



2018 STATE OF LAW ENFORCEMENT SINT MAARTEN

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Law Enforcement Council
April 2019

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Introduction

Since 2012 the Law Enforcement Council (“Council”) has been conducting inspections within the criminal justice chain regarding quality, management, and effectiveness. The Council is also tasked with conducting a general inspection of the quality and effectiveness of the justice cooperation between the countries.

In addition to its inspection reports, the Council publishes its state of Law Enforcement (“State”) each year. The State gives a helicopter view of law enforcement in the year in question based on prior inspections and analysis. The State is presented to both the Ministers of Justice (and Safety) and the Parliament of the country involved.

2013 – 2017 State of Law Enforcement

The 2013 State reported on all three countries (Curaçao, Sint Maarten and the Netherlands – on behalf of Bonaire, Saint Eustatius and Saba) collectively. From 2014 onwards, a separate state of Law Enforcement has been published for each country, including Sint Maarten. Over the years, the State of Sint Maarten has taken on an increasingly prominent role. Over the years the State has transformed from a mere letter into a dedicated report in which the Council reflects on general developments in the justice domain.

In May 2017, the Council issued its 2016 State. The Council reflected —more extensively than before — on the specific factors and issues identified during its inspections. The vast majority of these could be traced back to seventeen underlying factors¹ that are important for a well-functioning criminal justice chain. These factors were then analyzed and categorized using a regulatory framework. Integral cooperation within the justice chain, specifically, turned out to be of great importance. Also, the lack of means, capacity, and resources were found to be key factors. It was also pointed out that responsibility for the functioning and guaranteeing of law enforcement is not only the responsibility of the Minister of Justice but also that of the government as a whole. Private partners and citizens can also play a role. The objective of the 2016 State (and the 2017 State building thereon) was to help raise awareness and impart the need for improvement.

This need for improvement remains unchanged in 2018. According to the Council, the regulatory framework and the factors provide a good guide in the process of rebuilding and establishing a well-functioning law enforcement chain.

The 2017 State includes a discussion on the 2016 State. The Council’s conclusions in prior years can unfortunately also be applied in full force in 2017. Although in September 2017 the vulnerability of law enforcement was laid bare in a single event and law enforcement is receiving attention in the context of the reconstruction effort, it should be noted that the structural problems regarding, inter alia, capacity, (financial) means, and resources existed (long) before reconstruction started. The needed prioritization was lacking. At the same time, the Council has also observed a consistent positive factor over the years, which is the effort and dedication of those working within the agencies that are part of the criminal justice chain.

The year 2018

¹ The factors are: statutory framework, policy, resources, statistics, numbers and crime data, preventive actions, enforcement & compliance, inter-agency approach, work processes, informational position, corporate processes & access systems, financial management & authorization, service & communication, annual plans & annual reports, design plans & job matrix, capacity, employment policy, training.

Main themes

During its inspections in 2018, the Council again observed a high level of commitment and responsibility among the employees of law enforcement organizations. The year 2018 was characterized by the reconstruction of country Sint Maarten and, more specifically, of law enforcement organizations. The Council notes that the will to rebuild is certainly present, but that the process is mainly characterized by numerous administrative consultations, slowness in (necessary) decision-making, and an overall lack of financial resources, which has negative consequences for implementation within all organizations. The main themes in 2018 for law enforcement were the strengthening of border control in Sint Maarten, the serious problems surrounding the Pointe Blanche prison and detention center, and the closure of the Miss Lalie Center.

Strengthening border security

In the context of the reconstruction of the country of Sint Maarten, agreements have been made between Sint Maarten and the Netherlands on strengthening border control of persons and goods in Sint Maarten, as laid down in the Mutual Agreement on Strengthening Border Control². This Mutual Agreement entered into force on December 20, 2017, and will initially remain in force for two years, until January 1, 2020. The aim is to provide additional assistance from the Royal Netherlands Marechaussee (KMar) and Dutch Customs during the reconstruction process in order to protect and strengthen the vulnerable border controls. All this under the responsibility of the Minister of Justice of Sint Maarten.

In 2018, further details were provided on the agreements made in the context of strengthening border controls. One of the threats to Sint Maarten is (migration) crime and the influx of illegal migrant workers. Within the chain, attention is being paid to the problems of human trafficking and smuggling. This is reflected, among other things, in the Memorandum of Understanding on cooperation to prevent and combat human trafficking and smuggling (MOU MH/MS) and investigations by the specialized team on Human Trafficking and Smuggling of the KPSM and the joint cooperation called Alphateam. Here too, capacity emerges as a structural problem, which has consequences for the ability to tackle cases. The most recent evaluation³ of the MOU MH/MS took place in 2018. Among other things, it included ensuring continuity by means of sufficient specialist knowledge. Although required under the MOU, no National Coordinator had been appointed in Sint Maarten in 2018. This was rectified in early 2019. Furthermore, the lack of (coordination of) administrative action or control remains problematic; no multidisciplinary checks were carried out in 2018. In 2019, the Council will conduct an inspection on the approach to human trafficking and smuggling.

Two-Day Work conference

In January 2018, the Minister of Justice and the Dutch Representation in Sint Maarten organized a two-day work conference on border control and the reconstruction of the local justice chain after Hurricane Irma⁴. During the conference, discussions were held with partners

² Stcrt. 2017, 72542.

³ The text of the new Memorandum of Understanding was written based on the input and conclusions gathered from the Human Trafficking and Human Smuggling Conference of September 18 – 20, 2018 in Bonaire.

⁴ Representatives from the Sint Maarten Police Force, prison, Customs, Coast Guard, Public Prosecutor's Office, Royal Netherlands Marechaussee, Court of Guardianship, the Sint Maarten Judicial Institutions Foundation, the Sint Maarten Ministry of Justice, the Sint Maarten National Security Service, the Ministry of Justice and Security, Dutch Customs, the Ministry of

in the justice chain about possible ways and means of strengthening the borders of Sint Maarten and increasing the organizational capacity of at least the police force, customs, and the prison system. In the latter case, it was also noted that the Pointe Blanche prison had suffered enormous damage and that both local and Dutch experts had advised Sint Maarten to invest in a new prison complex. The work conference was considered fruitful, resulting in draft action plans for both border control and the prison. The (joint) action plan to strengthen border control in Sint Maarten was completed in April 2018 and includes the implementation of border control, the operational organizational structure, and joint responsibility for professionalism, quality, integrity, and monitoring. Furthermore, in 2018, the implementation of the plan was started.

Prison system

Completion of the prison system action plan initiated during the work conference was delayed due to a lack of capacity, resources, and expertise on the part of the Ministry of Justice. In the meantime, the plan has been further developed in collaboration with the Judicial Institutions Service (DJI). On September 17, 2018, at the request of the Minister of Justice, the DJI presented the action plan “A safe society: building responsible and sustainable enforcement of sanctions in Sint Maarten (2018-2023)” to Sint Maarten. This plan was then formally ratified as the new action plan during the ministerial consultation on October 19, 2018. In addition, a number of agreements were made and laid down with regard to the prison, concerning the phased return of prisoners, costs of stay and return, and urgent improvement measures with an accompanying timetable. The Council was pleased that cooperation had been sought and that Sint Maarten now has an up-to-date plan. However, the Council did question whether the agreements made were realistic within the agreed timetable.

In October 2018, the Council published two review reports on the prison. Whereas the Council initially thought that the situation had reached rock bottom in early 2017, this proved to be far from the case in 2018. The situation in the prison had deteriorated even further in 2018, partly as a result of the hurricanes. In 2018 the Council —like the Progress Committee, among others⁵ —therefore sounded the alarm yet again and concluded that there was no humane detention environment or safe workplace for staff at Pointe Blanche prison.

There have been serious violations of applicable national and international legislation and standards. This has not gone unnoticed at the international level either. The Council considers it unacceptable that people have to work and live in these conditions. As human rights are at stake, the Council recommends that the long-awaited and necessary action be taken. In addition, according to the Council, the issue is so complex that the Council sees the most active possible role for the prison, the Ministry of Justice, country Sint Maarten, and the Kingdom. The Council therefore urges once again that responsibility be taken and points to the need and necessity for cooperation.

In light of the many reports and recommendations published by the Council and other bodies, the Council also indicated that if no substantial progress was made in the shortest possible time, the Council's mechanism for conducting inspections and making recommendations for

Defense, the Ministry of the Interior and Kingdom Relations, the Detective cooperation Team, the Dutch police, and the Law Enforcement Council.

⁵ See, *inter alia*, the Evaluation Commission's 29th through 32nd Status Report regarding implementation of Sint Maarten's plans of action for the year 2018.

the prison and detention center would be exhausted. If the Minister of Justice systematically⁶ fails to implement the Council's recommendations, the Council is authorized to notify the representative body of the country involved and the council of Ministers of the Kingdom of the Netherlands.⁷ This power to address the representative body directly is a tool that can be used to compel the responsible minister to act on the results of the inspections. The Council has not yet exercised this power. In the case of the prison, developments that began in the last quarter of 2018 and continued in 2019 were among the reasons for not doing so. These include repairs to the prison roof, security measures, the start of an education program, and the introduction of electronic ankle bracelets. However, according to the Council, there is still a long way to go, with complex issues to be addressed. The Council expresses the hope that the developments that have been initiated will, in the shortest possible time, lead to substantial improvements in the prison system, bearing in mind that the functioning and guaranteeing of law enforcement is not only the responsibility of the Ministry of Justice, but of the government as a whole.

Juvenile rehabilitation: Miss Lalie Center

At the end of 2013, the Miss Lalie Center (MLC) was opened, which benefited the approach to youth crime. In 2016, the Council observed positive developments in the area of youth. These included steps taken in the area of youth rehabilitation. The program for young adults in prison also did not go unnoticed.

As a result of the hurricanes, Sint Maarten no longer had a youth rehabilitation center in 2018. From September 2017 and throughout 2018, the Miss Lalie Center was not operational. In concrete terms, this meant that all young people spent no more than a few days in the cell complex at the police station, after which they had to be sent away — despite often serious offenses — due to the lack of a suitable place for young people that met national and international requirements. In addition, electronic ankle bracelets were temporarily unavailable. With the closure of the MLC, an important element in the approach to youth crime has been lost. This situation also has direct consequences for the Court of Guardianships' performance of its juvenile rehabilitation and (non-)intervention tasks. During this period, the Council expressed serious concerns about young people, overall safety, and the wrong signal that law enforcement was sending to these young people and potential offenders in particular: it was not possible to respond adequately to criminal behavior by young people.

In the second half of 2018, steps were taken to resolve the issues surrounding electronic ankle bracelets. The ankle bracelets are now back in use. A lot of hard work will now be needed to reverse the negative image that has been created among young people. In this context, the Council points to the importance of opening the MLC as soon as possible. Repairs to the MLC have now begun and are at an advanced stage, so that it can hopefully be put back into use in the near future, this is expected to be in early June. The Council looks forward to the opening of the youth rehabilitation center.

National Recovery and Resilience Plan

⁶ Whether the Minister is systematically failing to implement recommendations is determined by the Council upon issuance of an inspection report and at least two follow-up investigations, see Law Enforcement Council Operational Protocol.

⁷ Article 32 Kingdom Act Law Enforcement Council (*Kingdom Act Law Enforcement Council*), Official Journal 2010, 338.

In August 2018, the 'Sint Maarten National Recovery and Resilience Plan. A Roadmap to Building Back Better' was published, which focuses on justice, public safety, and security, among other things. The recovery strategy proposed in the plan for this sector includes:

- a) Repairing and strengthening the physical facilities, such as the prison and police station;
- b) Relocating and equipping the 911 dispatch center;
- c) Properly equipping law enforcement personnel by replacing vehicles and uniforms;
- d) Paying attention to critical information-technology needs.

In 2017 and 2018, the 911 dispatch center was relocated to a secure location. Repairs to the prison began in 2018, and repairs to the roofs of the police stations began in early 2019. Furthermore, the KPSM received eleven new vehicles, and part of the new uniforms have already been received.

The NRRP further states that immediate needs focus on infrastructure, equipment, and improved emergency communications, while short- to medium-term needs focus on the construction of a new prison and strengthening the SJIB and the Court of Guardianship. As of the end of 2017, the SJIB did not have its own premises. Throughout 2018 and to date, the foundation has been housed in the building of the Ministry of Justice. In addition, the SJIB is also struggling with a staff shortage.

Victim support

For years, the Council has been drawing attention to the (lack of) victim support, emphasizing the social importance of having such facilities in place. Although in 2017 a person within the Court of Guardianship was made available to set up victim support, this did not get off the ground due to the events of 2017.

In 2018, there was still no structural provision for victim support. According to the Council, this continues to be at the expense of the provision of information to victims, care for victims, their willingness to report crimes, and their trust in law enforcement. In addition, the sheltering of victims remains problematic. In 2019, a second review inspection of victim support in Sint Maarten will take place, looking at the current situation and the follow-up to previous recommendations made by the Council.

Information and Communication Technology

With regard to ICT within law enforcement, the following picture emerged in 2018. Dependence on ICT systems is evident in virtually all organizations within the justice chain and remains an important point of attention in 2018. The organizations have been calling for modernization for years, but to no avail. Decision-making on this issue has changed repeatedly over the years, with the regrettable result that there are still no systems in place. This applies to the KPSM, the Court of Guardianship, the SJIB, and the National Detectives, among others. At the KPSM, the Info Unit has decided to stop waiting and has built its own module (information hub). The Council commends this initiative. The investigative organizations gather information in an information hub, which benefits cooperation and information exchange between the organizations. The Council wishes to emphasize that it commends the efforts of the KPSM and, in particular, the Info Unit, but at the same time criticizes the government of Sint Maarten for its failure to make decisions and allocate resources for adequate ICT.

The Council points to the collective responsibility of the administration for ensuring that priorities are set, including in the budget. The Mutual Agreement on Border Control has brought about changes in the availability of the ACTS systems (Actpol, BMS, and FMS). With money from the reconstruction fund, these systems have been reconnected for the duration of the Mutual Agreement and the reconstruction funds. After that, Sint Maarten must guarantee the connections. The Council strongly advises taking responsibility for this. The Council points to the possibility and advantages of joining the Mutual Agreement on IT.⁸ These systems provide a solid foundation for business operations. Furthermore, due to the long-standing absence of BMS, for example, there has been no insight into the movement of persons. In addition to its own information position and domestic security, Sint Maarten has an international responsibility to fulfill and will also need to get its information management in order from that perspective. An additional consequence of the previous ICT limitations is that thorough quantitative research within law enforcement is still not possible. In 2019, a number of protocols for sharing information between chain partners within the justice chain will be signed. The Council notes this with satisfaction and hopes that these protocols will also benefit cooperation within the justice system in practice.

Function book

The function book of the KPSM, the prison, and the National Detectives was not yet in force in 2018. At the end of 2018, the function book of the Police Force was submitted to the committee of trade unions (formerly known as the Organized Consultation in Civil Service Matters), better known as CCSU.⁹ In January 2019, a meeting took place between representatives of the committee and the Minister of Justice regarding questions related to the function book. Subsequently, in February 2019, the committee issued a positive recommendation regarding the function book and stated in the press that it saw no reason for further delay of the function book. Furthermore, in the context of the function book, the Ministry of Justice is also collaborating with a consultancy firm and human resources.

Training

It should be mentioned in the context of capacity that the basic police training course for the Sint Maarten Police Force commenced on September 24, 2018. In addition, twenty individuals will start in 2019 with the prison guard training course. Although there were some opportunities, the Sint Maarten Judicial Institutions Foundation was not able to participate in courses because of financial reasons. They are currently looking for alternatives to solve this problem.

Conducting inspections, policy responses, and implementing recommendations

Inspections completed in 2018

⁸ The Memorandum of Understanding on ICT is already in force between the Netherlands and Curacao with software being managed efficiently by the ICT administration foundation called "Stichting ICT Beheer".

⁹ Under article 112g of the National Ordinance substantive Civil Servants Law (*Landsverordening materieel ambtenarenrecht*), the Minister is required to seek the Committee's advice on matters of general interest to the legal position of government officials, including general rules for carrying out staff policy. The Minister must submit written and reasoned proposals to the Committee. The Committee must issue its written advice within six weeks of receiving a proposal.

The 2018 annual plan includes 10 inspections, some of which were conducted and completed in 2018.¹⁰ The inspections cover the following topics in random order:

- Sint Maarten penitentiary institution: follow-up inspection into the internal security and public safety;
- Sint Maarten penitentiary institution: follow-up inspection into the legal position and personnel and organization
- Forensic criminal investigations in Sint Maarten;
- Bureau Internal Affairs Sint Maarten Police Force;
- The enforcement of fines, damages, and seizures in Sint Maarten: follow-up inspection;
- Coast Guard: Inspection by the Law Enforcement Council into the performance of investigative tasks by the Coast Guard in Curaçao, Sint Maarten, and the Caribbean Netherlands (Bonaire, Sint Eustatius, and Saba); and
- Cooperation between public prosecutors' offices. Inspection into cooperation between the Public Prosecutor's Office of Curaçao, Sint Maarten, and Bonaire, Sint Eustatius, and Saba.

Policy response to Parliament

The Council published a total of 42 inspection reports on Sint Maarten between 2012 and 2018. In accordance with the law, all of these reports should have been accompanied by a policy response from the minister to the Parliament of Sint Maarten.

However, the Council has previously noted that policy responses have been systematically lacking in recent years and that (as a result) there has been no plenary discussion of the Council's reports in Parliament in recent years. The Council once again emphasizes the importance of the policy-setting, supervisory, and budgeting role of Parliament and the importance of the involvement of the responsible government bodies. The policy response gives the minister the opportunity to respond to the Council's findings and recommendations. Furthermore, the reports provide parliament with insight into the functioning of the law enforcement chain and can, among other things, provide a starting point for calling the minister to account on this matter.

The optimal functioning of this mechanism is therefore of paramount importance and benefits both the organizations within the justice chain and law enforcement as a whole. The Council was therefore encouraged by developments in the last quarter of 2018, when the Minister of Justice once again assumed his responsibility and provided a policy response to five of the seven inspection reports submitted to him, presenting these together with the reports to Parliament. The Council hopes that this course of action will be continued and that Parliament will once again put the Council's reports on the agenda.

Implementation of recommendations in 2018

In 2018, a total of three review inspections were carried out, two on the prison and house of detention and one on the enforcement of fines, damages, and confiscations. In addition to the situation already described in this State with regard to the prison, these specific inspections

¹⁰ The inspection regarding the Sint Maarten Crime Fund, also included in the 2018 annual plan, was completed in the first quarter of 2019 and presented to the Minister of Justice. The remaining number of inspections listed in the 2018 annual plan will be carried out in 2019.

reveal the following with regard to the follow-up of the recommendations made to improve the organizations concerned:

Pointe Blanche Prison and Detention Center (2018)

Following two inspections in 2013 and 2014, respectively, the Council published a total of three inspection reports on the Pointe Blanche prison and detention center in 2016 and 2017, covering the topics of legal position and personnel & organization (2016), internal security and public safety (2017), and treatment of detainees and social reintegration (2017). The first two reports were reviewed in 2018 to assess the extent to which the recommendations of both the Council and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had been followed up. At the request of the Ministers, the Council reports to the Judicial Four Party Consultation on the progress made in following up on the CPT's recommendations.

Of the Council's 26 recommendations on legal position and personnel & organization, internal security, and public safety, two (2) recommendations were followed up and 24 recommendations were not followed up. The Council had to conclude once again that none of the CPT's 16 recommendations had been followed up. The Council was forced to sound the alarm once again and, based on the circumstances it encountered, conclude that the prison and detention center were unsuitable in 2018, both as a workplace and for detention. According to the Council, the repeated findings lead to the conclusion that the Council's recommendations are systematically not being followed up. As indicated earlier in the section on the prison system, the developments that began in the last quarter of 2018 and continued in 2019 are among the reasons for not yet exercising the Council's power to communicate this.

The Enforcement of Fines, Damages, and Seizures in Sint Maarten: A Follow-Up Inspection (2018)

In 2014, the Council published the report "The enforcement of fines, damages, and seizures in Sint Maarten." In this report, the Council included five recommendations, three of which related to the execution of the enforcement task by the Public Prosecutor's Office (OM). The Council concluded that, in 2018, the practice was better in some respects than at the time of the previous inspection, resulting in nine partially implemented recommendations. The strong dependence on ICT systems prompted the Council to recommend that the KPSM (re)introduce the Actpol and BMS systems as soon as possible. After the decision was made in 2018 to recommission Actpol, BMS, and FMS, the systems were operational again at the beginning of 2019. According to the Council, this is a step toward improving the information position within law enforcement. However, as previously indicated, the problems with regard to ICT are broader (see above).

Pending and planned Inspections in Sint Maarten in 2019

At the time of this state of Law Enforcement's publication the Council was preparing or engaged in a number of inspections for Sint Maarten for the year 2019. These include in random order:

- Follow-up inspection: Victim support (second review);
- Follow-up inspection of the use of force by and against the police in Sint Maarten;
- Inspection of admission and expulsion of foreigners;

- Follow-up inspection of criminal seizure in Sint Maarten;
- Integral safety and infrastructure;
- Lead times;
- Approach to combating drug-related crime and drug-related issues;
- Approach to combating human trafficking and human smuggling;
- Monitoring CPT recommendations/review of detention facility;
- Approach on domestic violence; and
- Follow-up inspection of the Public Prosecutor's office's investigation and prosecution policy.

Conclusion

For country Sint Maarten, 2018 was a year of reconstruction, including in the area of law enforcement. The Council naturally understands the situation in which the country, and therefore law enforcement, finds itself after the hurricanes. As a result, the reality is that the administration — partly due to the country's financial situation — has not been able to make structural progress in law enforcement in 2018. Nevertheless, there is no lack of attention for law enforcement, and steps in the right direction have certainly been taken in the reconstruction process. The Council sees that the Sint Maarten Police Force is developing largely in the desired direction. However, the prison is lagging behind in meeting the minimum national and international requirements.

In 2018, the Council even had to conclude that the prison is unsuitable, both as a working environment and for detention. The Council once again emphasizes the importance of finding a structural solution to the problems within the detention system as soon as possible. In this context, the Council also points to the collective responsibility of the administration for setting priorities—including in the budget—and for realistic planning. However, the above applies not only to the detention system, but also to the problems faced by other organizations within the justice chain.

The Council notes that most attention is currently focused on these two specific organizations within the chain (police and detention system), while other organizations also face significant problems, including a lack of (basic) facilities such as housing, personnel, and resources. These organizations must receive the same support and attention from the administration, as all organizations together form law enforcement and one cannot function without the other. The Council therefore believes that the other organizations cannot be left behind in the prioritization and urges attention to this issue. The conclusion drawn by the Council in 2017 therefore remains applicable for 2018: continue to give well-deserved and necessary attention to the organizations within the judicial chain that are (and continue to be) committed to our safety on a daily basis. After all, there is still much to be done.

Finally, the Council considers it a very positive development that law enforcement in 2018 was characterized by cooperation and assistance. This was evident within and between justice organizations, at the inter-island and Kingdom levels.

Since the Council has already pointed out the strength and advantages of cooperation on several occasions, it can only commend and encourage all those involved in this State to continue and expand this cooperation within, between, and for all justice organizations. All this is in the interest of law enforcement. The Council will continue to monitor these and other developments closely.

Colophon

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April 2019