



Inspection: Review of St. Maarten's National Detectives Agency

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Law Enforcement Council

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List of abbreviations

BIZ	Bureau Interne Zaken (<i>Internal Affairs Office</i>)
COZ	Coördinator Operationele Zaken (<i>Operational Affairs Coordinator</i>)
CRO	Coördinerend rechercheofficier (<i>Coordinating investigating officer</i>)
JVO	Justitiële Vierpartijen Overleg (<i>Four Party Judicial Consultation</i>)
KPSM	Korps Politie Sint Maarten (<i>Sint Maarten Police Force</i>)
LSM	Landsrecherche Sint Maarten (<i>National Detectives Agency</i>)
LrC	Landsrecherche Curaçao (<i>National Detectives Agency Curaçao</i>)
Minister	Minister van Justitie (<i>Minister of Justice</i>)
Ministerie	Ministerie van Justitie (<i>Ministry of Justice</i>)
FIU	Financial Intelligence Unit
OM	Openbaar Ministerie Parket Sint Maarten (<i>Public Prosecutor's Office St.Maarten</i>)
AG	Attorney General
Council	Law Enforcement Council
RST	Recherche Samenwerkingsteam (<i>Detective Cooperation Team</i>)
TBO	Team Bestrijding Ondernijning (<i>Anti-Corruption Task Force</i>)
TCI	Team Criminele Inlichtingen (<i>Criminal Intelligence Unit</i>)
VC	Voortgangcommissie Sint (<i>St. Maarten Progress Committee</i>)

Preface

The St. Maarten National Detectives Agency (*Landsrecherche St. Maarten- LSM*) has three important tasks: conducting criminal investigations within the civil service or with respect to holders of public office to ensure the integrity of the organization, conducting criminal investigations within the police force at the instruction of the Minister and the Public Prosecutor's Office and, finally, providing assistance on the instruction of the Attorney General. This investigation - included in the Council's 2020 annual plan - focuses on the extent to which the National Detectives Agency is capable of performing its duties. It specifically examined the following components: legislation and regulations, policy, (financial, human and material) resources, cooperation and the results.

From the inspection it is apparent that investment in the National Detectives Agency has been, and remains, insufficient in every one of the aforementioned areas. In spite of plans to strengthen the agency, several serious bottlenecks still exist ten years after the establishment of a dedicated National Detectives Agency for St. Maarten. The main objective, a full-fledged agency, has not been achieved. There are problems in all areas. There is a lack of policy, management and supervision. The resources available to the LSM are not sufficient to realize its objectives; there is a structural budget shortage. Furthermore, the independence of the agency is not adequately guaranteed. It has not escaped the Council's notice, however, that in spite of this, the employees of the agency continue to make efforts, not only to maintain the organization's operations, but also to deliver results.

The Council hopes that the findings and conclusions of this inspection will contribute to the desired development of the National Detectives Agency and urges the responsible parties to provide the needed investment. To this end, the Council has made some seventeen recommendations.

Finally, the Council expresses its gratitude to the National Detectives Agency of St. Maarten, the Attorney General's Office, the Public Prosecutor's Office in St. Maarten, the Ministry of Justice and the Police Force of St. Maarten for the open and meaningful dialogue and for their contribution to this inspection.

THE LAW ENFORCEMENT COUNCIL

LL.M. L. Virginia, chairman,
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Summary and Recommendations

Summary

Introduction

This inspection report deals with the execution of the legal tasks of the National Detectives Agency of St. Maarten. The Council's central question for this investigation - included in the 2020 annual plan - is to what extent the National Detectives Agency is capable of performing its legal tasks. The inspection therefore focusses on the legal basis, the organizational structure, (personnel and material) resources, the cooperation with other agencies and the results. The findings of the inspection led to seventeen recommendations.

General conclusion

The Council has to conclude that the answer to the question, 'to what extent the National Detectives Agency is capable of performing its legal tasks', can only be formulated in the negative. It is evident that the LSM does not possess the basic prerequisites (financial, material and human resources) to function properly.

Legislation and policy

Most of the legal framework governing the National Detectives Agency is up to date. However, bottlenecks remain relating to the personnel's legal status. A formalized function book for the National Detectives Agency is still not available. In addition, the applicability of, and uncertainties regarding, the two existing decrees on the legal status have caused problems for years, although they recently seem to have been resolved.

The different plans for the establishment and further development of the LSM, the Organization Plan with accompanying Implementation Plan and the Improvement Program OM, have not produced the desired outcome; namely, a fully functioning agency. These plans have not -or not fully- been implemented for a variety of reasons. The National Detectives Agency is also expected to submit an annual plan and annual report every year but up to 2018, failed to do so. This annual plan, which must be approved by the Minister, must include the activities the National Detectives Agency is required to perform along with the resources necessary to accomplish them. The Council notes that there is room for improvement in the process of preparing a concrete annual plan. Communication between the stakeholders is not optimal. As a result, the specified objectives are often not achieved.

The Minister has not formulated a specific policy with his expectations of the National Detectives Agency, resulting in, among other things, a negative impact on the execution of tasks and cooperation with stakeholders. For the organization, this mostly means that there is insufficient supervision on performance and priorities, which ideally, should be defined as uniform as possible, by the Minister, the AG and the LSM together, and for which accountability can be given.

Organization

The Council finds that in recent years the Public Prosecutor's Office has sought to intensify its supervision of the investigations conducted by the National Detectives Agency using the National Detectives Agency Coordinating Committee (CCLR) along with the Instruction of tasks and deployment of the National Detectives Agency (Instruction). The Council is nevertheless concerned. For a number of months, deliberations by the CCLR were not regularly conducted. Furthermore, the communication between the LSM and the Public Prosecutor's Office is not optimal, which affects ongoing investigations.

Moreover, the Council has the impression that the organization, in so far as it concerns conducting integrity investigations, has not yet gained its desired standing within law enforcement. In this regard, the Council deems it appropriate that the Minister, as well as the AG, devote (more) effort in supervising the National Detectives Agency. Various strategic platforms are in place for this purpose, including the Tripartite Meeting, the Management Consultation, and the JVO.

In terms of management, the Council believes - as stated in previous investigations - that there should be greater investment in critical resources such as a business process system and increasing the current knowledge and capacity through the education and recruitment of personnel.

The Instruction is there to provide clarity on what cases the National Detectives Agency is or can be tasked with and how. The Council finds that despite the existence of the Instruction, different opinions exist regarding the types of cases that the LSM should handle and believes that by having a policy on the one hand and improved consultation between stakeholders, as well as communication and information from the Public Prosecutor's Office on the other hand, clarity can be improved.

Resources

The National Detectives Agency faces budgetary challenges. According to the Ministry, the Country's financial situation is a given resulting in the LSM's budget remaining virtually unchanged for the past several years. As such, the LSM has not been able to make the required investments in material and human resources, such as investing in the tools necessary for operations including its vehicle fleet, and equipment and supplies for use in and around the building. Furthermore, the ability to qualitatively fill vacancies appears to be essential for the growth of the organization. For example, the position of the head of the agency is once again vacant, which has implications for the management of investigations. The afore-mentioned bottlenecks cause employees considerable frustration. In addition, employees experience difficulties due to the lack of a formalized legal status, for example with regard to their national decrees, promotions and remuneration.

The Council appreciates the attention the organization, rightfully, dedicates to the subject of integrity. This attention is reflected in, among other things, the introduction of a code of conduct for employees and the identification of their secondary activities. In addition, all staff are in possession of a declaration of no objection enabling them to hold a position of confidence.

Cooperation

The investigation reveals that cooperation with local chain partners such as the KPSM and the Financial Intelligence Unit (FIU) is considered good. There are no formal agreements with these organizations. Limited cooperation exists with government departments such as the Tax Inspectorate and the Civil Registry. The LSM would like to work towards closer cooperation with these departments and is eager to take steps to this end. It has become apparent to the Council that the desirability and feasibility of intensifying the cooperation between the sister agencies within the Kingdom has long been under discussion at a ministerial level. However, without tangible results. Given the limited scale of the countries, the Council feels this is a miss. The Council concludes that all organizations understand the need for cooperation, but that they agree that they have nothing to offer each other as long as their own limitations remain unaddressed. In the opinion of the Council the bottlenecks, which are preventing more intensive cooperation between the organizations, need to be eliminated as quickly as possible.

The Council also recognizes that the National Detectives Agency is relatively highly dependent on the Detective Cooperation Team's (RST) support and expertise. This is currently necessary because of the LSM's lack of capacity and expertise, but while cooperation is considered a good thing, the secondment of RST-personnel should not be a long-term solution.

Results

During the inspection, the Council observed that more often than not, the desired results are not achieved. According to the Council, the facilities available and the ambitions possible within that framework, need to be looked at first. To this end, synchronization is needed between the budget, the prosecutorial approach and the desired results.

Recommendations

In its previous reports, the Council issued seven recommendations specifically directed at the National Detectives Agency. *'Application of force by and against the police in St. Maarten'*, *'Selectiveness in investigative and prosecutorial policies of the Public Prosecutor's Office?'* and *'Forensic Investigation on St. Maarten'*. Six of the seven recommendations issued by the Council have, to date, not been addressed. The Council therefore reiterates its recommendation to the Minister to systematically work on the continued development of the St. Maarten National Detectives Agency. In this context, the Council has reiterated and/or adjusted the previously issued recommendations where necessary, and also formulated new recommendations. These are listed in Table 1. The Council is looking forward to seeing the substantive results of the efforts.

All recommendations by the Council are addressed to the Minister of Justice.¹

Table 1: Recommendations per organization

Recommendation
To the Minister of Justice
1. Investigate to what extent the National Decree of the National Detectives Agency requires (further) updating.
2. Provide a regulation on the legal status for the National Detectives Agency.
3. Adopt the earlier recommendation issued by the Council concerning <i>'an overall political-administrative policy with respect to the National Detectives Agency observing proper performance of tasks and an adequate infrastructure for effective management support'</i> .
4. In keeping with the Council's previous recommendation, secure a business process system for the National Detectives Agency.
5. As previously recommended by the Council, ensure that the National Detectives Agency acquires readers for digital data carriers.
6. Formalize the LSM's function book and establish the associated organizational structure.
7. Provide staffing for the National Detectives Agency in accordance with the established staffing plan.
8. Provide the yearly allocation to the agency's budget based on the agency's annual plan.
9. Promote cooperation between the LSM and sister agencies including using (or continuing to use) the platforms available for this purpose, such as the JVO.
To the Minister of Justice with regard to the National Detectives Agency St. Maarten
1. In accordance with the law, continue the preparation of an annual plan and, in its preparation, accommodate the involvement and input of the Ministry with respect to policy and budget and accommodate the involvement and input of the Public Prosecutor's Office/AG in regard to the criminal justice approach. The above is necessary to further the achievement of agency objectives.
2. Prepare the necessary work- and process descriptions relative to all departments.
3. In time, prepare an integrity profile analysis.
To the Minister of Justice regarding the Office of the Attorney General/Public Prosecutor's Office.
1. Conduct an evaluation of the National Detectives Agency Improvement Plan;
2.
3. As recommended previously, ensure (in due course) that the National Detectives Agency is involved in all cases for which the agency is legally authorized.
4. Ensure a strong(er) presence of the National Detectives Agency at designated platforms, e.g., the JVO.

Recommendation
5. Provide continuity in the CCLR for the purpose of prioritizing and directing cases of the National Detectives Agency.
6. Provide in the short-term information to stakeholders regarding the contents and application of the Instruction for the National Detectives Agency.

1. Introduction

1.1 Rationale and background information

The Council is charged with the general inspection of the various agencies and institutions that form part of the judicial chain on Curaçao, St. Maarten and on Bonaire, St. Eustatius and Saba as well as the efficacy and quality of the judicial cooperation.¹ The inspections concern the effectiveness, the quality of the performance and the management thereof. In its annual plan for 2020, the Council identified the topics to be addressed. One of these is a joint investigation of the National Detectives Agencies of Curaçao² (hereafter: LrC) and St. Maarten (hereafter: LSM).

The National Detectives Agency of the Netherlands Antilles was established as a bureau in 1996 and, by virtue of the National Decree of the National Detectives Agencies³, resorted under (the Office) of the Attorney General (hereafter: AG) of the Netherlands Antilles. With the entry into force of the Police Regulation 1999⁴, the National Detectives Agency of the Netherlands Antilles, as a unit of the Netherlands Antilles Police Force, became an independent agency. Since October 10, 2010, St. Maarten has its own National Detectives Agency. In the 'Kingdom Police Act of Curaçao, St. Maarten and Bonaire, St. Eustatius and Saba' (hereafter: Kingdom Police Act)⁵, the 'National Ordinance Structure and Organization of the National Government'⁶, the 'Organization Decree on Justice'⁷ and in the 'National Decree Organization, Tasks and Authorities of the National Detectives Agency' (hereafter: National Decree National Detectives Agency)⁸, the LSM-organization is described along with the types of cases with which the Agency can be tasked.

In previous inspections by the Council the LSM was addressed indirectly as one of the organizations involved in the subject matter of the inspection. In this investigation, the Council will focus solely on the National Detectives Agency.

On October 10, 2010, the constitutional structure of the Kingdom underwent a transformation and St. Maarten became an autonomous country within the Kingdom. To ensure that the transition progressed as smoothly as possible, several committees were created. One of these is the St. Maarten Progress Committee (VC). The Progress Committee reports to the Ministerial Meetings about the status and implementation of the action plans within the context of the Cooperation Arrangement for guaranteeing action plans for country responsibilities of St. Maarten⁹, including action plans in the domain of law enforcement.

¹ Kingdom Act of July 7, 2010 regulating the establishment, duties and powers of the Law Enforcement Council of Curaçao, of Sint Maarten and of Bonaire, Sint Eustatius and Saba (Law on Law Enforcement Council).

² For Curaçao, the Council provides a separate inspection report, based on that country's findings and offered to the relevant Minister of Justice.

³ P.B. 1994, no. 48

⁴ P.B. 1999, no. 79

⁵ Kingdom Act of July 7, 2010, regulating the establishment, organization, authority and management of the police of Curaçao, of St. Maarten and of Bonaire, St. Eustatius and Saba and the mutual cooperation between the police of Curaçao, of St. Maarten and of Bonaire, St. Eustatius and Saba (Kingdom Act on Police of Curaçao, St. Maarten and Bonaire, St. Eustatius and Saba), Stb. 2010, 337.

⁶ AB 2010, GT no. 6

⁷ AB 2013, GT no. 44

⁸ National Decree Containing General Measures Regulating the Organization, Tasks and Authorities of the National Detective Agency. (2010); AB 2013, GT no. 165

⁹ Decree of July 24, 2010, containing temporary provisions for cooperating and guaranteeing the implementation of the action plans of the countries Curaçao and St. Maarten (Cooperation Arrangement guaranteeing action plans for country responsibilities Curaçao and St. Maarten).

The new constitutional relationships within the Kingdom resulted in the requirement for St. Maarten to build its own national detective agency. In 2014, the St. Maarten Progress Committee¹⁰ and the Commission on Integrity in Public Administration¹¹ concluded in their reports that the LSM lacked the necessary capacity, as well as the necessary expertise, to adequately investigate potential cases. Moreover, the temporary support staff provided by the Netherlands was considered insufficient. In this regard, both parties issued several recommendations for improving the situation. These recommendations addressed issues such as strengthening the LSM with the assistance of Kingdom partners, establishing the function book, securing proper housing, and formulating specific plans pertaining to investigations into integrity offenses.

The Council in 2015, in its inspection report *'Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office on St. Maarten? An investigation into the interpretation of the prosecutorial monopoly and the opportunity principle'*,¹² also raised concerns about the lack of progress at the LSM. As such, the Council issued four recommendations to the Minister of Justice regarding the LSM which are: drafting a general political-administrative policy; strengthening the LSM in accordance with the staffing plan; securing a business process system; and implementing the improvement program. A review of this report occurred in 2019 and revealed that not a single recommendation had been addressed.¹³

In 2018, the Council published the inspection report *'Forensic Investigation on St. Maarten'*,¹⁴ in which two recommendations were issued regarding the LSM. Specifically, providing readers for digital data carriers and establishing the necessary job guidelines, job procedures and/or memoranda to support activities performed by the digital analyst.

The Public Prosecutor's Office's *'Policy Program Cross Border Crime 2016-2020'*,¹⁵ specifies that the Public Prosecutor's Office prepare an improvement program National Detective Agencies Curaçao and St. Maarten with the goal of enabling the organizations to mature into full-fledged organizations capable of, among other things, combating international corruption. The improvement program covered a period of 5 years and, according to the document, would end and be evaluated in 2019.

Due in part to the above developments, the Council decided to review the LSM.

1.2 Objective

The purpose of this inspection is to gain a better understanding of the extent to which the National Detectives Agency is capable of performing its duties. The plan of action of the Government of St. Maarten and the improvement program of the Public Prosecutor's Office have established the basis for the LSM's establishment and continued development. However, from the various reports over the years it appears that the intended results may not have been achieved. The Council would like to use the results of this investigation to shed light on the current state of affairs and to contribute to the further development of the National Detectives Agency.

¹⁰ Progress Committee (January 1, 2014 — April 1, 2014), *Fourteenth report to the ministerial meeting*.

¹¹ Committee on Integrity in Public Administration (2014), *Doing the right things right*.

¹² Law Enforcement Council (2014), *Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office on St. Maarten? An investigation into the interpretation of the prosecutorial monopoly and the opportunity principle*.

¹³ Law Enforcement Council (2019), *Review investigation into the implementation of the recommendations concerning the investigation and prosecution policy of the Public Prosecutor's Office on St. Maarten*.

¹⁴ Law Enforcement Council (2018), *Forensic investigation on St. Maarten*.

¹⁵ Public Prosecutor's Office, *Cross-border crime policy program 2016-2020*.

1.3 Main Question

The main question of this inspection is:

To what extent is the National Detectives Agency equipped to carry out its duties?

To answer the main question, the following sub-questions were formulated:

1. *How is the National Detectives Agency organized?*
2. *Which methodology does the National Detectives Agency use?*
3. *Are the resources at the National Detectives Agency's disposal sufficient?*
4. *What is the extent to which the National Detectives Agency possesses sufficient and qualified personnel?*
5. *To what extent does the National Detectives Agency cooperate with Kingdom- and local partners?*
6. *To what extent are the desired results achieved?*

1.4 Limitation and scope

The inspection covers the period from 2010 to the third quarter of 2020.

1.5 Evaluation Framework

To address the main and sub-questions, an evaluation framework was created using sources related to laws and regulations, policy and other pertinent information and several research reports. On the basis of these documents, it has become clear that at the very least the following aspects are definitive for the optimal functioning of the organization within the judicial chain of St. Maarten, specifically: the organization, legal framework, methodology, resources, personnel and cooperation. The Council chose to evaluate these aspects during the investigation to determine the extent to which the LSM is capable of performing its duties.

1.6 Research methodology

The inspection was performed as listed below:

- 1) Orientation phase: the Council studied the topics to determine the approach of the inspection and developed a joint plan of action.
- 2) Desk research: a literature search was performed by the Council, a theoretical/legal framework was developed and the (joint) interviews were prepared.
- 3) Data collection: interviews were conducted with the staff of the National Detectives Agency as well as representatives of the Public Prosecutor's Office, the Office of the Attorney General, the St. Maarten Police Force, including the Internal Affairs Bureau, and the Ministry of Justice. Reports of all interviews were prepared, and all interviewees were afforded the opportunity to verify their interview report. The interview reports were approved after submission to the individuals involved.
- 4) Analysis and reporting: the Council processed and analyzed the information collected according to the main and sub-questions. Based on this, the information was then compared to the evaluation framework, resulting in an assessment of the LSM's performance. A draft inspection report was then prepared.
- 5) Rebuttal and approval: the findings in the report were presented to the representatives of the relevant agencies and to the Minister of Justice for rebuttal, after which the report was approved by the Council.

1.7 Reading Guide

In Chapter 1, the Council describes the reason for the inspection as well as its design and approach. Chapter 2 contains an outline of the laws, regulations and policies applicable to the LSM. Chapters 3 through 6, present research findings. Specifically, Chapter 3 explains the findings about the organization's structure, legal framework, and policies, thus answering the first sub-question: how is the LSM organized. The findings on the second sub-question regarding how the LSM operates are presented in Chapter 4. Findings on the LSM's material and human resources are presented in Chapter 5, thus answering sub-questions 3 and 4. Cooperation at the local and Kingdom level (sub-question 5) is described in Chapter 6. The results achieved by the LSM are included in the relevant chapters (3 to 6). The report concludes with an analysis, a general conclusion and recommendations to the Minister of Justice of St. Maarten in Chapter 7.

2. Legal framework and policy¹⁶

2.1 Introduction

This chapter describes the LSM's legal basis (Section 2.2). In addition, Section 2.3 presents the policy frameworks that the LSM operates in.

2.2 Legal Framework

In order for a country to have a National Detectives Agency at its disposal, the required legislation and regulations must exist. The following is a short description of the relevant stipulations concerning the LSM along with a graphical representation in figure 1. The stipulations in these laws and regulations, in terms of their relevance to the LSM's ability to perform its duties, are further cited in this investigation's findings (Chapters 3 to 6) under the respective topic.

2.2.1 Kingdom Laws

The organization of the LSM, its investigative tasks and possibilities for cooperation are set out in the following Kingdom laws:

Kingdom Police Act¹⁷

- Article 3 (a) and (b): police officers are defined as civil servants appointed to carry out police duties and civil servants appointed to carry out technical, administrative and other duties in the service of the police.
- Article 9: in each of the countries, the AG has a National Detectives Agency at its disposal, which may be charged with the investigation of facts or conduct that may undermine the integrity of the government of the countries which are committed by natural or legal persons entrusted with a public task or involved in the execution thereof. In addition, the AG has the responsibility to nominate a head of the National Detectives Agency who is thereafter appointed by national decree. In the BES islands these detective activities are performed by the Kingdom Detectives Agency (*Rijksrecherche*).
- Article 12 (1) and (2): police officers appointed to carry out police duties in one of the countries shall be authorized to carry out their duties in the other countries. Police officers working for a police force shall refrain from acting outside their area of employment unless ordered or authorized to do so by the competent authority.
- Article 16 (1) and (1): if the police operate to enforce law and order under criminal law, or perform tasks in the service of justice, they are under the authority of the AG. The AG may issue general and special instructions to the police officers for the performance of these duties.
- Article 57a (1) and (3): the protocol on specialized detective cooperation between the countries of the Kingdom dated November 30, 2001, shall apply accordingly in the countries. The task of the Detective Cooperation Team is exclusively to ensure the conduct of investigations into cross-border crime. The officials who are part of the Detective Cooperation Team are authorized to investigate criminal offenses, subject to the legal regulations of the countries.

¹⁶ This report contains unofficial English translations of Dutch regulations and policies. Reasonable efforts have been made in order to provide accurate translations, however, any discrepancies or differences created in the translation are not binding and have no legal effect. Under all circumstances the official Dutch publication of regulations and policies prevails.

¹⁷ Stb. 2010, 337

Kingdom Act Public Prosecutors' Offices of Curaçao, St. Maarten and Bonaire, St. Eustatius and Saba (hereafter: Kingdom Act OM)¹⁸

- Article 5 (4): the AG may issue general and special directions concerning the discharge of the duties and authorities of the Public Prosecutor's Office.
- Article 33: for the purpose of investigating and prosecuting cross-border crime, the Ministers of Justice shall consult each other and agree on the deployment of necessary human and material resources. Cross-border crime shall include terrorism, international drug trafficking, computer crime, international money laundering, international arms trafficking, international human trafficking and international corruption.
- Article 34 (1): the AG is entrusted with the preparation of a four-year policy program to combat cross-border crime.
- Article 35 paragraph 1, 2 and 3: the AG may, after consulting the Minister, request support from the Kingdom Detectives Agency to investigate integrity violations. In the interest of the proper administration of justice, he is authorized to request that designated police officers are tasked with investigating integrity violations and unethical conduct. The police forces are required to cooperate in such investigations and to provide the designated officials with the relevant information.¹⁹

2.2.2 National laws and regulations

In accordance with the provisions contained in the Kingdom Acts, a national legal basis is provided for the LSM's establishment and organization.

Constitution of St. Maarten²⁰

- Article 38: by National Ordinance, ministries shall be established which shall be under the direction of a minister.
- Article 125 (2): the organization, composition and competence of the police may be provided for by mutual arrangement.

Transitional regulation for decentralization of the Netherlands Antilles²¹

- Article 2, paragraph 1: the responsibility for the affairs of the Country shall, to the extent it concerns the subjects mentioned in the Annex to this National Ordinance, be transferred to the Island Territories with due observance of the provisions of this National Ordinance.
- The Annex referenced in article 2, paragraph 1, of the Regulation on decentralization of the Netherlands Antilles (P.B. 2009, no. 75).
The police force
(...)
c. Reference to article 3, paragraph 1, of the Transitional Regulation on decentralization of the Netherlands Antilles:

¹⁸ Stb. 2010, 336

¹⁹ In the Explanatory Memorandum, Article 35 of the Kingdom Act for the Public Prosecutor's Office includes the following:

"In the Final Declaration it was agreed that the Attorney General is authorized to use the Kingdom Detectives Agency for the investigation and prosecution of at the very least official misconduct. In principle, official misconduct is investigated by the police and the national detective agencies of the individual countries. The fourth paragraph regulates that the attorney general can call upon the police forces for this purpose. However, if necessary, the Kingdom Detectives Agency can be called upon. In view of the second paragraph, it is established that the officers of the Kingdom Detectives Agency are authorized in the countries. By virtue of the second paragraph, they function under the authority of the Attorney General. However, the Attorney General must first consult with the Minister of Justice of the relevant country. Consequence of the third paragraph is that the officers of the Kingdom Detectives Agency deployed in the countries have the same authorities as police officers in the relevant country. These authorities therefore do not have to be granted by means of appointment as a special police officer."

²⁰ AB 2015, GT no. 9

²¹ P.B. 2009, no. 75

- Police Regulation 1999 (P.B. 1999, no 79), with the exception of the provisions pertaining to the Central Police Department, the National Detectives Agency and the special police services, regarding the Security Service Netherlands Antilles

National Ordinance on the structure and organization of the national government²² (hereafter: Organizational Decree²³)

- o Article 9: the implementing agency, the National Detectives Agency, is placed under the executive responsibility of the Minister of Justice.
- o Article 20, paragraphs 1 and 2: the tasks with which a Ministry is or shall be charged, as well as the structure and organization of departments and implementing agencies shall, subject to Articles 3 through 9, be further regulated by national decree containing general measures. Regulations governing cooperation between ministries may be established by ministerial decree.

National Decree, Containing General Measures, for the subdivision and detailed development of the Ministry of Justice²⁴

- o Article 4: the Ministry consists of departments and executive agencies including the National Detectives Agency.
- o Article 5: the staffing plan, along with all job descriptions for the entire sector, are described in Appendix 1: Justice Function Book, and are an integral component of this Decree.
- o Article 15: the general objective of the National Detectives Agency is: to conduct criminal investigations within the civil service in order to promote the integrity of its operations. Three tasks have been included in the second paragraph for the realization of this objective:
 - a. conducting criminal investigations within the civil service or with respect to holders of public office;
 - b. conducting investigations of a criminal nature within the police force by order of the Minister and the Public Prosecutor's Office;
 - c. providing assistance as instructed by the AG.

National Police Ordinance²⁵

- o Article 1: in the National Ordinance, a police officer is considered to be an officer of the police as referred to in Article 3, under a and b, of the Kingdom Police Act.
- o Article 7 paragraph 2: by or pursuant to a National Decree containing general measures, rules shall be established regarding the legal status of the police officers.
- o Article 8: the stipulations based on the Police Regulation (P.B. 1962, no. 64) and the Police Regulation 1999 (P.B. 1999, no. 79) shall remain in force after the effective date of this National Ordinance, until they have been replaced by other regulations and implementing rules in accordance with this National Ordinance or the Kingdom Act. As long as no new regulations and implementing rules have been adopted, the existing regulations and implementing rules shall, as much as possible, be interpreted and applied in accordance with this National Ordinance. In the event of any discrepancy, this National Ordinance shall prevail.

Criminal Procedure Code²⁶

- o Article 184 (b): the officers of the National Detectives Agency, as provided by law, are charged with the investigation of criminal offenses.

²² AB 2010, GT no. 6

²³ A copy of the Explanatory Memorandum of the Organizational Decree was requested from both the Ministry of Justice and the Legal Affairs & Legislation Department but was not received.

²⁴ AB 2010, GT no. 11

²⁵ AB 2010, GT no. 62

²⁶ AB 2010, GT no. 1 en AB 2010, GT no. 30

Penal Code ²⁷

- The Penal Code applies in a general sense to the operations of the National Detectives Agency.

National Decree on the organization, tasks and authorities of the National Detectives Agency (*Landsrecherche*) ²⁸ (hereafter: national decree on the National Detectives Agency)

- Article 5: the head of the agency and the other investigating officers are appointed for the execution of the police function, with the exception of the officers appointed for the execution of administrative tasks in service of the police function. The ranks of the officers at the National Detectives Agency are determined based on job descriptions and job level characteristics as referred to in article 31, third paragraph, of the Decree on the Legal Status of the St. Maarten Police Force.
- Article 7: responsibility for the policy and management of the agency rests with the Minister of Justice.
- Article 8: the Attorney General shall exercise authority and supervision over the enforcement of law and order by the agency under criminal law. The Attorney General may issue the relevant police officers with the requisite instructions concerning their duties within this framework. The Attorney General shall, without prejudice to the provisions laid down in or pursuant to national regulations, establish guidelines for cooperation with other relevant (investigative) agencies, in particular with regard to the exchange of criminal investigation information and assistance with personnel, resources and knowledge.

National Decree Containing General Measures regulating the legal status of police officers of the St. Maarten Police Force ²⁹ (hereafter: Legal Status Decree KPSM)

- Article 1 under e and f: the Decree applies to officials appointed to perform the duties of the police and officials appointed to perform technical, administrative and other duties in service of the police as referred to in Article 3 paragraph a and b of the Kingdom Police Act.
- Article 3: rankings and job appraisals for officers assigned to perform police duties are established.

Decree on the legal status of the Police Force of the Netherlands Antilles 2000 ³⁰

- Article 1 under e and f: an officer appointed for the discharge of police duties and an officer appointed for the performance of technical, administrative and other duties in service of the police shall be understood to mean the officers referred to in Article 4 under a and b of the Police Regulations 1999, with the exception of the cadet and the auxiliary agent, who is in training.
- Article 3: the ranks and job appraisals for officers appointed to discharge police duties are established.

Official police instructions ³¹

- Article 1 paragraph 1 under a: a civil servant is defined as a police officer as referred to in Article 3 under a. of the Kingdom Police Act.

Instruction of duties and deployment of the National Detectives Agency (hereafter: Instruction) ³²

An Instruction was prepared and formalized by the Public Prosecutor's Office in 2016, based on article 5 of the Kingdom Act for Public Prosecutors, for the purpose of the investigation of criminal offences by the National Detectives Agencies of St. Maarten and Curaçao. The Instruction is intended to provide clarity on what cases the National Detectives Agency is or can be tasked with and in what manner the

²⁷ AB 2013, GT no. 2

²⁸ AB 2013, GT no. 165

²⁹ AB 2011, GT no. 1.

³⁰ PB 1999, no. 79

³¹ AB 2011, GT no. 2

³² 2016.02

National Detectives Agency should be deployed.

Below is a graphical representation of the aforementioned.

Figure 1. Legal framework National Detectives Agency St. Maarten as of 10-10-10



2.3 Policy

In Chapter 1 we indicated that two plans were crucial in the context of the establishment and further development of the LSM. These are the *'Implementation plan, also action plan'* (hereafter: action plan LSM) of Country St. Maarten for the National Detectives Agency and the *'Program improvement National Detectives Agencies Curaçao and St. Maarten'* (hereafter: improvement plan LSM) of the Public Prosecutor's Office dated 2014.

Two policies were drafted on the basis of the Kingdom Acts that are also relevant to this investigation. These are the *'Policy Program on Cross-Border Crime 2016-2020'* from the Public Prosecutors' Office (hereafter: policy program OM) and the *'Policy Plan on Detective Cooperation in the Caribbean Region of the Kingdom 2020-2023'*³³ (hereafter: policy plan detective cooperation).

In addition, the LSM's annual plans and annual reports provide some insight into how the organization performs its legal duties.

Action Plan LSM

A number of activities are mentioned that are required for the implementation (establishment and organization) of the LSM in the agency's *'implementation plan also action plan'* (date unknown) where the AG is the project owner, the government of St. Maarten is the project sponsor, and the head of the LSM is the project leader:

- preparation (including National Decree Establishment Plan, process descriptions, job

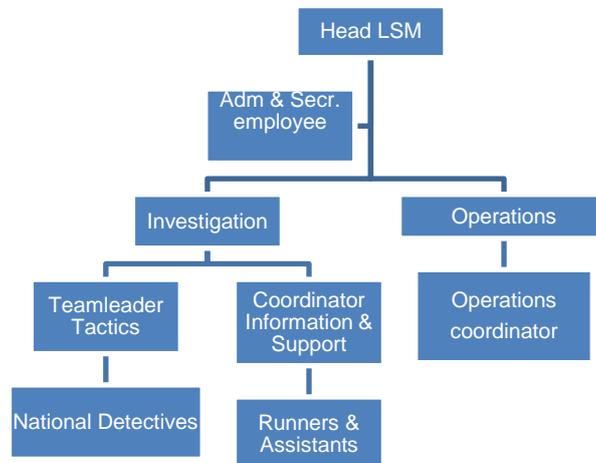
³³ Policy Plan for Detectives Agency Cooperation in the Caribbean Region of the Kingdom 2020-2023, December 2, 2019.

- descriptions/valuations),
- housing (including lease agreement, office furnishing),
- cooperation with third parties (covenants and cooperation agreements),
- development path and training (including research and documenting competence-gap analysis),
- research trajectory (drafting integrity profile analysis, operationalization).

Organization plan LSM

The preparation of an Organization Plan was included as an activity in the plan of action. The quartermaster drafted the Organization Plan in 2010.³⁴ This plan contains a description of the organizational principles and strategic choices that underpin the LSM, and a description of the LSM's structure (Figure 2) along with the staffing, cooperation relationships and financial aspects of building and equipping the agency.

Figure 2.

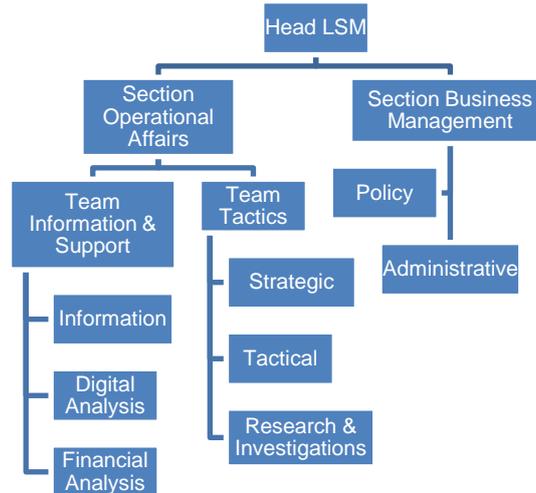


This plan was updated in 2014 by the (then) head.³⁵ The revision addressed the realities of the then-current task implementation, organizational methodology and management issues and operations at the LSM. This also impacted the structure of the organization, see Figure 3.

³⁴ Establishment plan National Detectives Agency St. Maarten, Version 1.0 (June 20, 2010).

³⁵ Establishment plan National Detectives Agency St. Maarten, Version 2.0 (July 2014).

Figure 3.



Improvement Plan LSM

According to the improvement plan LSM, the ambition of the Public Prosecution Office is to (jointly) strengthen the systematic development of the National Detectives Agencies. The improvement plan is aimed at both countries having full-fledged, functioning National Detectives Agencies as of January 1, 2019. This requires the National Detectives Agencies possessing sufficient and qualified staff. In addition, clarity is needed regarding the types of cases the National Detectives Agencies will execute, including supervision from the Public Prosecutor's Office. Cooperation is a prerequisite as it concerns the budget as is a constructive approach from other parties, especially the ministries.

Policy Program OM

As previously indicated, the AG is responsible for drafting a four-year policy program to combat cross-border crime. In the policy program, the LSM is cited twice; first in the context of the aforementioned improvement plan. The Policy Program states that the objective related to the National Detectives Agencies has been partially achieved:

"In describing this objective, three issues are mentioned, namely the National Detectives Agencies, the focus on financial investigations, and digital investigations. The objective related to the National Detectives Agencies has been partially achieved. The improvement program National Detectives Agencies Curaçao and St. Maarten, aims to develop the organizations into fully fledged agencies capable of combating international corruption. The improvement program will run for 5 years and will end and be reviewed in 2019."

In addition, the policy program specifies that the Anti-Corruption Task Force (TBO) will work, as much as possible, with local investigative partners, including the National Detectives Agencies. This was further fleshed out in the Policy Plan Detective Cooperation, which will not be discussed separately in this report.

Policy Plan Detective Cooperation

One of the elements of the Policy Plan for Detective Cooperation, is a more detailed implementation of the duties of the Detective Cooperation Team. The RST consists of two core teams; team 1, dedicated to combating cross-border/ transnational crime, and team 2, the TBO, which focuses on serious corruption crimes with an emphasis on financial-economic aspects. Since 2016, the TBO has been

funded by the Dutch government on a project basis. It is directly managed by the AG to address cross-border, corruption related crime in the Caribbean region of the Kingdom focusing on St. Maarten. In principle, the funding extends to the end of 2021. However, as of 2022, the Dutch government will allocate 12 million euros annually to transform the temporary, project-based approach into a systematic strengthening of the relevant organizations.³⁶ In each of the countries, the TBO cooperates with the respective National Detectives Agencies, the Kingdom Detectives Agency, the police forces and other (investigative) partners to combat corruption, according to the policy plan for detective cooperation.

Annual plans and annual reports

In the National Decree of the National Detectives Agency, the second and third paragraphs of Article 7 stipulate, in part, that the head of the agency must prepare an annual plan and budget and submit these to the Minister of Justice for approval. In addition, an annual report regarding the general management and the efficiency and effectiveness of the activities, and methodology of the unit, must be produced and submitted to the AG and the Minister.

³⁶ MinBZK, Parliamentary letter sustainable approach to corruption in the Caribbean, October 6, 2020.

3. Organization

3.1 Introduction

This chapter describes the LSM's organizational structure in practice according to the previously mentioned laws and regulations, as well as the objectives listed in the plans. In order to be able to evaluate this, the following criterion was formulated as part of the evaluation framework:

Criterion: The country has established its own National Detectives Agency. The organization is based on up-to-date legislation and regulations and the required policies are in place. In practice, the organization has been set up in accordance with the requirements so that the tasks can be carried out adequately.

3.2 Legal Framework

Formalization of the organization

As part of the preparation for the transition of St. Maarten from an island territory within the Netherlands Antilles to the status of an autonomous country within the Kingdom of the Netherlands, the Transitional Regulation on Decentralization of the Netherlands Antilles stipulates that the Police Regulation 1999 would be transferred to the Island Territory of St. Maarten, with the exception of the provisions pertaining to the National Detectives Agency. In 2010, the embedding of the LSM at the Kingdom and national levels was secured, based on which the LSM³⁷ is now a new autonomous organization.

The majority of the interviewees from the Public Prosecutor's Office, the Ministry and the LSM, assess the legal framework, including the National Decree with respect to the LSM, as adequate. A handful have a different opinion. The former deputy head of the LSM questions the lack of an LSM-specific national ordinance and legal status regulation and is of the opinion that the National Decree of the National Detectives Agency of 2010 is not sufficient. According to this interviewee, it lacks, among other things, provisions regarding the legal status and the required functions, which results in ambiguities regarding the LSM's position. As a result of the gap regarding the legal status regulation for the LSM, the Police Regulation is unjustly used, whereas the National Ordinance Substantive Civil Servants Law should be applicable and supplemented by LbHAM, according to the former deputy head.

From the interview with the Ministry, and from the advice of the Council of Advice on the two cited legal status decrees, it appears that both the Decree on the Legal Status of the Police Force of the

³⁷ Brief history:

In 1994, the special agency known as the National Detectives Agency was legally established for the first time. It was based on the Police Regulations of 1962. In 1999 the Police Regulations were revised. In this regulation one can read that the Police Force Netherlands Antilles (KPNA) consists of, among others, the police forces of the different islands and the National Detectives Agency. Article 29, paragraph 3, of the same Police Regulation stipulates that further rules shall be laid down by national decree regarding the organization, the tasks and the competences of the National Detectives Agency. This led to a revision of the National Detectives Agency Decree of 1994, which was adopted in 2007. In the explanatory note of the aforementioned national decree of 2007, it stated that the National Detectives Agency operates under the non-hierarchical denominator of the Police Force of the Netherlands Antilles and therefore has its own command structures. In addition, the same regulations regarding legal status apply to the staff as to the other police forces. It is also reported that the integration of the National Detectives Agency within the Police Regulations is considered sufficient by the government which is why it did not consider it necessary to draft a separate national ordinance for the National Detectives Agency.

In 2010 the national decree of the National Detectives Agency of 2007 was implemented almost entirely by St. Maarten and the national decree on organization, tasks and authorities of the National Detectives Agency (2010) was drafted and implemented. No separate national decree for the LSM was created.

Netherlands Antilles 2000, and the Decree on the Legal Status of the KPSM, are currently in force. The recent advice from the Council of Advice states that both are based on the "*Lex superior*" (the KPSM Decree derives its legal status in St. Maarten's legal order from the Charter, and the KPNA Decree from the Constitution), and on the "*Lex posterior*" (because the KPNA Decree 2000 is the older regulation, in the event of conflict the KPSM Decree prevails), the conclusion is that the KPNA Decree is applicable. In practice, according to interviewees from the Ministry, a previous lack of clarity caused a lot of confusion and resulted in some of the KPSM personnel, as well as the LSM personnel, not receiving a formal legal status (see also Chapter 5). Therefore, the Council of Advice recommends that the old Decree be repealed. The government is now working on the repeal decree, according to interviewees.

Management and authority

As mentioned previously, the LSM's management is vested in the Minister and the AG maintains authority.

Article 55 of the Kingdom Police Act states that an evaluation was required to be performed within five years of the enactment of this Kingdom Police Act. In 2015 the evaluation was done, and a report which also focused on the National Detectives Agencies was issued by the Evaluation Committee. The report states that, at the time, the Evaluation Committee had a favorable opinion about the development of the National Detectives Agencies of Curaçao and St. Maarten which, according to them, seemed to be moving towards full development. However, they made the following remark:

"The authority over the National Detectives Agencies resides - similar to the situation in the Netherlands Kingdom Detectives Agency - with the Public Prosecutor's Office. The management of the National Detectives Agencies rests - unlike the Kingdom Detectives Agency in the Netherlands - with the Ministers of Justice. Several parties have raised the question whether this is a desirable situation in terms of checks and balances. After all, now that the National Detectives Agencies can be charged with investigating Ministers or their civil servants, there is a risk of them exerting influence or otherwise applying pressure through managerial - e.g., financial - measures. However, it is important to note that the investigation does not reveal that this is currently the case in practice."³⁸

In its report '*Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office on Sint Maarten?*' (2015), the Council noted the following about the LSM and the method by which its management and authority is legally regulated:

"While opinions are mixed regarding the distinction made by the lawmakers, the Council believes that this separation is sufficient. However, the Council is of the opinion that the Minister should formulate policy with regard to the National Detectives Agency in which a proper performance of duties and an adequate infrastructure for effective management are taken into account."

Accordingly, the Council's recommendation at the time stated:

"Provide, in accordance with the law, a general political-administrative policy with respect to the National Detectives Agency that preserves proper performance of duties and an adequate infrastructure for effective management support."

A review of the recommendations from the 2015 report conducted in 2019, revealed that no action was

³⁸ Final Report Evaluation Committee on the Kingdom Judicial Laws, September 14, 2015.

taken on this recommendation.

The former deputy head indicated that neither the Ministry nor the AG formulates policy. In the opinion of the former deputy head, the AG's hands are mostly tied because he cannot formulate and implement policy without having the financial resources at his disposal (management). The AG explains that a (policy) plan must be drafted for the next three to five years in order to develop the National Detectives Agency into an organization that is capable of performing the duties for which it was originally established. The fact that the agency is currently not capable of doing this is partly due to its management, according to the AG.

The split between management and authority was cited as a concern by several respondents during this inspection. LSM interviewees indicated that management bottlenecks create challenges for funding and human resources. Examples cited included cases where resources often took years to arrive. According to interviewees from the Attorney General's Office, the core problem is that the Ministry does not give enough attention to the LSM's management. Due to the lack of resources, the staff is unable to perform their duties (for more see Chapter 5). The Office of the Attorney General believes that the management and the authority need to be combined under a single organization to generate greater support.

The Ministry does not share the concerns regarding the separation of management and authority. However, it mentions the risk that bad actors could influence the LSM's effectiveness by withholding the necessary investments, as the LSM is responsible for the execution of politically sensitive cases.

Additionally, the current inspection reveals that the existing recommendation to formulate policy has not been addressed.

Management

As mentioned before, the Instruction is intended as a guide to determine which cases the LSM can be tasked with and is significant for the following stakeholders: the LSM, the OM, the KPSM and the Office of the Attorney General. Both the LSM's current deputy head and the OM indicated that the Instruction meets their needs. The Coordinating Investigating Officer (CRO) - who is authorized by the AG - decides whether or not to deploy the LSM after consulting with the LSM's management. Once a decision is made, it is communicated to the staff through the LSM's management and a further determination of who will work on the case is made internally. Most of the staff indicated that they were not familiar with the contents of the Instruction because its application often takes place outside their sphere of influence. Respondents from the KPSM also are not very familiar with the content of the Instruction (see Chapter 4).

3.3 Policy

Plan of action LSM

One of the activities included in the LSM's action plan is the development of an Organization plan. As indicated earlier, the Organization plan was prepared by the quartermaster in 2010. It was then officially adopted by the government and presented to the AG.³⁹

The National Decree of the National Detectives Agency describes, among other things, the LSM's

³⁹ National Detectives Agency Plan of Action: Status of National Detectives Agency based on the Organizational Plan/ Plan of Action February 2013.

organization. Article 3 stipulates that the organization must consist of an Operational Affairs Department and a Business Management Department, each with a coordinator, and according to Article 4, the head of the department is charged with the daily management. The Organization Plan further specifies the structure of the organization and the corresponding staffing and positions. The Organization Plan includes a workforce of 20 full-time equivalents (FTEs), but a letter from the quartermaster indicates that this staffing level was derived by mistake and that the workforce should actually consist of 16 FTEs. Furthermore, in his letter, the quartermaster considered that the LSM's starting point (or the staffing for the LSM) was to be able to perform basic integrity investigations (whether or not in cooperation with other services) using five staff members (8 FTEs), specifically: a head, an operations coordinator, a team leader, a project leader; and four detectives.⁴⁰

The updated Organization Plan (July 2014) indicates that the organization should have a new staffing plan consisting of 25 FTEs, based on the reality while performing duties, the methodology, management issues and the operations of the organization. Various summaries of the status of the plan of action, prepared by the LSM's former head, did not include a proposal to change the staffing plan. According to the reports of the Progress Committee (VC), they primarily focused on the implementation of the plans of action of the various organizations, including the LSM, as established in the Roundtable Conference of September 2010. For the LSM, these plans included, in short, the physical and organizational (re)structuring of the departments with, among other things, the following objectives: effective functioning, adequate housing, sufficient (qualified) personnel, training, adequate financial resources and a legal basis.⁴¹

The VC indicated in its sixteenth progress report (August 2014) that there would be a need for a staffing increase at the LSM:

"The Committee approves of the fact that the National Detectives Agency has recruited five new staff members this year. The final staffing level of 16 FTE based on the plan of action is within reach. The Minister confirmed that four detectives will be hired in 2015. The Committee notes that, given the workload of the National Detectives Agency, a staff complement of 16 FTEs appears limited. While the police are planning to set up a new organization with fewer staff, the National Detectives Agency needs more, at least temporarily. The Committee believes that with more experts and proper cooperation, it is possible to deliver additional and better results. Increased support is sorely needed to handle new cases and bring current ones to a satisfactory conclusion."

This appeal by the VC was repeated in its subsequent reports (2014-2015). In its eighteenth report (May 2015), the committee expressed its appreciation that the LSM would achieve its staffing level of 16 FTEs for that year. In July 2015, the report '*Selectivity in the investigation and prosecution policy of the Public Prosecution Office on St. Maarten*'? by the Council recommends as follows "*Ensure that the National Detectives Agency is reinforced in accordance with the staffing plan so that the lack of capacity and expertise can be permanently remedied.*" The 2019 review report⁴² reveals that this has not been addressed.

In its nineteenth report (April 1 - July 1, 2015), the VC expressed its satisfaction with the fact that the Minister allowed the LSM's workforce to expand to 23 FTEs. Review of the Organization Plan (2014)

⁴⁰ Supplemental Information Plan of Action National Detectives Agency St. Maarten, August 10, 2010.

⁴¹ Letter from the Progress Committee to Minister of the Interior Plasterk (2016).

⁴² Review Report Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office on St. Maarten.

reveals talk of an expansion to 25 FTEs. In its twenty-first report (January 2016), the VC considered the LSM's plan of action to have been adequately implemented:

"The National Detectives Agency has practically completed the implementation of the plan of action. The process of establishing the agency was long, but steady, starting from nothing at the end of 2010 to an agency with adequate housing and a quality workforce at the end of 2015. The agency has been allowed to grow beyond official staffing numbers. The head of the agency has demonstrated a good ability to manage all aspects of his organization. The National Detectives Agency is a stable organization that has reached a required level. The Committee therefore considers the action plan for this agency as sufficiently implemented. The recommendation to the Ministerial Meeting is to formally confirm this fact.

On this occasion, the Committee wishes to explicitly urge, yet again, that the head of this agency be issued with a broader mandate for his operational tasks, to allow for much more efficient and discreet operations."

One interviewee from the Ministry reported that things have gone downhill at the agency since the Progress Committee removed the LSM from its monitoring list in 2016. Similarly, all interviewees agree that the LSM has not made the necessary progress through the years.

In practice, 13 of the 16 FTEs from the original organizational plan are currently filled. A proposal emerged in 2019 from the LSM's (then) deputy head, to establish a new organizational structure with new job descriptions to provide a flatter organization with improved management. The new workforce would comprise 36 FTEs. This proposal is still under consideration by the Ministry. The Ministry is familiar with the proposal but according to one interviewee, it is not realistic. It will in fact be difficult to fill all those positions from a quantitative standpoint, but even more difficult in terms of quality. Currently, the LSM is at about 80% of its original staffing level. Considered this way, the organization has grown, according to the interviewee. If the new proposal proceeds, the current staffing will amount to less than half, meaning understaffing, according to an interviewee from the Ministry.

The current deputy head believes that the formalization of the LSM is an important first step towards a full-fledged agency, allowing recruitment to proceed. Because the organization has not been formalized (although everything is on paper), further progress cannot be made in practice towards establishing the agency. Ensuring the LSM's independence requires sufficient in-house capacity, expertise and experience. This would be better guaranteed with the new functions, according to the current deputy head.

Improvement Plan OM

The Council noted in its aforementioned 2019 review report '*Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office on St. Maarten?*', that the recommendation "*Implement the National Detectives Agency Improvement Plan*" had not been addressed.

Interviewees from the Office of the Attorney General reported that little has been achieved under the improvement plan and no formal evaluation has occurred to date. However, improvements are evident with regard to the structure surrounding the progress of investigative monitoring and case selection. The AG notified the Minister of Justice of St. Maarten in 2018 that the LSM required a boost. The minister agreed to this, but due to, among other things, such as financial constraints, there was no follow-up, according to the AG. As a consequence, he expressed his concerns to the Progress

Committee and asked them to resume monitoring of the LSM.

As indicated earlier, the improvement plan called for the National Detectives Agency to become a fully-fledged agency by January 1, 2019 and possess sufficient and qualified staff. All interviewees agree that this objective was not attained by 2020. Main reasons: a lack of capacity, specifically the lack of qualified personnel and, material and financial resources.

The Ministry is familiar with the improvement plan which, according to the interviewee, never came to fruition. Since the improvement plan was drafted, the LSM has not been the primary focus. According to this respondent, there were plans in the Four Parties Judicial Consultation (JVO) to strengthen the (National) Detectives Agency, but these plans were not substantiated.

The Public Prosecutor's Office cites the lack of capacity at the LSM as the reason why the objectives were not achieved, which means that even if it wanted to, it would not be able to conduct large-scale investigations. In fact, this is impossible as long as the building blocks are not there, according to the OM. In the opinion of several interviewees, the LSM is not accorded sufficient priority by the government. For example, the budget allocated to them is insufficient to fund training or recruit staff. Furthermore, the Public Prosecutor's Office indicated that the organization's desire to grow is understandable but should also be compared, for example, to the KPSM which is also struggling with deficits and unrealized ambitions. The LSM cannot be built quickly, it will take time. Choices have to be made regarding the types of investigations that can be conducted, these do not necessarily have to be large and/or complicated investigations. The LSM must become a full-fledged organization but one that is realistic in terms of the viability of certain cases, according to the Public Prosecutor's Office.

The former deputy head confirmed that contrary to what was stated in the improvement plan, there were no investments in the LSM. Little to no training was provided to staff in the period leading up to 2018. Staffing levels have declined, and the workforce is aging. At the end of 2018, an attempt was made to fill five FTEs, but because the LSM's 2019 budget was cut, that number was reduced to one FTE, she reported.

Instruction National Detectives Agency

The improvement plan also included the goal of achieving clarity regarding the types of cases that can be handled by the National Detectives Agencies, along with better supervision from the Public Prosecutor's Office. By means of the Instruction, criteria were established to provide clarity for parties about the kinds of cases that the LSM can investigate. The actual deployment of the National Detectives Agency is governed by a number of combined principles:

"Crimes, committed by public servants in the employ of the government, which have (or may) affect the integrity of the government, and where guarantees for an independent investigation are required and furthermore, where the appearance of partiality must be avoided, and where the National Detectives Agency is the appropriate entity to conduct the investigation by virtue of its special expertise or for reasons of confidentiality or sensitivity in a case."

Even if these principles are met, according to the Instruction, it does not mean that the National Detectives Agency will always be called upon. Consideration is needed for the viability of achieving acceptable processing times in investigations. In that respect, these are 'only' basic principles; if the conditions are met, the National Detectives Agency *can* be called in, as per the Instruction. Nevertheless, it is possible to identify some cases that can be categorized as National Detectives

Agency cases, and even then, deployment of the agency is not guaranteed. The decision to deploy the National Detectives Agency thus occurs on a case-by-case basis. Also, the Instruction distinguishes between LSM-cases that can be regarded as 'typical', 'possible' and 'other'. The Instruction also devotes attention to reported cases, non-urgent cases and urgent cases that can be handled by the National Detectives Agency.

The Instruction dates back to 2016 and feedback was requested from the LSM's former deputy head regarding a new instruction, however, according to the former deputy head, no changes or otherwise have been forthcoming. The Office of the Attorney General added in response, that the Instruction is evaluated and adjusted as necessary. However, there are currently other processes with regard to the National Detectives Agencies which must be completed prior to issuing an adjusted instruction.

Policy plan detective cooperation

The Dutch government decided in October 2020 to convert the TBO's project-based approach into a systematic reinforcement of various organizations: the Court, the Public Prosecutors Office and the RST. As a consequence, from 2022 onwards, 12 million will be made available annually to support the strengthening of these organizations, including the RST. The RST's current policy plan covers the period 2020-2023 and, in terms of content, is in line with, among others, the OM's four-year policy program. As mentioned earlier, the RST currently has two central teams in place including the TBO. From the TBO, two FTE were made available (seconded) to the LSM to support the organization.

According to the Office of the Attorney General, the TBO supports the LSM, for example, with training. As the LSM does not have the necessary resources and expertise to carry out its duties. The Office of the Attorney General notes that this demands action from management, such as ensuring that the LSM meets the required staffing levels and investing in the agency in terms of training and systems. In other words, making sure that there are sufficient financial resources on hand to allow the organization to carry out its work instead of cutting back on the agency, according to the Office of the Attorney General.

Considering the policy plan on detective cooperation, it seems that the Committee on Integrity in Public Administration's 2014 recommendation regarding the LSM, has been partially addressed:

"Work with the countries of the Kingdom and other partners such as the United States on a multi-year cooperation program for the systematic reinforcement of the National Detectives Agency, with a particular focus on financially related fraud cases, as well as on maintaining the integrity of the agency itself, which has now been positively evaluated. Temporary reinforcement in the form of additional detectives over a period of several years should be the basis of such a program, which must also include systematic knowledge transfer."

The RST supports the LSM via the TBO, but this support should be limited. After all, the TBO has other tasks for which the AG is accountable to the collective Ministers of Justice, according to the Office of the AG. In their opinion, it is necessary to work towards a situation where there is a merger between the tasks of the TBO and the LSM, whereby in five to ten years' time, support will no longer be needed and the LSM will be able to conduct investigations independently. As previously mentioned, the first thing that needs to be done is the establishment of a new LSM-reinforcement plan for the next three to five years, in which management and authority are more aligned. The Office of the AG indicates in rebuttal that this should be jointly addressed by the Ministry, the LSM and the Public Prosecutor's Office.

Annual plans and reports

In this inspection, the Council established criterion to ensure that the objectives as outlined in the annual plans are met and accounted for in the annual report. For fiscal years 2019 and 2020, annual plans were prepared by the former deputy head with input from staff. Budgets were prepared based on these annual plans. The annual plans were shared and discussed with the AG, according to the former deputy head. The annual plans reflect the organization's goals and needs in terms of personnel and resources, and for example include targets. A 2020 target on legislation and regulation included having the LSM formalized and achieving clear legal operating frameworks. According to an interviewee from the Public Prosecutor's Office, they are not involved in drafting the LSM's annual plans; this is the responsibility of the Office of the AG. The respondent does not know whether the established targets have been met and is of the opinion that, given the limited size of the LSM, it is not practical to compile statistics of that kind.

Several LSM interviewees indicated that establishing targets is not preferred because work is often customized, which makes it impossible to predict what the targets should be for certain departments. The focus should be on quality and not necessarily quantity.

One interviewee explained that there are no targets set for the tactics department. At the end of the year, the status of the investigations is compiled and subsequently, at the beginning of the year, the investigations are inventoried, and a determination is made, partly based on external factors, of what is feasible for that year.

The Ministry is not involved in the preparation of the LSM annual plan. According to the Ministry, the preparation of an annual plan for the LSM is a matter for the AG. The Minister can only issue general directions based on the law. The AG prepares its own annual plan that is expected to include the LSM's investigative capacity to ensure the necessary synchronization between the proposed investigations and the available capacity, according to a Ministry respondent. The Office of the AG adds in rebuttal that it is the Minister who is responsible for the LSM's management and the (financial) choices associated with it which are relevant for the execution of the annual plan. Also, no strategic plans are developed by the LSM's management. There are also no long-term policy plans being developed by the Ministry while this is much needed according to the interviewee. This is due to the lack of continuity. An incoming minister may have his own vision which may differ somewhat from that of his predecessor, which in turn requires a different plan of action, according to the interviewee.

It was noted in previous Council reports that annual plans and reports for the LSM were not available. For the first time, an annual report is available for the year 2019. The 2019 annual report indicates that there have been a number of achievements in several areas, and the LSM's general view is that more formal support is needed to ensure more timely delivery of results. Moreover, the report states that a political shift is called for at the local and Kingdom levels, and independence and impartiality must be ensured.

The results are discussed in more detail in the subsequent chapters.

4. Investigative Process

4.1 Introduction

This chapter describes the LSM's methodology as set forth on paper, followed by a discussion of the situation in practice. Finally, the associated results are presented.

Criterion: The tasks and objectives of the LSM are prioritized by the AG/OM and known to all parties. These have been converted into the necessary work and process descriptions.

4.2 Tasks and Objectives

Tasks

As indicated in Chapter 2, the LSM has the following three tasks:

- a. conducting criminal investigations within the civil service or with respect to holders of public office;
- b. conducting investigations of a criminal nature within the police force on the instructions of the Minister and the Public Prosecutor's Office;
- c. providing assistance by order of the AG.

Article 2 of the National Decree of the National Detectives Agency further defines the tasks of the LSM. On the instructions of the AG, the LSM can be assigned to conduct fact-finding or follow-up investigations in a number of cases (paragraph 1):

- a. crimes committed by political and public office holders, judges, members of the public prosecutor's office, heads of department or directors of institutions entrusted with a public task;
- b. job-related crimes committed by other officials or officers of institutions entrusted with a governmental function, any such offenses having possibly resulted in tangible or intangible benefits and possibly having caused the government or private individuals any harm;
- c. officials or officers of institutions entrusted with a governmental task, who have been entrusted by law with an investigative task, and who commit a crime in violation of that official duty;
- d. a death or injury occurring to a person presumably as a result of firearm violence caused by officials or officers, to whom a governmental function was legally entrusted;
- e. a person's death or serious bodily injury presumably resulting from the use of force or any other form of physical contact or interference with officials or officers, to whom a governmental function was legally entrusted;
- f. a person, who is held in a custodial facility, deprived of his liberty by law or who was otherwise entrusted to the care of the government, dies or suffers serious physical injury.

The LSM may also be charged with conducting fact-finding or follow-up investigations on the instruction of the AG in the following cases (paragraph 2):

- a. offences committed by police officers other than those referred to in the first paragraph, for which pre-trial detention is permitted;
- b. officers or officials, to whom a government function was legally entrusted, having used a firearm for violence, as a result of which simple injury or damage was inflicted;
- c. crimes committed by persons other than those referred to in paragraph 1, for which, in the opinion of the Attorney General, it is necessary or desirable, for reasons of confidentiality, sensitivity or objectivity, to deploy the National Detectives Agency.

In addition, the LSM may provide assistance with the consent and under the authority of the AG (paragraph 3):

- a. in support of other types of multidisciplinary criminal investigations involving officials or employees of semi-governmental agencies;
- b. to participate in criminal investigations conducted by the Kingdom Detectives Agency, the Aruba National Detectives Agency or the Curaçao National Detectives Agency pursuant to a request for legal assistance.

Furthermore, with the consent of the AG, the LSM may provide assistance in support of:

- a. official commissions with respect to integrity investigations;
- b. teams for large-scale disciplinary investigations at judicial departments.

The Council published the report *'Use of Force by the Police on St. Maarten in 2014. Investigation into the use of force by the police and use of force against the police'*⁴³. Among the recommendations with respect to the LSM was, *"Engage the National Detectives Agency in all cases for which the agency is legally authorized."* The 2019 review investigation⁴⁴ revealed that the recommendation went unaddressed. As part of that review, a respondent from the Prosecutor's Office indicated the following:

"The recommendation to utilize the LSM in all cases in which the agency is authorized by law was formulated too broadly. Although the National Detectives Agency is competent in several areas - including the use of force by the police - this would mean that the National Detectives Agency would have to intervene in many cases, but it does not have the capacity to do so, which requires the National Detectives Agency to make choices."

In this regard, the respondent also pointed out the description of the duties of the LSM included in the Instruction.

The former deputy head also indicated that the National Decree of the National Detectives Agency did not sufficiently take into account the LSM's various tasks and therefore considers the national decree deficient. According to the former deputy head, important components are absent, including provisions regarding the legal status, and consequently a fully-fledged LSM is not provided for.

Further interpretation of the investigative tasks performed by the LSM and the related findings, appear in section 4.3.

Objectives

The LSM's annual plans for fiscal years 2019 and 2020 are known to the Office of the AG, the Public Prosecutor's Office, and the Ministry. For the past two years, the LSM's objectives have been included in these annual plans. Broadly speaking, the objectives concern personnel, information, organization, finance, automation, communication and housing (PIOFACH). In addition, objectives are established with respect to the LSM's primary and operational processes.

The 2019 annual plan mentions that the AG's objective that was included in the improvement program *(a fully-fledged organization with sufficient qualified staff that is also capable of conducting project-*

⁴³ Law Enforcement Council (2014), Use of force by the police on St. Maarten. Investigation of use of force by the police and use of force against the police.

⁴⁴ Law Enforcement Council (2019), Review investigation into the implementation of the recommendations on the use of force by and against the police in St. Maarten.

based investigations and is able to make strategic analyses and act in an information-driven manner) has still not been realized, and experience has shown that most results cannot be achieved due to limited support from management - a basic prerequisite of the improvement program.

Many 2019 PIOFACH goals in the 2020 annual plan were classified as 'not met' because little to no investment was possible due to budget constraints. In 2020, the primary focus was on further development of the agency, particularly the information position. Moreover, the agency intends to continue working on the human capacity, strengthening the current staff, a renewed communication strategy, and coordination with the Public Prosecutor's Office on the operating frameworks and the content of the duties. The aforementioned objectives and outcomes are detailed in the respective chapters.

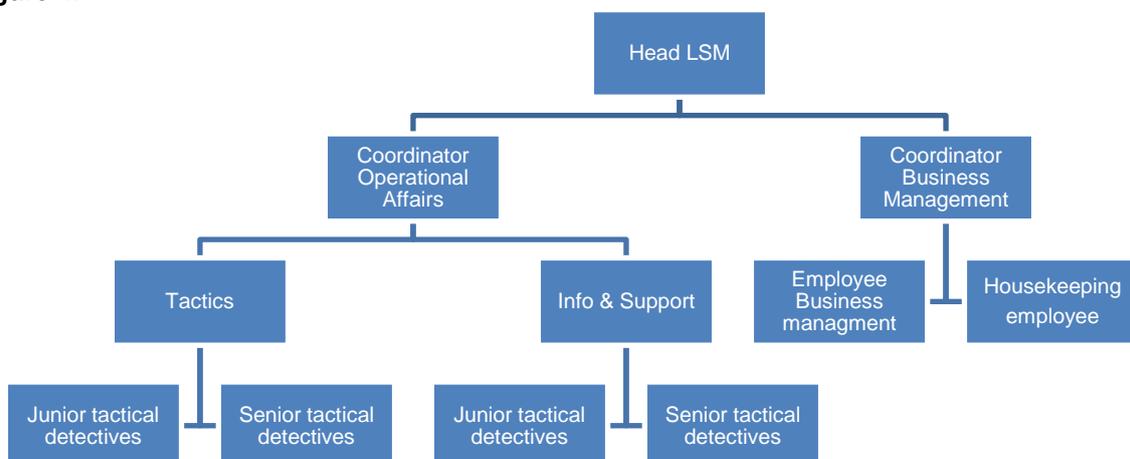
4.3 Methodology

Work and process descriptions

The Council, in the report *Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office on St. Maarten*, recommended: "Establish necessary work rules, work procedures, and/or memoranda regarding the support activities by the digital analyst". The 2019 review reports that this has not been addressed.

The LSM maintains a manual containing a number of work- and process descriptions. It was drafted in 2014 with the help of an external agency and the descriptions are based on the updated establishment plan (2014). The manual refers to an organizational chart (Figure 4) which differs from those from 2010 and 2014:

Figure 4.



The descriptions concern the LSM's primary and support work processes. According to interviewees, the process descriptions have not been formalized and a kick-off was initiated in 2019 by the former deputy head to further document the processes. The outlines are now available but need to be further refined by the responsible department. One interviewee indicated that a policy officer might be helpful in this regard, but that in the absence of one, the current staff should be optimally deployed. Another respondent reported however, that several process descriptions concerning the work of the digital analyst are documented.

Not all of the LSM's staff members are familiar with the existing process descriptions and those who are aware of them don't utilize them because they believe they are experienced investigators. Others indicated that process descriptions are not necessary because every investigation is different and requires customization. In addition, the detectives from the police force report that they are already familiar with the methodologies established within the KPSM for investigative work.

The National Decree of the National Detectives Agency is also used as a guideline for operations, along with the process descriptions. Also, the Penal Code, the Code of Criminal Procedure and other supplementary legislation provide the necessary flexibility to adequately carry out operations, according to interviewees.

There are three departments within the LSM. The methodology and procedures of these departments differ. The cooperation between the departments is described by interviewees as good. Twice a week an internal briefing takes place and is split into two parts to allow compartmentalization of information. All personnel (from various departments) attend the general section of the briefing which includes, among other things, general administrative announcements. The second section of the briefing involves a discussion of current cases and, for example, planned action weeks where only the departments present are tactics and TCI. The former deputy head adjusted the approach to further aid compartmentalization using separate briefings for individual investigations, however, according to some interviewees, this was perceived as impractical and did not continue after the departure of the former deputy head.

Business management department

The Organization plan states the following about LSM operations:

"In light of the new constitutional relationships as well as the developments regarding the operational processes of the police forces, no affiliation should be sought with the so-called Shared Services of Country St. Maarten given the independent position of the National Detectives Agency, with the exception of the salary administration. However, the National Detectives Agencies endeavor to share their operating capacity with each other under "Service Level Agreements." This will entail that on a number of topics, such as the management of ICT infrastructure, education and training, financial management (e.g., joint procurement where possible, facility management with regard to weapons and equipment) and administration (business process system), cooperation will take place with the National Detectives Agencies of Curaçao and Aruba and the Kingdom Detectives Agency of The Netherlands. To some extent, it will be necessary to make use of the operational capacity of the Office of the AG."

Interviewees from the LSM indicated that no cooperation between the Business Management Department and the other National Detectives Agencies or other organizations within the Kingdom takes place, not even, for example, in the context of exchanging best practices.

The Business Management Department is responsible for human resources and for financial administration including financial expenditures, assisting with requests for quotations and invoices, and preparing and submitting proposals for expenditures in excess of ANG 5000. Smaller expenditures can be paid from the petty cash. This is subject to the availability of funds, which in turn depends on funding from the Ministry. While performing tasks, regular contact must be maintained with, among others, the Finance Department - Accounting Section - and the Treasury Department of the Ministry of Finance.

According to interviewees, a procedure exists for the settlement of payments by the Ministry of Finance. They report experiencing bottlenecks with this procedure, particularly with regard to communication. Payments are often delayed because little or no feedback is provided on these matters. Consequently, they report often taking the initiative themselves to make contact.

In addition, respondents indicate that the advisory process can be more efficient. A proposal prepared by the LSM - for example, the advice submitted in 2019 to extend department telephones - submitted to the Ministry using the required procedure can, linger at the Ministry for a long time, years even. There is no permanent liaison for the LSM within the Ministry. There have also been many personnel changes within the Ministry, which is not conducive to maintaining relationships, according to one interviewee. This despite the fact that personal contact has proven to be important in the performance of their work.

Contrary to what is included in the Organization plan, the LSM uses the shared services of the government for facility management. In so doing, the department also experiences the (un)necessary delays in the submission and processing of requests. According to interviewees, these practices affect and impact the LSM's development because this external dependency also creates room for malicious parties.

Team Criminal Intelligence (TCI)⁴⁵

Tactics Department

The process of investigation includes conducting inquiries, divided into fact-finding and criminal investigations, including exploratory and criminal financial investigations. A fact-finding or criminal investigation is initiated by the tactics department when the AG issues written orders. The assigned prosecutor, the LSM portfolio holder, is always associated with the investigation. However, this does not mean that the portfolio holder is the only prosecutor authorized to handle LSM cases, according to one interviewee from the prosecutor's office. The prosecutor leads the investigations while they are being conducted. The LSM's management assigns one or more detective(s) to the investigation. Regarding the assignment of an investigator, LSM interviewees indicated that this, is among other things, based on the type of investigation, its scope, suitability of personnel and available capacity. However, due to the shortage of staff, everyone works on multiple investigations at the same time, and this also leads to certain investigations having to be put on hold. The final decision on which cases are handled by the LSM must be made based on capacity but are often dependent on which cases have the most urgency, or "the whims of the day," according to an OM interviewee. In rebuttal, the Office of the AG stated that the CCLR also plays a role in this process, where ongoing cases, new cases, the limited capacity and the way this capacity is to be used are discussed and decided upon.

For each investigation, a plan of action is prepared by the designated lead investigator which includes the activities to be performed, goals and deadlines. The plan of action must be approved internally by the acting Operational Affairs Coordinator (COZ- *Coördinator Operationele Zaken*) after which the plan of action is discussed with, and approved by, the OM. Subsequently, all follow-up steps within the plan are reviewed with the OM. According to one interviewee, a lot of time can be spent preparing cases.

The interviewee from the Public Prosecutor's Office said that there are no working arrangements between the Public Prosecutor's Office and the LSM, because they operate on a small scale. Different

⁴⁵ Pursuant to Article 31, paragraphs 2 and 3 of the Law Enforcement Council Act, parts of this report have not been made public for security reasons.

types of approaches are also possible depending on the type of investigation. For example, 'bring and take cases' (*breng- en haalzaken*) each require a different approach. In the case of 'bring cases', the information officer determines with the LSM whether a project plan will be made. The case officer only has contact with the information officer regarding the LSM's direction on a strategic level and no contact on a case level. A written project plan will be returned to the assigned prosecutor upon completion, however. The current deputy head is under the impression that there were more serious 'bring' cases in the past, as opposed to now. She suspects this is because the LSM is currently not as well-known and comparisons between the LSM and the TBO are perhaps made, where the LSM, possibly, comes up short.

According to the Organization plan, the availability of an adequate information position and proper supervision by the LSM's management is crucial to the success of integrity investigations. The Organization plan states that:

"Essentially, the concept of information-driven investigation involves the optimal generation and use of information from the community and agencies to achieve -guidance on- the most effective way to combat and prevent criminal behavior and promote integrity within the government apparatus."

The creation of an information branch is also one of the goals included in the 2019 annual plan. An information branch within the tactics department was created by the former deputy head. It is dedicated to the active collection of information regarding possible criminal offenses under the LSM's purview. The information collected by the information branch is not immediately intended for use in investigations and is not accessible to others within the LSM. Only when the information is processed can it be considered for investigative use. The information branch is staffed by two tactical detectives who are assigned this task in addition to their existing duties. The interviews have revealed that the information branch cannot be (further) optimally developed at the moment due to the limited capacity, and the core tasks of the tactical detectives which also need to be performed.

The plan of action includes a requirement for the LSM to conduct an integrity profile analysis, however, this never happened. The (then) head of the LSM wrote in regard to the situation⁴⁶ that the integrity investigations by the Committee for Integrity in Public Administration and Price Waterhouse Coopers⁴⁷ had provided sufficient evidence and that this rendered an integrity profile analysis unnecessary at the time. The former deputy head emphasized that at the very least the recent dissertation '*The roots of public fraud and corruption in the Caribbean region of the Kingdom*',⁴⁸ provides a useful impression of the current situation and that the recent Regional Crime Assessment⁴⁹, drawn up for the police forces with respect to the phenomena mentioned therein, is important for the LSM because they can gain insight at an earlier (preliminary) stage.

Procedure for cases against police officers

The National Decree of the National Detectives Agency specifically defines when the LSM is tasked with the conduct of fact-finding or investigative inquiries on the instruction of or at the behest of the AG. Furthermore, the instruction classifies three types of investigations as LSM-specific cases:

- Crimes committed by investigating officers in violation of the duty of office;
- Crimes, committed by police officers, which permit pre-trial detention;

⁴⁶ Plan of Action National Detectives Agency, February 3, 2015.

⁴⁷ PWC (2014), Integrity inquiry into the functioning of the Government of Sint Maarten.

⁴⁸ Schotborgh-van de Ven, N. (2019), The roots of public fraud and corruption in the Caribbean region of the Kingdom.

⁴⁹ Zee, S. (2019), Regional crime assessment: Trends in the Dutch Caribbean 2020-2022.

- Instances of firearm use by investigating officers resulting in death or any, bodily injury.

In the explanatory note accompanying the Instruction, reference is made to the fact that this often involves police officers and that instead of the local detectives, the use of the LSM is necessary to avoid (any) appearance of bias in the investigation. The inspection shows that most of the LSM interviewees are not well informed about the contents of this Instruction.

In its 2018 report entitled *Bureau of Internal Affairs St. Maarten Police Force*⁵⁰, the Council established the following:

"Several interviewees mention that the National Detectives Agency is confronted with a lack of capacity and simultaneously a high workload, which forces them to make choices. Occasionally, in consultation with the KPSM/BIZ, cases are transferred to the BIZ which should formally be investigated by the National Detectives Agency. These are matters in which police officers are involved, but which are not particularly serious. The cases are, for example, threats, simple assaults, a collision or an incident in the domestic sphere (police officers among themselves), which can be investigated in a discipline-specific manner, according to the official."

No procedures are documented about the referral of cases to the LSM. KPSM's procedure is to not accept complaints against public officials but to refer them to the LSM. However, in practice this is not done if the complaint is made against a police officer. The reason for this is that the KPSM does not want to create the appearance of bias by failing to register the complaint. When screening the case, officers must indicate in the registration system that the case is being referred to the LSM. The complaint is then forwarded to the OM, according to an interviewee from the KPSM.

The decision whether or not to investigate the case and which organization will investigate it, is discussed in the CCLR and decided by the OM /AG. Once a suspect has been identified and a decision made, this information must be entered into the PRIEM registration system and the original file sent to the organization responsible for investigating the case, according to the KPSM interviewee. The Office of the AG clarifies in rebuttal that a PRIEM-registration only takes place when a person is considered a suspect. This does not apply when a decision is taken to initiate an investigation.

The KPSM interviewee further stated that at times, due to the absence of a decision by the Public Prosecutor's Office, it is unclear who should investigate the case and that the Instruction offers no clear guidance in this regard. As an example, two or three police reports have been sitting in the drawer of the interviewee since last year. Sometimes the head of the KPSM investigation department contacts the LSM to seek clarity about whether a case has been assigned or not, but this often does not result in a resolution, according to the interviewee.

The interviews reveal that despite the existence of the Instruction, ambiguity persists among various parties as to when an investigation should or should not be handled by the LSM or the KPSM. Several LSM interviewees indicated that they also do not always agree with the instruction/prioritization of cases by the OM/AG. Frequently, the AG decides that the LSM should handle cases despite being understaffed. They feel that some investigations which need to be handled do not fall under their task (e.g., due to non-complexity), and that the LSM's available capacity is not always appropriately used. One example cited involves detectives having to put their work (large ongoing cases) on hold to work a case they believed to be relatively simple, that resulted in a backlog. The Office of the AG clarifies in

⁵⁰ Law Enforcement Council (2018), St. Maarten Police Force Internal Affairs Bureau.

rebuttal that the criterion for the LSM investigating a case involves the subject matter, namely (possible) lack of integrity of an official (as described in the National Decree of the National Detectives Agency and the Instruction), and not the complexity of an investigation. According to the interviewees, the BIZ is the appropriate organization for the investigation of routine minor cases of internal KPSM problems, but at the moment, unsolicited minor BIZ cases are transferred to the LSM. They believe that this situation should be resolved, and that the Public Prosecutor's Office should take a closer look at the types of cases the LSM is expected to investigate.

One LSM interviewee feels that clarity is needed in particular with regard to the LSM handling cases involving incidents of violence by police officers, and that the considerations and choices about whether to conduct a criminal investigation or a fact-finding investigation are also still unclear. The development of cases involving the use of firearms by investigating officers resulting in death or some physical injury included in the Instruction, has not yet taken place in the form of an *Instruction on how to deal with the use of violence by (police) officers*. At the time of this investigation, it appears that the Public Prosecutor's Office is working on an internal operational instruction regarding the procedure for shooting incidents involving a (police) officer that result in any physical injury. The BIZ and the LSM have been asked for input.

The LSM always handles shooting incidents (criminal investigation) involving a police officer resulting in bodily injury. According to the head of the BIZ, this definition is found in the Instruction. The established procedure requires that the BIZ is not involved in a criminal investigation of a police officer. The case is handled by the KPSM Criminal Investigation Department with or without the cooperation of the LSM. One KPSM respondent commented that it would in fact be preferable for the BIZ to conduct criminal investigations of police officers in addition to disciplinary investigations, rather than the KPSM's criminal investigation department. The reason being that the BIZ can maintain the necessary distance from the wider organization.

There are also instances where the LSM and the BIZ jointly conduct an investigation. The head of the BIZ provided an example of an ongoing investigation where there were verbal agreements between the BIZ and the LSM about the implementation/method of operation, and where a deadline had been set. According to the interviewee, the ability to meet the deadline depends on among other things, external factors, meaning that it is not possible to predict with certainty whether the deadline will be met. The investigation's progress is monitored by the assigned prosecutor. The average processing times for cases will be included in the new OM work instruction, according to the head of the BIZ.

One OM interviewee stated that they would like the LSM to be able to undertake the investigations which the LSM would like to conduct (i.e., larger cases), but indicates that the LSM is not in a position to do so. The desires and ambitions of the LSM should not be at the forefront at this point. Instead, the focus should be on handling cases with the resources currently available. The cases processed are not always particularly complex, such as cases of violence by police officers. Cases involving police officers, according to this interviewee, are not automatically handled by the LSM when the KPSM is able to do the investigation itself. The decision depends on the preferred independence and available capacity. It is up to the CRO (with a mandate from the AG), the Chief Public Prosecutor, the Chief of Police and the head of the LSM to deliberate about the best approach. These discussions can sometimes be complicated, but actually work out very well, according to the interviewee from the Public Prosecutor's Office. In respect to the coordination of cases against police officers, the aforementioned *'Bureau of Internal Affairs'* report states the following:

"For several months the head of the BIZ has joined the Public Prosecutor (portfolio holder for the National Detectives Agency) and the head of the National Detectives Agency for a meeting once every four weeks after the meeting of the National Detectives Agency Coordinating Committee (CCLR). During this coordination meeting, matters are discussed/monitored, information is shared (to the extent that it is BIZ-related) and coordination takes place. The meeting is limited to cases involving the National Detectives Agency and BIZ, insofar as they concern LSM-matters. Otherwise, neither the OM nor the LSM has any information on BIZ cases".

An OM interviewee stated that the idea is to (again) initiate a consultation structure between the head of the BIZ, the OM and the LSM to discuss the handling of cases. A new head of the BIZ was recently appointed, which is considered by respondents to be a good development. The head of the BIZ has been with the agency since mid-May 2020, bringing the agency's staffing level to two. Considering the current staffing, the BIZ's objectives, such as proper administration, better communication, and information sessions, will be implemented by the organization in small steps. The head of the BIZ indicates that when a complaint is made against a police officer or if a police officer is involved in an incident, the BIZ is always notified by the criminal investigation department regardless of whether it becomes a case. Disciplinary cases are always handled by the BIZ. Furthermore, if the BIZ requires assistance with an investigation, a request is made to the Criminal Investigation Department with the permission of the Chief of Police. According to the KPSM interviewee, deadlines are set for cases from the BIZ/KPSM Criminal Investigation Department. In the past, these were not met due to limited capacity within the BIZ.

At present, the BIZ's work- and process descriptions have not been documented. However, the head of the BIZ is planning to produce written descriptions but added that an inventory first needs to be prepared of the previous (verbal) agreements between the KPSM and the LSM.

Processing times

The OM's improvement program includes the following:

"The follow-up of investigations by the National Detectives Agencies also appears to be problematic in the eyes of many. Often it takes years before a case is brought to court. Incidentally, this is mainly attributed to the Public Prosecutor's Office, and not the National Detectives Agency."

Correspondence from the former head of the LSM in 2019 to the minister suggests that the LSM's clearance rate averaged just under 60%. The correspondence goes on to state that the processing times for certain investigations are needlessly lengthy because of decisions to shelve relatively urgent investigations, such as shooting incidents, and instead address larger long-running investigations. The example is presented of a 2017 shooting incident that took 5 months to complete, along with several shooting incidents that were completed at the end of 2018 but had been on record much longer. This is not desirable. In addition, an officer is not well served by having to wait a long time for the results of an investigation. Moreover, a processing time of 2 to 3 years for relatively small investigations was reportedly the norm for years though normally these require three months to complete.⁵¹

In the 2020 annual plan, the LSM's operational objective for processing times in minor cases is no more than three months, with the objective of completing fact-finding investigations into shooting incidents by

⁵¹ National Detectives Agency St. Maarten, Critical Functions at the National Detectives Agency and Need for an Adjusted Budget for the National Detectives Agency St. Maarten, March 16, 2019.

officers in the performance of their duties within two weeks. In the case of a criminal investigation following a fact-finding investigation, the duration of the investigation is determined according to the complexity of the case. However, the objectives are subject to the following prerequisites:

- The instruction to initiate an investigation is received by the LSM in a timely manner;
- Assignments are obtained by the LSM within one week after submission to the CCLR;
- Adequate staff is available for urgent cases.

According to LSM interviewees, the LSM does not have a standard list of processing times for investigations. Several reasons were given why this is undesirable. Namely, each investigation is unique and requires a customized approach. The processing time depends on several factors including scope, complexity, capacity, community impact and the viability of investigations. Nevertheless, in reality, a processing time is associated with an investigation, however, investigations that average six months or longer may take more time, sometimes even years, due to external factors in addition to those mentioned above. Examples include information that must be requested from other agencies or requesting assistance. For this reason, it is impossible to determine average processing times. According to the current deputy head, detectives however are able to estimate the expected duration of the investigation based on the available information, the required actions and their experience.

The LSM is also, according to interviewees, incident-oriented and multiple investigations can be conducted simultaneously. The amount of time ultimately devoted to an investigation is determined by the OM. In the CCLR, the processing time of the investigations is monitored, and decisions are made whereby the available capacity is taken into consideration.

Results

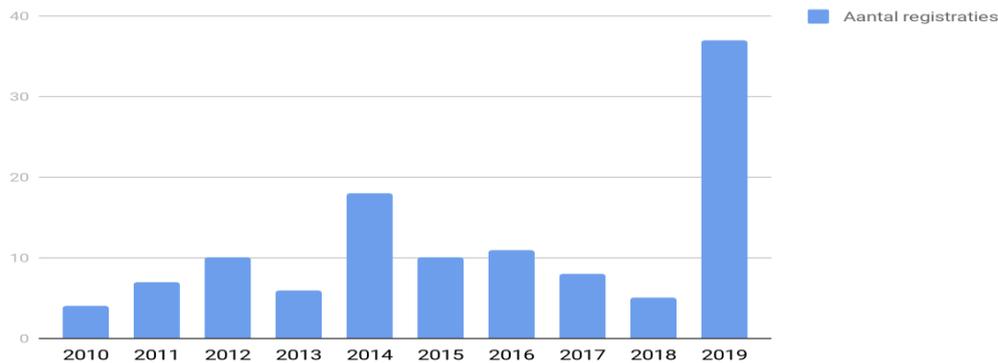
The aforementioned evaluation report of the Evaluation Commission shows that by 2015, the LSM had conducted about 30 investigations since its establishment, and that the chain partners, in particular, were generally positive about the LSM's performance at that time. The Progress Committee in its' fourteenth report also expressed great admiration for the LSM's performance. This was in view of its minimal staff capacity and the many complex investigations the LSM successfully managed to complete.⁵²

The 2019 Annual Report indicates that cases registered with the National Detectives Agency (see Table 2) do not all lead to investigations on account of the agency's mandate. The cases that are not investigated are referred back to the KPSM. The investigations which were managed by the LSM varied from fraud, abuse by officials, money laundering, information leaks to shooting incidents.

Table 2. Overview of the number of cases registered at LSM in 2010-2019.

⁵² St. Maarten Progress Committee, Fourteenth Report to the Ministerial Meeting covering the period October 1, 2014 - January 1, 2015.

Landsrecherche Sint Maarten



Source: LSM Annual Report 2019

According to the OM interviewee, the reality regarding the LSM's results is troublesome. The LSM cases are prioritized and managed from the CCLR, but due to different expectations about how a case will develop, the "whims of the day" and other external factors, deadlines are not always met.

4.4 Management

To map the management of the LSM, the Council first looked at the management as stipulated in laws and regulations. After which, the ways in which the authority and the management of the LSM were intended according to the plans, compared to the management in practice, was looked at.

As indicated in Chapter 2 Laws and Regulations, the LSM is subject to the authority and supervision of the AG and, at the same time, the Minister is responsible for the policy and management of the agency. The head of the LSM is responsible for the day-to-day management of the organization.

Article 9 of the National Decree of the National Detectives Agency stipulates the following forms of consultation:

- A quarterly consultation on strategic operational matters between the Attorney General, the Chief Public Prosecutor (HovJ) and the head of National Detectives Agency;
- A quarterly consultation on strategic policy and management issues between the Minister of Justice, the head of the Judicial Affairs Division, the Attorney General and the head of the National Detectives Agency;
- Periodic consultations, based on mutual need, between the head of the National Detectives Agency and the National Detectives Agency Committee. The parties may be assisted during these consultations by staff or advisors.
- A monthly consultation on tactical operational matters between the Chief Public Prosecutor, the head of the National Detectives Agency and the Coordinator of Operational Affairs at the National Detectives Agency.

The OM's improvement program further indicates that supervision of the LSM by the AG implies regular consultations, the issuance of investigation assignments, monitoring of the progress of investigations, and after an official notification is received, a decision on the disposition of an investigation. There is also a need for the LSM to prioritize investigations due to limited resources. Prioritizing investigations involves making choices like whether or not to deploy the LSM for the appropriate investigations, and

whether or not to terminate an investigation when progress stagnates for any reason. Efforts must be made to avoid ad hoc decision making in which the “whims of the day” are the main factor.

Two of the objectives of the 2014 improvement program were to improve the supervision of the LSM by the Public Prosecutor's Office, and to improve the prioritization of investigations by the Public Prosecutor's Office.

4.4.1 Management AG/OM

The following was raised by interviewees regarding supervision of the LSM in the aforementioned evaluation report (2015) of the Evaluation Committee on the Kingdom Judicial Laws:

" A lot of consultations in which the law assigns a role to the AG are actually held in practice by the Solicitor General. This includes, for example, regular consultations with the Minister of Justice and daily contact with the National Detectives Agency."

The current acting head indicates that although the Solicitor General used to be involved with the LSM as representative of the Attorney General (AG), he was eventually replaced by the CRO, who, like the AG, is based in Curaçao. Currently there is no contact between the LSM and the Solicitor General. The Office of the AG in rebuttal states that for years the Solicitor General has not acted as a representative of the AG in respect to the LSM. The former deputy head confirms that the LSM's past operational investigations were directed by the Solicitor General and emphasizes the added value of supervision from a Solicitor General with experience in integrity and financial investigative work.

Following the change of supervision from the Solicitor General to the Public Prosecutor's Office, management of ongoing cases was carried out by rotating prosecutors, which according to interviewees, had its pros and cons. As of 2015, one prosecutor has been permanently in charge of the LSM. According to an interviewee from the LSM, one reason for this approach was to ensure that from then on, the LSM's cases would always be handled in a consistent manner and that there would be a single point of contact. In rebuttal, the Office of the Attorney General states that the reason for the transition of management is due to the change in the organization of the Office of the Attorney General and the Office of the Court of First Instance.

In the previously cited report entitled ‘*Selectivity in Investigation and Prosecution Policy (2015)*’, the following was observed with respect to the Public Prosecutor's Office's supervision of the LSM:

"A lack of capacity in the investigative agencies directly affects management and the use of (special) investigative authorities. The supervision of the National Detectives Agency by the Public Prosecutor's Office has not always been optimal, according to interviewees from the Public Prosecutor's Office, but as of November 2014, the National Detectives Agency Steering Committee was launched. The intention is to provide clarity in the investigations of the National Detectives Agency, to make choices and set priorities, to allocate the limited capacity, to supervise the investigations and to monitor the progress of the cases. The use of this steering committee is in its early stages. There are no permanent operational agreements between the Public Prosecutor's Office and the National Detectives Agency, as is the case with the KPSM. In the rebuttal phase, the Public Prosecutor's Office revealed that regular consultations, including at case level, take place between the National Detectives Agency and the Public Prosecutor's Office. The Public Prosecutor's Office also added that an instruction on 'Duties and deployment of the National Detectives Agency' is currently being drafted."

In the 2019 review of this investigation, it was found that there are approximately eight factors that influence the Public Prosecutor's prioritization and execution of investigative cases. One of these

involved the LSM's and the KPSM's limited capacity to provide fiscal and financial expertise. It was further stated that:

“A National Detectives Agency steering committee was recently established to monitor the progress of cases screened and selected by the Public Prosecutor's Office. The Council believes that the National Detectives Agency must be strengthened so that the Public Prosecutor's Office can achieve a more balanced distribution between the different types of cases brought by the Public Prosecutor, and thereby allow the National Detectives Agency to work on the most urgent cases identified in the annual plans of the Public Prosecutor's Office.”

One of the 2014 recommendations of the Committee on Integrity in Public Administration concerning the LSM reads: in conjunction with the Public Prosecutor's Office, formulate a specific plan of action for the criminal prosecution of integrity-related offenses, such as fraud and bribery, and place a high priority on them. It is evident from this inspection that no concrete plan of action exists for the LSM's criminal-law approach. The Public Prosecutor's annual plan only gives the general direction the Public Prosecutor intends to take with the LSM. For example, the 2019 annual plan mentions the following with respect to the integrated approach towards integrity offenses:

“The National Detectives Agency and the Public Prosecutor's Office will continue to actively communicate about developments of criminal investigations in 2019. It is important to keep the population of St. Maarten informed in this regard. In 2019 the National Detectives Agency will (even more so than is currently the case) acquire extensive experience with so-called financial investigations and 'seizure cases'. The cooperation with the Internal Affairs Bureau of the St. Maarten Police Force started in 2018 and this cooperation will be strengthened in 2019.”

In addition, the LSM's 2020 annual plan defines the following objectives in the context of the primary process for further cooperation with the OM:

- Clarify roles at the different levels within the investigative process (strategic, tactical and operational);
- Formulate strategic topics with the OM;
- Further optimize management of investigations.

CCLR:

Based on the improvement program, a permanent consultation structure called the National Detectives Agency Coordinating Committee (CCLR) was created. In the 2019 annual plan of the St. Maarten Public Prosecutor's Office, the following is stated about the CCLR:

“The year 2019 will also be characterized by having the opportunity to make choices within investigations, but more importantly, between investigations. Due to the limited investigative capacity of the National Detectives Agency (and also the large number of cases), it is simply not possible to fully process all investigations. Provided that clear choices are made in this area, the National Detectives Agency's favorable development in recent years will be able to continue. This responsibility rests in particular with the National Detectives Agency Coordinating Committee (CCLR). If investigations pass through the CCLR's 'front office' and are taken up by the National Detectives Agency, it is up to the Coordinating Prosecutor of the National Detectives Agency to monitor this closely. This guideline will be further expanded. In its supervision of the National Detectives Agency, the OM will also ask the National Detectives Agency to focus more explicitly than before on the confiscation of criminal assets

in relevant investigations. Firstly, this relates to the fraud investigations and corruption investigations that the National Detectives Agency is handling or will be handling.”

The CCLR consultation takes place between the Chief Public Prosecutor, the CRO as mandated by the AG, the policy officer at the Office of the AG, the head of the LSM and the acting COZ. The CCLR is chaired by the CRO. The CCLR's prioritization is prepared by the assigned prosecutor and the LSM's team leader. The LSM's plan of action (considerations document) prepared for the investigation, is used as a guide for management within the CCLR. Within the CCLR, the strategy of the investigation is defined, the number of staff required for the task is determined, and the progress of the investigation is monitored and fine-tuned. The CCLR also monitors the targets that the LSM has agreed to with the Public Prosecutor's Office. If the CRO finds that the LSM is failing to meet targets because of management problems, this will be communicated to the AG who will then bring it to the attention of the Minister, according to one respondent from the Office of the AG.

Consultations usually take place monthly, but in practice they prove to be highly dependent on the CRO. The position of CRO was vacant at the beginning of 2020. A new CRO took up the position in August 2020. During the intervening period, there were temporarily no CCLR consultations. According to the new CRO, the intention is to strictly monitor the progress of investigations, but he does indicate that the progress of an investigation depends on the LSM's performance. After all, if there are staffing and management problems at the LSM that are not resolved, concluding investigations in a timely manner becomes difficult. Depending on certain issues, investigations can be shorter or longer. However typically they take longer, due to among others, capacity issues, says the current deputy head.

An interviewee from the LSM pointed out that the agreements made in the CCLR are sometimes not followed in practice. It was agreed that minor investigations pertaining to KPSM police officers would not be investigated by the LSM. This was in part due to the limited capacity within the LSM. In the opinion of the interviewee, having to handle these cases distracts the LSM from its primary task. The Office of the AG indicates in rebuttal that it is not aware of the aforementioned arrangement, and stresses that the consideration as to whether an investigation should be undertaken by the LSM depends on the nature of the case to be investigated. For example, shooting incidents must be investigated by the LSM.

According to the current deputy head, the public prosecutor has the authority over the investigation and sets the goals and direction. The LSM strives to make this a reality as much as possible in consultation with the deputy team leader and deputy COZ. Internally, the investigation is managed by the deputy COZ and/or deputy team leader in accordance with the wishes of the public prosecutor. The supervision and associated communication with the various prosecutors in the Public Prosecutor's Office is perceived in different forms by the interviewees and is characterized as being specific to the person. In practice, this means that throughout the years there has been good, bad or (almost) no communication with certain prosecutors. The latter is currently the case at the executive level and affects consultations. In the past, consultations at case level occurred in the presence of the assigned prosecutor, COZ and the team leader. Nowadays, only the assigned prosecutor and the team leader attend the consultations, as indicated by the current deputy head.

Furthermore, interviewees indicated that they are not always listened to when, for example, they do not agree with the chosen strategy and or decisions that are made, which can significantly influence an investigation. They feel there is limited room for criticism. Others refer to the formal role of the public

prosecutor as the leader of the investigation, whereby it is the prosecutor who decides. Some expressed a preference for not being dependent on a specific prosecutor.

Respondents also painted different pictures about the level of contact between the LSM and the assigned prosecutor. Some report that there is no contact between the investigators and the prosecutor, while others indicate that there is. In fact, some LSM interviewees reported that consultations at the case level previously took place directly between the investigators and the assigned prosecutor, something that is no longer the case. The detectives now only consult with the team leader. The team leader consults with the assigned prosecutor, after which, whatever was discussed is communicated to the detectives and vice versa. In their opinion, this can create static because issues can get lost or misinterpreted. This approach is therefore considered cumbersome and complicates the work.

Central Steering Group:

Article 8, paragraph 6 of the amended Protocol on detective cooperation between the countries of the Kingdom⁵³ (hereafter: protocol) stipulates that the chief public prosecutor shall periodically consult with the chief of police and the RST team leader about, in particular, the deployment and performance of the decentralized teams, the coordination and cooperation of the investigative activities between the central and decentralized teams; the cooperation of the teams with the police force and the extent to which this cooperation contributes to knowledge transfer. The central teams are operationally managed by a team leader. The decentralized teams form a unit together with the police force's major crime unit and are operationally supervised by the chief of police.

Also, Article 9 of the protocol specifies that there is a central steering group, the task of which is to consult at least twice a year, in compliance with the policy plan, on the use of the capacity of the central teams. This steering group consults at least twice a year and consists of the AGs; the chiefs of police and the team leader.

According to the former deputy head, the LSM is excluded from the aforementioned consultations concerning the deployment of the TBO and therefore the activities of the National Detectives Agency and underlines the uncommon role of the heads of the police forces in this process. The Office of the AG reports in rebuttal that it is always possible for chain partners to participate in this steering group. After consultation with chain partners, it was eventually decided that the LSM could participate in the consultations, but solely with respect to the cases that concern the LSM. However, the former deputy head did not agree to this, but did indicate that the LSM provides support to the tactics consultation by supplying tactical and CID/TCI information with the benefit of, among other things, assistance in the refinement and expansion of information.

4.4.2 Ministerial Management

The Minister participates with respect to supervising the LSM in the area of management within the so-called Management consultation. In the annual plan 2019 of the OM, the following is reported on the management consultations:

“The "Management consultations of the National Detectives Agency" will be reactivated in 2019 at the suggestion of the head of the National Detectives Agency and the Attorney General. In the Management Consultations of the National Detectives Agency, financial and staffing issues of the National Detective Agency are discussed between the Minister of Justice, the Attorney General and the head of the

⁵³ Amendment to the protocol on specialized investigative cooperation between the countries of the Kingdom, January 23, 2019.

National Detectives Agency. It is expected that the positive effects of starting this consultation in 2018 will become apparent as early as 2019.”

According to the AG, from 2017 onwards, during management consultations, the various heads of the LSM have emphasized the need for strengthening the organization in terms of staffing, ICT, housing, training and so on. The response from the respective ministers has always been that budget is unavailable. In this context, the AG goes on to state that he has reminded the ministers of the fact that, although he is responsible for the cases handled by the LSM, it is the minister who is responsible for the management of the LSM. From a management perspective, the LSM does not receive adequate support from the Ministry, in the opinion of the AG.

The Attorney General also reports that consultations are held every three months between the Minister and the AG, with the support of the AG's policy officer. According to the AG's office, subjects covered at these meetings include the lack of a formalized legal status for LSM staff and the posting of LSM vacancies by the Minister.

Management by the Ministry is described by the LSM's current deputy head as good but needing improvement. Several interviewees indicated that the LSM has always made an effort to secure self-management in order to, as much as possible, limit delays in investigations, but so far without success. In general, resources and other matters are often difficult to arrange (see Chapter 5) through the Ministry. Failure to receive a response followed by delays and failure to keep promises are just a few examples of this, according to the interviewees.

One interviewee from the Ministry interprets the Ministry's role regarding the LSM as follows. The Ministry should actually provide support to the agency at the strategic level. However, due to the lack of a policy officer within the agency, support is also provided at an operational level. For example, if the agency requests policy support, it is subject to the available capacity in the Judicial Affairs Department and the “whims of the day”. The preparation of documents for the JVO is an example of the support provided.

Based on Article 33 of the Kingdom Public Prosecutors Act, the Minister participates in the JVO concerning the investigation and prosecution of cross-border crime and makes agreements on the deployment of the necessary human and material resources. The Office of the AG has cited as an example that during the JVO's, the need for cooperation between the National Detectives Agency and the Kingdom Detectives Agency was raised. The Ministry also states that it is the AG who has to represent the LSM during the JVO and also address the LSM's needs.

According to the Ministry, the LSM needs to be more proactive in raising concerns to gain the attention of policy makers. It has not sufficiently done this, leading to limited support. Take the case of the KPSM that has been able to raise its profile in the area of international cross-border crime, and as a result, has obtained, among other things, management-level technical assistance from the Netherlands. In contrast, the LSM has received virtually no management-level technical assistance, only operational-level assistance from the RST. As a result, the LSM has not been able to operationally develop sufficiently. According to the interviewee, to the best of his knowledge, no (concrete) official requests were made by the LSM to the Ministry asking for support from the Netherlands.

The Ministry further reports that the AG attends the regular tripartite consultations, thus fulfilling the requirement for periodic consultations as stipulated in the legislation. In addition, during the management consultations, the AG must properly present the needs of the LSM to the Minister, ensuring that there is attention for the agency.

4.4.3 Management by the head of the LSM

The head of the LSM is responsible for the daily management of the LSM. This person is appointed, suspended and dismissed by national decree, in consensus with the AG. The first head of the LSM was also the quartermaster of the agency. He was in charge of the agency until the beginning of 2018. Thereafter, the agency was headed by an acting head for a period of approximately two years. As of July 2020, the acting COZ has assumed the position of acting head.

According to the Ministry, the AG has to provide advice on the appointment of a new head of the agency, who will then be appointed by the Minister. The decision to initiate the application process for a new head is therefore left to the AG considering his advisory role. Furthermore, when appointing a new head, it is important, in view of the working relationships between the various parties, to ensure continuity. Professional attributes of a new head of the LSM will play an important role in the further development of the agency, according to this interviewee. This sentiment is echoed by the OM. According to the OM, positive development of the agency depends on how quickly a new LSM-head is recruited.

The management provided by the head of the LSM is viewed internally by employees in a variety of ways, and depends on the person, leadership style and hierarchy. The leadership style of the different (deputy) heads ranged from very passive to very active, and from very hierarchical to (more) open in terms of seeking input from everyone. The preferences of the interviewees were mixed regarding these differences in style. Some liked to be actively involved in the development of the agency and others did not. Those who preferred an active leadership style noticed that this translated into a change of culture within the agency as well as active involvement of employees in the preparation of, for example, the annual plans. They also noticed that depending on the person, the head may or may not get more done. Opinions are also divided about the hierarchical relationships, as these can sometimes cause the inevitable tensions, both internally and externally.

5. Resources: financial, material, personnel

5.1 Introduction

The Council has voiced concerns in previous reports about, among other things, the LSM's lack of capacity, expertise, and resources. This chapter details developments in these areas and assesses the following criterion.

Criterion: LSM has sufficient, proper resources (material and financial) available for the safe execution of its tasks. A sufficient number of qualitative and quantitative staff with valid legal status who perform their duties with integrity are available to the LSM.

In 2015, the Council, in its aforementioned inspection report '*Selectivity in the Investigation and Prosecution Policy of the Public Prosecutor's Office in Sint Maarten*'? observed the following:

“As far as the National Detectives Agency is concerned, the period from October 10, 2010 to the present has been marked by the growth at this investigation unit. The agency has suffered a number of setbacks in the areas of finance, recruitment, proper accommodation and HR matters. No policy is available from the Minister of Justice. The National Detectives Agency needed to be completely structured after the constitutional changes but has made progress in the areas of housing and ICT infrastructure. The Council believes that, in light of the nature of the work of the National Detectives Agency, a business process system for the National Detectives Agency must be established. Although the capacity of the National Detectives Agency has grown over the past five years, the formal staff complement has not yet been achieved.”

In the opinion of all interviewees, the LSM does not possess the prerequisites to function optimally. It lacks the necessary (basic) material resources such as a registration system, a decent interrogation room, vehicles and resources for the surveillance team. It also lacks the required financial resources to, for example, request investigations to be conducted by other agencies, such as the National Forensic Institute. The LSM falls short in every aspect, according to an interviewee.

5.2 Financial Resources

The 2020 annual plan includes the following objective in the area of finance:

- The efficient and effective financial management of the LSM.

This requires the following:

- Presence of appropriate tools in the organization including COGNOS with required functionalities;
- Financial procedures are identified, and processes are described;
- Implementation of the budget amendment previously requested at the beginning of 2019 for the LSM including the appropriate line items;
- Change of the management of the National Detectives Agency budget in the interest of proper operations and adequate investigative activities of the agency.

According to the Business Management Department, the program Microsoft Excel and the program COGNOS are used for the financial administration. However, the department has only one GOGNOS user account, which means that only one of the two employees can use it at any time. This is characterized as suboptimal. It was also previously stated that although procedures and process

descriptions are available, they have not yet been adopted. For the Business Management Department in particular, further development of these is required.

The LSM aspires to achieve independent financial management. According to interviewees, this will enable the LSM to better meet its own needs and actually assume an independent position. Independent financial management means, among other things, that the LSM can make decisions about how the money allocated by the Ministry is actually spent, and that the LSM is accountable to the Minister (afterwards) for these decisions. To achieve these goals internally, the agency should at least have its own financial controller. The aforementioned is vital for the growth of the agency, according to interviewees. The 2019 annual report states that, at least for the TCI department, a petty cash fund has been requested which should be under the LSM's management. In addition, in anticipation of independent financial management, work to organize the financial operations of the department has started, so that expenditures can be audited, and financial statements prepared.

The 2019 National Budget allocated an amount of ANG 390,800 to the LSM for material resources, an amount of ANG 1,879,871 for personnel costs and no capital expenditures. In 2019, the cost of material resources was adjusted by the LSM via amendment to an amount of ANG 1,411,350.00 and the personnel costs to an amount of ANG 4,541,600. The request was then submitted to the Minister. The amendment in 2019 was necessary because the previous budget would not cover major expenses of the agency for its development and further professionalization. Also, the systematic lack of budget line items would be an impediment for managing and directing the organization on a day-to-day basis. Moreover, these justifications continue to be valid in 2020. The letter explaining the amendment also included the following ⁵⁴:

“The goal of the National Detectives Agency in 2019 was to expand to 22 FTEs. However, there was no budgetary approval. The agency’s budget was cut to such an extent that insufficient funds were included in the budget for the year 2019 to cover the existing staff (ANG -129,000.00). It is hoped that this may be corrected in 2020 and that additional funds can be allocated considering the growth of the National Detectives Agency. The fleet of vehicles (capital investment of approximately ANG 200,000.00) and the resources available to the National Detectives Agency also need to be improved. The purchase of a business process system for the National Detectives Agency should also be taken into account in the capital investment context. The costs of SUMM-IT can amount to approximately ANG 1.3 x 10 when choosing an in-house server for St. Maarten. The expenditure comprises the training, software, hardware, and travel and accommodation line items. For capital expenses, measures to secure the building housing the National Detectives Agency must also be factored in. This amount is approximately USD 130,000.”

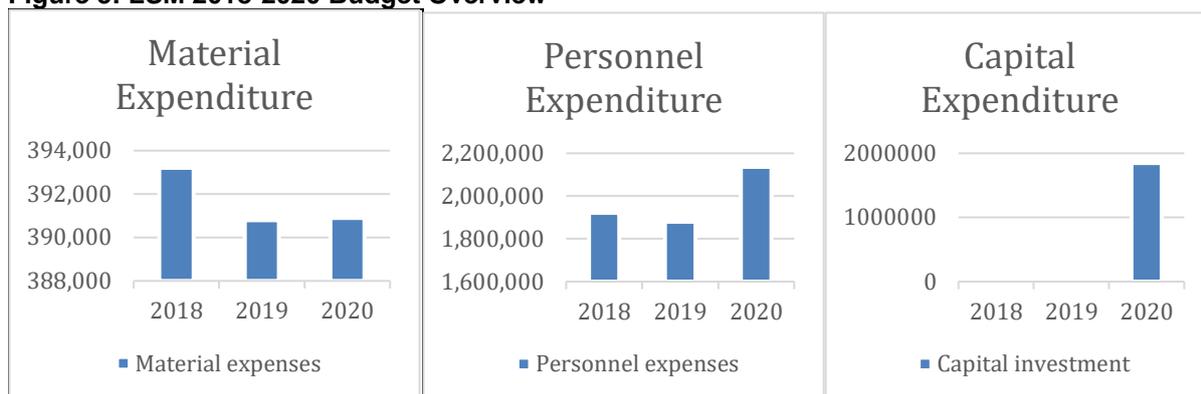
The National Budget 2020 allocates a total amount of ANG 2,527,657 for the LSM of which ANG 390,900 covers material resources and 2,136,857 is allocated for personnel costs. Also included is the amount allocated to capital outlays, broken down as follows:

- ICT equipment SUMM-IT ANG 800,000
- SUMM-IT ANG 750,000
- Department Vehicles (2x) purchase or lease purchase ANG 100,000
- Security equipment and systems ANG 200,000

The status of the aforementioned issues is further included in the relevant paragraphs.

⁵⁴ National Detectives Agency St. Maarten, Explanation of requested budget 2020, April 26, 2019.

Figure 5: LSM 2018-2020 Budget Overview



Source: 2020 St. Maarten National Budget

The Ministry reveals that the Minister's role is limited in terms of his ability to synchronize the annual plans of the LSM with the national budget. The country's financial situation is a given, and the Minister has some say, however, the budget of the Ministry of Justice, and therefore that of an agency such as the LSM, has remained largely unchanged over the past six years.

5.3 Material Resources

The Annual Report 2019 shows that resources have been acquired in several areas but there is stagnation in others, such as housing and the agency's vehicle fleet. Listed below are a few examples of the resources that were secured in 2019:

- Computers (donation TBO), various software applications;
- Handcuffs, safety vests, ammunition;
- Various basic resources in the event of an emergency, smoke detectors, cameras.

The goals in the 2020 annual plan for material resources are as follows:

- A working vehicle fleet;
- Working communication tools;
- Guarantee of continuity after a disaster.

In terms of resources, all LSM interviewees agree that these are insufficiently supplied by the Ministry. The term "stepchild" was used by several persons to describe the feeling they have about the relation between the Ministry and the LSM. One reason for this characterization is the lengthy response times on requests for funds, or because, they are informed, that there are no funds available for the LSM. This, while other judicial organizations are provided with the required resources. Interviewees therefore feel that they cannot count on support from the Ministry. LSM's needs include a business process system, vehicles, search cases, cameras, telephones and walkie-talkies.

5.3.1 Information Management

Two previous reports by the Council have provided recommendations with regard to the LSM in the area of information management. These are:

'Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office on St. Maarten' (2015):

- Provide a business process system for the National Detectives Agency.

'Forensic Investigation' (2018):

- Provide the National Detectives Agency with readers for digital data carriers.

The review of the first-mentioned recommendation of 2019 revealed that the recommendation was not addressed.

In the opinion of all the LSM interviewees, with the exception of the TCI department, the LSM does not have a business process system. The work is still done using Microsoft Word. Various systems used by the different investigative agencies were studied, but it became apparent that several systems have drawbacks in terms of security and information.

According to the Ministry, it has limited insight into the systems used by the LSM. The LSM's focus from the outset was more on formalizing the legal status of staff and less on organizational necessities such as a business process system. It is possible that the ACTPOL program used by the KPSM could provide a solution in this regard. The system is apparently broadly applicable to certain processes. Also, since November 2019, St. Maarten is affiliated with the Foundation Management ICT for Law Enforcement⁵⁵ that assists the countries within the Kingdom with various software packages, according to interviewees.

The former deputy head, states that the initial proposal was to purchase the SUMM-IT business process system in conjunction with other Kingdom partners, but ultimately it became clear that each country preferred to have a separate server for management of the information, making the project (too) expensive. The preference is due to the need to manage the integrity of the information internally; outside management is therefore undesirable, according to the former deputy head.

SUMM-IT is cited by all LSM interviewees as a solid information system for the LSM. The system is used by many investigative agencies including the RST. SUMM-IT can facilitate file searches and information is easy to retrieve. Currently, information is fragmented because staff members store information in their individual digital environments. Employees of the TCI department have recently started using SUMM-IT, which was made possible by the RST.

From the previous paragraph, it is evident that the 2020 budget includes the purchase of the software program SUMM-IT along with the requisite hardware. In addition, an allocation for SUMM-IT was also made for the year 2021. At the time of the inspection, no system was yet purchased.

Record keeping at the LSM is performed digitally but is not automated. Digital files are stored on an intermediate drive accessible only to operational staff. Once an investigation is completed, the file is moved to another drive and only authorized persons have access. It can take a long time to move files; for example, cases that have been disposed of for several years are still available on the intermediate drive, which poses some risks, according to an interviewee. There are three hard copies of the files. The original and a copy (after completion) are for the Public Prosecutor's Office, and a copy is stored internally by the acting COZ in a locked room, to which only specially authorized persons have access. The security of the information within the LSM is guaranteed, according to an interviewee and local backups are made monthly and stored elsewhere.

According to the former deputy head, the exchange of information with other organizations is largely done digitally and efforts are made to make this as secure as possible. One of the reasons why SUMM-

⁵⁵ Mutual arrangement to amend the Cooperation Arrangement ICT Law Enforcement Chain Curacao and the Netherlands in connection with the entry of St. Maarten into the Cooperation Arrangement, National Gazette December 18, 2019, 69263.

IT will be of added value to the LSM is that the information is automatically transferred via a secure connection. Recently, the LSM also acquired a VC connection, allowing sensitive information to be shared through this medium. This link was made possible by the RST. Furthermore, the TCI department will soon have a VPN connection which will further guarantee the security of information, according to the former deputy head.

As mentioned earlier, the operational focus on information was introduced to support information-driven action. One of the activities of the responsible staff member is maintaining contact with the information hub. This hub is a collaborative initiative for the exchange of information between several investigative partners on the island (see Chapter 6). As far as the exchange of information between the TCIs of the various countries is concerned, it takes place via the public prosecutor, according to an interviewee.

In addition, the LSM has no data readers. Just as in 2018, a reading device on loan from the RST is used. In 2019, however, an in-house forensic workstation was purchased that can be used to perform analyses and linking of hard drives, among other things, according to an interviewee from the LSM.

5.3.2 Housing

The Council's aforementioned report "*Selectivity in the Investigation and Prosecution Policy of the Public Prosecutor's Office*" (2015) included the following with respect to housing:

"Until recently, housing also demanded attention. The National Detectives Agency was first housed in a separate room in the complex of the St. Maarten Public Prosecutor's Office. After that, it was temporarily housed outside the Prosecutor's Office. The lack of available workstations and ICT facilities hampered efficient work, according to the Public Prosecutor's Office and the National Detectives Agency. As of 2014, the National Detectives Agency has access to a new location in which there are sufficient workstations as well as a suitable ICT infrastructure."

The problems associated with the building in which the LSM is located were raised by all interviewees from the LSM. Although the building has adequate workplaces and a suitable ICT infrastructure, it does not have adequate ventilation (windows that cannot be opened). This is perceived by interviewees as very worrisome, especially in light of the Covid-19 pandemic. The process of getting new windows installed in the building has started but is progressing with difficulty. Permission has been obtained from the responsible parties. However, this permission has to be presented in writing to the Facility Management Department before the work can proceed. At the same time, the lighting in a number of offices has not worked for quite some time. Although these problems were raised several times by interviewees, they have not been resolved. Sometimes a solution is sought through colleagues via the TBO. According to the interviewees, this is not the way it should be.

There also are issues centered around the building's fire safety, this includes the lack of a fire escape and entrances that are not suitable as emergency exits, according to LSM interviewees. The 2019 annual plan indicates that the building failed inspection by the fire department. However, steps have been taken by management to make the building safer. For example, sensors and smoke detectors have been installed.

5.3.3 Transportation

The appendix '*Vehicle fleet of the St. Maarten government*' of the National Budget 2020 includes three company cars for the LSM.

All LSM interviewees indicated that the cars owned by the LSM are very outdated and in need of replacement. They suffer from several serious defects. Examples cited include broken air conditioners and cars that constantly need to be taken to the garage for repairs. Payments for repairs can sometimes be slow and there are instances when the RST advances the money so that the operations are not held up. On occasion, because the bills are not paid or not paid on time, garage owners refuse to carry out the repairs. The LSM employees are then confronted with this situation. Rental cars are also required for surveillance work, but often there is no funding for this either, according to an interviewee.

In the past, rental cars were used for an extended period, albeit at high costs. According to the former deputy head, the LSM requires at least three properly functioning cars and attempts have been made to purchase these in various ways, but without success. In 2017, a proposal was submitted to the Ministry for the purchase of new cars. This yielded no results. In 2019, another advice was submitted and is still in process.

In the 2020 budget, as indicated earlier, an amount was reserved for two new department vehicles for the LSM.

5.3.4 External communication

LSM interviewees indicated that a proposal was drafted to establish a dedicated internet domain and website for the LSM. A third party was approached to undertake the work but, due to a lack of resources, nothing came of it. The proposal involved, among others, keeping the website under the management of the agency. A tip line was also requested where the public can call in with leads. These two projects were listed as objectives in the 2020 annual plan. The implementation of the tip line requires the cooperation of the Ministry of General Affairs. The LSM, however, is still awaiting this cooperation. The former deputy head of the department explains that although it is good that the LSM wants to manage these things in-house, it usually takes a long time to achieve.

5.4 Human Resources

Based on an organizational review in September 2018, the former deputy head wrote to the minister stating that if the LSM was going to function as a full-fledged investigative agency, there had to be a greater focus on expertise, a proper information organization, and the appropriate security.⁵⁶ Accordingly, in the 2019 annual plan, a number of targets were included regarding human resources such as the recruitment of a sufficient number of quality staff, the provision of education/on the job training and Integral Occupational Skills Training (IBT- *Integrale Beroepsvaardigheid Training*). One of the prerequisites was the availability of funds. Section 5.2 already explained that the financial resources were not sufficient to achieve many of the LSM's 2019 objectives.

The Annual Report 2019 also reveals the lack of results towards replenishing human resources. However, in the area of education, the relevant training and courses were provided. For example, training to allow detectives to also serve as assistant prosecutors and conduct criminal investigations. The 2019 targets regarding human resources have largely been repeated in the 2020 annual plan:

- Qualitative and quantitative capacity must be up to par
 - Recruitment and selection
- Improve internal services for staff
 - Digitization of personnel data

⁵⁶ National Detectives Agency St. Maarten, Critical Functions at the National Detectives Agency and Need for an Adjusted Budget for the National Detectives Agency St. Maarten, March 16, 2019.

There are also goals set in the context of professionalizing the organization. These include continuing with training, adding basic training such as the assistant prosecutor training for people entering the organization laterally, forensic criminal investigation, administrative training and leadership training.

Also reported under recruitment and selection is the following:

“There are currently 9 critical functions that need to be filled at the LSM. Of the 36 job positions that were defined as minimum requirements for the LSM, 13 are occupied, of which 1 is inactive. There are 9 people working in tactics and this includes 2 from management and 2 from support. The critical positions to be filled include: 3 tactical detectives; 1 information team leader; 1 policy officer; 1 digital detective or 1 ICT officer, 2 financial detectives and 1 analyst.”

5.4.1 Staffing

In 2014, the Committee on Integrity in Public Administration observed in the previously mentioned investigative report *“Doing the right things right”* that:

“Of the sixteen staff positions that the agency maintains in organizational terms, only ten have been filled to date (of which only seven are investigating officers). The current workload is enormous. In the high-profile Bada Bing case, the entire department was involved, and additional expertise had to be enlisted from Aruba. With this one complex case, a great deal of other work was left unfinished in the past year. The OM and the National Detectives Agency estimate that they still need roughly six to eight skilled detectives.”

The various reports of the Progress Committee (VC) also highlighted the LSM's lack of human resources. Disappointment was expressed about the delay in the recruitment of staff despite the availability of open positions in the organization. Furthermore, an appeal was made to the Minister and the Netherlands for support in this matter because of the LSM's heavy workload. However, the responsibility primarily rests with St. Maarten's Minister and they advised that efforts be undertaken to recruit personnel from other countries in the Kingdom, similar to what had taken place with the police force.

The fifteenth report of the VC (2014)⁵⁷ specified that the minister of Security and Justice would make two detectives from the Netherlands available to the LSM based on a request for support from St. Maarten. It was however not clear when they would start. There was still no support a year after the request was made.⁵⁸

In early 2015, the VC's expectation was for the LSM to finally complete its staffing requirement for that year. At the end of 2015, when the LSM was removed from the monitoring list, the VC concluded that the LSM possessed a high-quality workforce and could expand above the staffing plan.⁵⁹

Chapter 3 described the staffing of the LSM. That chapter illustrated that the LSM's job matrix and staffing plan have not yet been formally adopted and that the actual staffing plan has not yet been implemented. According to interviewees, attracting the required expertise continues to be difficult because local and regional recruitment is not providing the desired quality. The LSM is also unable to recruit inexperienced detectives and provide internal training because there is insufficient capacity to

⁵⁷ St. Maarten Progress Committee, Fifteenth Report to the Ministerial Meeting covering the period April 1, 2014 - July 1, 2014.

⁵⁸ St. Maarten Progress Committee, Sixteenth Report to the Ministerial Meeting for the Period July 2014 - October 1, 2014.

⁵⁹ St. Maarten Progress Committee, Twenty-first Report to the Ministerial Meeting for the Period October 1, 2015 - January 1, 2016.

do so. New employees are therefore expected to start immediately upon joining the agency, with minimal supervision, according to interviewees.

Respondents indicated that detectives have left the organization without a replacement having been found. As such, a number of these open positions have been filled by co-workers for an extended period of time. Recruitment programs (including for a policy officer and tactical analyst) were launched but due to insufficient budget and the lack of formalization of the function book by the Minister, these efforts have not borne results. As a consequence, interviewees are concerned that potential candidates, do not regard the LSM as an attractive employer. Consequently, several interviewees envision a bleak future for the agency. This despite the fact that they love their work and would like to do something to help the LSM thrive. They underline that greater priority should be given to the LSM in terms of (financial, material and human) resources.

Table 3 provides an overview of the desired staffing as included in the various establishment plans as compared to the actual implementation. In the year 2020, the staffing of the LSM is 13 FTEs and thereby understaffed.

Table 3. Staffing LSM

	Establishment Plan 2010	Establishment Plan 2014	Reality 2020
Head	1	1	
Operations Coordinator (Coordinator business management)	1	1	1
All-round administrative assistant	1	1	1
(Sr.) Policy Officer		1	
Policy Support and Control			
Coordinator (tactics) operational affairs		1	1
Coordinator CID			
Team leader tactics	1	1	1
Specialism Coordinator			
(Coordinator) Team Leader Information and Support	1	1	
Tactical (strategic) analyst		2	
Tactical CID analyst			
Senior tactical detective		2	
Tactical investigator	7	7	4 (5*)
Senior financial detective			
Financial investigator			(1*)
Financial analyst		1	2
Senior digital investigator			
Digital analyst		2	1
Specialist Cybercrime and ICT-management			
Runner (upper world/informants)	2	2	2
Information investigator	2	2	
Operations Analyst			
Information Officer			
TOTAL	16 fte's	25 fte's	13 fte's*

*The total excludes two RST employees on loan to the LSM in the positions of financial investigator and tactical investigator for support. For the sake of completeness, these two employees are listed in parentheses next to the relevant function.

The Council also noted in its report "*Selectivity in the Investigation and Prosecution Policy of the Public Prosecutor's Office in St. Maarten?*" (2015) that the following risk could potentially affect the staffing:

"The risk of political abuse of the management authority is also pointed out. The current division of tasks offers authorities with malevolent intent the opportunity to understaff the investigative agency. This understaffing would deprive the National Detectives Agency of the ability to properly conduct investigations that focus on, for example, political leaders."

During this inspection, attention was placed in general on the possible risks regarding the management of the National Detectives Agency, whereby it was indicated that as long as the organization is not properly staffed, it will continue to run unnecessary risks, which interviewees consider extremely undesirable.

5.4.2 Legal Status

Section 3.2 described the bottlenecks surrounding the legal status of civil servants charged with police duties. This issue was addressed by the former deputy head and a new function book for the LSM was produced, partly in cooperation with the external agency hired by the Ministry to prepare job descriptions and appraisals for the organizations within the Ministry of Justice. The function book was submitted to the job evaluation committee of the Ministry of General Affairs in July 2019, as required. No response was received, and the status is unknown, according to the former deputy head. The former deputy head is also of the opinion that a separate legal status should be created for the LSM based on the National Ordinance on Substantive Civil Servants Law. In addition, the National Decree of the National Detectives Agency should be amplified because, as previously indicated by the interviewee, important components are missing.

LSM interviewees report experiencing difficulties due to the uncertainties related to the legal status decree and the lack of a formalized function book about which they corresponded with the minister. The lack of the necessary national decree, no permanent appointment, and not being able to be promoted are a few examples. In 2016 and 2017 respectively, two employees of the LSM filed lawsuits against the Minister/government because of issues surrounding their legal status and achieved results.

A steering group has since been established by the Minister to determine the function books of the various organizations within Justice, including that of the LSM. This steering group consists of representatives from the relevant ministries. The intention has been to complete the process by the end of November 2020.⁶⁰ The intention is to link the LSM to the KPSM's function book starting from the rank of criminal investigator because all employees must be experienced criminal investigators, according to interviewees from the Ministry. The Council has no knowledge of the contents of the function book.

5.4.3 Integrity

According to the annex to the National Decree Containing General Measures of February 21, 2012, related to identifying confidential functions and establishing rules regarding the manner in which security screenings are performed⁶¹, all functions at the LSM are confidential functions and employees must undergo a security screening. All LSM interviewees have been subjected to a security screening and

⁶⁰ After the investigation period, there have been significant developments in this area worthy of mention. The function books are now in draft form and have been sent to the unions. Following the period elapses in accordance with the procedure, the function books will be submitted to the Council of Advice. The Minister's expectation is that the function books shall be in force as of June 1, 2021.

⁶¹ AB 2012, no. 9.

are in possession of the accompanying Certificate of No Objection. The former deputy head also confirms this but is of the opinion that it is wise to have this screening repeated after a certain period of time. Other interviewees also expressed a positive opinion on this.

The aforementioned report of the Committee on Integrity in Public Administration (2014) reported the following about the integrity of the LSM:

“The integrity of the staff of the National Detectives Agency, which is under development, is not questioned by any of the interviewees. The subject is internally given regular attention. Because of the small scale, however, it is essential to continue to pay attention to the subject externally.”

There continues to be a focus on the issue of integrity within the LSM. As previously reported, a code of conduct to promote integrity, which included input from staff, was drafted and implemented by the former deputy head. In addition, the secondary functions of employees have been identified.

5.4.4 Special expertise

In the organization plan (2010) the choice in favor of generalization for the LSM staff was made, partly in view of the small scale. With generalization, a degree of expertise among all employees could be achieved to allow the LSM to perform at a higher level. In addition, internal working rules would be established for education and training as well as for a horizontal rotation between the staff members, according to the organization plan. As a result of the intended generalization, detectives are, in practice, appointed as generalists despite the fact that they are specialized in a certain area, according to a respondent. Therefore, their special expertise is not optimally utilized.

Through training, the employees can specialize in certain areas, training is therefore part of the performance reviews that, according to most interviewees, take place at least twice a year between the head of the LSM, the team leader and the individual staff members. During the sessions, needs are identified, and agreements are made. Depending on the need, several interviews may take place. For employees of the TCI department, interviews are held in the presence of both the head of the LSM and the Team Leader RST. In the period up to 2019, according to interviewees, little training was provided to staff in spite of the need for it. The reason, financial constraints imposed on the organization. Interviewees also indicated that the LSM is often not notified, and/or are simply overlooked, when courses are organized that may be of interest to them. Employees of the tactics department have been able to participate in several training courses with the KPSM and the RST. One interviewee reported that a number of staff members have also attended training in surveillance work funded by the RST, but they cannot be deployed because the necessary material resources are unavailable.

As cited above, the Committee on Integrity in Public Administration stated in its 2014 report, that LSM lacked both the requisite capacity and the required expertise to adequately investigate the variety of potential identified cases. Specifically, the financial investigative expertise was described as sub-standard. The Council's previously referenced 2015 report "*Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office on St. Maarten*", also found that the National Detectives Agency possessed limited fiscal and financial expertise. Most of those interviewed indicated that expertise/capacity is still lacking in every discipline, but notably in the area of digital skills. Due to the lack of internal (financial) expertise, two employees of the TBO are currently on loan to the LSM. The financial analysts are trained internally by one of these detectives. In principle, the two employees are seconded to the LSM for a period of three years. In principle, the LSM does not offer them any training - partly due to the limited options available - but they can participate in training courses offered

by the RST. These employees also consider it proper that their local counterparts should be given priority as far as training is concerned. Occasionally, a temporary employee does not attend the training course offered by the RST, so that a National Detective can receive the training. The mandatory IBT, including shooting courses, are provided for these employees by the RST, according to the interviewees.

According to interviewees, interagency exchange programs can also be useful, to enhance knowledge and share best practices.

The Instruction specifies that one of the principles for deploying the National Detectives Agency is that they possess special expertise. However, as indicated above, the LSM has insufficient expertise. Thanks to support from the RST/TBO, this is partly provided for on a temporary basis. Most interviewees, therefore, refer to this support as indispensable as long as the LSM's situation remains unchanged. According to the interviewees, expertise from the KPSM is sometimes also used.

6. Cooperation

6.1 Introduction

In this section, the findings related to the cooperation between the LSM and (chain) partners at the local and Kingdom level for the performance of tasks are presented and the following criterion has been established for this purpose.

Criterion: In the detection of integrity offenses (corruption), the LSM serves as a reliable and integral part of the chain of organizations (locally and within the Kingdom).

In the National Decree of the National Detectives Agency, the third paragraph of Article 8 states that without prejudice to what is determined by or pursuant to national ordinance, the AG shall establish guidelines for the cooperation with other relevant (investigative) agencies, in particular with regard to the exchange of information concerning criminal investigations and assistance with personnel, resources and know-how. As previously explained, the policy plan of the Public Prosecutor's Office contains the provision that until the information position of the National Detectives Agency improves, cooperation will be pursued, especially with other investigative agencies in the countries or with sister agencies.

According to the organization plan (2010), the LSM was already aware that it was unable to provide all specializations within its own ranks due to the small scale of the organization. Support from other (sister) agencies was considered indispensable even then, and the LSM therefore committed itself to guaranteeing this third-party support through agreements. The organization plan called for this to be done primarily for the arrest and surveillance teams and forensic investigations. Also, the desire to establish a strong national detectives agency and, in doing so, establishing strong partnerships, is important.

The plan of action LSM (2010) disclosed that the continuation of cooperation with third parties would be achieved by means of cooperation agreements:

- Cooperation Agreement AG;
- Cooperation agreement between the National Detectives Agency and the Kingdom Detective Agency of The Netherlands;
- Covenant of cooperation KPSM;
- The cooperation protocol between the judicial training institute of Curaçao and the national selection and training institute for the police.

The document entitled '*Plan of Action for National Detectives Agency*'⁶² (2013) concerning the state of affairs, reports that experience subsequently showed that there was no need for a cooperation agreement between the AG and the LSM and that, after consultation, it was decided against entering into a cooperation agreement with the KPSM, also due to a lack of a need. There was also little interest by the Minister in entering into a protocol with the Training Institute for Law Enforcement and Security in Curaçao in connection with the existence of the 'School of Justice' on St. Maarten, as listed in the State of Affairs. Subsequently, the 2014 State of Affairs Report mentions that the agreement with the National Detectives Agencies and the Kingdom Detectives Agency was signed in October 2013.⁶³

⁶² Doran, A., Plan of action National Detectives Agency, April 14, 2015.

⁶³ Doran, A., Plan of action National Detective Agency April 22, 2014.

6.2 Local

The LSM works on different levels with the various departments, and collaboration varies per department. Several interviewees pointed out that cooperation is strongly dependent on the condition of an organization and that one's own organization must first be in good shape to be able to offer and contribute anything to others. This is currently not the case for the LSM, partly due to management bottlenecks and also because the “whims of the day” prevail, according to interviewees. Cooperation with the KPSM and other local services such as Customs and the Coast Guard is, despite the above, considered good.

In addition, interviewees note that, in general, efforts are made to use as little assistance as possible when conducting investigations, in part because of the obligation to then disclose information. However, the agency is forced to collaborate with investigative partners in various areas owing to a lack of capacity and expertise. Accordingly, one of the goals of the LSM's 2020 annual plan in terms of professionalization is to further optimize physical forensic investigation in cooperation with the KPSM. Interview subjects reported that assistance is sometimes requested from the KPSM for specialized detectives and during so-called action weeks.

A further agreement was reached with the KPSM that they would deliver the Integral Occupational Skills Training for LSM-employees biannually. The first training occurred in 2020. The Royal Netherlands Marechaussee also agreed to allow the LSM to attend a shooting training course free of charge five times a year. However, the LSM must provide its own ammunition. These training sessions have not yet taken place due to Covid-19, according to the former deputy head.

As for the Financial Intelligence Unit (FIU), according to LSM interviewees, the cooperation is focused on financial matters, given the many financial investigations carried out by LSM and the authority of the FIU to request information from abroad. Although the LSM regularly requests information from the FIU, there is a desire for more active cooperation. However, the actual consolidation of such cooperation is difficult due to several factors, including legislation and a lack of resources. There is also limited cooperation with organizations outside the judicial chain, such as the tax authorities. A cooperation agreement is required.

Every effort is being made to collaborate with other organizations, such as the Integrity Chamber, though this has not yet occurred. A protocol has, however, been signed between the Public Prosecutor's Office and the Integrity Chamber. Discussions are still at an early stage with other government departments such as the Civil Registry.

There is also a strong desire to improve cooperation with, for example, the various ministries in order to promote sharing of findings from investigations with regard to processes. This in addition to the administrative reports that are drawn up (via the OM), according to the former deputy head of the agency.

In its final report, the Evaluation Committee on Kingdom Judicial Laws issued a number of findings regarding the cooperation between the National Detectives Agencies and chain partners:

“Focus groups revealed that other forms of inter-territorial cooperation are, however, more complicated. This applies to cooperation with and between chain partners such as the National Detectives Agency, the RST, the KMAR, Customs and the Coast Guard. Between these agencies, it is critical that they are informed of each other's investigations and - within the limits of the law – the acquired information.”

Experiences with regard to this information exchange appear to be mixed. Although a large number of participants in the focus groups indicated that they had positive mutual relationships with the chain partners, the exchange of information appears to have stalled. The Infodesks set up at the police forces therefore do not seem to have achieved their maximum effect. One observation that emerged from the focus groups is that when it comes to exchanging information, people rely mainly on individuals and less on formal structures. Information is shared only with those one knows. This may explain why Caribbean participants seem to experience less difficulty in obtaining information from other services than European participants. Incidentally, the expectations of officials with a European background are usually shaped by the Dutch situation and they are therefore more critical of the information exchange.

With that said, other reasons can be identified as to why information exchange is not always smooth. Information exchange hinges on possessing, registering and processing information. Certainly, on Curaçao and St. Maarten not all police officers seem to recognize the usefulness of digitally registering data. As a result, a great deal of information is simply not available digitally (it is "in the heads or - if you're lucky - in the notebooks"), according to a representative of a chain partner. To remedy this situation, participants believe it is necessary not only to provide training in digital data entry, but also to manage the day-to-day. If police records are entered, the problem is that different police forces/services use different systems. For example, ActPol, Summ-it, but also generic data and word processing programs such as Microsoft Excel and Microsoft Word are used. Finally, reference is made to mutual distrust. Requests for information seem to be rejected simply because it is not sufficiently clear what the chain partners intend to do with it. Fear of 'leaks' appears to play a role here, but also fear of weakening one's position."

Investigations by the Council reveal that these findings are still largely applicable. For example, the Council's *Trafficking in Persons/Human Smuggling Report* (2019)⁶⁴ states that the Intelligence Center St. Maarten (information hub) is a partnership between: KPSM, Interpol St. Maarten, Financial Intelligence Unit, OM, National Detectives Agency, Customs, Coast Guard Caribbean and the Support Center St. Maarten, and the RST. In addition, the report reveals that:

"Following a pilot phase in which the organizations invested mainly in the relationship, trust and knowledge of each other's practices, the ICSM was formalized in June 2019 and guaranteed for the future with the signing of the cooperation agreement. This agreement provides the partners with the leeway to exchange information and expertise. The tasks of each partner can thus be carried out in a more focused manner and products and services can be collectively developed."

The LSM interviewee reports that all organizations involved, submit filtered information to the information hub (Infodesk KPSM). Each organization has a designated contact person and interdepartmental consultation takes place on a quarterly basis. The collaboration is proceeding well according to several interviewees and is considered worthwhile. One person indicated that it was not clear to what extent all the participating services actually provide information to the information hub.

During this investigation, it became clear that people continue to report that they rely primarily on people rather than the formal structure. Several interviewees from the various agencies painted a picture of the collaboration proceeding more smoothly because they already know each other from other settings.

In 2020, the Evaluation Committee's finding on the digital recording of data included in section 5.3 was

⁶⁴ Law Enforcement Council (2019) *Inspection on the Approach to the Trafficking in Persons and Human Smuggling in Sint Maarten*.

affirmed by interviewees and the impact on information sharing/collaboration outlined above, was also cited. With regard to the Evaluation Committee's finding of mutual mistrust, this inspection reveals that the project relating to the joint procurement of SUMM-IT by the countries faltered partly because each country wanted to retain ownership of its information and did not want to locate the server remotely.

6.3 Kingdom

Sister agencies

In recent years, according to interviewees, there has been little cooperation - other than ad hoc - at the operational level between the National Detectives Agencies. In addition, there has been virtually no cooperation between the LSM and the Kingdom Detectives Agency. According to the current deputy head, the aforementioned cooperation agreement with the Kingdom Detectives Agency explicitly excluded assistance because they were also struggling with a capacity shortage. The agreement was mainly about the deployment of the LSM for Saba and St. Eustatius and support in the area of information services.

The Attorney General's Office also refers to a proposal presented at the January 2018 JVO to strengthen the National Detectives Agencies and promote cooperation among the sister agencies. The proposal was to establish a working group consisting of representatives from the various National Detectives Agencies, the Kingdom Detectives Agency and the Public Prosecutor's Office to advance a cooperation plan. At the January 2019 JVO, the proposal was positively received, but additional questions were raised on a number of financial aspects, with St. Maarten proposing that these be discussed with the AG. The decision was taken that these aspects would be fleshed out ahead of the next JVO. The topic of the National Detectives Agencies was raised at the JVO in July 2020, and those involved again reacted positively on the cooperation proposal. This included exploring the possibilities of cooperation between the sister agencies and specifically sharing experts, training and internships.

The Ministry supported the LSM on the cooperation proposal in the preparing of the documents for the JVO. The Attorney General's Office also adds in rebuttal that if documents have to be submitted to the JVO, this is formally done by their Office. The Ministry also believes it is beneficial to take this kind of initiative, given that it is unrealistic that every national detective agency possesses all the required expertise.

In addition, interviewees from the Attorney General's Office reported that in December 2019, National Detectives Agency-days were organized by the Attorney General's Office for the purpose of bringing the National Detectives together. From Aruba, a prosecutor was found willing to teach a course. For the promotion of cooperation, they consider it important to see and speak to each other. In addition, they indicated that the cooperation between the Kingdom Detectives Agency and the National Detectives Agencies has always been good. The organizations know how to approach each other when necessary and exchange ideas. This does not require a covenant, even though there is one, according to the interviewees from the Attorney General's Office.

Moreover, since August 2020, the Kingdom Detectives Agency maintains a branch office on Bonaire which is staffed with two Kingdom Detectives. Via local announcements, it was communicated that this branch in the Dutch Caribbean will work intensively with the Kingdom Detectives Agency in the European Netherlands and with the National Detectives Agencies of Curaçao, Aruba and St. Maarten.⁶⁵

⁶⁵ [Rijksrecherche gestationeerd op Bonaire \(antilliaansdagblad.com\)](https://rijksrecherche.gestationeerd.op.bonaire.antilliaansdagblad.com)

Detective Cooperation Team

As indicated previously, there is a protocol on specialized detective cooperation between the countries of the Kingdom. This protocol was amended on January 23, 2019, on the basis of Article 57a of the Kingdom Police Act. According to Article 2 of the protocol, detective cooperation includes the availability of investigative facilities at the individual police forces and the further development thereof for the purpose of effective law enforcement. The availability of capacity and expertise is also mentioned, including support for the countries' national detectives. The cooperation also includes the improvement of the joint handling of criminal investigation information, according to the protocol.

The first paragraph of Article 8 of the protocol states that the RST shall consist of at least one or more central teams as well as a decentralized team in each country. The Policy Plan on Criminal Investigation Cooperation states that the focus of the central (team 1) and decentralized teams of the RST, is to combat cross-border/transnational crime; combatting corruption is the approach of the TBO (central team 2). The latter takes place in a professional, protected investigative environment and these corruption investigations have an embargo status, as stated in the Cross Border Crime Policy Program 2016-2020. Furthermore, in addition to this arrangement, the RST makes a number of FTEs available to the National Detectives Agencies within the Kingdom, including St. Maarten. Two detectives were temporarily seconded to the LSM for that purpose. Furthermore, in order to facilitate the deployment of the central RST teams, the required information must be made available by the countries.

The former deputy head reported that if the TBO requires information, a substantiated request must be made on a case-by-case basis, after which the information can be provided. In addition, a lot of work is performed with the TBO at the operational level, which has resulted in the upgrading of the digital information management. The current deputy head acknowledges that most substantive cooperation takes place with the TBO because of the type of investigations, which almost always involve financial and digital investigative work. A request for assistance from the TBO takes place informally between the COZ and the RST team leader and is generally granted, provided that the TBO itself does not require the expertise, according to the current deputy head.

7. Analysis, conclusion and recommendations

Introduction

In this investigation, the Council examined the extent to which the National Detectives Agency is equipped to perform its duties. To answer this question, the Council formulated six sub-questions. An analysis was performed on the basis of the sub-questions, followed by the conclusion and the recommendations.

7.1 Analysis

How is the National Detectives Agency organized?
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Criterion: The country has established its own National Detectives Agency. The organization is based on up-to-date legislation and regulations and the required policies are in place. In practice, the organization has been set up in accordance with the requirements so that the tasks can be carried out adequately.

In compliance with the Transitional Regulation on the Decentralization of the Netherlands Antilles (2009), the Country St. Maarten has operated its own National Detectives Agency for over 10 years. As of October 10, 2010, the (national) Detectives Agency is integrated at the Kingdom level in the Kingdom Act on Police (2010), and at the country level the LSM is embedded in the national legislation based on the National Ordinance on Structure and Organization of National Government (2010), the Organizational Decree on Justice (2010) and the National Decree of the National Detectives Agency (2013). There is also a specific instruction on the tasks and deployment of the National Detectives Agency (2016). Based on the above, the legal framework regarding the National Detectives Agency is largely up to date. The Decree of the National Detectives was published in 2013, however, the provisions have been adopted, almost identically, from the 2007 Decree. In the Explanatory Memorandum of the 2007 Decree, the Government argues that by including the National Detectives Agency in the Police Regulations 1999, a separate National Ordinance for that organization was obviated. Currently, the National Detectives Agency is not part of the KPSM and is not mentioned as such in the National Police Ordinance (2010). In contrast to the police, there is no specific provision in the current legislation stating that the establishment and organization of the LSM must take place by National Ordinance, but in the National Ordinance on Structure and Organization of the National Government, it is stipulated that further regulation must occur by LBHAM. This is also stipulated in the National Decree of the National Detectives Agency. According to the Council, this is in accordance with the law. The above is, of course, according to the Council, separate from the (possible) desirability of a National Ordinance for the LSM. It is up to the legislature, however, to establish such a regulation if required.

Despite the ongoing process, 10 years after the establishment of the LSM, a formalized function book for the National Detectives Agency has not yet been published. The Council has no knowledge of the content of the function book (currently being established) for the Ministry of Justice, but assumes that with the formalization thereof, the bottlenecks experienced to date, can finally be (largely) resolved. The relevance of, and lack of clarity surrounding, the two existing legal status decrees, was a bottleneck for years, but this was recently resolved with the advice from the Council of Advice, wherein it was concluded that the KPSM Decree is the applicable decree. In practice, there is a lack of clarity as to whether this decree also applies to the LSM or whether the LSM should have its own decree. According

to the Council, the name of the decree implies that it only applies to the KPSM. Two articles of the Decree of the National Detectives Agency also declare specific legal status provisions in the KPSM Legal Status Decree as applicable by analogy to the LSM. Therefore, according to the Council, it can be concluded that the KPSM Decree, as such, is not applicable to the National Detectives Agency. Given that the intention is, apparently, to repeal the older KPNA Decree 2000, a legal status decree will have to be prepared for the National Detectives Agency.

The Council also noticed a number of discrepancies. In the Organizational Decree, one of the three specified tasks of the National Detectives Agency specifies that the agency is responsible for initiating investigations of a criminal nature within the police force on the instructions of the Minister and the Public Prosecutor's Office. However, in this regard the National Decree of the National Detectives Agency contains no further information on the Minister's position. In the absence of the elucidation on the Organizational Decree, it is not possible for the Council to determine whether it explains the intention of the legislator. The National Decree mentions that, according to mutual need regular consultation between the head of the National Detectives Agency and a National Detectives Committee will take place, however there is no further mention or definition included in the 2007 Decree, which expired in 2013. Since there are several areas where ambiguities exist, the Council recommends examining the extent of the need to (further) update the National Decree of the National Detectives Agency.

The LSM is organized in accordance with both Kingdom and local laws and regulations. There is a National Detectives Agency, consisting of an operational affairs department (tactics and TCI) and a business management department. However, to date it has not been possible to reach agreement on the size of the organization nor on a final organizational structure. The independence of the LSM emphasized in the law and plans is, according to the Council, insufficiently guaranteed. Due to the lack of (further) implementation of the management, and subsequently, the policy by the Ministry, the independent functioning of the LSM, referred to in the organization plan, is compromised and the LSM occupies an undesirable and dependent position in several areas. Tangibly this translates into financial dependence (insufficient funds to carry out the work), and dependence in the area of practical matters (dependence on shared services of the Ministry). The fact that in practice there have been deviations from the organization plan also leads to considerable bottlenecks (e.g., communication ministries, shortage of petty cash, failure to make payments) during the execution of tasks. The LSM's desire for independent financial management has again been highlighted in this inspection.

The LSM's plan of action was characterized by the Progress Committee in 2015 as, sufficiently finalized. The assumption was that the LSM would continue to develop in the intended direction, however, since then there has been little quantitative or qualitative growth overall. Recommendations issued by various bodies, including the Council, have hardly been addressed, if at all. This results in the following state of affairs.

Table 4: Status of recommendations of previous Council investigations.

Year	Recommendation	Review 2019	Status 2021
2014	Engage the National Detectives in all cases where the service is authorized by law.	NA	Not followed up
2015	Pursuant to the law, provide for a general political-administrative policy with respect to the National Detectives that takes into account the proper	Not Followed up	Not Followed up

Year	Recommendation	Review 2019	Status 2021
	performance of duties and an adequate infrastructure for effective management support.		
2015	Implement the National Detectives Agency improvement plan.	Not Followed up	Not Followed up
2015	Ensure that the National Detectives Agency is strengthened in accordance with the staffing plan so that the lack of capacity and expertise can be addressed on a structural basis.	Not Followed up	Not Followed up
2015	Provide a business process system for the National Detectives Agency.	Not Followed up	Not Followed up
2018	Provide the National Detectives Agency with readers for digital data media.	NA	Not Followed up
2018	Establish required work instructions, operating procedures, and/or memoranda regarding the activities supported by the digital analyst.	NA	Addressed

The Council concludes that an overarching policy for the LSM is still absent. Although there are several plans (plan of approach, organization plan, improvement plan, annual plans, etc.) on paper for how the LSM should develop as an organization, the objectives included in these plans have largely not been realized, and any plans that do exist are unsuitable, outdated or incoherent. The improvement plan with the goal of a full-fledged agency has - as already noted by the Council - not been implemented. Furthermore, the organization plan and improvement plan were not converted, for years, into annual plans by the LSM, this was also observed in previous Council inspections. It is only since 2019 that the National Detectives Agency has complied with the legal requirement of preparing an annual plan, financial statements and annual report.

The inspection reveals that neither the Ministry nor the Public Prosecutor's Office/Office of the AG are involved in setting the (annual) targets for the LSM, and there is a lack of necessary synchronization between the budget allocated by the Minister, the Public Prosecutor's Office/Office of the AG criminal justice approach on integrity, and the LSM's annual plans. The absence of annual reports until 2019, also results in a lack of accountability for the prior period and the failure to meet targets in the prescribed manner. The Council observes that the foregoing affects the management, supervision, coordination, communication, accountability and public support for the LSM.

All those involved indicated that the plans did not result in a fully-fledged LSM. The vast majority put the blame for the failure of the agency on the organization's management shortcomings. There was, allegedly, insufficient support from the Ministry to facilitate the LSM's tasks and objectives. The Council shares the concerns of the stakeholders regarding management.

The Council has previously expressed its view that the separation of management and authority is adequate but believes that the Minister should have established policy. This is still an issue and remains unresolved. The Council also perceives a (partial) lack of (qualitative) management at all levels over the years. This applies to the management from the Ministry, the OM/AG and the operational management by the head of the organization. This is understood to mean guidance on:

- budget

- types of investigation;
- prioritization;
- available capacity;
- expectations of all parties.

In the Council's opinion, effective management is necessary for the achievement of objectives and requires not only a plan, but also specific development and implementation.

The plans of the Public Prosecutor's Office concerning the criminal approach to integrity-related crimes are included in the policy program on cross-border crime. Therein reference is made to the LSM's improvement plan. The Attorney General's Office (AG) has envisioned a new plan for the continued development of the LSM, but no formal evaluation of the improvement plan has taken place. The Council welcomes the intention of the Attorney General's Office to draw up a new, and up-to-date plan for the further development of the LSM but believes that it would be prudent to first conduct an evaluation to gain a better understanding of the conditions required to improve the feasibility of a plan.

The purpose of the Instruction was to overcome the limited capacity at the LSM, to create clarity in the allocation of cases to the National Detectives Agency, and to prioritize these cases. In short, better supervision from the Public Prosecutor's Office. The Council concludes that the Instruction does not provide enough clarity, not so much in terms of content, but more in terms of application. According to the Council, information to the various parties (at the operational level) is needed regarding the Instruction and its application to avoid misunderstandings, for example, about the tasks the LSM can or should be entrusted with. Besides, according to certain parties, the decision by the OM about which organization should investigate a case sometimes does not materialize. In addition, despite the arrival of a new head, the BIZ has limited capacity causing cases to sometimes fall to the LSM. The Council considers it important that steps are taken to staff the BIZ in accordance with, at least, the staffing plan. Furthermore, in the context of legal certainty, the Council deems it undesirable to everyone involved that in certain cases, a decision of the Public Prosecutor's Office is unnecessarily delayed.

Which methodology does the National Detectives Agency use?
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Criterion: The tasks and objectives of the LSM are prioritized by the AG/OM and known to all parties. These have been converted into the necessary work and process descriptions.

The legal duties of the LSM are as follows:

- Conducting criminal investigations within the civil service or with respect to holders of public office (hereafter: a-task);
- the initiation of investigations of a criminal nature within the police force on the instructions of the minister and the public prosecutor's office (hereafter: b-task);
- providing assistance on the instruction of the AG (hereafter: c-task).

These tasks have been further defined in the National Decree on the National Detectives Agency.

The manner in which these tasks are performed is defined in part in writing in the organization's work- and process descriptions, and the LSM is still working on a portion of these. The Council determined that, in practice, the tactics department largely does not use the existing written processes and procedures. The reason is partly because some staff members are not familiar with the work- and process descriptions and also, the experienced detectives do not consider this necessary in view of

their familiarity with the investigative work, nor is it required by the managers. The Council concludes from its findings that operating in this way serves the present purpose, as no bottlenecks were identified in this respect. Even though this currently satisfies the existing staff, it is however important that the work- and process descriptions are formally established. Defining these is important as a reference point for both existing and new staff, as well as for management. Describing the work processes also provides staff with an overview and insight and promotes communication, which can contribute to the further professionalization of the agency.

A new CRO assumed office in August 2020. No CCLR consultations took place for about six months prior to that. This, in the Council's view, is highly undesirable and not conducive to the continuity of operations, given the type of operations being undertaken by the LSM. The Council is of the opinion that it is up to the AG to ensure that agreements between the LSM and the Public Prosecutor's Office regarding the processing time of the investigations are documented and complied with.

The prioritization of investigations should also take place during the CCLR. The inspection shows that not all interviewees agreed with the prioritization by the Public Prosecutor's Office. It was asserted that (larger) corruption investigations (a-task) had to be put aside relatively frequently to deal with (smaller) cases against police officers (b-task), and the "whims of the day" which impact the processing times of the investigations and the outcomes; the processing times often do not fall within the established timeframes. The Council observes that there are different opinions about the kinds of cases the LSM should handle and believes that with policy and improved consultation, communication and information, it is possible to clarify this. Although the Council understands the desire of the LSM not to investigate minor cases against police officers, this is a legal (b)task like the so-called a-task. In addition, the LSM currently lacks the necessary expertise/capacity, which is a requirement for conducting investigations within the scope of the a-task.

The role of all stakeholders within the chain is clear to everyone, however, it has emerged in various inspections that the subject of communication between stakeholders remains a bottleneck. While this is a subject that will require continued efforts from everyone, the current communication between the Public Prosecutor's Office and the LSM is a source of concern to the Council. Expectations and perceptions about the role of the Public Prosecutor as leader of the investigations is a factor. This has undesirable consequences for the communication and the conduct of the investigations. The fact that both organizations have already acknowledged the foregoing is a positive development in the opinion of the Council. The challenge now is to find a workable solution that will benefit the activities.

One of the activities included in the plan of action was the preparation of an integrity profile analysis. This was not done. It was stated that the various reports published over the years provide sufficient insight into the integrity issues on the island. Although these reports certainly have added value, the Council believes that the LSM will definitely benefit from an up-to-date overview. By means of the insights gained from the investigations and from their expertise and work, an integrity profile analysis can be prepared based on which the LSM, and stakeholders, can obtain a thorough, up-to-date overview.

Are the resources at the National Detectives Agency's LSM's disposal sufficient?

Criterion: The LSM has sufficient proper resources (material and financial) available for the safe execution of its tasks.

The Council concludes that the LSM does not have the necessary basic resources at its disposal specifically, adequate capacity, and financial and material resources, which in practice means that the

work is hampered. As a result of the above, it is not possible to (adequately) invest in obtaining the quantity and quality of staff, to secure the resources required for the execution of tasks, such as the vehicle fleet, nor in the necessary equipment and supplies needed in and around the building. The inspection revealed that the Ministry did not respond to the LSM's request for an amendment to the budget for material and personnel costs, and as a result, there has been little investment in these areas in recent years. The Council has learned that the vehicle fleet is not up to standard. Repairs often do not take place or are delayed due to insufficient funds in the petty cash. Because of non-cooperation by third parties, steps have also not been taken for means of external communication. There are also bottlenecks regarding the current housing in terms of health (lack of ventilation), security and fire safety, just to name a few.

The availability of a business process system is considered by most parties to be essential for information processing and operations. The consequences of not acquiring this system, for example, is that information-driven investigations are not supported by the information system. The Council therefore expected the purchase of such a crucial and indispensable system to have been expedited. A recommendation on this matter was issued by the Council as early as 5 years ago. At the time of this inspection, a system was still not purchased, only the TCI was provided with one. The Council observes that unlike prior budgets, the 2020 budget includes reserves for the purchase of both vehicles and the required equipment for the SUMM-IT business process system. An amount for SUMM-IT has been earmarked for fiscal year 2021 as well. Accordingly, the Council anticipates that the reserved amount will actually be spent for this purpose. The acquisition will, in any case, immediately enable the LSM to improve its professionalism and efficiency.

What is the extent to which the National Detectives Agency possesses sufficient and qualified personnel?

Criterion: The LSM has enough qualitative and quantitative staff with a proper legal status to perform their function with integrity.

In 2020, the Council still cannot describe the LSM as having sufficient and qualified staff. Despite the fact that training was provided, primarily in the last year, and with respect to specific functions, the staff lacks the necessary (structural) training, and consequently does not have the required specialized expertise, for example in the area of financial investigation. The Council recognizes that the National Detectives Agency relies (very) heavily on the support and expertise of the RST. While this is necessary at the moment and the cooperation is a good thing, the secondment of personnel from the RST should not become a long-term solution, although it is beginning to resemble that. In fact, the support should be of a temporary nature, but the LSM is not making progress to be able to apply an independent approach. This makes the LSM very vulnerable, especially if the support is temporarily absent, for example due to staff changes. The Council considers it necessary to work towards a situation in which the LSM can perform its work completely independently and is able to conduct both small and large-scale investigations independently and, if necessary, can request, obtain and, if desired, also provide assistance itself. This requires the necessary investments such as the recruitment of staff and arranging training.

In addition, in practice, a number of managerial positions have been occupied by co-workers for extended periods of time due to attrition. The Council is familiar with this phenomenon within the government but points out its undesirability especially if the situation lasts for several years. The Council therefore recommends that steps be taken to qualitatively fill these positions in order to promote the development and continuity of the LSM. In particular, the position of head of the National Detectives Agency is crucial, according to the Council.

The Council already cited the function book briefly. The process started by the former acting head, to create a separate function book, appears to have been discontinued. The Ministry has set up a steering group and working group throughout the judiciary to establish the function books for the organizations within the justice chain.

The Council is optimistic about the new steering and working group and observes that the involvement of the departments in this process is crucial. The reason for this is that the further development of the departments is strongly dependent on the establishment of the function book. The bottlenecks regarding the absence of a function book (for years) have also led to disappointment among staff. Therefore, it is hoped that the aforementioned development will promote the well-being of the staff.

In discussions with chain partners, the Council established that the integrity of the organization and/or employees of the LSM is not in doubt. In addition, all staff are in possession of a declaration of no objection in accordance with the law. According to the Council the increased internal attention to integrity within the department is a good development, partly due to the recent drafting of an integrity policy and the identification of secondary activities.

To what extent does the National Detectives Agency cooperate with Kingdom- and local partners?

Criterion: In the detection of integrity offenses (corruption), the LSM serves as a reliable and integral part of the chain of organizations (local and within the Kingdom).

At present, cooperation is proving to be indispensable for the LSM due to the lack of internal capacity and expertise. The cooperation is considered good by all involved and relevant information is shared between the LSM and the chain partners during the investigation and execution of tasks. There are no cooperation agreements between chain partners and the LSM, except for those with the Kingdom Detectives Agency and the RST. The inspection revealed that cooperation is easier because people often already know each other. Even if the cooperation with chain partners is currently working well, the Council would like to see working agreements documented, to prevent the level of cooperation from being dependent on individuals. According to the Council, this poses a risk to the continuity of the cooperation should a particular person leave.

The LSM has entered into a cooperation agreement with the Kingdom Detectives Agency of the Netherlands, but the LSM makes little to no use of this agreement in the investigation of integrity violations and the identification of misconduct. This is mainly because the Kingdom Detectives Agency itself faces capacity shortages. The Council believes that this is a missed opportunity given the expertise of the Kingdom Detectives Agency and expresses the hope that with the establishment of a branch office on Bonaire there will be more room for cooperation.

According to the Council, it is clear from the JVO agenda that, for more than three years, there has been no (concrete) progress in the cooperation between the LSM and sister agencies, despite agreements to this effect. This, while it was established that until the information position of the agency improved, cooperation would be sought with other investigative agencies in the countries or with sister agencies. Given the LSM's current state of affairs, the Council believes it is important to examine whether this topic deserves placement back on the agenda to promote the agreed-upon arrangements.

The protocol on specialized detective cooperation has intensified in the region. There are cooperation

agreements with the National Detectives Agency regarding the RST/TBO, in the field of support and information supply, including with the LSM. The LSM and the RST both conduct investigations in the field of (international) anti-corruption. The Council believes that the OM/AG should coordinate their activities in this regard. The authority of the AG is also in play as it regards cooperation with other relevant (investigative) bodies, as the AG is required to establish guidelines. According to the Council, the AG's responsibility includes positioning the LSM and, where necessary, identifying the need for cooperation/support for the LSM among stakeholders at the platforms provided for this purpose.

To what extent are the desired results achieved?

Criterion: Objectives as defined in the annual plans are met and accounted for in the annual report.

The Council determined during the inspection that the desired results are absent more often than not. The PIOFACH goals and objectives regarding the primary and operational processes are presented in the 2019 and 2020 annual plans. Despite being accounted for in the 2019 annual report, most of the objectives have not been achieved. This is attributed largely to the lack of management support. Also, the investigation processing time is often exceeded. According to those involved, this is mainly due to the lack of budget, the "whims of the day" and the ambitions of the organization. The CCLR monitors, among other things, the processing time of the investigations. However, the Council has been informed that the LSM is often unable to meet the specified deadlines because it is not provided with the required resources by management. This is in addition to the fact that, as mentioned above, the CCLR does not regularly meet.

Finally, the investigation also reveals that the LSM's ambition is to primarily conduct major investigations. The Council believes it is good to have ambitions but there should be a correlation between the organization's core tasks (a, b and c) and the achievement of ambitions. Ambitions should be specific and include realistic and attainable goals and priorities. Furthermore, the current facilities and the ambitions that can be feasible within that framework must be examined. The Council emphasizes again the need for synchronization between the budget, the criminal justice approach and the desired results.

7.2 Conclusion

To what extent is the National Detectives Agency equipped to carry out its duties?

The LSM is one of, if not the most, relevant investigative agency for detecting and addressing integrity issues on St. Maarten. Despite the plans to build up the agency, there are still several serious bottlenecks ten years after the establishment of a dedicated National Detectives Agency for St. Maarten. The main objective, a full-fledged agency, has not been achieved. In all aspects, LSM's functioning can be described as problematic. It lacks policy, management and direction. The LSM's resources are inadequate to achieve the objectives, in this respect, the systematic lack of budget plays a major role. Furthermore, the independence of the agency is not sufficiently guaranteed. The recommendations issued by the Council and other bodies in the different reports, concerning the aforementioned bottlenecks, have rarely been addressed, if at all. This is very worrisome considering the LSM's duties and important role. Despite all this, the staff remains committed to the organization, but deserve a (safe) place to work to properly perform their duties.

The Council reiterates that the involvement of those responsible for the service, namely the Minister,

AG and the head of the LSM, is crucial for the (continued) development of the agency. Proper coordination is essential. At present, there is insufficient attention and coordination among management and authority. However, the Council in 2020 still believes that the separation between authority and management is adequate despite the concerns expressed by several parties. The reason is that the Council believes that with the appropriate policy, this separation can be achieved. The support and responsibility of the Minister is essential in this. Several consultation structures are in place at the strategic level. These consultative structures can be beneficial, including the Tripartite Consultation, the Management Consultation and the JVO. More attention, coordination and financial resources for the agency will certainly have an effect on the continued development of the LSM. The Council explicitly requests that attention be paid to this.

While having an annual plan and annual report is no guarantee of achievement of goals, it does provide the necessary guidance to determine the LSM's direction and allows for monitoring. The annual plan and associated budget must be formally approved by the Minister. The annual report, on the other hand, must only be submitted to the minister and the AG. Although it is not legally stipulated, the Council recommends that responsible parties get involved in the content of the LSM's annual plan in order to manage expectations and create more acceptance.

The Instruction is primarily intended to overcome capacity problems, that have existed at the LSM since 2010. In 2020, the LSM still has a capacity problem. As a result of limited capacity, the LSM is not able to focus on all investigations and the "whims of the day" prevail. Investigations remain pending for prolonged periods of time or cannot even be addressed. The Council considers this to be highly undesirable.

The legal status of the LSM's civil servants is described in laws and regulations but there is still a lack of clarity on it. The corresponding job descriptions and appraisals have not yet been formalized. Finally, the process seems to be moving forward. However, with the current state of affairs, it is unclear whether the LSM will be able to successfully grow to the planned staffing and legislation with sufficiently qualified personnel. Also because of the national budget of St. Maarten and the past difficulties in recruiting personnel. The Council therefore recommends examining whether the structure and staffing envisioned in the plans and legislation can be converted into a feasible staffing plan using a realistic budget.

The Council concludes that the LSM is currently not in a position to (independently) perform its legal duties (optimally). The fundamental conditions for this are absent. The LSM is heavily dependent on the support of the RST/TBO in terms of manpower and resources. Subsequently, the limitation in type and number of investigations the agency is able to conduct carries the necessary risks. These limitations will need to be identified to determine what risks the country faces should there be no further investment in the agency. An integrity profile analysis could serve as input. Furthermore, the Council assumes that integrity within public administration has the necessary ongoing attention from the Minister and stakeholders, and that steps will be taken in the short term to provide the LSM with the necessary investments.

The Council will revisit and/or update issued recommendations not yet addressed but that are still applicable and will provide new recommendations for the continued development of the agency.

7.3 Recommendations

The Council recommends the following to the Minister of Justice:

1. Investigate to what extent the National Decree of the National Detectives Agency requires (further) updating;
2. Provide a regulation on the legal status for the National Detectives Agency;
3. Adopt the earlier recommendation issued by the Council concerning "*an overall political-administrative policy with respect to the National Detectives Agency observing proper performance of tasks and an adequate infrastructure for effective management support*";
4. In keeping with the Council's previous recommendation, secure a business process system for the National Detectives Agency;
5. As previously recommended by the Council, ensure that the National Detectives Agency acquires readers for digital data carriers;
6. Formalize the LSM's function book and establish the associated organizational structure;
7. Provide staffing for the National Detectives Agency in accordance with the established staffing plan;
8. Provide the yearly allocation to the agency's budget based on the agency's annual plan;
9. Promote cooperation between the LSM and sister agencies including using or continuing to use the platforms available for this purpose, such as the JVO.

With regard to the Attorney General's Office AG/OM.:

1. Conduct an evaluation of the National Detectives Agency improvement plan;
2. As recommended previously, ensure (in due course) that the National Detectives Agency is involved in all cases for which the agency is legally authorized;
3. Ensure a strong(er) presence of the National Detectives Agency at designated platforms, e.g., the JVO;
4. Provide continuity in the CCLR for the purpose of prioritizing and directing cases of the National Detectives Agency;
5. Provide in the short-term education to stakeholders regarding the contents and application of the Instruction for National Detectives Agency.

With respect to the LSM:

1. In accordance with the law, continue the preparation of an annual plan and, in its preparation, accommodate the involvement and input of the Ministry with respect to policy and budget and accommodate the involvement and input of the Public Prosecutor's Office/AG in regard to the criminal justice approach. The above is necessary to further the achievement of agency objectives;
2. Prepare the necessary work- and process descriptions relative to all departments;
3. In time, establish an integrity profile analysis.

Colophon

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