



## Immigration detention in Sint Maarten

*Inspection into the treatment of detained foreigners in Sint Maarten*

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Law Enforcement Council

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## Table of contents

Table of contents .....	3
List of abbreviations.....	5
Foreword.....	6
Summary and recommendations.....	7
Recommendations .....	10
1. Introduction .....	11
1.1 Rationale .....	11
1.2 Objective of the inspection.....	11
1.3 Central question and sub-questions .....	11
1.4 Delineation.....	12
1.5 Assessment framework.....	13
1.6 Method of research .....	13
1.7 Reading guide.....	13
2. Findings: The humane treatment of illegal foreigners .....	14
2.1 Introduction .....	14
2.2 Legal framework & policies and responsibilities .....	14
2.2.1 Laws, regulations and agreements .....	14
2.2.2 Policy .....	16
2.2.3 Responsibilities .....	19
2.3 The immigration stop.....	21
2.3.1 Regular and multidisciplinary controls .....	21
2.3.2 Refusals at the border.....	22
2.3.3 Transfers .....	23
2.4 Holding .....	24
2.4.1 Domestic and border .....	24
2.4.2 Duration .....	25
2.4.3 Review.....	25
2.4.4 Documentation .....	26
2.4.5 Legal aid .....	28
2.4.6 Legal citizenship .....	28
2.5 Enforcement of detention .....	29
2.5.1 Daily treatment .....	29
2.5.2 Safety .....	37

2.5.3 Minimal restrictions and provisions.....	37
2.5.4 View of departure .....	39
2.5.5 Steering recommendations CPT.....	41
3. Analysis, conclusion and recommendations.....	42
3.1 Introduction .....	42
3.2 Analysis .....	42
3.2.1 Legal framework, policy and procedures.....	42
3.2.2 The process of detention: immigration stop, holding and detention.....	45
3.2.3 Enforcement of detention .....	46
3.3 Conclusion.....	48
3.4 Recommendations .....	50
Annex 1. Legal framework, policy and relevant developments.....	51
Laws and regulations and policy.....	51
Laws and regulations and agreements .....	51
Policy .....	54
Relevant developments .....	55

## List of abbreviations

<i>Abbreviation</i>	<i>Meaning</i>
Bavpol	Extraordinary police officer ( <i>Buitengewoon agent van politie</i> )
IBT	Integral Skills Training ( <i>Integrale Beroepsvaardigheid Training</i> )
IGD	Immigration and Border Protection Service ( <i>Immigratie- en Grensbewakingsdienst</i> )
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
JVO	Judicial Four-Party Consultation ( <i>Justitieel Vierpartijen Overleg</i> )
KMar	Royal Netherlands Marechaussee ( <i>Koninklijke Marechaussee</i> )
KPSM	Sint Maarten Police Force ( <i>Korps Politie Sint Maarten</i> )
Kustwacht	Dutch Caribbean Coast Guard ( <i>Kustwacht Caribisch Gebied</i> )
LTU	National Ordinance on Admission and Expulsion ( <i>Landsverordening Toelating en Uitzetting</i> )
MvJ	Minister of Justice ( <i>minister van Justitie</i> )
MT	Management team
NGO	Non-Governmental Organisation
OM	Public Prosecutor's Office ( <i>Openbaar Ministerie</i> )
PG	Attorney-General ( <i>Procureur-Generaal</i> )
RSJ	Council for the Administration of Criminal Justice and Protection of Juveniles ( <i>Raad van Strafrechtstoepassing en Jeugdbescherming</i> )
VKS	Volunteer Corps Sint Maarten ( <i>Vrijwilligers korps Sint Maarten</i> )
WvSv	Code of Criminal Procedure ( <i>Wetboek van Strafvordering</i> )

## Foreword

This report by the Law Enforcement Council (hereafter Council) concerns an inspection into the treatment of foreigners in the context of immigration detention by the justice organisations involved and the quality of their performance in this area. In addition, the Council assesses the state of affairs concerning the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on this subject and the manner in which these recommendations have been implemented by the Minister of Justice and/or those responsible for them.

The treatment of foreigners detained in Sint Maarten must comply with international conventions and standards and local laws and regulations that protect the rights of detained (illegal) foreigners. In Sint Maarten, detained foreigners are housed in the foreigner detention center and border hospice at Simpson Bay. As this is a closed setting, it must meet requirements of security and humane treatment of the foreigner. The inspection shows that aspects of security in particular are lacking, leading to unacceptable conditions, according to the Council.

The Council emphasises that despite the (major) bottlenecks, the inspection showed that this does not directly affect the humane treatment of detained foreigners. Detained foreigners are generally treated humanely by the persons involved in accordance with established standards. This may, especially given the circumstances under which they work, be considered with appreciation for the persons involved.

To this end, the Council makes a number of recommendations, which it believes can improve the detention process and ensure humane treatment of foreigners by the justice organisations involved. The Council thanks the organisations and individuals involved in the inspection for their constructive contribution.

THE LAW ENFORCEMENT COUNCIL

Mr. M.R. Clarinda, chairperson,  
Mr. M.I. Koelewijn, councilmember,  
Mr. E.R.A. Morillo, councilmember.

## Summary and recommendations

### Introduction

Since the reopening of the foreigner detention center/border hospice in 2021, (illegal) foreigners who are removed or expelled from Sint Maarten and to whom the measure of detention (immigration detention) is applied are placed there. Foreigners who are supposed to be detained at the border are also placed there by administrative order. In the underlying inspection, the Law Enforcement Council (the Council) assessed the extent to which foreigners are treated humanely by the justice organisations involved during immigration detention in accordance with established standards. The inspection also focused on the quality of task performance by the organisations involved in this area. In addition, it also assessed the extent to which the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)<sup>1</sup> on this subject were followed and how steering was provided by the Minister of Justice and/or those responsible for this.

The Council's inspection shows that the treatment of illegal foreigners during immigration detention by justice organisations can generally be considered humane and that the CPT's recommendations have been partially followed (of the nine recommendations, two have been followed, four have been partially followed and three have not been followed). Furthermore, the Council found that at the strategic level, the steering of the recommendations by the Ministry has been insufficient.

In addition, the Council has a positive image of the foreigner detention center. In the opinion of the Council, this is largely due to the dedication and drive of the staff, from middle management in particular. This is despite the serious staff shortage at the detention center. The situation is very fragile. The safety of both staff and detained foreigners is potentially at risk due to the lack of crucial security measures. The staff shortage also means that fewer checks can be carried out by the mobile unit of the Immigration and Border Protection Service (IBPS).

Due to the above, the morale of the staff of both the detention center and the mobile unit is highly affected as communicated during the interviews with the Council. If this situation is not changed very soon, the Council fears that this will have serious consequences for the quality of the enforcement of detention.

### Research question

In order to answer the research question, eight sub-questions have been drawn up about legislation, policy, procedures, treatment, bottlenecks and management of the follow-up of relevant recommendations of the CPT. The Council assesses the process of detention, namely the stopping of foreigners, the holding, and the enforcement of detention. The subject of the treatment of foreigners is addressed throughout the process.

### Legislation and policy

International laws and regulations provide the basis for the various measures and authorities for justice organisations involved in immigration detention. These are adequately built in at the Kingdom and local levels. For example, the National Ordinance on Admission and Expulsion contains provisions for carrying out foreigner supervision. This includes, for example, the following measures and authorities: the removal of a foreigner by the Minister of Justice (MvJ), the expulsion by the Attorney

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<sup>1</sup> CPT (2023). Report to the Government of the Netherlands on the periodic visit to the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 25 May 2022.

General (hereinafter PG) and the detention of illegal foreigners to ensure this. The official instructions contain provisions on the use of tools (including a security search, baton, handcuffs) by personnel of justice organisations during enforcement. Furthermore, the legal duties and authorities regarding immigration detention are known to those responsible for them.

However, there are a number of legislative and regulatory bottlenecks. There is no explicit legal basis for detaining foreigners in the context of refusing entry at the border. Similarly, there is no mandate for immigration officials at the border to make decisions on whether or not to grant entry to Sint Maarten. This should be regulated. If these persons make a decision to refuse entry it has consequences for the subsequent holding and detention of foreigners in the foreigner detention center/border hospice. Applying the measure of detention in these cases is also not in accordance with the law on this matter. Mandating immigration officials to review the measure of detention on behalf of the MvJ through a second interview should also be regulated.

Policy on the measure of detention is set forth in the 2012 Guidelines of the MvJ. In accordance with the Guidelines, the measure of detention in the context of removal or expulsion is only applied in special cases and when a lighter remedy such as an obligation to report cannot suffice. The Guidelines also mention the holding of foreigners in a general sense.

Moreover, the IGD's personnel and integrity policies deserve due attention. There is a serious staff shortage at the detention center. This adversely affects detention staff and the carrying out of checks by the mobile unit. A short-term and long-term vision to address these bottlenecks is lacking and is inadequately communicated by management to staff.

## Procedures

### *The process of detention*

The process of detention consists of an immigration stop, the holding and then detention. The IGD has working procedures for this, but they are not all in writing and established. In principle, the general procedures as stated in the Guidelines are followed. There are generally no complaints about the treatment of foreigners during the detention process.

### *Immigration stop*

An immigration stop takes place both at the border and in the country. In the country, immigration stops are carried out by the mobile unit. These immigration officers are authorized and adequately equipped to do so. During an immigration stop in the context of controls, the nationality and residence status of the foreigner is checked. To this end, foreigners are approached respectfully by immigration officers and the checks are largely without incident. There is usually no need to use physical force.

### *Holding*

The IBPS office on Illidge Road is used for holding up foreigners in the country, although the border hospice is designated for this purpose through the Guidelines. This poses no problems in terms of procedure. The procedure of being held is often realised within six hours. During this period the foreigner is interviewed, and a decision is made by the MvJ on whether or not to apply the measure of detention. There is also a review moment built into the process. This review must be done by the MvJ or by an official mandated to do so. However, as indicated, the mandating of these officials has not taken place. This needs to be arranged. Aside from this, immigration officials are well supported in the process by means of specific written forms. These forms ultimately form a file that is easily



accessible and can be used, for example, to ascertain the legality of the proceedings. The procedure of being held at the border should, as indicated earlier, be brought into compliance with the laws and regulations applicable to this.

### *Detention*

Detained foreigners are housed in the foreigner detention center. The security search that takes place there meets the standards for this. Foreigners are medically screened at intake by filling out a form about their medical status. However, this form has yet to be expanded. The foreigner's data and all documentation are properly recorded by the detention center and can be accessed at any time. Furthermore, the individual needs of the foreigner, such as a special diet or medication, are adequately provided for, and basic activities appropriate to the short length of stay of (most) foreigners are offered.

The security of the building requires urgent attention and immediate solutions. The safety of the staff and the detained foreigners is at serious risk. The building requires renovation. It is unclear in what time frame this will take place; a lack of steering is a factor here. Currently, detained foreigners who have been detained because of a refusal at the border or because of a removal or expulsion order are housed together on the first floor of the building. As a result, they are all under the same regime. This regime imposes minimal restrictions on the foreigners. Within the legal and permitted frameworks, efforts are made to make the foreigners as comfortable as possible. Although it appears that IBPS personnel, including detention staff, have not received specific training in the area of immigration detention, foreigners are generally treated respectfully and humanely during the detention process.

Moreover, foreigners are offered the prospect of their departure, and the organisations work energetically toward the departure.

### **Recommendations and requests CPT**

Not all recommendations were followed up. Of the nine recommendations, two were followed, four were partially followed and three were not followed. The relevant CPT recommendations regarding immigration detention in Sint Maarten concern: security searches (followed up); medical screening (partially followed up); informing the foreigner about the procedures in a language they can understand (followed up); developing activities for long-staying foreigners (not followed up); avoiding placing minors in the detention center (partially followed up); training detention center staff (not followed up); introducing a maximum detention period (partly followed up); evaluating continuous detention by independent authorities (not followed up); and, ensuring written translation of the decisions into a language understandable to the foreigner (partly followed up). In addition, the CPT made two requests regarding informing foreigners about free legal aid and the consequences of appealing a decision. These were complied with by the government in their response to the CPT report.<sup>2</sup>

### **Overall conclusion**

The purpose of the Council's inspection was to assess the extent to which foreigners are treated humanely by the relevant justice organisations during immigration detention, in accordance with established standards, and the extent to which the CPT's recommendations in this regard have been followed. The treatment of foreigners begins when they are stopped. The treatment by justice organisations is organised in such a way that the aspects of good/humane treatment are generally

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<sup>2</sup> CPT (2023). Response of the Government of the Netherlands to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Kingdom of the Netherlands from 10 to 25 May 2022.

met. This is despite the identified bottlenecks and the lack of follow-up to some of the CPT's recommendations. The Council hopes that the recommendations below can contribute to further improvements in the provision of services to foreigners and also better working conditions for staff.

## Recommendations

Based on the identified bottlenecks in the area of immigration detention in Sint Maarten, the Council makes the following recommendations to the Minister of Justice:

- Provide a legal basis for holding foreigners.
- Provide a (new) decree mandating immigration officials to take decisions on entry at the border.
- Arrange for a decision mandating immigration officials to review the detention measure.
- Ensure that the detention measure is only applied in accordance with laws and regulations governing its application.
- Introduce a regulation for (free) legal aid for detained foreigners. Consider, for example, whether the National Decree on Free Legal Aid should be amended to provide free aid to detained foreigners as well.
- Ensure completion of the process of establishing the IBPS's working procedures.
- Ensure that the necessary security measures are put in place at the foreigner detention center and border hospice.
- Carry out recruitment of staff for the benefit of the foreigner detention center and border hospice.
- Carry out the renovation of the building of the foreigner detention center and border hospice.
- Ensure (full) follow-up of the recommendations of the CPT that are not yet/partially followed up.

Several recommendations relevant to this inspection have already been made by the Council in previous inspections. There is therefore no need to make new recommendations. The Council reiterates from previous reports the following recommendations to the MvJ:

- Synchronise the mandating in the Mandate Decree and the decision practice regarding refusal of entry.<sup>3</sup>
- Promote a consistent and transparent integrity policy at the Admissions Organisation that actively monitors compliance with codes of conduct. Monitor compliance with the policy in practice.<sup>4</sup>
- Improve communication and information exchange between management and border control staff and invest in transparent personnel policies.<sup>5</sup>
- Free up resources for additional training. Start by offering in-service training in Dutch for those who need it. Provide structural training and development opportunities for all staff.<sup>6</sup>

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<sup>3</sup> Law Enforcement Council (2014). Border control of the movement of persons in Sint Maarten.

<sup>4</sup> Law Enforcement Council (2014). Border control of the movement of persons in Sint Maarten.

<sup>5</sup> Law Enforcement Council (2014). Border control of the movement of persons in Sint Maarten.

<sup>6</sup> Law Enforcement Council (2017). Border control of the movement of persons in Sint Maarten. A follow-up inspection.

# 1. Introduction

## 1.1 Rationale

### 1.1.1 Tasks Law Enforcement Council

The Law Enforcement Council (hereinafter: the Council) is tasked with the general inspection of the organisations of the justice chain in Curaçao, in Sint Maarten and in the Netherlands as regards the public entities of Bonaire, Sint Eustatius and Saba (hereinafter: the Caribbean Netherlands). These inspections include institutions and establishments where prison sentences, detention sentences, orders or freedom-restricting measures are implemented. In addition, the Council is charged with the general inspection of the quality and effectiveness of cooperation by justice organisations between the countries.

### 1.1.2 The inspection

Based on the 2024 annual plan, the Council conducted an inspection focusing on a specific topic within the detention system. The Council is also following up on the 2015 request made by the Judicial Four-Party Consultation (JVO) to monitor the recommendations of the European Committee for the Prevention of Torture (CPT)<sup>7</sup>. The topic concerns the treatment of (illegal) foreigners during their detention.

## 1.2 Objective of the inspection

The Council considers it important that (illegal) foreigners during immigration detention (see section 1.4 for the definition) are treated by the justice organisations concerned in accordance with (inter)national standards and the legislation and regulations based on them. The inspection therefore also focuses on the quality of the task performance by these organisations in this area. Furthermore, the Council assesses the state of affairs regarding the CPT's recommendations on this topic and the way in which these have been guided by the MvJ and/or those responsible for them.

By doing so, the Council identifies (possible) bottlenecks, their causes and possible improvements. In this way, the Council contributes to promoting the treatment of (illegal) foreigners and the quality of detention.

## 1.3 Central question and sub-questions

De central question is:

*To what extent are foreigners treated in accordance with established standards by the relevant justice organisations during immigration detention? And to what extent have the CPT's recommendations in this regard been followed?*

To answer the central question, the following sub-questions have been drawn up:

### Immigration detention

1. How is immigration detention organised in terms of legislation and policies and procedures?
2. What procedures do the Immigration and Border Protection Services (IGD) use for immigration detention in practice?

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<sup>7</sup> The monitoring of detention recommendations stems from a 2015 request from the Judicial Four-Party Consultation (JVO), the semi annual consultations of the Ministers of Justice (&security, JenV) of the countries within the Kingdom.

3. How is the treatment of foreigners in detention regulated?
4. How is the accommodation of foreigners in detention organised?
5. What bottlenecks (if any) arise in the area of immigration detention

#### Monitoring recommendations CPT

1. What relevant CPT recommendations have been made to the Minister of Justice on immigration detention?
2. To what extent have the recommendations been followed?
3. To what extent is this managed by those responsible for it?

#### 1.4 Delineation

The treatment of foreigners who are detained starts with the immigration stop. The Council will therefore include in this inspection the procedures used by justice organisations before the actual detention (the immigration stop and the holding). The organisation primarily responsible for the detention of foreigners in Sint Maarten is the Immigration and Border Protection Service. Furthermore, procedures related to applications for asylum will not be considered during this inspection.

#### Research period

The inspection focuses on the period from 2019 to 2023.

#### Definitions

The Council uses the following definitions<sup>8</sup> in the inspection:

- Treatment: the enforcement of a punishment or measure in all its aspects<sup>9</sup>. In this inspection, the Council looks at the aspects: lawfulness of enforcement, daily treatment, offering prospects (prospect of departure), security, imposition of minimum restrictions and legal citizenship;<sup>10</sup>
- Humane (treatment): according to human standards and rules;<sup>11</sup>
- Foreigner: any person who does not possess Dutch nationality and should not be treated as a Dutch citizen under any provision of law;<sup>12</sup>
- Immigration detention: an administrative measure, not a punishment, with the objective of keeping foreigners available for deportation;<sup>13</sup>
- Immigration stop: the authority to stop persons to determine the identity, nationality and residence status of the person.

<sup>8</sup> No definitions are available in Sint Maarten as regards the subject matter of this inspection, hence the Council has sought to draw on definitions used outside Sint Maarten.

<sup>9</sup> Council for the Administration of Criminal Justice and Protection of Juveniles (2012). Good treatment. Principles for government action towards people undergoing a judicial sentence or measure.

<sup>10</sup> According to the Council for the Administration of Criminal Justice and Protection of Juveniles, good treatment of detainees does not only imply adherence to written norms and rules by authorities, but also a continuous striving for improvement by recalibrating laws, regulations and procedures on the basis of social developments, scientific insights and changes in characteristics of persons in detention in closed environments. It is also the positive intention with which, the humane way a person is treated, that makes the difference between being treated well and complying with rights and duties.

The RSJ uses a number of principles as standards for this. In this inspection, the Council looks at the principles: lawfulness of enforcement, daily treatment, offering prospects (prospect of departure), safety, imposing minimal restrictions and legal citizenship. See Council for the Administration of Criminal Justice and Protection of Juveniles (2012). Good treatment. Principles for government action towards people undergoing a judicial sentence or measure.

<sup>11</sup> Council for the Administration of Criminal Justice and Protection of Juveniles (2012). Good treatment. Principles for government action towards people undergoing a judicial sentence or measure.

<sup>12</sup> Article 1 Aliens Act 2000. [wetten.nl - Regeling - Vreemdelingenwet 2000 - BWBR0011823 \(overheid.nl\)](https://wetten.nl/Regeling-Vreemdelingenwet-2000-BWBR0011823)

<sup>13</sup> National Ombudsman (2020). Limits to immigration detention. Report number: 2020/002, d.d. 6-2-2020.

## 1.5 Assessment framework

To answer the formulated central and sub-questions, the Council has drawn up an assessment framework based on criteria/standards set by the Council<sup>14</sup> and the recommendations of the CPT. The criteria/standards were established with the help of (inter)national laws and regulations, policy, various research reports, such as those of the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) and other relevant information.

## 1.6 Method of research

This inspection was conducted on the basis of file research, literature review and interviews with the legal profession, management of the relevant justice organisations, (policy) advisers and staff of the Ministry of Justice, the IGD, the Public Prosecutor's Office (OM) and the Sint Maarten Police Force (KPSM) who have a (statutory) role in immigration detention in Sint Maarten. To further investigate the treatment of detained foreigners, two of the five detained foreigners who were willing to speak to the Council were interviewed. The Council also conducted a physical inspection in the areas of the foreigners' detention center.

The inspection was carried out in accordance with the phases below:

1. orientation phase: global deepening of the topic, including holding exploratory talks with contact persons from the IGD and the Ministry for the purpose of determining the approach of the inspection and writing the plan of approach.
2. desk research: literature review and preparation.
3. Data collection: conducting interviews, file research and physical inspection at the detention center.
4. analysis and reporting: based on the main and sub-questions, the information collected was analysed and the draft inspection report prepared.
5. rebuttal and adoption: interviewees and the Minister of Justice were given the opportunity to comment on the draft interview reports and/or the draft report, after which any comments were incorporated and the report was presented to councilmembers for adoption.

## 1.7 Reading guide

After the introductory chapter 1, chapter 2 describes the findings on the humane treatment of foreigners. The third chapter describes the analysis of the findings, the conclusion and the recommendations. Annex 1 of this report provides a brief overview of relevant laws, regulations and policies and other relevant developments.

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<sup>14</sup> To assess the extent to which foreigners are treated humanely, the following standards are used, which are discussed in chapter 2: lawfulness of enforcement, daily treatment, offering prospects (prospect of departure), security, imposition of minimum restrictions and legal citizenship.

## 2. Findings: The humane treatment of illegal foreigners

### 2.1 Introduction

This chapter describes by means of an assessment against the established criteria and standards, the findings on the scope of the research question to what extent the humane treatment of foreign nationals is guaranteed during detention. The Council looks at the legal framework, policy and responsibilities, the procedures in the context of the detention of foreigners and the actual enforcement of detention by the IGD. In Annex 1 of this report, the Council elaborates on the relevant laws and regulations, policies and relevant developments. As regards the enforcement of detention at the foreigner detention center and border hospice at Simpson Bay, the findings on the follow-up to the CPT's recommendations (2022) are also included in this chapter.

### 2.2 Legal framework & policies and responsibilities

#### 2.2.1 Laws, regulations and agreements

*Criteria: local laws and regulations regarding the measure of detention comply with international standards and values. And relevant necessary authorities are provided with a legal basis.*

The relevant topics on immigration detention in the treaties and principles listed in Annex 1 are further elaborated on within the Kingdom in the Kingdom Police Act and the Mutual Regulations on the Immigration Chain. Furthermore, relevant provisions and authorities can be found in national legislation. These are the Constitution, the LTU, the National ordinance on the identification obligation and the Code of Criminal Procedure (WvSv) as well as the Admission Decree, the National Decree on the Duties and Organisation of Immigration Officers and the Official instructions. Interviewees indicated that, in general, they work well with the existing legal framework.

#### *Detention*

The Constitution of Sint Maarten contains elements to protect the freedom and security of persons and the protection of persons under any form of detention or deprivation of liberty. This is in accordance with international conventions. These are elaborated in particular in the LTU and the Admission Decree.

Annex 1 also indicates that the Guidelines of the Minister<sup>15</sup> state that supervisory measures have their basis in regulations and case law. For example, under the International Covenant on Civil and Political Rights, no one should be deprived of their liberty except on grounds and according to procedures established by law. The grounds for detention of foreigners are set out in Article 16 LTU in the context of expulsion and Article 19(2) LTU in the context of removal.

#### *Authorities in the context of an immigration stop*

On 1 March 2021, the Minister took responsibility for the implementation of the (section) border protection (Mobile Investigation and Supervision Unit) back from the police and returned it to the IGD. According to the minister, this is in accordance with the National Ordinance on the Establishment and

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<sup>15</sup> Guidelines of the Minister of Justice of Sint Maarten regarding the application of the National Ordinance on Admission and Expulsion (pb 1966, no. 17), as amended, and the Admission Decree (pb 1985, no. 57), as amended.

Organisation of the National Government.<sup>16</sup> Of the aforementioned Section Border Protection, the Mobile Investigation and Supervision Unit and the IGD Detention Unit are involved in the process of detention (immigration stop, holding, and enforcement of detention)

The authority to conduct an immigration stop is derived from Article 1(3)(a) of the National ordinance on the identification obligation. To enforce the LTU, both immigration officers and executive police officers can ask foreigners to identify themselves. This authority is also used in practice. This is done in various ways: while conducting regular checks (at the border and in the country), multidisciplinary checks and landing refusals (3.3.2).

The authority to conduct an immigration stop is the least intrusive measure of restraint and deprivation of liberty in the context of IGD supervision, and its sole purpose is to verify the identity, nationality and residence status of the foreigner. A number of authorities are required to effectively carry out checks. The Guidelines state that under the principle of proportionality, the application of the authorities granted to a supervisor is limited to those cases where the application of duty is considered reasonably necessary.

Based on the Kingdom Act and Official instructions, immigration officers of the mobile unit are authorised to use force in certain cases during immigration detention. The official instructions list the following means of violence: firearms, CS tear gas, police dogs, pepper spray and the baton. In practice, immigration officers possess a firearm and a baton. And they can use physical force in certain circumstances. In addition, immigration officers can apply handcuffs for the purpose of transportation. Furthermore, they are authorised to conduct searches of persons' clothing (security search).

### *Holding*

According to the Guidelines, supervision measures include measures restricting and depriving liberty, detention and declaring a foreigner undesirable. The National ordinance on the identification obligation stipulates in article 1, third paragraph, that every person from the age of 12 years and over is obliged to immediately provide the investigating officers with an identification for inspection upon request. In the event that a foreigner is unable to identify himself during an immigration stop, the more drastic measure of restraint will be applied: the holding to investigate and establish identity. If during the immigration stop it appears that a foreigner does not have a valid identity document or residence permit, he is therefore taken away for holding. Regarding the authority to detain a foreigner, the Ministry, among others, refers to the policy, being the Guidelines. The Guidelines then refer to transfer to a border hospice to establish identity. The person in question may also be

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<sup>16</sup> Law Enforcement Council, (2014). Border control on the movement of persons in Sint Maarten. Pg. 47 *"Pursuant to the 1998 Immigration Officials Decree, border control is a task of the Immigration Department, a part of the Netherlands Antilles Police Force, now the KPSM. The national decree also grants border control authorities to immigration officials. This 1998 national decree still has the force of law but has not yet been adapted to the Sint Maarten situation. In the plan of approach for the new admissions organisation, drawn up on the advice of the Review Commission, border control is also a task of the Immigration Department. Contrary to the aforementioned national decree and the plan of approach for the new admissions organisation, the 2010 Justice Organisational Decree states that the entry control of foreigners is a task of the Immigration Department, a service component of the Ministry of Justice. During 2012, the actual implementation of border control on the movement of persons was transferred from the Immigration Department of the KPSM to the Immigration and Border Protection Services (IGD), contrary to the plan of action endorsed by the ministerial consultations. This resulted in a covenant between the KPSM and the IGD, in which the control of, inter alia, entry of foreigners was assigned to the IGD, and the detection of criminal offences was called a task of KPSM 'in principle'. Now that, under the law, two different agencies are charged with the border control task, the legislator should clarify which agency is legally charged with the border control task. It is worth noting that the Justice Organisational Decree does assign the border control task to the Immigration Department but does not authorise immigration officers to perform the border control task. After all, as a rule, the exercise of a government task is accompanied by an authority based on public law."*

transferred to a place intended for questioning. During holding, restrictions may only be imposed on the foreigner if they serve the purposes of the identity investigation or the investigation into the right of residence, respectively, according to the Guidelines.

No distinction is made between holding in general and holding at the border in the context of refusal of entry. Given that this is a form of temporary deprivation of liberty, in the Ministry's view, the distinction should be regulated by law.

An example where the authority regarding immigration stops and the physical holding of foreigners in the context of refusal of entry have been incorporated into law is the BES Admission and Expulsion Ordinance.<sup>17</sup>

### *Enforcement of detention*

The authority to detain a foreigner is set out in sections 16 (PG) and 19 (minister) of the LTU. This authority can be applied by the Minister and the PG respectively if the foreigner poses a danger to public order, public peace or safety or morals, or if there is a well-founded fear that the person concerned will try to evade removal. The measure of detention may be used if the foreigner is declared undesirable.

In a judgment of the Court of First Instance on 2 June 2021, the Court indicated that as far as the enforcement of detention is concerned, immigration detention can be enforced in a house of detention. In this case, it concerned police cells. The Court did assume that immigration detention, when implemented in the Philipsburg police station, is not per se contrary to law, but that this method of enforcement should be limited in duration as much as possible.<sup>18</sup>

Since August 2021, the building on the Simpson Bay Road 1 plot has been designated for immigration purposes through a ministerial order.<sup>19</sup> The building has had multiple purposes in the past: a prison, house of detention, foreigner detention and border hospice. The building now serves as a foreigner detention center (for enforcement of detention orders) and border hospice (for holding persons who have been refused entry (landing refusals)).

## 2.2.2 Policy

*Criteria: Policies relevant to the detention of foreigners are current and guide the work of the IGD.*

### *2.2.2.1 Admission policy*

#### *Guidelines*

In view of prevailing (international) benchmarks, the Minister of Justice must establish policies that guide justice organisations in the performance of their duties. As indicated, Guidelines have been drafted by the Minister of Justice. Drafting or updating policies is a general bottleneck due to capacity. Although the position of policy officer has been included in the formation of the IGD, it has yet to be filled. This is seen as a shortcoming by several interviewees. Within the Ministry, a policy officer has been appointed as portfolio holder for immigration/border control. However, the person concerned has to perform this task alongside many other time-consuming activities, according to interviewees.

<sup>17</sup> [wetten.nl - Regeling - Wet toelating en uitzetting BES - BWBR0028571 \(overheid.nl\)](https://wetten.nl/Regeling-Wet-toelating-en-uitzetting-BES-BWBR0028571)

<sup>18</sup> ECLI:NL:OGEAM:2021:65

<sup>19</sup> MB no. 342-21MB/JU; National Gazette 2021, number 20, 3 September 2021.



The IGD indicates that the Guidelines need to be updated because they do not provide sufficient guidance in current developments and situations. For instance, there should be a review of the (maximum) period of immigration detention for specifically the removal and detention of persons; the revision should be taken up in the Guidelines, according to the IGD. See further 2.5.4.

It is indicated from within the legal profession that the Guidelines are insufficiently in line with European Guidelines on the rights and obligations of illegal foreigners. And it is also indicated that it is important here that the Minister's advisers have sufficient knowledge of immigration matters, which is not always the case.

#### *Work procedures*

The inspection found that not all work procedures based on the Guidelines are in writing. There are no working procedures in writing for the IGD's mobile unit. However, there are model forms available for preparing the necessary documentation for the work of the mobile unit. The Council has received some of these. Furthermore, work procedures are available for border supervision. However, according to interviewees, these are not known to everyone and are currently under review. Work procedures are also available for staff at the foreigner detention center. Council inspectors viewed these procedures and related documents during a visit. According to the IGD, the Government Accountants Bureau is in charge of drafting or updating working procedures for all sections of the IGD and this process should have already been completed. However, this did not appear to be the case at the time of the inspection. A deadline is not known.

#### *2.2.2.2 Personnel policy*

##### *Personnel shortage*

All interviewees indicate that there are personnel shortages at the IGD in general and at the foreigner detention center in particular. This is due to vacancies not being filled. Therefore, there is currently an internal agreement that a maximum of five foreigners can be detained at any one time. This internal agreement also affects the work of the IGD mobile unit. It cannot carry out its work in full, because this may result in exceeding the agreed maximum number of foreigners in detention, see further section 2.3.

The current personnel of the detention center consist of five permanent immigration officers: a coordinator, a supervisor and three detention officers. The immigration officers are all extraordinary officers and two have been trained as detention officers. This staffing is insufficient based on a necessary 24/7 schedule and other detention and security requirements, according to all interviewees. There are three shifts (morning, afternoon and evening) per day and the minimum number of personnel required per shift is one person at the central post and two people on the 'work floor'. It is a structural bottleneck that the minimum number is often not met.

As a result, current personnel must, almost structurally, work 12-hour shifts. The management of the detention center indicates that this is unacceptable from a security perspective and that it also takes a mental and physical toll on personnel. A detention center interviewee stresses that this should not be the norm, but rather only in the case of an emergency. This situation overloads personnel and makes it almost impossible for them to take days off. For some, the extra hours worked cannot be paid in full in the same month either, as they are still under the legal status of the prison. This means that no more than 40 overtime hours can be processed per month. It is therefore necessary to recruit new personnel as soon as possible, interviewees said. Another interviewee from the IGD indicates that

under these working conditions, current personnel are unlikely to last long: "*What is asked of them is inhumane and unsafe*".

To address the personnel shortage, the IGD relied on the Volunteer Corps Sint Maarten (VKS) from the partial reopening of the detention center in 2021 until the full-time opening in June 2023. However, assistance by the VKS ceased in December 2023. This was due to the lack of a formal agreement. The IGD says that for the time being, until the agreement is formally established, assistance in the form of a person from the VKS has been arranged. However, this does not appear to be structural in practice and therefore does not provide a solution to the current scheduling and safety issues. The agreement is currently under consideration by the VKS board, according to the IGD. Furthermore, a number of colleagues from other departments within the IGD provide assistance. However, this is not structural and does not solve the understaffing issue.

Several interviewees stress that the current agreement with the VKS can only offer a temporary solution. This is because the VKS is a voluntary organisation and the person made available is ultimately not obliged to come, which makes this deployment unsuitable for a detention setting. When this person does not show up, which also happens, the institution immediately has a personnel shortage and often no alternative. In total, the detention center needs at least eight personnel. Especially at night, at least three personnel are needed. Once the budget for 2024 is approved, at least 10 in-house personnel should be recruited. Furthermore, the minister has approved the plan of approach to strengthen border control and based on this, the possibility has been created, that the council of ministers approves recruitment of five FTEs, according to the IGD.

#### *Steering of personnel*

The IGD had no director since 2016, therefore this role has been filled by different management teams (MT) and acting directors. Since 16 October 2023, the IGD has a 19 new acting director.<sup>20</sup> According to IGD interviewees, the constant changing of the guard has affected the steering of personnel and operations.

Several IGD interviewees indicate that the steering and communication by the strategic management (act. director and MT) could be improved and that bottlenecks are insufficiently addressed and/or tackled. It is noted that there has been a lack of a vision for the organisation for years and that little feedback is given. Steering by middle management (the coordinators and team leaders) is experienced as predominantly positive by several IGD interviewees. This is mainly due to the transparent communication that characterises the steering by middle management.

#### *Personnel equipment*

Although all immigration officers working at the mobile unit should be fully equipped with handcuffs, a truncheon and a firearm, the inspection found that not all immigration officers were fully equipped. All those interviewed indicated that there is a short-term need for new uniforms as their current uniforms are worn out. A committee has now been formed to bring this about. Furthermore, the mobile unit has five vehicles at its disposal, one of which is shared with another department. The mobile unit's responsibilities include transporting foreigners.

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<sup>20</sup> [Levenstone Takes Center Stage as Integral Part of Immigration](#)

### 2.2.2.3 Integrity policy

The inspection reveals that the IGD does not currently have a written integrity policy, but that there are developments. There is talk of developing a Code of Conduct for government employees.<sup>21</sup> The draft framework for this is said to have been finalised and each component of the Ministry can develop a Code of Conduct for its own department based on this framework. IGD interviewees point out that they received limited information on integrity during their initial training. Thereafter, no training has taken place in this area. Integrity as a topic does get raised during briefings by the mobile unit and detention unit coordinators, often in response to an incident. According to interviewees, discussing this topic does not yet go smoothly, but it is improving. Furthermore, if applicable, breaches of integrity are also addressed during individual performance appraisals, according to interviewees.

Besides this, opinions differ within the IGD on whether there is a code of conduct specifically for the IGD. All interviewees agree that it is important to address and promote integrity within the service.

### 2.2.3 Responsibilities

*Criteria: The tasks and responsibilities in the context of detention are known to the relevant justice organisations.*

#### *Immigration and Border Protection*

In Sint Maarten, the IGD is charged with supervising the lawful residency of foreigners. This task includes enforcement and supervision under the LTU and the Admission Decree and is further detailed in the Guidelines.

The Guidelines indicate that direct control by officials charged with border control, border supervision and domestic supervision is exercised by the IND (read IGD) and special investigating officers as referred to in the National Decree on Tasks and Organisation of Immigration Officials. However, the national decree does not include the term special investigating officers. In practice, employees of the IGD's mobile investigation and supervision unit are appointed as special investigating officers/extraordinary police officers (bavpol).

On the website of the Ministry of Justice it states that<sup>22</sup> the investigative branch (unit mobile investigation and supervision) of the IGD are specifically tasked with the supervision of:

- Enforcement of the LTU at the border;
- The control of persons/passengers/documents at and around all border checkpoints;
- Denying entry to persons who do not meet the requirements to enter the country;
- Checking the legal status of persons within the country;
- Deportation of illegal immigrants.

It also states that the IGD Detention Unit is in charge of actual confinement (detention) and securing foreigners.

#### *Other justice organisations*

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<sup>21</sup> Law Enforcement Council (2024). General review recommendations Sint Maarten Sub-inspection 5: Border control of the movement of persons; Admission and expulsion of foreigners. During the writing of this report, the new code of conduct has now been published in the Sint Maarten Government Gazette, year 2024, number 23 on 30 August 2024.

<sup>22</sup> [Immigration and Border Protection Services – Ministry of Justice \(ministryofjusticesx.com\)](https://www.ministryofjusticesx.com)

Illegal foreigners detected, for example, by justice organisations such as the KPSM and the Coast Guard as part of their investigation and border control tasks are transferred to the IGD (see further section 2.3.5).

#### *Minister of Justice*

According to Article 19 of the LTU, the Minister of Justice may expel the following persons from Sint Maarten:

- a. those who entered the country in violation of the legal provisions on admission and expulsion;
- b. those who were admitted to the country for temporary residence, if they are found in the country after the validity of their temporary residence permit has expired or after the validity of the permit has expired due to any other cause.

The second paragraph of this article states that the Minister is authorised to detain these persons to ensure their removal. If the Minister judges that a foreigner poses a danger to public order, public peace or safety or morals, or in his judgment there is a well-founded fear that the foreigner will attempt to evade removal, he may order that the foreigner be placed in detention to ensure his removal.

#### *Attorney General/Public Prosecutor's Office*

The Solicitor General is mandated by the PG in terms of deporting foreigners as stipulated in Article 15 of the LTU. These are:

- a. persons who, after the loss of their admission by virtue of law, or after the revocation of their residence permit, have not left Sint Maarten within a period to be set;
- b. persons, for whom admission is required pursuant to this National Ordinance and whose stay is not considered desirable in view of morality, public order or public peace or safety.

Subsequently, under Article 16 of the LTU, the person may be placed in detention to ensure departure if he or she poses a danger to public order, public peace or safety or morals, or if there is a well-founded fear that the person will try to evade departure.

Expulsion is subject to specific grounds. The public prosecutor informs that, in practice, expulsion only takes place at the request of the Minister of Justice (by ministerial order), when it is not desired that the person returns within a certain period of time. Over the past six months, there have been 2-3 expulsions.

The OM only comes into contact with a foreigner when he or she is involved in a criminal investigation. Within the OM, a prosecutor is in charge of immigration and/or human trafficking/smuggling cases. The OM must ensure that the foreigner who is apprehended (these are often victims in the context of human trafficking/smuggling) and is no longer needed for the investigation is transferred to the IGD (see further section 2.3.4).

In the case there is a deportation but a court case is still pending, the deported person is given permission by means of a so-called '*Laissez Passer*' to return to Sint Maarten for his hearing. This document is prepared by the Minister and countersigned by the OM. However, this does not give the deported person unconditional access to Sint Maarten. He may only temporarily enter the country to attend the trial. The person is then temporarily detained and transported to and from the court and then to the airport on the day of departure.

## 2.3 The immigration stop

*Criteria Council: The immigration stop of illegal foreigners takes place in accordance with established procedures.*

### 2.3.1 Regular and multidisciplinary controls

The current staffing of the mobile unit is: 1 coordinator, 1 team leader and 8 employees. In 2023, 169 foreigners were held up through checks by the IGD mobile unit.<sup>23</sup> Mobile unit interviewees indicate that, partly due to the lack of a monitoring system, more targeted or ad hoc (regular) checks are carried out by the mobile unit in 2024. The regular checks carried out are determined based on reconnaissance, trends, the season, tips, the general flow of people and the experience of officials. In the case that a (potentially) illegal foreigner is found during a regular or multidisciplinary check, the same procedure is followed.

Due to the personnel shortage at the detention center, it has been agreed that a maximum of five foreigners will be placed there at a time. This has a direct impact on the daily activities of the mobile unit because fewer regular and multidisciplinary checks can be carried out by the mobile unit. After all, once the five detention places are full, there is no more room for other illegal foreigners. The mobile unit is not the only one that potentially finds illegal foreigners to be detained. This also has to be taken into account during operations.

As a result, six multidisciplinary operations/joint controls have last taken place in 2023. At the time of writing this report, a multidisciplinary check was conducted by the KPSM and the IGD as part of a criminal investigation in which 14 undocumented migrants were affected.<sup>24</sup> According to the KPSM's press release on this, all undocumented migrants were placed in immigration detention during the investigation and, in accordance with established procedures, the KPSM is assisted by the IGD in dealing with the detained migrants to facilitate their eventual repatriation to their country of origin.

The situation necessitates strategic decision-making with regard to operations and means that the mobile unit's work must be organised differently. Besides less regular and multidisciplinary checks, space should be left to assist in response to landing refusals, police transfers or prison. Also to get more visibility on illegality. The focus is currently mainly on targeted tips from cooperation partners and the public and preventive checks, as these can lead to the discovery of clusters, for example. The current course of events is demotivating, according to interviewees from the mobile unit.

#### *Procedures*

According to the Guidelines, the special investigating officers of the Immigration Department, under the National Ordinance on Identification Obligation, have the authority to stop anyone for the purpose of checking his/her identity, nationality and residency status. Means of transport can also be checked in this context. The condition is that such action is necessary to combat illegal residency.

The opinions of interviewees at the IGD, the legal profession and 2 foreigners interviewed on the procedures around an immigration stop and the use of force in the context of an immigration stop are divided. The IGD indicates that in practice, immigration officers announce themselves to individuals and ask them to identify themselves and show their proof of residence. If the person does not speak English, there are colleagues in the mobile unit team who also speak, for example, Spanish or (French) Creole. If the person cannot show identification and/or residence papers, the person is detained and - after searching their clothing - handcuffed for safety and transported to the IGD office on the Illidge

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<sup>23</sup> Annual report Mobile unit 2023.

<sup>24</sup> [Police & Border Protection Carry Out Targeted Operations Netting 14 Undocumented Persons \(soualiganewsday.com\)](https://www.soualiganewsday.com)

road by at least two immigration officers. In this context, an interviewee from the legal profession indicates that an immigration stop should be based on a regular check or signals, however, it would often happen that specific groups are stopped and checked arbitrarily and on questionable grounds. This interviewee points to ethnic profiling not being allowed in this. In addition, the interviewed lawyer has received signals of mistreatment during an immigration stop in respect of the use of handcuffs. However, this does not occur systematically. Complaints about security searches have not been heard, according to the interviewee.

Furthermore, the foreigner is also informed of his rights (the right not to answer (*cautie*) and the right to a lawyer) before being transported to the IGD office, due to his being temporarily detained by the IGD. The immigration officer gives names of lawyers to the foreigner. However, the foreigner has to pay for this assistance himself as there is no free assistance available (no legal basis). It is further indicated from within the legal profession that the authorities relating to an immigration stop, holding and detention are insufficiently known to immigration officers. This is due to lack of education, training and steering by management.

Both foreigners interviewed recounted that they were first transferred to the police station before they entered the border hospice. One of them stayed in a police cell at the KPSM for several days before being transferred to the IGD. This foreigner says he was treated when detained at the airport as well as at the police station as during the transfer and during immigration detention. The other foreigner says he was treated well by the relevant services when detained and during his short stay in a police cell and during his immigration detention. Both foreigners interviewed had no complaints about their treatment by the justice organisations during and immediately after being detained.

According to an interviewee from the mobile unit, in the case of a person who does not cooperate, the previous procedures also apply, with the understanding that proportional force is applied if necessary. It is noted that an attempt is always made to communicate with the person first and, if necessary, de-escalate the situation. Persons generally cooperate and the use of force such as a baton or firearm is rarely necessary, according to a number of interviewees.

Upon arrival at the IGD office, any belongings are put in a search bag and the necessary paperwork is filled in, according to the IGD. In the case an illegal foreigner needs to leave the country but cannot do so immediately, in practice, the foreigner is released with a reporting obligation, or the measure of detention is employed. Efforts are always made to employ the least intrusive measure, so that the foreigner leaves of his own accord, but experiences with a reporting obligation are often negative in the sense that the foreigner disappears in the country, according to the IGD.

### 2.3.2 Refusals at the border

In 2023, 112 people were refused entry at the border.<sup>25</sup> The procedure of stopping foreigners (tourists) at the border as described in the Council's 2014 report on border control in Sint Maarten<sup>26</sup> is still being followed by the IGD. If a foreigner is stopped at the border by immigration officers, depending on the seriousness of the case, the foreigner is refused entry and receives a refusal decision (landing refusal). Subsequently, deportation takes place whereby the foreigner is sent back on the same airline or sent away with a reporting obligation (whereby the passport is taken) or taken into immigration detention. One of the foreigners interviewed was refused entry at the border and detained because of a false passport. He indicated that he was treated well by both the police and the various IGD staff.

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<sup>25</sup> Annual report Mobile unit 2023.

<sup>26</sup> Law Enforcement Council, (2014). Border control on the movement of persons in Sint Maarten.

### 2.3.3 Transfers

In accordance with the Guidelines, the foreigner in detention should be deported from the country as soon as possible - depending on the factual circumstances of both the authorities and the detainee - after his/her release from prison/home detention. Detainees who are released from prison without a valid residence permit should be transferred immediately to the IGD by the OM for detention. The detention lasts until they are deported from the country, according to the OM. In 2023, 5 detainees transferred to the IGD.<sup>27</sup>

The OM indicates that based on the current conditional release policy, the Minister can decide that a person should be released earlier, due to the cell shortage within the prison. In the case of a foreigner, expulsion may come into the picture. The OM considers the case according to the proportionality requirement and balances interests. The law does not specify the criteria or interests to be taken into account. The OM says it does not proceed with expulsion lightly. In 2023, 2 people were handed over to the IGD for deportation.

A foreigner detained by the justice (investigative) organisations (e.g. Coast Guard and KPSM) during investigation and border control and who subsequently has to be released and deported is transferred to the IGD. Similarly, an illegal foreigner who has served his sentence and needs to be deported or removed is transferred to the IGD. The KPSM indicates that foreigners are transferred to the IGD after their arrest and termination of the criminal investigation. In 2023, the KPSM transferred 27 foreigners to the IGD.<sup>28</sup> After transfer, the foreigner must go through the IGD's holding procedure and in these cases, detention usually follows.

According to the OM, under criminal law, when a foreigner is arrested, his statement is recorded by the KPSM and the foreigner is almost immediately released. The document for immediate release is prepared and signed by the OM. The foreigner is then collected from the police cells by the IGD. A foreigner is usually heard and released by the KPSM within two days. A transfer from the OM to the IGD can involve either expulsion (through PG) or removal (through the minister). In 2023, 48 foreigners were transferred by the OM to the IGD.<sup>29</sup>

Both foreigners interviewed were first detained in a police cell. Both indicate that they were treated well by both the police and the IGD.

*"I was detained at the airport because of a false passport and was taken to the police station by the police and stayed in a police cell for 2 to 3 days. Due to this fact, I will be banned from Sint Maarten for 3 years. I was treated well both in the police cells in Philipsburg and at the border facility in Simpson Bay<sup>30</sup>"*

*"I was arrested at home. I was treated well because I chose to behave. I first sat outside the holding cell for a while after which I was questioned by the police and then put in a holding cell. I understand that the police are only doing their job. I spent about 1,5 days in the police cell."*

<sup>27</sup> Annual report Mobile unit 2023.

<sup>28</sup> Annual report Mobile unit 2023.

<sup>29</sup> Annual report Mobile unit 2023.

<sup>30</sup> To illustrate the treatment of detained foreigners, two interviews with foreigners detained at the detention center at the time of the inspection are presented in this chapter in orange and blue text in the relevant sections.

## 2.4 Holding

*Criteria Council: The holding of illegal foreigners takes place in accordance with established procedures*

### 2.4.1 Domestic and border

#### *Domestic holding*

According to the Guidelines, the foreigner must be transferred to a place intended for questioning (border hospice). During the holding, restrictions may be imposed on the foreigner only if they serve the purposes of the investigation of the identity or the investigation of the right of residency, respectively. In practice, the foreigner who is stopped domestically by two immigration officers from the mobile in the context of the holding is searched, handcuffed and transported to the IGD office on the Illidge Road and held there. On arrival at the office, the foreigners' handcuffs are removed, and the foreigner is again searched there. Bags are searched for possible weapons. The foreigner is given water to drink. Furthermore, the foreigner is given access to Wi-Fi and the opportunity to make a phone call to inform others that he is being held. It is pointed out by a legal professional that family members and/or relatives are insufficiently informed that persons have been held.

Furthermore, under the Guidelines, the IGD is not required to question the foreigner in the context of identity and/or right of residency. The officer can also check the information systems. In practice, the date and time of the immigration stop is recorded, and enquiries are made to establish the foreigner's identity. The IGD's information system is consulted for this purpose. If it is found that the foreigner does not have a residence permit, he/she is questioned to find out the reasons for this. The questions asked depend on the individual situation. The foreigner is also medically screened by means of a questionnaire (see also 2.5.1.2). One of the foreigners interviewed indicated that he was interviewed upon arrival at the Illidge road office and asked to explain his situation. He was also able to make a statement about how he had been treated until then. He was also informed that he did not have to answer the questions asked during the interview. It was also explained why he had been held.

*"I was transferred from the police to the immigration. I was first patted down, and my rights were read by the immigration officers. I was then handcuffed and taken to the immigration office on Illidge Road. I was interviewed and asked questions. I was made aware that I did not have to answer the questions asked. I was given the reason why I was detained, being that I do not have the correct paperwork to be in Sint Maarten. I am currently working on Sint Maarten and was trying to get an exemption letter. My employer applied for this on my behalf. I was also given the opportunity to give a statement on how I had been treated."*

#### *Border holding*

In practice, when a foreigner is refused entry and the decision is made to detain him, in addition to the refusal order made by an immigration officer at the border, a measure of detention by a officer of the mobile unit is drawn up. The foreigner is then transported to the foreigner detention center/border hospice and detained there. According to several interviewees, this is standard practice at airports within the Caribbean part of the Kingdom.

According to the IGD, the foreigner who has been refused entry should be held at the border crossing point itself, such as at the airport. This is currently not the case because the airport is not operational 24/7 and is not equipped for people in this kind of situation. So, in fact, persons have to enter the country to be transferred to the foreigner detention center/border hospice. Other documentation for



this is necessary, which is not yet in place. The Minister therefore needs to adapt the forms currently used for removal and expulsion to this part of the process. This is currently being worked on, according to the IGD.

In the model form used to request the measure of detention, Article 19(2) of the LTU for the removal of persons from Sint Maarten is mentioned as the legal basis. Namely, that the person will pose a danger to public order, public peace or safety or morals, and as further motivation, among others: "Landing denied: No return ticket and danger of absconding".

However, the IGD indicates that persons who receive a landing refusal will not receive a removal order. This is because they will not be removed. For example, if they can guarantee that they will leave within the stipulated period or if they can present the necessary documents to enter the country the next day, then permission will be granted.

#### 2.4.2 Duration

The Guidelines indicate that the duration of the deprivation of liberty is a maximum of six hours. When calculating this period, the time between the stopping of the foreigner and the transferal to a place intended for questioning is not counted. The hours between 10 pm and 7 am also do not count. If, after the expiry of the six-hour period, there are still no grounds for suspecting that the detained foreigner has lawful residence, the competent immigration officer may decide to extend the period by up to 48 hours.

Interviewees indicate that the duration of detention is a maximum of six hours. If this proves insufficient, it can be extended by the Minister. However, it is indicated that six hours should in principle be sufficient to complete the process and that this is therefore often achieved. Depending on the duration, the foreigner is provided with a meal, even though this is not compulsory. Vouchers for this purpose are made available by the IGD.

If a foreigner is detained in the evening, he is temporarily housed in the foreigners' detention center. The questioning then takes place there the next morning in a specially designated room.

#### 2.4.3 Review

According to the Guidelines, the decision to detain a foreigner is taken by the MvJ or an immigration officer mandated for that purpose, namely: an assistant public prosecutor in charge of immigration affairs or one of the persons mandated for that purpose, in accordance with Articles 16 and 19(2) L.T.U. respectively. He/she assesses by means of questioning the foreigner in question whether the measure of detention may be imposed on the foreigner in question. A lawyer may be present during questioning. After the questioning, the foreigner is issued a copy of the detention order. The order must be reasoned.

A 2022 ruling of the Court of First Instance of Sint Maarten shows that review of the detention order by an employee and IGD coordinator by means of questioning is contrary to the Guidelines because

they are not mandated to do so. Moreover, the detention order is not always signed in a timely manner by the party authorised to do so.<sup>31</sup>

In practice, after the investigation shows that the person is undocumented, a review of whether removal is appropriate is carried out. A recommendation for removal is drawn up by an immigration officer in consultation with the team leader or coordinator. In complex cases, consultations are held with the act. director. Furthermore, all documentation is checked by the team leader or coordinator during the process. In practice, it also still appears that there is no mandate decision from the Minister regarding review by means of questioning of the foreigner whether the measure of detention can be imposed. The Minister makes a decision based on the advice and may then determine as part of the removal process that a reporting obligation or measure of detention is imposed and that the person must leave the country within six weeks. The starting point is that the least intrusive measure is employed. The reporting obligation is a light measure (a guarantor and the foreigner arrange his/her own departure). According to interviewees from the mobile unit, in practice it appears that the reporting obligation is used for a different purpose than it is intended for and also for a longer period than it is intended for. Namely, it is also used to allow people to stay on Sint Maarten while their (asylum) application is being processed. However, this is not the intention. Based on the experience of staff, detention is chosen more often than mandatory reporting, as mandatory reporting has often been abused in the past, according to the IGD. In 2023, 41 out of a total of 169 foreigners detained by the mobile unit received a reporting requirement.<sup>32</sup>

#### 2.4.4 Documentation

If the decision is made to proceed with detention, the Guidelines require a written, reasoned decision to be drawn up, a copy of which is given to the foreigner. This decision should be signed by the Minister. The content of the decision - including the legal remedies - should be made known to the foreigner in a language he/she can understand. In the context of expulsion, the decision should be reasoned and, as far as possible, issued in person.

The IGD informs that the foreigner will be informed when the Minister has signed the removal order and the detention order. These documents must also be signed by the foreigner. However, foreigners have the right to choose whether to sign the document. If the foreigner does not sign the document, immigration officials make a note of this on the document. The legal profession demands the documents to be signed by the foreigner and drafted in a language that the foreigner can understand. According to interviewees, foreigners sometimes sign the orders under protest and a sentence is then

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<sup>31</sup> ECLI:NL:OGEAM:2022:18 (4.7). That same day, 11 February 2022, the applicant was placed in detention and issued with the document containing the measure of detention. That document was not signed by the defendant or by the assistant public prosecutor or any other person mandated for that purpose. Thus, at that time, there was no lawful detention order issued by or on behalf of the defendant as provided for in Article 19 LTU. It is only on 14 February 2022, and for unclear reasons again on 18 February 2022, that the warrant is signed by the defendant. The Respondent's Guidelines state under 12.4 that the foreign national must be heard prior to the imposition of the measure of detention. This is to check whether the measure can be imposed. This must be done by the defendant or a person authorised to do so. In this case, the applicant was heard by staff member [P] and coordinator [S] at the time the measure of detention was imposed. The official report of the hearing further states that the review was conducted by coordinator [S]. Employees [P] and [S] are not mandated for the review by means of a hearing referred to in Article 12.4 of the Guidelines. In so doing, the defendant is acting in violation of its own Guidelines.

<sup>32</sup> Annual report Mobile Unit 2023.

included at the bottom of the document by the official concerned that he/she has explained the content of the document to the foreigner in a language understandable to the foreigner.<sup>33</sup>

When an interpreter is needed, there are officials from the mobile unit that can communicate with the foreigner in their own language. In practice, this is mainly Spanish and (French) Creole. The foreigner receives the original document and the IGD makes and keeps a copy.

Interviewees from the Ministry of Justice indicate that on a number of occasions, during court proceedings in the context of immigration supervision, the motivation of the decision was insufficient and the IGD had not complied with legal procedures.

A ruling by the Sint Maarten Court of First Instance on 31 July 2023 made the following points in this regard<sup>34</sup>:

- failure to strictly follow legally prescribed procedures;
- failure to accurately state dates and times of certain actions, making it difficult to review in retrospect whether the correct procedure was followed and the deprivation of liberty was justified.

Interviewees from the mobile unit indicated that, following the rulings (since 2023), there is more focus on properly justifying decisions.<sup>35</sup> For example, it is essential that the date of birth and the person's name are clearly stated. The mobile unit is now more alert and aware of the articles in the law that must be complied with. Improvements are gradually being made, according to IGD interviewees.

Following this, new model forms have also been prepared. As indicated earlier, several model forms have been prepared by the IGD to set out the work process. The Council received model forms in the context of immigration detention (English), questioning (English), removal (Dutch) and the measure of detention (Dutch). Currently, the IGD is revising a number of documents and develop new templates. This is for the purpose of intensifying existing checks and balances. For instance, a model form will be introduced for the process of arraignment of foreigners by the IGD. The effectiveness and legality of the detention will be assessed by an official who is not part of the mobile unit. Thereafter, the foreigner will be questioned. This ensures more checks and safeguards the process. This new procedure will be implemented pending approval of the function book and the filling of the functions. The models must first be approved by the legal department and eventually the Minister. After that, they will be published and implemented, according to the IGD.

The aforementioned model forms are completed in Dutch or English or both languages, depending on the immigration officer drafting it. This is dependent on the language skills of the official concerned. The IGD tries to facilitate employees in this regard by, for example, drafting the new model form for the measure of detention in English. Employees are trained in the use of the new forms and diagrams

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<sup>33</sup> For example, the model form of the second hearing includes the following sentence: *'The content of the hearing was read out in a language intelligible to me'*.

<sup>34</sup> ECLI:NL:OGEAM:2023:44

<sup>35</sup> The Mobile Unit's 2023 annual report states that in 2023, there were a total of eight (eight) foreign nationals who had requested suspension of the measure of detention and suspension of the removal order before the Sint Maarten Court of First Instance. By judgment of the Court of First Instance on 17 May, 9 June, 16 June, 22 June, 4 July, 26 July, 1 November and 12 December, all these requests were rejected.

are being prepared to make the process understandable. The current process will be entirely updated using the new work procedures.

Randomly, Council inspectors reviewed a number of digital files to determine their content, digital arrangement and storage. Documents are arranged by year and stored digitally on hard drives. This is also backed up. The software program Excel is being used to register foreigners since 2012. Relevant information, such as date of birth, name, gender, address, date of immigration stop, type of action, day of arrival/detention, date of departure, flight details, and destination, is recorded. After the foreigner leaves, all documents are scanned into the digital file. A copy of the file is sent to the intelligence center of the IGD. Furthermore, monthly reports are produced. These include overviews of the number of deportations, the number of landing refusals, the number of removals, the number of people with a reporting obligation and the number of people who left voluntarily, in a given period. For example, the 2023 annual report of the mobile unit reports the number of people denied entry, their nationality and the number of multidisciplinary checks carried out.

#### 2.4.5 Legal aid

Under the Guidelines, the detained person must generally be granted - under treaty provisions - the same rights as a person deprived of liberty under the WvSv. The lawyer has free access to the detained person. He/she may speak to him/her without the presence of third parties and provide him/her with legal aid.

In previous sections it was indicated that immigration officials inform foreigners that they are entitled to a lawyer, but that they must pay for one themselves. One of the foreigners interviewed indicated in this regard that he did not make use of a lawyer during questioning by the IGD. He hired a lawyer to help him apply for a work permit and a residence permit.

From within the legal profession, it is indicated that the existing laws and regulations on the protection of foreigners are incomplete. For instance, detained foreigners residing here illegally are not entitled to free legal aid (see in this context section 2.5.1.3). But even if the foreigner is entitled to paid assistance, for example during questioning, this does not always happen. For example, an interviewed lawyer indicated that he has never been present during a questioning at the Illidge Road office of the IGD where foreigners are held.

*"I have my own lawyer that is helping me with my work permit and stay. During the interview with immigration officers, I refused a lawyer because the interview was straightforward. The documents were all in Dutch, only one document the 'denial exemption letter' was in English. The immigration officers explained to me what was in the documents, and I signed what was necessary."*

#### 2.4.6 Legal citizenship

According to the Guidelines, the fact that the L.T.U. does not have a separate legal procedure under which the detention (duration and further modalities of the deprivation of liberty) can be appealed, does not constitute a violation of the ECHR, as the legal procedure of summary proceedings before the civil court meets the requirements of Article 5 ECHR. From within the legal profession, it is indicated that if a foreigner appeals against the detention, interim relief can be granted by instituting summary proceedings to suspend the order. This works well in practice and foreigners are often released within a week. More specialised judges in immigration cases would be a welcome addition, according to the interviewee.

The IGD's model forms 'ministerial order of removal' and 'measure of detention' refer to the possibility of lodging an appeal against the order.<sup>36</sup> The ministerial order of removal refers to a period of six weeks and the measure of detention to a period of four weeks for lodging an appeal. Article 16(1) of the National Ordinance on Administrative Justice states that the notice of appeal shall be filed within six weeks from the day on which the order was issued; otherwise, it shall be deemed to have been rejected.

If an appeal is lodged against a removal decision, this may delay the foreigner's departure.

Thus, by judgment of 10 August, the Court of First Instance, on an application for interim relief, suspended the foreigner's detention, ordered his immediate release and ordered the authorities to refrain from any measure aimed at detention until six weeks after the judgment on appeal. In this ruling, the Court further considered that until the ruling, the detention was lawful.<sup>37</sup>

## 2.5 Enforcement of detention

The previous sections handled the treatment during and legality of the immigration stop and the holding. This section discusses the legality of the enforcement of detention. In addition, the inspected criteria/standards of treatment and then specifically daily treatment, security, imposition of minimum restrictions and offering perspective will be mapped out. Where relevant, the CPT's recommendations and the government's response to them will be cited.

*Criteria: Enforcement of detention of foreigners takes place in accordance with established procedures.*

### 2.5.1 Daily treatment

#### 2.5.1.1 Security search

##### **Recommendation 1 (A1) CPT 2022:**

*Persons newly admitted to the facility were systematically strip-searched and were requested to remove all their clothes at once, make a squat and cough. The principles set out in paragraph 351 should also be implemented in the immigration detention context.*

##### **Response Government 2023:**

*The government shares the CPT's view that strip searches should not be carried out systematically and takes the view that this should remain an exception based on a risk assessment. Nevertheless, the Ministry of Justice will ensure that immigration staff tasked with detention are instructed explicitly about this matter and the CPT's recommendation.*

In the context of a decision of detention, the mobile unit contacts the foreigner detention center so that the necessary preparations can be made. The foreigner is frisked at both the initial immigration stop and upon arrival at the office. Upon departure from the place of holding to the foreigner detention center, the foreigner is again transported in handcuffs. Upon arrival at the detention center, detention officers introduce themselves to the detainees and ask for the name and date of birth for verification of documentation. The foreigner is once again frisked. Foreigners are not searched on or

<sup>36</sup> ref. article 16 jo. Article 56 National Ordinance on Administrative Justice ('LAR', AB 2013, no. 73)

<sup>37</sup> ECLI:NL:OGEAM:2019:78

in the body in this process. For higher-risk foreigners, such as detainees after detention, the clothing is searched more thoroughly, according to the IGD. One of the IGD interviewees indicate further that as a result of the CPT's findings, it was communicated to all staff in 2022 that it is no longer allowed for foreigners to be fully undressed and internally searched. One foreigner interviewed recounted that he was frisked by the IGD before being transported from the police cells to the IGD office. On arrival at the detention center, he was not frisked.

#### 2.5.1.2 Informing on rights and duties

**Recommendation 2 (A2) CPT 2022:**

*The CPT recommends that the Sint Maarten authorities ensure that all persons placed in immigration detention are fully and effectively informed, in a language they can understand, of their rights and the procedures applicable to them as set out above.*

**Response Government 2023:**

*The recommendation on fully and effectively informing detainees of their rights and procedures has been duly noted. The Immigration and Border Protection Services makes use of interpreters to ensure information is conveyed to immigration detainees in a language they can understand.*

The foreigner is given a tour and explanation of the house rules upon arrival at the foreigner detention center. A manual of house rules is available for perusal in the common room. Council inspectors viewed it. The manual is available in English, Spanish, French and (French) Creole. If the foreigner cannot communicate in English and the detention officer does not speak the foreigner's language, the detention officer or the foreigner uses, for example, Google Translate to communicate.

*I received the house rules and the foreigners that were there functioned as a sort of 'welcome committee'. The house rules were given verbally. I do not believe that people would read a paper version. I do not know if such is available. I would not read it either way as all was clear when it was explained to me verbally.*

*The staff used their phone to translate and communicate with me. All the documents provided to me were in English.*

#### 2.5.1.3 Legal aid

**Request 1 (V1) CPT 2022**

*The CPT would like to receive more detailed information on the free legal aid scheme available to persons held in immigration detention who cannot afford to pay for a lawyer. Further, the Committee would like to be informed whether Non-Governmental Organisations (NGOs) who could provide free legal assistance to detained persons have access to the immigration detention facility.*

**Response Government 2023:**

*The Free Legal Aid National Decree (Landsbesluit Kosteloze Rechtskundige Bijstand) and the Assignment of Counsel (Criminal Cases) National Decree (Landsbesluit toevoeging in strafzaken) form the legal basis for providing free legal aid to both residents of St Maarten and foreign non-residents who are not registered in St Maarten. Legal aid is provided in criminal and civil cases only. There is therefore currently no legal basis for providing free legal aid to immigration detainees. Immigration detainees are however informed of their right to a (paid) lawyer; if they request information about lawyers, a list is provided.*

*NGOs are given access to detainees and in some cases NGOs representing certain nationals of certain countries are proactively informed about the arrest of persons in certain categories (minors, pregnant individuals, individuals who require special care).*

As mentioned in section 3.4.5, while being held the foreigner is informed that they are entitled to a lawyer and that they must pay for this themselves. This is also included in the house rules manual. It is stated from within the legal profession that there is free access to clients who are in the foreigner detention center. As far as is known, there are no NGOs on Sint Maarten that (can) provide foreigners with legal assistance during immigration detention. However, there are individuals from one of the many different ethnic groups on the island who provide certain foreigners with other types of non-legal assistance, such as specific vegetarian meals.

#### *2.5.1.4 Medical screening*

**Recommendation 3 (A3) CPT 2022:**

*The CPT recommends that systematic medical screening of all newly admitted persons, including for transmissible diseases, injuries, mental health issues and victimisation, be introduced.*

**Response Government 2023:**

*The government supports this recommendation and will take the necessary steps to fully implement it. In this regard it is relevant to state that when newly admitted persons are questioned/interviewed, they are asked whether they have any medical conditions that require medical intervention or special treatment and medication.*

The 2023 annual report of the mobile unit states that a 'step-by-step guide' with routine measures has been developed on how to deal with new immigrants or detainees to ensure their mental and physical well-being. Detainees must answer several health questions that are documented before entering the foreigner detention center. This is to observe the welfare of immigration officers, other staff working there and the foreigners staying there before they are taken into detention, according to the annual report.

In practice, during the process of detention, foreigners are screened through a questionnaire that is reviewed by the mobile unit during questioning. In the model 'Interview/question' form, which the Council inspectors also viewed, there is a medical history section. This includes space for mentioning the health status of the foreigner and the medications taken. There is also a list of health conditions that can be ticked off. This does not include communicable diseases and mental health problems. Furthermore, the form does not include specific questions on possible victimisation.

Specifically for the detention center, a doctor in Simpson Bay has been on call for several weeks. If a doctor is needed based on the intake at the detention center, they are called. During the intake, for example, individuals can indicate if they have a special diet or are taking specific medications. The doctor then visits and writes a prescription if necessary. This works efficiently, according to interviewees. Furthermore, prescriptions are collected by the mobile unit and brought to the detention center for the foreigner.

Furthermore, a detention center staff member informs the contact person of the prison kitchen - which provides hot food for both the prison and the detention center - about these special needs. At the detention center, all medicines are stored in the central post and distributed daily to the relevant foreigner. This is also documented. The foreigner interviewed confirmed that attention is paid to their

medical needs. And that if medication is needed, it is also provided in a timely manner. This is the case with one of the foreigners interviewed.

There is no medical equipment in the doctor's consulting room at the detention center. The room contains only a table, a chair, a cupboard, a small sink and a laptop is available. A list of supplies, corresponding invoices and advice have been prepared by the management and submitted to those in charge. The status of this is unknown.

*"At the police station I saw a doctor and he asked me if I had any medical condition. At the immigration office the medical questions were more thorough based on a list of questions."*

*"I had a checkup by the doctor once. I am diabetic and receive my tablets twice a day from the staff."*

The IGD further indicated that there are no special facilities at the detention center for people with mental health problems. No arrangements have been made with the Mental Health Foundation in this regard. Such a case requiring recourse to this institution has not yet occurred, according to the IGD.

#### *2.5.1.5 Documentation/registration*

The foreigner detention center keeps records. A daily watch report is part of this. This records all information, including everyone entering the facility and the legal documents (e.g. orders) associated with the detention order. When the foreigner is transferred, the mobile unit must hand over a copy of the order the measure of detention before the foreigner is taken over by detention staff.

The foreigner's personal belongings are placed in a sealed bag (search bag) by a staff member in the presence of the foreigner. The foreigner receives a proof of this. The search bags are kept in a safe, which the Council inspectors also viewed. When the seal of a search bag is broken, a new bag is used. This is part of the tracking system. The watch report also shows the name of the detention officer who made the changes. Changes to the search bag are noted by detention officers at the beginning of the shift. There is a record book for the administration of search bags. A search bag must always be signed for by staff of the mobile unit, the detention center and the detainee respectively. Details such as the name of the detainee, date, name of staff member, number and time are recorded.

*"My jewelry was put in a bag, and I got a receipt for it."*

*"I left my jewelry at home, but there are special holding bags available if needed."*

In addition to the daily watch report, a weekly, monthly and annual report has been drafted by the detention center management since 2023. This provides management information. Detention center management indicates the importance of keeping good records. It provides up-to-date and detailed insight into activities and it is crucial in the event of an incident. It also serves to allow third parties the ability to conduct a review. Preparing these reports is time-consuming and disproportionate to available staff capacity.

Relevant information about the foreigner such as date of birth, nationality, date and time of entry and departure and any telephone records are also kept in the software program Excel. In addition, a logbook is kept in which everything is written down in detail. Such as when money is received for the foreigner. The money is noted per note on a special form and signed in triplicate by the person who brought the money and by two detention center staff. Receipts are made for the benefit of the person who brought the money, the foreigner and the facility.



Upon departure, all relevant documents such as identification certificate, order of detention, medical information and receipts are stored digitally, and the folders are classified by year and month. Thus, there is a digital archive since 2023. There is also a filing cabinet in the building for the hardcopy files. Currently, this cabinet only contains files from 2024.

During the inspection, Council inspectors were allowed to review the records on site. The inspectors were able to see the inside of the safe, physically view all printouts of forms used (such as orders of detention; intake forms and items brought) and see other examples, such as the cash receipt form. They were also able to view the computer and review a few watch reports.

Furthermore, a return network CARINT has been organised from the JVO, by the countries Aruba Curaçao and CN. The IGD is also part of the CARINT network. They hereby support each other in returning foreigners and information is exchanged. For example, after the foreigner's departure, a copy of the file is shared with the CARINT network. The IGD gives as an example of support that a foreigner from Curaçao spent the night in the foreigners' detention center on Sint Maarten on his way to Haiti.

#### 2.1.5.6 Activities

**Recommendation 4 (A4) CPT 2022:**

*If persons were to stay for longer, a range of purposeful activities (educational, recreational or vocational) should be developed. The longer the period for which persons are detained, the more developed should be the activities which are offered to them.*

**Response Government 2023:**

*This recommendation has been duly noted and will be included in the further development of Simpson Bay Immigration Detention Facility. This type of purposeful activities could include computer classes, language classes, arts and crafts, outdoor sport facilities and so-called "cultural kitchens"*

Both the IGD and the Ministry indicate that a foreigners' stay in immigration detention is usually of short duration (see further 2.5.5).

In addition, almost all interviewees from the IGD as well as one of the foreigners interviewed, agree that the facilities in the detention center are much better than in the police cells where people were previously placed in immigration detention. Aspects such as the facility appearing more humane, access to fresh air in the airing space and the provision of more activities are mentioned.

The detention center has books in several languages, several games such as Domino, a computer and a television. These are in the common room.

*"There is a television, computer and couches to sit on. The facility also has a few activities: dominoes, cards and books, although these are mostly in Dutch. These activities are ok, I do not need more. There is more available here when compared to the police cells."*

#### 2.1.5.7 Treatment

The IGD reports that foreigners regularly give positive feedback on how they are treated. The treatment of foreigners by staff is rated as good by all interviewees, both staff and foreigners. For example, all necessary information is provided to the foreigner. And efforts are made within the set frameworks to make the foreigner as comfortable as possible during detention. It is also indicated that no complaints procedure has yet been drawn up and that there is no supervisory committee to

handle complaints from foreigners. If there are complaints, they are usually communicated through the foreigner's lawyer. These are then investigated by the IGD.

An interviewee from the IGD states that there are cases where foreigners do not cooperate and proportional force has to be applied, but it is always reported. Staff try to carry out their work from a human perspective and with mutual respect. Efforts are made to communicate with the foreigners as best as possible. Furthermore, there are few complaints because staff make the foreigners as comfortable as possible during detention, according to several interviewees. An example is given of a foreigner who was refused entry at the border and was positively surprised by the accommodation at the foreigner detention center/border hospice. The foreigner was under the assumption that it would be similar to staying in a police cell.

According to several interviewees, there were many complaints from foreigners in the past when detention was enforced at the police cells. This was partly because of the state of the police cells and the limited privileges. Now that this is no longer the case, the IGD receives more and frequent compliments, including on the treatment of foreigners. All interviewees indicated that virtually no complaints are received about the treatment of foreigners by justice organisations in general and the IGD in particular. One interviewee from the legal profession referred only to an alleged incident in which a foreigner was clamped down on by foreigner detention center staff. This interviewee is under the impression that most of the officials at the IGD perform the job to the best of their knowledge and belief. The interviewee also reports that careful attention must be paid to the applicable regime as they are not criminals.

Further, chain partners indicated that they had not heard of any complaints about the treatment of foreigners by the IGD during immigration stops, holding and detention. The KPSM, for example, indicates that, as far as it is aware, the detention of foreigners and further processing takes place correctly.

As mentioned earlier, the two foreigners interviewed reported being treated well by the police and the IGD.

*"I was treated well at the police cells in Philipsburg, and I am being treated well here also."*

*"I am being treated well here."*

Furthermore, several interviewees indicate that in its report on its 2022 visit, the CPT was largely satisfied with the facilities/treatment of foreigners at the foreigner detention center.

#### 2.5.1.8 Training

**Recommendation 5 (A5) CPT 2022:**

*The CPT recommends that training be provided to all staff deployed to Simpson Bay Immigration Detention Facility, in light of the aforementioned remarks.*

**Response Government 2023:**

*The government acknowledges this recommendation and echoes the need to have qualified and trained staff working for the Ministry of Justice. Matters relating to staff, including improving initial and continuous training, are a focus point for the Ministry of Justice in 2023. The training of staff at Simpson Bay Detention Facility will be included in the course program for 2023. If necessary, the Netherlands will be asked to provide expert assistance for the purpose of carrying out this training.*

Mobile unit staff receive basic training. During 2018/2019, some of the new staff received basic training. However, this training did not correspond with the basic training as previously given. For instance, there was a difference in duration and depth of material covered, according to some interviewees. Integral Skills Training (IBT), legislation (LTU) and a Bavpol module were part of both training courses to varying degrees.

According to several interviewees, the difference in training among staff is noticeable. According to an interviewee from the IGD, this is specifically visible in the areas of discipline and the way persons are treated. Employees who attended the training in 2018/2019 were not provided with further training at a later date, even though there was a need for it.

Further, the IGD indicates that a training curriculum has been written for all uniformed personnel and funds are still available for its implementation under the old mutual 'border strengthening' arrangement. The training courses will be provided by the KMar. At least for the mobile unit, there will be training in escorting foreigners. This will be provided for all countries in the Caribbean part of the Kingdom by the KMar. Furthermore, the training coordinator at the Ministry who was working on developing a Justice-wide training plan is no longer employed there and it is unclear when this position will be filled again. This has partly led to stagnation in the area of training.

IBT is provided by the KPSM for all of justice. This training covers aspects such as the use of force and marksmanship. According to the IGD, mobile unit staff last attended IBT in 2023. It should take place twice a year but does not take place structurally due to a shortage of available places for attendees. Furthermore, only instructors from the KPSM are authorised to conduct shooting training. The IGD indicates that it can in fact provide this itself as they have two shooting instructors, one of whom is also a firearms instructor.

A number of staff from the mobile unit were able to participate in a shooting training in 2023 through the VKS. They also attended a refresher course on legislation (LTU) and document training in the same year through the KMar. Staff in the field also share their expertise in different areas among themselves. A report by the Council shows that a Dutch language training course for IGD staff was started in 2023.<sup>38</sup> It was terminated early due to organisational and financial problems.

From within the legal profession the impression is that immigration officers do not receive the necessary (specialist) training to adequately fulfill their tasks. The interviewee believes that more training, focusing on rights and duties of foreigners, authorities of the IGD, social communication and skills and instruction on the use of force is necessary.

#### 2.1.5.9 Housing

##### **Recommendation 6 (A6) CPT 2022:**

*The CPT wishes to point out that every effort should be made to avoid resorting to the deprivation of liberty of a migrant who is a child. The placement of minors with their parents in a detention centre should only occur as a last resort, and if, in exceptional circumstances, such placement cannot be avoided, its duration should be as short as possible. Further, every possible effort should be made to avoid splitting up the family. More generally, persons detained under foreigners legislation should be accommodated in centers specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. The CPT recommends*

<sup>38</sup> Law Enforcement Council (2024). General review recommendations Sint Maarten Sub-inspection 5: Border control of the movement of persons; Admission and expulsion of foreigners.

*that the aforementioned principles be duly taken into account when Simpson Bay Immigration Detention Facility is being refurbished. The above identified deficiencies should be addressed in the context of the refurbishment.*

**Response Government 2023:**

*This recommendation will be taken into consideration when Simpson Bay Immigration Detention Facility is refurbished as part of the action plan to strengthen border controls. Funding has been made available by the Netherlands for the implementation of the action plan. An assessment will be made to the best practices of immigration detention facilities. The starting point is that the conditions of detention for irregular migrants should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities. It is the intention to include possibilities of outdoor exercise throughout the day, family rooms, visit rooms, a prayer room, a library as well as a play area for children in the refurbishing of the Immigration detention facility.”*

*Plan of action to strengthen border control*

The building consists of two floors. Because only the first floor of the building is currently usable, both foreigners detained for short periods of time (landing refusals) and detained foreigners are housed together on this floor.

Much damage in the building was caused, among other things, during the period when the building functioned as a house of detention, resulting in the second floor in particular being in need of renovation. This is evident from interviews with interviewees and from the Council inspectors' own observations. According to the IGD, a renovation plan is available, and ANG 1,055,000 has been made available for the renovation under the plan of approach to strengthen border control. This money is said to have already been deposited in the Crime Control Fund. The intention is to renovate the building in accordance with the designation as stated in the ministerial order.

The renovation of the building has been on hold for some time. The IGD's act. director has therefore approached the National Recovery Program Bureau for support - in line with the Justice Minister's vision - to get the renovation back on track and gain more insight into the available budget. The possibility of involving the United Nations Office for Project Services in the project is also being considered.

Several interviewees indicated that it is planned to renovate the building as part of the plan of action on the protocol on border strengthening. However, it is unclear when this will take place. The first floor of the building is now arranged to house both men and women separately. During the inspection there were five men (the maximum in connection with staff capacity) and no women in immigration detention. The central post is located on the first floor and there is always a detention officer present. This is also where the administration is located. There is also a dayroom/recreation room and two separate dormitories, one for men and one for women. When the dormitory gate opens in the morning, foreigners have free access to the recreation room. The use of this room must be alternated between the women and men, as they are not allowed to mix.

In principle, the men's dormitory can accommodate up to 15 men with sufficient staff. Management indicates that this room was not originally designed to accommodate so many men. There should be more space for individuals to move around freely. The men have access to a bathroom with four sinks and four showers, one of which does not work.

The women's dormitory can accommodate six women. Women have access to one bathroom with a toilet and shower. To get to the bathroom, women always have to go through the smaller family

room/isolation room on their side. There are two bunk beds in this room. Because of the way the women's dormitory is set up and its location directly opposite the central post, the women always have to change in the bathroom. In addition, there is one large fan in each dormitory. No complaints were received about this, according to management. The inspectors viewed all the rooms on the first floor.

*“There is one big fan in the sleeping area, I think this is sufficient and that there is enough ventilation.”*

The second floor is only used to air the detained foreigners. The inspectors visited the airing space and the other rooms on the second floor, and they are all visibly in need of renovation. There is also a need for new furniture such as chairs and mattresses suitable for detention purposes.

A question was raised from within the legal profession as to whether there are sufficient facilities if women with children need to be detained. During the inspection, it appears that a separate room is available on both the male and female side in case a family needs to be housed together. However, these specific rooms can also be used for temporary isolation purposes of a foreigner if necessary.

The management of the detention center indicate that when a woman who is detained has children, she is sometimes accommodated in a hotel together with her children. It also happens that the children are placed elsewhere through the Court of Guardianship and daily visits to the mother at the detention center are possible. It is further stated that care is mainly provided to people who have been refused entry at the border. Victims of human trafficking are ideally taken care of by the Safe haven foundation, for example, or they are sent away with a reporting obligation.

### 2.5.2 Safety

#### *Security measures*

Cameras hang outside the detention center for security. In the event of an emergency, an alarm button is available in certain rooms. In addition, necessary measures should be taken to ensure the building's power supply. The fire alarm system has not been operational for two years. The system has suffered damage due to a roof leakage. No budget for repairs is available. The facilities department has been informed about the situation, but no update on it is available, according to the IGD. However, it is planned to resolve this situation in the near future, according to the IGD. Further, the facility does not have a generator, which creates safety issues in case of power failure. Following the security situation during the inspection at the detention center, the Council sent a letter to the Minister of Justice immediately after this finding. The Minister subsequently promised immediate action.

A maximum of five foreigners can be housed at a time, so to speak. This is to maintain a safe environment with the current limited staffing at the detention center. The two detained foreigners spoken to by Council inspectors both indicated that they felt safe within the detention center.

### 2.5.3 Minimal restrictions and provisions

As indicated earlier, an airing space on the second floor is available for the foreigners. During the inspection, the airing space looked clean. Men and women are not aired at the same time. The men from 8am-9am and from 1pm-14pm. The women from 9.00 10am and from 12pm to 1pm. It is organised this way to avoid possible incidents between the two groups.

During airing, the foreigner is allowed to have his phone with him. Detention officers have several phone chargers available in case the foreigner does not have a charger. In the evening hours, the detention officers make sure the phones are charged in case they need them the next day. The Wi-Fi

code for the internet hangs on the wall just outside the airing space. The intention is to make it available as a QR code so that it is easier for the foreigner to log in via their phone.

*“At 8am we get airtime for one hour and get to take our phone or smoke. From 12.00-13.00 there is another airtime.”*

*“The staff is flexible. For example, if necessary, I can also receive access to my phone outside the designated times.”*

The airing schedule coincides with the daily visiting hours of 09:00-12:00 and 14:00-16:00. Visitors must register upon entry. In principle, all visitors are allowed, with a maximum number of four visitors per foreigner at a time. Visitors are allowed to bring goods for the foreigners such as drinks and snacks. All goods are checked.

*“At 7pm we have to go to the sleeping area, but the television in the common area is left on. At 9pm the lights are turned off, but the lights in the bathroom stay on.”*

Confinement in the dormitory takes place at 7pm. The men can then still access the television, via remote control. The lights are switched off at 9pm. This is also to avoid the heat given off through the lights. The lights in the bathroom always stay on. The women's dormitory is monitored at night through the central post, the men's dormitory through the gate.

*“At 7am breakfast is served. It is usually tea, bread with peanut butter or jam.”*

As indicated earlier, the hot meal is provided by the prison. The detention center is responsible for the morning and evening meals.

The facility used to get a separate budget for foodstuffs. Nowadays, supplies are provided by facility management of the IGD. The quantity does not meet the needs of the detention center. There is a perception that supplies are provided without considering the fact that it is a detention center and not a regular office. It happens that, despite the alarm being raised, the ordered stock is not received on time or only partially. As a result, management sometimes has to purchase supplies themselves, from their own budget (own money). An independent budget for the purpose of their own supplies would be a good solution, according to management.

According to detention center management, Haitian and Indian organisations (NGOs) try to assist foreigners whenever possible. Both organisations are very helpful, according to interviewees. For example, when there is a foreigner with Indian nationality, he is then provided with a hot meal that meets his vegetarian eating habits.

*“I think the lunch provided by the detention center is good. It is for example chicken, mashed potatoes, spaghetti, salad, stir fry etc. We also get a watercooler and ice. In the early evening around 5pm we get juice or tea and a peanut butter or jelly sandwich.”*

If the foreigner does not have toiletries with him, such as soap or toothpaste, these are provided by the detention officers. Foreigners can have items brought by friends or relatives during visiting hours.

Sheets and towels are washed every four days, and the rooms are cleaned. The foreigners are also responsible for cleaning their own rooms, such as the showers and toilets. Every morning, the detention officers inspect the hygiene situation in the rooms.

## 2.5.4 View of departure

Based on case law, in the context of dealing with foreigners, one of the aspects is providing a view of departure. Thus, it is important that the procedure of departure from the country by the relevant organisation(s) is carried out expeditiously. Also, in judgments of the Court of First Instance in Sint Maarten, it appears that the judge in immigration cases takes into account in his ruling the view of departure of the foreigner and the diligence by the organisations in working towards departure.<sup>39</sup>

### **Recommendation 7 (A7) CPT 2022:**

*“The CPT recommends that the Sint Maarten authorities take the necessary steps to ensure that:*

*- a maximum time limit is introduced for the detention of foreigners who are subjected to an expulsion order.*

### **Recommendation 8 (A8) CPT 2022**

*“The CPT recommends that the Sint Maarten authorities take the necessary steps to ensure that:*

*- the need for continued detention is reviewed periodically by an independent authority and the foreign national concerned is informed in writing of any decision taken in this respect.*

### **Recommendation 9 (A9) CPT 2022**

*Further, the Committee considers that it would be desirable for foreigners to receive a written translation in a language they understand of decisions regarding their detention and expulsion, including on the modalities and deadlines for appealing against such decisions.*

### **Request 2 (V2) CPT 2022**

*The CPT would also like to be informed whether lodging an appeal against an expulsion order has suspensive effect on the implementation of the expulsion.”*

### **Response Government 2023:**

*“The government acknowledges the recommendations made regarding the detention of foreigners and has noted the suggested amendments regarding a maximum time limit, the periodic review of continued detention by an independent authority and appeal having suspensive effect on the implementation of expulsion. However, to realise these suggested changes, national legislation will have to be amended. The need for and feasibility of these legislative amendments will be discussed internally. Currently, there is no legal maximum time limit for the detention of foreigners who are subjected to an expulsion order.*

*In practice, foreigners who are subjected to an expulsion order are detained for as little time as possible. The detention of a foreign national pending the implementation of an expulsion order is only ordered when it is strictly necessary to ensure the departure of a person who poses a danger to public order or peace, national security or public morality, or if there is a well-founded fear that the person concerned will attempt to evade departure. Wherever possible, less impactful measures, such as a reporting duty, are used.*

*Regarding the CPT’s comment about the desirability of foreigners receiving a written translation of decisions regarding their detention and expulsion in a language they understand, it is relevant to note*

<sup>39</sup> ECLI:NL:OGEAM:2021:26, ECLI: OGEAM:2023:44NL.

*that if necessary an interpreter is used when a foreign national is questioned. Under current legislation, lodging an appeal does not automatically have suspensive effect on the implementation of the expulsion. However, in practice implementation is regularly suspended due to lawyers filing injunctions against expulsion orders.”*

#### *Maximum time limit*

The aforementioned 2019 Council Detention Report<sup>40</sup> it states that, according to staff, the principle is that detainees spend a maximum of 10 days in cells at the police station. During the inspectors' 2019 visit, there appeared to be (undocumented) persons present who (far) exceeded that maximum. The undocumented persons, who were detained at the time of that inspection, indicated that they were already detained there for a period of twenty-two days. It was also found that the period of removal was not mentioned on the decision, unlike in Curaçao. As indicated earlier, foreigners have been staying at the Simpson Bay detention center since 2021.

According to the Guidelines, there is no legal maximum period for detention, but it is indicated that the detention should not reasonably exceed the time, which is necessary to actually remove the foreigner from Sint Maarten. The term in the Guidelines is three times 24 hours without ex officio judicial review. For this purpose, a connection has been sought with article 89 of the WvSv (based on case law of the European Court), according to the Guidelines. From within the legal profession it is also indicated that the maximum duration of detention was aligned with the WvSv. The interviewee has the impression that energetic efforts are being made to deport illegal foreigners so that there is a view of their departure. But that due to sabotage by illegal foreigners themselves, departure can sometimes take longer. According to the IGD, there was talk of introducing a maximum time limit which is not legally stipulated on the new model forms. However, based on legal advice, it was decided not to do so in view of the Guidelines. The Guidelines state that the maximum length of stay in detention should be a maximum of six months and this is in line with international guidelines.

The Guidelines state that case law on the duration of immigration detention has developed a number of assessment criteria. The basic principle is that if no removal has taken place after six months, it is assumed in principle that there is no prospect of removal, and that detention should be lifted.

The ministry indicates that the need and feasibility of legislative changes regarding a maximum term and periodic review of continuous detention has been discussed with relevant departments within the ministry. However, this did not lead to any changes as no need was felt among the departments surveyed. This is considering the fact that in practice, most individuals only stay in immigration detention for a short term. Also, the current time limits set by law (WvSv) are already relatively short, especially compared to other countries

All interviewees indicated that efforts are made to get people out of the country as quickly as possible. According to the IGD, foreigners refused entry at the border leave quickly, usually within a day. Foreigners apprehended domestically usually stay for one to two weeks. Due to external circumstances, it can sometimes take longer. For example, if the foreigner is unable to arrange a ticket himself. In such cases, an advice is eventually issued by the IGD for the government to buy a ticket. This is to ensure that the person still leaves as soon as possible. The foreigner scheduled for departure is prepared by the detention center on time in order to be picked up by the mobile unit. This is according to the interviewees because it would be unacceptable if the person misses his flight.

Furthermore, the period of removal is still not mentioned on the decision.

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<sup>40</sup> The Pointe Blanche Prison and remand center, the Miss Lalie Center, Philipsburg police cells, and the Simpson Bay border hospice. Report of findings 2019.



*“I will arrange my own ticket and will likely leave this coming Friday. I have help from the outside with making the arrangements. I still hope that my current employer can arrange something for me to stay.”*

*“I have been here for 30 days now. A family member is supposed to bring me my passport. I think that I will be able to leave in 2 or 3 days. When I get my passport, I will immediately buy my ticket to leave Sint Maarten.”*

#### *Evaluation detention*

According to the IGD, an extended stay in immigration detention for any reason requires the signature of the Minister. This model form is also being worked on. The idea is to review the detention every 10 days. This does not yet happen in practice.

#### *Written translation*

The removal decision and the measure of detention are drawn up in the Dutch language. Foreigners are informed verbally about the content of the decision by immigration officers in a language they can understand. If a translator/interpreter is needed, the mobile unit has officers who can communicate with the foreigner in their own language, mainly Spanish and (French) Creole (see section 2.4.4).

#### *Filing an appeal*

On the possible suspensive effect of the expulsion decision by lodging an appeal, see section 2.4.6.

### **2.5.5 Steering recommendations CPT**

The inspection shows that the Ministry of Justice and the IGD did not steer concretely on the implementation of all CPT recommendations. They actively steered on the security search by immigration officers and identified the need for legislative changes regarding a maximum time limit and a periodic review of detention.

## 3. Analysis, conclusion and recommendations

### 3.1 Introduction

In this inspection, the Council examined the extent to which foreigners are treated humanely during immigration detention by the justice organisations concerned in accordance with established standards and the extent to which the CPT's recommendations in this regard have been followed. In this chapter, the Council carries out an analysis, draws conclusions and answers the sub-questions and the central question. At the end of the chapter, the Council makes a number of recommendations.

### 3.2 Analysis

In this inspection, the Council notes that in addition to all that is going well, there are also bottlenecks in various areas. These will also be addressed using the question below in each case under the relevant topic.

**What bottlenecks (if any) arise in the area of immigration detention?**

#### 3.2.1 Legal framework, policy and procedures

**How is immigration detention organised in terms of legislation, policy and procedures?**

##### Legal framework

###### *International conventions and principles and national legislation*

The Council notes that there are several principles and international conventions that contain provisions on the right of every individual to liberty and also on the rights of individuals detained as part of expulsion or removal proceedings. The Council also notes that international provisions relevant to this inspection have been implemented at Kingdom and national levels in the context of immigration detention. For example, the right to freedom of individuals is guaranteed in the Sint Maarten Constitution and detention in the context of expulsion or removal is regulated in a national ordinance (LTU). The authorities required regarding (immigration) an immigration stop and detention have been granted to the IGD through the Kingdom Police Act and local laws and regulations. For example, the Council observed that the authorities regarding the use of means such as a security search and the use of handcuffs in the context of immigration supervision derive from the Kingdom Police Act and the official instructions. These powers are known and applied by the responsible justice organisations.

###### *Holding in general*

The Council notes that the IGD uses the term holding for the part of the process that may lead to detention. This includes the moment of the immigration stop and the usual six hours thereafter during which the foreigners who are held domestically are transferred to the Illidge Road office for further investigation/questioning. The term is also used for those foreigners who have been refused entry at the border and are transferred and detained at the border hospice for further investigation/questioning. There is a discrepancy here, in the Council's view, in the location for questioning of foreigners detained in the country, as the Guidelines speak only about holding up for questioning at the border hospice and not the Illidge Road office. If the latter is more workable, which the Council believes seems to be the case, the Guidelines should be amended. The Council also believes that a legal basis is lacking for transferring and detaining foreigners refused entry at the border in the border hospice.

### *Holding in the context of refusal at the border*

The Council notes the absence of an explicit legal basis on detaining a foreigner specifically in the context of refusing entry at the border. There is only mention of holding in a general sense in the Minister's Guidelines. A physical facility (border hospice) is not mentioned.

In the case of a refusal of entry at the border, if the foreigner cannot return immediately, he should be held until a return flight is available or the necessary documents for entry are handed over. This is usually a designated area or place whether or not secured against unauthorised departure. The Council gave the example earlier that this is explicitly provided for in the BES Admission and Expulsion Act. However, there is no legal basis in Sint Maarten for physical detention in the context of refusal at the border. Ideally, the (secure) detention facility would be located at the border (border hospice); however, this could also be elsewhere. The Minister has designated the border hospice by means of ministerial decree for use for immigration purposes such as immigration detention and border hospice.

Detention is an ultimum remedium and can only take place in the context of removal or expulsion and then only in specific cases where no lighter measures are possible. The Council notes that as a result of the lack of a legal basis for holding in the context of refusal of entry at the border and the designation of a room or place for this purpose nowhere mentioned, the measure of detention is improperly used for the purpose of being able to transfer and place those who are refused entry at the border to the border hospice in Simpson Bay. This is because the said measure is only applicable in the context of removal and expulsion - in other words, only applicable to persons already in the country.

The Council notes that another bottleneck then arises. In the border hospice only one floor is in use in practice, being the floor where immigration detention takes place. This means that in practice there is no border hospice with an associated regime. As a result, foreigners refused entry are held on the immigration detention floor. So not only is the most drastic freedom-restricting coercive measure, the detention order, applied in each case, but it is also on the wrong basis. According to the Council, this violates both the principle of proportionality and the laws and regulations. This should be regulated by law. Furthermore, the Guidelines should be amended accordingly.

### *Mandate*

The Council notes that there are currently two bottlenecks related to mandating. One which the Council already pointed out in a previous report, and which still persists at the border. There is still no mandate decree, while foreigners are still being refused entry at the border by non-mandated immigration officers. In its review inspection on border control of the movement of persons and the admission and expulsion of foreigners, the Council also elaborates on the mandate issue. Furthermore, the relatively recent court ruling on the lack of a mandate regulation on the decision-practice by immigration officials supported. The Council therefore believes that this aspect should be regulated soon. The Council's earlier recommendation on this matter in the context of the report on border control and the movement of persons report is still valid. The Council reiterates it here:

*"Synchronise mandating in the Mandate Decree and decision-practice on refusal of admission".*

The following bottleneck on mandating arises in the context of the second questioning required for the review and decision on whether to apply the measure of detention by the Minister. In cases where the second questioning is done by someone other than the Minister, who is not authorised to do so, the holding and placing in immigration detention subsequently unlawful. Here, too, the Council reiterates its view that this should be regulated in the shortest possible time.

## Policy

### *Guidelines*

The Council notes that there are policies on the immigration stop, holding (general) and detention in the context of removal and expulsion. This is in the form of the so-called Guidelines. There are general procedures on this in the Guidelines.

### *Integrity*

The Council notes that the IGD does not currently have a written integrity policy. The Council believes that integrity is important for citizens' trust in the functioning of the government, and in the case of the judiciary and, more specifically, the IGD, this is no exception. It is important that civil servants have integrity and know and comply with the rules within that framework. The Council welcomes the drafted Code of Conduct by the Ministry for all civil servants. It is now important to build on this specifically within the judiciary and the IGD. The Council believes that the subject of integrity should be addressed more actively. The Council therefore cites its earlier recommendation in this area in context of border control on the movement of persons in Sint Maarten:

*"Promote a consistent and transparent integrity policy at the Admission Organisation that actively monitors compliance with codes of conduct. Monitor compliance with the policy in practice."*

### *Personnel policy*

The Council notes that IGD staffing is an ongoing concern. The staff shortage at the IGD Detention Unit is a major bottleneck. This shortage has a major impact on the number of checks that can be carried out and the number of foreigners who can be accommodated at the foreigner detention center at the same time. Due to the staff shortage, staff at the foreigner detention center are also heavily overburdened. And while the Volunteer Corps can provide limited relief temporarily, it is crucial that staff are recruited in the shortest possible time to solve the problem structurally. There is no justification for detention center staff to work continuous 12-hour shifts with minimal opportunities for time off or adequate compensation. The situation hampers the implementation of foreigner supervision and has serious implications for the health and safety of staff. Despite this situation, detention staff manage to deal with the detained foreigners in a professional and respectful manner and ensure that they do not suffer, or at least suffer as little as possible, from the consequences. The bottlenecks in the area of security, also affect the foreigners present (see 3.2.2). The Council therefore again calls on the Minister to address this situation as soon as possible.

Furthermore, based on the inspection, the Council's impression is that communication and steering at the middle management level is predominantly good, but that communication and steering at the top management level is not as good. A lack of communication has implications for resolving bottlenecks about the foreigner detention center, among other things. The Council therefore encourages the current management to take steps to improve communication. The recommendation made earlier by the Council in the context of its review report on border control on the movement of persons in Sint Maarten also applies here:

*"Improve communication and information sharing between management and staff of the border control and invest in transparent human resources management"*

In addition, command of the Dutch language among staff is still a bottleneck. The Council notes that insufficient investment has been made in training in this in recent years. This manifests itself especially in the drafting of the necessary decisions in Dutch on removal and detention. The Council also welcomes the fact that the IGD is now developing model forms in the English language to facilitate staff in this regard. This will also benefit the foreigner (see also 2.2.3). The Council's earlier

recommendation as part of its follow-up inspection on border control on the movement of persons in Sint Maarten also applies here:

*"Free up resources for additional training. Start by offering in-service training in Dutch for those who need it. Ensure structural training and development opportunities for all staff."*

### 3.2.2 The process of detention: immigration stop, holding and detention

**How is the treatment of foreigners in detention regulated?**

**What procedures does the IGD use in immigration detention in practice?**

Checks in the context of immigration supervision by the IGD serve to ensure compliance with the law (LTU). Without checks, violations would not come to light. When checks are carried out regularly and often at unexpected times, people are more likely to with the legal rules. The detention process is primarily carried out by the mobile unit. The Council notes that in practice the procedures laid down in the Guidelines are used by this unit of the IGD during the checks but that there is room for improvement on certain points. The Council believes that the procedures are carried out in principle in accordance with laws and regulations.

The Council notes that apart from the general procedures mentioned in the Guidelines, there are as yet no written work procedures for the mobile unit with regard to immigration detention. However, staff are supported in the processes by means of model forms. Despite the lack of written procedures, the Council believes that the staff of the IGD mobile unit are aware of the procedures to be followed during checks, whether during a regular check or multidisciplinary check.

Case law in the area of immigration law has prompted the renewal of the model forms in use by the mobile unit. The Council welcomes this development but believes that the IGD itself should be proactively alert to this. The process initiated with the SOAB to establish procedures for the entire IGD is a good initiative but has been ongoing for some time without tangible results. Following legal procedures is certainly part of what is understood by treating a foreigner well. It is therefore important that the intended procedures are laid down and (further) implemented. The Council encourages the MvJ and the IGD to work on this. Furthermore, the detention center's work procedures have been put in writing and are known to the staff.

The Council further believes that it is crucial that the actions carried out by immigration officers during an immigration stop, holding and detention are properly recorded and stored for later review, for example for review by the courts. The Council noted that the IGD is now paying more attention to this. The digital files and documents viewed by the Council were accessible, ordered and made it possible to retrieve the details of the various actions, for example, the immigration stop. The Council asks the IGD to continue investing in this. Moreover, the IGD has indicated that it is in the process of reviewing the process of holding by the mobile unit to ensure its legality, among other things. In this regard, the Council calls for due attention to the aforementioned mandate issue regarding the review of the detention measure.

### 3.2.3 Enforcement of detention

- What relevant CPT recommendations have been made to the Minister of Justice on immigration detention?
- To what extent have the recommendations been followed up?
- To what extent is this managed by those responsible for it?

#### How is the housing of foreigners in detention organised?

##### 3.2.3.1 Follow-up relevant recommendations CPT

In 2022, the CPT made nine recommendations and two requests regarding immigration detention in Sint Maarten. The Minister largely agreed with the recommendations and indicated in his response in 2023 that the necessary measures would be taken for follow-up. The Council notes that not all CPT recommendations have yet been followed in the meantime. The status of follow-up is presented below for each recommendation and request.

##### *A1 CPT – Security search*

The recommendation has been followed. The Ministry and the IGD have ensured that during the immigration stop, holding and detention, foreigners are only frisked.

##### *A2 CPT– Provision of information rights and obligations foreigner*

The recommendation has been followed. The detained foreigner is informed about their stay in the foreigner detention center by means of a manual of procedures. This is available in several languages. If necessary, technical aids are used to facilitate communication.

##### *V1 CPT – Legal aid*

The Council notes that there is no (free) legal assistance for detained foreigners. This is because - despite being prescribed by treaty law and included in policy (Guidelines) - no legal basis for this has been created in, for example, the Free Legal Aid National Decree. However, foreigners can hire a lawyer at their own expense to appeal against their detention/removal/expulsion. Furthermore, there are NGOs that provide assistance to certain foreigners, just not in the field of legal aid. The Council believes that in view of the foregoing, the Minister should provide for a regulation and, in this context, may consider whether amendment of the National Decree on Free Legal Aid is desirable to provide assistance in the context of detention of aliens here as well.

##### *A3 CPT – Medische screening*

The recommendation has been partially followed. Detained foreigners undergo medical screening<sup>41</sup> twice in part by gathering information using a standard form. This occurs for the first time during holding and for the second time upon arrival at the foreigner detention center. The medical screening referred to is not physical. The Council notes that mental health, communicable diseases, and possible victimisation are not part of the standard form used for the initial medical screening, nor does a physical screening take place. Also, no special provisions are made at the foreigner detention center for persons with mental disorders. The Council agrees that attention is paid to medical screening, however, the process still needs to be completed as referred to by the CPT. The Council calls the attention of those responsible for this so that the recommendation can be fully implemented.

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<sup>41</sup> A similar situation exists in Curaçao. See the report by the Law Enforcement Council called 'Immigration detention in Curaçao. An inspection by the Law Enforcement Council into the treatment of detained foreigners in Curaçao.' (2020).

#### *A4 CPT - Activities*

The recommendation has been followed. The Council notes that the average duration of a foreigner's stay in the foreigner detention center is about two weeks, with some exceptions. As the duration is relatively short, the Council considers the current activities offered sufficient. This is also because of the limitations of the building. As indicated, the building has yet to be renovated, and the Council agrees with the CPT that the renovation should be used to create opportunities to offer foreigners multiple activities if they stay longer.

#### *A5 CPT – Training*

The recommendation has not been followed. Detention center staff have not received specific training related to immigration detention, even though the Ministry of Justice has established a training plan for the benefit of all of Justice. And that the IGD has established a training curriculum. On top of that, employees of the IGD working in the period 2018-2019 have undergone initial basic training but were not trained fully as intended and necessary and require refresher training. As for mobile unit staff, some have been allowed to attend a limited number of refresher courses. The Council believes that attention should be paid to the level of knowledge of staff and also specifically in the field of immigration detention.

#### *A6 CPT - housing*

The recommendation has been partially followed. The Council notes that since 2021, detained foreigners have been housed in the foreigner detention center. The option of housing detained foreigners in the Philipsburg police cells is no longer used. According to the Council, this is an improvement in the treatment of the foreigner. As a result, foreigners are no longer exposed to a criminal regime in the context of an administrative order. There are also more recreational facilities at the center and the staff there are exclusively responsible for immigration detention. The Council notes that the detention center/border hospice at Simpson Bay also offers the foreigner more privileges such as regular access to their own phone and access to a recreation room. Within the detention center, there is also the possibility of housing a small family if needed. However, in principle, efforts are always made to place children elsewhere, which the Council considers a good starting point.

The Council notes, similarly, to previous inspections, that the building is in dire need of renovation and there are unacceptable safety issues and unsafe conditions. These include issues of fire safety, back-up power and staff shortages. If not addressed, if something goes wrong, it could have major consequences for both the staff and foreigners present. In the Council's view, this cannot continue like this any longer. The above must therefore be addressed with the utmost priority. Furthermore, in practice, the first floor of the building is equipped to house foreigners detained in the context of a refusal at the border and detained foreigners together. The Council notes in this regard, however, that because the facility functions both as a border hospice and as a foreigner detention center, foreigners being held are subjected to the same regime as foreigners being detained. The Council considers this undesirable. The provisions for renovation included in the plan of approach for strengthening the border could play a positive role in this. This does require a vision from the Minister that is shared and supported by the various layers within the IGD. The Council expects the Minister to take up his role in this and to set the process in motion as soon as possible. This to the benefit of all foreigners housed in the building as well as the staff working there.

#### *A7 CPT - Duration detention*

The recommendation has not been followed. The Council notes that a maximum detention period is not laid down by law. The need for a change in the law in this context is not considered necessary by those responsible.

Foreigners do have a view of departure, and this is being actively pursued by justice organisations. The Council does believe that a deadline for removal should be stated on the removal order. This is in line with other countries within the Kingdom. After all, it could ensure (even) more visibility on departure and a dynamic approach by the organisations.

#### *A8 CPT – Assessment independent authority*

The recommendation has not been followed. There is no periodic review of detention by an independent authority.

#### *A9 CPT – Translation of decisions*

The recommendation has not been followed. The decisions are not translated in writing into a language comprehensible to the foreigner. Decisions in the context of removal and detention are drafted in Dutch and the content is explained orally to the foreigner by immigration officials. In addition to the translation of the decisions, the Council notes that there is a discrepancy in the decisions regarding the deadline mentioned for the foreigner to lodge an appeal against the decision. This differs in the two decisions, namely the removal order and detention order. This is while a fixed deadline has been given for appeal. As the IGD is already revising the model forms, the Council will not make a separate recommendation on this. However, the Council does draw attention to this so that the correct deadline is applied.

#### *V2 CPT – lodging an appeal*

The Council notes that foreigners can lodge an appeal against a removal order and a detention order. This may lead to suspension of the order.

#### *3.2.3.2 Steering on recommendations CPT*

In its response to the CPT's recommendations, the government indicated that measures would be taken to fully comply with international standards regarding the detention of undocumented foreigners. This included reference to the planned renovation that would address some of the CPT's concerns. As indicated, this planned renovation has stalled, meaning that some recommendations have not been addressed. The Council believes this is partly due to a lack of strategic vision, which negatively affects the steering within the IGD. There is also a lack of follow-through and steering in terms of investing in training for detention center staff. However, the Council is aware that this is a broader problem within the IGD and the Justice Ministry.

The Council notes that there has been active steering by the Ministry and the IGD regarding ensuring the manner in which security searches are conducted and also on the stock-taking with regard to possible legislative changes in the context of the maximum duration of detention.

The Council expects that the appointment of a new act. director IGD in 2023 will contribute to the steering within the IGD and further follow-up on the outstanding recommendations. Filling the position of policy officer could also play an important role in this regard.

### **3.3 Conclusion**

#### **Central question**

*To what extent are foreigners treated humanely by the justice organisations concerned during immigration detention in accordance with established standards? And to what extent have the CPT's recommendations in this regard been followed?*



The inspection shows that during immigration detention, the justice organisations concerned generally treat foreigners humanely in accordance with (inter)national laws and regulations and established standards. It further appears, however, that not all CPT recommendations have been followed. Of the nine recommendations, two have been followed, four partially followed and three not followed. The Council notes the following points.

As indicated, good treatment of detained foreigners does not only entail compliance with written standards and established rules, but also a constant striving for improvement by recalibrating laws, regulations and procedures on the basis of social developments, scientific insights and changes in characteristics of persons in detention in closed environments. It is also the positive intention with which, the humane way a person is treated that makes the difference between good treatment and complying with rights and duties.<sup>42</sup>

Namely, not being subjected to any form of deprivation or restrictions besides those that are an inevitable consequence of that detention. The Council tested whether this is met, through the aspects of daily treatment, security, imposition of minimal restrictions, legal citizenship and the prospect of departure. The fact that legislative discussions are taking place and that the IGD's working procedures are being amended on the basis of judicial insights and recommendations made by the CPT demonstrates that there is an eye for revising laws and procedures to improve the way people are treated during immigration detention. Although attention is good, the Council points out that actual action must follow to bring about structural improvements. Moreover, daily treatment is characterised by providing appropriate activities, providing suitable meals, meeting the foreigner's medical needs and imposing minimal restrictions as far as possible, such as allowing access to mobile phones outside designated times. Furthermore, the organisations work energetically towards the departure of a detained foreigner. Bottlenecks in the areas of mandating, staff training and the safety of foreigners and staff do require attention. The lack of staff leads to an untenable situation and the Council points out that a solution must be found for this as soon as possible. The Council would like to dwell specifically on the (security) conditions under which the foreigners stay at the detention center and also the staff have to work structurally. The unsafe situation does not currently affect specifically the treatment of the foreigners by staff, but it does affect the safety of the foreigners and staff.

Of course, the Council believes that a foreigner should be treated correctly in all circumstances, including those concerning staff. This was also paramount in this inspection and appears to be the case with staff. Nevertheless, the Council would like to dwell on the efforts of the (overburdened) detention staff. This by ensuring, for example, that detained foreigners are given the opportunity to have contact with the outside world via their own phones. It shows the positive intention and humane way in which the foreigners are treated. The Council observes that despite the circumstances staff are confronted with daily, which can lead to dissatisfaction and frustration, the foreigners are - rightly - generally treated humanely, as far as possible within the existing legal frameworks.

During the inspection, it quickly became clear to the Council that the conditions under which staff carry out their work can be viewed as inhumane and unsafe. To address this urgent situation quickly, the Council has written to the Minister about this before the end of this inspection and asked for

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<sup>42</sup> Council for the Administration of Criminal Justice and Protection of Juveniles (2012). Good treatment. Principles for government action towards people undergoing a judicial sentence or measure.

immediate solutions. The Council will continue to closely monitor developments in this area. The Council also concludes that the failure to follow up on earlier recommendations made by the Council and the CPT has negative implications for the IGD's services in several areas. The Council calls on the minister to ensure that follow-up of these recommendations takes place as soon as possible.

### 3.4 Recommendations

Through its inspection, the Council provided insight into the treatment of detained foreigners in Sint Maarten and the state of affairs regarding the follow-up of the CPT's recommendations in the context of immigration detention. The Council has identified a number of bottlenecks in the area of immigration detention and makes a number of recommendations to the Minister of Justice for improvement:

- Provide a legal basis for holding foreigners.
- Provide a (new) decree mandating immigration officials to take decisions on entry at the border.
- Arrange for a decision mandating immigration officials to review the detention measure.
- Ensure that the detention measure is only applied in accordance with laws and regulations governing its application.
- Introduce a regulation for (free) legal aid for detained foreigners. Consider, for example, whether the National Decree on Free Legal Aid should be amended to provide free aid to detained foreigners as well.
- Ensure completion of the process of establishing the IBPS's working procedures.
- Ensure that the necessary security measures are put in place at the foreigner detention center and border hospice.
- Carry out recruitment of staff for the benefit of the foreigner detention center and border hospice.
- Carry out the renovation of the building of the foreigner detention center and border hospice.
- Ensure (full) follow-up of the recommendations of the CPT that are not yet/partially followed up.

The Council reiterates from previous reports the following recommendations to the MvJ:

- Synchronise the mandating in the Mandate Decree and the decision practice regarding refusal of entry.<sup>43</sup>
- Promote a consistent and transparent integrity policy at the Admissions Organisation that actively monitors compliance with codes of conduct. Monitor compliance with the policy in practice.<sup>44</sup>
- Improve communication and information exchange between management and border control staff and invest in transparent personnel policies.<sup>45</sup>
- Free up resources for additional training. Start by offering in-service training in Dutch for those who need it. Provide structural training and development opportunities for all staff.<sup>46</sup>

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<sup>43</sup> Law Enforcement Council (2014). Border control of the movement of persons in Sint Maarten.

<sup>44</sup> Law Enforcement Council (2014). Border control of the movement of persons in Sint Maarten.

<sup>45</sup> Law Enforcement Council (2014). Border control of the movement of persons in Sint Maarten.

<sup>46</sup> Law Enforcement Council (2017). Border control of the movement of persons in Sint Maarten. A follow-up inspection.

## Annex 1. Legal framework, policy and relevant developments

This annex provides a brief overview of relevant laws, regulations and policies and other relevant developments.

### Laws and regulations and policy

#### Laws and regulations and agreements

##### International

###### *International Covenant on Civil and Political Rights*<sup>47</sup>

Article 2(3) of the International Covenant on Civil and Political Rights indicates that states must ensure that an effective remedy is available to any person whose rights or freedoms are violated, even if the violation is alleged to have been committed by persons in the performance of their official duties.

Article 9, paragraphs 1 and 4, states that everyone has the right to liberty and security of his person and no one shall be subjected to arbitrary arrest or detention. Furthermore, no one shall be deprived of his liberty except on grounds and in accordance with procedures established by law. Furthermore, anyone deprived of his liberty by arrest or detention shall have the right to apply to a court so that it may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Furthermore, article 10(1) of the same convention states that all persons deprived of their liberty must be treated humanely and with respect for the inherent dignity of the person.

###### *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)*<sup>48</sup>

The aforementioned is also partly included in Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It also states that everyone has the right to liberty and security of his person. And that no one may be deprived of his liberty in a number of cases and in accordance with a procedure prescribed by law. These cases are further specified in the article. The following case is relevant to this inspection:

*"In the case of lawful arrest or detention of a person to prevent him from entering the country unlawfully, or of a person against whom deportation or extradition proceedings are pending.."*

###### *International Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*<sup>49</sup>

The International Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment provides guidelines for governments on the humane treatment of persons deprived of their liberty. The CPT's investigations and recommendations are based on this.

###### *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>50</sup>

These principles apply to the protection of all persons against any form of detention or imprisonment. This resolution contains a total of 39 principles specifically addressing the protection of all persons

<sup>47</sup> International Covenant on Civil and Political Rights, New York, 16-12-1966.

<sup>48</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 04-11-1950.

<sup>49</sup> Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, New York, 10-12-1984.

<sup>50</sup> UN. General Assembly (43rd sess.: 1988-1989). Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: resolution / adopted by the General Assembly.

under any form of detention or deprivation of liberty. The first principle states that all persons under any form of detention or deprivation of liberty should be treated humanely and with respect for the inherent dignity of the human person. Other principles contain references to the aforementioned conventions. For example, the sixth principle refers to the fact that no one under any form of detention or imprisonment should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

## **Kingdom**

*Kingdom Act Police of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba*<sup>51</sup>

Article 10 of this Kingdom Act provides that the Minister of Justice may appoint, promote, suspend and dismiss extraordinary police officers (authorised to investigate certain, usually a limited number or a specific group criminal offences). Furthermore, the Kingdom Act provides in the second paragraph of article 10 that these extraordinary police officers have the authorities mentioned in article 13 of the same Kingdom Act to the extent stipulated in their appointment order. The Official instructions apply. Furthermore, article 14 states that countries should adopt among themselves an arrangement containing an Official instruction that contains rules to implement articles 12 and 13.

The first paragraph of article 13 authorises the police officer, in the lawful performance of his duties, to use force or means of restraint against persons. This authority may be applied when the purpose intended justifies it, also in view of the dangers involved, and the purpose cannot be achieved in any other way. The use of force shall, if possible, be preceded by a warning.

Under article 13(4) of the Kingdom Act Police, the police officer (read also extraordinary police officer) appointed for the performance of police tasks is authorised to search the clothing of persons in the exercise of an authority conferred on him by law or in the performance of an act in the performance of police tasks. The officer may exercise this authority if facts or circumstances show that there is an imminent danger to the life or safety of the officer himself, or third parties, and the investigation is necessary to avert this danger.

*Mutual arrangement immigration chain*<sup>52</sup>

The mutual arrangement on the immigration chain regulates the cooperation between the countries within the Kingdom in the area of the immigration chain. Important points in it are the supervision and return of foreigners, information exchange between the countries and the quality and professionalism of officials in the immigration chain.

## **Local**

*Constitution*<sup>53</sup>

According to article 27, first paragraph under f, of the Sint Maarten Constitution, everyone has the right to personal liberty. And no one may be deprived of his liberty except by statutory regulation (in this case it concerns the National Ordinance Admission and Expulsion (LTU)) in case of, inter alia the lawful detention of persons and for the purpose of preventing them from entering the country unlawfully or extending their stay unlawfully.

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<sup>51</sup> Kingdom Police Act of Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba, Stb. 2010, 337.

<sup>52</sup> Mutual arrangement Curaçao, Sint Maarten and the Netherlands under art. 38, paragraph 1, Statute [...] (cooperation in the area of immigration chain), Stb. 2010, 387.

<sup>53</sup> Constitution of Sint Maarten, AB 2010, GT no. 1.

#### *National Ordinance Admission and Expulsion*<sup>54</sup>

The LTU includes the authority to remove (Article 19) or deport (Article 15) foreigners who are not allowed to stay from the territory. Removal is done by the Minister of Justice and expulsion by the Attorney General. Furthermore, in the context of removal or expulsion under this National Ordinance, it may be determined that the foreigner must be detained if the foreigner poses a danger to public order, public peace or safety or morals, or if there is a well-founded fear that the person concerned will attempt to evade departure.

Pursuant to article 22a(1) of the LTU, persons are designated by national decree to be charged with the supervision of compliance with the National Ordinance. Such a national decree should be published in the National Gazette. These persons are the disembarkation officers. According to Article 1 of the Admission Decree, a disembarkation officer is to be understood as the police officer or immigration officer in charge of admission control.<sup>55</sup>

#### *National Ordinance on the Identification obligation*<sup>56</sup>

De Landsverordening Identificatieplicht bepaalt in artikel 1, derde lid, dat iedere persoon vanaf 12 jaar verplicht is desgevraagd terstond een identiteitsdocument ter inzage te verstrekken aan de opsporingsambtenaren, bedoeld in de artikelen 184 en 185 van het Wetboek van Strafvordering, voor zover dat redelijkerwijs nodig is voor de toepassing en handhaving van (onder meer) de LTU.

#### *Sint Maarten Code of Criminal Procedure (WvSv)*<sup>57</sup>

In the context of criminal law, the criminal powers of detention and arrest apply. Pursuant to article 72(1) of the WvSv, every investigating officer is to demand from the suspect a statement of his or her name, first names, date of birth, address and place of residence or abode and to stop him or her for this purpose. The suspect is obliged to comply with the demand. In case of discovery in flagrante delicto of any criminal offence, everyone is authorised to detain the suspect, according to Article 73(1) of the WvSv.

According to article 184, the officers of the police, the officers of the National Detectives as provided therein by statutory regulation and the extraordinary officers of the police, insofar as they are for that purpose, are tasked with the detection of criminal offences. Section 185 provides that those to whose vigilance, by or pursuant to special statutory regulations, the enforcement or care of compliance therewith or the detection of the offences referred to therein is entrusted shall also be charged with the detection of offences.

#### *Admission Decree*<sup>58</sup>

Pursuant to article 2, fourth paragraph, tourists considered undesirable may be refused entry or denied a longer stay in Sint Maarten by or on behalf of the Minister. It is not possible to appeal this decision. According to article 13(a), disembarkation officers have several authorities, including that to demand inspection of and temporarily confiscate the identification documents of those on board a vessel or aircraft.

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<sup>54</sup> National ordinance regulating admission to and expulsion from Sint Maarten, AB 2013, GT no. 498.

<sup>55</sup> Law Enforcement Council (2014). Border control on the movement of persons in Sint Maarten.

<sup>56</sup> National Ordinance containing provisions on the obligation of identification. AB 2015, no.9.

<sup>57</sup> National ordinance of 5 November 1996 establishing a new Code of Criminal Procedure. AB 2015, no. 9

<sup>58</sup> National Decree, containing general measures, implementing articles 7, sixth paragraph, 8, first paragraph, 11, first paragraph, 20 and 21, first paragraph, of the National Ordinance on Admission and Expulsion. AB 2013, GT no. 499.

### *Justice Organisational Decree*<sup>59</sup>

Through an amendment to the Organisational Decree in 2021, the IGD was divided into: a support section, compliance section, admission and residency section and a border control section. The latter section consists of: a mobile detection and supervision unit, an IGD detention unit and an information unit.

### *National Decree on Tasks and Organisation of Immigration officials*<sup>60</sup>

This National Decree states that immigration officers have the task to perform supervisory and administrative activities related to the exercise of control over the movement of foreigners and the compliance with the relevant legal provisions, as well as border control in Sint Maarten, all this on behalf of the police officers of the Sint Maarten Police Force assigned to that end. In addition, the officers are authorised to act as general investigating officers (officers appointed for the execution of the police task - authorised to investigate all criminal offences) and as debarkation officers (the police officer or immigration officer in charge of checking admission) insofar as they are vested with these capacities and with due observance of the Official instructions laid down by the Minister.

### *Official instructions for police and special police officers*<sup>61</sup>

The security search and handcuffing (restraint device) is regulated in the Official instructions. The Official instructions lay down requirements for, among other things, the use of handcuffs and firearms, the search of persons and the use of force. Article 31, 1, of the Official instructions states that the officer is authorised to handcuff a person deprived of his liberty by law for the purpose of transport. Article 33 stipulates that the security search is carried out by superficial scanning of clothing. Chapter 6 contains provisions specifically on aids for the purpose of actual removal or expulsion of foreigners. Furthermore, chapter 8 contains measures towards detainees.

### *Legal Status Decree Sint Maarten Police*<sup>62</sup>

In this decree, it is indicated that in addition to the National Detectives, officials of the Border Control of the Immigration Department also qualify as police officers, while separate legal status regulations are not desirable. And that as a result, the impetus has been followed to devise one legal status regulation for police officers.

## **Policy**

### **Admission policy**

#### *Guidelines of the Minister of Justice*<sup>63</sup>

The Guidelines of the Minister of Justice (hereinafter Guidelines) provide interpretation for the application of the LTU and the Admission Decree and then inter alia for the subjects of removal, expulsion and detention in that context. The Guidelines were amended in certain respects on 29 April

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<sup>59</sup> National Decree, containing general measures, of 20 December 2021 amending the Justice Organisational Decree in connection with the introduction of the Justice Function Book annexed to it, Ab. 2021, No. 78

<sup>60</sup> National Decree of the Government of Sint Maarten containing rules regarding the establishment of immigration services and the task and organisation of immigration officials in the National Decree on immigration officials. AB 2017, GT nr. 21.

<sup>61</sup> National Decree containing general measures, containing the official instructions for the police and extraordinary police officers and rules concerning the measures to which persons deprived of their liberty by right may be subjected for Sint Maarten. AB 2011, GT no. 2.

<sup>62</sup> National Decree, containing general measures, of 22 December 2023 containing rules on the legal status of police officers ((Legal Status Decree Police Sint Maarten)), AB. 2023, no. 66.

<sup>63</sup> Guidelines of the Minister of Justice of Sint Maarten regarding the application of the National Ordinance on Admission and Expulsion ( PB 1966, no. 17), as amended, and the Admission Decree ( PB 1985, no. 57), as amended.

2021. However, no amendments have taken place as regards the expulsion, removal and detention of foreigners.

### *Removal, expulsion and detention*

Policies and general procedures on removal, expulsion and the possibility of detention of foreigners are contained in the Guidelines. It states that the supervision measures have their basis in regulations and case law and that the measures include the identification requirement and the notification of change of residence and domicile in Sint Maarten. Furthermore, they concern the measures restricting and depriving liberty, the immigration stop, holding and declaring a foreigner undesirable.

The immigration stop serves to verify the identity, nationality and residence status of the foreigner. The holding serves in the context of an identity investigation and enquiry into the foreigner's right of residence. And the purpose of declaring a foreigner undesirable is to keep certain foreigners out of the country who are no longer allowed to stay in the country.

The measure of detention is a measure of deprivation of liberty and can be applied in the context of removal or expulsion when the foreigner poses a danger to public order, public peace/safety or morals, or in case there is a well-founded fear that the person concerned will evade removal/expulsion. It should only be applied if it is unavoidable (ultimum remedium) and no lighter measure (e.g. reporting obligation) is possible. This is in line with international law and conventions on human rights.

### **Personnel policy**

The Council has pointed out in several inspections the lack of a legal status decree and how it could help improve human resources management within the Justice Ministry. Recommendations have also been made to this end. Since 2023 there has been a new legal status decree for civil servants of the border control of the Immigration Department. The Council also found in the 2017<sup>64</sup> follow-up inspection into border control on the movement of persons that there is no unified personnel policy within the IGD.

### **Integrity policy**

Article 7 of the National Decree Immigration Officials stipulates that an oath must be taken by civil servants before performing their duties. There are also rules of conduct contained in the National Ordinance Substantive Civil Servants Law (Chapter VII) that apply to all civil servants.

### **Plan of approach strengthening border control**

A plan of action has been prepared by the IGD under the Protocol on Strengthening Border Control in the Caribbean Countries of the Kingdom<sup>65</sup> which is also relevant to this inspection.<sup>66</sup> Under this protocol, funds are made available for border-related investments.

## **Relevant developments**

### **Immigration stop and holding in BES and Curaçao**

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<sup>64</sup> Law Enforcement Council (2017). Border control on the movement of persons in St. Maarten. A follow-up inspection.

<sup>65</sup> Protocol on Strengthening Border Control in the Caribbean Countries of the Kingdom dated 05-02-2021.

<sup>66</sup> This was requested by the Council from the IGD but not received.

### *BES Admission and Expulsion Act*<sup>67</sup>

The legislation of Bonaire, Sint Eustatius and Saba specifically includes the authorities regarding the stopping and holding in the context of border control and immigration supervision. In article 22d, first paragraph, of the Admission and Expulsion Act BES, the officials in charge of border control and the officials in charge of supervision of immigration are authorised, either on the basis of facts and circumstances which, by objective standards, give rise to a reasonable suspicion of illegal residence or in order to combat illegal residence after crossing the border, to detain persons in order to establish their identity, nationality and legal residence position.

In the context of entry, article 20 of the same Act states that the foreigner to whom entry has been refused may be required to remain in a room or place designated by the officer in charge of border control (subsection 1). It is also stipulated that a room or place referred to in the first paragraph may be secured against unauthorised departure (subsection 2). Furthermore, rules may be laid down by or pursuant to a general measure regarding the regime applicable to the secured room or place referred to in subsection 2, including the necessary management measures (subsection 3).

### *Council report: Immigration detention Curaçao*<sup>68</sup>

In 2020, the Council conducted an inspection into immigration detention in Curaçao. The report stated the following about immigration detention: "The inspection shows that in order to carry out supervisory duties, the police detain foreigners for the purpose of establishing their identity and residence in Curaçao. The authority to request identification of the foreigners has its basis in the National Ordinance on Identification Obligation. (...) The Revised Instructions of the Governor 2006 (HIG) states that investigating officers under this article have the authority to stop any person."

The Council noted that according to the HIG, the authority to detain is derived from the authority laid down in the National Ordinance on Identification Obligation to ask the foreigner for his identity. The Council considers it desirable that an explicit regulation be created to detain foreigners in the context of supervising the provisions of the LTU. The Council therefore made a recommendation to the Minister to ensure that Curaçao has an explicit legal basis for stopping and holding foreigners.

Further, that report stated the following on holding:

*"For verification of residence status or for enforcement of immigration detention, a foreigner is transferred to the police watch, namely the office of the Immigration Police. After arriving at the police watch, the foreigner is held in the corresponding cell. Paragraph 9.2 of the Revised Instructions of the Governor 2006 states that the measures of supervision have their basis in regulations and literature. Examples include measures restricting and depriving liberty, stopping and holding. According to the HIG, the deprivation of liberty ("holding") lasts for a maximum of 6 hours, not counting night hours."*

The Council notes that the holding of the foreigner is not (explicitly) regulated by law. Only the HIG mentions that a foreigner can be detained to establish his identity and right of residence. Here too, the Council considers an administrative law provision desirable.

### **Council for the Administration of Criminal Justice and Protection of Juveniles**

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<sup>67</sup> Admission and Expulsion Act BES, BWBR0028571.

<sup>68</sup> Law Enforcement Council (2020). Immigration detention in Curaçao. An inspection by the Law Enforcement Council on the treatment of detained foreigners in Curaçao.



According to the Council for the Administration of Criminal Justice and Protection of Juveniles in the Netherlands, good treatment of detainees does not only imply adherence to written norms and rules by the authorities, but also a constant striving for improvement by recalibrating laws, regulations and procedures on the basis of social developments, scientific insights and changes in characteristics of persons in detention in a closed environment.<sup>69</sup> It is also the positive intention with which, the humane (decent) way of dealing with a person, namely not subjecting them to any form of deprivation or restrictions besides those that are an inevitable consequence of that detention.

### **Council and CPT**

The subject of immigration detention has been touched upon indirectly in previous Council inspections, including in an inspection into the detention system.<sup>70</sup> As part of this inspection, in 2019, the Council not only examined the Point Blanche prison and house of detention, the Miss Lalie Centre (youth rehabilitation center) and the police cells in Philipsburg, but also intended to inspect the border hospice (immigration detention center/border hospice) destined for foreigners. At that time, however, the Council was unable to review the CPT's 2014 recommendations<sup>71</sup> on this, because the building was not functioning as a foreigner detention center, nor as a house of detention and no one was housed at that location in that context. Foreigners were then detained in police cells in Philipsburg. The Council indicated that once the site was functioning again, the Council would inspect it.

The building is again being used as a foreigner detention center and border hospice since 2021. In 2022, the CPT conducted another inspection of the detention system in Sint Maarten. The report published by the CPT in 2023 drew attention to the detention of foreigners in the Simpson Bay building and made recommendations in that regard.<sup>72</sup> The present inspection is the Council's first inspection since the building was brought back into use.

### **Multidisciplinary controls**

In 2022, there was media coverage of the multidisciplinary checks and how they were carried out. One parliamentarian used the terms "heavy handed" and "shock and fright" and called for a more humane approach during the checks.<sup>73</sup>

The Council's 2023 review report on human trafficking and human smuggling described the multidisciplinary controls carried out jointly by the Ministry of Justice (IGD), Ministry of Tourism Economic Affairs, Transport and Telecommunications and Ministry of Health, Social Development and Labour. It indicated that these controls were taking place less regularly and on a smaller scale than before. This was due to protests that had arisen from the business community about the nature and scale of the checks. The government then instituted a temporary adjustment to give the sector time to take the necessary measures and get their affairs in better order.

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<sup>69</sup> Council for the Administration of Criminal Justice and Protection of Juveniles (2012). Good treatment. Principles for government action towards people undergoing a judicial sentence or measure.

<sup>70</sup> Law Enforcement Council (2019). The Pointe Blanche prison and house of detention, the Miss Lalie Centre, the police cells in Philipsburg and the border hospice in Simpson Bay. Report of Findings 2019.

<sup>71</sup> The Council notes here that the CPT's 2014 recommendations were made in the context of the building being used temporarily as a detention facility for prisoners and not as a border hospice for migrants. These recommendations are therefore not included in the current inspection.

<sup>72</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2023). Report to the Government of the Netherlands on the periodic visit to the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 25 May 2022.

<sup>73</sup> [Grisha concerned about 'heavy-handed' approach of recent joint Immigration controls - 721news.com | Sint Maarten News | SXM News](#)

Furthermore, the OM is not an active part of these kinds of checks. However, they indicated that from a human trafficking perspective, these kinds of joint checks are not (primarily) about looking for persons without legal title in order to then deport them (which may be a consequence of the checks). It is primarily about collecting signals of human trafficking and approaching the victims (who are often illegal) correctly to obtain relevant information, the report stated.

## Colophon

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