



2018 STATE OF LAW ENFORCEMENT SINT MAARTEN

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Law Enforcement Council
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Introduction

Since 2012 the Law Enforcement Council (*Raad voor de rechtshandhaving*) (“Council”) has been conducting inspections within the criminal justice chain with respect to quality, management, and effectiveness. Additionally, the Council is charged with conducting a general inspection of the quality and effectiveness of the judicial cooperation between the countries.

In addition to its inspection reports, the Council each year issues its State of Law Enforcement (“State”). 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 State for the year 2013 reported on all three countries (Curaçao, Sint Maarten and the Netherlands – on behalf of Bonaire, Saint Eustatius and Saba) collectively. In 2014, it was decided that each individual country, including Sint Maarten would have a separate State. Over the years, the State has gained an increasingly prominent position. Over the years the State has transformed from a mere letter into a dedicated report whereby the general developments within the criminal justice chain are reflected upon.

In May 2017, the Council issued its State for the year 2016. There, the Council reflected — more extensively than before — on the specific factors and issues yielded by its inspections. The vast majority of these could be traced back to seventeen underlying factors¹ that are important for a well-functioning criminal justice system. These factors were then analyzed and categorized using a normative framework. Integral cooperation within the justice chain, in particular, turned out to be of great importance. Additionally, the lack of means, capacity, and resources were found to be key factors. It also pointed out that the functioning and guarantee 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 play a role as well. The objective of the State for 2016 (and the 2017 State building thereon) was to help raise awareness and show the need for improvement.

The need for improvement was still present in 2018. According to the Council, the aforesaid normative framework and factors offer guide posts for the process of reconstructing and designing a well-functioning criminal justice system.

The State for the year 2017 includes a discussion about the State for 2016. 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.

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.

Key Issues

During its inspections in the year 2018 the Council again observed great involvement and responsibility on the part of the employees of law enforcement agencies. The year 2018 was characterized by the reconstruction of the country of Sint Maarten and more specifically of the law enforcement agencies. The Council notes that the will to rebuild is certainly present, but the process is mostly characterized by many administrative discussions, slow (important) decision-making, and an overall lack of financial means, which negatively impacts performance across all agencies. The key issues in 2018 for law enforcement were strengthening Sint Maarten's border security, the severe problems at the Pointe Blanche prison and detention center, and the closure of the Miss Lalie Center.

Strengthening Border Security

In the context of reconstructing the country, Sint Maarten and the Netherlands reached an understanding about strengthening border security in Sint Maarten for people and goods which was memorialized in the Memorandum of Understanding on Strengthening Border Security (*Onderlinge regeling versterking grenstoezicht*).² This Memorandum entered into force on December 20, 2017 and is set to run for 2 years until January 1, 2020. It provides for additional assistance from the Royal Netherlands Marechaussee (KMar) and Netherlands Customs during the reconstruction period for purposes of protecting and strengthening the vulnerable border security. All of this is done under the auspices of Sint Maarten's Minister of Justice.

In 2018 further details were worked out regarding the previous agreements made in the context of strengthening border control. One of the threats to Sint Maarten is (migrant) crime and the influx of illegal migrant workers. Within the justice chain the focus has also been on problems with human trafficking and human smuggling. This is expressed in, *inter alia*, the Memorandum of Understanding on Cooperation to Prevent and Combat Human Trafficking and Human Smuggling (*Memorandum of Understanding van samenwerking ter voorkoming en bestrijding van mensenhandel en mensensmokkel*) and research by the Sint Maarten Police Force's team of experts in human trafficking and human smuggling, as well as the "Alpha Team". Here too, capacity is referred to as a structural problem affecting the ability to take on cases. The most recent evaluation³ of this Memorandum was done in 2018 and focused on safeguarding continuity through adequate expert knowledge, among other things. Although required under the Memorandum, no National Coordinator was appointed in Sint Maarten in 2018. This was realised at the beginning of 2019. Furthermore, the lack of administrative (follow-up) action or oversight remains problematic and no multidisciplinary controls were conducted in 2018. In 2019, the Council will conduct an inspection of the approach concerning human trafficking and human 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 covering topics such as border control and

² Government Gazette 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.

reconstruction of the local criminal justice chain post-hurricane Irma.⁴ The conference included discussions with the agencies within the criminal justice system about potential ways and means to strengthen Sint Maarten's borders and to increase the organizational capacity of at least the Sint Maarten Police Corps, Customs, and the prison system. These discussions also included observations that the Pointe Blanche prison had suffered enormous damage and both local and Dutch experts advised Sint Maarten to invest in a new prison complex. The work conference was deemed to have been fruitful, resulting in draft plans of action for both border control and the prison. The (joint) plan of action to strengthen Sint Maarten's border security was finalized in April 2018 and includes implementing border security measures and an operational organization structure, as well as sharing responsibility to ensure expertise, quality, integrity, and monitoring. The plan's (further) implementation commenced in 2018.

Prison System

The prison system's plan of action as launched during the work conference took more time to complete due to a lack of capacity, means, and expertise on the part of the Ministry of Justice of Sint Maarten. In collaboration with the Netherlands Department of Justice (*Dienst Justitiële Instellingen*) they now have expanded the plan. On September 17, 2018, at the request of the Minister of Justice of Sint Maarten the Department of Justice offered Sint Maarten a plan of action titled "A Safe Community: Creating Accountability and Sustainability in Sanction Execution in Sint Maarten (2018 – 2023)". This plan was subsequently formally adopted as the new plan of action during the consultation of Ministers on October 19, 2018. Additionally, a number of arrangements regarding the prison were made and recorded regarding the phased return of inmates, accommodation and return costs, as well as urgent improvement measures with accompanying timeframe. The Council was pleased with the fact that cooperation was sought, and that Sint Maarten currently has a current plan in place. However, the Council did wonder whether the agreed-to arrangements had a realistic timeframe.

In October 2018, the Council published two review reports regarding the prison. Whereas the Council initially believed that early 2017 saw a low point, 2018 went even lower. The situation in the prison—partly due to the hurricanes—had exacerbated even further in 2018. For that reason, in 2018 the Council—just like the Evaluation Commission and others⁵—rang the alarm bell for the umpteenth time, concluding that the incarceration environment is not humane and the work environment is not safe for the staff at the Pointe Blanche prison. There were serious violations of (inter)nationally applicable laws and norms. This did not go unnoticed internationally. The Council deems it unacceptable to require people to work and live under these conditions. Because human rights are at stake, the Council recommends proceeding with the long-awaited and necessary action. Moreover, according to the Council, the problems are so complex that the Council believes the prison, the Ministry of Justice, the country of Sint Maarten, as well as the Kingdom of the Netherlands should engage in the most active way possible. Accordingly, the Council again urges them to take responsibility while pointing to the need and urgency of cooperation.

⁴ Attendees included representatives of the Sint Maarten Police Corps, prison, Customs, Coast Guard, Public Prosecution office, Royal Netherlands Marechaussee, Court of Guardianship, Sint Maarten Judicial Institutions Foundation, Sint Maarten Ministry of Justice, Sint Maarten National Security Service, Netherlands Ministry of Justice and Security, Netherlands Customs, Ministry of Defense, Ministry of Foreign Affairs and Kingdom Relations, Criminal Investigation Cooperation Team, Netherlands police, and 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.

Considering the many reports and recommendations published by the Council and other agencies, the Council also pointed out that if no significant progress was made as soon as possible, the Council would soon have depleted its mechanism for conducting its inspections and issuing recommendations for the prison and detention centers. 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 authority to directly approach the representative body is a last resort to force the responsible Minister to take action based on the inspection results. The Council has not yet used this authority. The reasons not to use it as far as the prison is concerned, include the developments that commenced in the last quarter of 2018 and that continue in 2019. These include repairs of the prison roof, safety measures, the start of a training program, and the introduction of ankle monitors. However, the Council believes there is still a long way to go, with complex problems along the way. The Council hopes the start of these developments will result in substantial improvements in the prison system as soon as possible and that account will be taken of the fact that ensuring the functioning and presence of law enforcement is not just a task of the Ministry of Justice but also of the government as a whole.

Juvenile Rehabilitation: Miss Lalie Center

The Miss Lalie Center ("MLC") became operational late 2014, which benefited the fight against juvenile delinquency. In 2016, the Council saw positive developments as far as juveniles were concerned, including progress in juvenile rehabilitation. The program for young adults in the prison was noteworthy as well.

As a consequence of the hurricanes Sint Maarten lost its juvenile rehabilitation center in 2018. The MLC was not operational between September 2017 and the year-end of 2018. This meant specifically that all juveniles spent a few days, at most, at the police station's cell complex, after which they—despite their often serious offenses—had to be sent away for lack of sufficient space suitable for juveniles and compliant with (inter)national requirements. In addition, ankle monitors were temporarily unavailable. The MLC's shutdown represented a loss of a critical final element in the fight against juvenile delinquency. This situation also had immediate consequences for the Court of Guardianships' performance of its juvenile rehabilitation and (non-)intervention tasks. During this period, the Council was very worried about the youth, overall safety, and the wrong signal that was sent by law enforcement specifically to these youths and potential offenders: they could not adequately respond to criminal conduct by juveniles.

In the second half of 2018, steps were taken to solve the problems with ankle monitors and ankle monitors are currently in use again. It will now take much effort to correct the wrong impression given to the youth. In this connection the Council emphasizes the importance of opening the MLC as soon as possible. Meanwhile, the MLC's repair work has already started and is making significant progress. Hopefully, this will allow it to be used again in the short term, which is expected in early June. The Council looks forward to the juvenile rehabilitation center's reopening.

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 Section 32 Law Enforcement Council Establishment Kingdom Act (*Rijkswet Raad voor de rechtshandhaving*), Official Journal 2010, 338.

National Recovery and Resilience Plan

The “Sint Maarten National Recovery and Resilience Plan: A Roadmap to Building Back Better” was published in August 2018, covering topics such as law enforcement, public safety, and security. The recovery strategy for this sector as proposed in the plan encompasses:

- 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 moved to a safe location. Repair of the prison started in 2018 and repair of the police stations’ roofs started in early 2019. Additionally, the Saint Martin Police Force received eleven new vehicles and some of the new uniforms.

The plan further states that the immediate needs are infrastructure, equipment, and better emergency communication, while the short-term to mid-term needs center on building a new prison and strengthening the Sint Maarten Judicial Institutions Foundation (*Stichting Justitiële Instellingen St. Maarten*) and Court of Guardianship (*Voogdijraad*). The Foundation lost its accommodation in late 2017. The Foundation was relocated to the Ministry of Justice building at the start of 2018 and is still there now. Apart from that, the Foundation has been struggling with staff shortages.

Victim Support

For years the Council has been raising awareness of (the lack of) victim support services and reiterating their importance to society.

Although one Court of Guardianship employee was made available in 2017 to set up a victim support bureau it could not be completed due to the events of 2017. There was no structural victim support effort in 2018 either. The Council believes this has affected and continues to affect the level of information and assistance provided to victims, their willingness to file reports with the police, and their confidence in law enforcement. Moreover, sheltering victims remains problematic. A review inspection of victim support in Sint Maarten will be conducted for the second time in 2019 analyzing the current situation and status of implementation of the Council’s prior recommendations.

Information Technology

The situation in 2018 was as follows for information technology (“IT”) at law enforcement. Virtually all law enforcement agencies have shown to be dependent on IT systems and this remains an important point of attention in 2018. The agencies have been calling for modernization for years, but to no avail. The decision-making on this issue has been subject to constant changes over the years with lamentable results—there are still no systems. This applies to amongst others the Sint Maarten Police Force, Court of Guardianship, Sint Maarten Judicial Institutions Foundation, and the National Detectives Agency. The Sint Maarten Police Force’s Info Unit decided to not wait any longer and built a module itself (information hub). The Council praises this initiative. Investigative agencies gather information in an information hub, which benefits cooperation and information exchange between the agencies. The Council wishes to reiterate its praises for the Sint Maarten Police Force and particularly the Info Unit for their approach, but at the same time it criticizes Sint Maarten’s government for failing to make decisions and to allocate resources to ensure an adequate IT infrastructure. The Council

points to the administration's collective responsibility to ensure prioritization, including in its budgeting. The MOU on Border Security did effect a change in the availability of the ACTS systems (Actpol, BMS, and FMS). Funds from the reconstruction fund were used to reconnect these systems for as long as the MOU and the reconstruction funds arrangements are in force. After that, Sint Maarten is required to guarantee the connections. The Council urges it to take responsibility in this respect. The Council points to the possibility and the benefits of joining the Memorandum of Understanding on IT.⁸ Its systems provide a solid basis for operations. Moreover, because of the years-long lack of BMS there, for example, has been no oversight on the movement of persons. In addition to its own information position and homeland security, Sint Maarten also has an international duty to perform and it will have to ensure that its information infrastructure is well-organized from this perspective as well. A collateral consequence of the IT limitations mentioned above is that it is still not possible to conduct proper quantitative research at law enforcement.

A number of protocols will be signed in 2019 for inter-agency information exchange within the criminal justice system. The Council applauds this development and hopes these protocols will also lead to practical benefits to cooperation within the criminal justice chain.

Job Description Manual

The Function books for the Sint Maarten Police Force, prison, and National Detectives agency were not yet in force in 2018. Late 2018 the Force's Function book was presented to the Committee of Civil Servants Unions, better known as CCSU (formerly known as the Civil Service Collective Negotiation Committee, *Georganiseerd Overleg in Ambtenarenzaken*).⁹ In January 2019, Committee representatives and the Minister of Justice held a meeting to discuss matters regarding the Function book. Subsequently, in February 2019, the Committee expressed its approval of the Function book, stating in the media that it saw no reason for any further delays in proceeding with adopting the manual. Furthermore, the Ministry of Justice is also working on the manual together with a consultancy firm and human resources.

Training

It should be mentioned in the context of capacity that the foundational 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.

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

⁹ Under section 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.

Inspections Completed in 2018

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 prison: follow-up inspection of internal safety and community safety;
- Sint Maarten prison: follow-up inspection of legal status of prisoners and human resources;
- Forensic criminal investigations in Sint Maarten;
- Sint Maarten Police Force Internal Affairs Unit;
- Enforcement of fines, damages awards, and forfeitures in Sint Maarten: follow-up inspection;
- Coast Guard: Law Enforcement Council inspection of performance of the investigative duties by the Coast Guard in Curacao, Sint Maarten, and Caribbean Netherlands (Bonaire, Sint Eustatius, and Saba); and
- Cooperation among Prosecutor's Office: inspection of cooperation between the Prosecutor's Office of the Prosecution Service of Curacao, Sint Maarten, as well as Bonaire, Saint Eustatius, and Saba.

Policy Statement For Parliament

Between 2012 and 2018 the Council published a total of 42 inspection reports for Sint Maarten. The law requires the Minister to present all these reports to the Sint Maarten Parliament along with a policy statement. However, previously the Council consistently found that over the past years policy statements had not been issued and, consequently, that in recent years Parliament has not held any plenary debate on the Council's reports. The Council again reiterates the importance of Parliament's role in setting parameters, conducting oversight, and budgeting, as well as the importance of the responsible government agencies' engagement. The policy statement affords the Minister the opportunity to expand on the Council's findings and recommendations. The reports give Parliament insight into how the criminal justice system works and may furnish a basis to hold the Minister accountable for it. Therefore, optimal functioning of this mechanism is of critical importance and benefits both the agencies within the criminal justice system as well as law enforcement as a whole. That is why the Council was pleased with the turn of events in the last quarter of 2018 when the Minister of Justice again took responsibility, issuing policy statements for five of the seven inspection reports presented to him and presenting these to Parliament along with the reports. The Council hopes that this new approach will be continued and will also cause Parliament to put the Council's reports back on the agenda again.

Implementation of Recommendations in 2018

A total of three review inspections were conducted in 2018, two concerning the prison and detention center and one concerning the enforcement of fines, damages awards, and forfeitures. In addition to the prison's condition described earlier in this State, these specific

¹⁰ The inspection regarding the Crime Fund in Sint Maarten, 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 of the 2018 annual plan will be carried out in 2019.

inspections show the following with respect to implementation of the recommendations issued to improve the agencies involved.

Pointe Blanche Prison and Detention Center (2018)

After two inspections in 2013 and 2014, respectively, the Council issued a total of three inspection reports in 2016 and 2017 about the Pointe Blanche prison and detention center covering topics such as legal status of prisoners and human resources (2016), internal safety and community safety (2017), and treatment of detainees and reintegration into society (2017). The first two reports mentioned above were reviewed in 2018 to determine the level of implementation of the recommendations of both the Council and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”). At the Ministers’ request the Council reports to the Quadripartite Judicial Consultation (*Justitieel Vierpartijenoverleg*) on the progress with respect to implementation of the CPT’s recommendations.

Of the total of 26 Council recommendations covering topics such as legal status and human resources, as well as internal safety and community safety, two (2) recommendations have been implemented and 24 recommendations have not been implemented. The Council once again ascertained that none of the CPT’s 16 recommendations had been implemented. The Council was forced to ring the alarm bells again and to conclude, based on the situation it observed, that in 2018 the prison and detention center were unsuitable both as a working environment and as a detention environment. The Council believes these consistent findings lead to the conclusion that the Council’s recommendations are consistently not implemented. As stated earlier in the paragraph about the prison system, the developments that started in the last quarter of 2018 and continued in 2019 are among the reasons for the Council to refrain from using its authority to report at this time.

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

In 2014, the Council issued its report titled “The Enforcement of Fines, Damages Awards, and Forfeitures in Sint Maarten”. In its report the Council included five recommendations, three of which related to the performance of enforcement duties by the Public Prosecution Office (*Openbaar Ministerie*). The Council concluded that compared to the prior inspection, the Prosecution Office’s practice had improved on certain aspects in 2018, which meant it had implemented recommendations in part. The significant dependence on IT systems caused the Council to recommend ensuring the Sint Maarten Police Force starts using the Actpol and BMS systems as soon as possible (again). The systems were operational again by early 2019 after they had decided in 2018 to start using Actpol, BMS, and FMS again. The Council believes this is a step in the direction of improving the informational position of law enforcement. Nevertheless, as stated earlier, there are more problems with IT (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 police brutality and violence against the police in Sint Maarten;

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

Conclusion

The year 2018 was a year of reconstruction for the country of Sint Maarten, including its law enforcement. Obviously, the Council understands the situation the country and, consequently, its law enforcement found themselves in after the hurricanes. As a result, the reality is that the government—partly because of the country's financial situation—has been unable to structurally improve law enforcement in 2018. Nonetheless, law enforcement remains an area of focus and steps have indeed been made in the right direction during reconstruction. The Council notes that the Sint Maarten Police Force is moving mainly in the right direction. The prison, however, lags behind in satisfying (inter)national minimum norms. The Council even had to conclude in 2018 that the prison is unsuitable, both as a working environment and as an incarceration environment. The Council again stresses the importance of achieving a structural solution for the problems within the prison system as soon as practicable. In this context the Council also notes that the government administration has a collective responsibility to ensure both prioritization — including in its budgeting — and a realistic accompanying timeframe. Note, however, that the foregoing not only applies to the prison system, but also to the problems the other agencies within the criminal justice system are facing.

The Council finds it is worth noting that at present most attention is given to these two specific agencies within the system (police and prison system), but the other agencies are also having significant problems, such as a lack of (basic) means including housing, staff, and resources. The administration should give these agencies the same support and attention because law enforcement comprises all agencies collectively and one cannot function without the other. Accordingly, the Council believes that the other agencies cannot remain behind in priority and urgently calls attention to this issue. As such, the Council's conclusion in 2017 continues to apply in 2018 as well: keep paying the well-deserved and necessary attention to the agencies within the criminal justice system that (continue to) work on a daily basis to ensure our safety, because there is still much to do.

Lastly, the Council believes it is a very positive development that in 2018 law enforcement was characterized by cooperation and mutual support. This was observed within and between law enforcement agencies, both at an inter-island level and at the Kingdom level. Because the Council has already pointed to the power and benefits of cooperation multiple times, it can only use this State to praise all involved and to encourage them to keep doing this and to expand this within, among, and for all agencies within the criminal justice system. All of this is for the benefit of law enforcement. The Council will continue to closely watch these and other developments.

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