



Public administrative integrity in the Caribbean Netherlands

Summary

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Summary

In 2015, the Law Enforcement Council (hereinafter: the Council) published a research report on the anti-corruption infrastructure on Bonaire, Sint Eustatius and Saba (hereinafter: the BES islands). This investigation was prompted by serious signals of corruption in the Caribbean Netherlands, especially in Bonaire. The report found that there were solid indications of an increase in cases, but a clear picture of the exact nature and extent of official corruption was lacking because that was beyond the scope of the investigation. One of the Council's main recommendations to the Minister of Justice and Security (JenV) was, therefore, to provide a clearer picture of corruption on the BES islands so that specific measures can be developed to combat it. To give substance to this recommendation, the Scientific Research and Documentation Centre (WODC) asked DSP-groep to investigate the phenomenon in order to provide a foundation for future policy development aimed at countering it. This study's main questions are:

What forms of public administrative integrity violations occur in the BES islands? What factors are associated with these violations? How is integrity violation policy formulated, and what possibilities exist for the continued development of policy instruments?

Research method

First, we reviewed the relevant literature on corruption and violations of civil service integrity to provide a desk research response to the main question. We also consulted available sources describing (parts of) the integrity infrastructure of the BES islands. A media analysis of seven relevant local news sources was done to find out which integrity violations have been made public.

In addition, we requested data from the National Criminal Investigation Department, the BES Public Prosecutor's Office (OM BES) and the public bodies on the number and type of public administrative integrity violations that have occurred since 2010. However, the study relied heavily on interviews. These were largely conducted on location on the three islands with the following parties (some interviews also took place in Curaçao and The Hague via MS Teams):

Table 1 Respondents

Respondents group	Number of respondents
Business	5
Governing body	8
Justice partner	7
Civil society	10
Public body employee	20
Supervisor	18
Executive organisation	13
Total number of respondents	81

There was an impartial committee overseeing the study. It supervised the planning and execution of the research and provided feedback on both the preliminary and final reports.

Scope and limitations of the study

Within this investigation, 'public administrative integrity violation' means abusing powers, knowledge or power associated with an official or administrative position in return for favours from third parties. Because of the characteristics of the problems on the BES islands, within this study, not only unlawful but also improper use of powers is understood, even if this misuse does not constitute a criminal offence in the direct sense. However, this broad definition also extends to the Ministry of the Interior and Kingdom Relations (BZK), whose policy domain includes public administrative integrity.¹ A significant part of the recommendations that follow from this study are therefore addressed to this ministry.

Answering the research questions

In the BES islands, what is the nature of public administrative integrity violations?

Integrity violations in the sense of criminal offences or formal misconduct are hardly ever reported in the Caribbean Netherlands. The number of cases registered within the justice chain and public bodies is, therefore, very limited. Integrity violations involving the inappropriate use of authority are presumably frequent by European-Dutch standards and take the following forms:

- 🕒 Permits, including those for construction, are not always issued according to the applicable procedures. Several examples were mentioned in the survey where preferred parties (relations or family) are granted permits much easier and much faster than others who have no relationship with the responsible administrator or official. In other cases, on the contrary, an unreasonably long wait is required for a decision on the granting of a permit (and in the case of Bonaire, also the granting of leasehold plots).

¹ <https://www.weerbaarbestuur.nl/partners/ministerie-van-binnenlandse-zaken-en-koninkrijksrelaties>

- ③ Enforcement of compliance with laws and regulations is not, or not always, done according to the norm, as a result of which illegal situations continue to exist. The study cites several examples in which law enforcement officials chose to ignore violations either voluntarily or at the request of the accountable political official.
- ③ Private parties are provided with sensitive information. The disclosure of proposed spatial developments or tenders by office holders to entrepreneurs and other relations was mentioned. This insider knowledge allows for the enjoyment of financial advantages.
- ③ Within tenders, contracts are awarded not to the best-qualifying party but to preferred parties. A so-called level playing field is lacking in such cases.
- ③ Local political parties in the Caribbean Netherlands rely heavily on donations from the business community. Donors sometimes turn out to be preferential in tenders.
- ③ When voters cast a proxy or support a specific political party, they receive rewards. This is considered election fraud, which is illegal.
- ③ Appointments within public administration are regularly politically motivated and serve as a reward for electoral or financial support, to maintain the (political) network or to secure political influence within an organisation. The public interest and the standard of public service are both negatively impacted by this practice.
- ③ Public officeholders engage in extracurricular activities that are challenging to balance with their primary responsibilities. The office holder usually gains directly from these activities.

Based on a comparison of the described phenomena with the literature on corruption and public administrative integrity violations, it must be concluded that corruption is not very prevalent in the Caribbean Netherlands. Petty crime is the term used in the literature to describe situations in which an official and a third party have a unilateral relationship in which illicit (financial) favours are exchanged.

But even those examples are scarce. What remains are behaviours in the twilight zone between political patronage, social bribery and network corruption. Although this is an undesirable situation by European-Dutch standards, in most cases, it is not a criminal offence in the direct sense of the word.

There are important differences between the BES islands: the problem is mainly observed on Bonaire and, to a lesser extent, on St Eustatius. On Saba, there were few signals of integrity violations that fit the working definition of this study.

What are the main factors associated with public administrative integrity violations in the BES islands?

In the literature, a large number of risk factors are associated with the incidence of corruption and integrity violations. However, most of the factors mentioned relate to (much) larger countries whose socioeconomic features are not easily comparable to those of the BES islands. If we limit ourselves to the theory that fits

within the specific context of the Caribbean Netherlands, several risk factors mentioned in the literature also apply to the Caribbean Netherlands.

At the macro level, the dominant political culture of the islands legitimises, or at least does not reject, certain forms of integrity violations. The European-Dutch-based laws and regulations mainly codify universalistic norms, while the dominant political culture of the islands can be characterised as particularistic. This creates a mismatch between the behaviour socially expected of administrators and the norm set by law. This increases the pressure on administrators to make improper use of their powers. In exchange for favours granted to their network, the political office holder secures electoral support, funds for party treasury or loyalty from the network.

Relative poverty on the islands increases the likelihood of administrative integrity violations. Residents often rely on government services or jobs for their livelihoods. Politicians trade off this dependence for electoral support. In addition, income inequality may also play a role on the islands. As a result of the visibility of wealth among some and the inability of others to achieve the same material prosperity, feelings of injustice arise and find an outlet in norm-breaking behaviour. With the influx of large numbers of (very) affluent European Dutch nationals and expats - to Bonaire in particular - visible social inequality has further increased.

Small scale also contributes to the risk of integrity violations as private and professional roles frequently overlap. Citizens or representatives of companies calling on the government often know, from other social contexts, the serving official or responsible director personally. Role blurring and political patronage then quickly lurk.

Economic developments, specifically in Bonaire, have increased the risk of integrity violations. With the influx of new residents and increased property prices, the economic significance of the real estate market has changed substantially and become significantly more vulnerable to land speculation and malinvestment. This is all the more problematic because the long-standing vulnerability of the island's leasehold issuance process has not been systematically addressed.

Increased building activity, particularly on Bonaire, along with new commercial ventures, guarantees that the administrative licensing, supervision, and enforcement components (collectively, the "VTH domain") are more susceptible to inappropriate policy influence. However, the study found no evidence to suggest that public bodies are actively engaged in undermining criminal activity.

At the meso level, there are also some factors that facilitate political patronage and network corruption. First, mention should be made of the widespread culture of fear that finds fertile ground in Antillean society, which is inherently power-inequal. Within an organisation, contradicting a superior on work matters is, more so in the Caribbean Netherlands than in the European Netherlands, quickly perceived as inappropriate because it affects the person's authority. This can not only seriously disrupt the relationship but also - in the case of an

authority relationship - harm one's position. Dependence on the government as an employer and the need to maintain one's employment position provides a reason to look away from malpractices and move along when directives are given from on high, even when those directives conflict with prevailing procedures.

Secondly, the role and quality of middle management within government organisations should be highlighted. For promoting and safeguarding integrity, this management holds the key as they are the main culture carrier for good behaviour in the workplace. Heads of departments and other managerial positions should not only propagate integrity but also be resilient to political pressure. This is far from always successful in practice. On the one hand, middle management is regularly weakly organised, and heads of service often appear to be on temporary contracts. The accompanying risk of dismissal and the limited outlets on the local labour market mean that managers experience an incentive to stay within the wishes of the administration. On the other hand, there is also the problem that key positions are sometimes given away to political confidants. These will not easily feel an incentive to antagonise the executive to whom they owe the position.

Third, at the implementation level - apart from the culture of fear - there is the problem that the civil service is increasingly unable to cope with the increasing complexity of the task. Due to the integration in the Netherlands, more and more is expected of the local civil service. This has led to an increasing workload and the legalisation of processes. However, all three islands lack sufficient (legally) trained personnel. Many functions performed at the HBO (+) level in the European Netherlands must, therefore, be filled at the MBO level on the BES islands. And it does not help that many processes have yet to be written out in full and have only been digitised to a minimal extent. Within the VTH domain, the backlog of permit applications is enormous. For entrepreneurs who want to move forward, this situation can be a reason to circumvent formal processes through political relations. For politicians, the backlogs in the VTH domain provide (willingly or unwillingly) a bargaining chip that can be used to strengthen particularistic relations with entrepreneurs and citizens.

Finally, it should be noted that certain procedures within the public bodies have not yet been worked out. This ensures that improper use of powers in some cases - although undesirable - is not prohibited. For instance, there are no elaborated procurement rules, there is no legal duty for political parties to disclose donations, and no sanctions for the government exceeding critical decision deadlines.

To what extent are existing policies to combat and prevent public administrative integrity violations adequate?

The term adequate is essentially normative and is interpreted within this study as the extent to which the Euro-Dutch standard is met. We distinguish here between the curative framework from which action is taken when integrity violations actually occur and a preventive framework aimed at preventing the phenomenon from occurring.

Curative framework

Regarding the curative framework, various orders and prohibitions are enshrined in criminal law and civil servants' law, comparable to the Dutch legal system in Europe. If public officials violate these laws, appropriate legal action can be taken. As far as the public body (as an administrative body) takes unlawful or improper decisions, vertical supervision is important in the Caribbean Netherlands.

Unlike municipalities in the European Netherlands, public bodies do not fall under a province but directly under the state. Vertical supervision is exercised on behalf of the state (currently) by the Kingdom Representative (in Dutch: Rijksvertegenwoordiger). He has several instruments with which he can intervene in the local decision-making process should unlawful decisions be taken or if the public body otherwise violates the principles of good governance. For example, certain decisions (including appointments) only take effect after his approval, and he is authorised to submit decisions (also non-written decisions) to the Crown for annulment. In extreme cases, the Kingdom Representative can take his place in the event of dereliction of duty. This occurs when the island government does not (correctly) take a decision required by or according to the law.

Looking at the criminal law approach to integrity violations, the conclusion is that there are no significant obstacles at play in the Caribbean Netherlands. With a few minor exceptions, the designated parties are qualified to conduct the criminal investigation. In principle, the Rijksrecherche is in charge of this inquiry. The Rijksrecherche can react effectively to the relevant signals and has permanent staff on Bonaire.

Furthermore, neither the public administration law nor the tools used to enforce its orders and prohibitions contained any evidence of significant omissions, according to the study. The study does, however, demonstrate that the instruments are rarely used and that the appropriate authority frequently overlooks public official misconduct when taking corrective action would have been the obvious course of action.

On paper, there is tight vertical supervision. In practice, this does not get off the ground. In explanation, it is pointed out that the necessary preconditions are not provided. For instance, the island governments do not consistently comply with the legal obligation to publish all decisions of the island government (on time). When decisions are submitted in time for approval to the Kingdom Representative, the latter runs into the problem that there is no clear assessment framework with which to assess whether the decisions meet the standard at all. More important, though, is the Hague's unwillingness to exercise the formal authority of the Kingdom Representative. Aside from strained relations with the islands, departments face significant (financial) obligations when using their powers, particularly when "stepping in for neglect of duties." These are unwelcome responsibilities to take on. The Hague's poor execution of vertical supervision sends a message to the islands that administrative integrity is not always a top priority, at least when it comes to the BES islands.

Preventative framework

The study's preventive framework concentrated on the guidelines established for civil servants of public bodies (administrators' guidelines were not evaluated). The "integrity policy" in the European Netherlands and the preventive framework are essentially the same. In the Caribbean Netherlands, public bodies are not required to adopt such policies, but in the European Netherlands, they are under the Civil Service Act. However, integrity policies have been adopted by all three public bodies.

The design of integrity policies is not bound to a fixed format. To assess the Caribbean policy, a comparison was made with the European-Dutch standard as developed by the VNG. This comparison shows several shortcomings for all three islands. For example, the provisions regarding the acceptance of gifts are inconclusive, there are no provisions to report financial interests, and there are no (detailed) procedures for reporting and investigating suspected integrity violations.


Furthermore, unlike in the European Netherlands, the Whistleblowers Protection Act is not in force on the islands. However, since this year, a Regional Information and Expertise Centre (RIEC) has been established, and work is underway to implement the BIBOB Act.

Furthermore, on all three islands, there is a large gap between (the spirit of) policy and practice. The underlying norms of behaviour expressed in the European-Dutch integrity policy clash with the manners generally accepted in island society. Especially the broad social acceptance of favouritism and what is called 'network corruption' in the European Netherlands makes it challenging to make the integrity policy take root on the islands. In this respect, taking an integrity training course is of little use, especially if in the higher echelons of the organisation and among political office holders, favouritism is still visibly preached, there is little social disapproval, and The Hague tolerates it.

How can official administration integrity violations be (further) reduced?

Based on the study's findings, the researchers make several suggestions that could reduce the risk of public administration integrity violations. For each suggestion, the addressee varies. In a few cases, the advice is addressed to the Ministry of JenV. More often, the suggestion is made to the Ministry of the Interior and Kingdom Relations, the public bodies or other ministries that have an executive task on the islands on behalf of the Kingdom. For each recommendation, the addressee is explicitly mentioned.

Macro-level suggestions:

-  It is necessary for the political culture of the BES islands to shift in order for public administration integrity to be genuinely sustainable. Reducing poverty and inequality and promoting education are necessary to break the cycle of dependency and eradicate the social foundations of political patronage. (This is general guidance for relevant government agencies and ministries.)

- ③ Eliminating the underlying causes is a long-term matter. As long as this has not yet happened, it is good to support public bodies in testing specific risky categories of governance decisions against the principles of good governance. The governor shouldn't be left to handle this test alone since doing so would put him in the impossible position of having to balance upholding good relations with the Executive Council and society while at the same time interfering with the governance process when necessary. With the WolBES and FinBES Revision Act, The Hague's intergovernmental relations with the islands are completely transformed, and an attempt is made to operate based on mutual trust. In order to achieve this, the role of the Kingdom Representative is eliminated, greatly loosening the constraints on intergovernmental supervision and expanding the frameworks inside which public bodies can function. The Revision Act's implementation has created new opportunities, specifically for soft diplomacy to assist the governor in guaranteeing good governance. The report goes into more detail about these options. The researchers recommend that the Ministry of the Interior and Kingdom Relations take these options into account.

Meso-level suggestions:

- ③ Create an opportunity for justice partners in criminal investigations to query relevant records anonymously. (This advice is addressed to the Ministry of JenV.)
- ③ Ensure that the BES criminal procedure law's legal provisions regarding professional secrecy, official secrets, and breach of duty of confidentiality are compliant with Dutch law in Europe. This also holds true for the clauses pertaining to the use of specific investigative instruments and search techniques. (This advice is addressed to the Ministry of JenV.)
- ③ Ensure that the Police Data Decree incorporates the relevant criminal provisions of the BES Criminal Code so that theme processing for public administrative bribery has a solid legal foundation. (This advice is addressed to the Ministry of JenV.)
- ③ Make certain that administrative protocols for reporting incidents and conducting investigations are set up on each of the three islands. This should ensure that the reporter can confidently present his/her report to an impartial third party. Under labour law, the reporter should also be shielded from consequences. (This advice is addressed to the public bodies.)
- ③ Strengthen the quality and position of managerial positions (heads of departments within public bodies and directors at government foundations and government NVs) by encouraging permanent contracts on the one hand and restricting the use of OVO's for these positions on the other. It's also advisable to provide specialized integrity training designed to help people effectively resist social and political pressure. Naturally, the effectiveness of these trainings depends on how often they are conducted and how their outcomes are incorporated into routine work procedures (like case discussions). This contributes to increasing the awareness of integrity in day-to-day activities. (This advice is addressed to the public bodies and the Ministry of the Interior and Kingdom Relations.)
- ③ Determine the procedures for tendering and procurement, then set them up administratively. Using the European standard as an example, to ensure that the highest-quality or most economically advantageous

offer is chosen for contract award by applying due diligence, openness, and the equal playing field principle. (This advice is addressed to the public bodies.)

- ④ Provide lawyers to assist the islands with their VTH function. Additionally, think about completely depoliticizing and restructuring the VTH function as a regional environment service that is not directly under the control of the public body and make sure there are enough personnel and resources available. (This advice is addressed to the Ministry of the Interior and Kingdom Relations and the public bodies.)
- ④ Where these are lacking, record the VTH processes and procedures and automate them as much as possible. (This advice is addressed to public bodies but also to the Ministry of the Interior and Kingdom Relations because it can aid in their automation.)
- ④ Establish regulations that require local political parties to disclose donations (above a certain threshold) and limit the amount of donations per donor. (This advice is addressed to the Ministry of the Interior and Kingdom Relations.)
- ④ Abolish the possibility of voting by proxy. This possibility was imposed by The Hague against the will of the islands at the time and – as in the past in the Netherlands Antilles – creates a high risk of electoral fraud. (This advice is addressed to the Ministry of the Interior and Kingdom Relations.)
- ④ Strengthen the local media so that it is better equipped to do independent newsgathering. This can help increase the transparency and accountability of local government. (This advice is addressed to the Ministry of Education, Culture and Science.)

In conclusion

The evaluation shows that public administrative integrity violations in the criminal sense of the word are unlikely to occur on the BES islands and are only very rarely observed. Although not explicitly investigated, it cannot be ruled out that the stubbornly poor image of the Caribbean Netherlands is related to the fact that on the islands, the improper use of powers happens much more openly than in the European Netherlands. This is because, in contrast to the European Netherlands, such behaviour is far less frowned upon on the islands. Or even expected and requested by those involved. The question is, therefore, why would The Hague want to promote public administrative integrity if that mostly means imposing a European-Dutch standard on a local administrative process that currently largely functions according to local standards widely accepted in society?

Two arguments should be made against this. First, the current governance practices do not serve the public interest. While particularism undoubtedly helps certain individuals and companies, society suffers greatly from it through slower economic growth and worse public service quality and quantity. This harms the interests of society at large. Second, since 10-10-10, the Caribbean Netherlands has been governed by Dutch law. Partialism cannot coexist with legal equality, which is one of the most fundamental tenets of this constitutional state.

As outlined in the study, administrative integrity, first and foremost, requires setting a good example within politics and in executive positions. However, as long as most voters and party financiers expect something else from their administrators, the behaviour desired by the European Netherlands will not spontaneously arise. If The Hague truly wants to promote public integrity, it must help the BES islands break the vicious circle. And it does so by proactively supporting the islands in ensuring good governance. Such assistance not only sends a clear signal that The Hague considers public administrative integrity necessary, but it also makes local administrators more immune to social pressure to engage in political patronage. The report offers several suggestions on how this support could be implemented in practice.

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