers and bureaucrats who have worked together long enough to implement a response to emergencies. However, that process is currently opaque, poorly defined, inefficient, and in need of update. Sources, including several that serve on the ESF themselves, were unable to provide insight into the policies and procedures by which the ESF operates. Emergency conditions inevitably call for difficult questions about appropriate weighing of interests and values in the interest of responding to human crises. However, little procedure beyond ESF ministers collaborating through institutional shared knowledge and a history of working together was revealed in our research.

Moreover, the ESF presents opportunity for environmental waste and abuse, as well as corruption in the organization of a response and allocation of emergency resources.⁵⁵ Without a clearly-defined procedure or roles, interview subjects claimed that opportunity for fraud in environmental cleanup operations and contracts was difficult to combat. The relatively small number of government officials overseeing the intensive cleanup process was insufficient to control the threat of fraud and corruption. Additionally, there is no independent voice championing environmental values installed on the ESF board. As a result, our sources suggested the cleanup was inefficient, incomplete, and did not serve environmental values.

Clearly defined roles for each minister are vital to promote transparency and reliability. Information on the process must be made available to the public *prior* to an emergency so that people may plan ahead, rather than learning of processes and procedure after a disaster strikes. Finally, an environmental representative should be placed on the ESF board. While emergencies call for a weighing of many concerns and values, environmental issues are currently underrepresented in the ESF. While concessions on environmental issues may be necessary, environmental concerns must maintain a voice in these important decisions when they are most likely to be sacrificed or overlooked.

C. Prioritize Enforcement of Environmental Laws and Ordinances

⁵⁵ *How Corruption Affects Climate Change*, TRANSPARENCY INTERNATIONAL (Apr. 22, 2017), https://www.transparency.org/news/feature/how_corruption_affects_climate_change.

Enforcement of environmental laws and ordinances must be prioritized and pursued. Many of our interview sources spoke of the lack of fear of enforcement of the island's waste and related ordinances. Waste piles in violation of Sint Maarten's waste ordinance are prevalent throughout the island. Structures built upon the island's beaches and throughout its hills in seemingly obvious violation of the beach and hill policies are easily spotted. The sources we spoke with said polluters often act with impunity, because the island's overtaxed prosecuting service prioritizes other crimes to the detriment of environmental enforcement. Under-enforcement was discussed by sources whenever questioned about penalties for environmental violations.

The Preamble of Sint Maarten's Constitution directs the government to prioritize preservation of nature and its environment, with Article 22 directing "it shall be the government's constant concern to keep the country habitable and to protect and improve the environment and of the living environment and welfare of animals." Beyond this provision, legislation regarding the island's environmental protection is limited, outdated, difficult to obtain, and under-enforced. Most of the environmental laws of Sint Maarten take the form of ordinances promulgated in the 1990's, prior to the island's independence and prior to the coalescing of our modern understanding of the effects of climate change on extreme weather events.

Sint Maarten's waste ordinance, AB 1993 03, sets out the manner in which trash must be held and presented for collection. This ordinance's emphasis on collection and visibility of waste fails to serve important environmental values. Despite these loose and lax requirements, examples of violations of the ordinance's prohibition on dumping and waste piles outside of government-selected sites are evident throughout the island. The criminal provisions of the ordinance provide for a fine and up to two months' imprisonment for violators. Despite this, sources and observation suggest fear of enforcement is minimal.

Other ordinances include a development planning ordinance (AB 1993 13), wastewater ordinance (AB 2002 5), and hillside and beach policies.⁵⁶ The development planning ordinance is largely a zoning regulation with minimal direction to consider environmental quality. The island's wastewater ordinance prohibits discharge of environmentally harmful liquids and provides for both administrative and criminal punishments (up to two months' imprisonment or a fine of 5,000ANG). The hillside policy sets out guidelines narrowing the ability of developers to build in the island's hills and prohibiting building above 200 feet. Despite this, the hillside policy lacks an enforcement or criminal provision. The beach policy prohibits construction within 50 meters of the beach, or within 25

⁵⁶ "Policy & Legislation," DUTCH CARIBBEAN NATURE ALLIANCE (last visited Apr. 28, 2018), <http://www.dcnanature.org/resources/policy-law-enforcement/>.

meters of the ocean where there is no beach. Again, the beach policy is just that- a policy with no means of enforcement.

Two existing environmental laws, the waste and wastewater ordinances, have meaningful and severe penalties, but must be utilized by prosecutors empowered with both the resources and the will to pursue charges. Additionally, a means of enforcement must be adopted for the hillside and beach policies. This provides the stick to promote buy-in of environmental values, while education serves as the carrot. The number of environmental violations on the island is surprising and the severity of the problem apparent. Openly flouting these rules undermines environmental values on the island and further perpetuates indifference towards long-term environmental goals. An equally public prosecution of especially powerful, visible, and egregious violators of waste laws could demonstrate “teeth” to the environmental laws on the island.

D. Partner with Similarly Situated Island Nations

Finally, partnerships with similarly situated islands and nations should be explored. As a small island state, Sint Maarten is particularly susceptible to damage from hurricanes and rising sea levels from climate change.⁵⁷ Sint Maarten shares this and other features with many small island nations around the world and particularly in the Caribbean. Inadequate fresh water stores, waste and waste water accumulation, fragile biodiversity, expensive transportation costs, vulnerability to sea rise, and dependency on foreign fuel sources present both Sint Maarten and similarly situated nations with environmental challenges.⁵⁸

The UN supports a group, the Alliance of Small Island States, which encourages its members to collaborate to promote a stronger voice in international issues, pooled intellectual resources, and insight into what works to proactively plan for Sint Maarten’s new normal of extreme weather events.⁵⁹ The Alliance consists of 44 Members and Observers which represent a collective and empowered voice at the United Nations, UNICEF, and other international bodies and organizations for these small states most prone to climate change’s transformative and damaging effects.⁶⁰ AOSIS members also partner together to share and develop sustainable development technology and planning.⁶¹ Informal partnerships with neighboring

⁵⁷ *Rising Tides, Rising Capacity – Supporting a Sustainable Future for Small Island Developing States*, UNITED NATIONS DEVELOPMENT PROGRAMME (Sep. 14, 2017), <http://www.undp.org/content/undp/en/home/librarypage/poverty-reduction/rising-tides-rising-capacity-supporting-a-sustainable-future-for.html>.

⁵⁸ *Id.* at 5.

⁵⁹ *Rising Tides, Rising Capacity*, *supra* note 57.

⁶⁰ AOSIS APA Statement UNFCCC, AOSIS Opening Statement, ALLIANCE OF SMALL ISLAND STATES (Nov. 2016), <http://aosis.org/documents/climate-change/>.

⁶¹ “Sustainable Development,” ALLIANCE OF SMALL ISLAND STATES (last visited Apr. 28, 2018), <http://aosis.org/documents/sustainable-development-document/>; *See also* “Statement by the Republic

islands should also be pursued in the interest of collaboration in education, conservation, and enforcement. Through these initiatives, Sint Maarten can work to prioritize preservation of its beauty and natural resources using the best practices available, which will in turn protect and preserve its tourism industry and an economy reliant on that industry.

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Sint Maarten is facing a historic time in its environmental history, one presenting unique challenges and potentially transformative opportunities. The island has entered a new age of climate change along with the rest of our planet, featuring increasingly unpredictable and severe extreme weather events. Sint Maarten's beauty presents both an asset worth protecting and a potential for economic danger. Resources must be committed to confronting the buy-in problem on the island, perhaps most importantly through education. Sint Maarten's residents' disregard of long-term challenges has resulted in those challenges transitioning to immediate—and dire—threats. Structural changes to the island's ESF will further promote awareness of the importance of protecting Sint Maarten's environment. Meaningful enforcement of environmental violations must be vigorously pursued to defeat the widespread indifference—or worse, criminal intent—towards enforcement of the nation's environmental laws. Finally, Sint Maarten should pursue meaningful partnership with similarly situated island nations to learn more about the unique challenges these states face.

Through these measures, Sint Maarten may work to accurately cast climate change's threat to its environmental beauty as a problem for today requiring each citizen's immediate commitment to secure a sustainable economy and future. Implementing change to protect Sint Maarten's environment requires changing attitudes towards conservation and environmental protection. The proposed measures seek to implement meaningful policies that may instigate changes to those attitudes to better protect the natural beauty of the island, and thus its future.

V. BUILDING, ZONING, AND PUBLIC PROCUREMENT LAW

Sint Maarten experiences day-to-day corruption in building, zoning, and public procurement. Though the corruption may be wide-ranging,⁶² the public procurement issues described during our interviews include collusion, fraudulent invoices, underperforming contractors, and a lack of competition. As to building and construction, under-the-table facilitation payments may be made to speed up permit

of Maldives on behalf of the Alliance of Small Island States,” ALLIANCE OF SMALL ISLAND STATES (Mar. 23, 2017), <http://aosis.org/wp-content/uploads/2017/03/High-Level-Climate-Change-and-SDG-statement-w-edits.pdf>.

⁶² INTEGRITY INQUIRY, *supra* note 18.

processes. Additionally, there is a lack of coordination between the Permits Department and Inspection Department, which may facilitate unethical behaviors within the Inspection Department.

Such issues with corruption are likely to be exacerbated by extreme weather events. Indeed, great amounts of work must be done following a natural disaster as to building and construction, stretching financial and human resources. Urgent need and limited resources affect oversight controls, making it easier to get away with corrupt practices. As such, natural disasters are breeding grounds for fraud and corruption, especially in the areas of building, construction, and public procurement.⁶³

Given that public procurement is a major source of government expenditure in Sint Maarten,⁶⁴ it is especially important to address the potential waste, fraud, and abuse resulting from a natural disaster. Five sets of proposals can be implemented to target this corruption, including: (1) tightening oversight controls in the emergency cleanup stage following an extreme weather event; (2) updating VROMI policies to better respond to natural disasters; (3) promoting educational programs regarding public procurement to the business community; (4) creating incentives for the reporting of misbehavior; and (5) revising public procurement policies to prevent corruption both during and after the reconstruction period.

A. Tighten Oversight Controls in the Emergency Clean-Up Stage Post-Disaster

Hurricane Irma illuminated certain issues concerning the readiness of the Sint Maarten government to immediately and effectively respond to a disaster situation. Going forward, Sint Maarten should focus on (1) adopting more easily verifiable standards for assessing clean-up-related invoices and (2) periodically updating the Emergency Support Function (ESF) to better address future natural disasters.

1. Adopt More Easily Verifiable Standards to Judge Invoices Related to Initial Clean-Up

During the immediate response period following Hurricane Irma, VROMI was responsible for overseeing the initial clean-up of debris, as well as managing waste and drainage. Sources told us that VROMI faced significant challenges in performing proper oversight over the initial clean-up post-Hurricane Irma. Specifically, the initial days of debris clean-up involved over one thousand workers, with only eight workers available to oversee whether the workers were accurately

⁶³ “Disaster Fraud,” NATIONAL WHITE COLLAR CRIME CENTER (June 2017), <https://www.nw3c.org/docs/research/disaster-fraud.pdf>.

⁶⁴ INTEGRITY INQUIRY, *supra* note 18.

recording their number of hours worked. Accordingly, hours-based invoices were likely to have been fraught with corruption, causing a waste of vital government funds. To prevent this low-level form of corruption in the future, Sint Maarten should adopt a policy indicating when invoices may be charged based on hourly rates. Due to the difficulty of proper oversight post-disaster, hours-based payments to workers should be limited to the specific time period of immediate clean-up (e.g., pay hourly rates for only the first seventy hours following the disaster). After, payments should be made based on more easily verifiable standards, such as the weight of debris removed. A model example of such a policy is available from the National Association of State Procurement Officials.⁶⁵

2. Periodically Update the Emergency Support Function (ESF)

The government of Sint Maarten was also hindered in its response to Hurricane Irma due to its outdated emergency contingency plan, ESF. The ESF was initially created in response to Hurricane Luis in the 1990s. Prior to Hurricane Irma, it had not been updated to match the 2010 changes to the government structure. Because the emergency response roles did not align with the government structure, it was challenging to respond to Hurricane Irma as contemplated by the ESF, rendering the ESF less useful. The ESF has since been revised as of September 2017.⁶⁶ However, the ESF should be re-visited continually every six to twelve months to assess its functionality and alignment with the current government structure.

B. Update VROMI Policies to Better Respond to Extreme Weather Events

The Ministry of Public Housing, Spatial Planning, Environment & Infrastructure (VROMI) plays a major role in Sint Maarten's extreme weather contingency plan. VROMI's policies and procedures should be strengthened given its major role in emergency response and recovery processes.

1. Establish Formal Processes within VROMI to Respond to Disaster Situations

Based on our research, it seems that VROMI officials responded to needs arising from Hurricane Irma in an ad hoc fashion. Though emergency situations inherently create certain unknown challenges, VROMI should nevertheless have a disaster protocol in place given the risk of extreme weather events in the Caribbean. Formal processes and procedures related to disaster response should be created within the ministry. For example, in addition to their regular roles, VROMI employees should

⁶⁵ *Emergency Preparedness for State Procurement Officials: Guide*, NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (March 2013), <http://www.naspo.org/dnn/portals/16/documents/EmergencyPreparednessforStateProcurementOfficials.pdf>.

⁶⁶ "Emergency Support Group," GOVERNMENT OF SINT MAARTEN (Sep. 15, 2017), <https://www.sxm.emergency.org/en/updates/relief/emergency-support-group/>.

be trained as to their roles in disaster management. Disaster-related policies and procedures should be published and understood throughout the ministry. Having a more detailed plan in place will allow officials to respond efficiently while keeping oversight controls in place.

2. Create Permit Processes to Accommodate Post-Disaster Recovery

A department within VROMI, the Permits Department appeared to respond to Hurricane Irma in a particularly ad hoc manner. To accommodate the influx of reconstruction projects after Irma, the Permits Department created new salvage permits and expedited roofing processes. Such processes should instead be established in advance in order to be able to quickly respond to future disasters, while still keeping safety measures in mind. Specifically, the Permits Department should consider developing certain expedited permit processes that are consistent with public safety.⁶⁷ Such a framework will be useful both in rebuilding post-disaster and in the everyday building context. By creating legal expedited processes for certain types of permits, the government can deter the use of facilitation payments as methods of expediting permits while also ensuring that safety standards are met.

C. Promote Educational Programs Regarding Public Procurement to the Business Community

With the distribution of disaster relief funding provided by the Netherlands, Sint Maarten may be subject to a more intensive public procurement system. Specifically, the World Bank may require extensive bidding requirements in order for recovery funding to be used for public procurement. These requirements may or may not take into account the size of the island and the capacity of local businesses.

Accordingly, there is a risk that local businesses will be unwilling or unequipped to bid pursuant to stricter guidelines. Although such standards have yet to be announced, it is important that local businesses understand the requirements and are encouraged to bid despite the more intensive standards. Local bidding is imperative to boost the local economy and increase overall competition. As such, VROMI should implement educational programs targeted at the business community to teach them about the new processes and how they can be successful in the bidding processes.⁶⁸

⁶⁷ In 2016, Chicago instated “Easy Permit” options for certain types of permits. This program seems to have been met with success. *See* “Easy Building Permit Applications,” CITY OF CHICAGO (last visited Apr. 7, 2018), https://www.cityofchicago.org/city/en/depts/bldgs/provdrs/permit_proc/svcs/applications.html.

⁶⁸ The EU has materials available for a similar type of training program, in which Ukrainian businesses were taught EU public procurement standards. These materials may be used to develop a similar program for the Sint Maarten business community. *See* ANASTASIIA KALINA, REPORT ON THE

D. Create Incentives for the Reporting of Misbehavior

The small size of Sint Maarten creates a significant challenge in changing the culture of corruption. Because social networks are so intertwined, locals may be hesitant to report on their friends, family, and other connections that engage in corrupt behaviors. Further, local businesses may believe that corruption is just the price of doing business on the island. Though outsiders may be less deterred to report because they are not tied to personal relationships, they are also less likely to have access to information regarding corruption. As such, it is especially important that local individuals and businesses have incentives to report corruption.

1. Establish an Immunity and Leniency Program for Local Businesses to Self-Report If They Have Engaged in Anti-Competitive Behaviors

Sint Maarten's culture of corruption extends to both the government and the business community. In order to change this culture, the Public Prosecutor's Office (PPO) should consider implementing an immunity and/or leniency program for local businesses. Under such a program, the PPO will encourage businesses to come forward if they have behaved in collusive or other anti-competitive activities in exchange for favorable treatment. Such a program may encourage better practices in the future and change the culture of corruption in the public procurement sphere. The International Competition Network has gathered leniency and immunity program legislation and materials from countries around the world. Such materials may serve as concrete examples for implementation.⁶⁹

2. Incentivize Public Officials and Citizens to Report Misbehavior Related to Building Processes

Though there is widespread knowledge about misbehavior, such as bribery and facilitation payments, within the VROMI ministry, such misbehavior is rarely formally reported. Reporting may increase in frequency if it is properly incentivized, like through ease of reporting, confidentiality guarantees, and/or monetary inducement. As mentioned earlier in the report, a hotline should be created to allow citizens and public officials to report unethical behaviors easily with a guarantee of confidentiality. This hotline should be publicized in government buildings and pamphlets so that individuals are made aware of how to report misbehaviors. Additionally, certain financial incentives could be introduced to induce further

SECOND PUBLIC PROCUREMENT TRAINING WORKSHOP FOR THE BUSINESS COMMUNITY (June 2015), <http://eupublicprocurement.org.ua/wp-content/uploads/2015/06/Training-Report-on-second-business-event-ENG.pdf>.

⁶⁹ See "Leniency Materials," INTERNATIONAL COMPETITION NETWORK (last visited Mar. 27, 2018), <http://www.internationalcompetitionnetwork.org/working-groups/current/cartel/awareness/leniency.aspx>.

reporting. For example, public officials may be incentivized to report bribes if they are guaranteed an award of the bribe amount upon successful prosecution.⁷⁰

E. Update Public Procurement Policies to Counteract Corrupt Practices

The destruction caused by natural disasters often leads to increased public procurement. Accordingly, it is especially important to have a strong public procurement framework that cannot easily be abused. Sint Maarten should implement the below recommendations to strengthen its procurement policies and procedures in order to combat disaster fraud.

1. Increase Controls to Prevent Contract Awards from Being Changed After Bidding Has Ended

Currently, public tenders are only required by law if a project meets a certain monetary threshold. Under Article 47 of the National Accountability Ordinance, the “performance of work and the procurement of goods or services” shall be contracted by public tender if above \$150,000 ANG and \$50,000 ANG, respectively.⁷¹ Accordingly, if projects or services are below these thresholds, no public tender is required. However, it is not unusual for contract amounts to change after the contract is awarded. Without proper controls over contract changes, the thresholds may be abused by first awarding a lesser contract value and later increasing it above the threshold. This may lead to unjustified or inflated charges. To prevent this from happening, Sint Maarten should institute a high level of scrutiny regarding change order requests and audit all requests that go above the public tender threshold.⁷²

2. Create Clear Guidelines for When and How Public Tender Exceptions May Be Used

Similarly, the vagueness of the exceptions to the public tender requirement in the National Accountability Ordinance may enable corrupt uses. Under the Ordinance, public tenders are not required if: (1) “the procurement of goods and services or the performance of work is necessary as a result of a disaster” or (2) “a delay in contracting is against the general interest.”⁷³ There are no specific details as to the disaster or general interest exceptions. The disaster exception was used during the

⁷⁰ Charles J Stiegler, *Offering Monetary Rewards to Public Whistleblowers: A Proposal for Attacking Corruption at Its Source*, 9 OHIO STATE JOURNAL OF CRIMINAL LAW 815 (Spring 2012), <http://hdl.handle.net/1811/73396>.

⁷¹ National Accountability Ordinance, § 23 art. 47 (2010).

⁷² A change order audit may be done to determine how problematic the fraudulent use of change orders is in Sint Maarten. *See, e.g.*, CITY OF COLLEGE STATION, CHANGE ORDER AUDIT (Aug. 2014), <http://www.cstx.gov/Modules/ShowDocument.aspx?documentid=19823>.

⁷³ National Accountability Ordinance, § 23 art. 47 (2010).

initial clean-up following Hurricane Irma, as there was no access to electricity, internet, telephones, or other resources required to facilitate public tenders. However, it was ambiguous as to how long the disaster exception would be in place. This is problematic; without further controls as to its use, the disaster exception may be used to avoid public tenders when it is not actually necessary to do so. The general interest exception faces the same problem—it too can be used for nefarious purposes because of its broad application. More detail or controls should be implemented to prevent the exceptions from being used for corrupt purposes. For example, the natural disaster exception should include a time limit specifying an exact period following a disaster during which it can be used.

3. Create Training Programs for Public Officials to Recognize Collusive or Other Anti-Competitive Behaviors in Bidding Processes

Lastly, to counteract general issues with corruption in public procurement, officials need to be trained to recognize suspicious behavior. We did not encounter evidence of such training during our research. As such, VROMI should consider implementing training programs for public officials to recognize collusive and other anti-competitive behaviors in bidding processes.⁷⁴ The Institute for Public Procurement⁷⁵ and the United Nations Development Programme⁷⁶ both host a variety of courses for public procurement officials. Their training programs, including webinars and workshops, may be good tools for officials in Sint Maarten to learn more about the best practices in the public procurement field.

VI. CONCLUSION

The four areas of law most affected by corruption following an extreme weather event are (1) criminal law, (2) ethics and non-criminal anti-corruption law, (3) environmental law, and (4) building, zoning, and public procurement law. This report provides recommendations specific to each of these issue areas. In terms of criminal law, recommendations were tailored to problems of money laundering and fraud in the post-disaster context of urgency and an influx of relief and aid money. In terms of ethics and non-criminal anti-corruption law, recommendations called for action in the areas of accountability in government, the integrity chamber, and public awareness. In terms of environmental law, recommendations centered on updating the ESF, focusing prosecutorial discretion on environmental crimes, addressing the threat of climate change through the law, and producing funds for environmental education and cleanup. Finally, in terms of building, zoning, and

⁷⁴ ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, GUIDELINES FOR FIGHTING BID RIGGING IN PUBLIC PROCUREMENT (2009), <http://www.oecd.org/daf/competition/cartels/42851044.pdf>.

⁷⁵ “Find Procurement Resources,” THE INSTITUTE FOR PUBLIC PROCUREMENT (last visited Mar. 27, 2018), <http://www.nigp.org/home/find-procurement-resources>.

⁷⁶ “Procurement Training,” UNITED NATIONS DEVELOPMENT PROGRAMME (last visited Mar. 27, 2018), <http://www.undp.org/content/undp/en/home/operations/procurement/procurement-training/>.

public procurement law, recommendations focused on emergency cleanup, post-disaster recovery, and public procurement.

While these recommendations are intended to address specific issues to which Sint Maarten is vulnerable, major themes are prevalent across all four issue areas. First, existing corruption is exacerbated by extreme weather, making corruption easier and more prevalent in the wake of an extreme weather event. Second, focus should stay on the long term, as climate change ensures more and more extreme weather events. Practices aimed at protecting against extreme weather and decreasing the effects of climate change should be implemented. Third, prevention and preparedness are key to ensure the chaos and urgency that follows an extreme weather event are minimized. When processes are in place to minimize that chaos, opportunities for corruption are more limited. Keeping these lessons in mind, the government of Sint Maarten will be able to increase its resiliency against corruption following extreme weather events into the future.