



# **2021 STATE OF LAW ENFORCEMENT SINT MAARTEN**

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Law Enforcement Council  
April 2022

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## 1. Introduction

Since 2012 the Law Enforcement Council (*Raad voor de rechtshandhaving*) (“Council”) has been conducting inspections within the criminal justice chain on Sint Maarten, Curacao, and the Dutch Caribbean with respect to quality, management, and effectiveness. Additionally, the Council is charged with conducting a general inspection of the quality and effectiveness of the judicial cooperation between the countries. Along with its inspection reports, the Council issues its State of Law Enforcement (“State”) each year for each of the mentioned countries. The State gives a helicopter view of law enforcement in the year in question based on prior inspections and analysis. The State is presented directly to both the Ministers of Justice (and Safety) and the Parliament of the country involved.

The focus of this State is on the developments with regards to the strengthening of law enforcement and the most recent inspection reports published by the Council related to cross-border crime. Besides this, the Council has also taken the opportunity to highlight positive developments within the Ministry of Justice in 2021. Furthermore, the inspections carried out by the Council in 2021 are briefly described, such as the general review (initiated 2020) which is being conducted by means of sub-inspections and is still ongoing. To facilitate this inspection the recommendations have been categorized based on recurring themes (e.g., policies, work processes) which have been identified in previous reports and states by the Council. Based on this general review the Council will be able to provide an overarching view of the state of law enforcement in conjunction with the level of compliance of the recommendations issued by the Council in the period 2012-2018.

The intention of the Council is to stimulate decision makers to take action to improve the quality, management, and effectiveness of law enforcement in Sint Maarten. However, the lack of policy responses over the years to the reports of the Council makes it difficult to determine the (intended) actions of the Minister of Justice to address the recommendations and associated bottlenecks identified by the Council. This major concern has recently been addressed by the Minister and the hope of the Council is that this in future will allow for the Council to take a closer look at the aspect of ‘management’ by the Ministry of Justice in the follow-up of the recommendations of the Council.

## 2. Framework

### **Strengthening the rule of law**

The United Nations defines the rule of law as:

*“A principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in*

*the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”<sup>1</sup>*

The recommendations of the Council based on its inspections are ultimately geared towards strengthening the rule of law in Sint Maarten. The strengthening of the rule of law received extra focus from all the countries within the Kingdom in 2021. Also, during the biannual Four-Party Judicial Consultation (JVO).

A Kingdom Act to establish a Caribbean body for reform and development with accompanying country packages was first proposed in 2020. The country packages stated that many cases of cross-border crime related to drug smuggling, human smuggling and trafficking, arms trafficking, and money laundering take place in the countries, including Sint Maarten. The aim of the reforms and measures relating specifically to the rule of law is therefore to contribute to the strengthening of the rule of law, by focusing on strengthening border control, tackling financial-economic crime, and improving the detention system.<sup>2</sup>

In its State for 2020 the Council stated that:

*“For the justice chain, it is important that agreements to strengthen the rule of law were made in the country package. The Council considers these agreements between the countries as minimum requirements to improve the quality of the rule of law. The quality of governance and the democratic rule of law is primarily the responsibility of each country. Accordingly, each country must ensure that the quality of governance and the democratic rule of law are guaranteed.”<sup>3</sup>*

In 2021 this translated to concrete steps being taken in Sint Maarten by amongst others, the Ministry of Justice. A new protocol to strengthen border control was signed and the stakeholders involved began drafting a plan of approach, focusing on amongst others, materials, personnel and training.<sup>4</sup> Assistance was requested to improve the detention situation, and as agreed, the administration refrained from making budget cuts to the most vital sectors of the rule of law, such as the Police, Customs, the National Detectives, the Public Prosecutor's Office, the Joint Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba, the Dutch Caribbean Coast Guard, the Detention system, and the National Security Service. According to the progress report in November 2021<sup>5</sup> there were no indications that the operational implementation capacity of the judicial authorities had been affected because of additional budget cuts.

Preparations were also made for the drafting of a Consensus Kingdom Law regarding data protection and an information session thereto was held by the Ministry for stakeholders.

Lastly, a plan of approach with regards to the management of the Crime Fund was also drafted. The country package (H12) namely provides for the recommendations of the Council regarding the Crime Fund to be carried out and an independent body to be appointed to

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<sup>1</sup> The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General (S/2004/616, 23 August 2004)

<sup>2</sup> H. Strengthening the rule of law. Country Package Sint Maarten.

<sup>3</sup> Law Enforcement Council (2021). The State of Law Enforcement St. Maarten 2020. 10 years of law enforcement.

<sup>4</sup> Protocol on strengthening border control in the Caribbean countries of the Kingdom signed on February 4, 2021.

<sup>5</sup> Caribisch Orgaan voor Hervorming en Ontwikkeling i.o (2021) Uitvoeringsrapportage landspakketten Aruba, Curaçao en Sint Maarten – vierde kwartaal 2021.

monitor the Fund's compliance with the recommendations and report whether the fund is functioning properly. The Crime Fund namely derives its income from amongst others fines and criminal money that has been confiscated in cases of, for example, cross-border crime. In 2021 the Council reviewed the recommendations concerning the Crime Fund. This was done as part of the general review of the recommendations by the Council that was included in the 2021 annual plan. The general review examined amongst others as to what extent the recommendations were carried out. The details of which are given in chapter 2.

At the written request of the Minister, the Council also agreed in 2021, subject to the provisions of the Kingdom Act Law Enforcement Council and the protocol applicable to inspections by the Council, to review and monitor the implementation of the recommendations of the Council regarding the Crime Fund in the year 2022.

### **Cross-border crime**

The Kingdom Act on Public Prosecutors of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba<sup>6</sup> lists terrorism, international drug trafficking, computer crime, international money laundering, international arms trafficking, international human trafficking, and international corruption as forms of cross-border organized crime. It also tasks the Ministers of Justice of the countries within the Kingdom with creating policy programs and developing forms of cooperation to combat these forms of crime (Article 34). One of the topics on the agenda of the JVO in 2021 pertaining to cross-border crime was combating human trafficking and – smuggling.

In the below table is an overview of the reports by the Council pertaining specifically to cross-border crime. Taking the importance of these topics into consideration the Council also had these reports translated from Dutch to English in order to extend their reach and improve accessibility for stakeholders.

<b>Publication year</b>	<b>Title report</b>	<b>Related cross-border crime</b>
2019	<i>Inspection of the approach to human trafficking and human smuggling in Sint Maarten</i>	<i>human trafficking</i>
2019	<i>Inspection of the approach to drug crime and drug related issues in Sint Maarten</i>	<i>drug trafficking</i>
2021	<i>Review of the National Detectives Agency</i>	<i>corruption</i>
2022	<i>Illegal firearms in Sint Maarten</i>	<i>arms trafficking</i>
2022 (pending)	<i>Money laundering and terrorism financing in Sint Maarten</i>	<i>money laundering / terrorism</i>
2022 (pending)	<i>To Be Determined (subject: cybersecurity)</i>	<i>computer crimes</i>

To successfully combat cross-border crime it is essential to have insight into the nature and scope of cross-border crime. In this context the Kingdom Act Police<sup>7</sup> provides for a crime analysis to be drafted every two years on which the approach by the authorities should be based on. The Regional Crime Analysis (2019)<sup>8</sup> describes the various aspects related to transnational crime, a new take on cross-border crime, on the islands, including Sint Maarten.

<sup>6</sup> Article 33, paragraph 2, of the Kingdom Act of the Public Prosecutors of Curaçao, Sint Maarten and Bonaire, Sint Eustatius, and Saba.

<sup>7</sup> Article 32, paragraph 2, of the Kingdom Act of the Police of Curacao, Sint Maarten, and of Sint Eustatius and Saba.

<sup>8</sup> Van der Zee, S. (2019). Regional Crime Analysis. Trends in the Dutch Caribbean 2020-2022.

According to the report, characteristic of transnational crime is that the criminal activities are spread out over multiple countries. Furthermore, transnational crime forms one of the greatest threats for the region.

The Policy Program on Cross-border Crime 2016-2020<sup>9</sup> notes that cross-border crime cannot be seen separately from local crime and therefore neither can the approach. According to the policy program the prerequisites for a successful approach by authorities to combat cross-border crime are an integral approach, information, international cooperation, strengthening of the law enforcement chain and the Detective Cooperation Team (RST).

#### *Integral approach*

The local judicial authorities in Sint Maarten have struggled for years with their (integral) approach to combating these various forms of cross-border crime and the effects thereof. The lack of measures to combat these is a well-known fact that has been publicized by the Council, among others, on numerous occasions. Various recommendations were issued by the Council in its inspection reports to address the bottlenecks (e.g., lack of resources). The fact that the issues are oftentimes interconnected e.g., firearms being used in the drug trade and the same routes being utilized for the smuggling of drugs, persons, and weapons, means that a lack of compliance in one area affects other areas as well. The Council is a firm proponent of utilizing a multidisciplinary (integral) approach to tackle these issues even though the authorities involved are often of the opinion that their lack of resources means that they have nothing to offer each other. The Council will, however, continue to encourage collaboration between the authorities.

#### *Information*

The Criminal Analysis dating from 2011, the 2019 Regional Crime Picture Analysis and other relevant reports, combined with the results of the authorities, provide some insight into the nature and scope of cross-border crime. Nonetheless, the general lack of insight (information) into the people and groups involved in the various forms of cross-border crime is cause for concern by the Council. The abovementioned reports by the Council have shown that information exchange, especially between the countries of the Dutch Kingdom takes place mostly on an ad hoc (case) basis and is often dependent on the personal contact of those directly involved. This makes it difficult to create a complete overview of the phenomenon cross-border crime / transnational crime. The lack of proper data registration, outdated systems and systems not being able to communicate with each other also attributes to this issue. There was, however, attention for this during the JVO in 2021, whereby it was decided that an existing plan of approach would be elaborated on for the further development of the information organizations in the Caribbean part of the Kingdom.

In its 2020 State the Council namely observed that there were developments pertaining to the legal framework (the introduction of the General Data Protection Regulation<sup>10</sup> in 2018) in the field of police and judicial data exchange within the Kingdom, and that clarity on a solution for use in the field was still pending.

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<sup>9</sup> Openbaar Ministerie; Parket Procureur General. Beleidsprogramma grensoverschrijdende criminaliteit 2016-2020.

<sup>10</sup> Algemene Verordening Gegevensbescherming (AVG).

Since then, the countries, in the January 2021 JVO, agreed on a project approach whereby a project group will begin preparations for the joint creation of a Consensus Kingdom Data Protection Act. This project group (consisting of participants from all countries) has drafted a contour note, which has since been adopted in the JVO. The next step to be taken is the preparation of a draft text for the Kingdom Act for the June 2022 JVO. Within the timeline, a consultation and an implementation review are also planned. The plan is to have the results of these available by the end of 2022. The legislative process will then commence with the submission of the proposed legislation to the Council of Ministers. From that moment on, however, the creation of a Kingdom Act will take some time, but the thorough preliminary work will already have been done.

As far as the Consensus Kingdom Data Protection Act is concerned, the Council observes on the basis of the outline of the memorandum and other developments, including the periodic update in the JVO, that progress is being made on this subject. As a result, it should be possible within the foreseeable future to exchange personal data, including police data and judicial data, on a structural basis within the framework of the AVG. The Council recognizes a structural attitude of the countries in dealing with this issue, meaning that they are working together to improve the protection of the rights of citizens. Moreover, the Council sees an intensive form of cooperation between the countries in the area of policymaking and legislation, whereby the necessary (financial) support is also provided by the Netherlands where needed. The Council warmly encourages this form of cooperation.

#### *International cooperation*

International cooperation by the authorities has been observed by the Council, which consists of informal (operational contacts) and formal working agreements such as requests for legal assistance based on international treaties. While the cooperation is oftentimes labeled as good by the authorities' cooperation with Saint Martin on a formal level remains a point of concern as cooperation with the French authorities is considered vital due to the open borders. The Council was therefore pleased to note that the treaty concerning the legal position of military personnel and other government personnel present on each other's territories in the context of the COVID-19 crisis and humanitarian relief in the event of hurricanes was extended. The treaty initially set to expire on 6 August 2021, has been extended in principle until 6 August 2023, or until the establishment of the treaty between the Kingdom and France regarding cooperation in the area of defense and the status of armed forces in the territories of the Caribbean, South America and the French Republic.<sup>11</sup>

#### *Strengthening of the law enforcement chain and the Detective Cooperation Team (RST)*

Cooperation with the RST takes place via placement of personnel within the major crime's unit of the KPSM which conducts investigations into e.g., drug trafficking and within the National detectives which conducts investigations into corruption. The Anti-corruption Taskforce of the RST (TBO) also conducts investigations into cross-border crimes such as corruption and financial- economic crimes (money laundering). While this cooperation with the RST, embedded in the protocol detective cooperation<sup>12</sup>, has proven its worth by offering the necessary support in the areas of capacity and expertise to the local authorities on a daily basis, a chain is only as strong as its weakest link. The fact that the local authorities within the

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<sup>11</sup> Letter of the Minister of Foreign Affairs of the Netherlands to the Second Chamber dated October 12<sup>th</sup>, 2021, concerning the intention to extend treaties.

<sup>12</sup> Amended protocol on specialized detectives cooperation between the countries of the Kingdom, January 23, 2019.

judicial chain are not all being strengthened in a structural manner means that the need for support will continue to persist in the long term.

The Mutual Agreement on Strengthening Border Control established in 2017<sup>13</sup> after the hurricanes Irma and Maria provided for resources for the judicial authorities tasked with protecting the borders, such as Customs, the Dutch Caribbean Coast Guard and the Immigration and Border Protection Services. However, despite these organizational improvements, the bottlenecks ascertained in each report by the Council had a common thread, the persistent lack of resources in the area of capacity (expertise), materials, finances and information gathering. The Council can therefore state based on its reports that the prerequisites listed in the earlier mentioned policy program, for a successful approach to combat cross-border crime, were still not (sufficiently) present in 2021.

The reports by the Council on illegal firearms and human smuggling/human trafficking in Sint Maarten also pointed out that aside from a repressive judicial approach an administrative approach is also important in combating (cross-border) crime. For example, where it pertains to establishing policy and the granting of licenses. This issue was also addressed during the JVO in June 2021, whereby it was decided that a so-called 'workgroup administrative approach' would be established to facilitate the preparation of a problem analysis to list existing initiatives against undermining within the countries, to take stock of the wishes, and to draw up plans of approach to this issue. The Council looks forward to the concrete results of this workgroup.

### **3. Highlights 2021**

#### **Introduction**

While the results of the inspections of the Council often expose areas that require improvement, the Council would also like to highlight some positive developments within the Ministry that contribute to the quality and effectiveness of the chain as a whole. Progress is often hard-fought due to, for example, budgetary constraints and therefore deserves to be acknowledged.

#### **Strengthening Border Control**

As stated earlier, strengthening border control is one of the elements within the country package for strengthening the rule of law in Sint Maarten. The earlier mentioned mutual agreement established in 2017 after the hurricanes Irma and Maria already provided for this but ended on 31 July 2021. The new '*Protocol on strengthening border control in the Caribbean countries of the Kingdom*' established on 4 February 2021, however, continues the groundwork that was already laid. The related plan of approach expounds on the needs of the various authorities involved in border control such as the Coast guard and Customs. Headway was made by the workgroup tasked with drafting the plan of approach in 2021 and stakeholders were positive in their outlook with regards to its completion.

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<sup>13</sup> Decree of the Minister of Justice dated December 19, 2017, number 72542, on the mutual agreement between St. Maarten and the Netherlands pursuant to article 38, paragraph 1, of the Charter of the Kingdom of the Netherlands to strengthen the border control of St. Maarten (*Onderlinge regeling versterking grenstoezicht Sint Maarten*)



## **Detention System**

In the various reports related to cross-border crime the quality of the prison and the lack of detention capacity is cited as a bottleneck. With the sentencing of offenders and prosecution of suspects for, among other cross-border crimes such as firearms trafficking, criminal enforcement received considerable attention in 2021. However, the lack of detention capacity played a negative role in this.

The last report published by the Council in 2019 regarding the detention system covered the implementation of the recommendations issued by the Council and the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Despite the continuous lack of compliance in implementing the recommendations the Council refrained from issuing another report on the detention system in 2021. This, because the Council recognized the consequences of the financial constraints of the country, the Covid-19 pandemic and the necessary implementation time required. Not to mention the fact that the Council has already published nine inspection reports over the years reflecting all the associated bottlenecks. However, throughout 2021 the Council continued to closely monitor the situation via monthly meetings with the different stakeholders.

The Council has also always called on both Sint Maarten and the Kingdom of the Netherlands to take responsibility for addressing the complex and urgent matter of the prison. This now seems to have taken root in the aforementioned country package.

*“In order to improve the detention conditions, in consultation with the Netherlands, Sint Maarten will implement the agreements made on improvement measures from 2018 and, if necessary, free up the needed resources and include them in the budget. In order to comply with the (international) requirements with regard to detention, Sint Maarten together with the Netherlands will commission UNOPS to conduct a preliminary investigation before 15 February 2021 to arrive at a long-term plan for the detention situation on Sint Maarten. Based on the preliminary investigation, follow-up actions will be set out and conducted to structurally improve the detention situation.”*

While the assistance of the United Nations Office for Project Services (UNOPS) is slow in getting off the ground, the Council is positive that once all points have been finalized it will have great results for the detention system in the long term, resulting in a new prison amongst other things. Developments surrounding the prison also received a positive impulse in 2021 with the recruitment of a program manager, a program assistant, and a human resources advisor by the Dutch Ministry of the Interior and Kingdom Relations (BZK), tasked with executing the plan of approach for the prison drafted in 2018. The installation of a new prison director and a new management team at the house of detention by the Minister signals commitment to the realization of the goals set for the prison. Strong efforts by the Minister have also resulted in successful cooperation between the Netherlands and Sint Maarten. In September 2021 the Minister and support staff traveled to the Netherlands for a work visit. During the visit various judicial and youth institutions were visited with the intention to establish and foster working relationships, get a better understanding of the judicial system and its stakeholders and explore ways in which Sint Maarten can be included in programs and receive

assistance where necessary.<sup>14</sup> The Council is therefore cautiously optimistic that these developments will bear fruit in the short and long term.

### ***Tackling youth delinquency***

The (social) effects of cross-border crime (drug trafficking) on the youth was pointed out by the Council in its inspection report on the approach to drug crime and drug related issues in Sint Maarten (2019). Indications that youngsters were being recruited by adults to buy and sell drugs was cause for concern, as well as the increase in the wide and open use of marijuana by youngsters. Besides that, marijuana was traded by young people on the streets as well as at the schools.

On 16 November 2020, a decree by the Minister designating specific areas where stricter enforcement of nuisance and criminal behavior among truant school children and loitering youth took effect. As this problem continued in 2021 a new decree was issued in August 2021, (valid until July 2022) and various initiatives followed with regards to tackling youth delinquency. This helped to curb the amount of school fights in the area, but also opportunities for the buying and selling of drugs.

In September 2021 a symposium was held on behalf of the Ministry of Justice on youth delinquency for various stakeholders and for which the Council also provided a presentation with its findings from its 2015 report with regards to the topic.

### ***Relational violence***

The Council applauds the steps taken by authorities and specifically the Minister of Justice to create awareness on this topic. Since publishing its report on domestic violence in 2020 there have been many developments. Training for authorities has been at the forefront. Workshops for example were held for the Sint Maarten Police Force by the Public Prosecutor's Office to create more awareness and educate and explain the guidelines for dealing with cases of relational violence. The Council was also pleased to witness inter-ministerial cooperation between the Ministries of Justice and Public Health, Social Development and Labor (VSA) with regards to establishing a policy to combat domestic violence, child abuse and gender violence in Sint Maarten. Community engagement was also observed by the Council in various forms, including information sessions, films, and music.

The lack of support for victims in general, however, remains a point of concern for the Council. Developments announced in 2021 with regards to the establishment of the foundation Victim Support Services have yet to yield tangible results.

### ***Function book***

The function book has been a point of contention for the Ministry of Justice for about 10 years. In 2020 the Minister of Justice stressed her commitment to finalizing the process in a correct manner and in the best interest of all parties involved. Feedback on the function book was given by the Progress Committee, the Committee of Civil Servants Union and the various unions representing the civil servants within the Ministry of Justice.<sup>15</sup> The Council did not provide feedback on the contents of the function book as the Council 's regulatory role does not provide for such.

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<sup>14</sup> <https://www.ministryofjustice.sx/minister-of-justice-travels-to-the-netherlands-for-a-work-visit/>

<sup>15</sup> [Function Book in the final phase of the legislative process – Ministry of Justice](#)

Discussions between the Ministry and the unions regarding the function book dominated the media in 2021. Ultimately the national decree containing general measures was approved and signed by the Governor and the Minister of Justice on 20 December 2021.<sup>16</sup> The Council therefore commends the efforts of all involved thus far and looks forward to the completion of this extremely important project.

#### **4. Inspections 2021**

During its inspections in the year 2021 the Council again observed great involvement and responsibility on the part of the employees of the various law enforcement agencies. The general lack of strategic management from the administration as well as a lack of support on the political front to provide for the necessary resources continues however, to contribute to the lack of improvement to the overall judicial approach to the enforcement of the rule of law. The Council did observe attempts by the Ministry to address this with, for example, the organization of a conference in July 2021, whereby the various departments as well as external partners of the Ministry had the opportunity to discuss topics related to their operations, to include their legal basis, annual plans, their budget, challenges, and plans of actions geared at improving their functionality and effectiveness.<sup>17</sup>

The inspections selected and carried out in 2021 by the Council were based on themes deemed important by the Council, due to signals received from stakeholders and the public. One inspection concerning illegal firearms was conducted at the behest of the Minister considering the social relevance. The 2021 annual plan therefore included five inspections, of which two were carried out and completed in 2021. The findings of these inspections are described briefly below. The remaining inspections which were all initiated in 2021 will be completed in 2022, this due to unforeseen circumstances. The inspections cover the following topics in no particular order:

- combating money laundering and terrorism financing;
- cybersecurity within the various justice institutions;
- general review of the follow up of the recommendations issued by the Council in the period 2012-2018;
- monitoring of recommendations by the CPT in the detention facilities of Sint Maarten / request of the Ministers of Justice of the Kingdom to evaluate the Mutual Agreements regarding Detention;
- illegal firearms in Sint Maarten.

#### **General review**

In 2020 the Council started with a general review of its recommendations issued from 2012-2018. Due to the large number of recommendations the general review inspection is conducted per subject resulting in sub-reports. In 2021 two sub-reports were published. The reviews showed the level of compliance with respect to the implementation of recommendations issued in various reports (2012-2018) by the Council to improve the workings of the justice authorities. Below is a brief overview of the findings of each report. For

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<sup>16</sup> [Ministry of Justice Function Book Approved and Established by National Decree containing general measures \(LBHAM\) \(sintmaartengov.org\)](https://www.sintmaartengov.org)

<sup>17</sup> [Minister of Justice Anna E. Richardson pleased with the results of Justice Conference \(sintmaartengov.org\)](https://www.sintmaartengov.org)

a detailed overview of the rate of compliance for each report please see the attached infographic.

*General review sub inspection part I: youth and probation*

The Council evaluated the extent to which its earlier recommendations were acted upon. The Council grouped several reports and undertook an initial sub-inspection of the state of affairs. It was decided to group the reports related to juveniles and (adult) probation given the cooperation and connection between juvenile and adult probation; the latter subject is also included in this review. The first sub-inspection involves the following six (including two follow-ups) reports:

- Juvenile Probation on Sint Maarten (2012);
- Juvenile Probation on Sint Maarten. A follow-up. (2015);
- Adult Probation on Sint Maarten (2013);
- Adult Probation on Sint Maarten. A follow-up. (2016);
- Prevention of Juvenile Crime on Sint Maarten (2015);
- Juvenile rehabilitation on Sint Maarten. A baseline study at the Miss Lalie Center (2016).

The first sub-inspection showed that of a total of 45 recommendations, 26 recommendations were fully implemented, 11 recommendations were partially implemented, and 8 recommendations were not adopted. It can therefore be concluded that most of the recommendations were implemented. The Council concluded that the Foundation Judicial Institutes Sint Maarten (SJIS), and thus the adult probation, had evolved significantly in the manner intended by the recommendations. Unfortunately, this does not apply to the subject of juveniles. According to the Council, the situation regarding juveniles is the result of broader challenges. In particular, the lack of an integrated and inter-ministerial approach and corresponding (policy) frameworks for allocation of human, financial and material resources have led to the stagnation of developments. Furthermore, the financial consequences, the need for greater efficiency, and the need for cooperation are also evident. As far as acting on the recommendations, the Council had to conclude just as in previous review inspections, that the individual organizations often succeed in acting on a large number of recommendations, but that adoption of a portion of the recommendations stagnates or does not get off the ground because of the need for action by, or cooperation from the administration.

*General review sub inspection part II: Public Prosecutor's Office and Crime Fund*

The second sub-inspection examined to which extent the recommendations relating to the following eight inspection reports (including three reviews) were addressed:

- The enforcement of fines, damages and dispossessions (2014);
- Review enforcement of fines, damages and dispossessions (2018);
- The investigative and prosecutorial policies of the Public Prosecutor's Office (2015);
- Review of the investigative and prosecutorial policies of the Public Prosecutor's Office (2019);
- The Public Prosecutor's Office in incident-based investigation (2013);
- Review of the Public Prosecutor's Office in incident-based investigation (2017);
- Cooperation between Public Prosecutors offices (2018);
- Crime Prevention Fund (2018).

From this second sub-inspection, it became apparent that of the total of 25 recommendations that were issued, six were fully implemented, nine were partially addressed, and 14 were not implemented. The Council noted that the capacity of the organizations to be able to consistently enforce the law proved to require further growth and that local governmental-strategic prioritization in the chain, based on an integral vision, is required. Integration in order to focus resources and create synergy through collective efforts is also important. The need for strategic guiding principles was also observed in all the reviews. For example, the Crime Prevention Fund requires an annual policy plan, and strategic choices for investigative and prosecutorial policies need to be determined as these are important for effectiveness.

In the inspections related to the enforcement of sentences and incident-oriented investigations the strategic prioritization of this issue proved to be critical. However, once the guiding principles have been determined, it is essential that efforts are made to support these to prevent them from being cast aside. The roles of the Minister of Justice, the Ministry of Justice and the Public Prosecutor's Office are very important in this context.

With respect to compliance with legislation and regulations, some reviews (Enforcement of fines and Crime Prevention Fund) show that legislation and regulations require greater compliance during the performance of tasks. Risks were identified in terms of integrity and the credibility of law enforcement in general due to laws and regulations not always being sufficiently followed.

The Council found that justice objectives are achieved by multiple actors within the chain. Nevertheless, it is often apparent that the administration is only organized for a small section (within an organization) of the chain and that the interaction between the components requires improvement. The inspection of the Crime Prevention Fund and the administration of assets on behalf of the Fund demonstrated this clearly. In the review of the investigative and prosecutorial policy of the Public Prosecutor's Office, this issue came at the expense of case oversight and led to a large portion of sentences not being enforced. In the inspection into incident-based investigation, oversight was also absent. Establishing processes and procedures also requires (project) capacity. This capacity was, however, not being prioritized or available. The Council concluded by stating that the actions of justice authorities are not always effective or efficient, but notwithstanding this, small successes have been achieved and the Council recognizes their perseverance and anticipates future opportunities.

### *Illegal firearms*

The Council inspected the prevention and combating of illegal firearms in Sint Maarten. The inspection revealed that the judicial authorities have various control mechanisms at their disposal such as the specialized teams, the Major Crimes Unit, and the Special Unit Robberies, to combat illegal firearm possession. This approach, however, does little to stem the trafficking of illegal firearms. The interconnectedness of drug trafficking and illegal firearms was also addressed. The Council noted that authorities such as Customs, the Dutch Caribbean Coast Guard and the Alphateam<sup>18</sup> who are tasked with protecting the borders suffer from a lack of resources which hamper their effectiveness. The absence of 24/7 coastal control is one bottleneck that was cited, along with the need for enhanced formal cooperation between the French and Dutch authorities. In this regard the renewed protocol on strengthening border control was considered a positive development by all stakeholders. The Council as in previous

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<sup>18</sup> The Alphateam is a joint task force consisting of members of the KPSM, Customs, Dutch Caribbean Coast Guard and Koninklijke Marechaussee (KMar)

reports advocated a comprehensive approach and enforcement to address the issue of the illegal smuggling of firearms, the illegal trafficking of firearms, and the illegal possession of firearms.

The Council also advised that an administrative approach (policy and licensing) is also invaluable in successfully combating illegal firearms in Sint Maarten. As this inspection focused specifically on illegal firearms and not on licensed firearms, the Council will consider carrying out an inspection in this regard at a later date.

### ***Policy statement by the Minister of Justice***

Of the three inspection reports published by the Council in 2021, none received a policy response from the Minister of Justice as required by the Kingdom Act Law Enforcement Council in 2021. The Council stressed the importance of these policy responses and the purpose which they serve, namely, to provide insight into planned policies and the approach of the ministry to the various bottlenecks addressed by the Council. It also serves as an instrument for Parliament to, for example, provide the Ministry with the necessary budgetary support in order to make its approach successful. The Council is therefore pleased to report that at the time of the drafting of this State, a general policy response to the recommendations of the Council was presented to Parliament as well as to the Council by the Minister.<sup>19</sup> This response addressed the lack of noncompliance over the past eleven years, the recurring themes of the various recommendations, and highlighted recent and anticipated developments by the Ministry. The Council is hopeful that moving forward this matter will continue to receive the necessary priority from the Minister.

## **5. Pending and planned inspections 2022**

At the time of this State of Law Enforcement's publication the Council had already carried out or was preparing/engaged in several inspections for Sint Maarten for the year 2022. These include in no specific order:

- Combating money laundering and terrorism financing (initiated 2021);
- Cybersecurity within the various justice institutions (initiated 2021);
- Monitoring of recommendations by the Committee for the Prevention of Torture in the detention facilities of Sint Maarten/ JVO Request Mutual Agreements Detention (initiated 2021);
- Lead times (will be initiated in 2022);
- Public order (will be initiated in 2022);
- General review sub inspection III: Police (initiated in 2022).

## **6. Conclusion**

The strengthening of the rule of law was at the center of many developments in 2021. The continued efforts (e.g., cooperation) between the various authorities, and within the Kingdom, specifically regarding the strengthening of the borders of Sint Maarten to prevent illegal goods and persons entering the country, were clearly evident in 2021.

Cross-border crimes such as drug trafficking, firearms trafficking, and human trafficking are given high priority within law enforcement by both the investigative authorities and the Public Prosecutor's Office and efforts are made to deal with them as quickly as possible. However,

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<sup>19</sup> <https://www.ministryofjustice.sx/minister-richardson-breaks-negative-cycle-of-non-compliance-to-law-enforcement-council-recommendations/>

the lack of resources plays a large role in their ability to do this and other tasks successfully, as well as provide for continuity and guarantee structural changes. Nevertheless, cross-border crime requires the attention of the relevant authorities in a structural manner, as this form of crime is a serious threat to Sint Maarten. To realize this, continuous support on an administrative and political level is required as the authorities cannot effect the necessary change on their own.

As indicated earlier, cross-border crime cannot be seen separately from local crime and therefore neither can the approach. Local crimes are at times a consequence of cross-border crimes such as the youth being engaged in the dealing and use of illegal drugs. The Council therefor reiterates the benefits of an integral and proactive approach, particularly in the field of youth and prevention. As the latter were amongst the priorities of the minister of Justice for 2021, the Council hopes more efforts will continue to be made in this field.

Given the numerous reports about and the current attention for the detention system, the Council also once again stresses the importance of having a proper detention system in place that complies with international standards. Besides providing for a humane work and living environment it would also amongst other things prevent hard choices having to be made in the prioritization of persons requiring incarceration. The Council is therefore pleased that in 2021 and moving forward priority is given to this matter and that the necessary cooperation between the Netherlands and Sint Maarten has been established and continues to be fostered.

In conclusion the Council notes that due to the complex developments within the area of crime and specifically cross-border crime, the necessary cooperation is being pursued more and more, not only by and between authorities, but also on an inter-ministerial level and within the Kingdom. The Council has always been a proponent of cooperation and has made numerous recommendations to this effect. The Council therefore continues to applaud all cooperation efforts as they will contribute to the strengthening of the rule of law and by extension benefit the safety and quality of life of the Sint Maarten population.

As always, the Council looks forward to all future developments.

## **Colofon**

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April 2022