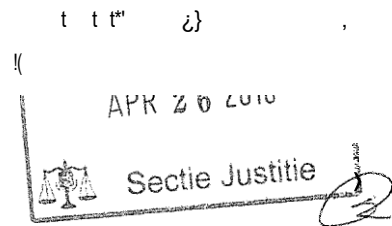


Philipsburg, 26 April 2016
BF/175/4/2016/RVRHSXM

His Excellency the Minister of Justice,
Mr. E. Kiridongo

Subject: The State of Law Enforcement in Sint Maarten 2015

Dear Mr. Kiridongo,



In accordance with article 33 Kingdom Act Law Enforcement Council, please find enclosed the State of Law Enforcement, which is a report on the state of law enforcement in Sint Maarten based on the Council's activities in 2015. This report is being submitted to both the Minister of Justice and Parliament.

Sincerely,

On behalf of the Law Enforcement Council,



F.R. Richards

LL.M. Chairman

The State of Law Enforcement in Sint Maarten

According to Article 33 Kingdom Act Law Enforcement Council, the Law Enforcement Council (hereinafter: the Council) publishes an annual report on the findings made in the previous year, the nature of which exceeds that of individual inspections and reports.

Since mid-2012, the Council has been conducting inspections on the functioning of the chain with a view to quality, efficiency, and effectiveness. The Council also examines justice cooperation between the Countries within the Kingdom.

For 2013, the Council published a state of law enforcement for the three countries that fall under the Council's remit.

The 2014 State of Law Enforcement related only to Sint Maarten. The present 2015 State of Law Enforcement has also been drawn up with a focus on Sint Maarten.

As in previous years, the Council notes in general that all those involved demonstrate a high level of commitment to all its inspections. The desire and ambition to achieve a properly functioning justice chain at an acceptable level form the basis for achieving that objective. The circumstances in which they carry out their work, and in which there must also be room to meet the expectations of the individual, are lacking in opportunities.

Specific inspections have revealed the following, among other things.

Review Youth Rehabilitation 2015: Of the sixteen recommendations from the 2013 Youth Rehabilitation inspection, the Council was able to determine in 2015 that all of the recommendations had been fully implemented, six of them are at an advanced stage, and four recommendations are currently receiving attention. The Council therefore concludes that the recommendations have been addressed and sees this as an incentive for further development.

Following up on recommendations is not only in the interest of an organization. It yields results with external effects and touches on the ultimate core of law enforcement. Thanks to the significant improvements in youth rehabilitation, an alternative can now be offered to young people at a professional level, in contrast to the past.

The inspection on the *Prevention of Youth Crime (2015)* shows that there is still much to be gained in the field of prevention and tackling youth crime. The proactive approach to youth crime, including the deployment of a youth public prosecutor and the establishment of a youth rehabilitation center should therefore remain a priority. The Council notes that a large part of the prevention issue falls outside the justice chain and is therefore an interdepartmental responsibility. Reactive (judicial) measures alone will not tackle youth crime in a structural way.

The investigation *Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office (2015)* was carried out by the Council following a request from the Minister of Justice. Based on the analysis of several criminal cases and the results of interviews, the Council concluded that the Public Prosecutor's Office, in its decisions on investigation and prosecution, the identity of the suspect is not directly taken into account. Furthermore, the Council found, among other things, that eight factors ensure that the Public Prosecutor's Office in Sint Maarten is less able to select and control the range of cases than the legal framework suggests. One of the factors is an external factor, the National ordinance on the prosecution of political officials. In its report, the Council concluded that there were bottlenecks with regard to the interpretation of the aforementioned National ordinance. There was disagreement on the question of whether the National ordinance extended to the investigative measures used in the investigation phase, which required authorization from the examining magistrate. The Joint Court of Justice – coming back on a previous ruling – in March 2016, gave concrete substance to the interpretation of the National ordinance, thereby putting an end to the ambiguities surrounding this issue.¹ The Court ruled, among other things, that a prosecution order from the Court is not required for a house search. In the event of a criminal offense whereby the Public Prosecutor's Office wishes to summon a political official or request the provisional detention of this person, the Public Prosecutor must request an order for prosecution from the Court.

Partly in view of the high frequency of robberies on Sint Maarten, in 2015 the Council conducted an inspection on the approach to combating robberies on Sint Maarten. Despite the prioritization of robberies and the considerable efforts of all those involved in the police force, the Council found that, due to the lack of preconditions necessary for an effective approach to combating robberies, the desired results regarding robberies cannot be achieved. There is also much to be gained in the area of prevention, both within and outside the justice chain.

In its inspection *Exchange of police and judicial data within the Kingdom (2015)*, the Council also addresses the information position within the justice system. As long as there is no structural improvement in this area, it will remain a major concern for the quality of law enforcement. Another aspect is the lack of necessary and, moreover, feasible investments. For example, a system could take a lot of work out of people's hands, resulting in more efficient investigation and the wider availability of existing capacity.

The Council noted the initiative to set up a central justice information system as an interesting development that it will follow with interest.

In 2013, the Council received reports of potential problems in the criminal justice system involving individuals with addiction problems or mental health disorders. These signals prompted the Council to conduct an inspection in 2015 into how the chain deals with addicts and people with behavioral disorders. The main conclusion is that a lack of legal, administrative, and policy frameworks — including for prisons — is decisive for the reception, treatment, and aftercare of the target group, while there are serious problems with a major impact on society involved, placing a relatively heavy burden on the implementation chain.

¹ ECLI:NL:OGHACMB:2016:10.

De Raad voor de rechtshandhaving is een inspectieorgaan, ingesteld bij Rijkswet (Staatsblad 2010, nr. 338). De Raad heeft eigen rechtspersoonlijkheid en is belast met de algemene inspectie van organisaties, behorende tot de justitiële keten. Ook de algemene inspectie van de justitiële samenwerking tussen de landen behoort tot de taak van de Raad.

In 2016, the Council will conduct three reviews. These will reveal how recommendations have been implemented in other areas. At this stage of those inspections the Council already notes in general terms that recommendations from previous inspections have been taken into account. It is striking that the recommendations that can be implemented within organizations are receiving more attention.

Recommendations that require further administrative action receive less attention and are left behind. Just like in several specific inspections the Council also notes in general terms that there is a certain degree of discrepancy between the implementation of recommendations by the administrative management and by the executive branch.

For Sint Maarten, the establishment of a national government on October 11, 2010, largely determined the administrative agenda. This applied and continues to apply in full to the justice chain. In general, many areas are constantly evolving. Many respondents are of the opinion that the development is not proceeding efficiently. Areas are also mentioned where there is no development at all, such as in the field of disaster relief. The Council reiterates that view. The Council considers it important to reiterate that there should be no misunderstanding about the fact that the transition is a very demanding process and that the transition phase, which actually started on October 10, 2010, is not yet complete. Nevertheless, the Council notes that progress in many areas is lagging behind what could be achieved. The Council notes in this regard that administrative decisions are made for unclear reasons. It is striking that the official follow up is constantly subject to administrative decisions. Decisions are highly dependent on individuals and relatively subjective. This affects continuity within an organization and the chain. Lack of structural embedding of processes, procedures, and knowledge, results in a vulnerable organization. This is because the internal organization is largely dependent on the leadership of a ministry. The question arises as to whether some of the decisions belong at that level. A department is a policy organization that determines the framework for implementation but does not implement it itself. Nevertheless, the Council also frequently observes inconsistencies in departmental policy. The system thus appears to be at a standstill.

At the same administrative level, the Council also observes strict separation between departments. There appears to be little or no policymaking.

In addition, the centralized administration at the Ministry of Finance causes bottlenecks in implementation. Without a management mandate for an organization or the possibility of retrospective accountability, organizations experience many delays in their (investigative) inquiries or have to make additional time-consuming efforts to look for other alternatives. Apart from the issue of efficiency, this process therefore also has a direct impact on the quality of the investigations.

As in 2014, the Council also investigated in 2015 whether there is still a backlog in the drafting, updating, and implementation of (implementing) legislation and policy in the area of law enforcement. In some cases, this backlog has led to obstacles and sometimes stagnation in the implementation process. The 2013 State of Law Enforcement already noted that not all development plans had been completed. This will continue to be an issue in 2014 and 2015. The failure to prioritize the completion of the action plans is hindering progress in the necessary development of certain organizations. The Council considers the situation at Pointe Blanche prison to be alarming.

In 2015, the Council took note of developments in the area of strengthening law enforcement within the Kingdom. Following the Judicial Four Party Consultation in January and June 2015, a 'Master Plan for Strengthening Law Enforcement in the Caribbean Part of the Kingdom' was drawn up in mid-2015 to strengthen law enforcement.² The plan provides for a fundamental, multi-year, chain-based approach. The January 2016 JVO indicated that structural financing is necessary for the further implementation of the plan. Although this is not available, the JVO has expressed its support for this. The Council continues to follow these developments with interest.

From 2012 to the end of 2014, the Council completed twenty-two inspections. In contrast to 2014, Parliament did not hold a plenary meeting in 2015 to discuss a number of the Council's reports. The Council expresses its hope that the Council's reports will be placed on Parliament's agenda and that of the Minister so that the respective responsibilities can continue to be fulfilled optimally. The policy setting, monitoring, and budgeting role of Parliament is of great importance. Law enforcement will benefit from the continued involvement of government bodies.

Inspections already completed in Sint Maarten in 2015

Below is an overview of the inspections carried out by the Council in 2015.

In no particular order:

- Cross-border crime³;
- Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office in Sint Maarten;
- Exchange of police and judicial data in the Kingdom;
- Approach to combating robberies in Sint Maarten;
- Youth rehabilitation in Sint Maarten. A follow-up inspection (review inspection);
- Prevention of youth crime in Sint Maarten;
- The treatment of persons with addiction problems or behavioral disorders in the criminal justice system in Sint Maarten.

2) Decision list, Judicial Four Party Consultation January 2016.

3) This inspection was started in 2013.

De Raad voor de rechtshandhaving is een inspectieorgaan, ingesteld bij Rijkswet (Staatsblad 2010, nr. 436). De Raad heeft eigen rechtspersoonlijkheid en is belast met de algemene inspectie van organisaties, behorende tot de justitiële keran. Ook de algemene inspectie van de justitiële samenwerking tussen de landen behoort tot de taak van de Raad.

Ongoing and planned inspections in Sint Maarten in 2016

At the time of drafting this state of law enforcement the Council in as far as it concerns Sint Maarten had several inspections in progress for the year 2016. These are in no particular order:

- The investigative process by the criminal investigation in Sint Maarten. A follow-up inspection (review-inspection);
- Adult probation in Sint Maarten. A follow-up inspection (review-inspection);
- The protection and security of persons and objects in Sint Maarten;
- Enforcement of the prostitution policy in Sint Maarten;
- Victim support in Sint Maarten. A follow-up inspection (review-inspection).

The following topics are planned for 2016:

- Baseline assessment of the Miss Lalie Center (youth rehabilitation center)
- Coast Guard

The Law Enforcement Council:

LL.M F.E. Richards, chairman
LL.M Th. P.L Bot
LL.M G.H.E. Camelia