



PENITENTIARY INSTITUTION SINT MAARTEN

FOLLOW-UP INSPECTION INTO INTERNAL SECURITY AND SECURITY OF SOCIETY

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Law Enforcement Council
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List of abbreviations used

CPT	European Committee for the prevention of torture and inhuman or degrading treatment or punishment
Cvt	Supervisory Committee (<i>Commissie van Toezicht</i>)
IJenV	Justice and Security Inspectorate (<i>Inspectie Justitie en Veiligheid</i>)
JIS	Judicial Information System (<i>Justitieel Informatie Systeem</i>)
JVO	Judicial Quadripartite Consultations (<i>Justiteel Vierpartijenoverleg</i>)
LBB	National Special Assistance Unit (<i>Landelijke bijzondere bijstandseenheid</i>)
MvJ	Minister of Justice (<i>Minister van Justitie</i>)
OM	Public Prosecutor's Office (<i>Openbaar Ministerie</i>)
P.i.	Penitentiary Institution (<i>Penitentiare Inrichting</i>)
Pointe Blanche prison	Pointe Blanche prison and house of detention <i>Pointe Blanche gevangenis en huis van bewaring</i>)
Council	Law Enforcement Council (<i>Raad voor de Rechtshandhaving</i>)
VI	Conditional release (<i>Voorwaardelijke invrijheidsstelling</i>)
WvSr	Penal Code

Foreword

In 2016 and 2017, the Council carried out inspections of the detention system. This was done at the request of the Ministers of Justice of the Kingdom (JVO) and in connection with the monitoring of the recommendations made by *the European Committee for the prevention of torture and inhuman or degrading treatment or punishment* (CPT). The inspections include recommendations from the CPT. The inspections were based on six sub-topics contained in three sub-reports, namely: legal status and personnel and organisation (sub-report 1; 2016), internal safety and security of society (sub-report 2; 2017) and treatment of detainees and social reintegration (sub-report 3; 2017). By means of this review inspection, the Council will monitor the follow-up of the recommendations formulated by the Council and the CPT on internal safety and security of society for the year 2018. In accordance with the Kingdom Act Law Enforcement Council, all three sub-reports were sent by the Council to the Minister of Justice.¹ The same law also provides that the Minister of Justice is to send the inspection report and his response thereto to the representative body of the country concerned within six weeks.² It is not apparent to the Council that the Minister has complied with this requirement with regard to the sub-report on internal safety and security of society.

In its first sub-report from 2016, the Council expressed its serious concerns about the overall situation in the prison in Sint Maarten. A few months later, in 2017, the Council reported that the situation had worsened. The Council concluded that the internal security of the prison was very serious and feared that in the event of serious incidents, the consequences would be irreversible. In addition, the Council was particularly concerned about security arrangements and oversight, which had a negative impact on the level of security of society. The Council reported real risks. As the prison did not meet the relevant standards and expectations, the Council called for action in the very short term. In this context, the Council also refers to its 2018 review report entitled '*Penitentiary Sint Maarten. Follow-up inspection into the legal position and personnel and organisation*'.

What was established a year ago is still very much valid in 2018. The Council concludes that the situation has worsened as a result of the natural disasters, both in terms of internal security and in terms of the security of society. The prison is (or has not been) at all prepared for the prevention and management of emergencies and, given the state of the security facilities and supervision, there are increased risks to society. The fact that some of the detainees are temporarily staying abroad keeps the situation somewhat manageable.

The conclusions of the Council in its review report on the aspects of the legal status of prisoners and personnel and organisation also apply here: the overall situation in the prison has deteriorated to such an extent that it must be concluded that the prison in its current state is completely unsuitable both in terms of *humane detention* and in terms of *workplace*.

Also on this point the Council notes that the condition of the prison is so deplorable and

¹ Article 30(4) of the Kingdom Act of 7 July 2010 regulating the establishment, tasks and powers of the the Law Enforcement Council of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba (Kingdom Act Law Enforcement Council), Stb. 2010, 338.

² Article 30(5) of the Kingdom Act of 7 July 2010 regulating the establishment, tasks and powers of the the Law Enforcement Council of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba (Kingdom Act Law Enforcement Council), Stb. 2010, 338.

alarming that not only by Country Sint Maarten, but also more broadly by the Kingdom, it must be ensured that the prison and house of detention in Pointe Blanche will comply with the (inter)national laws and regulations and (CPT) standards to which the countries within the Kingdom have committed themselves as soon as possible.

As was the case with previous Council inspections, the organisations and individuals involved cooperated constructively with the inspection. Once again, the Council would like to thank the individuals who were approached for their cooperation.

THE LAW ENFORCEMENT COUNCIL,

mr. F.E. Richards, Chairman,
Mr. G.H.E. Camellia
mr. Th. P.L. Bot.

Summary and recommendation

Summary

Introduction

In 2016 and 2017, the Council carried out inspections of the detention system in Sint Maarten at the request of the Ministers of Justice of the Kingdom (JVO) and in connection with the monitoring of the recommendations of the *European Committee for the prevention of torture and inhuman or degrading, treatment or punishment*. The inspections covered the Point Blanche prison and House of detention. Recommendations from the CPT are included in the inspections.

The inspections were based on six sub-topics contained in three sub-reports, namely: legal status and personnel and organisation (sub-report 1; 2016), internal safety and security of society (sub-report 2; 2017) and dealing with detainees and social reintegration (sub-report 3; 2017). In accordance with the Kingdom Act Law Enforcement Council, all three sub-reports were sent by the Council to the Minister of Justice.³ That Act also provides that the Minister of Justice is to send the inspection report and his response thereto to the representative body of the country concerned within six weeks.⁴ It is not apparent to the Council that the Minister has complied with that requirement with regard to the sub-report on internal safety and security of society.

In this follow-up inspection, the Council assesses whether the recommendations formulated by the Council and the CPT with regard to the second of the three published sub-reports have been followed up. This is the sub-report: internal safety and security of society (2017).

State of affairs recommendations

The Council concludes that out of a total of fifteen Council recommendations, none has been implemented. Nor does it appear that any of the four recommendations of the CPT have been followed in this context.

Overall conclusion

The findings and conclusions in this review report are of the same seriousness and scope as those from the Council's review inspection entitled '*Penitentiary Institution Sint Maarten. Follow-up inspection into the legal status and personnel & organisation*' (2018). The problem is so serious that it transcends the two aspects examined. The text of the overall conclusion in the summary is therefore the same in both review inspections.

In 2016 and 2017, the Council (once again) called for urgent attention to the situation in the Pointe Blanche prison and house of detention in three different (sub-)reports on the detention system. At that time, the Council considered the situation to be so serious and untenable that rapid changes were needed. A bottom line had already been exceeded at that time. It was

³ Article 30(4) of the Kingdom Act of 7 July 2010 regulating the establishment, tasks and powers of the Law Enforcement Council of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba (Kingdom Act Law Enforcement Council), Stb. 2010, 338.

⁴ Article 30(5) of the Kingdom Act of 7 July 2010 regulating the establishment, tasks and powers of the the Law Enforcement Council of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba (Kingdom Act Law Enforcement Council), Stb. 2010, 338.

time for action and the Council urged the prison, the Ministry of Justice and the Country of Sint Maarten to take up their responsibility. The Council was in favour of a new detention facility and considered that cooperation should be a priority in tackling the problems of prison. In the various reports, the Council made a large number of recommendations for improvement.

Although the Council assumed that a low point had been reached with regard to the prison at the beginning of 2017, the situation turned out to be even worse in 2018. Partly as a result of the natural disaster in September 2017, the Council is forced to conclude that not much has changed substantially as a result of the deplorable situation already observed in 2016 and that the situation in the prison has even deteriorated. There are serious violations of national and international legislation and standards. In the meantime, the conditions under which people have to live and work are so bad that it is absolutely irresponsible to continue them in this way. In addition, the prison is (or has not been) at all prepared for the prevention and management of calamities and, given the state of the security facilities and supervision, there are irresponsibly high risks to society. The Council also draws attention to the serious and unacceptable risks to society if the detainees are released. At the moment, there is no resocialization at all. According to the Council, the fact that some of the detainees are temporarily staying abroad ensures that the situation does not get even more out of hand. However, the Council stresses that this is a special and temporary situation and that a structural solution must be provided.

Therefore, in view of the overall state of the prison and its impact on daily practice, the Council must conclude that the prison is currently unfit for detention and is also unsuitable as a place to work. There is no question of a *humane* detention climate and a safe workplace. Several (international) bodies have already sounded the alarm, but according to the Council, there is insufficient momentum behind the necessary decisions and their implementation. The Council therefore once again urges those responsible to take the necessary decisions and to take structural measures. The Council also sees an active role for the Kingdom in this. According to the Council, neither the prison, nor the Ministry of Justice or the Country of Sint Maarten can solve the complex problem independently. The Council emphasizes once again that cooperation is required so that the prison will comply with the (inter)national laws and regulations and (CPT) standards to which the countries within the Kingdom have committed themselves as soon as possible.

The repeated findings lead to the conclusion that the Council's recommendations are systematically not being followed. The Council notes that the problem has been discussed - even for a long time - but that the constitutional system of control, supervision and safeguarding does not function within the country and the Kingdom.

In the meantime, the Council has been informed in detail that the Ministry of Justice is again working on a plan for the reconstruction and renovation of the prison, as well as

plans for staff, rehabilitation, alternative punishments and, in general, an improved regime. Although there have been several action plans (2010, 2014, 2016, 2017) that have not been implemented or have only partially been implemented, the limited renovation work from 2014 that has been carried out has now been undone, the Council is cautious about its optimism about the intentions on the basis of history (see also the Council's report 2017). Nevertheless, the situation of reconstruction lends itself to giving the government of Sint Maarten, the Minister of Justice in particular, the benefit of the doubt. In addition, the Council notes that the deadlines agreed between Sint Maarten and the Netherlands of 1 August for the repair of the outer wall and mid-September 2018 respectively with regard to the Plan will be monitored. The Council also expresses the expectation that a comprehensive and concrete feasible plan will be in place before or at that deadline, also with guarantees for continuity after implementation. To the extent that proper progress has not been made by then, the Council's mechanism for conducting inspections and making recommendations has been exhausted.

Recommendation

Follow up and implement the recommendations of the Law Enforcement Council and the CPT that have not yet been implemented as a matter of priority.

1. Introduction

1.1 Introduction and background

In 2016 and 2017, at the request of the Ministers of Justice of the Kingdom of the Netherlands (JVO) and in connection with the monitoring of the CPT recommendations, the Council carried out inspections of the detention system in Sint Maarten. The inspections concerned the Point Blanche prison and House of Detention (hereinafter referred to as Point Blanche prison). Recommendations from the CPT are included in the inspections.

The inspections were based on six sub-topics contained in three sub-reports, namely: legal status and personnel and organisation (sub-report 1; 2016), internal safety and security of society (sub-report 2; 2017) and dealing with detainees and social reintegration (sub-report 3; 2017).

In this follow-up study, the Council assesses whether the recommendations formulated by the Council and CPT with regard to the second of the three published sub-reports have been followed up. It concerns the sub-report:

- Internal safety and security of society (2017)

1.2 Objective

By means of this inspection, the Council wishes to determine whether and how its recommendations and those of the CPT regarding the Point Blanche prison have been followed up.

1.3 Problem definition and research questions

The central research question is as follows:

How have the recommendations of the Council and the CPT been followed up on the issues of internal safety and security of society?

These include 15 recommendations of the Council and 4 recommendations of the CPT on the sub-topics of internal safety and security of society.

1.4 Assessment framework

The starting point of this follow-up study is the recommendations as are included in the 2017 report (sub-study 2). The Council assesses the follow-up to the recommendations formulated: these form the framework.

1.5 Research approach and method

In accordance with the Kingdom Act Law Enforcement Council, all three sub-reports were sent by the Council to the Minister of Justice.⁵ That law also provides that the Minister of Justice is to

⁵ Article 30 sub 4 of the Kingdom Act of 7 July 2010 regulating the establishment, tasks and powers of the Law Enforcement Council of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba (Kingdom Act Law Enforcement Council), Stb. 2010, 338.

submit the inspection report and his response thereto within six weeks to the representative body of the country concerned.⁶ It is not apparent to the Council that the Minister has complied with that requirement with regard to the sub-report on internal safety and security of society.

The Council conducted observations in the institution and interviews with prison officials, inmates and employees of the Public Prosecutor's Office, Supervisory Committee and the Legal Profession. In accordance with the Kingdom Act, the Council gave the prison's interim management team the opportunity to respond to the inspection report within a reasonable period set by the Council. No response was received from the MT.

1.6 Demarcation

This inspection is a follow-up inspection, in which the inspection is primarily focused on the way in which the Minister of Justice and the service or institution targeted by the recommendations have responded to the Council's considerations and recommendations.

The inspection covers the period from January 2017 to June 2018.

1.7 Reading guide

After this introductory chapter one, chapters two and three contain the research findings of the respective topics: internal safety and security of society. Chapter four contains a final conclusion on both the recommendations of the Council and those of the CPT.

⁶ Article 30 sub 5 of the Kingdom Act of 7 July 2010 regulating the establishment, tasks and powers of the Law Enforcement Council of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba (Kingdom Act Law Enforcement Council), Stb. 2010, 338.

2. Search results: Internal security

2.1 Introduction

In 2016, the Council assessed the state of internal security at the Pointe Blanche prison on the basis of three criteria. The Council made five recommendations to the Minister of Justice. It was also recommended to follow the recommendations formulated by the CPT that had not been followed.

The Council assesses the follow-up to the recommendations made. First, the Council sets out the criterion and then the resulting Council recommendations. If applicable, the related and unfollowed recommendation(s) of the CPT are also mentioned. After that, the findings are presented, followed by a conclusion. Finally, the Council provides a schematic assessment of the state of affairs, compared to 2017, with regard to the follow-up of the recommendation(s). If nothing has changed in the situation, the valuation will remain the same as in 2017. If it has worsened or the recommendation has not been followed, the rating has been adjusted downwards. In the event that the situation has improved, or the recommendation has been followed, the valuation has been adjusted upwards.

2.2 Prevention and control of emergencies

The facility is well prepared for the prevention and management of emergencies.

2.2.1 Recommendations 2016

The Council's recommendation in the context of the criterion of prevention and management of emergencies is:

- Promote that the facility is well prepared for the prevention and management of emergencies. In any case, pay attention to: establishing, implementing and practising the company emergency plan, training of emergency response officers, sufficient staff per shift and properly working equipment.

2.2.2 Findings 2018

Emergency organisation

The organisation's emergency plan was not adopted in 2018. The prison does not have an operational emergency response organisation. There are ideas for the 2018 hurricane season, but these have not yet been translated into concrete plans.

The fire alarm is not functioning as it should, according to a staff member, false reports have been received since the hurricanes.

The two large servers in the Central Post are awkwardly in the way when entering the room and the wiring is largely loose. The company that installed the servers has not yet returned to finish the work, according to an employee of the Central Post.

Emergency men's department

The regular staffing of the shifts is still problematic. On the day of the inspection, six of the twelve scheduled employees are available for duty. In fact, this means that three staff members (including two women) were deployed 'in the back' in the men's department. In the event of a calamity, this number is insufficient. In addition, the prison still suffers from locks that cannot be opened immediately. According to staff members, this is because in 2017 the entire system was not replaced as necessary, but only the cylinders. The inspectors saw with their own eyes that several doors could not be opened immediately.

In this context, the detainees indicate that they are concerned about their safety in the event of an emergency such as a fire, earthquake or hurricane.

Emergency women's department

Only from Monday to Friday there is a guard present in the women's department. The entrance door to this department can still only be opened from the outside. The guard states that for her own safety she never closes the entrance door when she works inside. The detainee present indicates that the intercom system is working.

2.2.3 Conclusion

The Council is of the opinion that the prison is not prepared for the prevention and management of emergencies to the extent that can be expected. In addition to the fact that the required planning is not up-to-date, the equipment (locks and doors) does not work properly. In addition, tools for detecting fire hazards appear to be unreliable. Especially in the case of insufficient staff on shift, it must be possible to rely on such crucial tools to work. The Council is of the opinion that the degree of insecurity within the prison and the risk of casualties, harm or unwanted behaviour by the detainees has increased compared to the situation encountered in 2017. The Council stresses the need to put an end to this highly unsafe and totally irresponsible situation in prison.

2.2.4 Assessment

Table 1: Assessment of prevention and control of calamities

Aspect	Criterion	2016		2018	
Internal security	Prevention and control of emergencies	Red	Red	Red	Red

Red: Does not meet the relevant standards and expectations

2.3 Aggression control

The P.I. pursues an active policy to prevent and control violence, threats and intimidation.

2.3.1 Recommendations 2016

The recommendations made by the Council in the context of the aggression control criterion are:

- Establish and actively implement policies to prevent and control violence, threats, and intimidation. In doing so, pay immediate attention to what is minimally required to actually implement the policy.
- Conduct regular cell inspections to promote security within the prison.
- Ensure that you have a well-equipped internal assistance team and sufficient financial resources for the remuneration associated with this task.

The recommendations of the CPT related to this and not followed are:

- The CPT recommends that the Sint Maarten authorities deliver the clear message to prison officers that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of sanctions.
- The CPT reiterates its recommendation that the prison management of Pointe Blanche Prison develop a strategy to address the challenge of inter-prisoner violence, taking into account the above remarks. Further, it wishes to receive information on the investigations into the incidents mentioned in paragraph 239 and any subsequent action taken.
- The CPT recommends that measures be taken to ensure that the record drawn up after the medical examination of a prisoner – whether newly arrived or following a violent incident in prison – contains:

- (i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);
- (ii) a full account of objective medical findings based on a thorough examination;
- (iii) the doctor's observations in the light of i) and ii) indicating the consistency between any allegations made and the objective medical findings.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. In addition, documents should be compiled systematically in a special trauma register where all types of injuries should be recorded.

The results of every examination, including the above-mentioned statements and the doctor's opinions/observations, should be made available to the prisoner and, with the consent of the prisoner, to his or her lawyer. Further, the existing procedures be reviewed in order to ensure that whenever injuries are recorded which are consistent with allegations of ill treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is

immediately brought to the attention of the relevant prosecutor regardless of the wishes of the person concerned.

2.3.2 Findings 2018

Explicit communication from the Ministry to the prison management or staff that abuse or verbal abuse against inmates will not be tolerated did not take place after the Council's inspection in 2017.

Ongoing violence among detainees remains a concern. The last serious stabbing incident dates back to April 2018. No strategy has been developed for dealing with violence between prisoners, nor has any (additional) policy been drawn up and implemented to prevent and control violence, threats and intimidation.

According to interviewees, a number of cell inspections took place after the hurricanes, among other things. During the inspections, contraband - including mobile phones - is still being found. There is no (well-equipped) internal assistance team.

Medical procedure

There is no specific trauma register and the results of a medical examination are not consistently made available to the prisoner. Furthermore, the existing procedures have not been revised to ensure that the public prosecutor's office can be informed if there is a suspicion of ill-treatment of a detainee.

2.3.3 Conclusion

The Council notes that the prison still faces serious problems in terms of aggression control. There is a lack of a clear vision and (active) policy or strategy with regard to violence between or against prisoners or staff and manpower to carry it out. The Council believes that in such a situation, the structural carrying out of cell inspections is all the more important in order to limit the risk of violent incidents. However, the cell inspections do not yet take place structurally.

The Council's three recommendations on policy formulation, cell inspections and an internal assistance team have not been followed.

In this context, the CPT made three recommendations. The recommendations on communication regarding unlawful violence against prisoners and on developing a strategy for violence between prisoners have not been followed. The recommendation on the medical procedure for injuries to prisoners consisted of four parts. In 2016, only the part about the registration was followed up. The other three components have still not been followed up. The Council is still in favour of medical staff, the doctor and the director(s) meeting to discuss the medical procedure. This will help to follow up on the recommendations.

2.3.4 Assessment

Table 2: Assessment Aggression control

Aspect	Criterion	2016		2018	
Internal security	Aggression control				

Red: Does not meet the relevant standards and expectations

2.4 Drug discouragement

The penitentiary actively combats the import, trafficking and use of drugs.

2.4.1 Recommendations 2016

The Council's recommendation under the drug deterrence criterion is:

- | |
|--|
| <ul style="list-style-type: none"> Maintain an up-to-date and applicable drug control policy. |
|--|

2.4.1 Findings 2018

There is no specific drug policy. Furthermore, drugs still find their way into the prison. The fact that part of the iron fence and the concrete walls at the firebreaks and the air places are missing increases the chance of success.

Urine tests only take place within the framework of early release.

2.4.2 Conclusion

There is no up-to-date and applicable drug control policy. According to the Council, the prison is not in a position to actively combat and/or discourage the import, trafficking and use of drugs, other than a number of cell inspections and urine checks under the V.I. The Council concludes that the current state of the prison poses an increased risk of importing drugs into the prison. This is extremely undesirable. The Council's recommendation has not been followed.

2.4.3 Assessment

Table 3: Assessment Drug discouragement

Aspect	Criterion	2016		2018	
Internal security	Drug discouragement				

Red: Does not meet the relevant standards and expectations

3 Search results: Security of society

3.1 Introduction

In the 2016 report, the Council assessed the state of security of society on the basis of three criteria. In this context, the Council made *nine* recommendations to the Minister of Justice. It was also recommended to follow the recommendations formulated by the CPT that had not been followed.

The Council assesses the follow-up to the recommendations made. First, the Council sets out the criterion and then the resulting recommendation(s) of the Council. If applicable, the related and unfollowed recommendation(s) of the CPT are also displayed. The findings are then presented, followed by a conclusion and schematic assessment of the state of affairs regarding the follow-up of the recommendation(s).

3.2 Security features and oversight

The structural facilities and technical systems, procedures and other measures to prevent escapes from the P.I. function properly and there is sufficient supervision in situations with an increased safety risk.

3.2.1 Recommendations 2016

The recommendations made by the Council in the context of the criterion of security arrangements and supervision are:

- Ensure that the structural facilities, technical systems, procedures and measures to prevent escapes from the P.I. function properly.
- Ensure that there is sufficient supervision in and near situations with an increased safety risk.
- Stop hiring and deploying external unqualified and unauthorized security personnel at critical security posts.
- Evaluate the choice of external staff, taking into account the specific requirements that must be placed on staff working in a prison and the specific requirements associated with the work they perform.

The CPT's related recommendation that was not followed is:

- The CPT recommends that a clear protocol for cell searches be drawn up, taking into account the above remarks.

3.2.2 Findings 2018

The head of surveillance and security indicates that there is a shortage of staff. As a result of the damage caused to the outer walls by the hurricanes, two members of staff from the National Special Assistance Unit (LBB)⁷ are responsible for the outer ring of the prison (including anti-climbing protection) and one staff member is responsible for access control,

⁷ The National Special Assistance Unit (LBB) is part of the Transport and Support Service (DV&O) and DV&O is a directorate within the Custodial Institutions Agency (DJI). DV&O is involved in searches, law enforcement, evacuations and hospital surveillance, see www.dji.nl.

including the inspection of goods. The deployment of the LBB is temporary and is based on an agreement between Sint Maarten and the Netherlands and applies (after extension) at least until August 2018. The detection port and hand scan function, this does not apply to the control belt.

Furthermore, like in 2016, the prison uses staff from the private company Checkmate to carry out surveillance from the shooting towers, among other things. One interviewee indicates that - given the staff shortages - there are no plans to stop hiring and deploying external security personnel. In addition, members of the Volunteer Corps are also called upon if necessary. The management indicates that the lack of payments from the Ministry of Justice has consequences, among other things, for the payments to the private security company.

The electronic security of the prison does not work properly, because it is partially detached and/or defective. This applies, among other things, to the flight lines as well as to the camera system. Most everyone is generally satisfied with the camera system, but it is currently not working as it should. Multiple cameras have been out of service since the hurricane, according to employees of the camera room. The images that are available are recorded. The iron fence around the prison as well as several concrete walls at the firebreaks and the open areas are partly gone. This makes the prison very vulnerable. Both from the inside and from the outside. Measures taken are: new lighting in the firebreaks and the deployment of patrols on foot around the building and in the firebreaks. Sometimes staff of the private company also patrol with a dog. Occasionally, cell searches are carried out in cooperation with the staff of the LBB and, if necessary, the KPSM. No protocol has been drawn up for cell searches.

The Ministry of Justice reports that in June 2018 a letter from the Netherlands promised financial support to be able to repair the fence, the outer walls and the electronic security of the prison in the short term. In July 2018, a start was made with the repair of the walls.

In addition, a new generator has been received. Now it is a matter of putting it in the appropriate place.

Several interviewees draw attention to the general situation in the prison. The situation is so dire and urgent, yet it is (still) lacking in administrative attention and involvement from the administrative government. Despite the deplorable state of and in prison, no concrete actions or initiatives have been taken, according to interviewees.

The Ministry of Justice is in the process of drawing up a plan of action for the prison, which builds on earlier plans. First and foremost are structural improvements and changes required for a safe detention climate and to be able to meet the minimum (basic) requirements for a prison. All this taking into account the dire situation after the hurricanes. The Ministry indicates that there is a lack of capacity, knowledge and finances, including specifically for the prison. As a result, completion of the plan is stalled. According to the ministry, specialist help is needed for the completion of the plan. The Ministry indicates that technical assistance was promised in June 2018 and that it was implemented in July. Mention is also made of the growing cooperation between the (executive) employees of the ministries in the Netherlands and Sint Maarten.

Due to the current situation in prison, the Public Prosecutor's Office is forced to weigh up the risks to society and (possible) victim(s) on the one hand and the violation of the rights of prisoners in prison on the other. As a result, the Public Prosecutor's Office is now more reluctant to apply for pre-trial detention.

3.2.3 Conclusion

The seriousness of the Council's concerns about security arrangements and oversight in 2017 increased in 2018. The structural, facilities, technical systems and other systems, procedures and measures to prevent escapes from prison are even less functional than in 2016.

In cases where there are insufficient staff on duty, there is insufficient supervision in the prison and in situations with an increased security risk. Technical tools that are required in such a setting are indispensable. However, the prison only partially has access to these.

The temporary solution of physical security by the LBB contributes to security on the outside of the prison. The Council also believes that it is now really time for the baggage scanner to be repaired or replaced after years of being out of service. Despite the fact that a number of measures have been taken, the risks with regard to the extent to which society is protected remain high, according to the Council.

With regard to external hiring, the Council still maintains the same position as in 2016: the externally hired security company provides more staff, but according to the Council, it poses unacceptable increased risks for both internal safety and security of society. In the Council's view, this choice needs to be evaluated.

Finally, the Council reiterates the risks to integrity posed by the current situation with regard to security provisions and supervision.

The Council concludes that the four recommendations to improve safety have not been implemented. In section 2.3.3 it has already been indicated that cell searches do not yet take place structurally. The CPT's recommendation on the establishment of a protocol for cell searches has not been followed.

3.2.4. Assessment

Table 4: Assessment Security features and oversight

Aspect	Criterion	2016		2018	
Security of society	Security features and oversight	Orange	Red	Red	Red

Red: Does not meet the relevant standards and expectations

Orange: meets the relevant standards and expectations to a limited extent

3.3 Freedoms policy

When granting freedoms to detainees, the P.I. takes social risks into account.

3.3.1. Recommendation 2016

The Council's recommendation in the context of the criterion of the freedoms policy is:

- Evaluate the possibilities for granting freedoms and, if necessary, draw up (additional) policies.

3.3.2 Findings 2018

The possibilities for granting freedoms have not been evaluated. There is no policy on this. As a result, inmates do not have the option to temporarily leave the facility or go on leave.

3.3.3 Conclusion

There is no freedoms policy for the prison in Sint Maarten. The responsibility for that policy lies with the Ministry in cooperation with the prison. The Council reaffirms the importance of this in the context of rehabilitation.

3.3.4 Assessment

Table 5: Assessment of the policy on freedoms

Aspect	Criterion	2016		2018	
Security of society	Freedoms policy	Red	Red	Red	Red

Red: Does not meet the relevant standards and expectations

3.4 Conditional release (v.i.)

The P.I. correctly implements the applicable laws and regulations and the resulting procedures regarding the granting of v.i.

3.4.1 Recommendation 2016

The Council's recommendations in the context of the conditional release criterion are:

- Ensure that the exact end date is communicated to the detainee in writing within a reasonable period of time.
- Adapt the house rules in accordance with the provisions of the applicable Criminal Code.
- Actively inform each detainee of the house rules upon entry and make sure that the house rules are available to everyone.
- Ensure that the problems surrounding the implementation of electronic monitoring are resolved.

3.4.2 Findings 2018

As mentioned earlier, about sixty detainees are abroad and some in the prison at Pointe Blanche. The prison and the Ministry use the same procedure for determining, assessing and granting V.I. and this procedure applies to all detainees, including those abroad.

In its review report on, among other things, the legal status of detainees, the Council already indicated that the initiative to be informed in good time about the release date should not lie with the detainee, but with the P.I.⁸

⁸ Law Enforcement Council. 'Penitentiary Institution Sint Maarten. Follow-up inspection into the legal status and personnel and organisation' (2018).

The Mutual Arrangement for the Provision of Detention Capacity states that the return of the detainee must in any case take place within a reasonable period of time before the end of the execution of the sentence.⁹ This is in the interest of proper rehabilitation, as can be read in the arrangement. The explanatory memorandum states that the rehabilitation of the detainee takes place in his or her own country and that, in this context, the detainee returns in principle within a period of six months from the time of temporary transfer.

In the context of V.I., in principle, a period of six months before the calculated V.I. date is allowed for the return of the 60 transferred detainees. This didn't go entirely as it should at first. After some of the detainees were transferred to Curaçao and the Netherlands, it turned out that detainees who should have stayed on Sint Maarten were also transferred because of their (fast) approaching V.I. date. This error (due to poor administration) has since been corrected. Furthermore, timely decision-making by the Ministry of Justice appears to be crucial, especially in this particular situation. In one specific case, the intended V.I. date had passed without a decision being taken by the Ministry. The Public Prosecutor's Office then decided to suspend the execution of the sentence and to release the person in question. Subsequently, the Minister decided to reject the V.I. That person must therefore return to prison to serve the remainder of his sentence. This specific case causes differences of opinion between the Public Prosecutor's Office and the Ministry regarding the decision taken. In the rebuttal, reference is made to the contents of the memorandum 'Conditional release (V.I.) pursuant to the new Criminal Code'.

Although the detainees are being brought back, there is currently no question of rehabilitating prisoners in prison.¹⁰ In addition, it is noted during the inspection that the prison social workers themselves have no insight into the conduct of the detainees abroad. This makes it difficult to carry out their advisory role in the context of V.I. In the rebuttal, it is indicated that information (with regard to the behaviour and particularities) about the detainee who has been staying in the Netherlands until then is provided from the Netherlands.

Furthermore, the inspection shows that electronic monitoring is not an option. The house rules have not been changed as a result of the (new) Criminal Code.

3.4.3 Conclusion

The Council reiterates the importance of a timely start of the procedure and a timely decision by the Minister. The Council is concerned about the substantive assessment of the degree of rehabilitation of the prisoner in the absence of any rehabilitation in prison. In the Council's view, this is an obstacle to a proper assessment.

A solution for electronic monitoring has still not been provided, even though the Council considers that the use of this technical tool would be a good alternative in view of the general state and problems of the prison.

⁹ Article 3 sub 5 Mutual arrangements as referred to in Article 38 sub 1 of the Charter of the Kingdom of the Netherlands regulating the cooperation between Curaçao, Sint Maarten and the Netherlands in the field of mutual provision of detention capacity, AB 2014, 20.

¹⁰ In this context, see also the Law Enforcement Council. *'Penitentiary Sint Maarten. Follow-up inspection into the legal status and personnel and organisation'* (2018).

The Council's four recommendations on communication about the end date (1), adjustment of the house rules (2 and 3) and electronic monitoring (4) have not been followed.

3.4.4 Assessment

Table 6: Conditional release rating

Aspect	Criterion	2016		2018	
Security of society	Conditional release	Light green	Dark green	Light green	Light green

Light green: Predominantly but not fully compliant with the relevant standards

Dark green: Fully compliant with relevant standards and expectations

4 Final Conclusion

In this inspection, the Council looked at the follow-up to its recommendations made in 2017 to improve the internal safety and security of society. The recommendations of the CPT made in 2014 are also taken into account. The Council concludes that out of a total of fifteen Council recommendations, none has been followed. Nor does it appear that any of the four recommendations of the CPT have been followed in this context.

Overall conclusion

The findings and conclusions in this review report are of the same seriousness and scope as those from the Council's review inspection entitled '*Penitentiary Institution Sint Maarten. Follow-up research into the legal status and personnel & organisation*' (2018). The problem is so serious that it transcends the two aspects examined. The (text of the) general conclusion is therefore the same in both review inspections.

In 2016 and 2017, the Council (once again) called for urgent attention to be paid to the situation in the Pointe Blanche prison and House of detention in three different (sub-)reports on the detention system. At that time, the Council considered the situation to be so serious and untenable that rapid changes were needed. A bottom line had already been exceeded at that time. It was time for action and the Council urged the prison, the Ministry of Justice and the Country of Sint Maarten to take up their responsibility. The Council was in favour of a new detention facility and considered that cooperation should be a priority in tackling the problems of prisons. In the various reports, the Council made a large number of recommendations for improvement.

Although the Council assumed that a low point had been reached with regard to the prison at the beginning of 2017, the situation turned out to be even worse in 2018. Partly as a result of the natural disaster in September 2017, the Council is forced to conclude that not much has changed substantially as a result of the deplorable situation already observed in 2016 and that the situation in the prison has even deteriorated. There are serious violations of national and international legislation and standards. In the meantime, the conditions under which people have to live and work are so bad that it is absolutely irresponsible to continue them in this way. In addition, the prison is (or has not been) at all prepared for the prevention and management of calamities and, given the state of the security facilities and supervision, there are irresponsibly high risks to society. The Council also draws attention to the serious and unacceptable risks to society if the detainees are released. At the moment, there is no resocialization at all. According to the Council, the fact that some of the detainees are temporarily staying abroad ensures that the situation does not get even more out of hand. However, the Council stresses that this is a special and temporary situation and that a structural solution must be provided.

Therefore, in view of the overall state of the prison and its impact on daily practice, the Council must conclude that the prison is currently unfit for detention and is also unsuitable as a place to work. There is no question of a humane detention climate and a safe workplace.

Several (international) bodies have already sounded the alarm, but according to the Council, there is insufficient momentum behind the necessary decisions and their implementation.¹¹ The Council therefore reiterates its call on those responsible to take the necessary decisions and to take structural measures. The Council also sees an active role for the Kingdom in this. According to the Council, neither the prison, nor the Ministry of Justice or the Country of Sint Maarten can solve the complex problem independently. The Council emphasises once again that cooperation is required so that the prison will comply with the (inter)national laws and regulations and (CPT) standards to which the countries within the Kingdom have committed themselves as soon as possible.

The repeated findings lead to the conclusion that the Council's recommendations are systematically not being followed.

The Council notes that the problem has been discussed - even for a long time - but that the constitutional system of control, supervision and safeguarding does not function within the country and the Kingdom.

In the meantime, the Council has learned in detail that the Ministry of Justice is again working on a plan for the reconstruction and renovation of the prison, as well as plans for staffing, rehabilitation, alternative punishments and, in general, an improved regime. Although there have been several action plans (2010, 2014, 2016, 2017) that have not been implemented or have only partially been implemented, the limited renovation work from 2014 that has been carried out has now been undone, the Council is cautious about its optimism about the intentions on the basis of history (see also the Council's report 2017). Nevertheless, the situation of reconstruction lends itself to giving the government of Sint Maarten, the Minister of Justice in particular, the benefit of the doubt. In addition, the Council notes that the deadlines agreed between Sint Maarten and the Netherlands of 1 August for the repair of the outer wall and mid-September 2018 respectively with regard to the Plan will be monitored. The Council also expresses the expectation that a comprehensive and concrete feasible plan will be in place before or at that deadline, also with guarantees for continuity after implementation. To the extent that proper progress has not been made by then, the Council's mechanism for making examinations and recommendations has been exhausted.

4.1 Recommendations of the Council

Internal security

In 2016, the Council assessed the internal security of the prison on the basis of three criteria from an assessment framework drawn up by the Council. In this context, the Council made five recommendations. In 2018, none of the recommendations were followed (see Table 7).

Security of society

In 2016, the Council assessed the state of security of society on the basis of three criteria. The Council made four recommendations. The inspection in 2018 shows that none of the

¹¹ See, for example, the findings and recommendations of the Progress Committee in the reports relating to the prison. Progress Committee Sint Maarten (May 2018). Twenty-ninth report to the Ministerial Consultation for the period 1 January 2018 – 1 April 2018.

recommendations were followed (see Table 7).

Recommendations CPT

In addition, the Council recommended that the four recommendations of the CPT not followed should be implemented. In 2018, the Country of Sint Maarten does not appear to have followed any recommendations (see Table 9).

State of affairs of the Council's recommendations and CPT

Table 7 shows the state of affairs regarding the follow-up to the Council's recommendations.

Table 7: State of affairs and follow-up of Council recommendations on internal safety and security of society

Council recommendations 2016	State of affairs 2018
<i>Internal security</i>	
1. Prevention and management of emergencies	Not followed
2. Aggression Policy	Not followed
3. Performing cell inspections	Not followed
4. Internal assistance team	Not followed
5. Drug control Policy	Not followed
<i>Security of society</i>	
6. Countering escapes	Not followed
7. Supervision increased safety risk	Not followed
8. Deployment and hiring of external staff	Not followed
9. Evaluation of the deployment of external staff	Not followed
10. Evaluation of granting freedoms	Not followed
11. Communicating the end date of detention	Not followed
12. Adjustment of house rules	Not followed
13. Informing and providing house rules	Not followed
14. Electronic monitoring	Not followed

Table 8 shows the overall assessment of the criteria in 2016 and the assessment based on the findings in 2018.

Table 8: Evaluation of the Council's criteria in relation to internal safety and security of society

Aspect	Criterion	2016		2018	
<i>Internal security</i>	Prevention and control of emergencies	Red	Red	Red	Red
	Aggression control	Red	Red	Red	Red
	Drug discouragement	Orange	Red	Red	Red
<i>Security of society</i>	Security features and oversight	Orange	Red	Red	Red
	Freedoms policy	Red	Red	Red	Red
	Conditional release	Light green	Dark green	Light green	Light green

Red: Does not meet the relevant standards and expectations

Orange: meets the relevant standards and expectations to a limited extent

Light green: Predominantly but not fully compliant with the relevant standards

Dark green: Fully compliant with relevant standards and expectations

Finally, Table 9 gives an overview of the status with regard to the follow-up of the CPT's recommendations.

Table 9: Overview of the state of affairs follow-up recommendations CPT regarding internal safety and security of society

CPT recommendation	2016	2018
<i>Internal security</i>		
1. Unauthorized violence by staff	Not followed	Not followed
2. Strategy for violence between detainees	Not followed	Not followed
3. Trauma registry & results of medical examinations	Not followed	Not followed
<i>Security of society</i>		
4. Drawing up a protocol for cell searches	Not followed	Not followed

4.2 Council Recommendation 2018

The Council urges the Minister of Justice to give priority to the recommendations that have not yet been implemented.

Colophon

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