

State of law enforcement Sint Maarten 2017 (ENGLISH)

In addition to the inspection reports produced by the Law Enforcement Council ('Council'), the Council annually publishes the State of the law enforcement ('State') in Sint Maarten, Curaçao and Caribbean Netherlands. This State gives the opportunity to outline a more overarching picture of law enforcement in general, on the basis of previous audits and inspections and research-transcending information. The State is offered to both the Ministers of Justice and the Parliaments of the countries.

In May 2017, the Council issued a very comprehensive state of law enforcement 2016 for St. Maarten. That State should serve as a benchmark for the performance of the law enforcement, where the Council examined the entire functioning of the judicial chain on the basis of a normative framework. The outcome led to conclusions that the functioning of law enforcement and bottlenecks within it, can be reduced to 17 structural factors. The Council has assessed the state of the law enforcement on the basis of these factors, each serving as a specific benchmark. The final conclusions made clear that the operations are predominantly below standard. Although there is a great deal of dedication within the institutions and organizations, there is a general lack of resources, capacity and facilities.

Looking at the perspective of law enforcement over 2017, it is obvious that the situation and starting position for St. Maarten has not improved. The conclusions by the Council over the timeframe 2010-2016 are unfortunately unabridged for 2017. In particular, the lack of resources has increased, with immediate negative consequences in terms of capacity and facilities. The prospect of improvement is still far away. In the context of the Reconstruction, however, attention is paid to law enforcement, with which there may be opportunities. At the same time, it must be realised that structural problems already existed (far) earlier. In the year 2017, certain steps have been taken. However, in the third quarter of last year, the vulnerability of law enforcement in St. Maarten has emerged in a very confrontational manner. The Council therefore stresses the importance of the structural approach to development of law enforcement. To that matter, it is sufficient in this context to refer to the findings and conclusions in the State of last year.

The ability of the institutions

The Council considers it important to dwell on a number of important developments which have occurred because of the passage of the Hurricanes. The passage of hurricanes, especially Hurricane Irma, has transformed St. Maarten into a disaster area within a few hours. In the hours and days after, extreme situations have arisen in maintaining public order and security. The core of law enforcement was faced with a situation to which it was not prepared. With a high level of improvisation and cooperation, the law enforcement institutions have, within a short period of time, drawn up an approach required for that particular circumstance. With very limited resources, they were able to recover the chaos and disorder, after the necessary military and police assistance from the other countries were provided. The Council therefore has a positive view on the ability of these organisations to cooperate on an ad hoc basis in such circumstances enabling them to achieve results. This in itself is already admirable.

Unfortunately, the Council cannot say the same of the administrative authorities and their role in the coordination of disasters. The country Sint Maarten has shown to have been completely unprepared for a disaster of this calibre. Despite the magnitude of the disaster in itself, against which it is virtually impossible to be fully prepared, it can be expected that there is an infrastructure on which to lean. Preparation, disaster coordination and assistance proved far from optimal. Nevertheless, the competent authority has chosen to only declare the state of emergency at a very late stage, four days after the disaster. Although it is difficult to measure, the consequences for the rule of law, the welfare of the population and damage to the economy are therefore in the opinion of many, many times greater than when the necessary preparation had taken place and decisions had been taken timely.

The Council recommends that all (cooperating) organisations in law enforcement chain and disaster coordination evaluate their plans. In the event there are no plans, those must be made. As part of the research into the infrastructure and safety of St. Maarten, the Council will, as already foreseen in the annual plan, also look into those aspects in the near future.

Follow-up of recommendations

In a comparison between the countries, it is quickly apparent that St. Maarten strongly lags behind the Caribbean Netherlands (Bonaire, Sint Eustatius and Saba) and Curaçao where it concerns the follow up of the recommendations of the Council. When it comes to the follow-up of recommendations, the Caribbean Netherlands are leading. Not only are the reports pertaining to the Caribbean Netherlands consistently taken into account by the respective Government (Minister), the organisations are also being equipped to work with the recommendations. In Sint Maarten the picture is contrary: the organisations themselves are able to work with the recommendations as far as possible, but they hardly get any administrative and financial support for the implementation. Nor has Parliament addressed the Minister that there is no or little consideration for improvements. In fact, in some cases reports have not been offered to Parliament. Thus the controlling mechanism of Parliament within the Government is compromisingly affected. This creates the image that the administrative authorities stand far away from the operations and implementation. As a structural bottleneck, the Council already mentioned the attention of the administrative authorities for law enforcement (State of the Law Enforcement 2016).

The Council recommends that the respective authorities should inform the Parliament, with a structural attention on law enforcement. The Council recommends that the Parliament exercises its control functions and discuss this regularly with the Minister of Justice.

Finance and decision-making

Given the current situation, the Council outlines a separate paragraph to the financing of law enforcement. The Council regularly learns that structural and necessary provisions are not funded. This also applies to planned or initiated projects. In this paragraph, the Council only deals with (the consequences of) this deficit, not on policy-based financing choices.

As examples are mentioned:

- Structural backlogs in payment arrears and/or failure (of succession) of policy decisions taken in it provisions (e.g. ActPol/Summit, FMS/BMS, JIS, electronic surveillance, buy/renew licences), resulting in the shut-down of systems or not being able to make use of a system;
- Structural delays in taking decisions which are crucial to law enforcement and/or approve those decision in general;
- Structural backlog in payment arrears, resulting in the cessation or accumulation of long delays in ongoing investigations (e.g. services provided by the Netherlands Forensic Institute);
- Structural delays in the contribution of the country, with the result that it is not (itself) able to fulfil commitments (e.g. the Public Prosecutor's Office);

The foregoing also serves to illustrate that structural matters, of eminent importance, do not run well on St. Maarten. Since these financial aspects now have a more or less structural character, the Council is concerned about the major implications for the organisations in law enforcement and, as such, for society as a whole.

Apart from the funding, it is apparent that decision-making on financing is often delayed for a long time. Thus, further development stagnates.

The Council recommends that a long-term plan for the development of organisations and facilities to be made as soon as possible, with a sound financing plan. The Council then recommends that the decision-making process be accelerated.

The Council deems it of the utmost importance to note that, since the beginning of 2018, the Ministry of Justice is currently attempting to make improvements. In the framework of the Reconstruction on all sides is being worked on formation of plans.

However, the lack of capacity and access to resources plays a detrimental role. The financial possibilities of the country will be restraint in the coming years. The Council considers that law enforcement is an essential part of proper reconstruction. In this context, the parties involved in the Reconstruction should be aware of the importance of the development of law enforcement, and ensure that there will be no deterioration but progress.

Independent law enforcement

In previous reports before the gaining the autonomous status of St. Maarten, it has already been found in several reports that the island will not be able to guarantee the required level of law enforcement independently.

However, it was opted to charge the country of St. Maarten with law enforcement as an autonomous task. Looking back on 2017 and given the current state of affairs, the question arises again whether the country will be able to guarantee its obligations in the short and/or medium term. Without the full attention of the Government, the availability and allocations of sufficient resources, policy making, awareness and an answer to the question: 'Where do we want to go with law enforcement?', the Council considers that the country will not capable of

fulfillment. In recent months, there has been a great deal of assistance from the Netherlands to St. Maarten, in particular the police and the prison were supported. It has been clear to everyone that St. Maarten could not have done without that assistance. In Society and in the Council, the opinion is that St. Maarten will not be able to perform and fulfill without any form of assistance.

In addition, assistance has also brought about a great deal of positive development within the organisations. The Police Corps and its employees have experienced this as very positive. There is a fear that when the assistance expires, the progress achieved by the organisations and the assistance will stagnate or decrease. Certainly with the current financial situation, the country will lack the necessary resources for the further development of law enforcement, which were already desperately needed for the passage of the Hurricanes Irma and Maria: If the resources were not there for the Hurricanes, they will certainly not be there now. That is why it is important to find either a way in which St. Maarten will be able to guarantee law enforcement or to set up a way of cooperation with which it can exercise the autonomous task. The latter seems to be a more realistic and viable solution than the first one. Within the kingdom, legislation already offers the possibilities, which to date are not optimally explored. Willingness to co-operate is even more important. The possibilities can also be explored in the context of the Reconstruction. The practice has recently shown that one can easily find each other in times of difficulties (crisis). This seems to be an important example for the future.

Conclusion

The Council believes that law enforcement in St. Maarten is currently so vulnerable, that continuation at the same path is irresponsible. The organisations within the law enforcement that are committed to a safe (-r) Sint Maarten deserve the same dedication of the Government and its administration. For this reason, the Council is using this State of law Enforcement 2017 as a call to the Government to pay attention to the law enforcement that it needs and deserves. The Council considers it important to emphasize that administrative attention to law enforcement is a priority, and then the structural solutions to the major challenges St. Maarten is facing, must be addressed. Cooperation within the Kingdom should be paramount.