



INSPECTION ON THE APPROACH TO HUMAN TRAFFICKING AND HUMAN SMUGGLING IN SINT MAARTEN

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Law Enforcement Council

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Abbreviations

CBA	Crime Pattern Analysis (<i>Criminaliteitsbeeldanalyse</i>)
ECHR	European Convention on Human Rights
ICSM	Intelligence Center Sint Maarten
IGD	Immigration and Border Protection Service (<i>Immigratie en Grensbewakingsdienst</i>)
ICCPR	International Convention on Civil and Political Rights
JVO	Four Party Judicial Consultation (<i>Justitieel Vierpartijen Overleg</i>)
KMar	Royal Marechaussee (<i>Koninklijke Marechaussee</i>)
KPSM	Sint Maarten Police Force (<i>Korps Politie Sint Maarten</i>)
LAV	National ordinance containing rules relating to employment of and by foreign nationals (<i>Landsverordening, houdende regels met betrekking tot het doen verrichten van arbeid door vreemdelingen</i>)
LR	National Detectives Agency Sint Maarten (<i>Landsrecherche Sint Maarten</i>)
MoU	Memorandum of Understanding
NGO	Non-governmental organizations
NRB	National Reporting Bureau on Human Trafficking
OM	Public Prosecutor's Office (<i>Openbaar Ministerie</i>)
AG	Attorney General (<i>Procureur-Generaal PG</i>) Curaçao, Sint Maarten, Bonaire, Sint Eustatius, Saba
Council	Law Enforcement Council
RST	Detective Cooperation Team (<i>Recherchesamenwerkingsteam</i>)
SG	Secretary-General
TEATT	Tourism, Economic Affairs, Transport & Telecommunication
UMM	Human Trafficking and Human Smuggling Unit (<i>Unit Mensenhandel en Mensensmokkel</i>)
VSA	Public Health, Social Development and Labor (<i>Volksgezondheid, Sociale Ontwikkeling en Arbeid</i>)
UN	United Nations

Preface

Prevention and combating of human trafficking and human smuggling requires a comprehensive international approach and a corresponding national strategy with consideration for local problems. Several agreements are in place within the Kingdom based on international obligations to prevent and combat these serious crimes.

This report contains the Law Enforcement Council's assessment of the international, interregional, and local approach to human trafficking and human smuggling in Sint Maarten. A successful approach requires the recognition of both the differences and the relationship between these criminal offenses. The Council ascertains that many international and interregional agreements are in place to reinforce the approach to human trafficking and human smuggling. There are many individuals working in the justice system, all of whom have their own individual roles to play in preventing and combating these serious crimes.

However, the Council's research also shows that the nature and scope of human trafficking and human smuggling are not yet well understood, and that Sint Maarten continues to rely heavily on the punitive approach (criminal justice) for the prevention and combating of these phenomena. The Council believes that it is impossible to describe an integral approach based on a comprehensive overview and a clear vision and policy aimed at establishing the required cooperation. The governmental and criminal justice sectors barely, if at all, support each other, resulting in a lack of effective barriers. In addition, victims lack adequate relief and assistance. The Council believes that these are crucial elements that must be in place to effectively prevent and combat human trafficking and human smuggling.

The Council expresses its appreciation to the respondents from the Ministry of Justice, the Ministry of Health, Social Development and Labor, the National Coordinators for Human Trafficking/Human Smuggling, the Public Prosecutor's Office, the Sint Maarten Police Force, the RST, the Coast Guard, the KMar, the National Police, the Inspectorate of Public Health, Social Development and Labor, Customs and the legal profession for the pleasant and candid discussions as well as for their contribution to this inspection.

THE LAW ENFORCEMENT COUNCIL

Mr. Th.P.L. Bot, chairman,

Mr. M.R. Clarinda,

Mr. L.M. Virginia.

Summary and recommendations

In its annual plan for 2019 the Law Enforcement Council (hereafter: the Council) announced that it would conduct research on the approach regarding human trafficking and human smuggling. The inspection's central question reads: To what extent is there an approach on human trafficking and human smuggling within the Kingdom that contributes to preventing and combating these crimes?

Human trafficking and human smuggling are serious crimes with different characteristics and forms. To prevent and combat human trafficking and -smuggling various international treaties have been signed and numerous (scientific) studies have been conducted. The approach to trafficking and smuggling of human beings is based on four main pillars, namely: Prosecution, Protection, Prevention and Partnership. These 4P's serve as a framework for an effective integral approach using barrier models, which has been integrated in interregional- and national regulations and policy. For example, the countries within the Kingdom have agreed in a Memorandum of Understanding to intensify cooperation and information exchange, and human trafficking and human smuggling have been criminalized in the Penal Codes.

Based on this inspection's findings, the Council concludes that there is room for improvement in terms of the international and interregional cooperation related to the prevention and combating of human trafficking and smuggling. The cooperation is 'ad hoc' rather than structural and depends too much on individual contacts and efforts. This makes the (continuity of) the approach vulnerable. The Council believes that countries can utilize each other's knowledge, experience, pre-existing plans, and information materials to a far greater and more effective extent. The wheel does not have to be reinvented each time. In the opinion of the Council, by strengthening international and interregional cooperation, great strides will be possible.

In addition, the Council notes that the approach to combat human trafficking and -smuggling in Sint Maarten needs improvement. The nature and prevalence of these types of crime have not been identified (on a local and interregional/-national level) and the development of crucial elements for an effective integral approach has been stagnating for many years. Sint Maarten's approach falls short especially in the area of prevention and protection. There is insufficient awareness of the seriousness of the problem and as a result the required assistance and protection for victims is partially absent.

When it comes to criminal law enforcement and cooperation, the Council notes several positive developments. For instance, because of the new focus on the strengthening of border control in Sint Maarten, organizations are increasingly able to connect with each other. The Council encourages the organizations within and outside the judicial chain to continue the (now still fledgling) cooperation in the area of human trafficking and human smuggling. The approach to administrative law cannot be overlooked in this regard. Administrative measures and controls are indispensable in successfully erecting barriers to reduce the opportunity for human trafficking and human smuggling. To this end, the required legislation must be put in order, and ministries will have to jointly assume policy responsibility for preventing and combating all forms of these serious offenses. Criminal justice approaches alone cannot achieve the desired result.

To reinforce the approach to human trafficking and human smuggling, the Council recommends the following to the Minister of Justice of Sint Maarten:

1. a) Promote the ability of the Intelligence Center Sint Maarten to build a sound intelligence position in the field of human trafficking and smuggling. *
- b) Promote that - in relation to the above - countries work together towards building an interregional and international intelligence position in the area of human trafficking and human smuggling *
2. Expand administrative commitment by developing a strategic vision and policy on human trafficking and human smuggling that facilitates, structurally secures, and advances the growing operational cooperation in Sint Maarten in this regard.
3. Together with the ministries, organizations, and the national coordinator of Sint Maarten, establish a task force and regular consultations that will energize combating and preventing human trafficking and human smuggling and jointly set priorities.
Consider the following: the drafting of a joint agenda that includes a limited number of priorities per year. One priority that can be realized in the short term, is, for example an awareness campaign. Another priority, perhaps a more comprehensive one, for which several concrete steps can be taken in any given year, is for example the accommodation and follow up care for victims. Formulate a joint plan of approach for each priority (including timetable, people responsible for acting and funding) and monitor progress in the task force/regular consultation. Specifically examine how law enforcement, government, aid providers, NGOs, and the public and private sectors can support each other.
4. Take all forms of human trafficking into account in the (integral) approach to combat and prevent these types of crime, including criminal exploitation.
5. Accommodate the support requirements of the National Coordinator in Sint Maarten, so that he can fulfill the agreements established in the MoU. *
6. Organize the National Reporting Bureau on Human Trafficking in a structured manner or safeguard its tasks, so that the reporting, monitoring, and information functions are properly fulfilled. When considering and deciding on the way in which the NRB (or its functions) should be organized, prioritize the NRB's vision and the way its tasks are actually performed.
7. Follow (via the national coordinator) the research for the establishment of the regional CBA and the CARIFORUM human trafficking study, review the research results and where relevant translate them into the approach on human trafficking and human smuggling in Sint Maarten.
8. Promote uniformity and continuity within operational cooperation by ensuring that working arrangements, for example on occasions when scaling up and/or transferring, are documented, and known to the profession.
9. Follow up on the 6 recommendations outlined in the report *Prostitution policy and enforcement in Sint Maarten* (2016).

* *The Council included a similar recommendation in the reports of the Caribbean Netherlands and Curaçao.*

1. Introduction

1.1 Background

The Council is charged with the general inspection of all organizations of the judicial chain in Curaçao, Sint Maarten and the Netherlands for the public entities Bonaire, Sint Eustatius and Saba (hereafter: Caribbean Netherlands). Furthermore, the Council is responsible for the general inspection of the quality and effectiveness of the judicial cooperation between the countries. The Council makes its choice of inspections based on the social relevance and the importance of a well-functioning law enforcement in the countries.

Human trafficking and human smuggling are very serious crimes that have a major impact on victims and society. Human trafficking (exploitation) constitutes a gross violation of human dignity and the physical and mental integrity of victims and is qualified internationally as a violation of fundamental human rights (Art. 4 ECHR). Human trafficking is a form of transnational crime and in some cases is related to (international) human trafficking. Criminal organizations may be involved in both human trafficking and human smuggling. Consequently, this requires a comprehensive international approach and a corresponding national approach with attention for local problems. In view of this, the Council decided to conduct an inspection study on the approach to human trafficking and human smuggling in Curaçao, Sint Maarten, and the Dutch Caribbean.

1.2 Objective of the inspection

The Council will investigate how the approach to human trafficking and human smuggling has been structured and examine the extent to which the corresponding agreements have been implemented within the Kingdom. In this inspection, the Council will, in any case, examine the international and interregional cooperation, the multidisciplinary approach, the practical implementation of policy, and other relevant developments in each country's approach. The purpose of this inspection is to examine the extent to which there is an approach that contributes to preventing and combating human trafficking and human smuggling. Where appropriate, the Council will make recommendations for improvement based on the findings.

1.3 Central Question

The central question in this study is:

To what extent is the approach to human trafficking and human smuggling within the Kingdom structured and does it contribute to the prevention and combating of human trafficking and human smuggling?

To answer this central question, the following sub-questions have been formulated:

- 1) Which minimal requirements, based on (inter)national laws and regulations, must be met in the approach against human trafficking and human smuggling within the Kingdom?
- 2) What are the agreements reached within the Kingdom to deal with human trafficking and human smuggling?
- 3) In practice, how is the approach within the Kingdom structured?
- 4) To what extent does this approach contribute to the prevention and combating of human trafficking and human smuggling?

1.4 Scope of the inspection

For definition purposes, the Council adheres to the meaning of the terms “human trafficking” and “human smuggling” as stipulated in the Protocol for the prevention, suppression and punishment of human trafficking and the Protocol against the smuggling of migrants by land, sea, and air, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15-11-2000. In a nutshell, human trafficking refers to any form of exploitation, including sexual exploitation, forced labor or services, slavery, or practices similar to slavery, servitude or the removal of organs. Human smuggling is the facilitation of the illegal entry of a person into a country where that person is not a citizen or resident, to obtain a direct or indirect financial or other material benefit. In this thematic inspection, the Council considered relevant national and international legislation and regulations, prevailing policy, and cooperative agreements, and examined the current practice of the organizations involved in preventing and combating human trafficking and human smuggling, and the relief for victims. In other words, what have the countries (separately and jointly) agreed on “on paper” regarding the approach to human trafficking and smuggling, and what does the approach entail in “everyday practice”? To answer this question, attention was not only paid to the use of criminal justice, but also to administrative enforcement and any other initiatives and organizations that contribute to the prevention and combating of human trafficking and human smuggling and the relief for victims, including international and interregional cooperation in this context. The term ‘interregional’ as used in this report refers to the Caribbean countries within the Kingdom (where the Council has the authority to inspect): Curaçao, Sint Maarten and the Caribbean Netherlands. The Council inspected the period from 2010 through the first half of 2019.

1.5 Research methodology and assessment framework

This research was conducted through *literature review and interviews* with government officials, portfolio holders, (policy) advisors and staff of organizations/agencies that fulfill a (legal) role in preventing and combating human trafficking and human smuggling (see Appendix 1).

The inspection is comprised of 5 phases:

- 1) Orientation phase: exploratory discussions and a general in-depth examination of the topics with a view to determining the approach to be adopted in the inspection.
- 2) Desk research: literature review, detailing the theoretical/legal framework, and preparation for interviews.
- 3) Data collection: conducting interviews.
- 4) Analysis and reporting: based on the central and sub-questions, analyze the information collected and prepare the draft inspection report.
- 5) Rebuttal and adoption: respondents were afforded the opportunity to submit comments on the draft report, after which feedback was incorporated, and the final report was adopted by the Council and presented to the Ministers of Justice (and Security).

In this inspection, the assessment framework consists of the following components:

- Standards and insights from (scientific) research
- International treaties, interregional and national legislation, and agreements, Case law, (local) policy

1.6 Reading guide

In this inspection report, the Council describes using the research questions, the results of the literature review and the interviews on the approach to human trafficking and human smuggling in Sint Maarten.¹ The Council discusses the legal framework and policy and the findings in the following order; international-, to interregional-, and local level. Chapter 2 outlines the legal framework and policy and is followed by the Council's analysis. Thus, addressing the first two research questions. To answer the third sub-question, chapters 3 and 4 contain the research results from Sint Maarten, which are also followed by an analysis from the Council. The report concludes with an overall conclusion which answers the fourth sub-question and the main question and includes recommendations to Sint Maarten's Minister of Justice (chapter 5).

¹ The Council will produce separate inspection reports for Curaçao, and the Dutch Caribbean based on the findings from those countries, and which will be presented to the respective Minister of Justice (and Security)

2. Legal framework and policy

2.1 Introduction

This inspection's first two sub-questions are: (1) *which minimum requirements, based on (inter)national laws and regulations, must be met in the approach against human trafficking and human smuggling within the Kingdom?* (2) *what agreements were made within the Kingdom?* To answer these questions, this chapter will first take a closer look at the definitions of human trafficking and human smuggling and the characteristics of this problem. In addition, Section 2.3 briefly describes several general insights from (scientific) literature on the approach to human trafficking and human smuggling. This is followed in section 2.4 by an overview of the relevant international regulations. Section 2.5 provides a description of the constitutional guarantees, laws, and agreements within the Kingdom regarding the approach to human trafficking and human smuggling. The Chapter closes with the Council's analysis and conclusion about the requirements for addressing human trafficking and human smuggling, which the Council will use to evaluate Sint Maarten's approach.

2.2 Definitions and characteristics

As indicated in the introductory chapter of this report, the Council follows the definitions of human trafficking and human smuggling provided by the 'Protocol to Prevent, Suppress and Punish Human Trafficking', - and the 'Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15-11-2000' (the Palermo Protocols).

Article 3(a) of the Protocol on Human Trafficking reads:

"human trafficking" refers to the recruitment, transportation, transfer, harboring or taking in of persons, by use of threats or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the provision or receipt of payments or benefits to achieve the consent of a person who exercises control over another person, for the purpose of exploitation. Exploitation includes at a minimum, prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, or practices similar to slavery, servitude or the removal of organs.

Exploitation can take various forms: *labor exploitation or forced service provision*, in, for example, construction or the exploitation of domestic workers; *sexual exploitation*, in prostitution in brothels, adult entertainment bars, or elsewhere; *criminal exploitation*, where individuals are induced to commit crimes such as theft or drug trafficking; *forced begging*; or *organ removal*. And while the nature and extent of human trafficking may vary from country to country, no society appears to be immune from this problem. In several (scientific) studies, sexual exploitation and labor exploitation emerge as the most common forms of trafficking, including in the Caribbean.²

² Trafficking in persons reports, U.S. Department of State 'Office to monitor and combat trafficking in persons'; International organization for migration (IOM) (2005); Ribando Seelke, C. (2010)

Human smuggling is defined in the Protocol against the Smuggling of Migrants by Land, Sea and Air in Article 3(a) as:

‘smuggling of migrants’: to procure, for the purpose of obtaining, directly or indirectly, a financial or other material benefit, the illegal entry of a person into a signatory country of which the person is not a national or resident.

Human smuggling is also a global phenomenon. The intensity and modus operandi vary by location, but the crux of the problem remains the same everywhere: smugglers exploiting the migration desires of persons for whom the regular, legal options are not available or limited. A characteristic of the Caribbean islands, within the Kingdom and beyond, is that human smuggling is, by definition, conducted by sea or air.³ Paragraph II of the Protocol against Human Smuggling is entirely devoted to measures against the smuggling of migrants by sea in accordance with international maritime law.

Although human trafficking and human smuggling are often mentioned in the same breath, they are different forms of crime, each requiring a separate approach. In short, the main differences between human trafficking and human smuggling are the degree of consent (coercion/misleading vs. voluntary movement); the cross-border nature (transnational and domestic vs. transnational by definition); the purpose and criminal business model (financial or material benefit from exploitation vs. illegal transfer or residence); and the 'object' against which the crime is directed. Human trafficking is primarily seen as 'crime against a person': the exploited victim. Human trafficking is often seen as 'crime against a State': the State whose border/sovereignty is violated.⁴ The literature on human trafficking lacks a consensus on this theoretical concept and offers alternative approaches, including the human rights approach, which also identifies the smuggled person as a victim.⁵ Nevertheless, the aforementioned Protocols consistently refer to *victims* when it comes to trafficking, and to *migrants* when it comes to smuggling. In practice, the distinction between human trafficking and human smuggling is not always clear-cut either, and, these crimes can go hand in hand. For example, sometimes the "victims" of human trafficking, the persons smuggled, are exploited upon arrival to pay back their "debts" to the smuggler. This changes the nature of the crime from smuggling to trafficking, or both crimes are committed in tandem. This mixing may result in some migrants not being recognized as victims of trafficking. This presents a risk especially when human trafficking is cross-border in nature and a criminal organization is involved. Due to the small scale and geographical location of the Caribbean islands, human trafficking is often associated with human smuggling. The policies of organizations such as the Public Prosecutor's Office therefore describe the approach to human trafficking and human smuggling as combined.⁶ Considering the above, in this inspection the Council will also discuss the (combined) approach to human trafficking and human smuggling where appropriate, distinguishing between these crimes and the approach to them.

³ UNODC (2018)

⁴ UNODC (2018)

⁵ Baird, T. (2013)

⁶ Van der Meij, P.P.J. and Van der Leun, J.P. (2010); Baird, T. (2013); Kempadoo, K. (2006); OM Policy program on cross-border crime 2016-2020; OM Directive on criminal procedure for human smuggling and human trafficking.

2.3 General insights on the approach

In the discourse on human trafficking, the “3P” paradigm serves as an international framework for addressing the issue. Effectively combating human trafficking requires a comprehensive approach that combines investigation and prosecution (P_{rosecution}), protection of victims (P_{rotection}), and general deterrence (P_{revention}). The U.S. Department of State's Office to Monitor and Combat Trafficking in Persons (TIP Office) uses the 3P paradigm to evaluate and promote the global response to human trafficking.⁷ To achieve progress in the areas of ‘prosecution, protection and prevention’, an important fourth pillar has been added to this framework, namely cooperation (Partnership). This addition is often referred to as the 4P approach. Collaboration between law enforcement, government, aid agencies, and NGOs, as well as between the public and private sectors, is essential if trafficking is to be successfully combated and prevented at both the local and international levels.⁸ An integrated approach can be achieved by involving all parties that can contribute to this process and by working together towards the common goal with a shared vision and strategy.

For an effective integrated approach against organized crime, such as human trafficking and human smuggling, it is common to use the barrier model. The barrier model provides insight into the steps a criminal must take to be able to commit a crime. The model also highlights which parties and opportunities make the crime possible and which of these can play a role in making it more difficult or punishing it, in other words which barriers can be put in place. For human trafficking and human smuggling, examples of barriers are recruitment/entry, housing, identity, employment, and finances. Combined measures can be taken with an administrative, criminal, fiscal or private law dimension. Barrier models can differ according to the form in which they are used.⁹

The 4P approach and the integrated approach (using barrier models) are based on, or integrated into, international treaties and protocols, which will be discussed in more detail in the next section.

2.4 International regulations

International treaties have been established between several countries to prevent and combat human trafficking and human smuggling. Treaties to which (part of) the Kingdom of the Netherlands is a signatory include:

Treaty	Objective/content	Party
International Convention for the Suppression of Trafficking in Adult Women, as amended by the Protocol of November 12, 1947, New York, 12-11-1947	To ensure the suppression of trafficking in women and children: criminalization of trafficking in women/children for the purpose of committing lewd acts (sexual exploitation); exchange of information/data between countries in cases where a criminal offense, conviction, denial of admission or deportation has been determined, consisting of sentencing verdicts with all other useful information, details of measures to deny admission or deportation.	Entire Kingdom
Treaty for the Protection of	The enforcement and achievement of human	Entire Kingdom

⁷ See annual report ‘Trafficking in Persons Report’ (TIP Report)

⁸ www.state.gov/3ps-prosecution-protection-and-prevention

⁹ Center for Crime Prevention and Security; Comensha; National Rapporteur on Trafficking in Human Beings NL

Treaty	Objective/content	Party
Human Rights and Fundamental Freedoms, Rome, 04-11-1950 <i>master treaty</i>	rights and fundamental freedoms (Universal Declaration of Human Rights): prohibition of slavery and forced labor	
International Covenant on Civil and Political Rights, New York, 16-12-1966 <i>master treaty</i>	Exercise of civil and political rights, as well as one's economic, social, and cultural rights: prohibition of slavery and forced labor	Entire Kingdom
United Nations Convention against Transnational Organized Crime, New York, 15-11-2000 <i>master treaty</i>	Promote international cooperation to prevent and more effectively combat transnational organized crime, to include criminalization of participation in a criminal organization, money laundering, etc.	Entire Kingdom
Protocol to Prevent, Suppress and Punish Trafficking in Persons, in the [...] Nations against Transnational Organized Crime, New York, 15-11-2000 [Palermo protocol] <i>subordinate treaty</i>	Preventing and combating human trafficking, with special attention for women and children; protecting and assisting victims of such trafficking, with full respect for their human rights; and promoting cooperation among States that are party to the protocol to achieve these objectives.	European Netherlands, Caribbean Netherlands, Aruba
Protocol Against the Smuggling of Migrants by Land, Sea and Air, to [...] Nations Against Transnational Organized Crime, New York, 15-11-2000 [Palermo protocol] <i>subordinate treaty</i>	To prevent and combat the smuggling of migrants and to promote cooperation to that end among States which are party to the protocol, by protecting the rights of smuggled migrants.	European Netherlands, Caribbean Netherlands, Aruba
Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16-05-2005	To prevent and combat trafficking in persons, ensuring gender equality; to protect the human rights of victims of trafficking, to develop a comprehensive framework for the protection of and assistance to victims and witnesses, ensuring gender equality as well as effective investigation and prosecution; to promote international cooperation in combating human trafficking.	European Netherlands, Aruba

Prevention and combating of human trafficking can be traced back to the prohibition of slavery and forced labor which is included as one of the fundamental human freedoms in the Universal Declaration of Human Rights, New York, 10-12-1948. The European Court of Human Rights has explicitly ruled that human trafficking falls within the scope of Article 4 of the ECHR and is therefore a violation of human rights.¹⁰ The protection of or respect for the human rights of the victims of human trafficking is therefore the basis for the approach described in the international regulations. Several conventions and protocols have not (yet) been ratified by Curaçao, Sint Maarten and/or the Caribbean Netherlands. Regardless, countries have (partly) adopted laws and made interregional agreements¹¹ based on these international

¹⁰ Rantsev v. Cyprus and Rusland, ECHR, January 7th, 2010

¹¹ In this report, 'interregional' refers to the countries within the Kingdom in the Caribbean region (where the Council has the authority to conduct inspections): Curaçao, Sint Maarten and the Caribbean Netherlands

regulations to combat and prevent human trafficking and human smuggling, which will be discussed in the next section.

2.5 Interregional legislation and cooperation agreements

2.5.1 *The Charter of the Kingdom of the Netherlands*

Pursuant to articles 36, 37 and 38, the Netherlands, Aruba, Curaçao and Sint Maarten may provide mutual aid and assistance, consult, and make arrangements. As far as criminal justice matters of an interregional or international nature are concerned, such as human trafficking and human smuggling, regulations may be established by Kingdom Act if there is agreement on these regulations between the governments of the countries concerned. Article 39 stipulates that legislation in the countries must, as much as possible, be regulated in a similar manner (concordance principle).

2.5.2 *Kingdom laws and policy plans*

Human trafficking and human smuggling are included in various Kingdom laws and interregional agreements within the Kingdom as topics on which interregional and international cooperation is sought. Similar to the international treaties, human trafficking and human smuggling are usually referred to as forms of cross-border crime.

The Kingdom Act on Public Prosecutors and the Kingdom Act on Police of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba explicitly refer to cooperation to combat 'international human trafficking'.¹² In the Public Prosecutor's Office's 'Policy program on cross-border crime 2016-2020', the topic was expanded to include human smuggling. In addition to improving the intelligence position and conducting criminal investigations, this policy program highlights the importance of a multidisciplinary approach and barrier model. Article 31 (2) of the Kingdom Police Act states that (among other things) this policy program is the basis for the annual plans and that the analysis of the countries' crime patterns, prepared biennially under the responsibility of the Attorney General, will be considered. Pursuant to Article 57a of the Kingdom Police Act, the 'Amendment to the Protocol on Specialized Criminal Investigation Cooperation between the Countries of the Kingdom' was signed on January 23, 2019, by the Ministers of Justice of Aruba, Curaçao, Sint Maarten and the Netherlands, as well as the State Secretary for Interior and Kingdom Relations of the Netherlands. The Detective Cooperation Team (RST) consists of one (or more) central teams and a decentralized team in each country. The central teams conduct investigations into cross-border crime (including international human trafficking) and crimes that, considering their severity or frequency, or the organized context in which they are committed, constitute a serious breach of the rule of law. The protocol states that a biennial crime overview will be prepared, to serve as the basis for a multi-year policy plan in which the joint priorities of the local police forces and the RST are established.¹³

The Kingdom Act Coast Guard for Aruba, Curaçao and Sint Maarten as well as for the public entities Bonaire, Sint Eustatius and Saba describes (among other things) the general police tasks and border control tasks as supervisory and investigative duties of the Coast Guard.¹⁴ In the '2018-2021 Justice Policy Plan' and the '2019 Annual Plan' and '2020-2024 Forecast' of the Caribbean Coast Guard, human smuggling and trafficking are explicitly included as one of the four policy priorities.

¹² Article 8 of the Kingdom Act on Police; Article 33 of the Kingdom Act on Prosecutors' Offices

¹³ Amendment to the Protocol on specialized investigative cooperation between the countries of the Kingdom, 23 January 2019

¹⁴ Article 2 of the Kingdom Act on the Coast Guard

2.5.3 Interregional agreements

- *Mutual arrangements*

In addition to these Kingdom laws and resulting policy plans, the 'Mutual Agreement Curaçao, Sint Maarten and the Netherlands ex. art. 38, paragraph 1, Statute [...] (cooperation in the area of the immigration chain)' is worth mentioning. This mutual agreement states that the countries shall cooperate, take measures, and undertake the necessary efforts to combat illegal immigration, human trafficking, and human smuggling. "To this end, the Countries agree to ensure proper cooperation and information exchange between the various services involved in combating human trafficking and human smuggling. In this context, the Countries will, as much as possible, share the information contained in the Plans of Action which focus on prevention, enforcement, interagency cooperation, and the protection of victims."¹⁵

Specifically for Sint Maarten, there is also the *Mutual Agreement on Strengthening Border Control Sint Maarten*. To promote an orderly and successful reconstruction process in Sint Maarten, the supervision on the influx and out-flow of persons and goods at the borders has been strengthened. To this end, the Netherlands made additional assistance from the KMar and the Dutch Customs Service available.

- *Memoranda of understanding*

A Memorandum of Understanding on cooperation for preventing and combating human trafficking and human smuggling (hereinafter MoU) was signed by the Ministers of Justice of the Netherlands, Aruba, Curaçao, and Sint Maarten on June 20, 2011. With this agreement the countries agreed to intensify their cooperation and to prioritize the prevention and combating of human trafficking and human smuggling, as well as the accommodation (relief) for victims of human trafficking. This MoU includes the basic principle that the response against human trafficking and human smuggling must take place based on the human rights perspective and must be in accordance with the relevant international treaties. The MoU was reviewed and amended several times over the years. At the Four-Party Judicial Consultation on January 23, 2019, the most recent revision was adopted and signed by the countries' Ministers of Justice. Until this last revision, Article 1 of the MoU explicitly referred to the UN Convention on Transnational Organized Crime and its related (partly unratified) Protocols on Human Trafficking and Human Smuggling and the Council of Europe Convention on Action against Human Trafficking. During the last evaluation of the MoU, it was determined that all countries had sufficiently implemented the provisions of these conventions in national legislation, thus allowing the removal of Article 1.¹⁶ The MoU requires the countries to have an up-to-date overview and to appoint national coordinators to manage the priorities of - and cooperation between the countries for human trafficking and human smuggling. The Attorney General is responsible for the implementation of the agreements in regards to criminal law enforcement in Aruba, Curaçao, Sint Maarten and the Caribbean Netherlands and the national coordinators are responsible for the other areas such as the sharing of general knowledge, monitoring, prevention, and intelligence.

In addition, on the initiative of the Netherlands, a Memorandum of Understanding was established on June 2, 2016, between the four countries in the Kingdom and the United States regarding law enforcement in the Caribbean part of the Kingdom. This MoU serves to promote cooperation to strengthen law enforcement in the Caribbean part of the Kingdom, primarily through the exchange of information and the provision of physical resources and capacity for training and assistance of technical expertise.¹⁷

- *Protocols*

Various protocols have been established between and within the organizations that play a role in

¹⁵ Article 1 and Article 17 of the Mutual Agreement on the Immigration Chain

¹⁶ Memorandum 'Amendment MoU on Human Trafficking and Human Smuggling' for discussion in the JVO of January 2019

¹⁷ Status of memorandum MoU strengthening law enforcement for the JVO of January 2019

preventing and combating human trafficking and human smuggling in the Caribbean part of the Kingdom. For this inspection, the Protocol on the deployment of the Royal Netherlands Marechaussee (KMar), with which the Netherlands, Curaçao, Sint Maarten, and Aruba have established cooperation, is also important. With the 'Protocol on the deployment of personnel from the flexible deployment pool Royal Marechaussee', a flexible deployment pool of 43fte KMar personnel has been operating since 2008. In recent years, the deployment of the flexible pool has been extended for a fixed period. By signing the new protocol in January 2019, the parties agreed to continue the cooperation within the framework of the flex pool for an indefinite period starting January 1, 2020. Given the experiences of the past few years, a permanent deployment of the KMar is considered necessary. This flex pool performs border-related police tasks, where additional capacity deployment or transfer of knowledge and skills is required. Combating migration crime (human trafficking and human smuggling) is explicitly included as one of the primary tasks.¹⁸

2.6 National laws and regulation on Sint Maarten

2.6.1 Constitution of Sint Maarten

Because of the severity of the violation of personal freedom, the legislature of Sint Maarten saw fit to constitutionally enshrine the prohibition against human trafficking. Article 4 of the Constitution of Sint Maarten reads: *No one shall be held in slavery or servitude; No one shall perform forced or compulsory labor, other than as community service; and human trafficking is prohibited.* This fundamental provision does not appear in the constitutions of the Kingdom but is derived from Article 4 ECHR and Article 8 ICCPR.¹⁹ The prohibition against human trafficking as included in the Constitution has covered any form of human trafficking since 2010. Nevertheless, the investigation and prosecution of human trafficking in the broadest sense (not exclusively sexual exploitation) is only possible in Sint Maarten as of the entry into force of the new Penal Code on June 1, 2015.²⁰

2.6.2 Penal code and guideline for criminal procedure human smuggling and trafficking

Human trafficking is a criminal offense under the section 'Crimes against personal freedom' in article 2:239 of the Sint Maarten Penal Code. Article 2:240 of the Penal Code defines the intentional use of the services of a victim of human trafficking as a criminal offense.

Human smuggling is included in the chapter 'Crimes against public authority' of the Penal Code. Article 2:154 defines as punishable the facilitation of illegal entry into, transit through, or departure from and/or stay in Sint Maarten or a country that has joined the Protocol on Human Smuggling.

The Explanatory Memorandum to these laws states that they constitute a codification of the Human Trafficking and Human Smuggling Protocols of the UN Convention against Transnational Organized Crime (the Palermo Protocols, as explained in Sections 2.2 and 2.4).

Pursuant to Article 5 of the Kingdom Act on Public Prosecutors, also in early 2019, the 'Directive on Criminal Proceedings for Human Smuggling and Human Trafficking' was adopted by the Attorney General of Curaçao, Sint Maarten and of Bonaire, Sint Eustatius, and Saba. This guideline contains the basic principles for the criminal penalties in the prosecution of human smuggling and human trafficking. The basic penalty is always an unconditional prison sentence, after which, depending on the circumstances of the case, an appropriate penalty can be demanded within the so-called sentencing limits. Among the factors considered in sentencing are the suspect(s), the victim, and the severity of

¹⁸ Protocol on the deployment of personnel from the flexible deployment pool Royal Marechaussee, January 24, 2019

¹⁹ Explanatory memorandum Constitution of Sint Maarten

²⁰ Annual Report OM 2015

the offense, depending on the specific circumstance. Although criminal exploitation and forced begging are not explicitly included in the criminal legislation of Curaçao, Sint Maarten and the Dutch Caribbean, they are listed separately in the guideline as forms of human trafficking. Furthermore, the guideline also refers to possible human rights violations with regard to human smuggling. By identifying the relevant sentencing factors and aggravating circumstances, this guideline expresses the severity of the crimes of human smuggling and trafficking.²¹

2.6.3 Other laws and regulation on Sint Maarten

For administrative law enforcement in respect to human trafficking and human smuggling, the National Ordinance on the Employment of Foreign Nationals and the accompanying Implementation Decree are important. The National Ordinance on Admission and Expulsion and the Admission Decree are also relevant.²² Moreover, the Civil Code Book 7A contains provisions regarding the employment contract and the 2000 Employment Regulations are relevant in terms of the rules governing working hours.

2.7 The Council's Analysis

In this chapter, the Council has presented the results of the desk research used to answer the first two sub-questions of this study: *((1) which minimum requirements, based on (inter)national laws and regulations, must be met in the approach against human trafficking and human smuggling within the Kingdom? (2) what agreements were made within the Kingdom?*

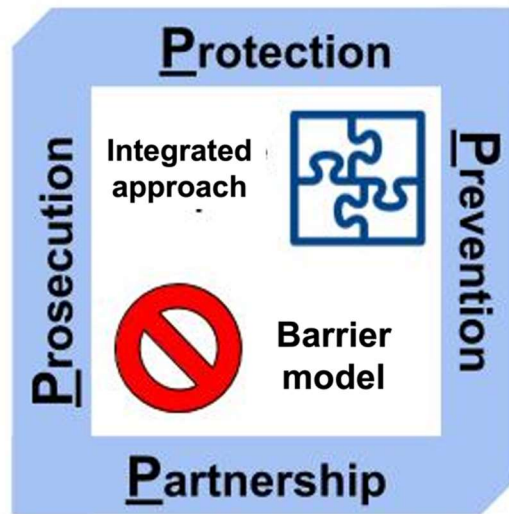
Human trafficking and human smuggling are serious crimes that have distinct characteristics and forms. Despite the differences, human trafficking and human smuggling are also interrelated phenomena that can overlap in practice. Especially when human trafficking has a transnational character, the distinction is sometimes difficult to make. To successfully address this problem, it is important to recognize both the differences as well as the relationship between these crimes. In its desk research, the Council examined general insights from (scientific) literature about the approach towards human trafficking and human smuggling. Four important pillars, or standards, emerged from this (Prosecution, Protection, Prevention, and Partnership) that constitute a framework for an effective integrated approach using barrier models.

This framework also forms the basis for preventing and combating human trafficking and human smuggling in international regulations. As shown in the table in Section 2.4, various international conventions have been established to address human trafficking and human smuggling. The Council notes that several conventions and protocols have not been ratified by Curaçao, Sint Maarten, and/or the Dutch Caribbean. Nevertheless, there is an overlap in the objectives and content of the conventions, and the so-called master treaties relevant to the approach to human trafficking and human smuggling have been ratified by the entire Kingdom. Moreover, interregional, and national legislation and cooperation agreements within the Kingdom, such as the MoU, are based on the Protocols on Human Trafficking and Human Smuggling. Therefore, in the following chapters, the Council will assess the approach to human trafficking and human smuggling based on the standards in this framework.

²¹ OM Directive on criminal procedure for human smuggling and trafficking

²² National Ordinance regulating admission to and expulsion from Sint Maarten, 19-04-2013, AB 2013, GT no. 498 and national decree containing general measures for the implementation of Articles 7, sixth paragraph, 8, first paragraph, 11, first paragraph, 20 and 21, first paragraph of the National Ordinance on Admission and Expulsion, 19-04-2013, AB 2013, GT no. 499

To summarize this set of standards, the Council provides the following graphical representation:



3. International and interregional cooperation

3.1 Introduction

To answer sub-question 3 - "How is the approach within the Kingdom structured in practice?" - the Council examined the approach to human trafficking and human smuggling in the individual countries, as well as their interregional and international cooperation. With respect to this cooperation, several agreements were reached that have already been described in Chapter 2. The MoU on Human Trafficking and Human Smuggling is an important framework in which the countries of the Kingdom have agreed to intensify cooperation and exchange information. More precisely, in accordance with this MoU, the countries must exchange the number of victims, police investigations, suspects, prosecutions and court rulings on an annual basis. The countries' agencies also need to exchange information, experiences, trends, and best practices. The national coordinators discuss the cooperation between the countries at least twice a year. In doing so, according to the MoU, their approach should be in line with the pertinent international treaties, in which the promotion of international cooperation is one of the important objectives. In this chapter, the Council first describes the findings with respect to the practical implementation of these agreements and concludes with an analysis.

3.2 Findings on international cooperation

In the treaties to which the countries are signatories or affiliates as well as in the Framework for Preventing and Combating Human Trafficking and Human Smuggling (as outlined in Chapter 2), international cooperation is included as an essential component. This is especially true of cooperation with countries of origin. Cooperation with countries outside the Kingdom occurs through operational contacts between the investigative authorities and prosecutors' offices and through international requests for legal assistance. The inspection showed that at the operational level, based on a specific investigation, regular contact is made with (among others) the neighboring countries and the U.S. When foreign suspects are arrested, it is usually fairly easy to establish contact with the authorities of those countries, according to the respondents. There is also ad hoc cooperation with the countries of origin of victims in specific investigations. International legal assistance requests go through the International Legal Assistance Center in Sint Maarten, the coordination point for the entire Dutch Caribbean Public Prosecutor's Office.

As part of the MoU on Strengthening Law Enforcement with the U.S., a training day on the detection of human trafficking was held on Bonaire in 2018 during an interregional conference on human trafficking and human smuggling. The focus of the training, which was conducted by trainers from Homeland Security Investigations, focused on financial investigation and victim advocacy within the investigation.

The inspection reveals that the Caribbean Netherlands and Sint Maarten do not systematically cooperate with source countries (such as Colombia, Venezuela, or the Dominican Republic) to prevent international human trafficking and human smuggling. One of the respondents indicated that RST is the appropriate agency that together with the KMar and the Coast Guard should invest in an international survey into the organizational side of human trafficking.

In July 2019, a comprehensive study on human trafficking in the Caribbean was commissioned by the Forum of Caribbean States²³ (CARIFORUM). Source countries such as the Dominican Republic, Dominica, Haiti, St. Kitts and Nevis, and Suriname are being studied, in addition to interviews with representatives of regional and international institutions. This research aims to develop 'evidence-

²³ Caricom press release, July 31, 2019: 'CARIFORUM Embarks on critical Human Trafficking study' www.today.caricom.org

based interventions for, among other things, the prevention, protection, and prosecution of human trafficking. In addition, the researchers hope to generate useful information on types, patterns, and routes; profiles and risk factors related to victims and traffickers; border and law enforcement issues; local, interregional, and international efforts to prevent human trafficking.

According to the Public Prosecutor's Office, in the period 2013-2017 Sint Maarten cooperated very intensively with the authorities of the Dominican Republic. The main focus of this cooperation related to the investigations Papegaai and Pompei, which also will be discussed in more detail in chapter 4. The Pompei investigation was started with information that the authorities of the Dominican Republic actively shared with the Prosecutor's Office of Sint Maarten. One of the respondents indicated that through this intensive cooperation considerable progress was made in both investigations. Recruiters in the victims' home country were identified and this provided the Public Prosecutor's Office more insight into the criminal conspiracy. Financial flows could be tracked, which in turn led to the confiscation of illegally acquired money. Additionally, the Public Prosecutor's Office reported favorable results from interviewing witnesses in the Dominican Republic by means of letters rogatory.

During 2016-2017, Sint Maarten's Human Trafficking and Human Smuggling Unit (UMM) collaborated frequently with the US, which according to the UMM worked out very well. The reason for the intensified cooperation was the investigation into the human trafficking incident involving fatalities near the US Virgin Islands in 2016. Since then, Sint Maarten has received several requests for legal assistance from the US in human smuggling cases. Since 2019, the Intelligence Center Sint Maarten (ICSM) functions for international cooperation and information sharing as a clearinghouse for the investigative agencies of Sint Maarten.²⁴

Additionally, the cooperation with Saint Martin/France is of great importance for Sint Maarten. The relationship between the prosecutors and police officers of Sint Maarten and Saint Martin is good and locally there is rapid operational response. Matters become more complicated when (legal aid) requests (e.g., hearing someone as a suspect) are required to go through Guadeloupe or France (Paris). This is often a laborious, drawn-out process, according to respondents.

Besides limited capacity and resources which complicate the international approach, legislation or the absence of treaty agreements is also problematic. For example, joint investigation teams cannot be established between Saint Martin and Sint Maarten because the necessary European Regulations have not been ratified by Sint Maarten. Another example is the lack of an extradition treaty between Sint Maarten and Saint Kitts and Nevis, this is a problem when dealing with human trafficking and human smuggling because criminals are known to 'commute' between these islands. This type of problem is raised by the Public Prosecutor at the administrative level, in the tripartite meeting with the Minister, who must then put it on the agenda at Kingdom level but, according to the Public Prosecutor, that often does not happen.

3.3 Findings interregional cooperation

3.3.1 Intelligence position and -sharing

The inspection found that an up-to-date crime pattern analysis regarding the nature and scope of human trafficking and human smuggling does not exist in the individual countries. Inadequate documentation plays a part in this. Individual countries work separately on strengthening their intelligence position, but according to respondents this is not sufficiently incorporated at the Kingdom level. The countries' business process systems are not linked and are therefore not used to share information between the countries. Information exchange between the countries takes place on a limited, ad hoc basis. The

²⁴ See section 4.3.1 of this report for a more detailed explanation of the UMM and the ICSM

information often relies on people who know each other. As a result, information remains fragmented, is not accessible and, according to respondents, it is difficult, if not impossible, to create a complete integrated and interregional intelligence overview based on which criminal organizations can be identified. As a result, there is no interregional insight into the total nature and scope of cross-border crime such as human smuggling and human trafficking.²⁵

The Council observes that at the time of this inspection, on the instructions of the Council of Chiefs of Police and the Head of RST (following the renewed protocol on collaboration between national detectives' agencies), a first regional overview is being developed. It will look at crime trends in the Caribbean to then translate this to Aruba, Curaçao, Sint Maarten and the Caribbean Netherlands. The focus is mainly on the intersections between cross-border crime and local problems. This overview forms the basis for the joint multi-year policy prioritization that is expected to be presented to the Ministers of Justice of the four countries in January 2020.

When it comes to information, the organizations involved are increasingly leaning towards interregional cooperation, but as one of the respondents described it, "traditionally one prefers to keep one's own information". The research shows that the heads of the intelligence organizations of the police forces in the Caribbean part of the Kingdom regularly meet in the Heads of Intelligence Organizations Platform.²⁶ The heads of the intelligence organizations of other law enforcement partners, such as the RST, the KMar, the Coast Guard, as well as the Public Prosecutor's Office and the liaison of the Dutch police, are also connected. People get to know each other better and trust grows, this strengthens cooperation, according to respondents. In June 2019, a coordinating intelligence officer joined the Public Prosecutor's Office. This is a new position focused on optimizing and securing the intelligence organization for the entire OM Carib and the connection of the various (in development) intelligence centers. Several respondents described the new arrangement for the RST as positive in terms of operational cooperation and information exchange between the countries. RST employees are working in the local and central teams and information hubs and the RST offers technical, digital and interception support to the police forces, the central teams of the RST and other investigative partners from a central location in Curaçao. Consequently, more emphasis should be placed on combating cross-border crime. Respondents indicated that the results of these efforts remain to be seen. The Coast Guard is pursuing information-driven operations, though many steps still need to be taken to optimize this. For fear of sharing too much information than is (technically) allowed from a privacy perspective, the Coast Guard respondents said that countries and various organizations were not sharing enough information. They believe this is problematic, as the Coast Guard's operations stand or fall on available information, given the large, open border formed by the waters surrounding the islands.

Respondents at various levels indicate that there is room for improvement in the information exchange between the Netherlands and the countries in the Caribbean part of the Kingdom. A recent amendment to the Dutch Police Data Act, resulting from the General Data Protection Regulation²⁷, has, according to them, seriously hampered the information exchange between the Netherlands and the countries in the Caribbean part of the Kingdom starting in January 2019. With this amendment, the provision of police data to a third country, including Aruba, Curaçao and Sint Maarten, is subject to strict conditions.²⁸ The principle for providing information to these countries within the Kingdom is now 'No, unless all kinds of conditions are met'. This must be balanced on a case-by-case basis and impedes an efficient exchange of information. According to respondents, this is also contrary to the Charter and the "one Kingdom" concept. The inspection reveals that in July 2019 the JVO instructed the countries to provide

²⁵ See also the report 'Exchange of police and judicial data within the Kingdom' (RvdR, 2015/2017)

²⁶ This was not evident from the research results of the Curaçao branch

²⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, on the protection of individuals with regard to the processing of personal data and on the free movement of such data and the repeal of Directive 95/46/EC

²⁸ The European Union Commission has determined that police data may only be provided outside the EU if the Commission has determined that the third-party country or international organization ensures an adequate level of protection for the proposed data processing. The privacy legislation of Aruba, Curaçao and Sint Maarten has been considered as insufficiently adequate.

a working instruction for the JVO of January 2020 regarding the way in which police data can be shared in future between the Netherlands, Aruba, Sint Maarten and Curaçao.

A respondent from the Public Prosecutor's Office indicated that in Curaçao, Sint Maarten and the Dutch Caribbean, the Criminal Procedure Codes do not provide a basis for using special investigative methods to investigate the organized planning or commission of major crimes. According to the respondent, this makes it difficult to conduct specific investigations into human trafficking and human smuggling, for example. In the European Netherlands, this possibility has existed since 2000.²⁹ In addition, the countries lack the necessary cyber investigative authorities, while in the European Netherlands the Computer Crime III Act is already in effect.³⁰ This makes investigations in the Caribbean highly dependent on human intelligence. There are limits to this, not least given the small scale of the islands. In smaller, closed communities it is more difficult to make the necessary contacts and to establish trust to gather intelligence.

3.3.2 Operational cooperation

Respondents from the judicial organizations indicate that cooperation between the countries within the Kingdom at the operational level is evolving. They describe the cooperation between the countries as currently 'ad hoc'. The operational agencies with a role in combating human trafficking and human smuggling manage to connect where necessary in specific cases. When information emerges from an investigation that is relevant to another country, it is (usually) shared. In some cases, however, this is done late. The Council's attention was drawn by respondents to an example where Sint Maarten was informed about a 'person of interest' on a flight, while the relevant aircraft had already landed. They indicated that such bottlenecks in the operation are usually discussed and solved one-on-one or are included on the agenda through the Council of Police Chiefs or the Public Prosecutor's management team. The operational collaboration between the Public Prosecutor's Offices of Sint Maarten, Curaçao and the Dutch Caribbean is progressing fairly smoothly, according to the respondents.³¹

The UMM reports that cooperation is primarily undertaken from St. Maarten with the investigative agencies of the neighboring islands. Operational cooperation with Curaçao and Bonaire in human trafficking or human smuggling investigations is not that common. In early 2018, a separate human trafficking/human smuggling team was also established in Aruba consisting of the Aruba Police Force and the KMar. In the beginning, UMM maintained contact with it, in part to share knowledge about setting up the unit, but thereafter UMM received no further word from the team in Aruba. A possible explanation is that this team in Aruba is now occupied with the Venezuela crisis, according to one of the respondents.

The Coast Guard is the maritime police organization for the entire Caribbean part of the Kingdom and has support offices on Curacao, Sint Maarten, and Aruba. The Dutch Caribbean is served by the Coast Guard from Curaçao (Bonaire) and Sint Maarten (Saba & St Eustatius). The Coast Guard cooperates with the various police forces, the KMar, immigration and customs. They are fully authorized to make arrests when crimes are identified, including human trafficking and human smuggling. Subjects arrested by the Coast Guard are transferred as soon as possible to the police force and/or the immigration service of the country in question. If necessary, these agencies will initiate a follow-up investigation and handle human smuggling or trafficking cases in consultation with the Public Prosecutor's Office. Respondents from the Coast Guard indicated that the Coast Guard rarely receives any feedback or

²⁹ Pursuant to Dutch Criminal Procedure Code Chapter V, Special Investigative Authorities Act (BOB); see for Sint Maarten also the (explanatory memorandum of the) National Ordinance of August 30, 2012, amending the Code of Criminal Procedure (Special Investigative Authorities and other urgent adjustments), AB 2012, no. 25, in which the reason is given why this authority has not been adopted in the Sint Maarten Criminal Procedure Code.

³⁰ This was already included in the new Criminal Procedure Code for Aruba, Curaçao, Sint Maarten and the Dutch Caribbean, which was recently presented to the Parliament for renewed approval.

³¹ See also the report 'Cooperation of public prosecutors' (RvdR, 2018)

further information from the investigation. Sometimes, the Coast Guard arrests the same persons at sea within a week, which raises the question of whether in-depth interrogations are conducted in the first place or whether arrested persons are deported as quickly as possible. In the opinion of the respondents, the latter is not in the interest of combating human smuggling, as valuable information can be gathered from the interrogations that can help guide the actions of the agencies, especially the Coast Guard.³²

Respondents report that operational cooperation between the countries is limited by the scarce capacity and lack of financial and/or material resources. They indicate that the judicial organizations, especially on Curaçao and Sint Maarten, have their hands full dealing with local crime prevention. There is also a lack of the required equipment or equipment is outdated and in need of replacement, such as radar installations that are important for border control and therefore for the prevention of human trafficking.³³

3.3.3 Strategic cooperation and knowledge-sharing

The countries have prioritized addressing human trafficking and human smuggling at the strategic level in the MoU. For example, the inspection found that progress on the MoU is included annually on the agenda. Respondents indicated that at the government administrative level, however, there is little coordination on this specific topic between the ministries and organizations involved in the countries. According to respondents, developments in policy, the approach, priorities, or trends are shared to a limited extent. 'Everyone is busy dealing with their own problems' is an often-heard argument.

In the JVO of January 10, 2017, the human trafficking prosecutors and country coordinators were asked to write a plan for each country to address human trafficking in an integrated manner. The completion of these plans was required six months later. In the JVO of July 2017, the Plans of Approach for Curaçao and the Dutch Caribbean were signed. The Public Prosecutor reported having written a draft plan for Sint Maarten which was handed over to the new national coordinator. However, this was never verified and was not discussed by the respondents during this inspection of the Council.

In September 2018, based on the MoU, an interregional conference on human trafficking and human smuggling was organized in Bonaire. When questioned in the interviews about interregional cooperation or knowledge sharing regarding human trafficking and human smuggling, almost all respondents referred to this conference and the role of the country coordinators. During that conference, there was agreement on the need to invest in improved cooperation between the countries, but according to respondents, to date this has not produced concrete and tangible initiatives. The country coordinators held two meetings (via video conferencing) after the conference, however, the coordinators do not all participate in regular meetings. The national coordinators reveal that they do have regular email contact with each other. They discuss current developments, the content of the MoU and the progress made on the action points from the evaluation. The idea is that the country coordinators will jointly establish an information and awareness campaign in the countries. This inspection indicates that the country coordinators of Sint Maarten and Curaçao have insufficient time or financial means to connect people from different organizations, draft plans, and lead initiatives. The national coordinator of the Dutch Caribbean indicates that he is given the time and latitude by the Ministry of Justice and Security to carry out his tasks.

Within the Public Prosecutor's Office, strategic collaboration and knowledge sharing has improved in recent years according to respondents. Respondents from the Public Prosecutor's Office characterize the current cooperation within the Carib Prosecutor's Office as good. The 'Policy program cross-border crime 2016-2020' from the Attorney General's Office offers a strategic multi-year vision on (the

³² See also 2011 Caribbean Coast Guard Annual Reports et seq; the Coast Guard Report (RvdR 2018))

³³ The Ministry of Defense and the Coast Guard currently have mobile shore radars operational on the Windward Islands, in advance of permanent deployment from 2021

prerequisites for) an effective approach and cooperation between Curaçao, Sint Maarten and the Dutch Caribbean. The coordinating criminal investigation officer directs (via the steering teams of the countries) the criminal investigations that the Public Prosecutor assumes and advises the Attorney General (AG) in this respect, partly based on this strategic multi-year vision. Knowledge sharing is encouraged by the subject matter specialists within the Prosecutor's Office for the Caribbean and Aruba, including a subject matter specialist in human trafficking and human smuggling. The Public Prosecutor's Office in the European Netherlands also expresses its willingness to support, with regular exchanges or the sharing of useful expertise, according to respondents.³⁴

In the JVO of July 11, 2017, the decision was taken with the countries within the Caribbean part of the Kingdom, under the direction of the AG, to establish baselines of minimum standards that border security and border surveillance must satisfy.³⁵ According to respondents, these proposals for improvement could help prevent and combat (among other things) human smuggling and trafficking in the region. Strengthening surveillance around coastlines is, according to respondents, urgently needed to combat human smuggling. The inspection found that the willingness of the organizations involved in border security and the formulation of the baselines is high. Respondents indicate that it now boils down to political-administrative urgency and willingness to provide the necessary funding. In January 2020, the final plan of action for sea and air borders should be ready.

3.4 The Council's Analysis

The lack of a good overview of the nature and scope of human trafficking and human smuggling within individual countries impedes the creation of an interregional and international perspective. Information from the various organizations that have a role in combating and preventing human trafficking and human smuggling is not shared and accessed across countries in a structural manner. The Council notes that it already arrived to this conclusion in 2015 and 2017 and issued recommendations within that context. The factors of 'coincidence, network and initiative' still largely determine whether information will be exchanged in 2019.³⁶

The interregional crime pattern analysis (CBA) currently under development could be a first step in providing the countries with insight into the nature and scope of human trafficking and human smuggling. The central team of the RST could, in the opinion of the Council, play a role in further accessing and combining information from the countries. The Council believes that the further establishment of a structure with the local intelligence organizations of the countries is a prerequisite. The CARIFORUM research into human trafficking in the Caribbean region can provide the countries, and especially the RST, with new insights into international aspects of human trafficking and human smuggling.

The Council believes that the investigation of human trafficking and human smuggling will benefit from up-to-date and effective investigative authorities, so that investigative agencies - such as the RST - will also in future be able to investigate the organized planning of these crimes and make use of cyber investigation methods. It is therefore of great importance that the modernized Criminal Procedure Codes are adopted and implemented as soon as possible.

The Council observes that the countries' investigative agencies focus on the national response to (often) serious forms of crime. In response to a specific case, the agencies can connect with each other, cooperate effectively and share information. The systematic sharing of professional knowledge, best

³⁴ See also the report 'Cooperation of Public Prosecutors' (RvdR, 2018)

³⁵ Document 'Baselines border security Aruba, Bonaire, Sint Eustatius, Saba, Curaçao and Sint Maarten', Understanding borders, conference November 21, 2018, first version for informational purposes s

³⁶ See also the report 'Exchange of police and judicial data within the Kingdom' (RvdR, 2015/2017)

practices, and research results in the area of human trafficking requires improvement, in the opinion of the Council. There is no structured annual exchange of statistics on victims, police investigations, suspects, prosecutions, and court decisions.

It is the opinion of the Council that countries can effectively make use of each other's knowledge, experience, plans and information materials which have already been developed. There is no need to reinvent the wheel every time. The MoU offers every opportunity to gain mutual advantage and to jointly advance the approach on human trafficking and human smuggling. To this end, the Council deems it necessary that key players such as the national coordinators receive the requisite time and support to perform their advocacy and liaison functions.

4. Local approach on Sint Maarten

4.1 Introduction

This chapter includes the findings of the desk research and interviews regarding the local approach taken on Sint Maarten. First, the overview of the nature and scope is described. Next, Section 4.3 outlines the approach to human trafficking and human smuggling in Sint Maarten. In section 4.4 an analysis of the research results is presented, after which in section 5 the Council formulates the conclusion and recommendations to the Minister of Justice of Sint Maarten based on the findings and analysis. With this, sub-question 4 and the main question of this inspection are answered: "To what extent is the approach to human trafficking and human smuggling within the Kingdom structured and does it contribute to the prevention and combating of human trafficking and human smuggling? ".

4.2 The nature and scope of human trafficking and human smuggling in Sint Maarten

The most recent CBA of Sint Maarten specified that there is no complete overview of the scope of the different forms of human trafficking and human smuggling. This most recent CBA is dated 2011. According to the Public Prosecutor's Office, updating the CBA requires a great deal of time and effort from those who must provide data. Meanwhile, the work is done with (partial) 'intelligence reports' and the charting of criminal alliances based on tactical investigations and analyses by the intelligence unit. The Public Prosecutor's Office and the KPSM consider this to be sufficient for determining the efforts and priorities of the investigation. The perception of the nature and scope of both human trafficking and human smuggling in Sint Maarten is, according to respondents, primarily determined by the criminal investigation and prosecution of cases. According to the Public Prosecutor's Office, the current situation of human trafficking and human smuggling is less detailed than it was some four years ago, because fewer human trafficking and human smuggling cases are currently under investigation.

Various studies and reports indicate that in the Caribbean part of the Kingdom, sexual exploitation, and labor exploitation in sectors such as retail, housekeeping, security, construction, and garden maintenance are the most common forms of human trafficking, although some respondents claim there is a lack of substantiation for this.³⁷ The interviews conducted by the Council in Sint Maarten as part of this inspection study supported this assessment of the nature of human trafficking. Not a single respondent indicated that they were familiar with other forms of exploitation in Sint Maarten, such as criminal exploitation or forced organ removal. Also, the criminal investigation, prosecution, and adjudication of human trafficking cases to date only concern sexual exploitation and (to a lesser extent) labor exploitation.³⁸ Moreover, all recorded victims of human trafficking in Sint Maarten are adults and the majority are women.

On a regular basis, illegal brothels are discovered in Sint Maarten in which there are very poor working conditions and in some cases situations of exploitation. As recently as late 2018, one such illegal brothel was shut down on suspicion of human trafficking. The victims were of Latin American nationality.³⁹ According to the Human Trafficking Unit (hereafter UMM), Sint Maarten is a final destination for human smuggling and trafficking on behalf of the (illegal) sex trade. Well known, common source countries are Colombia and the Dominican Republic. Suriname to a lesser extent also features as a source country, and a small number of victims from Eastern Bloc countries have been identified in the past.

³⁷ Trafficking in persons reports, U.S. Department of State 'Office to monitor and combat trafficking in persons'; CBA Sint Maarten 2011; OM Annual Reports

³⁸ OM Annual Reports

³⁹ OM Sint Maarten press release November 27,2018: ' Illegal brothel raided in major police operation '

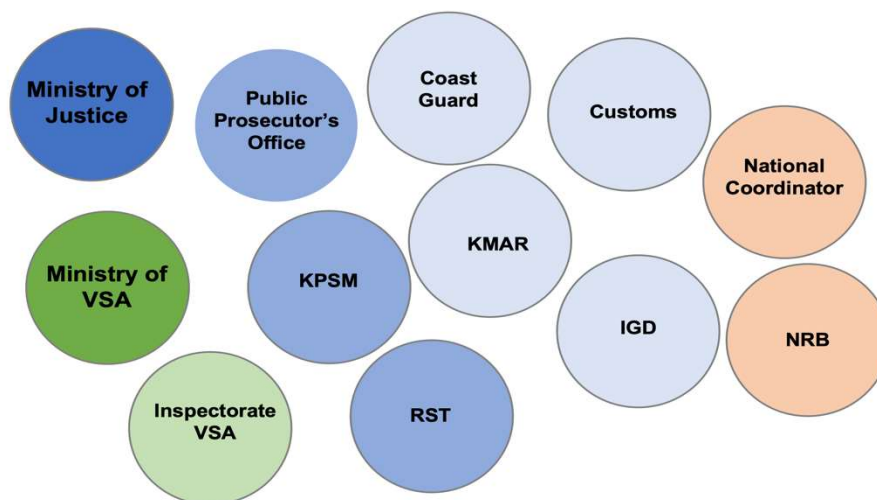
When considering the nature of human smuggling in Sint Maarten, one can conclude based on previous criminal cases that human smuggling by air and sea occurs in various forms. In 2015, the Sandpiper investigation dismantled a major smuggling network. Sint Maarten served a transit function in this case. Haitians residing illegally were smuggled in rickety boats via Sint Maarten to the US Virgin Islands. This dangerous smuggling route/method had been highlighted earlier by a 2010 case in which eight people, including four children, died after the smugglers' boat capsized. In 2016, a similar human smuggling incident occurred on this route that left 14 Cubans dead.⁴⁰ Besides being a transit country, Sint Maarten is also an intended destination for human smuggling. For example, several investigations have been conducted in the past involving foreigners attempting to enter Sint Maarten with false travel documents.⁴¹ As a result of a lengthy investigation dubbed Ostrich, several immigration officers in Sint Maarten were convicted of human smuggling, bribery, and abuse of office as of 2016. This involved an investigation into human smuggling and official corruption in which immigration officials at the airport provided illegal entry to Jamaicans, Haitians, and Guyanese, among others.⁴² According to several respondents, in recent years (after hurricanes Irma and Maria and following the escalation of the Venezuela crisis) there is a noticeable increase in Venezuelan victims/smugglers. They enter Sint Maarten on their own or with the help of smugglers both legally and illegally, after which residence and illegal employment, or exploitation, in primarily the construction sector are facilitated.

Human trafficking is, by definition, a transnational problem. As already indicated in Chapter 2, human trafficking in the Caribbean region is often associated with human smuggling because of the small scale and geographical location. This impression is confirmed by several respondents in Sint Maarten, in addition they see links between and combinations in the smuggling of (illegal) goods - such as weapons, drugs, money and jewelry - and persons.

4.3 The approach in Sint Maarten

4.3.1 Involved ministries, organizations, and collaborations

The different ministries, organizations and officials that have a primary role in addressing human trafficking and human smuggling in Sint Maarten are listed below:



⁴⁰ OM Sint Maarten Annual Reports 2015, 2016; The US Attorney's office Virgin Islands, press release October 16, 2014: 'Two Haitian Men Sentenced To 57 Months in Prison for Alien Smuggling Conspiracy that Killed Eight'

⁴¹ OM Sint Maarten Annual Report 2016

⁴² OM Sint Maarten Annual Report 2017

The Ministry of Justice is responsible for (among other things) the establishment and monitoring of policies, laws and regulations on crime control and prevention; immigration matters including admission and expulsion; the judicial system, the judiciary and the Public Prosecutor's Office.⁴³

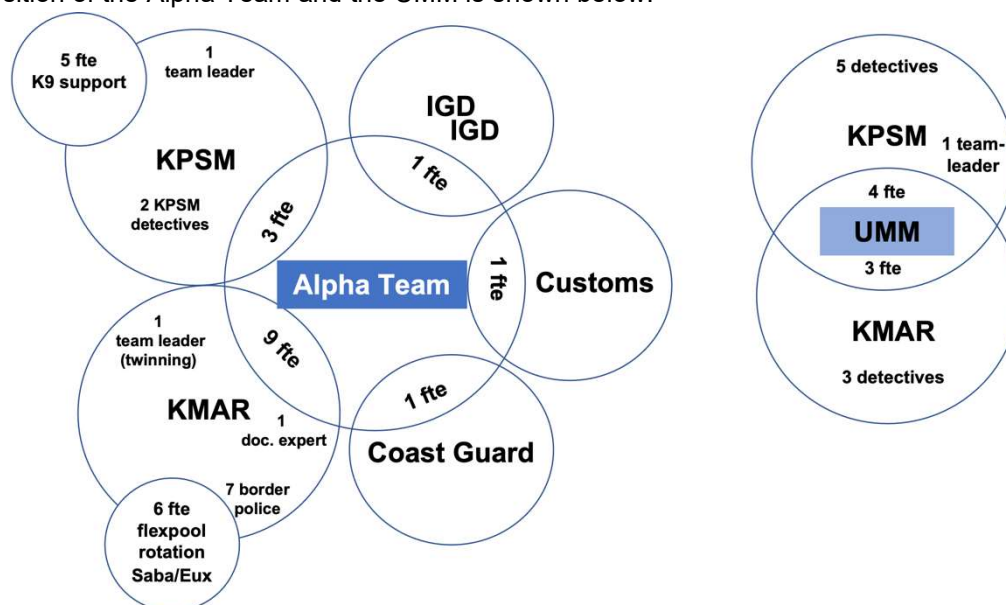
The Ministry of Health, Social Development and Labor (VSA) is responsible for, among other things, the establishment and supervision of laws and regulations and policies concerning social affairs, and labor; and the supervision of the execution and quality of social services, employment and working conditions. As part of the Inspectorate VSA, the labor inspectorate is charged with conducting labor control, labor, and safety inspections.⁴⁴

The Public Prosecutor's Office has authority for the investigation conducted by the Sint Maarten Police Force and the RST and is responsible for the criminal enforcement of the rule of law through the investigation and prosecution of criminal offenses such as human trafficking and human smuggling.⁴⁵

The Immigration and Border Protection Service (IGD), Coast Guard, Customs and KMar play roles in the border control of people and goods in Sint Maarten and combating illegal immigration and cross-border crime.

As explained in Chapter 2, the national coordinator has been appointed, under the responsibility of the Minister of Justice, to implement the agreements from the MoU and to manage the approach to human trafficking and human smuggling. In addition, the 'National Reporting Bureau on Human Trafficking' (NRB) has been established in Sint Maarten as an executing agency for the prevention of and protection against human trafficking.

For the prevention and combating of human trafficking and human smuggling in Sint Maarten, according to the respondents, three partnerships are important. *The multidisciplinary Alpha Team, the Unit Human Trafficking-Human Smuggling, and the recently formalized Intelligence Center Sint Maarten.* The composition of the Alpha Team and the UMM is shown below:



⁴³ National decree containing general measures for the division and further specification of the Ministry of Justice, 21-02-2013, AB 2013, GT no. 44

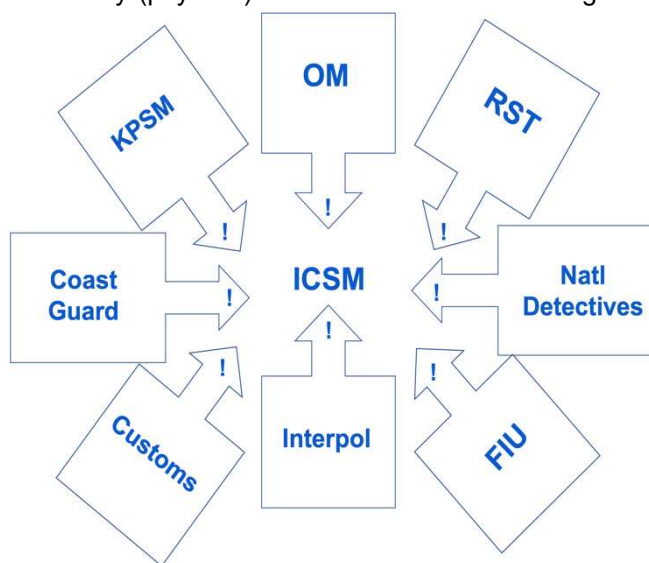
⁴⁴ National decree containing general measures for the subdivision and further specification of the Ministry of Public Health, Social Development and Labor

⁴⁵ Kingdom Act on Public Ministries; Kingdom Act on Police of Curaçao, Sint Maarten and Bonaire, Sint Eustatius & Saba

The Alpha Team was established in early 2017 to strengthen border surveillance at Sint Maarten's airport, Princess Juliana International Airport (PJIA). Every Monday, the Alpha Team conducts a briefing at PJIA where colleagues from the UMM, PJIA security and the French Police Aux Frontières (PAF) participate. During this briefing, and occasionally outside of it, relevant information is shared so that operational cooperation is possible where necessary. For the seaport, there is already on a fortnightly basis a seaport consultation with representatives of the Alpha Team, Maritime Service, Coast Guard, Customs, KPSM (Info Unit; CID; TCI; Border and Immigration Control), the UMM, port security, Security Service Sint Maarten and the PAF. Part of the Alpha team will soon be stationed at the seaport. At present, this will not be associated with an increase in capacity, although those involved believe that it is needed. Housing is also a matter of concern. The Alpha Team's workspace at the airport leaves much to be desired and there is no available office space at the seaport.

The Human Trafficking-Human Smuggling Unit was created in early 2015 specifically to conduct investigations into human trafficking and human smuggling. Under the responsibility of the KPSM, detectives from the KMar (from the flexible deployable pool, as described in the KMar protocol in Chapter 2) and the KPSM collaborate in this unit.

The Intelligence Center Sint Maarten is a partnership between: KPSM, Interpol Sint Maarten, the Financial Intelligence Unit (FIU or *MOT Meldpunt Ongebruikelijke Transacties*), the Public Prosecutor's Office (OM), the National Detectives (*Landsrecherche*), Customs, the Coast Guard Caribbean, and the Support Center Sint Maarten, as well as the RST. Unlike the Alpha Team and the UMM, the ICSM is not a separately established team in which there is daily (physical) collaboration on site. Intelligence officers from the organizations involved work together by pooling and correlating information, both on request and unsolicited. Day-to-day coordination rests with the head of the information unit of the KPSM. After a pilot phase in which the organizations primarily invested in the partnership, trust, and knowledge of each other's practices, the ICSM was formalized in June 2019 and secured for the future by the signing of the cooperation agreement. This agreement provides the partners with the leeway to exchange information and expertise. Each partner's tasks can thereby be performed in a more effective manner, and products and services can be jointly developed.⁴⁶



4.3.2 Criminal justice approach

- Operational cooperation: from notification to criminal investigation

When a notification of human trafficking or human smuggling is received, for example, through regular border control by immigration officers or at the initiative of the victim (first line), the KPSM or - at the airport - the Alpha Team will investigate this notification (second line) in more detail. If the suspicion of human trafficking or human smuggling is confirmed, the UMM is activated. Over the past few years, this process has occurred approximately once or twice a month. Occasionally, the Alpha Team handles (caught in the act) cases itself, in which event the approval of the (acting) head of the Border Control and the Immigration Control department of the KPSM is required, as well as the authority of the Public Prosecutor's Office. Acting based on a suspicion, the UMM conducts a brief preliminary investigation

⁴⁶ OM Sint Maarten press release date of June 14, 2019: 'Intelligence Center Sint Maarten formalized'

and presents the results, in the form of a project proposal, to the steering team. A decision is then taken in consultation with the coordinating investigating officer of the Public Prosecutor's Office as to whether the UMM will handle the case on a project basis or with a smaller ("short term") investigation. Caught in the act cases are immediately handled by the UMM, the steering team is informed of this through progress reports. With the current investigative capacity, the UMM can, according to the respondents, conduct about 4 large project-based investigations per year, in addition to short term/caught-in-the-act investigations (at the time of the establishment of the UMM, this was referred to as the "two-track policy"). Although the UMM is specifically established for human trafficking and human smuggling investigations, the unit sometimes provides assistance during major operations cases in other investigations. Conversely, the unit can call on, for example, the resources of RST during major operations.

No standard working arrangements have been established for the cooperation between the first line, the Alpha team and the UMM which, for example, include rules on when the Coast Guard or Immigration should call in the Alpha team and/or the UMM. However, according to the respondents, this cooperation generally works well. Occasionally, the Immigration officials have called in the Alpha team or the UMM when it is (too) late and as a result they have lost valuable time and information to properly investigate a case. The overall intelligence position is further constrained by the fact that the different organizations/teams use different systems which are not interconnected. Immigration officers and the Alpha team use the Border Management System (ActBMS), but also update separate registration systems. The UMM and the IGD also use different, unconnected systems. An improved version of ActPol has since been purchased and refresher courses are being given to all KPSM staff (Basic Police Duties) as well as the members of the Alpha Team, after which this system will be implemented without delay. The IGD plans to implement DecosJoin. The intention is to link ActBMS and DecosJoin. The National Detectives and the KMar use a separate database (Access) to produce daily reports; they may introduce a version of ActPol in the future that is suitable for criminal investigations. All respondents recognize the problem of fragmented information (systems) and the importance of information-driven operations. The KPSM and the Prosecutor's Office indicate that some progress has been made in the correlation of information gathering and analysis by the CID and the KPSM's Intelligence Unit. The arrival of the ICSM is expected to further improve the intelligence position in the future.

- Prosecution and court proceedings

The Public Prosecutor's Office devoted considerable time to human trafficking, primarily involving sexual exploitation in the adult entertainment sector of Sint Maarten. This resulted in several major criminal cases against well-known brothels including Casa Blanca and Hypnotic (investigations 'Papegaai' and 'Gier'), El Capitan and Le Petit Chateau (investigation 'Pompeii'). In January 2019, the management of the Casa Blanca brothel was also convicted of human trafficking but acquitted of unlawful deprivation of freedom in the appeal filed by the prosecution.⁴⁷ In addition, the Public Prosecutor's Office filed a confiscation claim of ANG 15,170,583.40 in court against Casa Blanca to strip the defendants of their unlawfully obtained profit. In the Pompeii case, the brothel owner, manager, and supervisor were convicted by the court of First Instance in April 2019 for human trafficking, deprivation of freedom and illegal employment. In addition, the prosecution announced a US\$5 million confiscation claim. In both cases, the sentences imposed differ (significantly) from the prosecution's sentencing demand and the sentencing decision contains several peculiarities.

⁴⁷ In addition to human trafficking and unlawful deprivation of freedom, the criminal cases against the manager and assistant manager of Casa Blanca also involved illegal possession of firearms and tax evasion

Sentencing demand and sentence in human trafficking case against management Casa Blanca and Hypnotic:

	Public prosecutor's sentencing demand in First Instance	Sentence of the Court in First Instance	Public prosecutor's sentencing demand in appeal	Verdict on appeal
Managing Director Casa Blanca	8-year prison sentence 200.000 ANG fine	2-year prison sentence, 1 year conditional 15.000 ANG fine	6-year prison sentence 200.000 ANG fine	2-year prison sentence, 1 year conditional 15.000 ANG fine
Assistant manager Casa Blanca	7-year prison sentence 200.000 ANG fine	2-year prison sentence, 1 year conditional 15.000 ANG fine	5 year and 6 months prison sentence 200.000 ANG fine	2-year prison sentence, 1 year conditional 15.000 ANG fine
Brothel owner Casa Blanca	5-year prison sentence	44-day prison sentence, equal to pretrial custody	4-year prison sentence	90-day prison sentence, 46 conditional
Assistant Casa Blanca	4-year prison sentence	342-day prison sentence, equal to pretrial custody	342-day prison sentence, confirmation of ruling	6 months, 3 months conditional
Secretary/manager Casa Blanca/Hypnotic	3-year prison sentence	2-year prison sentence, 1 year conditional	3-year prison sentence	1 year prison sentence, 6 months conditional

First instance sentencing grounds in human trafficking case against management Casa Blanca and Hypnotic:

Also considering the fact that the Government has previously inadequately assumed its responsibility within the framework of supervision of this vulnerable industry, it is not appropriate to impose long prison sentences. It is true that Casa Blanca has perpetrated a crime, but Casa Blanca cannot be held entirely responsible for its continued existence over the years. Whereas Casa Blanca should have realized that women in a vulnerable position should be treated with more care, the country Sint Maarten could have called Casa Blanca to order earlier by emphasizing, after inspections, the difficult situation in which the women found themselves.⁴⁸

On appeal, the defendant argued as a defense, partly in relation to this ground for sentencing, that the Public Prosecutor had created the impression among the defendants that the offenses committed would fall within the scope of the Government of Sint Maarten's prostitution tolerance policy. According to the Common Court of Justice, however, this defense was insufficiently substantiated, and the government policy is not directly attributable to the Public Prosecutor.

Sentencing demand and imposition in human trafficking case against management El Capitan and Le Petit Chateau:

	Public prosecutor's sentencing demand in First Instance	Sentence of the Court in First Instance
Brothel owner El Capitan and Le Petit Chateau	4-year prison sentence, 1 year conditional	1 million ANG fine, 3-year conditional prison sentence

⁴⁸ ECLI:NL:OGEAM:2018:137

	Public prosecutor's sentencing demand in First Instance	Sentence of the Court in First Instance
Manager El Capitan	3-year prison sentence, 1 year conditional	500.000 ANG fine, 2-year conditional prison sentence
Supervisor Le Petit Chateau	2-year prison sentence, 6 months conditional	250.000 ANG fine, 1-year conditional prison sentence
Assistant Le Petit Chateau	2-year prison sentence, 6 months conditional	Acquittal, lack of evidence

First instance sentencing grounds in human trafficking case against management El Capitan and Le Petit Chateau:

Finally, the following is considered with regard to the sentencing option. Sint Maarten's detention system has remained in an inadequate condition for many years. Since the passing of Hurricane Irma there also exists a significant lack of staffing capacity. Therefore, it is unclear whether an imposed unconditional prison sentence will be carried out or how long it will take before this is possible. For that reason, the Court is more critical of the imposition of an unconditional prison sentence when considering the sentencing option. In this case, considering the aforementioned circumstances of this case and considering these enforcement difficulties, the Court considers it appropriate to impose a substantial fine instead of an unconditional prison sentence.⁴⁹

Respondents from the Public Prosecutor's Office noticed that the Judge, with this reasoning, took what they considered to be an unjustified preemptive step with regard to enforcement. After all, it is not a certainty that the enforcement of the sentence will take place in the Point Blanche prison, considering that the Mutual Regulation on Detention Capacity allows for (temporary) placement elsewhere in the Kingdom. According to the respondents, it is also questionable to what extent this sentence serves as a deterrent. Normally, in vice cases (sexual exploitation) fines are not exclusively imposed, but high amounts like these (when they become irrevocable and are executed) are definitely felt, according to the public prosecutor. The country coordinator of Sint Maarten asserts that stronger action and more severe sentences are needed. Indeed, in the new Penal Code, the prison sentences for human trafficking have been adjusted upwards in response to the relative balance in maximum sentences.⁵⁰ The low sentences and the lack of imprisonment send the wrong signal to the population and (potential) offenders, according to the national coordinator. According to most respondents, the preventive effect of criminal justice in general is limited, some offenders care about a conviction, others continue undeterred.⁵¹

- Victims and victim services

A complicating factor in the criminal justice approach to human trafficking and human smuggling is, moreover (as demonstrated in the Casa Blanca criminal case), that sex workers and other workers from poorer countries are often dependent on, and therefore 'happy' with, their (limited) earnings. Despite the poor living and working conditions and/or situation of exploitation in which they find themselves, they do not always, or perhaps mostly not, see themselves as victims, according to several respondents. The number of victims reported to the police is therefore low. The support and relief of victims who are identified is also a big problem. Victim assistance is completely lacking in Sint Maarten, even though this is desperately needed according to all respondents. Victims do not receive adequate emotional, practical, or legal support. The lack of victim shelters also frustrates criminal investigations. After a raid, there is nowhere for victims to be accommodated. Usually victims leave Sint Maarten

⁴⁹ ECLI:NL:OGEAM:2019:53 /54 /55 /56

⁵⁰ Explanatory memorandum article 2:239 Penal Code Sint Maarten

⁵¹ See e.g., the investigation 'Mus' and the recent new conviction of the owner of Juan Bar for similar offenses: running an illegal brothel, human trafficking, and illegal employment of sex workers

quickly, which makes interrogation in later stages of the investigation more difficult. The defendant also uses this as a defense in a criminal case. During the investigation, the police are always looking for possibilities to make up for the lack of victim support as best as possible. One of the respondents provided the example of the Pompeii investigation in which, in consultation with the Sint Maarten Public Prosecutor's Office, the victims were accommodated in their home country, the Dominican Republic. In the past, in several cases the accommodation possibilities of Safe Haven, the shelter for victims of domestic violence in Sint Maarten, have been used. Respondents describe this as an emergency solution ("rowing with the available oars"), however, this will not eliminate the need to establish a specific shelter for victims of human trafficking. According to the lawyer who was interviewed by the Council within the framework of this research, the KPSM and the Public Prosecutor also provide victims with insufficient guidance and information about their rights. Sint Maarten also lacks a compensation fund to which victims can appeal. According to the attorney at law, victims in general can't get their hands on the compensation they are awarded.⁵²

- *Capacity and expertise*

The approach to human trafficking and human smuggling was prioritized at the strategic level in the JVO. According to several respondents, this is a noble goal, but this prioritization does not (always) work at the operational level because of the limited resources and investigative capacity, as compared to the high influx of serious crimes. For example, in the case of a new homicide investigation that results in considerable social unrest, investigative capacity regularly must be shifted from one major investigation to another. According to the respondents, it is helpful that the UMM has reserved investigative capacity for human trafficking and smuggling cases. As far as knowledge and expertise are concerned, the UMM relies heavily on the KMar investigators working in the unit. The MoU on Human Trafficking/Human Smuggling includes agreements on the transfer and safeguarding of knowledge and expertise. According to the MoU, the countries must ensure that there is sufficient specialized knowledge in this area to guarantee the continuity of investigations, detection, and/or controls. However, the support of the KMar is dependent on the annual allocation of flexpool personnel (in accordance with the protocol mentioned in Chapter 2) and the KPSM investigators in the UMM are not specifically trained to investigate human trafficking and smuggling cases. There was supposed to be a course for the UMM in 2017 but it was cancelled due to the passage of hurricanes Irma and Maria, subsequently the unit has not received any more information about this matter. According to the respondents, the Alpha team has sufficient knowledge and experience to collect warning signals, several courses have also been offered at the IGD. In addition, all KPSM employees at the Border Control and Immigration Control Division have received training in human trafficking and human smuggling. According to the Public Prosecutor, in general (for all subjects) there is a lack of specialized knowledge in Sint Maarten. There is a lack of dedicated, specially trained interrogators for human trafficking and smuggling cases, but there are several good detectives with the willingness to explore in depth. Even within the prosecutor's office, the prosecution cannot maintain specializations. The four public prosecutors must serve many different portfolios; they must therefore be allrounders. Moreover, the prosecutors work on a temporary basis at a public prosecutor's office, which does not contribute to continuity⁵³. When necessary, the prosecutors seek advice from their predecessors, which also contributes to continuity in criminal cases, according to the Public Prosecutor's Office.

Although there was sufficient investigative capacity and expertise in human trafficking and human smuggling, the respondents from the judicial organizations agreed that a criminal justice approach alone will not achieve the desired effect. Criminal justice is in principle repressive in nature. To prevent and combat human trafficking and human smuggling, according to the respondents, a preventive administrative approach is also urgently needed in Sint Maarten.

⁵² See also reports: 'Victim support in Sint Maarten' (RvdR, 2012); 'Victim support in Sint Maarten, a follow-up study' (RvdR, 2016); 'Prostitution policy and enforcement in Sint Maarten' (RvdR, 2016)

⁵³ See also the report 'Cooperation of public prosecutors' (RvdR, 2018)

4.3.3 Administrative approaches and alternative interventions

- Responsibility of ministries

According to the SG and the Head of the Judicial Affairs Division of the Ministry of Justice, criminal investigations mainly reveal the problem of sexual exploitation in brothels and there is almost no evidence of human trafficking in other sectors or of large-scale human trafficking in Sint Maarten. Since the problem manifests itself primarily in the prostitution sector, the approach is also focused on the prevention of sexual exploitation through the regulation of prostitution, according to the Ministry. There are no broader policies on the topics of human trafficking and human smuggling. The authority for administrative enforcement action lies with individual ministries. For example, the responsibility for closing brothels lies with the Minister of Tourism, Economic Affairs, Transport and Telecommunications (TEATT) since brothels hold economic licenses.⁵⁴ The issuance and revocation of work and residence permits is a responsibility of the Minister of Justice. Until May 2016, the Director of IGD held this (mandated) authority to make decisions; due to a criminal human trafficking investigation involving the former director, this mandate was revoked. In the past, the Public Prosecutor's Office petitioned the Minister of Justice to urge his counterpart to close brothels. This request was passed on to the Minister of TEATT, but no follow-up was subsequently given, according to the Ministry of Justice. There is no strategic consultation with the other ministries in which human trafficking and human smuggling are on the agenda, and no agreements have been made for inter-ministerial action to achieve an integrated approach. Also, according to the respondents, there are no initiatives or policies from the ministries in Sint Maarten that stimulate or facilitate cooperation between law enforcement, government, humanitarian aid, NGOs, and the public and private sector.

- Administrative action and joint supervision

Sint Maarten maintains a tolerance policy towards prostitution. In 2015, a licensing requirement for brothels was included in the new Penal Code (Article 2:212). This licensing requirement has not yet been implemented, and no licenses have been issued. The Ombudsman has challenged this article of law on the grounds that it would be contrary to the constitution (unequal treatment of women). Before the Constitutional Court, the Ministry argued that this article is not in conflict, but that it concerns the way in which the obligation to obtain a permit is regulated by national decree. The Constitutional Court endorsed this and declared the Ombudsman's complaint unfounded.⁵⁵ The idea was that by building in safeguards, women could be better protected against excesses in prostitution and human trafficking. However, thus far Sint Maarten has no established regulations and policies that regulate the adult entertainment sector or make it subject to verification.⁵⁶

As a result of criminal investigations, the Public Prosecutor sent several letters to the Minister of Justice advising that administrative measures be used to prevent human trafficking, e.g., by ordering the closure of brothels. However, this was never followed up by the administration. During major campaigns (searches and arrests) and during criminal trials, the topic receives brief public attention, but subsequently the penalties are low and there is a lack of administrative urgency and action to effectively regulate and control the prostitution sector to prevent human trafficking and smuggling in the sex industry on Sint Maarten, according to the Public Prosecutor's Office. Because of this lack of administrative action and in view of the scarce capacity and resources, the Prosecutor's Office has started to re-prioritize human trafficking investigations. There is still attention for the adult entertainment sector, but to a lesser extent than a few years ago. Now that Sint Maarten is in the reconstruction phase after hurricanes Irma and Maria, the Public Prosecutor has shifted the focus to human trafficking and human smuggling in/on behalf of the construction sector. However, even here the Public Prosecutor

⁵⁴ Ministerial Decree mandating economic permits

⁵⁵ ECLI:NL:OCHM:2013:2

⁵⁶ See also the report: 'Prostitution Policy and Enforcement in Sint Maarten' (RvdR, 2016) which further elaborates on the draft country regulation on licensing of sex businesses which was drafted with all relevant chain partners, it has yet not been presented to the Parliament

receives few notifications from the administrative supervisory and enforcement authorities (e.g., the labor inspectorate) and is very dependent on its own preliminary investigations.

Other respondents, including the Inspectorate VSA, confirm that there is no joint approach or controls in the context of human trafficking and human smuggling at the time of this study. According to the Inspectorate VSA, it has been about 4 years since the last joint controls with the IGD and the judiciary, despite their previous success. The Labor Inspectorate of the Inspectorate VSA oversees monitoring working conditions both at the collective and individual level. The labor inspectorate must monitor employers for "compliance with recognized standards and regulations on working conditions and terms of employment".⁵⁷ The National Ordinance regulating the employment of foreign nationals (*LAV-Landsverordening, houdende regels met betrekking tot het doen verrichten van arbeid door vreemdelingen*) forms the most important basis for this. In recent years, the Labor Inspectorate no longer has a clear view of the current situation in the prostitution sector. As of 2014, the prostitution policy is "vague" and the Inspectorate VSA's authority to supervise sex workers is unclear, as a decision on the position of sex workers has still not been made: are they employees with an employment contract and a work permit or self-employed with a business license. In the case of the latter, the Inspectorate VSA has no supervisory authority based on the LAV.⁵⁸ The construction industry is currently in better shape with the labor inspectorate. Every week 3 to 4 construction sites are inspected; this concerns small and large construction projects. However, here too the authority to inspect is based on the LAV and is not specifically aimed at detecting human trafficking and human smuggling. Moreover, the scope of action of the labor inspectorate is limited to issuing warnings for violations of the LAV and, in case of re-offense, drafting an official report. The Inspectorate has submitted several official reports to the public prosecutor for LAV violations, but nothing has been done with them due to understaffing. However, this has been the case for years and is very demotivating for inspectors, according to the Inspectorate VSA. In addition, the Inspectorate VSA submits information to the Border Control and Immigration Control Division of the KPSM, but in recent years, according to the Inspectorate, has rarely received any feedback on this. In early 2016, a controversy arose over a joint inspection at the Sonesta Maho Beach Resort and Casino⁵⁹, since then no joint inspections have been conducted with the IGD either, despite repeated requests from the Inspectorate VSA to do so. Shortly after the investigation period of this report, the Public Prosecutor's Office, the KPSM (Border Control and Immigration Control Division), the UMM, the Alpha Team, the Coast Guard, Social and Health Insurance (SZV) and the Inspectorate VSA, for the first time in a long time, again conducted a multidisciplinary inspection.

A total of 20 illegal workers were found at a construction site working for two different construction companies. The construction companies were fined and the illegally employed were registered with a reporting obligation to immigration.⁶⁰ There was no human trafficking in the form of labor exploitation as far as we know.

The investigative authority of the special police officers ('BavPol'ers) could be better utilized, with standard reports produced by the Public Prosecutor's Office. According to the Public Prosecutor's Office, these kinds of initiatives always must come from within the Public Prosecutor's Office and there is little or no support from the administration.

- The national coordinator and the National Reporting Bureau on Human Trafficking

The webpage of the Ministry of Justice refers to the national coordinator - the director of the IGD - as the initiator in the approach to human trafficking and human smuggling. In addition, the site mentions

⁵⁷ National decree containing general measures for the subdivision and further specification of the Ministry of Public Health, Social Development and Labor

⁵⁸ National Ordinance, containing rules regarding the performance of labor by foreign nationals, 27-03-2013, AB 2013, GT no. 357; National Decree, containing general measures, for the implementation of sections 3, part e, 5, third and fourth paragraphs, and 8, first paragraph, part f, and second paragraph, of the National Ordinance on Labor of Foreign Nationals, 21-02-2013, AB 2013, GT no. 73

⁵⁹ The daily herald, press release 11-2-2016: 'Govt. is still to receive report on Maho inspection incident'

⁶⁰ The daily herald, press release 13-8-2019: 'Construction companies fined after all workers found undocumented'

that the "National Reporting Bureau on Human Trafficking" (NRB) is the implementing organization for the "prevention and protection" against human trafficking and that with its establishment, a major step has been taken in the "organized and structured approach" to human trafficking and human smuggling in Sint Maarten. However, this web page does not appear to be up to date.⁶¹ The former director of the IGD was dismissed in 2016 on suspicion of human smuggling, for which he was convicted by the Court in First Instance in April 2019. After several changes and then prolonged absences of the former national coordinator(s), this task was assigned to the (acting) Division Head of Border Control and Immigration Control of the KPSM in the second half of 2018. Although the new coordinator is certainly qualified, according to the respondents, as (acting) divisional head he has many other tasks and lacks the necessary support. There is currently no regular consultation between the national coordinator and the chain partners on this specific topic, but when a case arises everyone manages to contact each other, according to the respondents. As described in the previous chapter, an interregional conference on human trafficking and human smuggling was organized based on the MoU in September 2018. The current country coordinator of Sint Maarten was appointed just before this conference and participated with a delegation from the UMM, the Alpha Team, the KPSM, the OM and the Ministry of Justice. Everyone was enthusiastic, it was educational in terms of content and mainly a good networking opportunity. Among other things, the problem of the support and aftercare of victims emerged as one of the points of concern/action. Following the conference, a consultation with chain partners in Sint Maarten was dedicated to this, but subsequently it was not taken any further.

The NRB has not been operational in recent years. It is not clear to the respondents under which organization the NRB formally operates. The IGD believes it is part of the KPSM, but the KPSM has not (yet) incorporated the NRB into the organization. By his own request, the country coordinator received a box containing documents from the former NRB office in late April 2019. No further transfer to the KPSM or the national coordinator has taken place. The documents cover the period from 2012-2014. During that period, 12 employees reportedly worked at the NRB. It seems that since the resignation of the former director of the IGD, no one has been involved with the NRB. There is supposedly 1 employee still working but it is not clear to the respondents who that is. For a considerable time, notifications or reports on human trafficking or human smuggling have not been received from the NRB. The NRB hotline number, as listed on the Ministry of Justice website, appears to be an IGD office number. When this number is called, they are immediately referred to the KPSM, even though this is not yet the arrangement according to the KPSM. In addition to the hotline function, one of the NRB's tasks was to provide information for the prevention of human trafficking and human smuggling; however, this has also been discontinued for some time. The KPSM is trying to remedy this in part by proactively drawing up a communication plan with which the NRB would be able to work and with which the various target groups could be reached. In addition, the KPSM website is being updated with general information about human trafficking and human smuggling, and the UMM and the KPSM's accessibility. The KPSM, according to the (acting) Division Head of Border Control and Immigration Control, is interested in taking on (some of) the tasks of the NRB, but for this to happen, the necessary personnel must be able to be recruited.

- *Border control*

Respondents from the judicial organizations have observed improvement in border control in Sint Maarten over the last year. Despite the limited capacity and resources, the agencies involved, such as Customs, are working hard on professionalization and improvement. The added assistance for control of persons and goods by the KMar resp. Dutch Customs, which was made available by the Netherlands with the *Mutual Agreement Strengthening Border Control Sint Maarten*, contributes to this. In May 2019, a cooperation protocol was signed between the IGD and the KPSM, for the period May 31, 2019 - May 31, 2020. This protocol aims to promote (automated) information exchange, mutual coordination, assistance or (advisory) support and the professionalism, quality and integrity of officers working in the immigration chain. Article 7 of this protocol is specifically focused on trafficking and smuggling, and

⁶¹ Last survey date for the purposes of this study: October 2019

states: *to combat and enforce in respect of trafficking and smuggling, the agencies will exchange information that addresses prevention, enforcement, cooperation, and protection of victims.* Although the Council recognizes a role for the IGD in addressing human trafficking and human smuggling, it was not possible to schedule an interview with this agency for this study. The staff member who was contacted indicated that, since the 'transfer of the NRB tasks', the IGD no longer deals with human trafficking and human smuggling. For the sake of completeness, it should be mentioned at this point that it is not clear whether this is the opinion of an individual employee or the view of the entire IGD. The latter seems unlikely given the recent signing of the aforementioned cooperation agreement between the IGD and the KPSM.

4.4 The Council's Analysis

4.4.1 Legislation and policy

Sint Maarten has committed itself to numerous extensive (inter)national agreements to tackle human trafficking and human smuggling. Yet, or perhaps because of this, a tangible approach to this issue never structurally materializes. The MoU has been evaluated, updated, and re-adopted by the countries on three separate occasions, but the development of several crucial components, such as victim care, has remained stagnant for years in Sint Maarten. While international and local laws and regulations assume a human rights-based approach in which the victim is given a central role, this is being virtually ignored partly due to the absence of victim assistance in Sint Maarten. To facilitate the approach to human trafficking and human smuggling and the cooperation required for this, the (legal) bottlenecks in legislation and policy must be resolved. This requires inter-ministerial cooperation in the preparation of legislative and policy proposals on which political-administrative decisions can subsequently be taken. In the formulation of legislation and policy, the human rights perspective may not fade into the background. Exploitative situations must be prevented in every form, in every sector, and victims of trafficking deserve protection and support.

In 2016, the Council released the report *Prostitution Policy and Enforcement in Sint Maarten*. As early as that time, it was noted that the policy is not watertight and there is virtually no cooperation between the administrative and criminal law enforcement agencies. All respondents indicated that there are openings in this field, however, so far no one has taken the first step to achieve a systematic integrated approach. In 2016, the Council issued the following recommendations to the Minister of Justice:

1. *Provide for a comprehensive system of laws and regulations for law enforcement purposes.*
2. *Evaluate the policy and its enforcement, when possible, in cooperation with the other relevant ministers. Make suggestions for adjustments, where necessary or desirable. In doing so, involve all relevant interests.*
3. *Promote chain cooperation and shared responsibility for policy objectives.*
4. *Provide for effective inspections and strictly enforce legislation and other required rules. To this end, also provide training for inspection personnel on how to recognize abuses.*
5. *Be responsible for proper feedback and information sharing between administrative and criminal enforcement.*
6. *Ensure adequate facilities for the accommodation of victims of human trafficking, exploitation and forced prostitution.*

The Council concludes that, to date, no follow-up has been given to any of the earlier recommendations. The persistent lack of clarity in legislation and policy regarding prostitution complicates the approach to prostitution-related crimes and makes the position of sex workers in Sint Maarten more vulnerable. Partly in response to the criminal case against Casa Blanca and Hypnotic, the Council emphasizes that a tolerance policy should create the conditions under which prostitution may be practiced. This tolerance

policy can in no way be a justification for exploitation within prostitution; such lines of reasoning must therefore, in the opinion of the Council, be explicitly rejected.

Based on these findings and conclusion, the present inspection can also be considered a follow-up examination to the report *Prostitution Policy and Enforcement in Sint Maarten*. The Council urges the Minister of Justice to act on the recommendations made in 2016 and to include the relevant findings regarding human trafficking from this inspection study.

4.4.2 The nature and scope of human trafficking and human smuggling in Sint Maarten

The overview of the nature and scope of human trafficking and human smuggling in Sint Maarten is almost exclusively based on criminal investigations and therefore limited. The fact that to date, the judiciary has no insight into other forms of human trafficking besides sexual and labor exploitation does not mean that these other forms of exploitation do not exist. Moreover, it is plausible that because all registered victims are adults, the focus of the judicial approach is on exploitation in the (condoned) prostitution sector and the construction sector of Sint Maarten. Potential other forms of exploitation and underage victims are therefore not in the picture. Parallel to this study, the Council conducted an inspection study on the approach to drug crime. In various interviews held in the context of that investigation, signals emerged that minors were being deliberately used by adults to commit criminal acts, such as the purchase or sale of drugs. Such activities could qualify as criminal exploitation, as included recently in the Public Prosecutor's Guidelines for Criminal Proceedings in Human Smuggling and Human Trafficking. The Council finds that this form of human trafficking has not received any attention at all in Sint Maarten, while given the indications it may be a real problem that affects minors.

4.4.3 The approach to human trafficking and human in Sint Maarten

- The criminal justice approach

The Council finds that for the prevention and combat of human trafficking and human smuggling in Sint Maarten, is too reliant on the criminal justice approach. In general, but certainly with the current resources, capacity, expertise, and status of law enforcement in Sint Maarten, a criminal justice approach can only produce limited results. Moreover, due to the deplorable state of the Point Blanche prison, an important capstone of the criminal justice chain is currently missing. With the sentence imposed in the human trafficking case Pompeii, the judge looked for a way to circumvent the problems surrounding the prison. The Council does not wish to pass judgment on the adjudication and application of the principles of subsidiarity and proportionality in the sentencing of individual cases. In general, the Council does request attention for the penal objectives of special and general prevention and the fulfilment of the needs of victims, which are influenced by the severity and type of sentencing. In view of the above, in this report the Council also considers it necessary to emphasize the urgency for the thorough and structural improvement of the prison.

The Council agrees that it is impossible to achieve the desired result with a criminal justice approach alone. In (inter)national agreements and the 4P paradigm, as described in Chapter 2, 'protection' and 'prevention' are just as important as 'prosecution'; in addition, 'partnership' as the fourth P is essential for a successful approach. In view of the cross-border nature of human smuggling and trafficking, shifting the focus to the external borders can contribute to the early detection and prevention of these crimes. Moreover, the clustering of cross-border crimes can make the judicial approach more effective and efficient, as it enables the interrelationship between crimes and networks to become increasingly visible. Limited resources and capacity can then be used more efficiently in a concentrated manner. However, with this focus on preventing and combating crime at the border, the attention for the vulnerable groups that already reside, legally or illegally, in Sint Maarten cannot be relaxed. The approach to human trafficking and human smuggling within the borders also deserves a fresh start. In

recent years, there has been insufficient supervision and enforcement in high-risk sectors involving sexual and labor exploitation (brothels and construction) and little or no focus on other forms of human trafficking, according to the Council's research findings. When preventing and combating human smuggling, from the border control perspective, more attention seems to be given to the facilitation of unlawful entry to, transit through or departure from Sint Maarten (art. 2:154, paragraph 1. sub a. WvSr), than towards the facilitation of unlawful residence in Sint Maarten, or the facilitators of human smuggling (art. 2:154, paragraph 1. sub b. WvSr).

According to the Council, unclear policy and the lack of a complete overview and an integrated approach or barrier model in which the administrative and criminal justice domains reinforce each other are the main obstacles in this regard.

- Administrative approaches and alternative interventions

The fact that the Ministry of Justice only uses the criminal justice approach to human trafficking and human smuggling as a point of departure means that broader policymaking does not materialize. The Ministry of Justice does not seek cooperation with other Ministries for the purpose of an integrated approach in which administrative action and alternative interventions are also used to combat and prevent human trafficking and human smuggling. The Council concludes that, instead of combining forces, the Ministries involved shift the responsibility for the approach to each other.

As a result of the intensified attention to the external borders and the exchange of information, the Council believes that at the operational level, quality improvements are being realized and successful cooperative ventures are being created. Employees of various organizations within and beyond the judicial chain are becoming better acquainted with each other (their competencies), share information and, where possible, work together. The Council encourages the organizations to continue along this path. Greater trust in and knowledge of each other's work processes contribute to good cooperation. For the sake of uniformity and continuity, however, it is important that working agreements, e.g., regarding the timing of scaling up and/or transfer, are defined. In this way, cooperation cannot be dependent on individuals but instead becomes a permanent working method. In addition, the Council sees opportunities for the near future by (re)involving administrative enforcement agencies, such as the labor inspectorate, in multidisciplinary inspections. Furthermore, this operational cooperation should be supported by IT as soon as possible. Discussions on the application of ACTS have been ongoing for years, but decision-making on its full implementation is lagging. As a result, organization(s) continue to work with their own databases. In previous investigations and the States of Law Enforcement, the Council observed that the lack of investment in technological applications has a negative effect on the intelligence position and law enforcement.⁶² The same certainly applies to tackling crimes with a cross-border character and a low reporting rate, such as human trafficking and human smuggling. In addition, based on the findings to date, the Council observes a lack of administrative involvement, strategic vision, and policy to facilitate and structurally secure the expanding operational cooperation.

According to the Council, the prevention and combating of human trafficking and human smuggling in Sint Maarten still requires a (big) push in raising awareness of the severity of the problem. This may also open the door to public-private cooperation, which is now completely absent, but by which additional thresholds could be created. Organizing awareness campaigns and annual information activities is also an agreement under the MoU. The Council envisages a role for all ministries and agencies involved, but the national coordinator and the NRB are in a position to take the lead. The NRB will need to be restructured so that it can properly fulfil its reporting, monitoring and information functions. At the moment the NRB does not actually exist; it organizationally 'floats' between the IGD and the KPSM. When considering and deciding on the organizational anchor point of the NRB, the vision and actual execution of the NRB's tasks must be paramount. For example, transferring the NRB to the KPSM may be preferable from a practical point of view, but if the NRB is to function as an

⁶² See also the reports 'Border control on the movement of persons in Sint Maarten' (RvdR, 2017); 'State of Law Enforcement 2016' (RvdR, 2017); 'Exchange of police and judicial data within the Kingdom' (RvdR, 2015)

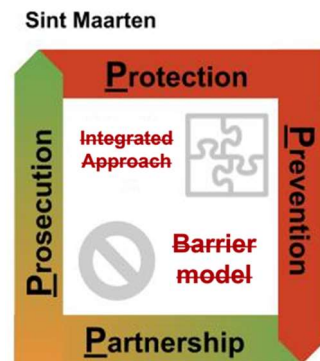
independent contact point for victims, this choice also has drawbacks. As indicated, the problem with human trafficking and human smuggling is that victims do not always see themselves as victims. They are in a vulnerable situation, reside illegally and/or (as a result) distrust the police and the judicial system. Such circumstances influence the willingness of victims to report. If the NRB is placed with the police, this may have a 'threshold increasing' effect. Such factors must be considered in this assessment.

In almost all (inter)national legislation/regulations and agreements reached in the context of human trafficking and human smuggling, the protection and accommodation of victims is included. Similarly in the MoU which has been endorsed and signed by the Minister of Justice repeatedly. However, in the interim there is no hotline for victims and Sint Maarten completely lacks the necessary facilities to offer victims adequate help and protection. On this point, the Council notes that there is a 'paper reality' where nothing has been done for years, with all the negative consequences this entails. The Council already issued several recommendations regarding victim support.⁶³

⁶³ Inspection reports: 'Victim Support in Sint Maarten' (RvdR, 2012); 'Victim Support in Sint Maarten, a follow-up study' (2016); 'Prostitution policy and enforcement in Sint Maarten' (RvdR, 2016)

5. Conclusion and recommendations

Based on the research results and the analysis, the Council concludes that steps have been taken in the area of criminal law enforcement 'prosecution' and cooperation 'partnership' in Sint Maarten. Although there is still room for improvement, these developments contribute to the response against human trafficking and human smuggling. The approach so far has been mainly repressive in nature; in the area of 'prevention' and 'protection', the Council sees little development.



Therefore, in Sint Maarten there is considerable benefit to be gained in the prevention of human trafficking and human smuggling. To achieve this, the Council recommends the following to the Minister of Justice of Sint Maarten:

1. a) Promote the ability of the Intelligence Center Sint Maarten to build a sound intelligence position in the field of human trafficking and smuggling. *
- b) Promote that - in relation to the above - countries work together towards building an interregional and international intelligence position in the area of human trafficking and human smuggling *
2. Expand administrative commitment by developing a strategic vision and policy on human trafficking and human smuggling that facilitates, structurally secures, and advances the growing operational cooperation in Sint Maarten in this regard.
3. Together with the ministries, organizations, and the national coordinator of Sint Maarten, establish a task force and regular consultations that will energize combating and preventing human trafficking and human smuggling and jointly set priorities.
 Consider the following: the drafting of a joint agenda that includes a limited number of priorities per year. One priority that can be realized in the short term, for example an awareness campaign. Another priority, perhaps a more comprehensive one, for which several concrete steps can be taken in the year in question, for example the reception and post-care of victims. Formulate a joint plan of approach for each priority (including timetable, people responsible for acting and funding) and monitor progress in the task force/regular consultation.
 Specifically examine how law enforcement, government, emergency services, NGOs, and the public and private sectors can support each other.
4. Take all forms of human trafficking into account in the (integral) approach to combat and prevent these types of crime, including criminal exploitation.
5. Accommodate the support requirements of the national Coordinator in Sint Maarten, so that he can fulfill the agreements established in the MoU. *
6. Organize the National Reporting Bureau on Human Trafficking in a structured manner or safeguard its tasks, so that the reporting, monitoring, and information functions are properly fulfilled. When considering and deciding on the way in which the NRB (or its functions) should be organized, prioritize the NRB's vision and the way its tasks are actually performed.

7. Follow (via the national coordinator) the research for the establishment of the regional CBA and the CARIFORUM human trafficking study, review the research results and where relevant translate them into the approach on human trafficking and human smuggling in Sint Maarten.
8. Promote uniformity and continuity within operational cooperation by ensuring that working arrangements, for example on occasions when scaling up and/or transferring, are documented, and known to the profession.
9. Follow up on the 6 recommendations outlined in the report *Prostitution policy and enforcement in Sint Maarten* (2016).

Bibliography

Baird, T. (2013), [*Theoretical Approaches to Human Smuggling*](#)

Kempadoo, K. (2006) *Sex Work Migration and Human Trafficking: Problems and Possibilities*.

Van der Meij, P.P.J. and Van der Leun, J.P. (2010), *Policies, barriers, and boundaries; a multidisciplinary approach to the phenomenon of human trafficking* (Beleid, barrières en begrenzingen; een domeinoverschrijdende aanpak van het fenomeen mensenhandel).

Ribando Seelke, C. (2010), [*Trafficking in Persons in Latin America and the Caribbean*](#)

UNODC (2018), [*Global Study on Smuggling of Migrants 2018*](#)

Trafficking in persons reports, U.S. Department of State 'Office to monitor and combat trafficking in persons', www.state.gov

IOM (2005), *Data and Research on Human Trafficking: A Global Survey*

Center for Crime Prevention and Safety (CCV); Comensha; National Rapporteur on Human Trafficking NL

Rantsev v. Cyprus and Rusland, EHRM, January 7, 2010

Crime Pattern Analysis (CBA) Sint Maarten 2011

Prosecutor's Office Policy program on cross-border crime 2016-2020

Public Prosecutor Directive on human smuggling and human trafficking

Public prosecutor Sint Maarten Annual Reports

Appendix 1

Respondents' List:

- Ministry of Justice
- Ministry of Health, Social Development and Labor
- National coordinators of human trafficking/human smuggling
- Public Prosecutor's Office
- Sint Maarten Police Force
- RST
- Coast Guard
- KMar
- National Police
- Inspectorate Health, Social Development and Labor
- Customs
- Legal profession

Colophon

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