



THE STATE OF LAW ENFORCEMENT SINT MAARTEN 2017

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Law Enforcement Council
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State of Law Enforcement Sint Maarten

In addition to the inspection reports produced by the Law Enforcement Council (the “Council”), the Council publishes an annual state of law enforcement (the State) for Sint Maarten, Curaçao, and the Caribbean Netherlands, respectively. This State provides an opportunity to paint a more comprehensive picture of law enforcement in general, based on previous inspections and information that transcends individual inspections. The State is presented to both the Ministers of Justice and the Parliaments of the countries.

In May 2017, the Council published a very comprehensive 2016 State of Law Enforcement for Sint Maarten. This report served as a benchmark for law enforcement, with the Council scrutinizing the entire functioning of the justice chain on the basis of a normative framework. It concluded that the functioning of law enforcement, and structural bottlenecks within it, could be reduced to 17 factors. The Council assessed the functioning on the basis of these factors. The final conclusions made it clear that the functioning is predominantly below par. Although the organizations are working with great commitment and dedication to maintain and improve their functioning, they generally lack resources, capacity, and facilities.

When considering the outlook for law enforcement 2017 on that basis, it quickly becomes clear that the situation and starting position for Sint Maarten has not improved. The conclusions drawn by the Council for the period 2010-2016 remain valid for 2017. In particular, the lack of resources has increased, with direct negative consequences in terms of capacity and facilities. The prospect of improvement is therefore still a long way off. However, attention is being paid to law enforcement in the context of reconstruction, which may offer opportunities for improvement. At the same time, however, it must be realized that the structural problems already existed (well) before the reconstruction. Steps forward were certainly taken in 2017, but in the third quarter of that year, the vulnerability of law enforcement on Sint Maarten once again became apparent in a very confrontational manner. The Council therefore emphasizes the importance of a structural approach to improving law enforcement, and in that context, it suffices to refer to the findings and conclusions in last year's State.

The capacity of the organizations

The Council considers it important to reflect on several significant developments that occurred as a result of the passage of the hurricanes. The passage of the hurricanes, particularly Hurricane Irma, transformed Sint Maarten into a disaster area within a few hours. In the hours and days that followed, extreme situations arose in the area of maintaining public order and safety. The core of law enforcement was confronted with a situation for which it was completely unprepared. With a high degree of improvisation and cooperation, the law enforcement agencies quickly developed an approach appropriate to the exceptional circumstances. With very limited resources, they were able to restore order and calm after the necessary military and police assistance was provided by other countries. The Council therefore has a positive view of the ability of these organizations to cooperate ad hoc in such circumstances and achieve results. This in itself is admirable.

Unfortunately, the same cannot be said for the administrative authorities and their role in disaster coordination. The country of Sint Maarten has demonstrated that it was completely unprepared for a disaster of this magnitude. Despite the magnitude of the disaster itself, for which it is virtually impossible to be fully prepared, it is reasonable to expect that there is an infrastructure in place that can be relied upon. Preparation, disaster coordination, and emergency response proved to be far from optimal. Nevertheless, the competent authority chose to declare a state of emergency only at a very late stage, four days after the disaster. This was despite the fact that there were already reasons to exercise this power before the hurricane struck. Although it is difficult to measure, many believe that the consequences for the legal order, the welfare of the population, and damage to the economy were many times greater than if the necessary preparations had been made and decisions had been taken (in a timely manner).

The Council recommends that all (cooperating) organizations within law enforcement and disaster coordination evaluate their plans. If no plans exist, they should be drawn up. As part of the inspection into the infrastructure and safety on Sint Maarten, the Council will also look into this, as already provided for in the annual plan.

Follow up recommendations

When comparing the countries, it quickly becomes clear that Sint Maarten lags far behind the Caribbean Netherlands and Curaçao in following up on the Council's recommendations. When it comes to following up on and implementing recommendations, the Caribbean Netherlands is leading the way. Not only does the Caribbean Netherlands consistently pay attention to the reports by the relevant minister, but the organizations are also better equipped to implement the recommendations. In Sint Maarten, the opposite is true: the organizations themselves implement the recommendations as far as possible, with little support. Nor has the Parliament called the government to account for the lack of attention for improvements. In fact, in a number of cases, this was not possible because several of the Council's reports have not yet been presented to Parliament. This greatly diminishes the value of Parliament's supervisory role over the government. This creates the impression that the administrative authorities are far removed from the implementation. The Council has already identified the administrative authorities' attention to law enforcement as a structural bottleneck.

The Council recommends that the administrative authorities pay structural attention to law enforcement and that Parliament be informed and consulted on this matter. The Council recommends that Parliament exercise its supervisory role and regularly debate this matter with the Minister of Justice.

Finance and decision-making

Given the current situation, the Council sees reason to devote a separate section to the financing of law enforcement. The Council regularly receives reports that structural and necessary provisions are not being financed. This also applies to planned projects. In this section, the Council will only discuss the consequences of this shortcoming, not policy-related financing choices.

The following examples are cited:

- structural payment arrears and/or failure to follow up on policy decisions taken regarding IT facilities (e.g. ActPol/Summit, FMS/BMS, JIS, electronic surveillance, purchasing/renewing licenses), resulting in the system being shut down or not being able to be put into use or continue to be used;
- structural delays in making financial decisions that are crucial for law enforcement and/or approving them in general;
- structural payment arrears, resulting in the discontinuation of or long delays in ongoing criminal investigations (e.g., for services provided by the Netherlands Forensic Institute);
- structural delays in the government contribution, resulting in the inability to meet payment obligations (e.g., to the Public Prosecutor's Office).

The foregoing also serves to illustrate that structural issues of paramount importance are not functioning properly on Sint Maarten. Because these financial aspects have now become more or less structural in nature, the Council is concerned about the significant consequences for law enforcement organizations and, by extension, for society as a whole.

Apart from the financing, it appears that decision-making on financing often takes a long time. This also causes further development to stagnate.

The Council recommends that a long-term plan for the development of the organizations and facilities be drawn up as soon as possible, accompanied by a sound financial plan. The Council then recommends that the decision-making process on this matter be tackled energetically and that the plan be implemented.

The Council would like to note that, since early 2018, the Ministry of Justice has been working hard to implement improvements. In the context of reconstruction, planning is underway on all fronts. However, the Ministry is hampered by a lack of capacity and access to resources. The country's financial resources will be severely limited in the coming years. The Council believes that law enforcement is an essential part of successful reconstruction. In this context, the parties involved in the reconstruction should be aware of the importance of developing law enforcement and ensure that there is progress rather than regression.

Independent Law Enforcement

In previous reports prior to the establishment of country Sint Maarten it had already been concluded that the island would not be able to guarantee law enforcement independently.¹ Nevertheless, it was decided to assign law enforcement as an autonomous task to the country of Sint Maarten. Looking back on 2017 and considering the current state of affairs, the question arises again as to whether the country will be able to guarantee this independently in the short or medium term. Without the government's full attention to this issue, the availability and allocation of sufficient resources, policy-making, and an awareness of and answer to the question: 'Where do we want to go with law enforcement?', the Council believes that the country is not capable of doing so. In recent months, a great deal of assistance has been provided to Sint Maarten from the Netherlands, with particular support going to the police and the prison. It has been clear to everyone that Sint Maarten could not have managed without that assistance. The prevailing opinion in society and among the Council is that Sint Maarten will not be able to manage without (some form of) assistance.

In addition, the assistance has also brought about many positive developments within the organizations. The Police force and its employees have found this to be very positive. There is a fear that when the assistance ends, the progress achieved by the organizations and the assistance will decline.² Certainly given the current financial situation, the country will lack the necessary resources to further develop law enforcement, which was already desperately needed before Hurricanes Irma and Maria struck: if the resources were not available before the hurricanes, they are certainly not available now. For this reason, it is important that either a way be found for Sint Maarten to be able to guarantee law enforcement independently, or that a form of cooperation be established that will enable it to perform this autonomous task. The latter seems to be a more realistic and feasible solution than the former at this stage. Legislation within the Kingdom already provides opportunities for this, which have not been optimally utilized to date. Willingness to cooperate is even more important. Opportunities can also be explored in the context of reconstruction. Practice has recently shown that people are able to find each other in times of difficulty (crisis). This seems to be an important example for the future.

¹ Safety plan Netherlands Antilles 2007 / Sint Maarten 2008

² It was recently decided to extend the assistance until at least September 2018.

Conclusion

The Council believes that law enforcement on Sint Maarten is currently so vulnerable that continuing in this manner is no longer defensible and therefore irresponsible. The law enforcement organizations that work daily to make Sint Maarten safer deserve the same dedication from the government and the administration. For this reason, the Council is using this 2017 state of law enforcement as a call to the government to give law enforcement the attention it needs. The Council considers it important to emphasize that administrative attention to law enforcement is a priority, after which structural solutions must be provided for the major challenges facing Sint Maarten. In this regard, cooperation within the Kingdom is a priority for the Council.

Colophon

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