



General review of recommendations

Sub-inspections 2:

Crime Prevention Fund;

Investigative and prosecutorial policies of the Public Prosecutor's Office;

Enforcement of fines, damages and dispossessions;

The Public Prosecutor's Office in Incident-based Investigation;

Cooperation between Public Prosecutors offices.

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List of abbreviations

| <i>Abbreviation</i> | <i>Definition (Original Dutch terminology)</i> |
|---------------------|--|
| (Act)BMS | Border Management System (Immigration system) |
| Actpol | Law enforcement system used by police and investigative services in the law enforcement chain in the Caribbean part of the Kingdom |
| AR | General Criminal investigations (<i>Algemene Recherche</i>) |
| BES | Bonaire, Sint Eustatius, and Saba |
| BIZ | KPSM Internal Affairs Office (<i>Bureau Interne Zaken van het KPSM</i>) |
| BPZ | Basic Police Service (<i>Basis Politiezorg</i>) |
| CCLR | Coordinating Committee for National Detectives Agencies (<i>Coördinatie Commissie Landsrecherche</i>) |
| CJIB | Netherlands Central Judicial Collection Agency (<i>Centraal Justitieel Incasso Bureau Nederland</i>) |
| CvK | The Council of Police Chiefs (<i>College van Korpschefs</i>) |
| COZ | Operational Affairs Coordinator of the National Detectives (<i>Coördinator Operationele Zaken van de Landsrecherche</i>) |
| CRO | Coordinating Investigating Officer (<i>Coördinerend Recherche officier</i>) |
| Dean | Dean of the Bar Association (<i>Deken van de orde van Advocaten</i>) |
| DBB | Decision di biaha (equivalent retaliation approach in Aruba) (<i>lik op stuk aanpak</i>) |
| Flexpool Kmar | Flexibly deployable pool of Royal Marechaussee (<i>Flexibel inzetbare pool Koninklijke Marechaussee</i>) |
| Fund | Crime Prevention Fund (<i>Criminaliteitsbestrijdingsfonds</i>) |
| Hoofd JZ | Head of Judicial Affairs (<i>Hoofd justitiële zaken</i>) |
| HOvJ | Chief Public Prosecutor (<i>Hoofdofficier van Justitie</i>) |
| IGD | Immigration and Border Protection Service (<i>Immigratie en Grensbewakingsdienst</i>) |
| JASAP | Justice as soon as possible |
| JVO | Four-Party Judicial Consultation (<i>Justitieel Vierpartijenoverleg</i>) |
| KMar | Royal Marechaussee (<i>Koninklijke Marechaussee</i>) |
| KPSM | Sint Maarten Police Force (<i>Korps Politie Sint Maarten</i>) |
| LIOL | National Ordinance Structure and Organization of National Government (<i>Landsverordening inrichting en organisatie landsoverheid</i>) |
| LR | National Detectives Agency (<i>Landsrecherche</i>) |
| LV CF | National Ordinance crime prevention fund (<i>Landsverordening criminaliteitsbestrijdingsfonds</i>) |
| MoJ | Minister of Justice |

| | |
|---------------|--|
| Oio | Initial training of the Public Prosecutor's Office known as Prosecutor in training (<i>Initiële opleiding van het Openbaar Ministerie genaamd Officier van Justitie in opleiding</i>) |
| OM | Public Prosecutor's Office (<i>Openbaar ministerie</i>) |
| OM-Carib | Public prosecutor of Curaçao, Sint Maarten and BES and Aruba |
| ORVG | Mutual arrangement for strengthening border control Sint Maarten (<i>Onderlinge Regeling Versterking Grenstoezicht</i>) |
| OvJ | Public Prosecutor (<i>Officier van Justitie</i>) |
| PBB | Paga bo but (<i>pay your fine</i>) |
| AG (P-G) | Attorney General (<i>Procureur-Generaal</i>) |
| PRIEM | An internally restricted and secured system of the Public Prosecutor's Office |
| Council | Law Enforcement Council |
| RCN | Dutch Government Department for the Caribbean (<i>Rijksdienst Caribisch Nederland</i>) |
| Rijkswet OM's | Kingdom Act on Public Ministries of Curaçao, Sint Maarten and BES (<i>Rijkswet Openbare Ministeries van Curaçao, van Sint Maarten en van de BES</i>) |
| RIMOZ | Criminal investigation in multifaceted cases (<i>Recherche in meeromvattende zaken</i>) |
| RST | Detective Cooperation Team (<i>Recherche samenwerkingsteam</i>) |
| S-G | Secretary-General of Justice |
| SJIB | Foundation for Judicial Institutes of Sint Maarten (<i>Stichting Justitiële Instellingen Sint Maarten</i>) |
| SUR | Special unit robberies of the KPSM |
| TOL-C | Tactical Operational Leadership for the Caribbean in collaboration with the Police Academy (<i>Tactisch Operationeel Leiderschap Caribisch gebied in samenwerking met de Politie Academie</i>) |
| Wet USB | Netherlands Criminal Procedure (Enforcement) Act (<i>Wet tenuitvoerlegging strafrechtelijke beslissingen</i>) |
| Act. S-G | Acting Secretary General of Justice |
| WvSr | Penal Code of Sint Maarten (<i>Wetboek van Strafrecht van Sint Maarten</i>) |
| WvSv | Code of Criminal Procedure Sint Maarten (<i>Wetboek van Strafvordering Sint Maarten</i>) |
| Zwacri | Team that handles major criminal cases at the KPSM (<i>Team dat zware criminaliteitszaken behandelt</i>) |
| | |

Preface

In 2020, the Law Enforcement Council (hereafter: the Council) in Sint Maarten launched an overall inspection about the implementation of recommendations issued by the Council through 2018¹. Considering the large volume of recommendations, it was decided to conduct sub-inspections, each dealing with a limited number of topics. This is the second sub-inspection. It examines the extent to which the recommendations relating to five topics have been addressed. This concerns the following reports:

- [Crime Prevention Fund \(2018/2019: 6 recommendations\)](#)²;
- [Review of the investigative and prosecutorial policies of the Public Prosecutor's Office; \(2019: 10 recommendations\)](#);
- [Review Enforcement of fines, damages and dispossessions \(2018: 3 recommendations\)](#);
- [Review of the Public Prosecutor's Office in Incident-based Investigation \(2017: 6 recommendations\)](#);
- [Cooperation between Public Prosecutors offices \(2018: 4 recommendations\)](#).

This second sub-inspection reveals that of 29 recommendations, six were fully complied with, nine were partially addressed, and fourteen recommendations were not implemented. Once again, this inspection demonstrates the commitment of the justice organizations to comply with the Council's recommendations. The efforts undertaken by the various organizations are proof of this. In practice, however, the adoption of the Council's recommendations often does not take place. This is usually due to a lack of fundamental prerequisites. Furthermore, the Council also notes other influential factors. A strategic vision, priority setting and proactive management of (chain) objectives are needed within the judicial chain. The Council considers both the Public Prosecutor's Office and the Ministry of Justice as having important roles to play in this respect. At present, initiatives within the justice system remain fragmented, despite the need for more integration.

As with previous Council investigations, the organizations and individuals involved participated in a constructive manner. The Council reiterates its sincere gratitude to the individuals who were provided their assistance.

We hope and expect that this inspection will prompt the Minister of Justice (hereafter also referred to as: the MvJ) to take prompt action in those cases where recommendations have not been (fully) addressed or implemented. The Council will continue to periodically monitor the progress of the outstanding recommendations.

THE LAW ENFORCEMENT COUNCIL

M.R. Clarinda, LL.M, chairperson,
L.M. Virginia, LL.M
Th.P.L. Bot, LL.M

¹ This is consistent with the review period of (at least) 2 years used by the Council. However, it is possible that the Council will include the results of the review reports through the year 2020 in the sub-inspections as a part of the general review, since they do not contain any new recommendations but evaluate the compliance of previously issued recommendations.

² With regard to the Fund, the status of the extent of compliance with recommendations made in the reports "The Enforcement of Fines, Damages and Dispossessions in St. Maarten" (2014 and 2018) and "The Crime Prevention Fund (2018/2019)" will be discussed.

Summary and recommendations

Summary

Introduction

During the period 2012 through May 2021, the Council on Sint Maarten issued a total of 53 inspection reports on a variety of topics, all containing recommendations, including 19 related to follow-up inspections (reviews). In each case, the reports revealed the persistent shortcoming; a lack of follow-up of the recommendations. The Council specified in its 2020 Annual Plan that in Sint Maarten, the greatest benefit possible is from an in-depth general review of recommendation compliance for each judicial organization for the period from 2011 to 2018³, that will allow the Council to form a more comprehensive and coherent impression of the compliance and associated bottlenecks. Thereafter, progress can be monitored using all findings.

Considering the large number of recommendations that were not implemented, the general review will be conducted in phases using sub-inspections, with a final report after the completion of all sub-inspections. The sub-inspections focus on the extent to which the Minister of Justice and the judicial organizations acted on the Council's recommendations. This second sub-inspection addresses the extent to which the recommendations from five reports about the Prosecutor's Office and the Crime Prevention Fund (hereafter also referred to as the Fund) were implemented:

[Crime Prevention Fund \(2018/2019: 6 recommendations\)](#)⁴;

[Review of the investigative and prosecutorial policies of the Public Prosecutor's Office; \(2015/2019: 5 recommendations\)](#);

[Review Enforcement of fines, damages and dispossessions \(2014/2018: 3 recommendations\)](#);

[Review of the Public Prosecutor's Office in Incident-based Investigation \(2013/2017: 6 recommendations\)](#);

[Cooperation between Public Prosecutors offices \(2018: 4 recommendations\)](#).

The Crime Prevention Fund

In 2014, the Council published the report "*The Enforcement of Fines, Damages and Dispossessions in Sint Maarten*". In that report, the Council recommended including a policy plan along when submitting the budget, as well as the need to establish a steering committee to advise on the Fund. The Council conducted a separate investigation in 2018 of the management of the Crime Prevention Fund and issued a report in 2019. Among other things, the Council noted that the legal obligations stipulated in the National Ordinance Crime Prevention Fund were not being implemented consistently. The Council recommended that, at the very least, follow-up should be given to the recommendation for the policy plan associated with the budget, and the Crime Prevention Steering Committee.

In addition, the Council issued recommendations on developing a policy on behalf of the Fund; reducing the risks of improper use or abuse of the Fund; ensuring physical and electronic administration and registration for the evaluation, awarding and payment of projects; ensuring that claims benefitting the Fund are repaid; and finally, raising awareness about the Fund.

³ This is consistent with the review period of (at least) 2 years observed by the Council. However, it is possible that the Council will include the results of the review reports up to and including the year 2020 in the sub-inspections as part of the overall review, as these do not contain any new recommendations but evaluate the follow-up to previously issued recommendations.

⁴ In terms of the Fund, the status of the degree of follow-up of recommendations issued in the reports "The Enforcement of Fines, Damages and Dispossessions in St. Maarten" (2014 and 2018) and "The Crime Prevention Fund (2018/2019)" will be addressed.

The current assessment reveals that the Fund's legal framework has not changed, nor has it been further clarified since the Council's last investigation. The operational frameworks are determined by the National Ordinance Crime Prevention Fund and the National Accountability Ordinance. This implies that the Fund should be used for "financing crime prevention projects", that the Minister of Justice administers the Fund, the Head of the Judicial Affairs Department (of the Ministry of Justice) is responsible for the day-to-day management of the Fund, and that there must be policy and a policy budget for the Fund. The review reveals that in practice the terminology used in the law is interpreted ambiguously. Because of this, in practice there is still a lack of clarity about the procedures relating to requests and approval processes, on the details regarding the Fund's processes and procedures and about the information needed from relevant parties regarding the Fund's remit.

Consequently, at the time of the review, very little progress is evident in terms of compliance with legal obligations when using the Crime Prevention Fund. The daily and long-term management of the Fund are therefore compromised:

- the Fund's management and the Steering Committee for Crime Prevention are not getting off the ground;
- a policy, policy plan and associated budget or related preparation are NOT in place;
- the bookkeeping and registration is by no means in order; and
- the Fund is not receiving publicity.

On a more positive note, the Council observed that there is greater oversight and control over the Fund's assets and expenditures. However, these are not supported by formal or approved policies, processes, and procedures, from the persons legally responsible for the Fund. Accordingly, the Council considers its previous recommendations as still relevant and therefore maintains them.

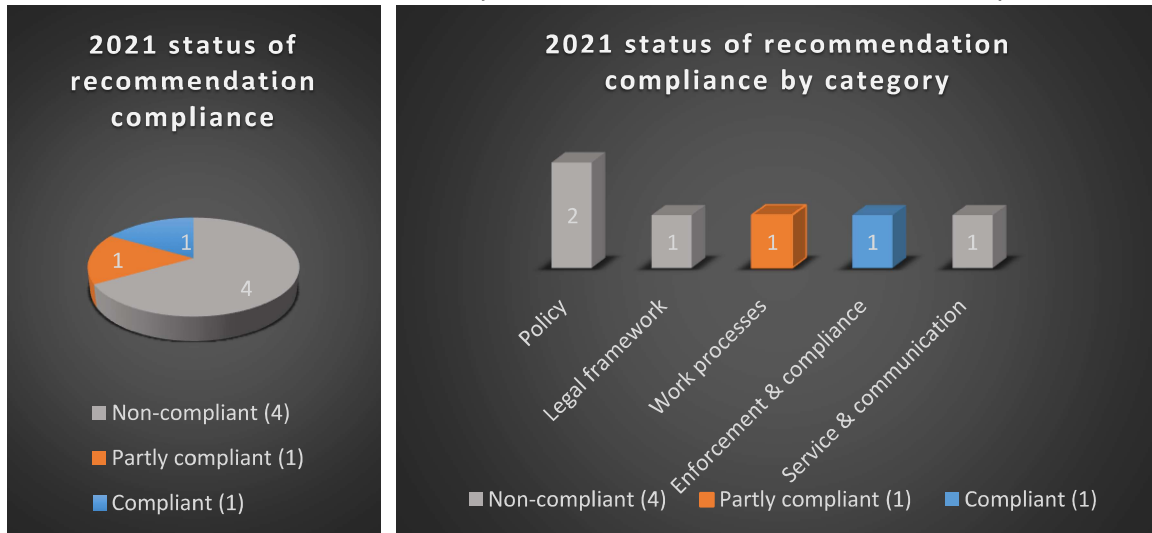
To manage the Fund and ensure greater transparency and reduce the (possible) risks of misuse, these matters must be sorted. As a result, the Ministry would receive greater insight into the Fund's procedures and objectives and be able to provide greater clarity to the parties involved in the chain with respect to the approval of projects.

Status of compliance in 2021

In 2021, of the six recommendations, one has been satisfied (reimbursement of Fund claims), one has been partly satisfied (the physical/electronic administration and compliance with Fund procedures), and four recommendations remain unaddressed (implementation of legal obligations, drafting of policy, National Ordinance, and publicity). Consequently, as of 2021, the compliance rate is **25%**.⁵

⁵ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

Table 1: Status of recommendation compliance from the 'Crime Prevention Fund' report



Investigative and prosecutorial polices of the Public Prosecutor's Office

The Council released a report in 2015 that included ten recommendations on "The investigative and prosecutorial policy" of the Public Prosecutor's Office. In 2019, the Council conducted a review inspection of the compliance with those recommendations. One of the 10 recommendations was found to be fully addressed. The remaining recommendations had either not been addressed, or only partially. In the April 2021 review report of the National Detectives Agency, four of these recommendations were reviewed. Therefore, five recommendations from the 2015 report, describing the latest developments, remain unaddressed or were partially implemented. The five recommendations are:

- the influence of the Public Prosecutor's Office, the Sint Maarten Police Force (hereafter also: KPSM) and the National Detectives Agency (hereafter also: LR) on the effectiveness of law enforcement;
- policy related to personnel of the Prosecutor's Office on Sint Maarten in terms of continuity and expertise of the Prosecutor's Office on Sint Maarten;
- the timely processing of criminal cases by the Public Prosecutor's Office and decision-making on prosecution;
- proactive communication and communication policy of the Public Prosecutor's Office; and finally;
- modernization of the OM's business process system referred to as PRIEM.

Based on this review, it appears that an examination was not conducted to determine how the Public Prosecutor's Office, the KPSM and the National Detectives Agency can reinforce the effectiveness of law enforcement. The Minister of Justice and the Attorney General are parties involved in the (strategic) management of effective law enforcement. The Council identifies several specific topics that will certainly have to be addressed, such as plans, cooperation agreements, quality, information (sharing), capacity, education and training, expertise, resources, and ICT. The Council notes that some initiatives have been developed, such as the formation of information hubs. However, these initiatives are *ad hoc* for priority selection. Choices are based on opportunities that present themselves, as is currently the case with policy in crimes of subversion and trends for reinforcing border control. Where Kingdom initiatives are developed and where there is (Kingdom) supervision, progress is noted in law enforcement. This is the case with developments at the Coast Guard.

In the opinion of the Council, the Public Prosecutor would have a stronger position within the chain and would be better able to manage it, if continuity of its in-house capacity was present. During the investigation, however, the Council observed that the Public Prosecutor Office had not defined a new personnel policy at the central level. However, a policy was already in the preparatory phase. Also, the Prosecutor's Office on Sint Maarten employed an 'officer in training' and made provisions to retain this candidate. In so doing, the Sint Maarten Public Prosecutor's Office was showing signs of change in support of local employment at its offices.

The Public Prosecutor does not yet have an overall case overview. This is partly due to the internal organization of the Public Prosecutor's processes and the lack of an adequate business process system (PRIEM).

Meeting reasonable deadlines also requires good interaction between partners in the investigation and adjudication phase. There are delays and stagnation in processing of cases within the investigation as well as in making timely decisions within the context of the investigation due to the lack of manpower. In selected areas of investigation, such as robbery and serious crime (hereafter referred to as *zwacri*), the situation is generally a little better, but it remains vulnerable. The same applies to the prompt processing of cases in court. Particularly for the major cases, it is important to have judges on the island. The absence of optimal staffing in the judicial organization on Sint Maarten creates bottlenecks in the quality and timeliness (processing times) of hearings. COVID-19 has made this process even more complicated, causing longer waiting times before cases are heard. According to the Public Prosecutor's Office, online hearings have not been effective in improving the quality of cases. Smaller cases proceed better according to the Public Prosecutor's Office.

The Council recognizes positive developments at the Public Prosecutor's Office in the communication and establishment of new policies and looks forward to their implementation.

Status of compliance in 2021

During the review inspection, the Council indicated that one recommendation had been addressed, and three (3) still needed to be partially (3) and six (6), fully, addressed. Based on the foregoing, the overall compliance rate was **25%**⁶ in 2019.

The Council reviewed five recommendations, the remaining four were addressed in another report (review of the National Detectives Agency). The situation in 2021 reveals that, of the nine recommendations, one has been implemented (communication), three - two of which, like in 2019, are partially implemented (human resources policy, PRIEM and processing times) and five recommendations - like in 2019 - remain outstanding (law enforcement effectiveness; LR policy; implementation of improvement plan; LR capacity; and business process system (for the status of the last four recommendations, see the LR review)). Consequently, the compliance rate is **28%** in 2021.

⁶ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

Table 2: Status of recommendation compliance in the 'Investigative and prosecutorial policy' report



Enforcement of fines, damages, and dispossessions

In 2014, the Council conducted a review of the enforcement of fines, damages, and dispossessions. This included cases handled by the Public Prosecutor's Office. Bottlenecks identified in 2014 included deficiencies in bookkeeping, complexity in the process that defendants experience when they agree to pay, and the very limited use of the available legal mechanisms to promote payment by defendants. Too many sentences resulted in non-payment of the imposed fine. The Council issued three recommendations on enforcement. These related to:

- The establishment of the accounting system to ensure reliable information on the type and size of imposed financial penalties as well as their enforcement;
- Arranging the process so that the defendant who wants to pay is facilitated; and
- The use of legal mechanisms in instances where payment fails to occur.

The 2018 review investigation revealed a slightly improved situation when it came to the registration and administration of enforceable cases. This was due to the introduction of *Paga Bo But* (PBB)⁷ where imposed traffic fines were registered. For other fines, the Public Prosecutor did not make arrangements despite the fact that PRIEM was intended for this purpose. The Council introduced a new recommendation on the implementation of Actpol and BMS.

The current review examines the status of the implementation of the four recommendations included in the 2014 and 2018 reports. It assumes four modalities, namely the implementation of: compensation (to victims); fines (general); traffic fines and dispossessions.

The Council believes that a considerable effort still needs to be made with the organization and administration of enforcement to ensure an effective and efficient process. This is particularly the case for the recommendations regarding the organization of the accounting system and the use of the legal mechanisms (authorities). The Public Prosecutor's Office is also aware of this.

The Actpol and BMS systems have been implemented but are not used for the enforcement of financial penalties. The PRIEM system is not functioning optimally:

- There is no way to process all the required data in the system;
- Data entry is successful but, the data is not readily accessible;
- Deadline monitoring is not possible in the system; and

⁷ The PBB system supports the enforcement of submitted cases, and data can be generated from the system about the type and size of imposed penalties and their enforcement.

- No (comprehensive) management information is generated from PRIEM. Also, deficiencies in the system are not corrected promptly, for example, by introducing new applications. Because PRIEM does not function adequately, the administration of enforcement orders consumes more time.

The processes and procedures relating to enforcement must also be described and organized for an adequate accounting administration. The Public Prosecutors' Office is already trying to improve this situation by bringing the public prosecutors (hereafter also: OvJ) and administrative staff together. There are also plans to recruit a bailiff and an administrative employee for this purpose. In addition, the recruitment of a project manager is also considered necessary.

As for the method of compensation for damages, victims continue to experience excessive disadvantage. They are not sufficiently assisted in filing claims for damages. If the judge grants a claim, there is little prospect of payment. This is not only due to the poor administration, but also because of the often-poor financial position of the defendant (offender) and the financial position of the Government of Sint Maarten. In major cases, the support for victims is better. The Public Prosecutor's Office created victim policies to address the needs of the victim. The policy focuses on the treatment, information, and compensation of victims.

Regarding the method of dispossessions or confiscations, it was determined that data collection is very poor. According to the Public Prosecutor's Office, statistics are recorded, but not consistently. The financial data relating to confiscations is also absent. Reference is also made to findings of the inspection of the crime prevention fund.

A point of concern is not having enforcement projects continue due to a lack of preconditions for example, limiting the *Justice As Soon As Possible* (hereafter JASAP) and the Recovery fines projects.

Besides PBB, the Council also recognizes a few positive developments:

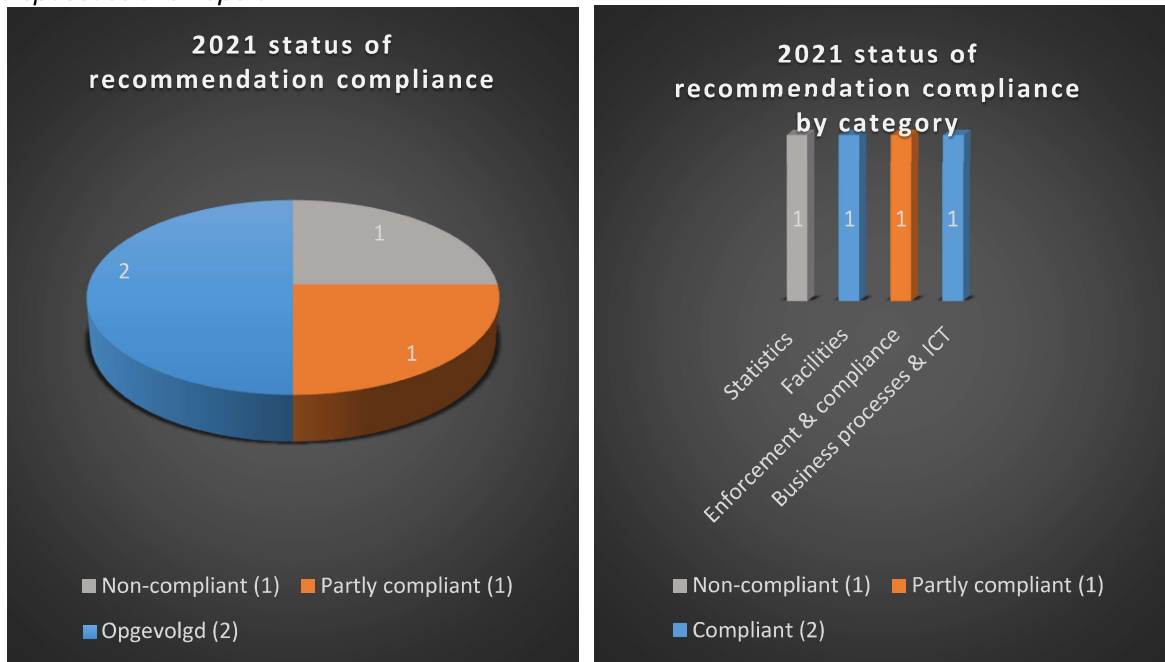
- In the interim, both administrative staff and prosecutors are involved;
- Reminders are being sent after mail delivery was halted due to Hurricane Irma (and unreliable addresses); and
- Improved management of 6-hour cases (JASAP) allows for better and swifter enforcement in those cases, although the administration of JASAP cases needs optimization.
- Additionally, there is greater awareness among the prosecution and the KPSM of the position of victims which can at least improve the enforcement of awards to victims.

Status of compliance in 2021

In the 2018 review, it became clear that all three recommendations still need to be partially (1) or fully (2) addressed; also, the Council issued a new recommendation (BMS/ACTPOL). Based on the above, the compliance rate was **17%** in 2018.

The situation in 2021 shows that of the four recommendations, two are complied with (facilitation of payment and BMS/ACTPOL), one is partially fulfilled (utilization of legal authority) and one remains unaddressed (set-up of accounting administration). The compliance rate is therefore **63%** in 2021.

Table 3: Status of recommendation compliance in the 'Enforcement of fines, damages, and dispossessions' report



The Public Prosecutor's Office in Incident-based Investigation

In fiscal year 2014, the Council investigated the role of the Prosecutor's Office in directing and supervising the selection and processing of KPSM criminal cases. Both the Prosecutor's Office and the KPSM recognized bottlenecks in the investigatory and prosecutorial process.

As part of processing cases, the Council examined the extent to which there was oversight. The Council defined case oversight as *management-level knowledge at the police and the Public Prosecutor about investigations assigned (to teams or individual detectives) or awaiting processing; prioritization; progress monitoring; the quality of police reports; the cooperation between the Public Prosecutor and the police; and the treatment of victims.*

The 2014 findings revealed that the implementation of case screening was inadequate. Bottlenecks still exist in the management and quality of case reports. The Public Prosecutor's Office was not promptly informed of incidents, and the police did not comply with criminal investigation agreements. Complainants and victims were also not notified. This review produced nine recommendations. After a review of these recommendations in 2017, it appeared that three recommendations were addressed, four were partially implemented, and two were not met.

The partially and unaddressed recommendations (6) are the subject of this review. The partially addressed recommendations relate to:

- The method for periodic review of case screening;
- Creating 'insight into cases' by designing and implementing a mechanism to recall pending cases;
- Honoring agreements made during investigative efforts with the prosecutor's office by the Police Force;
- And providing complainants and victims with adequate information.

The recommendations not addressed relate to:

- Prompt notification of the Public Prosecutor by the police prio-1 incidents; and

- Feedback from the Prosecutor's Office to the Police Force on prosecutorial convictions and court rulings.

It was already known in 2017 that case screening -as initially formulated- would not be continued. KPSM still uses the case screening system to record all cases. The Public Prosecutor's Office continues to lack a comprehensive oversight of cases. The PRIEM system has many flaws, as already outlined in the review on enforcement section of this report and is characterized as substandard.

Police capacity is continually under pressure. The Public Prosecutor states that acting on requests from the Public Prosecutor in specific cases, remains difficult due to similar capacity constraints; but also, because there are numerous other priorities within the KPSM that necessitate capacity commitment. In other words, there are again implementation problems despite a well formulated approach and increased, frequent communication with the Prosecutors regarding the JASAP difficulties. JASAP-work has been expanded to include partners. Where necessary the SJIS, Court of Guardianship and/or the school boards are included. The Public Prosecutor tries to lessen the police workload by ensuring that its approach to JASAP is less labor-intensive. For example, the Public Prosecutor's Office reached an agreement with the Court on Sint Maarten not to present entire case files in these cases anymore.

The KPSM cannot perform all investigative tasks assigned to it by the Public Prosecutors Office either. The KPSM explains that it is dependent on its available capacity. Out of necessity, investigations are sometimes delayed or limited. According to the Public Prosecutor, the situation goes further, in the sense that agreements seem to be infeasible which led to an increase in the dismissal percentage. The new JASAP has not yet been evaluated because as of this review, it has only been in operation for a short time.

The improved communication between the Public Prosecutor and the KPSM applies to priority 1 cases, the KPSM reports prio-1 cases to the Public Prosecutor more frequently. However, the notification procedure by the incident center sometimes still fails, resulting in late notification of the Public Prosecutor's Office.

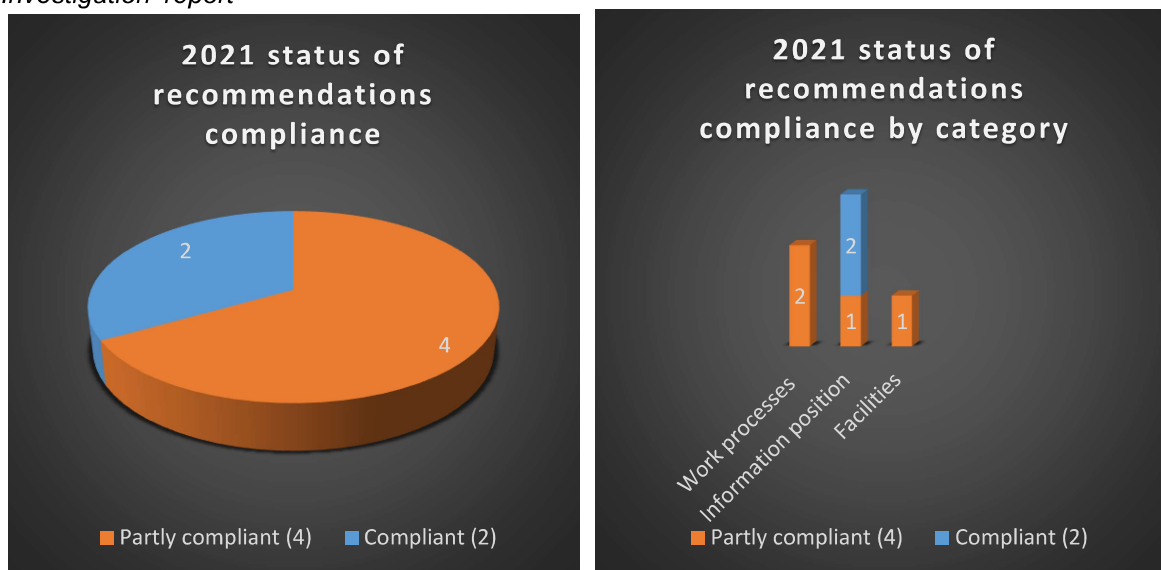
The status of the victim in the criminal procedure process is extensively discussed under the topic of enforcement of fines, damages, and dispossessions. In this review, a more operational perspective is provided. A '*Victim information form*' was produced by the Police and the Prosecutor's Office. However, the form has not yet been shared with victims because they were not printed. Furthermore, agreements are pending with Safe Haven (support for victims of violence, among other things) to collaborate on domestic violence. The intention is for the Police to receive training from an OvJ and Safe Haven. This can contribute favorably towards the treatment of the victim and provide a greater understanding of the rationale behind victim information/treatment. Likewise, this trend of involving the Police in the process is evident by the Prosecutor's Office informing the Police more effectively about the outcome of cases while the Police are sharing certain information via their intranet to motivate staff.

Status of compliance in 2021

The current situation in 2021 is that of the six recommendations, two have been addressed (feedback and communicating priority 1 cases) and four recommendations - as noted in 2017

- have been partially met (evaluation of approach, compliance with agreements, provision of information and provision of insight). The compliance rate will therefore be **78%**⁸ in 2021.

Table 4: Status of recommendation compliance in the 'Public Prosecutor's Office in Incident-based Investigation' report



Cooperation between Public Prosecutors Offices

In 2018, the Council published its first report on the topic of "Cooperation between Public Prosecutors". The focus of this investigation was on the subject matter specialization, with a particular focus on the choice of specialization development and the use of the specialized expertise at other public prosecutors' offices. The 2018 review highlighted that the choice of specializations was not necessarily based on a legal or policy principles. The choices were therefore not always disclosed to relevant stakeholders. The Council presented four recommendations in the 2018 report:

- The purpose for each of the subject matter specializations should be established and the specialists and the public prosecutor's office should be clearly informed about subject matter specializations;
- Reconsider the classification of crime type as a subject matter specialty and include the ambiguity about the status of military cases;
- Promote the linking of a Policy Officer or Public Prosecutor with each subject matter specialist; and
- Establish a training plan in conjunction with the subject matter specialists and support staff.

In this review investigation, the intention was to examine the status of compliance of these recommendations issued in the Council's 2018 report. However, during this review, the Prosecutor's Office indicated that this topic is no longer being pursued.

Findings include that cooperation has been arranged by the ministers of the Kingdom regarding more serious and cross-border crimes (art. 33 Kingdom Act on Public Prosecutors and Judicial Four Party Consultation (JVO)). These include cybercrime, terrorism, and trafficking in drugs and firearms. Instructions or guidelines have been provided at the AG/OM

⁸ To calculate the total percentage, the 3 recommendations already addressed in 2017 were also counted in this section.

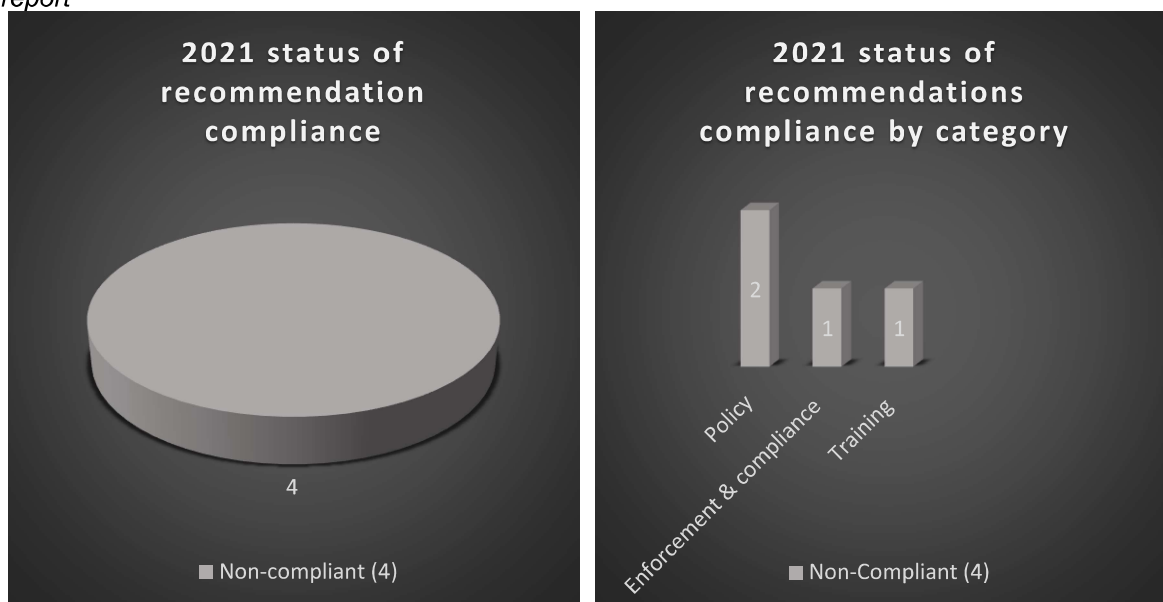
level for high impact or common crimes over the years. The 2016-2021 vision document entitled "*Perspective on Crime Reduction*" issued by the Public Prosecutor's Office of Curaçao, Sint Maarten and Bonaire, Sint Eustatius, and Saba sharpened the priorities by adding several current offenses in the context of, among others, crime of subversion, and confiscation of criminal assets. When it comes to tackling corruption, approval of the proposal for a regional steering committee in the JVO context places this responsibility directly in the hands of the AG. Additionally, the Public Prosecutor's Office has also identified local priorities. Aruba maintains local priorities as Aruba employs its own AG. The priorities chosen in Aruba are much more locally oriented, while the choices of the other countries are focused on cross-border crime. There are also differences between the countries in terms of the choices and requirements at the local level. The Chief Public Prosecutor (hereafter also: HOvJ) of Sint Maarten indicated during the investigation that there is a need for consultation within the context of cooperation between Public Prosecutors and the organization of specializations.

Given that the review investigation revealed that the subject is not being pursued, the Council strongly advises the AGs that they consult each other whether the cooperation between the Public Prosecutor's Offices should be revisited, on the continued value of having subject matter specializations and, at least, the required approach. If it is decided to use subject matter specializations, the recommendations already formulated by the Council remain relevant.

Status of compliance in 2021

As of 2021, none of the four recommendations have been addressed (identification and clarity of subject matter specialists, reconsideration of crime types, linking subject matter specialists and employees, and training plan). Therefore, the compliance rate is **0%** in 2021.

Table 5: Status of recommendation follow-up in the 'Cooperation between Public Prosecutors Offices' report'



Overall Analysis

From this second sub-inspection, it is apparent that of a total of 25 recommendations, six were fully implemented, nine were partially addressed, and 14 were not implemented (see the relevant chapters for a breakdown). In other words, overall, it can be concluded that just over half of the recommendations were either partly or fully complied with.

The capacity of organizations to work consistently on law enforcement requires further growth. Local governmental-strategic prioritization in the chain, based on an integrated vision, is required. Integration is important to focus resources and create synergy through collective efforts. The need for strategic principles can be observed in all reviews. For example, the Crime Prevention Fund requires an annual policy plan, and a determination of strategic choices for investigative and prosecutorial policies is important for effectiveness. Strategic prioritization of issues proved to be critical in the inspections related to the enforcement of sentences and incident-oriented investigations. Having determined the starting points, it is essential to support efforts to prevent these from eroding. The roles of the Minister of Justice, the Ministry of Justice and the Public Prosecutor's Office (AG) are very important in this context.

With respect to compliance with legislation and regulations, some reviews (enforcement of sentences and Crime Prevention Fund) indicate that legislation and regulations require greater compliance during the performance of work. Risks have been identified in terms of integrity and for the credibility of law enforcement in general because laws and regulations are not always adequately obeyed.

Justice-objectives are achieved using multiple stakeholders within the chain. Nevertheless, it is often apparent that the administration is organized for a small section (within an organization) of the chain and that the interaction between the components requires improvement. The investigation of the Crime Prevention Fund and the administration of assets on behalf of the Fund demonstrates this clearly. In the review of the investigative and prosecutorial policy of the Public Prosecutors' Office, this issue was at the expense of case oversight, and led to a large proportion of unenforced sentences. In the investigation into incident-based investigation, oversight was also absent. Establishing processes and procedures requires (project) capacity. This capacity is not currently prioritized or available. The actions of justice-stakeholders are not always effective or efficient, notwithstanding this, small successes have been achieved and the Council recognizes the perseverance of stakeholders. Because of this attitude, the Council anticipates future opportunities.

Table 6: Status of compliance percentage on recommendation follow-up per report

| Compliance percentage Crime Prevention Fund | Compliance percentage investigative and prosecutorial policy OM | Compliance percentage Enforcement | Compliance percentage Incident-based investigations | Compliance percentage Cooperation among Prosecutors' Offices |
|---|---|-----------------------------------|---|--|
| 2021: 25% | 2019: 25% 2021: 28% | 2018: 17% 2021: 63% | 2017: 67% 2021: 78% | 2021: 0% |

Recommendation and monitoring 2021

Based on the above, the Council's recommendation to the Minister of Justice is as follows: *Implement the Council's 23 recommendations which are not yet (fully) addressed (see also [Appendix 1](#)) and make the necessary resources available as soon as possible.* Below, an overview of the progress made regarding the recommendations is presented.

The Council will initiate periodic monitoring of progress on outstanding recommendations in 2021.

Summary of recommendation status

| Recommendations Crime Prevention Fund | Status 2021 |
|--|--------------------|
| Implement the legal requirements arising from the National Ordinance Crime Prevention Fund consistently. Make sure that the recommendations previously issued by the Council on behalf of the fund are implemented. These are: " Include in the submission of the annual budget a policy plan in which projects are listed that qualify for financing from the Crime Prevention Fund" and " Guide efforts towards the establishment of a crime prevention steering committee and involve this committee in the management of the Crime Prevention Fund". | Non-compliant |
| Establish current policies for the benefit of the Crime Prevention Fund. Include criteria, processes and procedures related to the application, processing, awarding and (justification of) decisions regarding projects and if relevant, provide any necessary definitions. | Non-compliant |
| Minimize risks regarding improper use and abuse of monies from the Fund, establish rules and protections in a National Ordinance. | Non-compliant |
| Maintain complete physical and electronic records/registration of project applications, reviews, awards and payments, and comply with related procedures and documentation resulting from applicable laws and policies as well as timely availability. | Partly compliant |
| Ensure that all claims on behalf of the Crime Prevention Fund are (re) paid. | Compliant |
| Promote greater awareness of the crime prevention fund. | Non-compliant |
| Recommendations investigative and prosecutorial policy of the Public Prosecutor's Office | Status 2021 |
| Analyze the specific opportunities available within Sint Maarten and the Kingdom to strengthen the impact of the Public Prosecutor's Office, the National Detectives Agency and the Sint Maarten Police Force. | Non-compliant |
| In cooperation with the Public Prosecutor's Office in the Netherlands, promote the development of a personnel policy at the Public Prosecutor's Office that specifically focuses on St. Maarten and that enhances the efficiency and continuity and expertise of the Public Prosecutor's Office in St. Maarten. | Partly compliant |
| Ensure that the Prosecutor's Office, in accordance with the law, processes criminal cases within a reasonable time and renders its decision to prosecute as soon as possible. | Partly compliant |
| Maintain the established course toward more proactive communication and, in addition, formulate explicit communication policies. | Compliant |
| Modernize PRIEM business process system | Partly compliant |
| As required by law, provide for a general political-administrative policy on the National Detective Agency that respects proper mission performance and adequate infrastructure for effective support management. | Non-compliant |
| Implement the National Detectives Agency's improvement plan. | Non-compliant |
| Ensure that the National Detectives Agency is reinforced in accordance with the staffing plan so that the lack of capacity and expertise is permanently remedied. | Non-compliant |
| Arrange a business process system for the National Detectives Agency. | Non-compliant |
| Recommendations enforcement of fines, damages, and dispossessions | Status 2021 |
| Organize administrative records so that reliable data can be generated on the type and size of financial penalties imposed and the enforcement thereof. | Partly compliant |
| Design the process to facilitate the defendant who wants to pay. | Compliant |
| Utilize legal remedies in event of non-payment. | Partly compliant |
| Implement Actpol and (Act)BMS. | Compliant |
| Recommendations Public Prosecutor's Office in incident-based investigations | Status 2021 |
| Collectively define the method by which this approach will be periodically evaluated and adjusted as appropriate. | Partly compliant |
| Promote and monitor, that the Public Prosecutors Office is always and promptly informed by the police force about prio-1 incidents. | Compliant |
| Promote and monitor compliance by the Police Force of agreements made with the Prosecutor's Office regarding investigative action to be taken in an investigation. | Partly compliant |
| Provide adequate information to complainants and victims. | Partly compliant |
| Design and implement a mechanism by which the caseload is reduced such that it results in 'insight into cases'. | Partly compliant |
| Provide feedback of prosecutorial and judicial decisions to the Police Force. | Compliant |
| Recommendations cooperation between Public Prosecutors Offices | Status 2021 |
| Establish what is intended by each of the subject matter specializations and create clarity among the specialists and within the prosecutor's offices. | Non-compliant |
| Reconsider the designation of crime types as subject matter specializations. Include the existing ambiguity about the status of military cases. | Non-compliant |
| Encourage that each subject matter specialist is linked to a policy officer c.q. prosecutor's secretary. | Non-compliant |
| Establish a training plan with the subject matter specialists and support staff. | Non-compliant |

1. Introduction

1.1 Introduction and basis

Introduction

As of 2012, the Council has issued more than 100 inspection reports. The Council examined the effectiveness, quality of performance and management of the organizations in the judicial chain in Curaçao, Sint Maarten, Bonaire, Sint Eustatius, and Saba, as well as the quality and effectiveness of judicial cooperation between the countries.

To date, the monitoring process has taken place using follow-up studies (reviews) performed after (at least) two years, and a yearly review as part of the State of Law Enforcement. In 2020, the Council (also) started to intensify monitoring of the implementation of recommendations to encourage the compliance and to contribute to the implementation of these recommendations.

Basis

The Council published a total of 53⁹ inspection reports in Sint Maarten on a variety of topics through May 2021, of which slightly under half have been subject to review. Of these 19 review reports, the majority reveal a bottleneck in terms of adequate compliance with recommendations. Therefore, the Council believes that Sint Maarten stands to gain, at this stage, from reviewing the compliance of all the Council's recommendations issued from the period 2011 to 2018.¹⁰

Therefore, starting in 2020, the focus is on an in-depth general review of the implementation of the previous recommendations for each justice organization. Thereafter, progress can be monitored based on all results.

In light of the high volume of recommendations, the overall review is phased out using sub-inspections. This second sub-inspection covers the following five (review) reports:

- [Crime Prevention Fund \(2018/2019: 6 recommendations\)](#)¹¹;
- [Review of the investigative and prosecutorial policies of the Public Prosecutor's Office; \(2015/2019: 5 recommendations\)](#);
- [Review Enforcement of fines, damages and dispossessions \(2014/2018: 4 recommendations\)](#);
- [Review of the Public Prosecutor's Office in Incident-based Investigation \(2013/2017: 6 recommendations\)](#);
- [Cooperation between Public Prosecutors offices \(2018: 4 recommendations\)](#).

1.2 Review question and sub-inspection

The review question in this inspection is as follows:

To what extent do the Minister of Justice and judicial organizations comply with the Council's recommendations?

⁹ In the first sub-inspection undertaken as part of the general review, the incorrect total of reports published by the Council was erroneously reported. The total number of reports published through May 2020 was 50 reports rather than 34.

¹⁰ This is consistent with the review period of (at least) 2 years observed by the Council. However, it is possible that the Council will include the results of the review reports through the year 2020 in the sub-inspections as part of the general review, since these do not contain any new recommendations but evaluate the follow-up of previously issued recommendations.

¹¹ In terms of the Fund, the progress of the level of compliance on recommendations issued in the reports "The Enforcement of Fines, Damages and Dispossessions in St. Maarten" (2014 and 2018) and "The Crime Prevention Fund (2018/2019)" will be addressed.

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

- To what extent have the recommendations issued in the following (review) reports: '*Crime Prevention Fund*', '*Cooperation between Public Prosecutors' Offices*', '*Review of investigative and prosecutorial policies of the Public Prosecutors' Office*', '*Review of enforcement of fines, damages and dispossessions*'; and '*The Public Prosecutor in the incident-based investigation*' been implemented?

1.3 Delineation

This sub-inspection focuses on the recommendations in the (review) reports published from 2012 through 2019¹².

The Council reviewed the extent to which its earlier recommendations were addressed. The Council clustered several reports and conducted a second sub-inspection on the progress.¹³ It was decided to cluster the reports with respect to the *Prosecutor's Office* and the *Crime Prevention Fund*. The second sub-inspection concerns the following five (review) reports:

- [*Crime Prevention Fund* \(2018/2019\)](#);
- [*Review of the investigative and prosecutorial policies of the Public Prosecutor's Office; \(2015/2019\)*](#);
- [*Review Enforcement of fines, damages and dispossessions* \(2014/2018\)](#);
- [*Review of the Public Prosecutor's Office in Incident-based Investigation* \(2013/2017\)](#);
- [*Cooperation between Public Prosecutors offices* \(2018\)](#).

More sub-inspections will follow. Based on the sub-inspections, the Council will issue one or more general reports. These reports will focus on the extent to which the Minister of Justice and the justice-organizations, across the board, implemented the Council's 2011-2018 recommendations, and will provide an overview based on various aspects. Benchmarking against other countries within the Kingdom will also occur based on best practices, where relevant.

1.4 Assessment Framework

The point of departure for this sub-inspection are the recommendations listed as included in the reports '*Crime Prevention Fund*' (2018/2019), '*Review Investigative and Prosecutorial Policy OM*' (2015/2019), '*Review Enforcement of Fines, Damages and Dispossessions*' (2014 / 2018), '*Review Public Prosecutor's Office in the Incident Based Investigation*' (2013 / 2017) and '*Cooperation between Public Prosecutors' Offices*' (2018). The Council assessed the compliance with recommendations issued: these form the framework.

1.5 Research Approach and Methodology

The Council developed a database to include all reports and associated recommendations (through 2019). In addition, the Council added relevant information for each recommendation including the category of the recommendation, the organization to which the recommendation primarily relates, and whether a review inspection took place. Thereafter, the reports and recommendations of relevance to this first sub-inspection were collated by organization.

¹² The initial report on the investigative and prosecutorial policy of the Public Prosecutor's Office is from 2015, however, the results of the 2019 review report on this subject are also included in this inspection. As indicated earlier, the Council may include the results of the review reports up to and including the year 2020 in the sub-inspections as part of the general review, as these do not contain any new recommendations but evaluated the compliance of previously issued recommendations.

¹³ The first sub-inspection covered the (review) reports: Juvenile Crime Prevention, Juvenile Rehabilitation Center Miss Lalie Center, Juvenile Probation and Adult Probation.

Relevant data and documents were also requested from the Public Prosecutor's Office and the Ministry of Justice. In this way, the Council was able to gain insight into the current situation. The Council further conducted in-person or online interviews with the Public Prosecutor's Office, the Ministry of Justice, the National Detectives Agency, the Sint Maarten Police Force, and the legal profession. Moreover, written questionnaires were also used. Via the Dean of the Bar Association, a written questionnaire was distributed within the legal profession to shed light on victim compensation and the legal profession's knowledge and treatment of victims. A written questionnaire was also distributed within the KPSM and at the Common Court of Justice as part of the investigation into the Crime Prevention Fund. Finally, the records associated with the Crime Prevention Fund were also inspected at the Ministry of Justice to better understand the administration and transparency at the Fund. Where applicable, the Council incorporated the new information along with the documents provided by the authorities. The report's findings were submitted to all parties concerned for a rebuttal.

1.6 Reading Guide

This report is structured as follows. After the introductory chapter 1, chapters 2 to 6 present the current situation with respect to the Crime Prevention Fund, the investigative and prosecutorial policy of the Public Prosecutors' Office, the enforcement of fines, damages and dispossessions, the Public Prosecutor's Office in Incident-Based Investigation, and the Cooperation between the Public Prosecutors' Offices, respectively. Each chapter includes a separate analysis. The final chapter 7 provides an overall analysis. The individual chapters also contain tables that graphically represent the current situation.

2. Status of recommendations on the Crime Prevention Fund

Introduction

Background

The National Crime Prevention Fund was established in 1995 by National Ordinance. The National Ordinance Crime Prevention Fund (hereafter also LV CF) and the National Accountability Ordinance provide the legal framework for the Fund. According to the National Ordinance Crime Prevention Fund, the Fund is used for "*the funding of crime prevention projects*", the Minister of Justice administers the Fund, the Head of the Judicial Affairs Department (of the Ministry of Justice) is responsible for *the day-to-day management* of the Fund, and a policy budget must be in place for the Fund. Under the LV CF, the Minister submits a policy plan, with (expenditures for) projects, when submitting the budget, and the Minister complies with the provisions of the National Accountability Ordinance for the budget and the financial statements. Therefore, the minister must at least, prepare a policy budget as well as provide the financial position along with the income and expenses of the Fund.

The Ministry of Justice is responsible for, among other things, the creation and oversight of Justice policies and laws and regulations in general and, as a primary task, policies, laws and regulations for crime deterrence and prevention.¹⁴ Under Article 15 of the National Ordinance on the Structure and Organization of the National Government (hereinafter also referred to as LIOL), the Ministry of Justice is charged with creating conditions for maintaining security, order and peace, and guaranteeing justice within the community. This ministry is under the responsibility of the SG.¹⁵

Previous Council Reports

In 2014, the Council published a report on the enforcement of fines, damages, and dispossessions in Sint Maarten (see [Chapter 4](#)), which included a recommendation for the submission of a policy plan to accompany the annual budget and the role of the Fund's crime prevention steering committee. Although the follow-up inspection in 2018 did not include recommendations about the Fund (because a separate inspection was scheduled), the Council determined that the Fund was losing revenue. The reason for this was, in the Council's overall opinion, because 45% of the fines imposed were not collected and this percentage admittedly could be higher since, besides fines, there is also income from other sources. Proceeds from dispossessions and, likely, income from settlements also flow into the Fund.

In April 2019, the Council issued its first inspection report specifically addressing the Fund. As the main question, the Council examined the extent to which monies from the Fund were allocated to projects for which the Fund is intended, and also assessed the supervision and control of the use of the monies based on five elements, namely laws, regulations and policies; processes and procedures; the project-approval or -denial decision; the method of supervision and control, the progress of projects and the related expenditures; and the documentation and evaluation of project results.

This report outlined the legal parameters of the Fund. It further reported that the Council was unable to find a policy or description of criteria, processes, and procedures for the Fund. There appeared to be no clear basis for granting and denying projects, and decisions seemed based

¹⁴ Article 1 and 2 National Decree containing general measures, for subdivision and further detailing of the Ministry of Justice, Ab 2010, no. 11.

¹⁵ Article 3, first paragraph National Ordinance on the Structure and Organization of the National Government, AB 2010, GT no. 6.

on the presence of financial resources. In terms of adequate oversight of the Fund, the Council determined that most records were missing and that pre-paid expenditures were not reimbursed to the Fund. Lastly, the Council was unable to find written documentation or evaluations of project results. The Council issued six recommendations in the 2019 report, and, in this current review report, the Council examines the status of these.

The Country Package Sint Maarten of December 2020, aimed at strengthening the rule of law, contains the measure to improve the management and supervision regarding the Crime Prevention Fund. To this end, Country Sint Maarten should follow the recommendations contained in the Council's reports on the Crime Prevention Fund. Several deadlines were set as well. Before June 15, 2021, an independent organization was supposed to be appointed.¹⁶ Short-term recommendations were due by August 15, 2021. The timeline for follow-up actions will be determined based on the implementation agenda.

2.1 Status of Crime Prevention Fund 2021

The status of each recommendation is presented below as of 2021.

To the Minister of Justice concerning the Ministry of Justice:

Recommendation 1: Consistently implement the legal responsibilities arising from the National Crime Prevention Fund Ordinance. Be sure to follow up on the recommendations previously issued by the Council that benefit the fund. These are, 'With the submission of the annual budget, include a policy plan that identifies projects eligible for funding from the Crime Prevention Fund', and 'Guide efforts toward establishing a crime prevention steering committee and involve the committee in the management of the Crime Prevention Fund.' *The recommendation was classified by the Council in its database as a "policy" item.*

2021 Findings

The recommendation consists of one general proposal to consistently implement the legal requirements, and in doing so, to at least follow up on the recommendation related to the policy plan and budget requirements and the recommendation on the Steering Committee on Crime.

Policy plan and budget

The review reveals that a policy plan and budget were never prepared in the context of projects covered by the Fund. Interviewees indicated that there is no prior knowledge of which projects will (or not) be eligible for funding from the Fund in any given year.

Crime Prevention Steering Committee

A Crime Prevention Steering Committee was not established; therefore, it could not be involved in the management of the Fund. The Prosecutor's Office has not been involved in the establishment of a Crime Prevention Steering Committee for the Fund but considers it desirable for broadly defining prevention. During the Council's investigation, it became apparent that some interviewees did not appreciate or understand the importance of the steering committee. Some interviewees felt that the management of the Fund was sufficiently

¹⁶ The Law Enforcement Council was designated in June 2021 as this independent organization that, subject to the provisions of the Kingdom Law Enforcement Council Act and the protocol applicable to the Council's investigations, will audit and monitor the implementation of the recommendations of the Council's Crime Control Fund report.

covered by existing legislation and regulations. Other interviewees acknowledged the importance of the steering committee. In the opinion of one of the interviewees, this steering committee can objectively review and advise on project proposals based on procedures formulated by the committee itself. Furthermore, in this interviewee's opinion the steering committee could be a more effective intermediary between the Head of the Judicial Affairs Department and the Minister of Justice, by serving as an advisory platform for the Minister. The platform could be especially important when opinions diverge. There is a case for broad representation of the community on the steering committee, from within and outside the government: the General Audit Chamber, the private sector and stakeholders from the community are mentioned as possible options. This is because the fight against crime is broader than just the Ministry of Justice. Another perspective that emerged is that previous ministers may not have wanted to form a steering committee because it would reduce the Ministers' influence over the Fund.

Compliance with legal obligation/management

According to the controllers of the Ministry of Justice, no substantial progress can be reported with respect to compliance with the legal obligation on supervision, management, and guidance for the use of the Fund. However, the situation is less *ad hoc* than before because the controllers pay more attention to whether expenditures are in line with the Fund's objective. The expenditures are also checked against the National Accountability Ordinance, which, depending on the amount, may require a decision from the Council of Ministers. According to one interviewee, these steps are still very minor, however.

The Fund's management is not yet adequately structured. Expenditures from the Fund are unplanned and lack a strategic basis. Despite the legal role of the Public Prosecutor's Office (OM) in the context of criminal proceedings, the Office is not involved in policymaking for the Fund nor its expenditures. For example, the Public Prosecutor indicates that it is not involved in the drafting a policy budget and is not part of, for example, an (audit) committee for expenditures of the Fund. Due to the lack of policy governing the Fund, it is still possible to make binding agreements carrying financial-legal consequences, beyond the practical procedures that the Ministry currently indicates it uses. One interviewee reported that once approval is given for projects, disbursements can be made from the Fund. In the absence of strategic principles and priorities, it is unclear which choices can or may be made regarding projects and who should be involved in the process of approving disbursement from the Fund (see also [Recommendation 2](#)).

Recommendation 2: Formulate updated policies on behalf of the Crime Prevention Fund. Include criteria, processes and procedures related to the application, processing, granting and (justification of) decisions regarding projects and if appropriate, required definitions. *The recommendation has been classified by the Council in its database as a "policy" item.*

2021 Findings

In recommendation 1, the absence of a policy was already discussed. The Council further notes that there are still no documented procedures for the application, and procedures for processing the application remain unclear nor does registration consistently take place. For example, documents cannot be tracked in DECOS because DECOS is not yet being consistently updated by all parties involved in the advisory process prior approval. The

approval procedures lack transparency, and project exceptions and -approvals are not always substantiated when applications are processed. The basis for granting or denying project applications is similarly unclear because of a lack of sufficient substantiation. Also, there are no procedures for the audit and issuance of payments from the Fund.

An interviewee stated that there is a need for ministerial guidelines to describe the process related to the Fund. As in 2018, the financial controller remains a permanent link in the overall process and the controller continues to have the same role. A standard advice/advisory form continues to be used for each project. Currently, projects, their financial implications, project expenditures from the Fund and other receivables from the Fund are tracked in an Excel file on initiative of two controllers within the Ministry of Justice. The Council received this file as well. The mechanism for ensuring continuity of the financial controller within the Ministry of Justice is based on verbal communication between them at the executive level about the processes and procedures they apply. The Ministry is aware of the need to define processes and procedures for the Fund. This is consistent with the prioritization for describing the main processes of the Ministry of Justice, which is already underway. Smaller processes, such as those related to the Fund, are scheduled to be addressed at a later stage.

Embedding of the Fund is insufficiently managed by those legally responsible at present, although there is certainly a need for this in practice, in the opinion of several interviewees. In practice, however, there is also uncertainty as to who is responsible for formulating the policy, processes, and procedures for the Fund. The Ministry of Justice and the Public Prosecutors' Office both point fingers at each other or at a yet-to-be-established committee to assume the task. However, it is unclear who should define and monitor the parameters for the activities of such a committee. The Public Prosecutor explicitly indicates that it wants to be involved in drafting policy, processes, and procedures for the Fund.

Recommendation 3: To limit the risks of improper use and misuse of money from the Fund, establish rules and safeguards via a National Ordinance. *The recommendation was classified by the Council in its database as "legal framework".*

2021 Findings

There is no National Ordinance in which rules and guarantees are stipulated to limit the risks of improper use and misuse of the Fund's monies. Interviewees working at the Ministry of Justice indicated that they did not see a need for a National Ordinance because the LV CF already references the National Accountability Ordinance, and the latter contains the requisite procedures and provides sufficient guarantees against improper use of the Fund. The safeguards included in the National Ordinance on Substantive Civil Service Law and the Penal Code are also mentioned in this context. During the preceding administration, according to the Head of Judicial Affairs of the Ministry of Justice (hereafter: the Head of JZ), - after presentation of the report on the Fund by the Council to the Minister of Justice - a draft policy response associated with the report was prepared by his department.¹⁷ In this response, according to the head of JZ, arguments were presented to explain why the Council's recommendation to draft a new National Ordinance would be ignored. The draft reaction on the report and the recommendations were never made official and at the time of this investigation, were yet to be presented to the new Minister of Justice by the head of the JZ. The Council has also not yet received a copy of this reaction.

¹⁷ Article 30 Kingdom Act Council for Law Enforcement, stb. 2010, 338.

Recommendation 4: Ensure that the physical and electronic records/registrations related to the submission, review, granting and the payment of projects are complete and that the related procedures and documents derived from the applicable laws and policies are complied with and received promptly. *The recommendation has been classified by the Council in its database under the category 'work processes'.*

2021 Findings

Policy and legal compliance and role of stakeholders at the Fund

The jobs that are now associated with the Fund include the Controllers of the Ministry of Justice, the Secretary General of the Ministry of Justice, the Head of Judicial Affairs, and the Minister of Justice. The involvement of these offices, as indicated earlier, does not appear to be consistent and uniform. For example, for projects that have already been funded, the Council found that the same individuals do not necessarily sign all documents. In one case, the signature of only one department head was visible. The signature of the Minister of Justice is consistently present for the projects reviewed by the Council. A policy has not been written concerning the procedures to be followed for the physical and/or electronic administration/record keeping with respect to project submission, review, award, and payment. Also, there is no specific requirement for the Fund for the type of documents needed to submit projects for approval. According to the controllers, the legal principles of the National Accountability Ordinance are used when submitting projects.

According to interviewees, the current procedure for submitting a project to the Fund is identical to the advisory process used by the Ministry of Justice for regular applications used by the departments from their budgets. Different interpretations exist within the chain about the way to check how the approval process of the Fund should take place. Similarly, the routing of an approval process, can also vary in practice. There are no agreed-upon procedures with project-applicants nor internally at the Ministry of Justice, so applications are received at different locations and the same people are not always involved in the approval of projects.

Controllers and the Head of Judicial Affairs are unsure whether the Minister of Justice, as administrator, can formally decide on any expenditure without the approval of the Ministry of Finance, and it depends on the individuals involved at any point in the approval process to determine how the process proceeds. A public procurement process was, according to the controller of the Ministry of Justice, used for the projects after Hurricane Irma in September 2017 as required (depending on the project type amounts, the requirement starts at ANG 50,000 or at ANG 150,000) in accordance with the requirements of the Accountability Ordinance. However, this approach relied on the perspective of the controller for the Ministry of Justice owing to the lack of agreed-upon procedures governing the Fund.

Without adequate documentation, the substantive assessment of projects and allocation of projects is not always transparent, and the Council was unable to find any further information in this investigation. Once the process has been completed and payment can be made for a project, it is well documented via the Fund's bank account.

Registration and administration system

The records relating to the Fund are currently maintained in three main ways. First, since 2020, the documents on the Fund's advisory process for projects are registered in DECOS.

There is no consistent registration discipline for DECOS according to the Head of Judicial Affairs and the controllers of the Ministry of Justice. No evidence was found that these entries are verified daily, and (that people are) corrected. According to the controllers, greater discipline is required to keep the data in DECOS *current* so that extracting *real time* information from DECOS becomes possible. Using the most common process at the Ministry of Justice, the application is reviewed within the Judicial Affairs Department of the Ministry of Justice and the Minister signs for approval. After this, the payment is made by the controllers. Financial accounting is done via the Fund's bank account. The controllers have maintained monthly balances for the Fund for the years 2019 and 2020. The Ministry also provided a list of projects to the Council, albeit without specifying the year for each project. For most projects, approval or (in two cases) partial approval was granted by the relevant Minister of Justice. Finally, the Ministry of Justice maintains partial physical records for the Fund up to and including 2018. No physical records are available for the year 2019, but electronic records of expenditures are available via the bank. There are no physical records for the three active projects discussed with the controllers in 2020 and 2021 and the electronic information is incomplete. Few applications were received after 2017, but those that were received had the necessary documentation, according to the controllers at the Ministry of Justice. According to the controllers, other payments were also made to conclude projects in 2020. The Council could not verify this because the bank statements are dated 2019, and there are no physical records. Internally at the Ministry of Justice, it was agreed that only policy-related payments will be made in 2021.

The accounting system for payments has now been designed to be more transparent, providing more oversight of the Fund's balances and more control over the Fund's expenditures. The controllers achieved this by auditing the Fund for the years 2018 to 2021 and documenting which payments had (not) been made, how they were made, and which projects were ongoing or completed. According to the previous controller's records, most items were completed. According to interviewees at the Ministry of Justice, a "four to six eyes principle," or "two-step payment," applies to the outgoing administration. The controller makes the amount for the project payable from the Fund electronically, then the Head of Judicial Affairs approves the payment, after which the controller at the Ministry of Justice issues a final order for the payment to occur. Payments from the Fund continue to be made electronically, which provides greater visibility into Fund expenditures, as mentioned above.

The Ministry of Justice expects that the Fund's accounting will improve in the coming years. This is because the controllers' department of the Ministry of Justice is now better staffed with 2 controllers, 1 administrative worker and 1 head of Planning and Control. Together they are now trying to get the financial affairs in order. In addition to the Fund, other topics such as overtime are also discussed. Various aspects of improvement were discovered. An overview of the Fund's account balance is still available, and the objective is to further improve the system.

Enabling administration for inflow of funds into the Fund

The administration (and oversight) of inflows of monies into the Fund's account deserves more attention. In the interest of achieving a balanced bookkeeping, enabling third-party administration for the benefit of the Fund's income is important since this is a concern for all stakeholders.

The KPSM indicated during the Council's investigation that it has policies for dealing with the seizure of funds and valuable property. These guidelines and police policy are currently being updated. The accounting as currently structured makes it possible to trace the amounts (financial) seized from the very beginning to a case and a suspect/defendant. This information can be accessed through the KPSM information unit, which has access to all KPSM files, or via the administrative worker in charge of confiscations, according to the KPSM. The Council observed, using the records provided by the KPSM, that the KPSM has some oversight into seizures. The KPSM reports that it currently no longer has any information on asset sharing, nor is it involved in *asset sharing* processes, nor does it know who will ensure that amounts derived from asset sharing are returned to the Fund, nor does it have any knowledge of the agreements in this regard.

The Court Clerk on Sint Maarten indicates that the Police, Customs and Public Prosecutors deposit money or goods of value with them. A 2021 report¹⁸ commissioned by the Clerk indicates that the Court Clerk, in her role as custodian of seized goods, encounters challenges related to this issue. Based on information from the 2021 report, the KPSM has been keeping records of seized property using an Excel sheet since January 2021. This information is given to the Prosecutor who shares the information with the Court Clerk pursuant to his responsibility as custodian of seizures. The KPSM's Excel sheet does not contain information on cases involving the Seizure Team, since the team functions under the direct leadership of the Public Prosecutor's Office. The report also mentions that agreements are currently being established regarding the registration of seizures using police reports. This will also make it possible to increase the insight into the seizures that are relevant to the Fund. Moreover, according to the report, objects for which an authorization for disposition has been granted are transferred by the custodian to the bailiff in charge of the auction.¹⁹ The proceeds generated by the item will be deposited in the crime prevention fund's account.²⁰

The Public Prosecutor's Office is aware that greater oversight is needed into incoming payments, particularly those resulting from the collection of fines. Because of the present bottlenecks regarding the administration of the Public Prosecutors Office where sums can (often) not be traced back to a suspect/defendant, collection is limited and there is no oversight of outstanding balances (see also chapter 4). This is due to a lack of detailed processes, sound administrative procedures, and possibilities for filing and retrieving the related data. However, one interviewee indicated that the Public Prosecutor could be more effective in the execution of sentences and the collection of money. Another interviewee would like to see the Prosecutor's Office invest more actively in enforcement despite the lack of capacity claimed by the Prosecutor's Office, because it will certainly pay for itself with the collection of fines. The monies that flow into the Fund's bank account are, according to all interviewees at the ministry, often impossible to identify. The origin of the payment is unknown due to the lack of identifying details. Apart from the cases where the payment is made at the Public Prosecutor's Office, the source of payments cannot be identified. As a result, the payment cannot be linked to the offender/defendant or a criminal case.

Payments on behalf of the Fund are made via ATM at the Public Prosecutor and at the bank, at the Sint Maarten Police Force and at the Receiver's Office of the Government of Sint

¹⁸ Advisory report confiscated assets Sint Maarten, 2021.

¹⁹ Article 17 National Decree on the Preservation of Confiscated Property, AB 2013, GT no. 505.

²⁰ Article 3 National ordinance on the establishment of a crime fund

Maarten. Both the Public Prosecutors Office and the Ministry of Justice have limited or no information about the uncollected funds. According to interviewees, Public Prosecutor's reports are not shared with the Ministry of Justice nor with the Receiver's Office on Sint Maarten. The Ministry of Justice indicates that there are no regular consultations with the Public Prosecutor's Office. There has been one conversation with the Public Prosecutor about the Fund. At the time of the investigation, the Ministry of Justice indicated that it had not consulted with other parties about the Fund. For more information, see [Chapter 4](#).

Recommendation 5: Arrange for (re)payment of all claims to the Crime Prevention Fund. *The recommendation was classified by the Council in its database under the category of 'enforcement and compliance'.*

2021 Findings

The controllers indicate that they are not aware of any outstanding amounts (collections) in favor of the Fund. Based on the internal audit, there are no outstanding balances that need to be reimbursed to the Fund. There has been a large outstanding expenditure towards the prison project after Hurricane Irma, however this has already been paid according to the controllers. Based on the Council's findings, as of March 2020, there is a balance outstanding of approximately ANG 400,000 in favor of the *Miss Lalie Center*. The exact amount could not be ascertained by the controllers since changes had been made to this project's expenditure. As a result, the expenditure may be more favorable according to the controllers, which means that the entire amount will not have to be paid by the Fund. The allocation of a different portion of the reserve remained unknown. The Council did not find any information in the documents provided to support this claim.

Recommendation 6: Raise awareness about the Crime Prevention Fund. *The recommendation was classified by the Council in its database under the category of 'service and communication'.*

2021 Findings

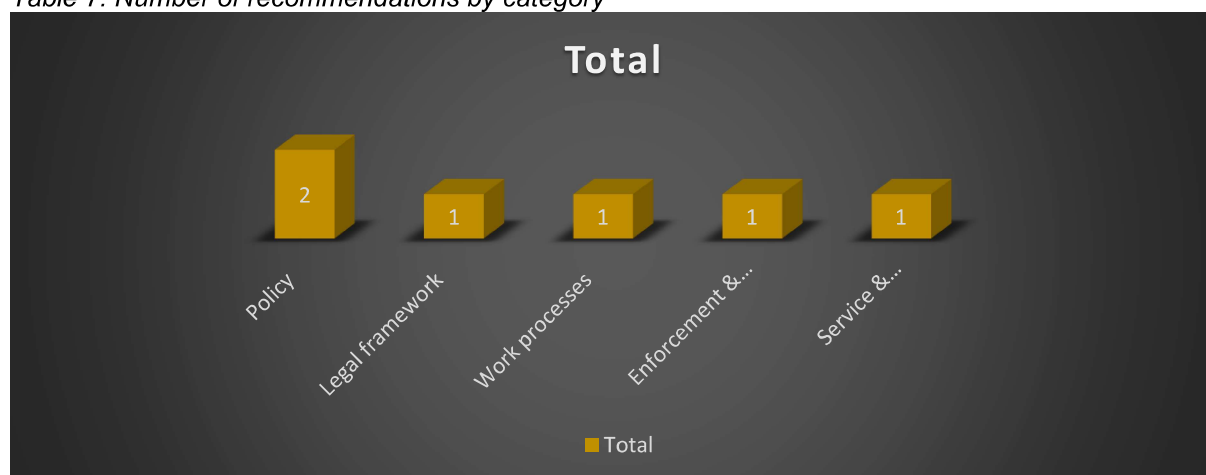
There were no initiatives taken by the Minister or Ministry of Justice to raise awareness about the Fund. According to an interviewee, the Ministry of Justice last issued a plea in 2018 to the Head of departments of Justice to submit concrete project proposals. Despite this, none were submitted. Controllers consider informing department heads as the responsibility of the Minister's Office and the Secretary General of Justice. The Public Prosecutor indicates that they have not submitted a project in the years after the release of the Council's report, because the procedure is not clear to them. The Public Prosecutor mentions that it has a few possible projects that could be undertaken with the help of the Fund, such as victim support and the issue of confiscation. The custody of confiscated (large) items is currently a problem that must be addressed. The KPSM also reports that it has not included any projects related to the Fund in its annual plans for 2019 to 2021. The KPSM-interviewee stated that he was not aware of any information from the Minister or the Ministry of Justice regarding the use of the Crime Prevention Fund. The National Detectives Agency reports that several years ago they presented projects to the Fund, but in the end the projects were not approved by the Minister. There have been no discussions with the new Minister about this yet.

2.2. Analysis

Introduction

This 2021 inspection is the first review inspection into recommendation compliance related to the Crime Prevention Fund. The Council issued six recommendations in 2019, and these are categorized, at the Council's discretion, in its database to offer some greater insight into the individual recommendations. The subdivision is intended to be informative and is as follows: the legal framework (1), policy (2), collaboration within the chain (1), work processes (1) and prevention activities (1) (see also Chapter 6).

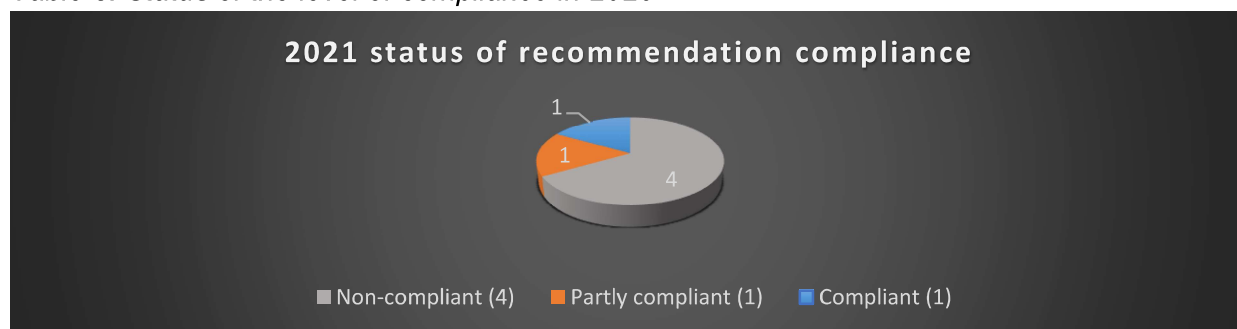
Table 7: Number of recommendations by category



Status of recommendation compliance in 2021

As part of the general review, this second sub-inspection determined that one of six recommendations was addressed (repayment of claims to the Fund), one was partially fulfilled (the physical/electronic administration and compliance with Fund procedures), and four have not been met (implementation of legal requirements, drafting of policy, National Ordinance, and publicity for the Fund). The compliance rate is therefore **25%**²¹ in 2021.

Table 8: Status of the level of compliance in 2020



Except for the improvement in the incidental review of requests for, and approval of projects and expenditure from, the Fund, no (significant) improvement is evident. The introduction to this chapter highlighted the stakeholders and their legal responsibilities. It is primarily the

²¹ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

Minister of Justice who is expected to set the structure. It is important that the minister involves all the parties mentioned. At present, the Council finds that there is more of a wait-and-see attitude among important stakeholders. Specifically, the Ministry of Justice, under the leadership of the SG, is responsible for policy formulation with respect to crime deterrence and prevention, and for creating conditions for, among others, maintaining security in the community.

Also, it is the Head of Judicial Affairs of Justice (currently also acting SG Justice), who is responsible for the day-to-day management which includes creating processes and procedures and facilitating the department heads with information about the Fund. The Prosecutor's Office has a responsibility for performing crime prevention tasks, replenishing the Fund and for policy formulation in crime prevention. A need to define the right strategy for the Fund and to bring, or keep, all the stakeholders in line is needed now. The law is clear on the roles and responsibilities of the various agencies; in practice the stakeholders wish to be provided with structures (selecting strategic starting points, prioritizing, and assigning authority) to work together. For the time being, the Fund's daily and long-term management is in jeopardy; its management is not functioning properly, nor is the steering committee for crime prevention; the Fund's legal framework has not been amended or made clearer since the Council's last investigation; there is no policy nor policy plan with associated budget, nor are these being prepared; the administration and registration are not yet in order; and the Fund is not receiving publicity. The Council therefore believes that its recommendations, that have not been implemented or only partially implemented, are still relevant and therefore, the Council reiterates them.

Both the Public Prosecutor and the controllers from the Ministry of Justice are committed to the Fund and are pursuing improvements. The controllers, at their level and with the resources at their disposal, are making a modest, yet significant, difference at the Fund. But their efforts do depend on who serves as controller and their area of responsibility, because they are not supported by formal (internal or strategic) policies or procedures.

Daily management is important to the Fund to allow structures to be introduced in its operation. This process needs to be given priority by the Ministry of Justice and the SG. The legal framework should be used to clarify the Fund's processes and procedures. The processes for reviewing and awarding projects should require executive-level priority. This is a matter for both the Ministry of Justice and the Ministry of Finance and, in view of the National Accountability ordinance, also for the Council of Ministers. These are the levels, where clarification is provided as to which project advice falls within the approval purview of the Ministry of Justice, that require broader procedures.

The controllers have demonstrated that basically all procedures of/for daily management of the Fund fall under the final responsibility of the (acting) SG. The department's management should clarify the procedure for application, assessment, substantiation and awarding or denial of projects as well as the method of expenditure from the Fund. Considering the law, the process for application can be set out under the responsibility of the Fund's daily management. It is important that the lines of communication for the rest of the process are agreed upon and established with each relevant party (and the Minister). The payment processes must also be considered as an internal matter of the Ministry of Justice. The criteria for application, assessment, approval, or denial of projects are determined by policy and legislation. Stakeholders with a direct or indirect statutory responsibility to the Fund, such as

the Minister, (former) SG -he is the daily manager of the Fund-, and the Public Prosecutor's Office must provide the requisite clarity.

There are no transparent and documented rules for approving and rejecting projects. A direct consequence of this is that, for example, making a contract(s), is currently not transparently organized. In addition, due to the lack of priority and a policy (budget), it is not precisely clear why an organization is required to implement a project at any given time. The lack of a policy budget affects all aspects of the Fund. An integrated focus on goals and vulnerabilities is important, but it is currently absent. In the event of errors, improper use, or abuse of the Fund, it will be difficult to take appropriate action. Therefore, a task for the Fund's administrator and the daily manager is the creation of more order at the Fund to reduce the (possible) risks associated with the use of the Fund to acceptable levels.

The Council finds limited accounting of (potential) amounts in favor of the Fund. This applies both to identification as well as enforcement of penalties. The stakeholders often do not know what is happening with these assets and do not effectively communicate among each other on this subject. The improvements identified are therefore minor, and in certain respects, the Council believes tangible principles and management is lacking. The Ministry's administration, via the controllers, has improved somewhat, as previously noted. The administration related to the Fund's advisory process for projects, is currently not optimal, because parties do not consistently use DECOS, and requests are received at different locations. The checks and balances are, to some extent, being supplemented by different persons' responsibility for the expenditure of the Fund's monies. The likelihood that Fund-expenditures are not in line with the legal objectives remains high because the controller's oversight is only incidental, using a few legal principles, while transparent policies are absent.

The accounting via the Fund's bank account is optimal, which means that there is now a proper understanding of incoming funds and expenditures incurred by the Fund. The data still needs to be available in real time, however. This is important for proper management. After all, the Fund can only spend what it has on hand at any one time. Together with the fact that no information is available regarding the outstanding balances at the Crime Prevention Fund, one could fairly assume that there is more money to spend than is actually deposited at the bank, when these balances are not available. There are outstanding amounts, yet to be collected/retrieved. For a more detailed perspective on this, please refer to the chapter "*Enforcement of Fines, Damages and Dispossession*".

The Council sees opportunities for the Ministry of Justice and the Public Prosecutor's Office, where it concerns communicating their objectives, jointly determining a direction, and advising the Minister of Justice. The reason for the lack of high quality communication did not become clear during the Council's investigation, though all parties were cautious. Both parties expressed an appreciation of each other's involvement and a desire to individually play a role. The main partners are the Public Prosecutor's Office (from the perspective of improving oversight into the Fund's revenue and policy), and the Ministry of Justice (SG; in his responsibility as Head of Judicial Affairs); the controllers at the Ministry of Justice, who experience the Fund's bottlenecks from up close, and who have (partly) already worked on solutions). The KPSM should also be involved in the role of the Chief of Police with respect to policy towards insight into (potential) income for the Fund at an early stage, together with the

Public Prosecutor and the Minister of Justice in the tripartite consultations, as well as in the context of cooperation with the Public Prosecutor and the Ministry.

As a result of the controller's optimized accounting, there is an improved understanding of the Fund's incoming balances and expenditures. Thanks to this, receivables to the Fund can, once again, be collected. This is a positive development and makes it easier to ensure that funds are available for expenditures for crime fighting, which is the objective of the Fund.

An orderly approach to the Fund is important to ensure that stakeholders (Justice departments and wider (civil society)) are aware of the Fund and its use. This will need to be prioritized to ensure the effectiveness of the Fund's approach.

Recommendations and monitoring

With its review, the Council presented insight into the progress in implementing the recommendations about the Crime Prevention Fund. Based on the above, the Council's recommendation to the Minister of Justice is: *Implement the Council's five recommendations that have not yet been (fully) addressed and make the necessary resources available as soon as possible.*

| Recommendations Crime Prevention Fund | Status 2021 |
|--|--------------------|
| Implement the legal requirements arising from the National Ordinance Crime Prevention Fund consistently. Make sure that the recommendations previously issued by the Council on behalf of the fund are implemented. These are: " Include in the submission of the annual budget a policy plan in which projects are listed that qualify for financing from the Crime Prevention Fund" and " Guide efforts towards the establishment of a crime prevention steering committee and involve this committee in the management of the Crime Prevention Fund". | Non-compliant |
| Establish current policies for the benefit of the Crime Prevention Fund. Include criteria, processes and procedures related to the application, processing, awarding and (justification of) decisions regarding projects and if relevant, provide any necessary definitions. | Non-compliant |
| Minimize risks regarding improper use and abuse of monies from the Fund, establish rules and protections in a National Ordinance. | Non-compliant |
| Maintain complete physical and electronic records/registration of project applications, reviews, awards, and payments, and comply with related procedures and documentation resulting from applicable laws and policies as well as timely availability. | Partly compliant |
| Ensure that all claims on behalf of the Crime Prevention Fund are (re) paid. | Compliant |
| Promote greater awareness of the crime prevention fund. | Non-compliant |

The Council will begin periodically monitoring the progress of outstanding recommendations related to the crime prevention fund in 2022.

3. Status of recommendations on investigative and prosecutorial policies of the Public Prosecutor's Office

Introduction

In 2015 and 2019, the Council issued two reports: respectively, an initial investigation and a review of the Public Prosecutor's investigative and prosecutorial policies. The focus was on how the Council's recommendations on the interpretation of the prosecutorial monopoly, and the Public Prosecutor's discretionary (opportunity) principle, was addressed.

The Public Prosecutor has the exclusive right (monopoly) to prosecute and subpoena, but not the obligation to do so (expediency). If there is a public interest, the Prosecutor may decide not to prosecute. The Public Prosecutor may attach conditions to this decision (article 207 Code of Criminal Procedure Sint Maarten (WvSv) articles 208 and 209 WvSv). The courts are not necessarily the best solution in all situations, but decisions of this kind must be justified within the public interest. One question in this regard is the extent to which the community (including the suspect/defendant) benefits from prosecution. The Public Prosecutor may, based on his discretion, for example, decide to proceed with a settlement or a dismissal if expedient. Article 15 of the Dutch Code of Criminal Procedure provides for judicial supervision of the Public Prosecutor's Office with respect to the application of the discretionary (opportunity) principle.

In a nutshell, it is safe to say that the Public Prosecutor's Office is permitted to apply a certain degree of discretion in handling criminal cases, but only within the limits of the rule of law. The Council's initial report revealed that the Prosecutor's decisions are influenced by the absence of effective law enforcement prerequisites. As a result, the Council issued 10 recommendations in 2015, of which 1 was addressed, 3 were partially implemented, and 6 were outstanding during the 2019 review. The four recommendations specifically targeting the National Detectives Agency were evaluated in the Council's previously released report as part of the April 2021 inspection of the National Detectives Agency. Overall, the status of these four recommendations is as follows:

| Year | Recommendation | Review 2019 | Status 2021 |
|------|---|---------------|---------------|
| 2015 | Pursuant to the law, provide for a general political-administrative policy with respect to the National Detective Agency that observes the proper performance of tasks and an adequate infrastructure for effective support management. | Non-compliant | Non-compliant |
| 2015 | Implement the National Detectives Agency's improvement plan. | Non-compliant | Non-compliant |
| 2015 | Arrange for the National Detectives Agency to be strengthened in accordance with the staffing plan to overcome the lack of capacity and expertise. | Non-compliant | Non-compliant |
| 2015 | Arrange for a business process system for the National Detectives Agency. | Non-compliant | Non-compliant |

For a detailed explanation, the Council invites the reader to refer to the report.²² The other five recommendations reviewed this report are described separately in the next section.

²² <https://www.raadrechtshandhaving.com/wp-content/uploads/2021/05/Final-DUTCH-version-redacted.pdf>

3.1 The 2021 status of the investigative and prosecutorial policies of the Public Ministry

The following shows the situation in 2021 for each recommendation included in the Council's 2019 report (Investigative and Prosecutorial Policy of the Public Prosecutor's Office) that was not, or partially, followed up.

To the Minister of Justice regarding the Public Prosecutor's Office, the National Detectives Agency, and the Sint Maarten Police Force

Recommendation (recommendation 1 from the 2019 report): Examine the specific options within both the Country of Sint Maarten and the Kingdom to strengthen the effectiveness of law enforcement by the Public Prosecutor's Office, the National Detectives Agency, and the Sint Maarten Police Force. *The recommendation has been classified by the Council in its database in the category 'research and crime image'.*

2019 Status

It was evident during the 2019 review that this recommendation was addressed.

2021 Findings

This investigation by the Council reveals that the specific possibilities within both the Country of Sint Maarten and the Kingdom to strengthen the effectiveness of law enforcement by the Public Prosecutor's Office, the National Detectives Agency and the Sint Maarten Police Force were not examined. The Public Prosecutor indicates that although the recommendation is relevant it is simultaneously a complex task comprised of multiple layers. According to the Public Prosecutor, the recommendation should therefore be more plainly defined to clarify the (strategic) role of the parties involved.

The topics that emerged from the earlier investigation, and the current interviews, that – in any case - are important for the (development of the) effectiveness of law enforcement by the Public Prosecutor's Office, the KPSM and the National Detectives Agency include plans, cooperation and cooperation agreements, quality, information and information sharing, capacity, education and training, expertise, resources, and ICT.

The Public Prosecutor's Office recognizes that there are several developments with respect to previously mentioned initiatives that will increase the effectiveness of law enforcement. This is more evident at the KPSM than at the National Detectives Agency. The police forces have started to seek out each other via the Council of Police Chiefs (CvK), with the purpose of reinforcing each other and working together. They have allocated issues among themselves and are focusing more on training. Furthermore, in the 2019 report, the Public Prosecutor highlighted that cooperation between law enforcement partners is increasingly being sought and strengthened, for example in the Information Exchange. The Public Prosecutor and the police are currently in talks because they want to become the information hub for the Caribbean region and want to work towards operational '*deployability*'. According to the Public Prosecutor, this also relates to the developments in the Netherlands where a large capital injection was provided for the issue known as subversion. The Caribbean region also plays a role in this matter. The idea is to create a platform and become members (partners) to the subversion platform. The developments mentioned here are still in their infancy and originate from the consultation between the heads of information of the police forces. It provides a structure on which to build.

Cooperation on border control continues. In December 2020, the "*Mutual arrangement for strengthening border control*" was extended for the period January 1, 2021, to July 1, 2021. In 2021, under the Country Package Sint Maarten, the '*Protocol on Strengthening Border Control in the Caribbean Countries of the Kingdom*'²³ was arranged between the respective countries. This was the result of long-term cooperation between the countries within the Kingdom on this subject, but also the result of regional developments such as those in Venezuela and emerging pressures in the border control of Aruba and Curaçao. The intention was also to strengthen the cooperation between Kingdom partners as a counter to transnational organized crime. As far as the border is concerned, the Public Prosecutor notes that the protocol includes, among others, the objectives for tackling transnational subversive crime. At the time of the Council's investigation, the Chief Public Prosecutor indicated a role had not been assigned for either the Public Prosecutor or the police force in shaping the approach, which according to the Public Prosecutor, was not understandable.

The problems the Council described about the National Detectives Agency described in its 2019 Review Report on Investigative and Prosecutorial Policies remain valid. The National Detectives Agency indicates that Hurricane Irma contributed to positive developments within the KPSM, including the boost in quality. On the initiative of the National Detectives Agency, 2 detectives participated in the RIMOZ-training (Criminal Investigation in Multidisciplinary Cases), and 1 team leader will participate in the TOL-C training (Tactical Operational Leadership Caribbean), as part of the quality initiative. Furthermore, the training in financial investigation and the IBT training are part of the planning. According to several interviewees, the Police Force took a more proactive stance in 2017 compared to the National Detectives Agency (herein after also: LR) did, which was a missed opportunity for the Agency where there is now a lack of quality and capacity. The Agency indicated that it would like to look at other options and consider the Caribbean Reform and Development Agency as a possibility. Given that ICT plays a major role in the functioning of the National Detectives Agency, the Agency emphasizes that the function of ICT is critical and is currently performed by the cyber-criminal investigator in addition to his/her normal duties.

As for the developments in the context of the Agency's long-term effectiveness, the Agency noted that both in (the preparations for) the JVO and in the local administration there is insufficient attention for the Agency. For example, the Agency does not appear in meetings (e.g., the last JVO concerned the Criminal Investigation Team (hereafter: RST) and the KPSM) nor in certain relevant documents (e.g., policy plan RST 2020-2023), which makes the prospects for the LR unclear, according to the former head of the National Detectives Agency. Because of the current situation, the LR does not consider participation in the preparatory meetings for the JVO as adding value. According to the Ministry, the National Detectives Agency is included in the JVO to the extent that the investigative capacity is discussed, and it is up to the National Detectives Agency to ensure that they are more prominent and heard. According to the LR, there are no plans for the allocation of capacity nor finances for the LR, while reinforcement for this agency is desired to allow tasks to be addressed (further) in the future. Because of this, the National Detectives Agency would like the Minister of Justice to answer the questions about the future of the Agency, including those about the developments regarding the Agency and the RST. The National Detectives Agency believes that the current

²³ <https://www.rijksoverheid.nl/documenten/rapporten/2021/02/18/tk-bijlage-protocol-versterking-grenstoezicht>

developments are not compatible with plans to build up the Agency, which should be pursued. Despite the foregoing, the National Detectives Agency indicates that it believes that the Acting SG and the Minister of Justice support the Agency and that (according to the Agency), both indicate that capacity can be found in the KMar (Royal Netherlands Military Marechaussee) flex pool²⁴ because the revised protocol allows for this possibility. This demonstrates a certain willingness, but not along the lines of the JVO, and thus a political prioritization for the Agency's growth remains out of the question.

The National Detectives Agency indicated that they intended to discuss this issue with the Minister of Justice, but ultimately it was discussed with the Acting SG in the first quarter of 2021, who is optimistic on the subject. The National Detectives Agency further indicated that it was struggling with very scarce financial investigative capacity and was happy to make use of the RST. The Ministry of Justice indicates that the RST, as well as the KMar, has limited capacity in that area. Furthermore, the Ministry of Justice reports that the National Detectives Agency's wishes are being addressed within the framework of the function books, but that the National Detectives Agency itself has not produced a concrete plan. The Head of Judicial Affairs states that the National Detectives Agency has been too internally focused in recent months, rather than externally focused on specific plans. Problems persist with the Agency's leadership, and it is uncertain when a new head will be in place. The Public Prosecutor indicates in the context of the Agency's cooperation with other services that the Agency requested assistance from the RST, received cooperation from BIZ (Department of Internal Affairs) and conducted another investigation in cooperation with the KPSM. The Public Prosecutor points out that the bottlenecks within the National Detectives Agency are ultimately not due to the partnerships, but that there are often factors over which the National Detectives Agency has no influence, and which will remain for the time being. If there is no improvement in both quality and quantity of the capacity in the law enforcement agencies, the current situation is the maximum that is attainable. Improvement in quantity and quality implies, at a minimum, a financial boost and long-term (political) prioritization, both of which are presently absent. According to the National Detectives Agency, the Agency continues to operate, nonetheless, with creativity, and hopes to meet expectations for their department. For more information about the National Detectives Agency, the Council refers to its report on the review of the National Detectives Agency, published in 2021.

When it comes to long term plans/policies, the Ministry of Justice indicates that unlike the implementation of the plans of action for the KPSM and Prison, no initiatives have been developed by the Minister or the Ministry, other than ad hoc initiatives from the JVO such as the baseline study for strengthening the border and the 'Coast Guard issue'. The Coast Guard issue focuses on the detection task, whereby the Coast Guard is deployed as part of the countries' joint approach and the Minister of Justice of Sint Maarten. These are predominantly cases initiated by the Kingdom. The current initiatives focus on the regular processes to strengthen the organizations. The Ministry of Justice is pursuing this approach based on indications. The general indication is that there is a general lack of capacity, on every front, in the operational organizations. However, the Ministry of Justice reports that it has no knowledge of precisely where the organizations lack effectiveness. When dealing with the services' effectiveness, it is more often about implementation policy rather than strategic policy. For example, the Minister of Justice has addressed HR-related issues, but there is no

²⁴ Protocol flex-pool Royal Marechaussee, January 24, 2019. The flex-pool is a flexible deployment pool of the Royal Marechaussee.

overall policy to reduce the capacity shortage in the departments. Moreover, other plans are also missing. The action plans, prepared in the context of October 10, 2010, currently concern the Police and the prison. In the interest of reinforcement and effectiveness, these receive continuous attention, but that is also due to the mandatory element and the presence of the progress committee that oversees these action plans. Several of the organizations, according to the Ministry of Justice, have been properly reinforced within the framework of the Mutual Arrangement for Strengthening Border Control Sint Maarten (ORVG) by implementing policies from those action plans.

With respect to the operational execution of the operations for crime prevention and effectiveness of law enforcement, the Prosecutor's Office indicates that, in the ideal situation, they would prefer a project-driven approach from the start. With the current lack of capacity, this is not possible. In the scope of the Ministry of Justice there are several factors that influence this. Namely COVID-19, the increased use of the police force, the accrued vacation, the reduction of overtime within the judiciary, and the function books of judicial organizations that have not yet been established. These are issues that do not supersede the working relationship between the Prosecutor's Office and the KPSM or other departments and that impact the effectiveness of law enforcement, according to the Chief Prosecutor.

The Public Prosecutor points out that many obstacles have been present for years, such as capacity, finances, and training. Although the Public Prosecutor's Office acknowledges the existence of initiatives to improve its effectiveness, it believes that the basic conditions must first be improved before a more in-depth examination of possibilities can take place. Beyond the previously discussed aspect of managing cases using the project approach, the Public Prosecutor provided the status of several issues that impact the effectiveness of law enforcement. Firstly, the capacity of the Public Prosecutor's Office is sufficient, the KPSM has capacity shortages in essential core departments such as Serious Crime, Special Unit Robberies and Youth, despite recruitment, and the LR has a serious staffing shortage, and their level of expertise needs to be optimized. According to the Ministry of Justice, the Public Prosecutors Office has a different position by which they are kept out of budget cut headwinds. The AG thereby has a strong management role, as he personally determines the allocation of resources after approval (unlike the Sint Maarten departments). Secondly, the Public Prosecutor commented that they have no insight into the promotion of expertise for either the LR or the KPSM, and that the education and training offered is of limited practical value. The Public Prosecutor also indicated that in the relationship between the reported '*bring*'- and '*fetch*' cases, there are a limited number of '*fetch*' cases supplied by community officers. And finally, the Public Prosecutor notes that there is no balance between old and new cases. At the KPSM, recent cases are mainly reviewed by means of JASAP, but also at the *Special Unit Robberies* (hereafter SUR), which must deal with many robberies and therefore also must contend with new cases. If possible, the inventory of cases is also checked. The department *zwacri* is more long-term and, depending on its capacity, also focuses *on cold cases*.

According to the Ministry of Justice, there are several policy decisions that were made which could potentially contribute to increased effectiveness. For example, for operational departments, the country package includes the provision that no cutbacks may be made in operational aspects of the operational departments. The Coast Guard has a specific cyclical policy that is based on a strategic policy from the presidium of the Coast Guard established in the Kingdom Council of Ministers and a collaborative annual plan between the countries of the

Kingdom, based on the Public Prosecutors Office (OM) multi-year investigative policy plan. The deficits experienced by the other departments have not been encountered at the Coast Guard, and according to the Ministry of Justice, the policy established for the department is supported via the agreement with the former Ministers of Justice and Finance for a long-term investment plan covering 10 years. According to the Ministry, the Coast Guard is assured of the replacement of the equipment and other assets such as the mobile shore radar. In addition, the current minister has confirmed by means of an administrative agreement within the framework of the country package that he will contribute to the long-term plan and the 24/7 operation of the Coast Guard. The Coast Guard is stronger because it is part of the country package, according to the Ministry of Justice. According to the Ministry, it was easier for the countries to agree as this will be financed by the Netherlands. The Ministry of Justice states that with the equipment and personnel, the Coast Guard will be more resilient, and the effectiveness will be increased.

According to the Ministry of Justice, certain nuisances or crimes can be addressed along administrative/governmental channels. The Minister's approach to nuisance/*community care* is cited as an example. In the Ministry's view, these are minor offenses that are "nuisances" to the community. According to the Ministry of Justice, tackling nuisances in the community such as illegal parking, loud music, souped-up mopeds, and noise pollution from cars, is more suited to an administrative/governmental channel approach. The approach to noise pollution in the hospitality industry from the TEATT (Ministry of Tourism, Economic Affairs, Transport and Telecommunication) inspectors can serve as an example. In both cases, these are issues where the community benefits and where direct results are evident. The Ministry of Justice considers the possibility of an active role for the Public Prosecutor's Office in this regard. The Ministry of Justice indicates that the cases will demand capacity from the police and that the Public Prosecutor will probably end up doing little or nothing with them, which means that the approach to the nuisance problem will be ineffective. An administrative approach unburdens the Public Prosecutor and the police and gives the ministry concerned more control over the problem. A ministry can then manage the process from beginning to end, impose administrative fines, collect the money itself and, if necessary, initiate a civil procedure. The foregoing also has an effect on the selectivity of prosecution, according to the Head of Judicial Affairs.

To the Minister of Justice relative to the Public Prosecutor's Office

Recommendation (recommendation 6 from the 2019 report): Promote development at the Public Prosecutor's Office, in cooperation with the Public Prosecutor's Office in the Netherlands, of a personnel policy that specifically focuses on Sint Maarten and benefits the efficiency and continuity and expertise of the Public Prosecutor's Office in Sint Maarten. *The recommendation has been classified by the Council in its database in the category 'personnel policy'.*

2019 Status

It was evident from the 2019 review that this recommendation was not addressed.

2021 Findings

According to the Public Prosecutor, the situation in 2021 reflects a change in the recruitment and selection policy, in which priority is given to persons from the region. A few years ago,

there was high personnel turnover, some of which was inherent to the organization. However, the balance on Sint Maarten was lost. This led to the start -as previously reported in the 2019 review- of an in-house "Officer in Training Course" (Oio). This program is an example of local training. Sint Maarten participates in the process and the *Officer in Training* involved will be employed in Sint Maarten. Should this person leave earlier, the Prosecutor says a penalty clause applies. In the meantime, the trainee officer has almost completed his training.

The Public Prosecutor is currently trying to recruit suitable candidates from the Windward Islands within the recruitment policy. If that fails, the Leeward Islands will be considered. The Public Prosecutor indicates that the pool is small and that an up-to-date personnel policy is not yet written. At the time of the investigation, the Public Prosecutor stated that it intends to work with the Caribbean Public Prosecutor management team to identify the organization-wide training needs. The objective is that this will then be transformed into a training plan with an associated training calendar 2021-2022. The Public Prosecutor's Office reports that discussions have already taken place in the JVO and OM-wide, to ensure that a larger number of officers from the Caribbean will be trained; funding is one of the prerequisites for achieving this. There are currently two training locations reserved for Oio's from Sint Maarten, starting in December 2021 in the Netherlands. The first requirement of this course is the acquisition of a court proficiency certificate. During the training, certain basic knowledge and skills must be demonstrated in a simulated setting (aptitude test) before the candidate is allowed to stand in court. If the result is positive, the candidate obtains the certificate²⁵. Several discussions must take place and financing needs to be in place before the positions are made available. The Public Prosecutor's Office indicates that there are two members of their staff who show great promise as future officers and that their developmental needs will first be determined by means of a developmental assessment. After that it will be determined whether they can be prepared to participate in the selection round in two years. The Public Prosecutor's Office says interest from the Caribbean is problematic. In the last search for a public prosecutor, only one candidate from Curaçao participated.

The National Detectives Agency reports that they do not detect a specific policy from the Public Prosecutor's Office concerning personnel for Sint Maarten. The Agency believes that gains can be realized by sharing more awareness of the cultural differences and views from both sides to thus create more understanding for each other's points of view. In this way there would be advantages within investigations in terms of sharing opinions on how to proceed to bring investigations to a successful conclusion. Furthermore, the interviewee cited a case in which a candidate who was qualified, according to the interviewee, was not given a chance, which seems to be at odds with the policy of prioritizing candidates from the region. However, the interviewee was unable to disclose the considerations in this matter.

The Ministry of Justice declares that it is not involved in the personnel policy of the Public Prosecutor and believes that it ought to mostly remain that way. The Minister of Justice is responsible for the Public Prosecutor's Office from a management point of view, but the Public Prosecutor's Office - like the Court - is in a more favorable financial position compared to other judicial departments because they are positioned at arm's length from the Ministry, according to the Ministry of Justice. The budget of the Attorney General's Office (AG) is defined and approved in the context of the JVO, as mentioned above. Thereafter, the AG himself decides

²⁵ <https://ssr.nl/oio-opleiding/uitgangspunten-initiele-opleidingen-om-2/>

whether to make expenditures within his budget. This is done through the Ministry of Justice. Subsequently, the Ministry of Justice undertakes to transfer an amount to the Prosecutor's account on a quarterly basis.

Recommendation (recommendation 7 from the 2019 report): Dedicate efforts to ensure that the Public Prosecutor's Office, in accordance with the law, processes a criminal case within a reasonable period and issues its decision to prosecute as promptly as possible. *The recommendation has been classified by the Council in its database under the category of 'enforcement and compliance'.*

2019 Status

Part of this recommendation had been addressed during the 2019 review process.

2021 Findings

Departmental and prosecutorial processing times

In 2021, the status of cases remains unclear, according to the Public Prosecutor. In the opinion of the Public Prosecutor, statistics can be generated, but they are not yet definitive. During the 2020 lock down caused by COVID-19, a portion of the backlog was cleared, and the officers were instructed to tackle so called 'shelf cases' because there was more leeway considering they could only work from home. The Prosecutor's Office suggests that the biggest impact for processing cases within a reasonable time is the JASAP method, as a decision is rendered immediately, and the case is disposed of. However, this cannot be substantiated with data.

The Public Prosecutor's Office also indicated that whether the envisaged processing times were achieved depended in part on the available courtroom capacity. Minor cases proceed reasonably smoothly, but major cases are difficult to schedule. In addition, Sint Maarten does not have criminal judges; they all must be flown in from Curaçao. As a result, some meetings had to be held online, because it was not possible to fly in. While it was a temporary solution given the circumstances, the Prosecutor's Office indicates that online hearings in 2020 occurred at the expense of quality, especially in major cases. An interviewee from the Prosecutor's Office further indicated that because of this, hearings were not conducted via a computer screen, but physically, as it frequently led to delays in cases due to the lack of conditions to deliver quality in a case.

The delay in the handling of National Detectives Agency cases may affect the Agency or the Public Prosecutor's Office. Sometimes the Public Prosecutor depends on how quickly the Agency completes its investigations, but in the past, it has been the situation that cases were brought to the Public Prosecutor by the Agency within a reasonable period but were not taken to trial by the Public Prosecutor on time, according to a National Detectives Agency interviewee. The Agency cannot influence this. According to the National Detectives Agency, there have been instances in which the Attorney General was not aware of cases that were on 'the shelf'. According to the National Detectives Agency, cases that were previously shelved are now being pursued, and the National Detectives Agency intends to efficiently pursue these cases. An interviewee from the Agency mentioned the lack of capacity also affects processing times. Currently, according to the acting head of the Agency, the capacity of the National Detectives Agency is also important in terms of the timely processing and settlement of cases. The department is struggling with a shortage of capacity that will become

(even) more acute in the short term. The current situation is that the National Detectives Agency will lose a tactical investigator employed by the RST soon. However, another RST tactical investigator who was scheduled to leave, must be replaced first. At the time of the investigation, the National Detectives Agency informed the Council that due to the departure of the RST financial investigator, the management of the RST decided not to replace the departing tactical investigator who is assisting the Agency. The rationale for this is that the Agency lacks the supervisory capacity to assist the investigator. The Agency was supposed to organize another meeting with the RST team manager concerning the replacement of the financial investigator. According to the Agency, this exemplifies the vulnerability of the National Detectives Agency. Nevertheless, the RST's temporary staff is considered an asset by the Agency. The Agency is of the opinion that, for the sake of continuity and to reduce dependency on third parties, it is necessary for the Agency to recruit its own staff and stand on its own feet. During a conversation between the acting SG and the National Detectives Agency, the Agency stated that although there is a personnel freeze, the Agency's critical positions could possibly be filled. In that case, a letter will have to be drafted so that the Council of Ministers can decide on the matter. Before these steps can be taken, the National Detectives Agency intends to meet with the Minister of Justice to reach an agreement to be provided with the proper information to inform the Council of Ministers and, if necessary, to be able to convince them of the importance of strengthening the National Detectives Agency.

In general, the Public Prosecutor's Office reported that processing times differed by investigation and by type of investigation. Processing times are affected by a pre-trial detention, or a person at large. At the Agency, processing times are too long in major investigations. According to the Public Prosecutor's Office, the *zwacri* department has a good control of cases. The same is true in SUR, considering that there are a lot of cases for only four people. In the case of JASAP, we can say that management is erratic and person dependent. According to the Public Prosecutor, JASAP does not operate smoothly and there ought to be more use of case plans. JASAP cases should be handled quickly, but once again capacity plays a role. When the file reaches the Public Prosecutor's Office, requests for and receipt of additional documents by the Public Prosecutor's Secretaries appear to be a laborious process. At the Prosecutor's Office, in JASAP cases, a subpoena is issued as promptly as possible, preferably while the suspect is still in custody. That way the case can be brought to court within a few months, whereas in other types of cases it takes longer. Despite the previously mentioned limited courtroom capacity, the Public Prosecutor's Office is not dissatisfied with the current processing times. Most old cases date back to 2019. Incidentally, this does not apply to the SUR and *zwacri* units. According to the Public Prosecutor's Office, the planning of the major cases is approaching the reasonable time limit. However, if exceeded, this will not lead to inadmissibility but to a reduction of the penalty.

Prioritizing and managing cases

Besides adequate capacity and associated impacts on processing times, prioritization, and management of cases also emerged as important conditions in the investigation related to processing times and settlement of cases.

Management

After being left essentially without a Coordinating Investigation Officer (hereafter CRO) in 2020, a new CRO was appointed in the second half of 2020. Since that time, meetings organized by the Coordinating Committee for National Detectives Agencies (CCLR) have

resumed. As of the end of February 2021, there have been three CCLR meetings for the National Detectives Agency Sint Maarten since the arrival of the new CRO.

The National Detectives Agency expressed agreement with the working method of the CRO and the absence of an AG passed unnoticed at the time. The National Detectives Agency described the relationship with the CRO and the Chief Public Prosecutor as 'good'. The relationship with the Prosecutor's portfolio holder responsible for the Agency could be improved. The CRO is committed, according to the National Detectives Agency, to keeping up with all cases. The CRO is also committed to the central steering committee²⁶.

The intention of the National Detectives Agency was to process more cases, but the workload was considered to be too high. This can lead to disagreements between partners such as the Public Prosecutor's Office, when too many cases are accepted without being completed, according to one interviewee from the Public Prosecutor's Office. For this reason, a discussion was held with the CRO about the National Detectives Agency doing more 'fetch cases' and not attempting to handle all investigations. The CRO, according to the Agency, agreed to this proposal to change the approach. The extent to which the approach was discussed by the CRO with the case officer for the National Detectives Agency remains unknown to the Agency. Nevertheless, according to the Agency interviewee, work is already underway with the CCLR towards the proposal.

Prioritizing

In some cases, (working) agreements are made with the Public Prosecutor's Office, but these agreements are not honored by the Public Prosecutor's Office, which, according to the Agency, creates inevitable obstacles. There are agreements regarding police cases to be handled, but these are not always acted upon (for more information, see the Council's report on the review of the National Detectives Agency). The Agency must continue to monitor the situation for the sake of clarity in the team.

In terms of the selection of cases by the Public Prosecutor, the Agency expresses disappointment. More consideration could be given to the input of the National Detectives Agency. The National Detectives Agency's recommendations are not (always) considered, and they feel that they are not being heard, resulting in more dismissals, according to an Agency interviewee. The National Detectives Agency, in collaboration with the new CRO, and via a more transparent decision-making process, is trying to ensure that all responsible parties in the Public Prosecutor's Office and the National Detectives Agency have a say, in resolving this communication problem. The National Detectives Agency points out that it considers the relationship with the Public Prosecutor's Office important in this regard.

Recommendation (recommendation 8 from 2019 report): Maintain the course for increased proactive communication and, in addition, formulate an explicit communication policy. *The recommendation was classified by the Council in its database under the category of 'service and communication'.*

2019 Status

It was noted that this recommendation had been partially addressed during the 2019 review process.

²⁶ Policy Plan for Criminal Justice Cooperation in the Caribbean Region of the Kingdom of the Netherlands 2020-2023, page 12 under 5 "Management"

2021 Findings

The Public Prosecutor has been developing its communication vision, and a communication policy plan was recently created. The policy still needs to be implemented. For some time now, the Public Prosecutor has been trying to achieve a more structured approach to communication. This is evident from the Prosecutor's vision document entitled '*Perspective on crime prevention 2016 - 2020*'. The three pillars in the document are the improvement of community links and communication. In the document the Public Prosecutor's Office indicated that a systematic change to a safer, more just society with less crime and more integrity cannot be achieved without a more explicit involvement of society itself. The Public Prosecutor considers the community as a partner. That vision has now been expanded in the Public Prosecutor's 'Communication Plan 2021'. The document serves as an internal guide for communication by the Public Prosecutor on specific topics and serves as an internal reference guide about the Public Prosecutor's role with respect to the topics. The Public Prosecutor's objective is to create more awareness in the community using recurrent communication. The plan elaborates on how the Public Prosecutor will strategically design communication. The paper was prepared by a communications officer employed in the interim by the Public Prosecutor. Furthermore, in the last quarter of 2019, the Public Prosecutor launched a new website.

Recommendation (recommendation 9 from the 2019 report): Upgrade the PRIEM business processes system. *The recommendation was classified by the Council in its database under the category of "business processes and ICT".*

2019 Status

It was noted that this recommendation had been partially addressed during the 2019 review process.

2021 Findings

In 2021 the situation shows that efforts are being undertaken to optimize PRIEM. While the system is not yet functioning to the Public Prosecutor's Office's satisfaction, compared to 2019 the data processing is more structured. The Council refers to [Chapter 4](#) of this report, on the 'enforcement of fines, damages and dispossessions' for a more detailed discussion of the system.

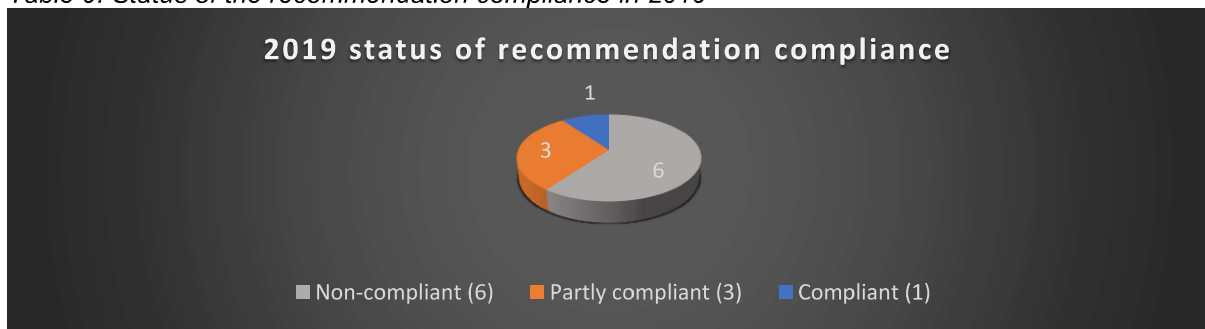
3.2 Analysis

Introduction

As part of its inspection into the Prosecutor's Office's investigative and prosecutorial policies, the Council issued ten recommendations in 2015, after which a review inspection followed in 2019. During the review inspection, the Council revealed that a single recommendation had been addressed. At that time, 9 of the recommendations still needed to be partially (3) or fully (6) implemented. Consequently, the overall compliance rate in 2019 was **25%**²⁷.

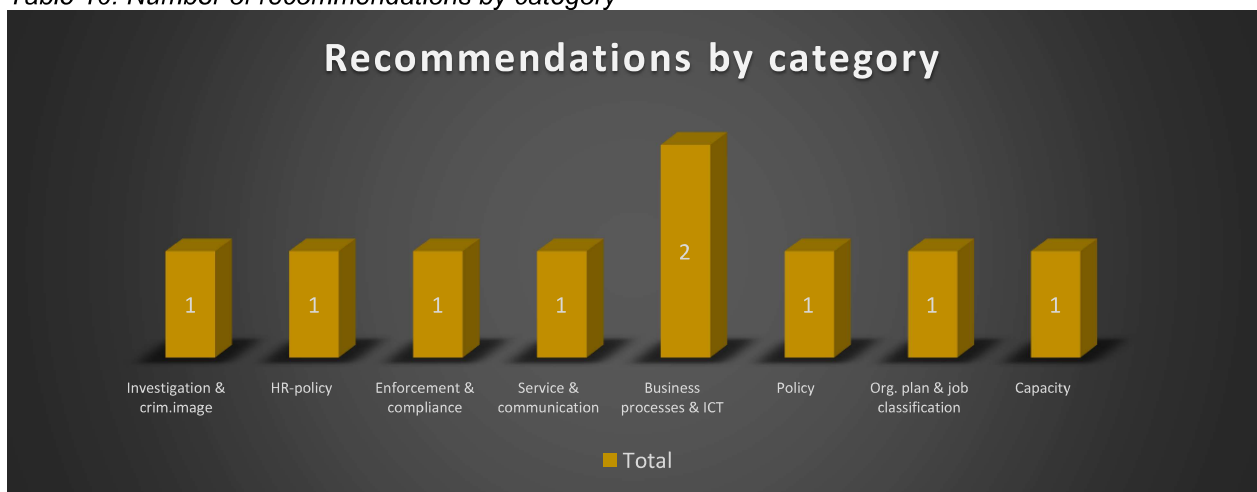
²⁷ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

Table 9: Status of the recommendation compliance in 2019



Since the Council previously explained that the four recommendations regarding the National Detectives Agency were reviewed in another investigation, the current sub-inspection addresses the review of five recommendations. The nine recommendations were categorized at the discretion of the Council in its database to provide greater insight into the individual recommendations. The subdivision is intended to be indicative and is as follows: investigation and crime image (1), human resources (1), enforcement and compliance (1), service and communication (1), and business processes and ICT (1).

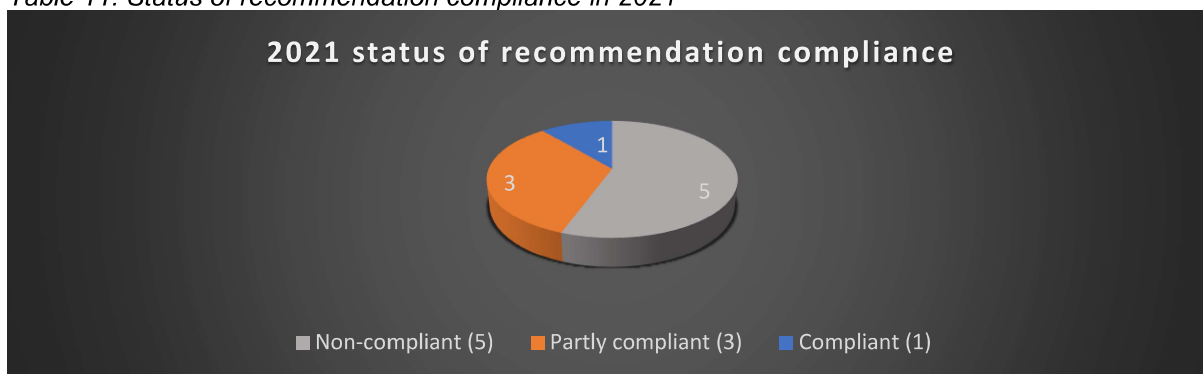
Table 10: Number of recommendations by category



Status of recommendation compliance in 2021

The situation in 2021 reveals that of the nine recommendations, one was complied with (communication), three recommendations - two similar to 2019 - were partially addressed (human resources policy, PRIEM and processing times) and five recommendations - similar to 2019- were not addressed (law enforcement effectiveness policy National Detectives Agency; implementation of improvement plan; capacity National Detectives Agency; and business process system (for the status of the last four recommendations, see the National Detectives Agency inspection). For this reason, the compliance rate will be **28%** in 2021.

Table 11: Status of recommendation compliance in 2021



The following is true of the five recommendations examined in this review. The concerns that arose in the recommendations have been covered in detail in the initial as well as in the 2019 review report. It is now apparent that, as was the case in 2019, the recommendation compliance remains very limited. The only changes observed relate to recommendations on human resources management and communication. The extent to which effectiveness can be strengthened is particularly important, according to the Council, because this affects, among other things, the topics of the other recommendations. For this reason, the Council discusses the ability to operate in more detail, however, the Council acknowledges that the recommendation could have been worded more precisely and that the strategic nature of the recommendation is complex. Nevertheless, the Council believes that the following specific issues should at least be addressed: plans, agreements on collaboration, quality, information (sharing), capacity, education and training, expertise, resources & ICT. The recommendation to improve the effectiveness within the justice system demands an integral and strategic approach. Both matters are a joint (legal) responsibility of the Public Prosecutor's Office and the Minister, and for which the Minister of Justice carries ultimate political responsibility.

In general, the Public Prosecutor's Office is responsible for the criminal enforcement of the rule of law.²⁸ The Public Prosecutor's Office is responsible for, among other things, the enforcement of legal regulations and the investigation and prosecution of criminal offenses. The Attorney General oversees the proper investigation and prosecution of criminal offenses²⁹. The AG may also instruct police officers (judicial police) on the prevention, detection, and investigation of criminal offenses as he deems necessary in the interests of justice.³⁰ The Minister of Justice can issue general instructions to the AG³¹ and should facilitate the operations of the OM/AG (management). In other words, the Minister of Justice and the AG are the appropriate parties for (strategic) management of proper law enforcement, including the effectiveness of the law enforcement apparatus.

Management, as just mentioned, demands decisive policy action on the part of these stakeholders and a great deal of communication to achieve the appropriate prioritization of issues in this broad field of activity and to involve the appropriate parties in the field. In first instance on Sint Maarten. However, the findings reveal that the judicial approach is often

²⁸ Article 9 Kingdom Act on OMs

²⁹ Article 6 (3) Kingdom Act on OMs

³⁰ Article 11 (1) of the Kingdom Act on OMs

³¹ Article 13 Kingdom Act on OMs

initiated in the Netherlands and introduced and prioritized in the Caribbean through the JVO. The findings reveal that Justice, on the level of the Kingdom, Country Sint Maarten, the Ministry, and departments, takes an ad hoc approach on certain elements, primarily operational and less strategic. Sint Maarten's integrated requirements are poorly addressed from that level, government lacks resources to address the appropriate issues in appropriate measure as well to engage the appropriate stakeholders. In the field, there are rumblings of a failure to involve certain departments. The National Detectives Agency and the Public Prosecutor's Office expressed their views on this subject during this investigation as pertains to the further development of the National Detectives Agency and the approach to the border, respectively. The Ministry of Justice should act as a (legal) facilitator for the departments by providing legislative proposals and policy. The Ministry has an important task in the preparation of the platforms such as the tripartite consultations and the JVO. One important aspect in this regard is maintaining a sound knowledge of the field and keeping up with trends, which are mostly operational. In this context, the Council anticipates opportunities for the AG and the Minister to work together in setting priorities and for the prosecutor's office to cooperate with the Ministry at the strategic level.

The departments that, in light of the findings, have greater leverage to potentially increase their effectiveness are subject to Dutch oversight and receive Dutch funding on either a project- or routine basis. These include the Coast Guard, the Public Prosecutor and the KPSM. They operate based on priorities dictated by the Netherlands, such as border control and tackling subversive crime. Obviously, this is a good thing, but an integrated approach tailored to local circumstances remains of great importance. As far as supervision is concerned, it is fair to say that this momentum creates, and obliges the departments to organize, despite the many tasks they face, as well as to continue to pay attention to the progress of the plans that can bring structure to the law enforcement approach. Documenting the activities also generates political attention, which leads to a greater understanding of the needs in those specific areas.

The capacity of the departments requires a sustainable budget and is (thus) a matter for Sint Maarten. Management-wise, there is insufficient investment in the structural improvement of this situation. The Council observes that because of a lack of integral prioritization of focal areas and the absence of an integrated approach, the deficits are becoming increasingly serious. This means that synergy from a common approach cannot be achieved because the components of law enforcement do not align due to the absence of strategic goals. Strategic goals are long-term targets that anticipate the deployment of topics and that provide insight into where the (financial) needs are. Joint topics first require strategic targets, but the absence of these means that the (financial) resources are fragmented and very little can be done in a structural way. This impacts effectiveness.

The three major issues identified in this investigation and related to the topic of law enforcement effectiveness (again) are capacity, training, and finances. The Council views these issues as traceable to the strategic management of law enforcement. The limited strategic presence of management, authority, and the Ministry of Justice - as the main support mechanism- in the creation of law enforcement capacity on Sint Maarten is worrisome. The more profound challenges include, identifying problems through information, mutual (political) coordination (at the Kingdom level and at the level of civil service), determining integrated strategic choices, setting priorities based on urgency and resource availability, allocating

resources (if desired) by topic (instead of by department), formulating projects and programs for development, and organizing management and supervision around the programs and projects. Issues mentioned here require external support from the Ministry of Justice and more generally from the Kingdom.

The Prosecutor's Office is mindful of the issues concerning the continuity and efficiency of the Public Prosecutor's Office's capacity, and some improvement has been achieved in this area by recruiting a candidate trainee who will be employed locally at the Public Prosecutor's Office on Sint Maarten. The Prosecutor's Office has also implemented safeguards to prevent the immediate departure of this candidate. Thus, creating room to build the Prosecutor's Office on Sint Maarten. Personnel turnover at the Public Prosecutor remains a problem, as does the recruitment of suitable candidates for the positions at the Public Prosecutor's Office on Sint Maarten. The Public Prosecutor's Office reports that it does not have sufficient candidates. The Council is of the opinion that the pursuit of an active Sint Maarten-focused personnel policy by the Public Prosecutor is significant because the circumstances of the island are different than the other islands. The challenges regarding personnel with Sint Maarten experience are specific to the island and should therefore be addressed in a way that allows for sufficient and precise attention in recruitment and communication. In the opinion of the Council, the process initiated has a good chance of succeeding. However, should that process not be successful, it is essential that it can be followed up promptly. Incidentally, the Public Prosecutor made good progress in formulating a specific communication policy in 2021. The Council looks forward to seeing how this will be implemented in the community.

It is now common knowledge that the departments are operating below full capacity. Meaning that they are unable to do what is needed for adequate law enforcement. This extends beyond prioritization and proper management, although these issues are also vital to the success of the law enforcement approach. Furthermore, the pandemic has exposed how working in accordance with processes requires more than just capacity. Despite the reduced workload and the reduction of the case backlog during the COVID-19 crisis, the bottlenecks related to this recommendation are still evident. They are manifested in the fact that the Prosecutor's Office currently has no oversight of cases. In the chapter on the enforcement of fines, damages and dispossessions, the role of the PRIEM business process system is further explained, and the Council would like to refer to this. In addition, JASAP causes management difficulties within the police force. There is no management continuity because of the absence of qualitative capacity and, when cases are not immediately handled, there is apparently no systematic follow-up on the Public Prosecutor's reinforcement requests. Statistics are not available to measure the project's progress. Similarly, the COVID-19 crisis has exposed weaknesses in the judicial system's centralized organization. The lack of optimal staffing in Sint Maarten's judicial organization, results in bottlenecks in both the quality and timeliness (processing times) of court appearances. It exposes an undesirable dependence of the Public Prosecutor's Office in Sint Maarten on the centrally organized Common Court of Justice. This influences the way the law can be enforced on Sint Maarten.

At a different level, the process of communication (and decision making) is subject to debate. This process has improved in the sense that all stakeholders are now aware of the importance of good communication about issues and joint decision-making. This process is still in its infancy and the Council is monitoring the development with interest.

Recommendation and monitoring

With its review, the Council has shed light on the situation regarding the compliance with the recommendations in the context of the Public Prosecutor's Office's investigative and prosecutorial policy. Based on the abovementioned, the Council's recommendation to the Minister of Justice is as follows: *Implement the four recommendations issued by the Council which have not yet been (fully) adopted and make the necessary resources available as soon as possible.*

| Recommendations investigative and prosecutorial policy of the Public Prosecutor's Office | Status 2021 |
|--|--------------------|
| <i>Analyze the specific opportunities available within Sint Maarten and the Kingdom to strengthen the impact of the Public Prosecutor's Office, the National Detectives Agency, and the Sint Maarten Police Force.</i> | Non-compliant |
| <i>In cooperation with the Public Prosecutor's Office in the Netherlands, promote the development of a personnel policy at the Public Prosecutor's Office that specifically focuses on St. Maarten and that enhances the efficiency and continuity and expertise of the Public Prosecutor's Office in St. Maarten.</i> | Partly compliant |
| <i>Ensure that the Prosecutor's Office, in accordance with the law, processes criminal cases within a reasonable time and renders its decision to prosecute as soon as possible.</i> | Partly compliant |
| <i>Maintain the established course toward more proactive communication and, in addition, formulate explicit communication policies.</i> | Compliant |
| <i>Modernize PRIEM business process system</i> | Partly compliant |
| <i>As required by law, provide for a general political-administrative policy on the National Detective Agency that respects proper mission performance and adequate infrastructure for effective support management.</i> | Non-compliant |
| <i>Implement the National Detectives Agency's improvement plan.</i> | Non-compliant |
| <i>Ensure that the National Detectives Agency is reinforced in accordance with the staffing plan so that the lack of capacity and expertise is permanently remedied.</i> | Non-compliant |
| <i>Arrange a business process system for the National Detectives Agency.</i> | Non-compliant |

The Council will begin to periodically monitor the progress of outstanding recommendations in 2022 regarding investigative and prosecutorial policies.

4. Status of recommendations on enforcement of fines, damages, and dispossessions

Introduction

Fines, damages, and dispossessions in brief

Article 9 of the Kingdom Act on Public Prosecutors charges the Public Prosecutor with enforcing verdicts and decisions rendered in criminal cases. Among other things, the WvSv provides the Public Prosecutor with the legal responsibility to execute judgments and rulings, including those relating to fines (Articles 605 and 628 WvSv; Articles 1:54 and 1:57 WvSr et seq.; and Article 3 of the Uniform National Ordinance on the Judiciary). It includes the supervision, organization, and administration thereof. The confiscation of illegally obtained assets is completed in accordance with the same procedure applicable for fines (634 WvSv). The enforcement of penalties and sanctions is a part of criminal procedure and is described in detail in the Code of Criminal Procedure. The Code of Criminal Procedure also regulates the definition of penalties and sanctions. In accordance with the WvSr, a fine is one of the main penalties (1:11 WvSr) that the court can impose. Compensation for damages is a special condition (1:21 paragraph 2 a WvSr) that can be imposed in combination with one of the conditional sentences mentioned in the Penal Code.

Compensation or a fine may also be imposed as a special condition of dismissal.³² The judge, when convicting on a criminal offense or where a criminal offense has been considered by the judge in the sentencing (with a confession in the subpoena), may, as a measure, order the convicted person or defendant to pay a sum of money to the National Government on behalf of the victim, if the victim has suffered damage under civil law (1:78 WvSr). The Public Prosecutor is responsible for remitting this amount to the victim. The dispossession of unlawfully acquired assets is a measure (1:77 WvSr (38e of the old WvSr)) that requires the convicted person to pay the National Government the amount of the unlawfully acquired assets.

Council investigations of 2012, 2014 and 2018 review

In 2012, the Council conducted an inspection about victim assistance on Sint Maarten. This inspection revealed that the enforcement of criminal sentences is a problem. A significant finding was that "the victim, even when the verdict is favorable to him, often does not receive compensation." This was followed in 2014 by an investigation into the enforcement of fines, damages, and dispossessions. Also included are cases settled by the Prosecutor's Office. The investigation revealed, among other things, that the registration of financial penalties and the performance of enforcement are seriously deficient and in urgent need of attention. Far too many verdicts did not result in a payment. Bottlenecks in 2014 included deficiencies in accounting, complexities in the process that offenders experience when they are ready to pay, and the very limited use of legal mechanisms to encourage payment from offenders. The Council concluded that systematic improvements were needed and issued five recommendations in total, three related specifically to implementation, and two related to the Crime Prevention Fund. In 2018, the Council conducted a review on the follow-up of three of the five recommendations in the 2014 report. The 2018 findings revealed a slightly improved performance in registration and administration of cases to be enforced, compared to the 2014 findings. This was attributed to the introduction of *Paga Bo But* (PBB) which allowed imposed

³² Article 2017 Code of Criminal Procedure

traffic fines to be registered. PBB generates data on the type and volume of traffic fines and facilitates the actual enforcement. For the remaining fines, no provisions had yet been made by the Public Prosecutor. The Public Prosecutor's system known as PRIEM, which can be used for this purpose, was not yet in use. The Council concluded that these improvements identified in 2018 as compared to 2014, were not substantive nor permanent.

The Council refrained from issuing new recommendations relating to the Public Prosecutor's Office because it relied on the actual efforts of the Public Prosecutor's Office to improve implementation. Moreover, the new recommendations would largely be similar in scope to the previous recommendations. The Council issued one new recommendation containing two components, namely the implementation of Actpol and (Act)BMS.

In 2019/2020, the Council performed a review of the two recommendations on the Fund derived the 2014 report. Progress on these two recommendations was as follows:

| Year | Recommendation | Review 2019/2020 |
|------|--|------------------|
| 2014 | When submitting the annual budget, include a policy plan that identifies projects eligible for funding from the crime prevention fund. | Non-compliant |
| 2014 | Guide the creation of the Steering Committee on Crime Prevention and involve it in the management of the Crime Prevention Fund. | Non-compliant |

For a detailed discussion of the content, the Council invites the reader to refer to the report³³ and, for the status, to Chapter 2 of this report.

The present review focuses on the status of the implementation of the four recommendations and assumes four modalities, namely the implementation of: compensation (to victims); fines (general); traffic fines and dispossessions.

The recommendations are described separately in the next section.

4.1 2021 Status of Enforcement of fines, damages, and dispossessions

Findings

The status of each recommendation in 2021 is described below.

To the Minister of Justice with respect to the Public Prosecutor:

Recommendation 1: Organize the accounting system in such a way that reliable data can be generated on the type and volume of financial penalties imposed and their enforcement. *The recommendation has been classified by the Council in its database under the category 'statistics'.*

2018 Status

The Council concluded that the Public Prosecutor's Office had partially complied with the recommendation regarding the administration of fines for traffic and other offenses and had taken a positive step in the desired direction. As far as the administration of fines for non-traffic violations, damages, and dispossessions of unlawfully acquired assets, the Council concluded

³³ <https://www.raadrechtshandhaving.com/wp-content/uploads/2019/06/Vastgestelde-eindversie-7-april19-JVL-1.pdf>

that the recommendation had not been addressed. On this basis, the recommendation is considered not implemented.

2021 Findings

The Council was unable to obtain the data requested from the Public Prosecutor's Office concerning the type and volume of fines imposed and the enforcement thereof within the stipulated period.

The enforcement process, as the 2018 research revealed, is largely dependent on the way in which accounting is carried out. The Prosecutor's Office seeks to carry out the electronic administration of enforceable financial sentences using the PRIEM system. In general, PRIEM's accessibility is a point of concern for the Prosecutor's Office, because it is very limited. Certain options within the system are not automatic, and experience often shows that a specific option simply does not work. Currently, the ICT system, PRIEM, is still not adequately developed to properly support enforcement tasks. This means, for example, that - as in previous investigations - it is impossible to generate data from (the few) criminal cases, which are not (traffic) offenses. For example, the system is also unable to process several types of convictions simultaneously. For example: suspended sentence, community service and fines cannot be inputted at the same time. The monitoring of time limits is one of the most important aspects that the system should achieve, but this is not possible with PRIEM. For example, when sentences become irrevocable, a reminder is not provided. Moreover, the follow-up registration actions cannot be processed. The manual processing in Excel, the review and if necessary, identification the amounts, now takes much more time. Registration in Excel also takes place for the letters sent, reminders, amounts and payments by the defendant. The number of confiscations is processed in an Excel sheet by the responsible Public Prosecutor. The amounts have yet to be clarified. The administration of traffic and other offences is still done using the PBB system, just as was the case at the time of the earlier investigation, and data can still be generated using this system. The Public Prosecutor indicated that the intention is to eventually register everything in PRIEM.

In this context, the Public Prosecutor claims that the timeliness for providing PRIEM-applications deserves attention. In other words, it takes a long time to find proper solutions for the challenges related to administration, described above. Optimization has been outsourced to the company ACTS and updates are constantly being developed. A fully equipped system is expected in the medium term. In consultation with key users of chain partners, for whom ACTS is developing a system or module, attention is present, and priorities are being set. The enforcement module (for enforcing sentences) has now been prioritized for the Public Prosecutor's Office. Despite this, according to the Public Prosecutor, it remains a lengthy undertaking that has already lasted a year due to the many priorities that need to be dealt with. In February 2021, the Public Prosecutor was engaged in the testing phase of the module. The Public Prosecutor prefers more rapid progress in this process and indicates that an Appeal module is still missing. The date for the next release is not known, but the Public Prosecutor indicates that it will be ready by the end of 2021 at the earliest. With that, the work is not yet finished. The Public Prosecutor points out that in addition to a usable system, adequate entry is important, and that entry is labor-intensive. There are staffing implications as a result.

The Council's investigation further reveals that currently both prosecutors and administrative staff at the Prosecutor's Office are involved in the administration of the enforcement process,

with administrative staff playing a major role. However, the Prosecutor's Office has not yet gotten around to properly carrying out this administrative task due to the many other assignments they have, lack of capacity, and because much more is involved in the proper set-up, such as adapting the summons processes or the proper registration at payment locations. Furthermore, it is a difficult project that will need time before all parties involved are on the same page.

There are (have been) initiatives in some areas with the potential to contribute to better enforcement. The previously mentioned JASAP project is expected to lead to improvements within the enforcement process, because of the swifter completion of 6-hour cases and potentially also the payment of fines in those cases. The protocol initiative for victim assistance between KPSM and the Prosecutor's Office has indirectly contributed to more awareness, insight, and oversight on both sides, which also benefits the collection of damages for victims. Improved contact and information are now being provided to the victim, there is more awareness among the prosecution and the police concerning the position of the victim, and registration is being improved. The project previously deployed by the Ministry, entitled '*Recovery fines*' for the collection of fines, failed to produce the intended results, but it did provide the Public Prosecutor's Office with valuable insight into the complexity of enforcement and, in the process, revealed internal bottlenecks.

The Public Prosecutor's Office intends to take a project-based approach in the organization of the enforcement task - different from what was previously envisaged - and to appoint a project manager. The project manager's task is to categorize the process, hold consultations and make agreements with all stakeholders. The Public Prosecutor reports that although the individual prosecutors do not have a formal role in the administrative process, they can arrange their work in a certain way so to allow the process to flow better. In addition, the Prosecutor cooperates with the policy officer, the administration and the HOvJ to streamline the enforcement process as much as possible. A bailiff and an administrative worker will also be recruited, and department vehicles will be replaced or purchased (bailiff). The project will be financed using internal budget reallocations within the Public Prosecutor's Office, so that the expenditure remains within the total budget of the Public Prosecutor's Office. Possible complications include the fact that the budget still needs to be approved and the required process for issuance of the national decrees for the newly recruited employees. To assess the employment of the staff, the staff complement is always considered.

Furthermore, one of the prosecutors interviewed referred to several initiatives for improving enforcement. These relate to the drafting of a profile for an enforcement officer, who must still be hired and trained, adjustments to PRIEM for the registration and the monitoring of time limits in enforcement cases, and the organization and monitoring of the Public Prosecutor's seizure and confiscation processes. The officer interviewed is currently working on obtaining a better overview of offenders who are still at large and still must serve their sentences.

Below, the Council specifically addresses the modalities previously mentioned in the introduction.

Compensation/damages (to victims)

Dealing with victims in the system is also affected by the way enforcement data is managed. In this investigation - as in previous investigations - almost all interviewees refer to the overall

position of the victim. They point out that victims have a difficult, if any, position in the criminal procedure system, specifically highlighting their position in the context of (the collection of) compensation for the victim. A newspaper article from late 2020 illustrates this by quoting a criminal lawyer in Sint Maarten who expresses his concerns about the treatment of victims in the system.³⁴

He contends that: *“The position of the victims of violent crimes in St. Maarten is weak compared to that of the criminals who harmed them”*. He further points out: *“nine examples of violent crimes whereby the court awarded damages to the victims. But because the perpetrators did not have any assets, those claims were never paid out”*. The article indicates that the lawyer complained to the Minister of Justice on this issue in a letter, adding that he describes the role of the Public Prosecutor's Office as: *“(...) the Public Prosecutor's Office is hardly available to the victims. It routinely sends a note explaining that victims can submit a civil claim during a criminal procedure, but it offers no help whatsoever. Victims often do not understand the message and appear in court without documents to support their claim. Then they fail to submit a claim, or the court declares their claim inadmissible. While suspects get an attorney free of charge, victims must pay for legal assistance. But even if the court awards damages, victims often remain empty-handed because the defendant cannot pay (...)”*

In response to the newspaper article from the criminal lawyer, the Public Prosecutor's Office states that it supports the criminal lawyer's reasoning that victims feel abandoned. According to the Public Prosecutor, the criminal lawyer has a point since the victim is left with a traumatic experience.

However, the offender is not - as the lawyer argues - better off because a (custodial) sentence is hanging over him or her. The Public Prosecutor does his best, but realizes that, from the victim's point of view, improvement is desired. The Public Prosecutor considers the absence of an office for victim assistance a great loss and attributes this to financial shortcomings of the country. Additionally, the Public Prosecutor feels that a victim support office could also be linked to a legal desk providing free legal advice, which is a role the Public Prosecutor currently performs. The Public Prosecutor says that it is not involved (any longer) by the Minister of Justice or the Ministry of Justice in any plans for a new victim assistance office, but of course it always encourages it. Also, since people are currently looking for a place to go for help, this might reduce the number of phone calls to and walk-ins at the Public Prosecutor.

Regarding victim assistance, the Public Prosecutor indicates that it has not received any specific complaints, but that it still receives general complaints of individuals being turned away from the KPSM when they tried to report a crime. These victims then knock on the door of the Public Prosecutor or the Ombudsman.

The Council's current investigation found from interviews that filing a claim for compensation often does not make sense for the victims, especially in cases where there is already a court ruling to this end. The reason is that offenders/defendants often do not have the financial means to compensate the damage, leaving the victim empty handed. The compensation is therefore described as a paper tiger by one interviewee. According to an interviewee from the legal profession, on two occasions an amount in damages was awarded to a crime victim, but the Government of Sint Maarten was not able to provide the victims with the compensation.

The role of the prosecutor in compensation cases is described as mixed by a lawyer, and due to the change of prosecutors, it is possible that in one specific case, several prosecutors have contact with a victim. This practice occurs when a prosecutor leaves, and the incoming

³⁴ <https://stmaartennews.com/local-news/attorney-stands-up-for-victims-of-violent-crimes/>

prosecutor must take over the criminal file. In general, victims of major cases are well taken care of and assisted by the Public Prosecutor's Office. In contrast, matters often go wrong in regular cases. According to the lawyer in question, this also happens with victims of limited education or victims who do not speak the language. These victims do not know what to do and the criminal case ends without the victim's damage being (adequately) dealt with. An interviewee from the legal profession indicated that the Public Prosecutor often does not invite these victims for consultations and pointed out that it is the responsibility of the victims to be well informed. Systems are not compatible, but funding (or the lack of it) also plays an important role in whether victims can be compensated for their losses.

Compensation to victims has also been discussed with the Dean of the Bar Association (the Dean) and several written questions on the subject have been circulated by the Dean to members of the Bar Association. Several lawyers replied. A general impression is that the legal profession is not closely involved with the subject matter and victims rarely report to the legal profession. The interviewees from the legal profession are therefore of the opinion that it is important that victims receive more information and support. The Dean indicates that he currently has no insight into the problems of victims of criminal offenses or whether they receive compensation. That is because victims generally do not have the attention, as such, within the legal profession. According to the Dean, this is mainly because of the fundamental reason where victims and offenders cannot be represented at the same time. When asked, the Dean indicated that such an important subject certainly belongs among the topics that are usually raised by the Dean or the Bar Association in connection with the proper administration of justice and the rule of law.

The Public Prosecutor indicates that the core focus of the Prosecutor's Office is offender oriented and continues that victim rights and attention for the victim - not only in Sint Maarten - are new phenomena. Currently, the Ministry of Justice finds itself in the middle of this trend and the increasing attention for it in Sint Maarten. Legally speaking, the role of the victim is reasonably incorporated in the law, at least as far as redress is concerned, according to the Public Prosecutor. Although the current Code of Criminal Procedure does not include the right to speak and lags in this area, in practice the Public Prosecutor's Office finds that the court does offer this possibility to victims. It is true that the Public Prosecutor has experience with different judges in criminal cases and notes that the right to speak is not consistently used. The new Code of Criminal Procedure does include this right. According to the Public Prosecutor, the government must create space in the budget for the payment of victims and sees the crime prevention fund as an option.

The Public Prosecutor's Office also considers it a welcome development that attention is being paid to the problem by, for example, from the previously mentioned lawyer, but believes that the topic should be approached holistically if changes in the treatment of victims in criminal cases are to be made.

The Public Prosecutor has devoted attention to the subject through its recently formulated victim policy of October 2020. In the document, the Public Prosecutor's Office declares that it seeks visible, perceptible, and identifiable actions and meaningful interventions on behalf of victims. The Public Prosecutor wants to optimize victim care by providing information about settlements, by treating victims decently and by means of an appropriate compensation mechanism. As part of this new policy, the Public Prosecutor has developed an information flyer for victims, among other things. The KPSM has also provided input on this matter. The

Public Prosecutor indicates that it has had to make choices in the victim policy. This is the case, for example, with regard to providing victim consultations. Although everyone could be offered a consultation, the Public Prosecutor has established that, at least in specific categories with a severe impact, the victim is always offered a consultation. Looking back at 2020, the Prosecutor's Office indicates that the Victim Policy is an achievement they are very proud of. Within the Public Prosecutor, a Prosecutor and a Prosecutor's Office secretary were already working to increase internal awareness and treatment of victims and they also worked with the policy officer on the new policy. They also consulted with the administration and other prosecutors and prosecutor's office secretaries. The Prosecutor's Office notes that staff internally are more actively engaged in the issue than before and that there is feedback in this regard. There is also a Prosecutor who keeps track of the amount of compensation awarded in the cases. Given that it is still new, the Public Prosecutor cannot really indicate whether the efforts are yielding the intended results, but the first indications are promising. At the Prosecutor's Office, there is more awareness about issues such as informing victims and being aware of a deadline for payment and tracking deadlines for legal surcharges. According to the Public Prosecutor, the KPSM and the probation department (Court of Guardianship and SJIB) have been made aware of the Public Prosecutor's new policy.

Although the Public Prosecutor's Office reported that it could provide an overview of the number of punitive damages awarded and the total amount of money awarded, the Council did not receive this by the deadline. The Public Prosecutor's Office, however, indicates that it cannot properly trace whether payments have been made, because the Public Prosecutor's Office does not always have the means to pursue convicted criminals and the enforcement process is not yet consistently followed. In cases where the offender/defendant is willing to pay, there are usually clear agreements with him or her and they know where to pay. This can also involve very small amounts.

According to the law, after eight months, the government can compensate the victim with up to ANG 5,000. Whether, and to what extent, the government is involved in the payment of victims is not evident to the Public Prosecutor. No discussions take place between the Public Prosecutor and the government in the cases where a sentenced person fails to pay. What the Public Prosecutor typically does is to escalate the matter in distressing cases and support the victim by, for example, calling the government's attention in this regard, but this, as such, is not a regular occurrence. The Public Prosecutor has no permanent solution for expenditures by the government, however, as indicated, it sees possibilities in a payment from the crime prevention fund.

Money and traffic fines

Regarding traffic fines, the Public Prosecutor took measures together with the KPSM before Hurricane Irma to facilitate collection. This encouraged both the Public Prosecutor and the KPSM to stay on task. The Public Prosecutor printed outstanding fines each month and passed them on to the KPSM for enforcement. When the offender was found, this then prompted, for example, a family member to pay up. These operations have been discontinued due to use of jail capacity for alternative detention. In addition, large turnover in police cells is currently not desired due to the requisite COVID quarantine. The Public Prosecutor identifies the Simpson Bay building as an option for solving enforcement challenges. However, this is expected to encounter legal and staffing concerns. The Public Prosecutor also indicates that, unlike pre-2020, there are more people going to the traffic court to exercise their right to

complain about traffic fines and other fines including COVID fines, which means that the time allotted is sometimes too short.

The situation with traffic fines is still decent despite the reduction in activities or possibilities for enforcement. Traffic fines have traditionally been well documented and generally traffic fines are paid, especially when compared to other categories of financial penalties. The PBB module is used as the registration system for traffic fines imposed by the police and the Coast Guard, among others. According to the Public Prosecutor's Office, this works well. Interviewees from the Public Prosecutor's Office do not have any insight into the number of traffic fines issued, but with the help of the system, the amounts imposed, the outstanding amounts and the yearly figures can be revealed. The Council has not received this information either. In addition, the PRIEM system is used. However, with that system it is impossible to process payments. Likely the PBB system does not provide an overall overview either.

Dispossessions

The enforcement of dispossessions (confiscations) is problematic due to the lack of capacity and attention in the past. According to the Public Prosecutor's Office, the PRIEM registration system can only query for the number of cases of dispossessions. The financial component is also missing here. The Public Prosecutor in charge of dispossessions maintains a record of most of the payments using an Excel sheet. If necessary, the figures can be provided to the policy officer. The Excel sheet is not comprehensive because the registration is not carried out consistently. The figures still need to be explained. Ultimately the intention is to also register the financial data in PRIEM.

There is a confiscation (seizure) team on Sint Maarten responsible for dispossession cases. The confiscation team does not deal with money as such, according to the confiscation officer. They know exactly what they have seized but are not involved in the process that follows. For example, the team is not familiar with funds raised from auctions of previously confiscated assets.

General

According to one interviewee, the Minister of Justice's general authority to issue instructions offers a possible solution for improving the ability to prioritize and implement the Minister of Justice's vision. Experience shows that ministers are reluctant to issue instructions, which on the one hand is desirable, but on the other hand, the authority to issue instructions is ideally suited to this type of case, according to this interviewee. It is the minister's task to define broad priorities for at least one year. This gives the departments a basis on which to formulate their work plans, according to the interviewee. This interviewee also believes that there are opportunities for the minister to initiate discussions in the tripartite setting based on existing perspectives to reach practical agreements.

Recommendation 2: Organize the process in a manner that facilitates the offender/defendant who is willing to pay. *The recommendation has been classified by the Council in its database under the category 'facilities'.*

2018 Status

The Council found this recommendation had not been addressed.

2021 Findings

As in the 2018 investigation, the present review also highlights the previous option of payment at entry and exit points. The Prosecutor's Office operated and maintained ATMs at the police station and the airport. The airport system would display a warning message if there was an outstanding fine. Due to changes in the software, this was terminated at that point. This has not been reinstated.

Defendants or those who are convicted and wish to pay can do so using clear arrangements with the Public Prosecutor's Office. They then are familiar with the payment locations that are in use, being the Public Prosecutor, the KPSM headquarters, the CIBC bank, and the Receiver's Office of the Government of Sint Maarten. While the Public Prosecutor facilitates the individual paying, deficiencies were found in the registration at some of the payment locations. Crucial data like the Public Prosecutor's Office code is still too often missing and it affects the reliability of the data. During our interview with the Public Prosecutor the desire was expressed to reduce the number of payment locations and to establish sound agreements with the remaining payment locations for the sake of viability, operability and to shorten the lengthy and time-consuming procedure at the different counters. In that context, the Public Prosecutor wanted to reach further agreements with the Receiver's Office of the Government of Sint Maarten regarding the registration of payments so that they can be more easily traced. Upon processing the data from this investigation by the Council, the Public Prosecutor's Office announced in a press release that, for the time being, only payments of damages on behalf of victims can be made at the Public Prosecutor's Office. Other claims and fines must be paid at the Government's Receiver's Office or the KPSM.³⁵ The Public Prosecutor had previously indicated that the agreements with the KPSM regarding payments are working optimally and because of the good cooperation new agreements will be made as necessary.

The Ministry of Justice reports that, in addition to the extra staff for the Public Prosecutor's Office, a more effective system for processing payments is required. Currently, makeshift solutions are used, resulting in a lack of insight and oversight. When payment is made through the bank's payment terminals, it is often impossible to determine exactly what the person paid for. The money goes to a bank account, is transferred to the Receiver's Office or an account of the Ministry of Finance and then back into the account of the Crime Prevention Fund. Besides being cumbersome, this process incurs additional bank fees.

As previously noted in the investigation into the Crime Prevention Fund, the Ministry of Justice considers the tracking and tracing of 'non-payers' a Public Prosecutor's Office and KPSM task. The Ministry of Justice identifies this as a serious bottleneck that the Public Prosecutor's Office is unable to monitor and indicates that a payment reference should be provided to facilitate this process. Currently, the Public Prosecutor's bookkeeping needs improvement. The Ministry cites the lack of a system that allows the Public Prosecutor and the KPSM to trace the payment through a common computer connection. Such a system needs to be conceived and discussed, but there is a lack of capacity among all parties. The Ministry of Justice interviewee would like to see the Minister of Justice place a priority on this and take the lead through facilitation and management.

Recommendation 3: Use the legal mechanisms in cases of non-payment. *The recommendation was classified by the Council in its database under the category of 'enforcement and compliance'.*

³⁵ <https://om-sxm.org/only-victims-compensation-can-be-paid-at-prosecutors-office/>

2018 Status

In its review report, the Council concluded that this recommendation received limited follow-up. The Council determined that reminders were rarely sent and that the authority to obtain redress by means of seizure was not used. A new project intended to provide attention to the systematic progression through the stages in the enforcement of fines, namely: reminder, second reminder, seizure for recovery and alternative detention. As of March 2018, regarding sentences after March 2018, the Public Prosecutor's Office will deploy the legal remedies consisting of reminders, surcharges for non-payment, the authority to seize for collection and the enforcement of provisional detention. In addition, the KPSM would begin to conduct actions around events to collect, and the list mentioned before would be available at the airport, to check entering and departing passengers for outstanding fines. At the time, it was stated that the KPSM was equal to the task and demonstrated enthusiasm and willingness, and that the Prosecutor's Office was able to call on the Force's permanent project team.

2021 Findings

Victim Compensation

There is an employee at the Prosecutor's Office who performs a considerable amount of victim-related work by updating victims and informing them of payments and monies to be collected. This helps the victim to understand their rights and enables them to choose how to proceed within their case. In addition, the cooperating defendant also knows which steps to take to meet payment obligations. These instances of information gathering involve, however, personal initiatives by the defendant (offender) who wants to pay or from the victim seeking redress. Victims who do not take the initiative to seek restitution have little chance of obtaining damage awards under these circumstances, as legal remedies are applied in a limited way. Defendants who have no interest in complying with the obligation to pay are usually not pursued either, which means that payment may be delayed.

The Public Prosecutor indicates that, despite their efforts, they remain largely dependent on the willingness and resources of the offender/defendant. The Public Prosecutor remarks that in the current verdicts there are more compensation sentences, which is a sign that the public is becoming familiar with, and aware of, the option for damage compensation. There is an increase in the number of letters sent to victims and the number of claims received. If the offenders are in detention, the prosecution often works out a deal with people. The Public Prosecutor also indicates that they cannot do the impossible, meaning that if the offender/defendant lacks financial means they cannot collect the money. This is often the case with convicted defendant or offenders serving long sentences, as a result of which the victim has to wait much too long. An alternative detention does not add value for the victim, the capacity of Pointe Blanche Prison plays a role in the non-payment.

In other words, the legal remedies may be poorly deployed in practice due to the lack of prerequisites in many areas. The Prosecutor's Office indicates that it is also constrained in terms of time and capacity, considering the limited effectiveness and possibilities outlined above. The bottleneck regarding payment by the Government to the victim was mentioned earlier. According to the Prosecutor, this is due to the dependence on third parties, including the Ministries of Finance and Justice. The Prosecutor knows of only two examples in which the National Government paid compensation following the intervention of the victim's lawyer. However, the legal mechanism not only provides opportunities for the prosecution, but also for the victim. According to the Public Prosecutor, the victim can personally engage a bailiff with the verdict as an enforceable order. The victim can also, with the assistance of a lawyer,

arrange for an attachment of assets in a civil case. For amounts exceeding ANG 50,000, the civil process is mandatory, according to a Public Prosecutor's Office secretary. In addition, it has been legally regulated that the victim is able to collect an advance of ANG 5,000 from the Government.³⁶ This becomes particularly relevant if the defendant faces a long sentence. Moreover, the amount of ANG 5,000 concerns the compensation measure which differs from the damage award measure insofar as the government will only have to advance this amount if the judge stipulates in the verdict that it concerns the compensation measure.

Alternative Detention

Prior to Hurricane Irma in September 2017, fines were enforced and work sentences that were not carried out were converted to alternative detention. The impact was apparent to the extent that people then started to quickly pay up, according to the Prosecutor's Office. The Public Prosecutor considers it advantageous to restart this process.

The interviewed prosecutor currently explains work sentences for which there is negative feedback to convert them into alternative detention. There is cooperation with the probation department to create an overview of outstanding sentences. Due to the lack of capacity at the Pointe Blanche prison, this facility is not an option for the implementation of alternative detention. The Public Prosecutor indicates that detention must then be carried out in the holding cells at the police station. People are allowed to be detained in these cells for a maximum of 10 days, which is equivalent to 20 hours of community service. The Prosecutor hopes that the implementation of a 10-day maximum will serve as a deterrent and that people will, for example, choose to complete the community service. In February 2021, there were several spaces allocated for alternate detention in police cells. Also, notices summoning the offender to report have been issued. Should the offender fail to comply, an "arrest warrant" may be issued. The standard notices are being prepared so that they can be used. According to the Public Prosecutor, the process is running satisfactorily.

The Public Prosecutor recognizes incremental progress and indicates that he will restart executing custodial sentences. The Public Prosecutor's Office is aware that starting small and constantly evaluating the follow-up is needed. The Public Prosecutor's expectation is that the detention capacity will remain a problem in the coming years. The construction of a new prison will certainly take five years and will require additional manpower. By adjusting, the Public Prosecutor is trying to address this enforcement problem. At the time of the Council's investigation, one person was in detention because of the use of the enforcement process.

Reminders

In general, accurate postal addresses from the Census on Sint Maarten represent a problem and merit improvement, according to the Public Prosecutor. After Hurricane Irma, the Public Prosecutor temporarily discontinued issuing reminders because many addresses turned out to be unreliable. As a result, the Public Prosecutor was forced to stop using C-Post and employ an in-house bailiff to issue documents instead. The single bailiff employed by the Public Prosecutor, however, is also charged with other tasks. Since November 2020, the Public Prosecutor's Office has resumed sending reminders via C-Post.

To start legal remedies, it must be demonstrated that two reminders were sent. The procedure is still in its infancy, which means that the Public Prosecutor's Office has not yet been able to evaluate it. The intention is for the Public Prosecutor's Office to employ a second bailiff in

³⁶ Sint Maarten Penal Code Article 1:78 (6); Articles 107 to 110 Civil Code Book 6.

2021. The Public Prosecutor is currently attempting to exert pressure on collection, by sending reminders to offenders.

In addition to serving the verdict on the convicted person, an English-language notice is also sent to the offender, containing a summary of the verdict, specifying the amount, setting a time limit for payment - as opposed to the verdict - and listing the location where the payment is to be made as well as the option to enter a payment arrangement. After six weeks, the administration at the Public Prosecutor's Office verifies whether payment has been made; if not, one or more reminders are sent.

One attorney interviewed indicated that he had no insight into the use of legal remedies such as the surcharge on fines for non-payment, confiscation, or alternative detention. Another lawyer interviewed stated that the application of legal remedies occurs arbitrarily, depending on the public prosecutor, in cases of non-compliance with a suspended sentence.

Requirement in criminal cases

The Prosecutor's Office provides the following incremental sequence for the severity of sentences: fines, community service (work or learning), and imprisonment. The Public Prosecutor describes how in recent times most average and smaller cases require work punishment, because many people cannot pay a fine under the present circumstances anyway. In those cases where imprisonment is appropriate, that is also demanded by the Prosecutor's Office. The cell shortage was repeatedly mentioned as a major bottleneck during the interviews conducted with the Council. The Public Prosecutor's Office indicated that it was not deterred by the cell shortage and continues to plan and look ahead. The Public Prosecutor cannot reconcile the proposition, introduced during the interview, and shared by chain partners, that because of the cell shortage, fines are demanded more often, as such the Public Prosecutor does not acknowledge this trend. The Public Prosecutor does recognize exceptions in which the judge has replaced the imposed prison sentence with a large fine. The Public Prosecutor cites a specific case as an example. The Public Prosecutor appealed in this specific case because the Public Prosecutor is of the opinion that imprisonment should be imposed for this specific type of offence.

Recommendation 4: Implement Actpol and (Act)BMS. *The recommendation has been classified by the Council in its database under the category 'business processes and ICT'.*

2018 Status

In 2018, it was noted that ACTS had been rendered inoperative. Both Actpol and the Border management system could not be used, and the link with PRIEM was no longer possible, eliminating a suitable tool for the effective collection of fines. The Council therefore recommended to the Minister of Justice to resume use of the ACTS system for the police as soon as possible.

2021 Findings

The Public Prosecutor's Office observes that virtually all activities are chain dependent. When one link is omitted or out of order, it immediately affects the rest of the chain. For example, the Public Prosecutor can demand a prison sentence, but if it cannot be carried out, the credibility of the entire system of criminal procedure suffers.

For the digitization and automation of the enforcement process, the Public Prosecutor focuses on ACTS modules. This includes PRIEM for registration by the Public Prosecutor and the

connection with BMS and Actpol for registration by IGD and KPSM respectively to facilitate execution.

PRIEM, according to the Public Prosecutor, as stated before, is still a long way from being used as a general registration system from which reliable information can be obtained. The Minister of Justice decided in 2020 that the IGD will no longer be part of the KPSM. Currently, KPSM is no longer the only partly responsible for implementing or supplementing information related to the implementation of financial sentences. The Immigration and Border Protection Service is currently responsible for the Border Management System information at the border. The systems are both in use but are currently not deployed for the purpose intended by the recommendation.

Supplemental

While it is believed that written processes relating to enforcement can be adopted practically 'one-for-one', in practice this appears to be different and depends on local circumstances and the availability of prerequisites, the HOvJ explains. The situation on the other islands of the Kingdom differs from that on Sint Maarten. The enforcement process on Curaçao has been designed differently. Also, the Public Prosecutor on Curaçao uses a facility exclusively for payment, and administrative personnel for the enforcement process has been made available. This includes security. The Public Prosecutor on Curaçao is therefore not familiar with the registration problems like those on Sint Maarten. There the Public Prosecutor is more concerned with the willingness of persons to pay. Adoption of the system as used by the Public Prosecutor in Curaçao would result in a security problem and lack of space at the current location of the Public Prosecutor in Sint Maarten. Moreover, the Public Prosecutor on Sint Maarten has five full-time administrative employees at his disposal to perform all activities. With regard to the Public Prosecutor on Bonaire, St. Eustatius, and Saba the situation also differs because the BES is supported in many areas with resources from the Dutch Government Department for the Caribbean (*Rijksdienst Caribisch Nederland-RCN*). In comparison, the Public Prosecutor also cites the example of the Netherlands Central Judicial Collection Agency and the new USB Act³⁷. Everything there is automated and the fact that the enforcement portfolio has been transferred from the Public Prosecutor to the CJIB illustrates the complexity of the entire process and the attention and requirements that are necessary to properly set up the entire process. The situation on Sint Maarten is very different and dependence on others plays a major role. The Public Prosecutor mentions that in the last few months they have certainly been working on the matter, but gradually they have also realized the magnitude of the process and all that it entails.

One more example that is mentioned is the Public Prosecutor Aruba which consists of about 60 full-time employees and where there is access to two full-time implementation employees. On Sint Maarten, on the other hand, as stated before, the administrative staff is deployed for all activities. Based on the above, according to the Public Prosecutor, one can certainly argue that at least one separate full-time employee is needed for enforcement. With a proper ICT system and an FTE for an enforcement officer, the Public Prosecutor's Office should be able to succeed in structuring the process more effectively, according to the Public Prosecutor's Office. Filling this full-time position in relation to the other positions in the Public Prosecutor's Office is currently under consideration. For example, anyone could make entries, but the

³⁷ The Act on the Review of Enforcement of Criminal Decisions (USB Act) became effective on January 1, 2020. This Act shifted the responsibility for the execution of sentences and measures (imposed by the judge or the Public Prosecutor's Office) from the Public Prosecutor's Office (OM) to the Minister for Legal Protection.

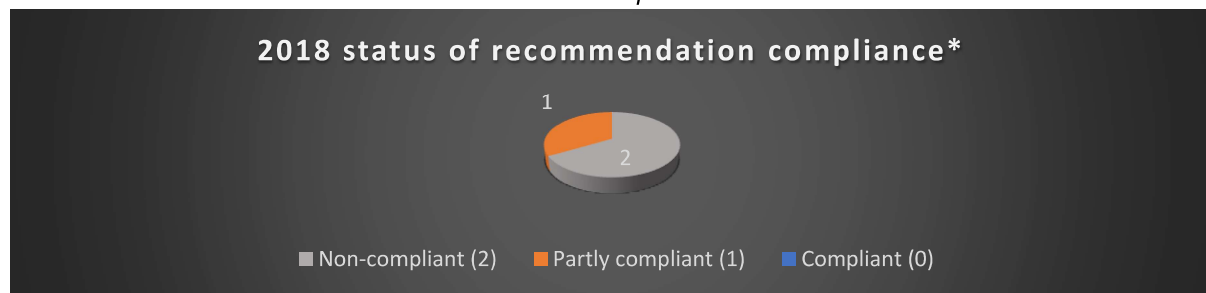
progress monitoring, in particular, should be done by the new enforcement employee. In addition, a bailiff is now also used to carry out certain activities.

4.2 Analysis

Introduction

The Council issued five recommendations in 2014 as part of its inspection into the enforcement of fines, damages, and dispossessions, and followed up with a review inspection in 2018. In the review inspection, three of the five recommendations were examined, and one new recommendation was introduced as a result of the 2018 review (the remaining two recommendations on the Crime Prevention Fund were not included in 2018 because they were reviewed in a separate inspection). During the 2018 review, the Council reported that its investigation revealed that only one recommendation had received limited compliance and the other two recommendations still needed full compliance. Based on the foregoing, the compliance rate was (near) **17%** in 2018.

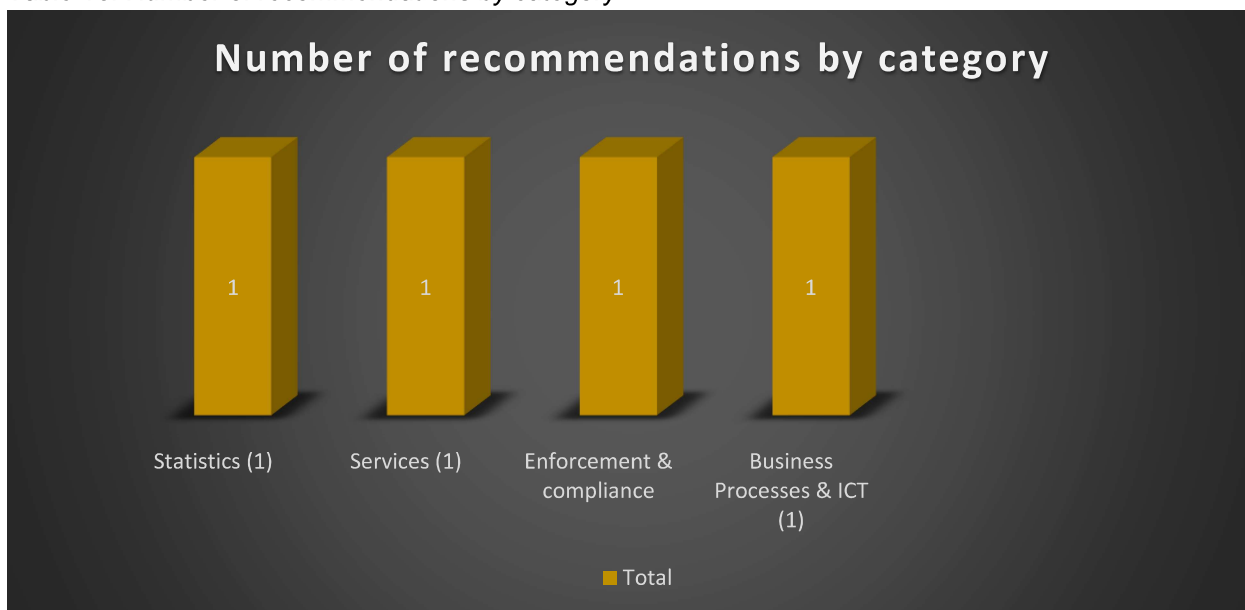
Table 12: Status of the level of recommendation compliance in 2018



* A new recommendation is included as a result of the 2018 review

The Council previously identified four recommendations, one of which is new, for consideration in this sub-investigation. These four recommendations have been subdivided into categories at the discretion of the Council in its database to provide some further insight into the individual recommendations. The classification is intended to be indicative and is as follows: statistics (1), facilities (1), enforcement and compliance (1) and business processes and ICT (1).

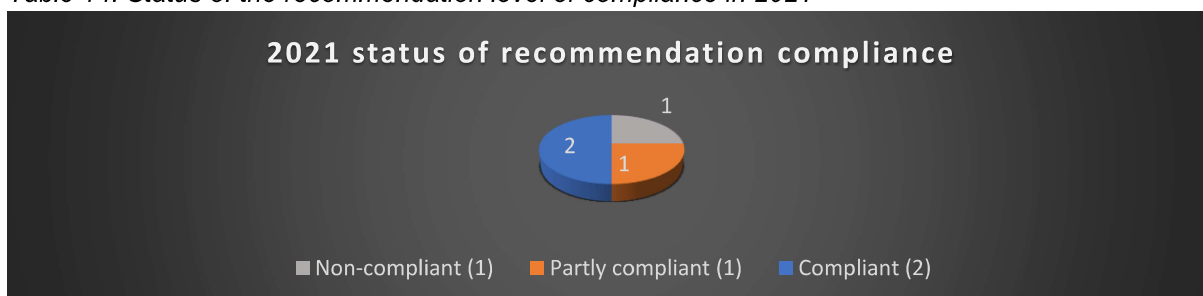
Table 13: Number of recommendations by category



2021 Compliance Status

The situation in 2021 shows that among the four recommendations, two have been addressed (facilitation of payment and BMS/ACTPOL), one is partially implemented (utilization of legal authorities) and one is not implemented (set-up of administration). This brings the compliance rate to **63%** in 2021.³⁸

Table 14: Status of the recommendation level of compliance in 2021



By law, the Public Prosecutor's Office is responsible for supervision, organization, and administration as part of the enforcement of sentences, and must secure the dependability of the type and volume of data and facilitation of payment by the offender. The Public Prosecutor is also responsible for the use of legal remedies for effective enforcement. At the management level, the Public Prosecutor's Office is responsible for ensuring proper implementation of the legislation by adequately designing and describing processes. Thereafter, it is important that within the Public Prosecutor's Office there is daily and long-term management. The Public Prosecutor is, of course, dependent on prioritizing the prerequisites for this process. It is a two-way process in which the Public Prosecutor together with the Ministry of Justice must ensure the drafting of appropriate principles. In this phase it is important that the most

³⁸ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

important partners directly involved in the process are engaged so that the agreements are tailor-made and feasible.

On the back end of this process as outlined, the prosecution is trying to provide some structure to the process of enforcement and is managing to achieve some enforcement success on a small scale, in sections and often over a short period of time. This is the case with the establishment of JASAP and PBB. In general, it can be said that the Public Prosecutor's Office is unable to control the process and still needs to articulate specific policy proposals. As far as the Ministry of Justice is concerned, the tasks to support this process still need to be actively pursued. These cases have serious implications within the context of (the failure to) prioritize resources needed to realize the desired long-term results.

The Council wishes to point out that, despite the efforts of the Public Prosecutor's Office, insufficient enforcement data is available for the period up to and including 2020³⁹. As far as victims are concerned, the Public Prosecutor's Office has drafted a new policy that shows promise. However, this policy still must be implemented with respect to victims. PBB was one of the first undertakings in the enforcement context and, partly due to the willingness of the person paying, this process is proceeding relatively well compared to the other components of the enforcement, but no new data have been received by the Council. Linking payments to the payer remains complicated and the Public Prosecutor's Office seems to be wrestling with the issue, for example, by first setting up multiple (police, Public Prosecutor's Office, bank, and Receiver's Office) and later fewer (Public Prosecutor's Office (SV), police and Receiver's Office) payment locations. The Council believes that a significant improvement is needed in the organization and administration of enforcement to ensure an effective and efficient process. The Public Prosecutor is also aware of this. The direction is currently known, but actually setting the course still needs to be done by the Prosecutor. The path to the most ideal condition that can support enforcement has proven to be more complicated. The Council believes that, as in the previous review, the improvements regarding enforcement are not substantial or structural, this applies to the recommendations regarding the organization of the administration and use of legal mechanisms. The Public Prosecutor is pursuing the goal of increasing staffing levels. The Public Prosecutor reports that a project manager will be appointed to structure the process. The Council suggests that it is good to plan and that at present many (policy) plans still need implementing. The Public Prosecutor, in practice, does not (yet) apply a policy cycle. By introducing changes in sections (pilots) within the process of enforcement, the Public Prosecutor can slowly get a grip on the process. The Council advises the Public Prosecutor to be cautious with the plans currently presented and to ensure actual implementation given the cycle required. This applies, for example, to the communication plan and the victims-policy. Developments for PRIEM are (too) slow, partly due to external delays, which means the system cannot perform important tasks such as inputting the proper data, printing the correct data, and monitoring the progress of cases.

Criminal proceedings without the final element of enforcement are, by definition, less effective. The Council has dealt with the problem of the prison on Sint Maarten and notes during this investigation that it affects implementation. With COVID-19 this problem has not improved. The prison capacity has, on balance, decreased because of the need for quarantine.

³⁹ see OM 2021 Annual Plan

Within a broader perspective, it is important that the Public Prosecutor's Office, as the major party responsible for law enforcement, promotes a more long-term strategy; sets priorities together with the Minister and, in so doing, guides the judicial departments integrally (policy-wise) with respect to topics, and receives support from the Ministry of Justice (under the responsibility of the SG). This will contribute to more balance in law enforcement.

The Prosecutor's Office is the primary entity responsible for the operational process surrounding the enforcement of sentences. At the tactical and strategic level, a responsibility can also be identified for the Ministry of Justice considering the legal task of the Judicial Affairs Department to oversee the quality of the prosecutorial process⁴⁰. The investigation shows that policy (preparation) responsibilities remain an issue for the Ministry. The ministry is also responsible for shaping policy, legislation and regulations on crime reduction and prevention⁴¹. Currently, enforcement tasks are not prioritized at a strategic level and there is no policy preparation undertaken by the Ministry of Justice in conjunction with the Public Prosecutor's Office. If this were to happen, it might contribute to the continuity, efficiency and effectiveness of initiatives taken by the Public Prosecutor's Office related to this investigation's subject matter.

Recommendation and monitoring

With its review, the Council has presented an indication of the status of recommendation implementation relating to the enforcement of fines, damages, and dispossessions. Accordingly, the Council's recommendation to the Minister of Justice is: *implement the two recommendations issued by the Council which have not yet been (fully) addressed and make the necessary resources available as soon as possible.*

| Recommendations on enforcement of fines, damages, and dispossessions | Status 2021 |
|---|--------------------|
| Organize administrative records so that reliable data can be generated on the type and size of financial penalties imposed and the enforcement thereof. | Partly compliant |
| Design the process to facilitate the defendant who wants to pay. | Compliant |
| Utilize legal remedies in event of non-payment. | Partly compliant |
| Implement Actpol and (Act)BMS. | Compliant |

The Council will initiate periodic monitoring in 2022 on the progress of the outstanding recommendations in the framework of the Crime Prevention Fund.

⁴⁰ Article 11 paragraph 1 under d and e National Decree, containing general measures, for subdivision and further detailing of the Ministry of Justice
⁴¹ Article 2 under e National Decree containing general measures for the subdivision and further detailing of the Ministry of Justice

5. Status of recommendations for the Public Prosecutor in the Incident Based Investigation

Introduction

During 2014, the Council investigated the role of the Prosecutor's Office in directing and supervising the selection and processing of criminal cases by the KPSM. Both the Prosecutor's Office and KPSM recognized that there were bottlenecks in the investigative and prosecutorial processes. They indicated that in 2012 they implemented a system of case screening to resolve or reduce some of the case selection and -processing bottlenecks.

The Council conducted further research into the selection (case screening) and processing of cases. As part of the processing of cases, the Council investigated the extent to which there was a clear overview of cases. *The Council defined an overview of cases as management-level knowledge at the police and the Public Prosecutor about investigations assigned (to teams or individual detectives) or investigations awaiting processing; prioritization; progress monitoring; the quality of police reports; cooperation between the Public Prosecutor and the police; and the treatment of victims.* In fact, these points were the reason for initiating case screening in 2012. However, the 2014 findings revealed that the implementation of case screening was inadequate. For example, the number of cases exceeded the ability to assign them, police reports remained on the desks of reporting officers, and the quality of reports was unchanged. With respect to case supervision, the Public Prosecutor's Office was not informed promptly by the police about major incidents, and agreements between the Public Prosecutor's Office and the police in criminal investigations were not honored. Also, in nearly all cases, victims were not informed. Therefore, the Council issued nine recommendations in the 2014 report.

In 2017, a review of the compliance of these nine recommendations was conducted. The review revealed that three recommendations had been fulfilled, four had been partially addressed and two had not been pursued. In this second sub-investigation, the Council examines the follow-up of the 6 partially or unaddressed recommendations from the 2017 report.

The recommendations are individually presented in the next section.

5.1 2021 Status of Public Prosecutor in Incident Based Investigation

The following reflects the 2021 status for each partially addressed or uncompleted recommendation from the 2017 report.

Recommendations to the Minister of Justice regarding the management of the Prosecutor's Office and the KPSM

Recommendation 1: Jointly determine how this approach will be regularly evaluated and, if necessary, adjusted. *The recommendation has been classified by the Council in its database in the category 'work processes'.*

2017 Status

This recommendation was deemed partially addressed during the 2017 review investigation. Following deliberations, it was decided to discontinue the case screening project and to start

the smaller JASAP project to deal with the 6-hour cases. The new project was so brief, however, that the periodic evaluation and possible adjustment were not even under discussion. The recommendation therefore remained valid.

2021 Findings

In 2017, the Prosecutor's Office indicated that it would no longer apply case screening as originally planned. The Public Prosecutor-interviewee reported that the Public Prosecutor now uses JASAP. The Public Prosecutor is not familiar with the general method of registration used by the police' (refer to [recommendation 3](#) in this chapter).

The KPSM mentions that the case screening system is still used to record all cases. This applies, for example, to major crime (*zwacri*), robberies and JASAP cases. An advantage of the case screening system is that the workload per person is much lower compared to 10 cases per person, since the team leaders maintain control over the volume of cases and always assign a certain number of cases per person. However, the overall workload remains high due to the large number of cases received. As a result, 'shelf cases' persist. The system is also used, in part, to manage JASAP cases, where, for example, no suspect has been taken into custody. The earlier form of JASAP was unsuccessful, according to the Public Prosecutor, because it was designed for large-scale operations. After consultation between the Public Prosecutor and the KPSM, it was scaled down and a manageable model that runs well was used at the grassroots level, according to the HOvJ. The stakeholders at the core of JASAP are the duty officer, duty prosecutor and the police JASAP coordinator, and an experienced detective who, based on his background in criminal investigation, oversees the coordinator in the background. Sometimes trainees are also used for implementation.

The current form of JASAP involves selecting 6-hour cases based on written criteria, according to the former Head of Investigation. According to him, these are cases that can be handled within 6 hours, involving one interview and one or two witnesses, for which a subpoena can be issued, a settlement can follow, or the case can be immediately dismissed. All cases are received by the General Criminal Investigation Department (AR) and are screened by the team leader of the relevant team receiving the case. If the case is a 6-hour case, it is discussed with the Public Prosecutor. The KPSM reports that for a while there was no Public Prosecutor on duty. In the first quarter of 2021, this changed, and, in principle, a Prosecutor will visit the office every morning. If the Prosecutor is unable to visit, for example because of a hearing, the Prosecutor notifies the office in advance. The Prosecutor's working procedure is that a decision is made based on a case discussion with the AR team leader. All assignments for the case are placed on a cover sheet and then worked out and approved by the Prosecutor. If the evidence is insufficient, the case is immediately dismissed. This is reported in the case screening system. If the case requires attention, an officer is assigned to investigate. This process usually functions well in the sense that agreements are honored in most cases, although it sometimes takes a little too long, according to the KPSM's former head of investigation. The Public Prosecutor, on the other hand, believes that following up on agreements made with the Prosecutor at the police station remains difficult for the police authorities. The impact of JASAP is characterized as 'mixed' by the Public Prosecutor. The Public Prosecutor reports not having enough insight into the impact of agreements with the police and is aware that if the experienced coordinators are not present, the process will not run smoothly. This makes the process very 'person-dependent'. In spite of the agreements, a case may still not be completed. According to the Chief Public Prosecutor, processing cases generally takes longer than agreed. The large number of cases also plays a role. Urgent

cases, on the other hand, are handled immediately. According to both the KPSM and the Public Prosecutor's Office, capacity is a problem. At the time of the investigation, for example, the COVID vaccination program was being handled by the KPSM. Three officers from the BPZ are also available for JASAP cases using a three-month rotation. The BPZ officers are supervised by the veteran investigator mentioned earlier.

Depending on the case, the SJIS, Court of Guardianship and/or school board are involved in the JASAP process. In PRIEM there is the possibility to flag a case as JASAP. According to the Public Prosecutor if all appointments were recorded in the system, it would create a better overview, but requires extra administrative effort. Consequently, a lot of the work is conducted verbally, but the Public Prosecutor indicates that the Public Prosecutor on duty is responsible for a proper transfer to the next Public Prosecutor on duty.

The model works, but there are opportunities for improvement in the execution, according to the Public Prosecutor. The Prosecutor discussed the bottlenecks common to the JASAP project with the police coordinator. This communication works well and promotes the process. An evaluation of the processes surrounding JASAP, and the case screening system has not been conducted. It is too early for that, according to the KPSM's acting Head of Investigation, because JASAP - after being on hold in 2017, as indicated - restarted in a scaled-down form. However, random checks are being made by the acting section chief to ensure that data is being properly entered into the system by the team leaders. According to the KPSM, there is currently no requirement to convene separately to evaluate the case screening system. However, this should be done at a later stage when potential adjustments are necessary.

Recommendation 2: Promote and monitor the process of informing the Public Prosecutor about priority 1 incidents in a timely manner. *In its database, the Council has classified the recommendation in the category 'information position'.*

2017 Status

The 2017 review investigation revealed this recommendation was partially addressed.

2021 Findings

Priority items (prio cases), according to the KPSM, are now being more effectively communicated to the Prosecutor's Office by the KPSM. This is usually done by the police incident center, the auxiliary police officer or the person on duty for the criminal investigation department. Typically, this is the deputy chief of section for the criminal investigation department. Sometimes, the Public Prosecutor is not called. In such cases, the person on duty at the crime scene assumes that the incident center has informed the Public Prosecutor who is required to appear at the scene. However, if it transpires that the Public Prosecutor has not appeared at the scene, the person on call from the criminal investigation department will call the Public Prosecutor. According to the KPSM interviewee, in these cases it is the responsibility of the incident center, because there is a standard procedure whereby the incident center calls the relevant persons based on an alert list. Sometimes, however, people forget to call a person on the list, for example the Public Prosecutor.

The Chief Public Prosecutor stated that, in general, he noticed an improvement in the information from the KPSM in priority 1 cases. The Public Prosecutor indicates that they are now informed in a timely manner about major cases. The Public Prosecutor would also like to be called (sooner) about fatal accidents. The Public Prosecutor's Office indicates that it also has a task in assessing these cases and carrying out potentially important investigative actions

in a timely manner. The example of a person who died after an accident on a boat is cited. The Public Prosecutor was notified several days after the death, whereas the Public Prosecutor would have liked to receive earlier notification. The KPSM adds in rebuttal that in this case it was not notified on the day of the accident either and an investigation was started after the KPSM was notified by the Public Prosecutor. Even in cases such as traffic accidents, the Public Prosecutor would like to receive timely notification. This has been brought to the attention of the KPSM and they acknowledge this. The Public Prosecutor's impression is that the KPSM will address the matter. In this regard the possibility of a refresher course or a presentation by the Public Prosecutor's Office was discussed, though this still must be translated into practice.

Recommendation 3: Promote and monitor compliance by the Police Force of the agreements made with the public prosecutor about the investigative activity to be performed in an investigation. *In its database, the Council has classified the recommendation in the category 'work processes'.*

2017 Status

It was clear during the 2017 review investigation that this recommendation was partially implemented.

2021 Findings

In 2021, the KPSM reported that it is dependent on capacity to fulfill the agreement. In general, they are honored, albeit with delays and limited investigative actions. Capacity is allocated according to the cases that are received and almost every day officers consult about their cases with the team leader on duty, through email or by phone.

Communication OM-KPSM

Communication between the KPSM and the Prosecutor's Office has improved, according to the KPSM. The Prosecutors and the KPSM team leaders are in almost daily contact about cases. Even if a team leader needs advice, for example, there is contact with the relevant Prosecutor via email or by phone. This is certainly the case with the AR. In major cases (prio-1), consultations occur two to three times a week. This can be either in person or by telephone.

According to the Chief Public Prosecutor, the agreements made between the Public Prosecutor's Office and the police are honored as much as possible. Given the shortage of capacity, the police also sometimes back out of agreements when they prove to be unattainable. If, for example, an additional report is needed, it is often impossible to implement this extra step. The result is an increase in dismissals due to lack of evidence. The standard for technical dismissals was 10% in 2020 and the Public Prosecutor's Office registered approximately 20% technical dismissals. For policy reasons, the number of dismissals, namely 17%, exceeds the 3% target.

Information-based management

The KPSM's info-desk analyzes all the changes and uses the information about common issues to for example, direct patrols and identify trends. Every Monday, the info-desk presents this information in the operational meetings, according to the KPSM. Cases are also initiated based on the information from these analyses.

The Chief Prosecutor indicates that he has no perspective on the role of the information unit. Under JASAP, there is an agreement between the Prosecutor's Office and the KPSM

regarding the registration process; specifically, to attach a copy of the suspect's Census ID. Efforts are now underway at the KPSM to arrange for the information unit to provide this information towards improving the registration process by gaining access to the Census system.

The Prosecution suggests that in the major investigations, the Prosecution's information officer manages based on information. Similarly, there is sufficient information for problem-oriented investigations. Despite this, no attention is paid to project-based investigations and efforts are only devoted to incident-based investigations. The day-to-day issues and the priority cases such as murders and robberies, continue to dominate and displace the problem-oriented cases. Project proposals are not prepared, and cases therefore remain "stuck" in the information phase because there is no available investigative capacity for the assigned cases. An exception is the Human Trafficking and Human Smuggling unit, where cases are assigned. The Public Prosecutor's Office would prefer to include drug and financial investigations, but it cannot be done. The unit *zwacri*, which handles the major High Impact Crime cases, also performs well. The cooperation is good, and the productivity is high.

Supervision of detectives

The Council's earlier investigation revealed the problem of prioritization of cases by the Public Prosecutor's Office, due to the investigating team's detectives being assigned to another case. If the case is a priority 1 case, individuals may still be pulled from another case and deployed on the prio-1 case. Major cases are discussed each month in the steering committee where the KPSM's capacity to investigate cases is communicated to the committee. The priority of cases is also specified by the Public Prosecutors. In the past, prosecutors were sometimes under the impression that all cases under their authority were given priority, which led to problems, according to the former Head of Investigation. In general, the management consultation provides better feedback between the Public Prosecutor and the KPSM and results in greater clarity. The following persons participate in the monthly physical or online consultations: the Chief of Police, the acting Head of Investigation, the acting Section Chief of Investigation, the acting Head of the Info-desk, the acting Head of Basic Police Care, the acting Head of Immigration, the CID Public Prosecutor, the Criminal Investigation Public Prosecutor (Curaçao) and the Chief Public Prosecutor.

In the steering committee, priorities are set based on available capacity. In terms of reports, the (practical) situation determines the prioritization. Juvenile and domestic violence cases are always handled. The Chief Public Prosecutor also considers the prioritized topics to be relevant in terms of processing times. These types of cases are quickly processed and scheduled for a hearing. The Public Prosecutor cited a case that went to court within two weeks.

In recommendation 1, reference was already made of the Public Prosecutor reports that the management of JASAP cases works well when there is guidance from the police.

Selection between, and on cases

The Chief Prosecutor comments that selection of, and between, cases is people oriented. Most of the work is accomplished by talking to each other. An example of this is the issue of domestic violence. Sessions have been held to discuss how to address and prioritize these cases. Although PRIEM data shows that six cases were being run in 2021, the Public

Prosecutor's Office is aware of additional cases from internal feedback and from the field. The Prosecutor explains that this difference is due to 60% of the cases including an element of domestic violence , but that cannot currently be found in the system.

Work experience of current prosecutors

The experience with the Public Prosecutors is mixed, but according to the KPSM it is satisfactory. The relationship with the Chief Public Prosecutor is good. Sometimes there are public prosecutors who, according to the KPSM, prefer to follow their own path, which can lead to tension. However, this is often resolved with discussion. There have been cases where a Prosecutor did not want to act on a case because he/she preferred to transfer it to the French authorities. The detectives were opposed to this and wished to continue with the case by carrying out several actions and avoid losing time by transferring it. Instead of a transfer, the KPSM prefers to retain the case and to issue a request for legal assistance, which would allow possible evidence or property to be acquired. The interviewee from the KPSM indicated that these differences are the exception rather than the rule.

For JASAP, an agreement has been made with the Court to waive the need for a final 'clean' draft in these cases. This means that the available documentation is sufficient. This saves the police time. Finally, the interviewee from the Police Force indicates that many improvements have taken place within the KPSM, but that the lack of capacity remains a problem. With more capacity, many challenges could be resolved.

Recommendation 4: Provide adequate information to persons who officially report a crime (complainants) and to victims. *The recommendation has been classified by the Council in its database under the category of 'information position'.*

2017 Status

This recommendation was found to have been partially addressed during the 2017 review investigation.

2021 Findings

The systematic supply of information to complainants and victims is such an important issue that it warrants constant attention. In accordance with the Council's earlier findings, the issue involved identifying the organization that should provide complainants and victims with case information. For the last several months, a document entitled "*Victim information form*" prepared by the Prosecutor's Office in cooperation with the KPSM, has been available. The document contains information for the victim about what they can expect after reporting the crime at the police station. It includes details on the investigation procedure used by the police, on the criminal procedure after the arrest of a suspect in the case, and about the victim's rights during this procedure. The prosecution was supposed to print the form and make it available to the KPSM for distribution to victims. At the time of the investigation, the form had not yet been produced, so the information is not yet being provided to victims appearing at the Police Station. The KPSM has no budget to accomplish this in-house. Currently, officers verbally inform complainants and victims about their rights, describe what the KPSM can do for them and, if necessary, refer them to other agencies. The intention is to place this information on the KPSM website as well.

Among the priorities of the Minister of Justice in 2020 was the subject of domestic violence. Partly in that context, plans were made for the establishment of a Victim Support Office. The KPSM indicates that it is not otherwise involved in activities related to the creation of such an office. As indicated earlier, this also applies to the Public Prosecutor. During the period of the former acting director of the Court of Guardianship, the then Minister of Justice believed that the Court of Guardianship would take the lead in establishing the office. Afterwards, the KPSM received no further information. Only several months prior to March 2021, did the KPSM receive documentation about the matter. The KPSM is now awaiting the establishment of the office.

The KPSM, along with a Prosecutor and the Director of Safe Haven, are participating in a working group for the purpose of addressing domestic violence. The goal is for officers to be trained by a Prosecutor in collaboration with Safe Haven and other stakeholders about how to act in cases of domestic violence. The Minister of Justice and the management team have already attended the training, and, the initial training session started on March 10, 2020, for a first batch from the BPZ. Furthermore, according to the acting Head of Investigation, a procedure protocol on domestic violence was drafted by the KPSM's Policy Department based on the Instruction of the Public Prosecutor. It has already been made available on the KPSM intranet. One of the changes implemented requires that every suspect of domestic violence is arrested regardless of the victim's report.

The position of the victim was thoroughly discussed in Chapter 4 (the enforcement of sentences) and the findings mentioned also apply here.

One thing that stands out, according to the Chief Prosecutor, is the difference between the service provided by the individual KPSM front desk staff whenever a person requests information at the front desk. According to the Public Prosecutor, some people are too easily referred to the Public Prosecutor, while the Public Prosecutor cannot provide the requested information since the responsibility lies with the KPSM. It is an unpleasant experience for persons when they must be sent back to the Police. This was discussed and, according to the Public Prosecutor, acknowledged by the police, but it is not working well. Despite having a process in place, in practice, it is a challenge to ensure everyone works in accordance with the process. This is true for the issue of victim support.

Recommendation 5: Design and implement a mechanism that will reduce the numbers of pending cases such that they lead to a better overview of cases. *The recommendation has been classified by the Council in its database under the category of 'facilities'.*

2017 Status

This recommendation was not addressed during the 2017 review investigation.

2021 Findings

The KPSM tries to record/register all cases. As stated before, this is done in the case screening system. It is the team leader's responsibility. The KPSM reports that this happens consistently, although not always on the same day as the cases come in. Depending on the workload, the case is usually registered within two to three working days. When the case is sent to the Public Prosecutor or assigned, this is also included in the system. The case screening system must also indicate which investigator is assigned to a case. The KPSM indicates that by using the case screening system, they have a total overview of all incoming cases. This can also be found in the data provided to the Council over the past 5 years. The team leader of each team, i.e., AR, *Zwacri*, SUR and Juvenile and Vice Affairs (JZZ), is

authorized to input data into the system. In addition, the Deputy Section Chief and the Deputy Head of Investigation are also authorized. A manual is available on how to input data, for example.

Insight and oversight, improved division of cases and the role of PRIEM

The Public Prosecutor specifies that they do not yet have a clear understanding and oversight of cases and that the Public Prosecutor would like to start using a planning and control cycle. This would provide clearer insight into the volume of cases and the caseload. Exactly when this can be achieved depends on the time available, the PRIEM system and the ACTS/ICT management organization. The development and adaptation of PRIEM has been (much) slower than envisaged. For example, PRIEM does have a field for specifying a 'Corona fine', however, when the system is queried, an overview cannot be created. This means a great deal of information can be entered into the system, but it is a challenge to extract the desired data. The Policy Officer made an appointment with ACTS to discuss how reports ought to be interpreted, which can differ from one user to another. The Chief Prosecutor concludes that the accessibility of PRIEM is currently substandard. The system seems to be built for storing information, but not with a query capability.

Recommendation 6: Provide feedback to the police force on prosecutorial decisions and court judgments. *The recommendation is classified by the Council in its database in the category 'information position'.*

2017 Status

This recommendation was identified during the 2017 review investigation as not being fulfilled.

2021 Findings

If cases are assigned by the prosecutor on duty, they are immediately processed accordingly in the case screening system. For the past year or so (first quarter of 2020), court verdicts have been communicated to the KPSM by the Public Prosecutor's Office on a more regular basis than before. An interviewee from the KPSM mentions the example of three verdicts having been rendered in the previous week. Usually this is accomplished by mail or by phone. In major cases, the verdict is provided, and the Prosecutor or the Prosecutor's Office secretary call the KPSM to give feedback. In smaller cases, the feedback is usually provided by telephone. The ruling is only uploaded by the KPSM in the digital case file. The case screening system does not include the ruling. In addition, the decisions, particularly in major cases, are posted on the intranet, to boost police officer morale.

The Public Prosecutor confirms that more feedback is now provided to the police on settlements of cases. The Head of Administration of the Public Prosecutor's Office forwards the list of court hearings to the KPSM prior to the court session, and verdicts are also sent to the KPSM by this officer. The Chief Public Prosecutor indicates that the feedback in JASAP cases needs to be improved.

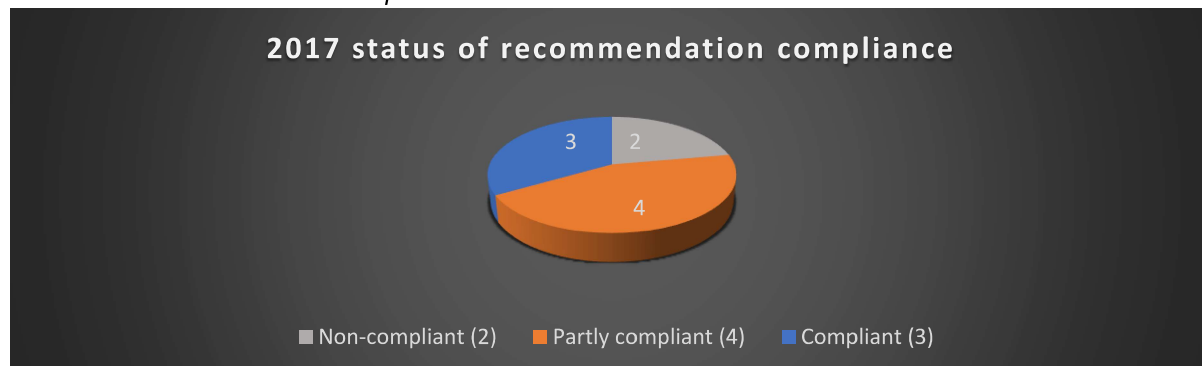
5.2 Analysis

Introduction

In 2014, the Council presented nine recommendations as part of its inspection on incidence-based investigation, after which a review inspection followed in 2017. During the review

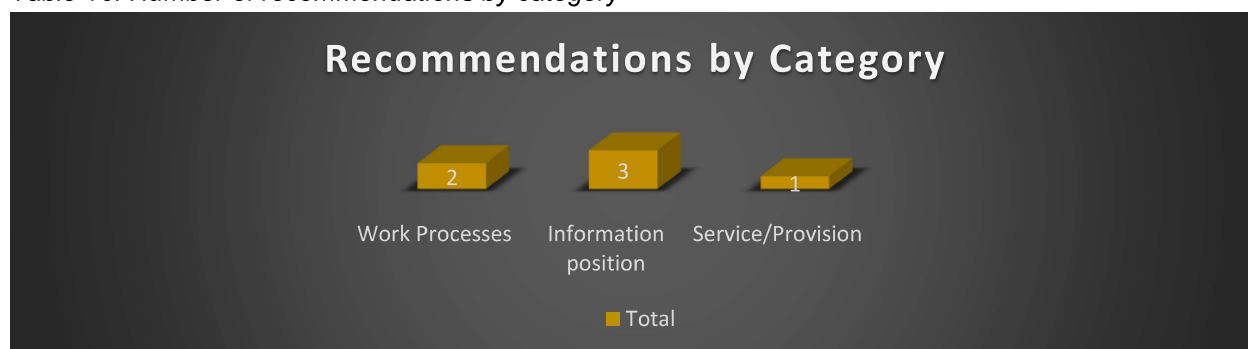
inspection, the Council reported that its review investigation revealed three recommendations (3) had been addressed. Six recommendations still needed to be partially (4) or fully (2) implemented at that time. On this basis, the compliance rate was **67%** in 2017.

Table 15: Status of level of compliance with 2017 recommendations



The six partially and non-compliant recommendations have been subdivided into categories at the discretion of the Council in its database to provide some additional insight into the individual recommendations. The classification is intended to be indicative and is as follows: work processes (2), information position (3) and facilities (1).

Table 16: Number of recommendations by category



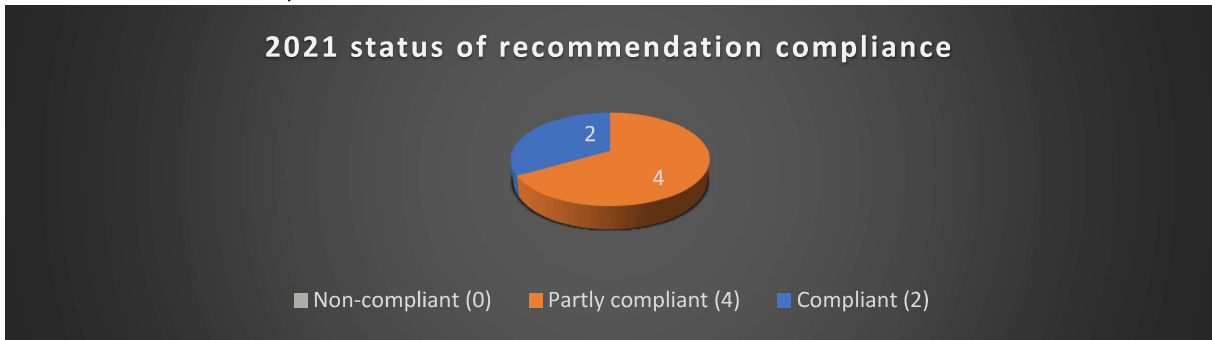
2021 Status

In 2021, the situation stands at two of the six recommendations (feedback and informing priority 1 cases) implemented and four recommendations - as observed in 2017 - partly addressed (evaluation of approach, compliance with agreements, provision of information and provision of insight on cases).⁴² The compliance rate is therefore **78%**⁴³ in 2021.

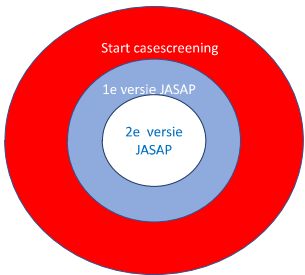
⁴² As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

⁴³ To calculate the total percentage, the 3 recommendations that already were implemented in 2017 were included.

Table 17: Status of compliance with recommendations in 2021



The Council finds that because of the described circumstances, a formal evaluation of JASAP (and case screening) has not yet taken place. Based on the premise that supervision motivates and sharpens one's focus, the KPSM and the Public Prosecutor's Office are advised to plan an evaluation of the project, also because the Council realizes that this investigation and the investigation into the enforcement of fines, damages, and dispossession, the scope of certain projects/activities seems to be reduced to control the course of events. In the area of enforcement, this was evident in the restriction of payment locations, and it is also evident by the narrowing of the field of screening by the Public Prosecutor at the expense of the overall overview of cases. The figure below illustrates the narrowing of the scope over the years:



JASAP processes the 6-hour cases as required. In practice, KPSM needs a better overall view and reverts to the registration system that was originally intended for the broader case screening. The Public Prosecutor has no insight into this, has its own challenges with PRIEM, and does not coordinate with KPSM in the usage of the registration system. A combined system could offer the Public Prosecutor greater opportunities to focus on cases as well as provide insight and oversight into the total caseload. Moreover, it could provide opportunities for policy prioritization. Although the concept is being continually developed, the Council and the Public Prosecutor's Office recognize the larger implementation challenge. The Public Prosecutor's Office is trying to improve this situation by focusing on this issue. An officer is currently at the office and the officer discusses obstacles encountered in practice with the police coordinator. The importance of describing processes, prioritizing, and addressing them using a project-based approach is highlighted, since these also benefit management. The Public Prosecutor demonstrates a great deal of involvement and is currently including several ("judicial") parties in the project.

Communication between the KPSM and the Public Prosecutor has improved. This is reflected in the improved notification of Public Prosecutor of prio-1 cases. Agreements between the Public Prosecutor and the police have been made and there are protocols to this effect within the Force. The implementation is not yet optimal. A possible idea is to scale up the processes

of the surveillance department as well as the criminal investigation department when it comes to priority 1 cases, to better manage the surveillance department and the incident center during major incidents. The fact that the Public Prosecutor's Office also indicates that it would like to be notified of accidents attests to the improvement in communication. This is another step forward. Effective agreements must be made in this area as well, combined with the description of procedures to make this workable and to organize oversight.

The importance of communication between the KPSM and the Prosecutor's Office is apparent from the process with respect to victims. These departments were tasked with improving information to complainants and victims and they have shown good will in putting matters on paper (with each other). There is a victim policy and forms have been produced for the benefit of the victim. Training has also been organized for police management, the Ministry and police personnel, and a procedure protocol is being prepared to improve the position of victims of domestic violence. It would be beneficial if the departments were also involved in the process of structuring victim support. A recurring challenge, however, is that implementation fails to get off the ground because elements are not fleshed out. Take the issue of a basic form with substantive information that needs to be printed. The Council believes that a solution should be found quickly.

The Council recognizes opportunities for the Public Prosecutor's Office to maximize the use of the options offered by the KPSM, including the possibilities afforded by the Information Unit for management, which in some respects, the Information Officer currently relies on.

Feedback from the Public Prosecutor's Office to KPSM is another area of communication that has improved. The feedback of verdicts and imposed cases is moving in the right direction and as far as the verdicts are concerned, these are communicated down to the work floor, as once they arrive at KPSM, they are (can be) shared on the intranet. This improvement in the quality of feedback is a good one that the Council believes should be maintained and further improved.

Recommendation and monitoring

By means of its review, the Council has provided insight into the progress regarding the implementation of the recommendations within the framework of the Public Prosecutor's Office in incident-based investigation. As a result, the Council's recommendation to the Minister of Justice is: *Implement the four recommendations which have not yet been addressed and allocate the required resources as quickly as possible.*

| Recommendations Public Prosecutor's Office in incident-based investigations | Status 2021 |
|--|--------------------|
| Collectively define the method by which this approach will be periodically evaluated and adjusted as appropriate. | Partly compliant |
| Promote and monitor, that the Public Prosecutors Office is always and promptly informed by the police force about prio 1 incidents. | Compliant |
| Promote and monitor compliance by the Police Force of agreements made with the Prosecutor's Office regarding investigative action to be taken in an investigation. | Partly compliant |
| Provide adequate information to complainants and victims. | Partly compliant |
| Design and implement a mechanism by which the caseload is reduced such that it actually results in 'insight into cases'. | Partly compliant |
| Provide feedback of prosecutorial and judicial decisions to the Police Force. | Compliant |

The Council will begin its periodic monitoring of progress on pending recommendations within the framework of the crime prevention fund in 2022.

6. Status of recommendations on cooperation between the public prosecutors' offices

Introduction

The Council issued a report in 2018 regarding the cooperation between the Public Prosecutors' offices (prosecutors) of Curaçao, Sint Maarten and Bonaire, Sint Eustatius, and Saba (BES). The central question concerned the status of the cooperation between the Public Prosecutors of Curaçao, Sint Maarten, Bonaire, Sint Eustatius, and Saba in terms of (subject matter) specializations and whether there were problems in that area.

Background

The intention of the Kingdom Act on Public Prosecutors of Curaçao, St. Maarten and Bonaire, St. Eustatius, and Saba (hereinafter also referred to as the "Public Prosecutors Act") includes a contribution to the coordination of investigative policies, cooperation agreements and compliance therewith by the Public Prosecutors of Curaçao, Sint Maarten and Bonaire, St. Eustatius and Saba.⁴⁴ Article 36 of the Public Prosecutors Act states that the AG will consult at least twice a year with a member of the Council of Prosecutors in the Netherlands designated by the Council, with an invitation to the AG of Aruba. The consultations cover investigation and prosecution of cross-border crime and other matters of common interest to criminal law enforcement in the countries and the European part of the Netherlands and serve the purpose of reaching agreements on mutual aid and assistance.

The Council's 2018 investigation into Cooperation between Public Prosecutors reveals, for example, that the Chief Public Prosecutor of Aruba participates in the consultation for all Chief Public Prosecutors of the Caribbean Kingdom with the mindset of "*How do we reinforce each other*"? According to one interviewee, this implies practical cooperation. However, this collaboration is of an earlier time. The "Cooperation Arrangement on Uniform Procedural Law in the Netherlands Antilles and Aruba"⁴⁵, that partly prescribes the uniformity of the criminal process, emphasizes this earlier cooperation.

From the 2018 Council investigation, it appears that OM-Carib (prosecutors of all Caribbean Kingdom countries including Aruba) selected specializations in cybercrime; forensic investigation; human trafficking and smuggling; military affairs; terrorism; and money laundering. The specialty 'Forensic Investigation' is not a crime type but underpins most investigative inquiries. Military cases are distinguished by the treatment of a different group of suspects, namely the military. As a result, several (legally) priority matters are not dealt with.

The Council's 2018 recommendations

The Council's report recommended:

1. A determination of what is intended from each of the subject matter specializations is necessary, and clarity is required among the subject matter specialists and the prosecutors. *In its database, the Council has classified the recommendation in the category 'policy'*;
2. Review the classification of crime types as subject matter specializations and incorporate the existing ambiguity regarding the status of military cases. *The*

⁴⁴ https://www.eerstekamer.nl/wetsvoorstel/32018_rijkswet_openbare

⁴⁵ <https://decentrale.regelgeving.overheid.nl/cvdr/XHTMLoutput/Actueel/Curaçao/144220.html>

recommendation has been classified by the Council in its database under the category of 'policy';

3. A policy officer and/or public prosecutor secretary should be attached to each subject matter specialist. *The recommendation has been classified by the Council in its database in the category 'enforcement and compliance';*
4. A training plan should be established with the subject matter specialists and support staff. *The recommendation was classified by the Council in its database under the category of training.*

The purpose of this investigation is to examine the status of the implementation of the recommendations issued in the Council's 2018 report. The Council's current inspection shows that the project/trajectory '*Cooperation between Public Prosecutors*' -as a whole- is no longer being pursued. Therefore, the following paragraph will not elaborate on each individual recommendation but will be limited to a general description of the current situation. A profile will also be presented of the choices of the Public Prosecutor's Office in 2021 with respect to the legal priorities.

6.1 Status of cooperation between prosecutors in 2021

The Prosecutor's Office mentions that although it was relevant a few years ago, the subject of subject matter specialization is no longer an active issue among the prosecutors' offices. The subject matter specialization is still discussed, but it is not pursued. At present no attention is paid to the subject, and it is possible that the new AG may revisit it, according to the Chief Public Prosecutor. She therefore indicated that, based on the foregoing, compliance with the four recommendations was not necessary.

The legal parameters that govern choices in specializations at the Prosecutor's Office and the Prosecutor's choices in the field

Article 33 of the Public Prosecutor's Act refers to the cooperation between the ministers in combating cross-border crime. It mentions terrorism, international drug trafficking, cybercrime, international money laundering, international arms trafficking, international human trafficking, and international corruption. Human trafficking and human smuggling have been prioritized by the relevant ministers in the JVO. Prosecutors' priorities, as articulated in a guideline or instruction on the Prosecutor's Office website (publicministry.org), are violent theft/robbery, victims in the criminal process, opium offenses (2018); relational (domestic) violence (2017); confiscation of criminal assets from High Impact Crime and Common Crime, among others (2017); firearms offenses (2015) and on BES, youth (2016) is also targeted (December 2020). This implies that on the aforementioned website, 3 of the priorities from article 33 of the Public Prosecutor's Act are included as focal points. In the Public Prosecutor's vision document for Curaçao, Sint Maarten and BES, entitled "*Perspective on the fight against crime 2016 - 2021*", cross-border and subversive crime, confiscation of criminal assets, High Impact Crime, and Common Crime (prevention and immediate retaliation (*-lik-op-stuk*)) are listed as focal points. Corruption cases, at least the actual management of cases involving the National Detectives Agency and Team 2 of the RST, are delegated to the Coordinating Criminal Investigation Officer (CRO)⁴⁶. In doing so, the Attorney General as chairman of the Regional Strategic Steering Committee (JVO and Policy Plan RST 2020-2023) handles corruption cases, which include other matters, and he is directly responsible for decisions in corruption cases. Two components from Article 33 of the Kingdom Prosecutors Act were not identified as being

⁴⁶ <https://www.raadrechtshandhaving.com/wp-content/uploads/2021/05/Final-DUTCH-version-redacted.pdf>

allocated to a prosecutor in the Council's 2018 investigation regarding cooperation between prosecutors' offices. These are international drugs and firearms crime.

Finally, the Public Prosecutor prioritizes combating local forms of crime (relational violence, JASAP and youth). For the discussion on JASAP, please refer to the previous chapters.

During this investigation, the Council did not encounter a new law approved by the Aruban Parliament regulating the cooperation between the Public Prosecutor's Offices post-October 10, 2010. However, the cooperation is still being sought by, and with, Aruba. On Aruba, special attention is given to human trafficking and smuggling; confiscation of criminal assets; juvenile delinquency; tackling traffic crime and dealing with criminal offenses as quickly as possible (DBB) (see omaruba.com). Consequently, Aruba appears primarily focused on local crime.

From an interview with the Public Prosecutor on Sint Maarten it became clear that internal subject meetings are organized centrally for all public prosecutors. Examples of topics that have been discussed are vice and human trafficking and smuggling. There have also been "LR days" for the National Detectives Agencies. Internal subject meetings are very popular, as interesting speakers are invited according to the interviewee, and they are (also) available online. For 2021, the subject of youth is on the agenda. The fundamental idea of knowledge sharing, which drives subject matter specializations, is being addressed centrally where necessary. The organization possesses a lot of knowledge. The Public Prosecutor's Office tries to tap into that knowledgebase for the sake of the entire organization. For example, a person with a great deal of cybercrime expertise is frequently consulted as needed. However, this happened more by chance than with advanced coordination with specific subject matter specialists (as was the case with the subject matter specializations).

During the interview with the Public Prosecutor's Office, it was also mentioned that the Public Prosecutor's Office tries to focus on different focal points each year, for example, in 2022 the topic is the softer dimension of detection/prevention based on forensic psychological care. These types of topics primarily are driven by experience from the field, for example, trends/signals among chain partners.

The Public Prosecutor's Office also indicates that it would like to focus on an integrated approach to problems. The Public Prosecutor explains that one of the most important partners, the government, is currently not involved in this process. In practice, the Public Prosecutor's Office is confronted with the fact that many services are not available. This forces the Public Prosecutor to concentrate on the matters that they can (largely) accomplish alone. One of the tasks of the Public Prosecutor's Office is identifying problems and bringing them to the attention of the community and the government.

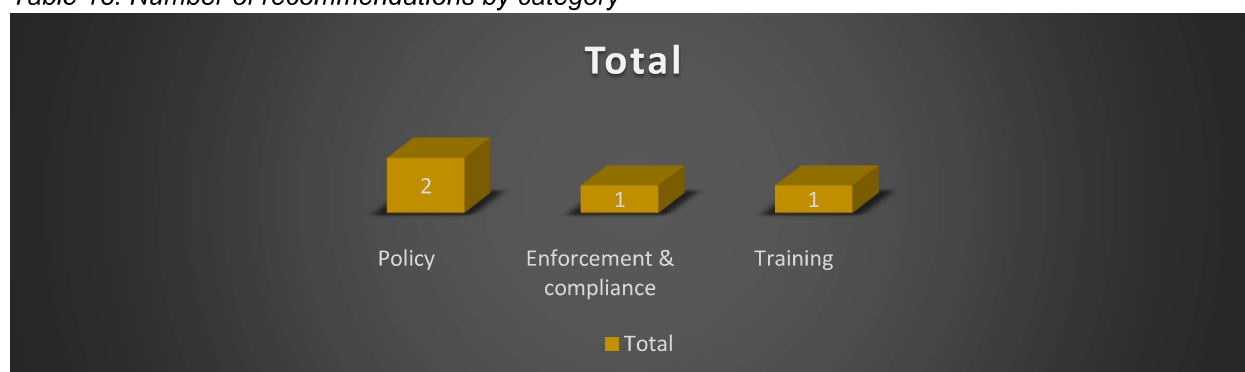
6.2 Analysis

Introduction

The 2021 inspection will be the first review inspection into the level of compliance with the recommendations related to cooperation among prosecutors. The Council issued four recommendations in 2018, and these have been categorized at the discretion of the Council in its database to provide some greater insight into the individual recommendations. The

classification is intended to be indicative and is as follows: policy (2), enforcement and compliance (1) and training (1).

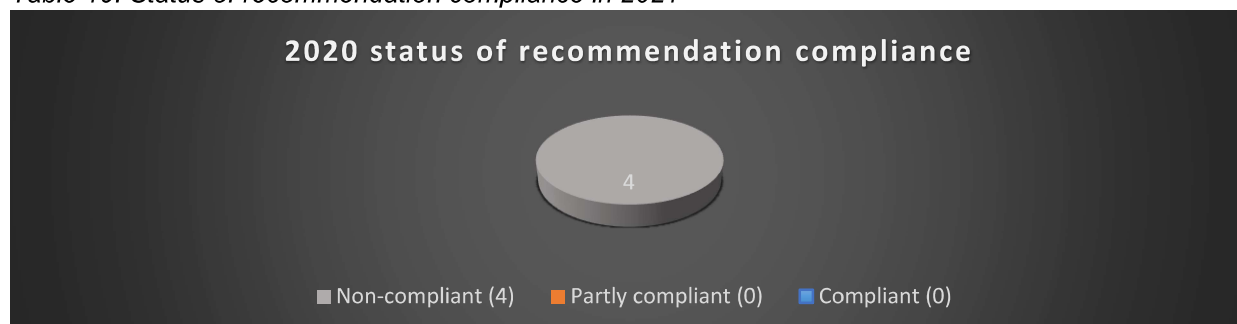
Table 18: Number of recommendations by category



2021 Compliance Status

In this second sub-inspection about the cooperation between public prosecutors, it was established that none of the four recommendations were implemented (the establishment and definition of subject matter specializations; the reconsideration of the classification of types of crime; the linking of subject matter specialists and policy officers c.q. public prosecutor's secretary; and the training plan).⁴⁷ The compliance rate is therefore **0%** in 2021.

Table 19: Status of recommendation compliance in 2021



While a major objective of the legislation is cooperation between prosecutors, it is proving to be a challenge and difficult to achieve. The policies pursued by prosecutors in the respective countries reveal a strong need for a significant (local) organization of tasks. Given the differences between the countries and the fact that law enforcement primarily remains an autonomous national responsibility, the AG's task of serving all countries equally is complicated. Formulating common thematic agendas is a first step, but setting common priorities remains challenging.

Clearly, the application of expertise is more advantageous using a regional approach because of the scale of the countries as well as for the sake of efficiency. For this reason, the AGs of the countries (of Aruba and of Curaçao, Sint Maarten and BES) should meet with the Ministers of Justice (and Public Safety) of Aruba, Curaçao, Sint Maarten and the Netherlands to establish common priorities and to choose guiding principles for organizing expertise. However, the field of law enforcement remains highly dynamic, necessitating flexibility. This is

⁴⁷ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

reflected in the very different priorities that are occasionally required in practice, but which are not directly prioritized in law or policy. The Public Prosecutor (and the investigative services) have gained experience in fields of expertise that must be continuously maintained. This can be a guide for identifying areas of expertise and partnering on that basis. Some issues can and should be dealt with locally, others regionally, and still others at the Kingdom or possibly international level. Maintenance remains necessary and this requires the AGs and Ministers to meet regularly in a forum, and to be well-served by advice (from the HovJs) from the countries and investigating agencies.

As part of the Council's recommendations on cooperation between public prosecutors, it appears that it would be prudent for the PGs to consult on cooperation, which, in any event, should include the desirability of maintaining subject matter specializations and the approach to these specializations. Should a decision be taken to deploy subject matter specialists, then recommendations previously issued by the Council remain relevant. Therefore, the Council recommends compliance therewith. The Council will continue to closely monitor the developments in this area.

Recommendation and monitoring

The review conducted by the Council offered insight into the situation related to recommendation compliance for cooperation between the public prosecutors' offices. Based on these findings, the Council recommends to the Minister of Justice: *Implement the four outstanding recommendations and make the necessary resources available as soon as possible.*

| Recommendations cooperation between Public Prosecutors Offices | Status 2021 |
|--|--------------------|
| Establish what is intended by each of the subject matter specializations and create clarity among the specialists and within the prosecutor's offices. | Non-compliant |
| Reconsider the designation of crime types as subject matter specializations. Include the existing ambiguity about the status of military cases. | Non-compliant |
| Encourage that each subject matter specialist is linked to a policy officer c.q. prosecutor's secretary. | Non-compliant |
| Establish a training plan with the subject matter specialists and support staff. | Non-compliant |

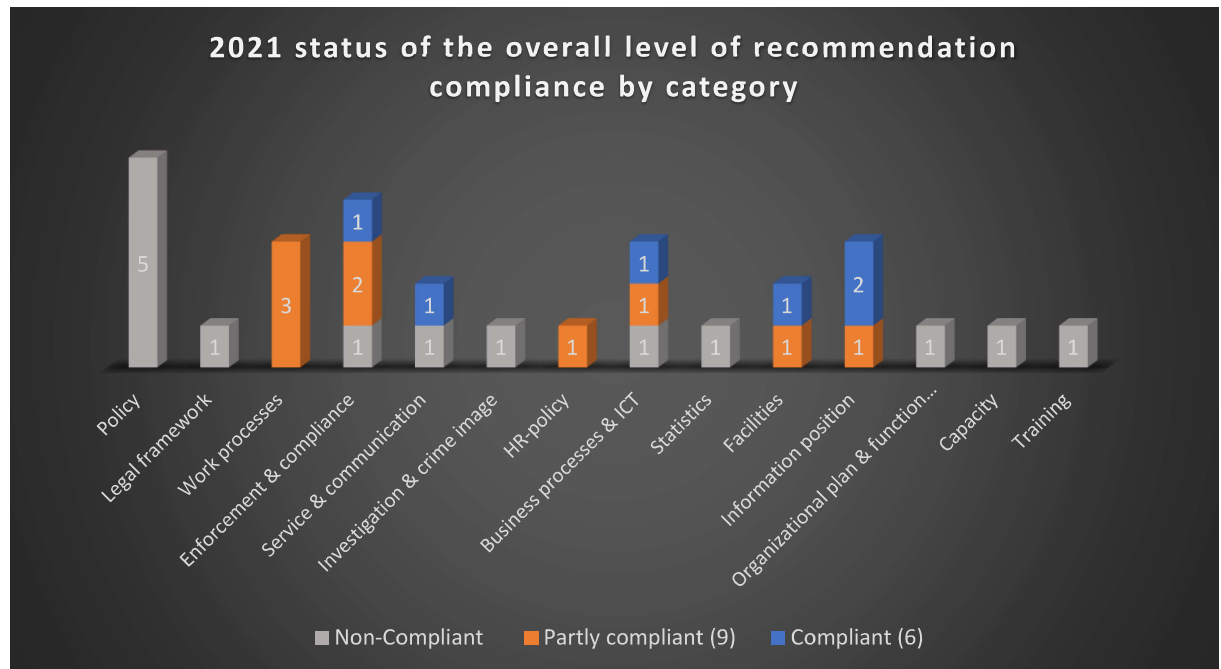
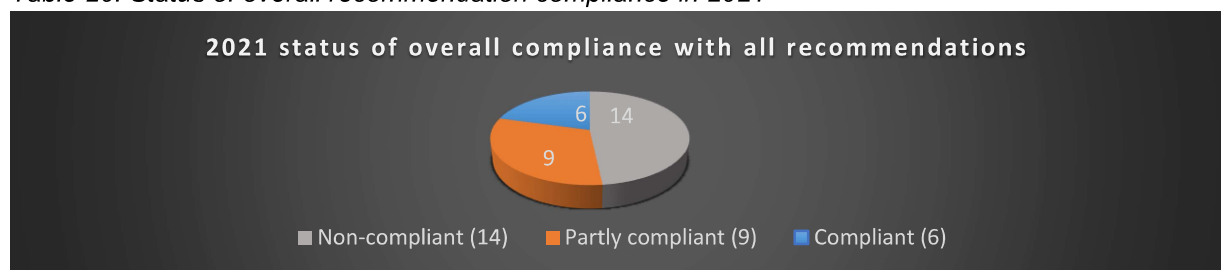
The Council will initiate periodic monitoring of the progress of outstanding recommendations in 2022 as part of the crime prevention fund.

7. Overall Analysis

Answering the main question

In this second sub-inspection, the Council examined the extent to which the recommendations issued on five subjects were addressed. These subjects include the reports on the Crime Prevention Fund (6 recommendations), the investigative and prosecutorial policy of the Public Prosecutor's Office (9 recommendations), the enforcement of fines, damages, and dispossessions (4 recommendations), the Public Prosecutor's Office in incident-based investigation (6 recommendations) and Cooperation between Public Prosecutor's Offices (4 recommendations). This second sub-inspection reveals that of the 29 recommendations, 6 were addressed, 9 were partially dealt with, and 14 were not implemented. Most of the partially or unimplemented recommendations relate to the Crime Prevention Fund, the investigative and prosecutorial policy of the Public Prosecutor's Office, and cooperation between the public prosecutor's offices.

Table 20: Status of overall recommendation compliance in 2021



Overall situation

The ability of justice organizations to work in a consistent manner on law enforcement needs improvement. Setting local administrative-strategic priorities in the chain based on an integrated vision is required. To be able to focus resources and create cooperative synergy, an integrated vision is necessary.

Strategic Principles and Effectiveness

The need for strategic principles is identified in all investigations. For example, the Crime Prevention Fund needs an annual policy plan, and to ensure effectiveness, the establishment of strategic priorities for investigative and prosecutorial policies is essential. In the case of inspections regarding the enforcement of sentences and incident-based investigation, it is strategic priorities must be set. Once the principles have been established, it is vital that support is present to prevent retrenchment. The initiative on cooperation between public prosecutors was abandoned. The Council observes that this initiative was the responsibility of the Public Prosecutor's Office and that governmental-level involvement from the country/countries is absent. Without support, recommendations and even legislative embedding will support sustainability. The Ministry of Justice⁴⁸ (under the responsibility of the SG (Article 3 LIOL)) plays a major role in this process. Within this process, the Ministry of Justice must (continue to) grow into a knowledgeable justice authority, become aware of each department's role to optimally use organizational intellectual capacity, and allow everyone to shoulder their responsibilities for which they will be held accountable. The Ministry of Justice under the management of the SG should be a constant presence in the field and advise the minister(s). Also, the Prosecutor's Office and the Ministry of Justice need to keep each other focused. The Prosecutor/AG is the highest organization/ authority in the context of its responsibilities and should properly assume its authority.⁴⁹ The Council identified management opportunities to improve the effectiveness of law enforcement based on the joint responsibility of the AG and the Minister of Justice⁵⁰, and which will enable the Public Prosecutor's Office and the Ministry of Justice, under the authority of the S-G, to take the required action.

Cooperation within the chain

A fragmented approach per component is no longer viable in these complex times. Cooperation within the chain has not yet been (adequately) achieved. However, the Council perceives an increasing focus on cooperation in recent years, as noted in their recent State of Law Enforcement Report.⁵¹ In 2021, the funding methodology continues to focus on departments rather than on community objectives⁵², and shortages persist. Decisions are made based on scarcity, resulting in more shortages. The chain suffers, in part, from the lack of cooperation starting with top management, to authority, and support. However, the isolation occasionally expressed by certain individuals also reflects the lack of interdepartmental cooperation. Decisions often become clear to stakeholders only after it is a *fait accompli*. This is a divisive strategy for stakeholders in the field, whether consciously or otherwise. The importance of a Ministry of Justice that understands the field of justice is evident as well. The ministry should be aware of issues from all platforms and be able to involve interested stakeholders in a timely manner and, in any case, alert the Minister of Justice and the AG of the issues. Topics should not be chosen for the Public Prosecutor and the Minister of Justice. Both should act as drivers of policy and set topic priorities (with funding) as management and authorities; they should be determining the course, directing the process and be the connective tissue between the justice departments in the field, on Sint Maarten and beyond.

Planning and control

⁴⁸ LIOL Article 15, Ministry of Justice responsible for creating conditions for the maintenance of security, order and peace, and the safeguarding of justice within the community.

⁴⁹ Article 9 (1) of the Kingdom Act on Public Prosecutors stipulates that the Public Prosecutor's Office is charged with, among other things, the criminal enforcement of the rule of law. See also chapter "Status of Recommendations on Investigative and Prosecutorial Policies of the Public Prosecutor's Office" from this report.

⁵⁰ Article 13 Kingdom Public Ministries Act and Explanatory Memorandum. The Minister may review the legality of an instruction in advance and the AG can do so on suspicion of its illegality.

⁵¹ Law Enforcement Council (2021), State of Law Enforcement 2020.

⁵² See National Accountability Ordinance

To start, an approach with the associated planning and control cycle requires a strategic vision from the parties involved in the work, to allow conscious choices. First and foremost, strategic policy formulation within the chain needs to be addressed, as discussed. This is particularly apparent in the inspection of investigative and prosecutorial policy, where ad hoc policy exists, and decisions are taken at the operational level. Operational information is of course important and should also be analyzed as part of the chain and introduced to the law enforcement authorities and management. However, decision-making at the operational level without chain coherence, affects the community and can be ineffective. For example, these (operational and ad hoc) decisions lead to frequent changes of direction at the expense of continuity in incident-based investigations. It also prevents a thorough evaluation, therefore obstructing the development of the enforcement chain. Matters get unsettled without progress. This is made particularly clear by the investigations into incident-based investigation and the enforcement of sentences. Both issues continue to require full scale investment.

While the Council emphasizes the previous aspects, it also recognizes an emerging awareness of the importance of policy, management, processes, and procedures. The way these should be structurally shaped still requires more insight. For example, the Public Prosecutor's Office has a clear vision, can articulate it well and incorporate it into policy plans. However, practical application has proven to be a difficult process for the Public Prosecutor's Office. Where initiatives move towards implementation, they are often not project-based in design. The result is that initiatives often stagnate halfway through. Capacity is a frequently used argument, among other departments at the Ministry of Justice. Another argument across the judicial chain is the lack of a business process system. While a business process system can help, it is not all-encompassing. Even with a business process system, it will be necessary to properly describe processes and procedures to gain an effective administration. This means that most of the administration has been implemented and can be monitored. To program a custom system, the processes and procedures must also be well described.

Complying with laws and regulations

In addition to using legal remedies granted at various organizational levels, there is also the aspect of compliance. Some investigations (enforcement of sentences and the Crime Prevention Fund) reveal that laws and regulations need to be more closely respected during the performance of work. Some risks have been identified with respect to integrity and the credibility of law enforcement in general, because of inadequate legal compliance. The risks arise from a lack of transparency (no policy and no justification), the potential for arbitrary action (everyone works as they see fit and is not monitored), a lack of oversight (not knowing about criminal cases, not knowing what needs to be enforced, not knowing how much money was received at the Fund inception because of a lack of processes and procedures) thus creating room for individual choices to go unnoticed. During enforcement, sentences are often not executed, which does not contribute to the objectives of criminal procedure, specifically deterrence and redress. The Public Prosecutor must guard against this.

Establishment and practical development of criteria, processes, and procedures

Justice's objectives are attained deploying multiple stakeholders within the chain. In spite of this, it is often evident that the recordkeeping is limited (within an organization) in the chain and that the interaction between the entities needs to be improved. This is clearly demonstrated in the investigation of the Crime Prevention Fund and the administration of assets on behalf of the Fund. The result in the review investigative and prosecutorial policies of the Public Prosecutor's Office, this came at the expense of case oversight. In the

enforcement of sentences, the result was the failure to enforce a large proportion of the imposed sentences; in the investigation into incident-based criminal investigation, the result was also a loss of oversight. Establishing processes and procedures requires (project) capacity. This capacity is not currently prioritized.

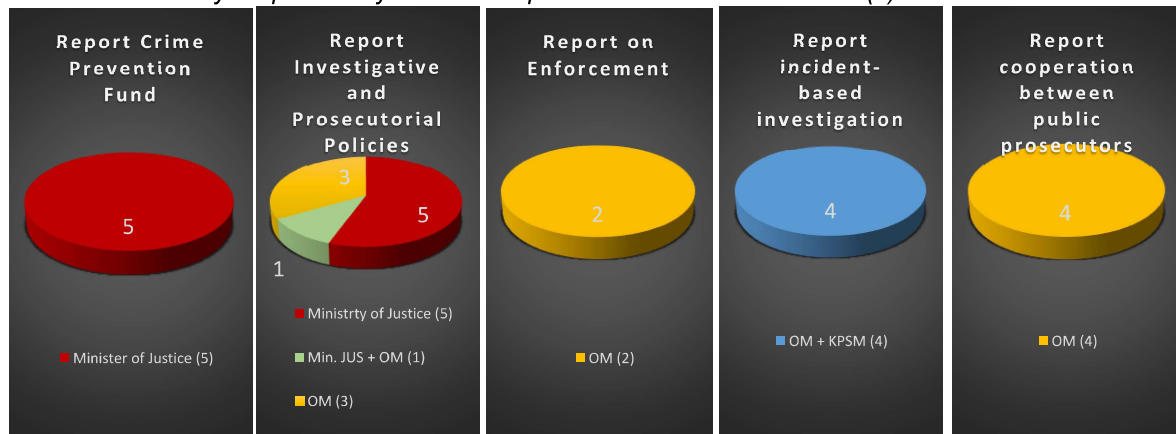
Fortitude of stakeholders

The actions of judicial stakeholders are not always effective nor efficient, yet there are small successes, and the Council recognizes the fortitude of stakeholders. Because of this attitude, the Council anticipates future opportunities.

Primary responsibility for action on the recommendation(s)

In accordance with the Kingdom Act on the Law Enforcement Council, all recommendations are formally directed to the Minister of Justice. For several recommendations, follow-up is mainly dependent on the Ministry's (the Minister of Justice's) action. For others, compliance depends largely on action by the organization(s) concerned. This is explained below for the 'partly compliant' and 'non-compliant' recommendations per report.

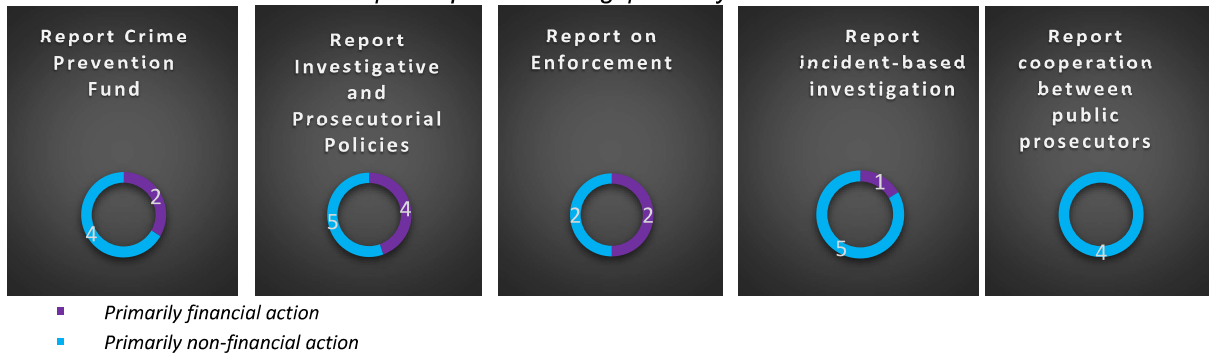
Table 21: Primarily responsibility for follow-up action on recommendation(s)



Financial implications on recommendation compliance

Financial and capacity constraints are common reasons why recommendations are not implemented. The Council is certainly aware that the Government and more specifically the Ministry of Justice struggle with financial challenges. Although recommendations (almost) always have financial consequences, the Council believes it is possible to differentiate between recommendations that primarily require financial action and recommendations that require other non-financial contributions. Using the aforementioned database, the Council undertook this exercise to provide an initial impression. One can conclude that of 29 partially or unimplemented recommendations, 9 require financial actions and 20 require non-financial action.

Table 22: Recommendations per report involving primarily financial action vs. nonfinancial action



Conclusion

Finally, the Council is aware that the recommendations are often diverse and that some are less complex than others. Nevertheless, for each report, the Council has quantified the progress in terms of a percentage⁵³. The percent mentioned below does not represent a firm measurement but merely serves as an indicator to illustrate the status of each report in a clearer, more visual format.

Table 23: Status in percent of recommendation compliance by rapport

| Compliance percentage Crime Prevention Fund | Compliance percentage investigative and prosecutorial policy of OM | Compliance percentage Enforcement | Compliance percentage Incident-based investigation | Compliance percentage Cooperation between Public Prosecutors |
|---|--|-----------------------------------|--|--|
| 2021: 25% | 2019: 25% 2021: 28% | 2018: 17% 2021: 63% | 2017: 67% 2021: 78% | 2021: 0% |

* The percentage was calculated based on the original five reviewed recommendations.

As mentioned in chapters 2 to 6, the Council previously recommended that the Minister of Justice implement 23 recommendations that were not (fully) addressed and allocate the necessary resources for this purpose (see [Annex 1](#)). As described in the respective chapters, the Council will initiate periodic monitoring of the progress of outstanding recommendations starting in 2021.

⁵³ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

Overview of the recommendation status

| Recommendations Crime Prevention Fund | Status 2021 |
|--|--------------------|
| Implement the legal requirements arising from the National Ordinance Crime Prevention Fund consistently. Make sure that the recommendations previously issued by the Council on behalf of the fund are implemented. These are: " Include in the submission of the annual budget a policy plan in which projects are listed that qualify for financing from the Crime Prevention Fund" and " Guide efforts towards the establishment of a crime prevention steering committee and involve this committee in the management of the Crime Prevention Fund". | Non-compliant |
| Establish current policies for the benefit of the Crime Prevention Fund. Include criteria, processes and procedures related to the application, processing, awarding and (justification of) decisions regarding projects and if relevant, provide any necessary definitions. | Non-compliant |
| Minimize risks regarding improper use and abuse of monies from the Fund, establish rules and protections in a National Ordinance. | Non-compliant |
| Maintain complete physical and electronic records/registration of project applications, reviews, awards, and payments, and comply with related procedures and documentation resulting from applicable laws and policies as well as timely availability. | Partly compliant |
| Ensure that all claims on behalf of the Crime Prevention Fund are (re) paid. | Compliant |
| Promote greater awareness of the crime prevention fund. | Non-compliant |
| Recommendations investigative and prosecutorial policy of the Public Prosecutor's Office | Status 2021 |
| Analyse the specific opportunities available within Sint Maarten and the Kingdom to strengthen the impact of the Public Prosecutor's Office, the National Detectives Agency and the Sint Maarten Police Force. | Non-compliant |
| In cooperation with the Public Prosecutor's Office in the Netherlands, promote the development of a personnel policy at the Public Prosecutor's Office that specifically focuses on St. Maarten and that enhances the efficiency and continuity and expertise of the Public Prosecutor's Office in St. Maarten. | Partly compliant |
| Ensure that the Prosecutor's Office, in accordance with the law, processes criminal cases within a reasonable time and renders its decision to prosecute as soon as possible. | Partly compliant |
| Maintain the established course toward more proactive communication and, in addition, formulate explicit communication policies. | Compliant |
| Modernize PRIEM business process system | Partly compliant |
| As required by law, provide for a general political-administrative policy on the National Detective Agency that respects proper mission performance and adequate infrastructure for effective support management. | Non-compliant |
| Implement the National Detectives Agency's improvement plan. | Non-compliant |
| Ensure that the National Detectives Agency is reinforced in accordance with the staffing plan so that the lack of capacity and expertise is permanently remedied. | Non-compliant |
| Arrange a business process system for the National Detectives Agency | Non-compliant |
| Recommendations enforcement of fines, damages, and dispossessions | Status 2021 |
| Organize administrative records so that reliable data can be generated on the type and size of financial penalties imposed and the enforcement thereof. | Partly compliant |
| Design the process to facilitate the defendant who wants to pay. | Compliant |
| Utilize legal remedies in event of non-payment. | Partly compliant |
| Implement Actpol and (Act)BMS. | Compliant |
| Recommendations Public Prosecutor's Office in incident-based investigations | Status 2021 |
| Collectively define the method by which this approach will be periodically evaluated and adjusted as appropriate. | Partly compliant |
| Promote and monitor, that the Public Prosecutors Office is always and promptly informed by the police force about prio 1 incidents. | Compliant |
| Promote and monitor compliance by the Police Force of agreements made with the Prosecutor's Office regarding investigative action to be taken in an investigation. | Partly compliant |
| Provide adequate information to complainants and victims. | Partly compliant |
| Design and implement a mechanism by which the caseload is reduced such that it results in 'insight into cases'. | Partly compliant |
| Provide feedback of prosecutorial and judicial decisions to the Police Force. | Compliant |
| Recommendations cooperation between Public Prosecutors Offices | Status 2021 |
| Establish what is intended by each of the subject matter specializations and create clarity among the specialists and within the prosecutor's offices. | Non-compliant |
| Reconsider the designation of crime types as subject matter specializations. Include the existing ambiguity about the status of military cases. | Non-compliant |
| Encourage that each subject matter specialist is linked to a policy officer c.q. prosecutor's secretary. | Non-compliant |
| Establish a training plan with the subject matter specialists and support staff. | Non-compliant |

Appendix 1: Status of recommendations by report



| 2021 Status of recommendations from the Crime Prevention Fund report rapport | | | | | |
|--|---------------------------------------|--|------------------|---|---------------|
| Recommendation subject | Recommendation category ⁵⁴ | Primarily financial action/ primarily non-financial action ⁵⁵ | Compliance 2021 | Primary responsible stakeholder ⁵⁶ | Status > 2022 |
| 1. Legal requirements LV CF | Policy | Primarily financial action | Non-compliant | Ministry of Justice | |
| 2. Drafting policy | Policy | Primarily non-financial action | Non-compliant | Ministry of Justice | |
| 3. Drafting national ordinance | Legal framework | Primarily non-financial action | Non-compliant | Ministry of Justice | |
| 4. Administration / registration | Work processes | Primarily non-financial action | Partly compliant | Ministry of Justice | |
| 5. Receivables | Enforcement & compliance | Primarily financial action | Compliant | None | - |
| 6. Awareness of Fund | Service & communication | Primarily non-financial action | Non-compliant | Ministry of Justice | |
| Total compliance %⁵⁷ | | | 25% | | % |



| 2021 Status of recommendations from the investigative and prosecutorial policy Public Prosecutor report | | | | | | |
|---|---------------------------------------|--|------------------|------------------|---|---------------|
| Recommendation subject | Recommendation category ⁵⁸ | Primarily financial action/ primarily non-financial action ⁵⁹ | Compliance 2019 | Compliance 2021 | Primary responsible stakeholder ⁶⁰ | Status > 2022 |
| 1. Effectiveness (impact) | Investigation & crime image | Primarily non-financial action | Non-compliant | Non-compliant | Ministry of Justice | |
| 2. HR-policy | HR-policy | Primarily non-financial action | Non-compliant | Partly compliant | Public Prosecutors Office | |
| 3. Processing times | Enforcement & compliance | Primarily non-financial action | Partly compliant | Partly compliant | Public Prosecutors Office | |
| 4. Communication | Service & communication | Primarily non-financial action | Partly compliant | Compliant | Public Prosecutors Office | |
| 5. PRIEM | Business processes & ICT | Primarily financial action | Partly compliant | Partly compliant | Public Prosecutors Office | |
| 6. Policy National Detectives Agency | Policy | Primarily non-financial action | Non-compliant | Non-compliant | Ministry of Justice | |

⁵⁴ For reference, the recommendations have been categorized at the discretion of the Council in its database to provide some additional insight into the individual recommendations.

⁵⁵ Although all recommendations (almost) always have financial consequences, the Council believes that, to address them, a distinction can be made between recommendations that require primarily financial action and recommendations that primarily require non-financial action.

⁵⁶ In accordance with the Kingdom Act Council for Law Enforcement, all recommendations are formally directed to the Minister of Justice. For some recommendations, compliance is primarily dependent on action by the Ministry (the Minister of Justice). For others, action is primarily dependent on the organization(s) concerned.

⁵⁷ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

⁵⁸ For reference, the recommendations have been categorized at the discretion of the Council in its database to provide some additional insight into the individual recommendations.

⁵⁹ Although all recommendations (almost) always have financial consequences, the Council believes that, to address them, a distinction can be made between recommendations that require primarily financial action and recommendations that primarily require non-financial action.

⁶⁰ In accordance with the Kingdom Act Council for Law Enforcement, all recommendations are formally directed to the Minister of Justice. For some recommendations, compliance is primarily dependent on action by the Ministry (the Minister of Justice). For others, action is primarily dependent on the organization(s) concerned.

| 2021 Status of recommendations from the investigative and prosecutorial policy Public Prosecutor report | | | | | | |
|---|---------------------------------------|--|-----------------|-----------------|---|---------------|
| Recommendation subject | Recommendation category ⁵⁸ | Primarily financial action/ primarily non-financial action ⁵⁹ | Compliance 2019 | Compliance 2021 | Primary responsible stakeholder ⁶⁰ | Status > 2022 |
| 7. National Detectives Agency improvement plans | Organization plan & function books | Primarily financial action | Non-compliant | Non-compliant | Ministry of Justice + OM | |
| 8. Capacity National Detectives Agency | Capacity | Primarily financial action | Non-compliant | Non-compliant | Ministry of Justice | |
| 9. Business processes National Detectives Agency | Business processes & ICT | Primarily financial action | Non-compliant | Non-compliant | Ministry of Justice | |
| Total Compliance %⁶¹ | | | 25% | 28% | | % |



| 2021 Status of recommendations from the report enforcement of fines, damages and dispossessions | | | | | | |
|---|---------------------------------------|--|----------------------------|-------------------------|---|---------------|
| Recommendation subject | Recommendation category ⁶² | Primarily financial action/ primarily non-financial action ⁶³ | Compliance 2018 | Compliance 2021 | Primary responsible stakeholder ⁶⁴ | Status > 2022 |
| 1. Organization of the administration | Statistics | Primarily financial action | Non-compliant | Non-compliant | Public Prosecutors Office | |
| 2. Facilitate payments | Facilities | Primarily non-financial action | Non-compliant | Compliant | None | |
| 3. Use of legal authority. | Enforcement & compliance | Primarily non-financial action | Partly compliant | Partly compliant | Public Prosecutors Office | |
| 4. Implementation of Actpol & BMS | Business processes & ICT | Primarily financial action | New recommendation in 2018 | Compliant | None | |
| Total compliance %⁶⁵ | | | 17% | 63%⁶⁶ | | % |



| 2021 Status of recommendations from the OM in incident-based investigation | | | | | | |
|--|---------------------------------------|--|------------------|------------------|---|---------------|
| Recommendation subject | Recommendation category ⁶⁷ | Primarily financial action/ primarily non-financial action ⁶⁸ | Compliance 2017 | Compliance 2021 | Primary responsible stakeholder ⁶⁹ | Status > 2022 |
| 1. Evaluation of the approach | Work processes | Primarily non-financial action | Partly compliant | Partly compliant | OM & KPSM | |

⁶¹ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

⁶² For reference, the recommendations have been organized into categories at the discretion of the Council in its database to provide some additional insight into individual recommendations.

⁶³ Although all recommendations (almost) always have financial consequences, the Council believes that, to address them, a distinction can be made between recommendations that require primarily financial action and recommendations that primarily require non-financial action.

⁶⁴ In accordance with the Kingdom Act Council for Law Enforcement, all recommendations are formally directed to the Minister of Justice. For some recommendations, compliance is primarily dependent on action by the Ministry (the Minister of Justice). For others, action is primarily dependent on the organization(s) concerned.

⁶⁵ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

⁶⁶ Percentage calculated includes new recommendation from 2018

⁶⁷ For reference, the recommendations have been organized into categories at the discretion of the Council in its database to provide some additional insight into individual recommendations.

⁶⁸ Although all recommendations (almost) always have financial consequences, the Council believes that, to address them, a distinction can be made between recommendations that require primarily financial action and recommendations that primarily require non-financial action.

⁶⁹ In accordance with the Kingdom Act Council for Law Enforcement, all recommendations are formally directed to the Minister of Justice. For some recommendations, compliance is primarily dependent on action by the Ministry (the Minister of Justice). For others, action is primarily dependent on the organization(s) concerned.

| 2021 Status of recommendations from the OM in incident-based investigation | | | | | | |
|--|---------------------------------------|--|------------------|------------------|---|---------------|
| Recommendation subject | Recommendation category ⁶⁷ | Primarily financial action/ primarily non-financial action ⁶⁸ | Compliance 2017 | Compliance 2021 | Primary responsible stakeholder ⁶⁹ | Status > 2022 |
| 2. Communication of prio-1 | Information position | Primarily non-financial action | Partly compliant | Compliant | None | |
| 3. Compliance with agreements | Work processes | Primarily non-financial action | Partly compliant | Partly compliant | OM & KPSM | |
| 4. Providing information | Information position | Primarily non-financial action | Partly compliant | Partly compliant | OM & KPSM | |
| 5. Provision of insight in cases | Facilities | Primarily financial action | Non-compliant | Partly compliant | OM & KPSM | |
| 6. Feedback | Information position | Primarily non-financial action | Non-compliant | Compliant | None | |
| Total compliance %⁷⁰ | | | 67% | 78% | | % |



| 2020 Status of recommendations from the report cooperation between public prosecutor's offices | | | | | |
|--|---------------------------------------|--|-----------------|---|---------------|
| Recommendation subject | Recommendation category ⁷¹ | Primarily financial action/ primarily non-financial action ⁷² | Compliance 2021 | Primary responsible stakeholder ⁷³ | Status > 2022 |
| 1. Establishment and clarification of subject matter specializations | Policy | Primarily non-financial action | Non-compliant | Public Prosecutors Office | |
| 2. Reconsideration of crime classifications | Policy | Primarily non-financial action | Non-compliant | Public Prosecutors Office | |
| 3. Linking subject matter specialist and policy officer or public prosecutor secretary | Enforcement & compliance | Primarily non-financial action | Non-compliant | Public Prosecutors Office | |
| 4. Establishment of training plan | Training | Primarily non-financial action | Non-compliant | Public Prosecutors Office | |
| Total compliance %⁷⁴ | | | 0% | | % |

⁷⁰ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

⁷¹ For reference, the recommendations have been organized into categories at the discretion of the Council in its database to provide some additional insight into individual recommendations.

⁷² Although all recommendations (almost) always have financial consequences, the Council believes that, to address them, a distinction can be made between recommendations that require primarily financial action and recommendations that primarily require non-financial action.

⁷³ In accordance with the Kingdom Act Council for Law Enforcement, all recommendations are formally directed to the Minister of Justice. For some recommendations, compliance is primarily dependent on action by the Ministry (the Minister of Justice). For others, action is primarily dependent on the organization(s) concerned.

⁷⁴ As an indicator, the compliance percentage is calculated by assigning 1 point to each completed recommendation, ½ point to each partially completed recommendation, and no points to an uncompleted recommendation. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

Colophon

Law Enforcement Council

Juancho Yrausquin Blvd 26, Unit 3A | Philipsburg | Sint Maarten

info@rrh-sxm.org

www.raadrechtshandhaving.com

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