



INSPECTION REPORT ON THE APPROACH TO DOMESTIC VIOLENCE IN SINT MAARTEN

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Law Enforcement Council
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Abbreviations

ART	Aggression Regulation Training (SJIS)
COG	Court of Guardianship
ECYS	Education, Culture, Youth and Sport (ministry/minister)
MHF	Mental Health Foundation
VSA	Public Health, Social Development & Labour (ministry/minister)
PPS	Public Prosecution Service (also known as Public Prosecutor's Office)
KPSM	Sint Maarten Police Force
SJIS	Foundation Judicial Institutes Sint Maarten
SMMC	Sint Maarten Medical Center

Preface

The Law Enforcement Council (hereafter: the Council) chooses the research subjects it investigates based on the level of societal interest and the importance towards a well-functioning law enforcement. One of the thematic inspections the Council announced in its annual plan 2019 concerned a topic of significant social impact, being: domestic violence. This report is the result of research by the Council on efforts made in Sint Maarten to confront and combat domestic violence. The Council researched specifically how domestic violence cases are handled within the criminal justice system of Sint Maarten.

Domestic violence is a serious problem that not only affects the direct victims, but threatens complete family structures, future generations and society as a whole. As a consequence the Council finds it of the utmost importance that legal action, services and measures to protect the safety of victims of domestic violence should be available to all who need them; including shelter, practical and psychological support, criminal action, rehabilitation and protection orders. Although it was not the focus of the research, the Council also wishes to stress the importance of prevention and (after)care and supports all initiatives in this regard.

The Council would like to thank the respondents of the ministry of Justice, the ministry of Education, Culture, Youth and Sport, the ministry of Public Health, Social Development & Labour, the Public Prosecutor's Office, the Sint Maarten Police Force, the Foundation Judicial Institutes Sint Maarten, the Court of Guardianship, the Women's desk and Safe Haven for their invaluable contribution to this research and their continued efforts to prevent and combat domestic violence in Sint Maarten. The Council is looking forward to future developments.

THE LAW ENFORCEMENT COUNCIL,

Mr. Th.P.L. Bot, voorzitter,
Mr. M.R. Clarinda,
Mr. L.M. Virginia.

Summary and recommendations

With this research the Council aimed to gain insight into the judicial approach to domestic violence, in Sint Maarten in practice. The main question for this research is: *How are domestic violence cases handled within the criminal justice system of Sint Maarten?*

Given the nature and extent of domestic violence in general and the severe consequences for those directly involved and the society as a whole, this problem must be regarded as a governance matter of inherent public concern. Both in the judicial field as well as in support services, institutions play a role in dealing with domestic violence cases. As part of this research, the Council organized a focus group session along with additional interviews with professionals from the justice and healthcare sectors. The Council examined how cases of domestic violence are identified and handled by, and or in cooperation with, the organizations in the judicial chain and or support services.

The Council found that there are different international regulations and (draft) government policies on domestic violence. However, the Sint Maarten government still has work to do in the implementation of these regulations and policies. At the time of this inspection, neither the ministry of Justice nor the ministry of Public Health, Social Development & Labour (VSA) of Sint Maarten had an overall public policy implemented to address domestic violence. Both ministries do have departments and or organizations, that play an important role in the tackling of domestic violence based on separate regulations and policies. Also the department of Youth of the ministry of Education, Culture, Youth and Sport (ECYS) plays a role. The Criminal Code of Sint Maarten and the Public Prosecutor's (PPS) 'policy instruction relational violence' include the regulations and policies regarding domestic violence that specifically apply to criminal law enforcement.

Domestic violence is steadily gaining the attention of authorities and the general public of Sint Maarten. While the topic is still often considered taboo by many, the need for tackling this problem has become increasingly more visible. Signals can come from various places (e.g. direct victims, witnesses, institutions), and these can be received and acted upon by the various institutions. Key players in the approach to domestic violence in Sint Maarten are: the Sint Maarten Police Force, the Public Prosecutor's Office, the Foundation Judicial Institutions Sint Maarten, the Court of Guardianship, the Women's desk, Safe Haven and the Sint Maarten Medical Center or General Practitioners.

The Council gathered information on the approach in practice and, based on that, identified four phases in the (criminal justice) response to domestic violence in Sint Maarten:

- Phase 1: Identification and Reporting
- Phase 2: Investigation and Referral
- Phase 3: Interventions and Follow-up
- Phase 4: Closure of a case

Based on the findings of this research the Council concludes that there is room for improvement in all four phases.

The necessary policies, protocols, criteria and procedures to properly address domestic violence are not finalized and or currently lacking. Also the execution of tasks and procedures

in practice needs improvement e.g. in the reporting and referral process. Although the Council acknowledges the constraints each organization faces, the Council is of the opinion that the approach to domestic violence can be improved, by organizations having (better) knowledge of the different interventions that are available and being better able to coordinate these. In order to stimulate a more coordinated approach, a common goal, vision and consistent interministerial policies are urgently needed.

Based on the findings, the Council is concerned that domestic violence victims, who might benefit from interventions that are available to criminal justice authorities and or support services, are being withheld the necessary assistance.

To improve the approach to domestic violence in Sint Maarten the Council makes the following recommendations to the Minister of Justice:

1. *Stimulate, and actively participate in, an interministerial program to jointly finalise, coordinate and implement an overall and consistent domestic violence policy, with the necessary government funding.*
2. *Provide the Court of Guardianship with the necessary resources to implement and structurally fulfill its legal task as a central registry for child abuse.*
3. *Follow up on the recommendations already made by the Council regarding the establishment of a victim support office.*
4. *Draft and implement a reporting code for (medical) professionals.*
5. *Ensure that law enforcement personnel (continue to) receive training, in order to (continue to) effectively deal with cases of domestic violence.*
6. *Create awareness in the community of the different types of reporting available to them.*
7. *Standardise and implement written work procedures with the judicial organizations to effectively investigate, track and refer cases of domestic violence.*
8. *Ensure that domestic violence cases remain/are registered separately by the KPSM and the Public Prosecution Service in order to effectively monitor and manage these cases and provide reliable statistics.*
9. *Stimulate the drafting and publication of a sentencing directive for the prosecution of domestic violence.*
10. *Finance and implement a specific training order (leerstraf) for domestic violence.*

Given the urgency of the subject, the Council stresses that a determined effort by the Minister of Justice is necessary in order to carry out the recommendations as soon as possible. Taking into account the necessary prioritization, the Council expects that the ten recommendations are carried out within a maximum period of 2 years. This two year period corresponds with the first opportunity for the Council to carry out a review of this report.

1. Introduction

The Law Enforcement Council (hereinafter: the Council) is tasked with the general inspection of the organizations within the justice chain and can conduct theme-research on relevant judicial topics. The Council looks at the effectiveness, quality of performance of tasks and management of these organizations. In addition, the Council is responsible for the general inspection of the quality and effectiveness of judicial cooperation between the Netherlands (concerning Bonaire, Sint Eustatius and Saba), Curacao and Sint Maarten.

In its annual plan 2019 the Council announced that it will conduct research on the approach to domestic violence in Sint Maarten. Domestic violence is a serious problem that is steadily gaining more attention. In juli 2017 the Prosecutors General Office of Curacao, Sint Maarten and Bonaire, Sint Eustatius en Saba issued the 'policy instruction relational violence'. The aim of this instruction is to ensure that the Police and the Public Prosecution Service effectively, efficiently and consistently respond to cases of domestic violence. In March 2018 the conference 'No Mas, No More' brought together professionals from Aruba, Bonaire, Curacao, the Netherlands, Saba, Sint Eustatius en Sint Maarten. Representatives hailed from governmental and non-governmental organizations working in the field of criminal justice and law enforcement, (mental) health care and other (support) services. For the first time the approach to domestic violence was addressed on a Kingdom level. Best practices, knowledge and skills were shared and the cooperation within the Kingdom was discussed. The aim was to improve the approach to domestic violence in all the Kingdom countries. In light of this, the Council decided to conduct research on the approach to domestic violence and in Sint Maarten.¹ Because domestic violence is a serious social issue that affects society as a whole, the Council finds it important that in any case the findings of this research are easily accessible to the wider public. Therefore, the Council decided to publish this full report in English.²

1.1 Objective

With this research the Council aimed to gain insight into the judicial approach to domestic violence in Sint Maarten in practice. The Council gives an account of the organizations involved, the role that professionals play in dealing with these cases, the available interventions, what is needed for professionals to be able to fulfill their role, and the collaboration between judicial organizations and or support services. Based on the findings the Council determined whether there is a need for improvement and formulated recommendations to the Minister of Justice.

¹ Law Enforcement Council, Annual plan 2019. Note: the Council also conducted research on the approach to domestic violence in Bonaire, Sint Eustatius and Saba.

² Until now the Council published its reports in Dutch with an English summary. In 2019 the Council in Sint Maarten decided to publish more reports entirely in English, as the official languages are Dutch and English, and the latter is the regular language of communication in this country.

1.2 Research questions

The main question for this research is as follows:

How are domestic violence cases handled within the criminal justice system of Sint Maarten?

To answer this main question, several sub-questions were derived and formulated as follows:

- 1) *What happens with a domestic violence case from the first signal or report?*
- 2) *Which organizations/professionals are involved in dealing with domestic violence cases (both in the judicial field as well as in support services)?*
- 3) *What is their role and what interventions can they use to address domestic violence?*
- 4) *What is needed in order for these professionals to fulfill their role and to what extent are these needs being met?*
- 5) *To what extent is there collaboration between professionals from judicial organizations and support services to address domestic violence?*

1.3 Research scope

In (international) legislation and (scientific) literature many different terms and definitions are used to describe violence between intimates or relatives. For the purpose of this research the definition of *domestic violence* is derived by the Council from prominent conventions and the policy instruction of the Public Prosecution Service (hereinafter: PPS) of Sint Maarten.³ In this report, domestic violence refers to physical, emotional, psychological or financial abuse happening between intimates or relatives, including former spouses or partners, or between persons in a dependent relationship, including children⁴ and their caregivers, elderly or persons with a disability. As there is a separate title for sexual offences in Sint Maarten's Criminal Code, and the PPS has a separate policy instruction and together with the police specific procedures for these types of crime, sexual abuse is not taken into account in this inspection.⁵

In this research the Council looked at the approach to domestic violence *from the first signal or report until the closure of a case by the various institutions involved* (with the exception of the procedures/casehandling by the Joint Court of Justice). The Council is aware of the importance of general awareness, prevention and (after)care, and emphasizes these as essential components of a successful approach. However, the focus of this research is on the approach of the organizations within the criminal justice chain, and on the collaboration between the judicial organizations and support services.

³ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (New York, no. 000837, 18-12-1979) and CEDAW-Committee General recommendation no. 12 and 19 (1989, 1992); Convention on the Rights of the Child (New York, no. 003908, 20-11-1989); Convention on preventing and combating violence against women and domestic violence (Istanbul, CETS No. 210, 2011); Aanwijzing relationeel geweld (2017.01) [see relevant sections in appendix 1 in this report].

⁴ Definitions in literature differ and it is not always self-evident that child abuse is included in the term domestic violence. In this research the Council's definition of domestic violence includes child abuse.

⁵ Criminal Code Title XIII 'Misdrijven tegen de zeden'; Richtlijnen en kaders voor strafvordering Zeden (2019.0002)

1.4 Research method

For this research, the Council conducted deskresearch and organized a focus group discussion with judicial and support service professionals working with domestic violence cases. The Council invited professionals that play a key role in the identification and response to these types of cases. From their experience, the Council gained insight into the referral-, support and assistance-, investigation- and prosecution-practice.

During the focus group the Council presented the participants with different examples of domestic violence cases based on which the approach was discussed, in accordance with the policy of the organizations involved; the role that professionals play in dealing with such cases; available interventions; the needs or conditions for professionals to be able to fulfill their role; and the collaboration with (other) judicial organizations and or support services.

The Council also organised separate interviews with key players, including key players that were not able to attend the focus group session. All the respondents received a summary of the results of the focus group session and or the interview for correction and approval.

The information gathered by the Council was then utilised to describe the approach by the various organisations and any associated bottlenecks.

1.5 Report outline

In the following chapter the Council will elaborate more in general on the problem of domestic violence, its nature and extent and the implications for those involved. In chapter 3 the regulations and policies that apply to the approach to domestic violence in Sint Maarten and the related findings are described. Chapter 4 includes an overview of the institutions in Sint Maarten that play a role in dealing with domestic violence cases and chapter 5 describes the findings of the approach in practice. In chapter 6 the Council will analyse these findings. Whereafter, in chapter 7, the Council will give its concluding remarks and recommendations to the Minister of Justice.

2. Domestic violence defined

Every day millions of children, women and men around the world suffer from domestic violence. It severely damages the physical, sexual, emotional, mental and social well-being of countless individuals and families and is considered a major obstacle to the universal fulfillment of human rights. Domestic violence occurs on all socio-economic and educational levels of society, across generations, nationalities, cultures and religions.⁶

Domestic violence includes a wide range of abusive conduct, from coercive or controlling behaviour aiming to intimidate, humiliate, isolate or subordinate a person, to various forms and degrees of neglect, physical violence and even murder. The suffering and pain caused by domestic violence can, in terms of severity, be compared to that inflicted by torture and other cruel, inhuman or degrading treatment or punishment. In quantitative terms it has been estimated that, on average, 30% of women worldwide have suffered intimate-partner violence at some point in their lives. Depending on the country, estimates vary between 15% and 70% of the female population.⁷ When it comes to children, worldwide estimates of experienced physical, sexual, or emotional violence at home lie between 50% and 75% (up to 1 billion children worldwide).⁸

Contrary to some perceptions, domestic violence is not an exceptional occurrence. It represents one of the predominant sources of violence, humiliation and death. Domestic violence generally continues for many years and often lasts an entire lifetime, traumatizing countless children, women and men. This affects not only the direct victims, but forms a threat to complete family structures, future generations and society as a whole. Being subjected to domestic violence goes hand-in-hand with deprivation and high risks of poor health, poor school/work performance and long-term welfare dependency. Domestic violence is associated with far-reaching costs for society, diverting billions of dollars from social spending, slowing economic development and eroding nations' human and social capital.⁹ Nonetheless, to this day domestic violence is still largely considered to be a "private matter" and the social taboo on it is significant.¹⁰

The context in which domestic violence occurs and the complex nature of the mechanisms contributing to the continuation of the violence entail particular challenges in terms of intervention, redress and prevention, which must be taken into account. The domestic context of the family and the home is, to a certain extent, protected by the right to privacy, resulting in considerable difficulties with regard to the effective detection and identification of perpetrators, victims, and situations of risk. Furthermore, societal indifference to, or even support for, the subordinate status particularly of women and children, and the governmental/institutional failure to prevent and redress abuse, may create conditions under which victims are subjected to severe forms of domestic violence for prolonged periods of time. Finally, the relationship between perpetrators and victims is often marked by factors such as legal, practical and or economic dependence, social expectations, or strong emotional ties. Despite their apparent

⁶ UN Special Rapporteur General Assembly Report (2019)

⁷ Garcia-Moreno et al. (2005); UN Special Rapporteur General Assembly Report (2019)

⁸ UN SRSG on Violence against Children (2015); UNICEF (2014)

⁹ UN SRSG on Violence against Children (2015)

¹⁰ UN Special Rapporteur General Assembly Report (2019)

freedom to resist, it is extremely difficult for victims to break the cycle of violence. These factors complicate the identification and implementation of an adequate approach (preventive and protective measures) in line with the human rights and best interests of the victims.

Given the above, although domestic violence may occur in the private sphere, it must be regarded as a governance matter of inherent public concern.¹¹

¹¹ UN Special Rapporteur General Assembly Report (2019)

3. Regulations and policies¹²

This chapter elaborates on the international and national regulations and policies that apply to the approach to domestic violence in Sint Maarten and the related findings. Paragraph 3.1. describes in general the international regulations and government policies on domestic violence and the state of implementation in Sint Maarten. Paragraph 3.2. zooms in on the regulations and policies regarding domestic violence that apply specifically to criminal law enforcement.

3.1 International regulations and Government policies

Based on its commitment to a number of international treaties including the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Sint Maarten is bound by different internationally agreed norms and standards that relate to ending domestic violence.¹³ To overcome domestic violence the approach should include: legislative, administrative, social and educational measures; criminal penalties and civil remedies; preventative measures; services to ensure the safety and security of victims of domestic violence, including refuge, counselling, rehabilitation and support services; rehabilitation programmes for perpetrators of domestic violence; social programmes to provide necessary support for children and caregivers; and effective procedures for identification, reporting, referral, investigation, treatment and follow-up of instances of domestic violence, and, as appropriate, for judicial involvement.¹⁴ The implementation of these norms and standards is being monitored by several international committees and organizations, such as The Committee on the Elimination of Discrimination against Women, The Committee on the Rights of the Child and UNICEF.¹⁵

Following a recommendation of the latter, in April 2014 the 'Kingdom Taskforce Children's Rights' (hereinafter: Kingdom Taskforce) was established, to stimulate cooperation between the Kingdom countries in the implementation of children's rights.¹⁶ In addition, in November 2018 an MoU was signed by all the Kingdom governments in order to strengthen cooperation and achieve concrete results on six priorities with regard to children's rights, one of these being: *to ensure the healthy and safe raising of children and the prevention of child abuse*.¹⁷ Part of this MoU is the 'Action plan children's rights' of Sint Maarten¹⁸, drafted and published

¹² This report contains unofficial English translations of Dutch regulations and policies. Reasonable efforts have been made in order to provide accurate translations, however, any discrepancies or differences created in the translation are not binding and have no legal effect. Under all circumstances the official Dutch publication of regulations and policies prevails.

¹³ With regard to these (and other) international conventions, the Convention on preventing and combating violence against women and domestic violence (Istanbul, CETS No. 210, 2011), designs a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence. This Convention was approved for the entire Kingdom of the Netherlands on 24 June 2015. However, as independent country within the Kingdom, Sint Maarten decides how and within what timescale it wants to implement the ratification and implementation of this Convention. Sint Maarten has not ratified the Convention, to meet the obligations arising from the Convention a catch-up phase is still needed.

¹⁴ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (New York, no. 000837, 18-12-1979) and CEDAW-Committee General recommendation no. 12 and 19 (1989, 1992); Convention on the Rights of the Child (CRC) (New York, no. 003908, 20-11-1989)

¹⁵ See: CEDAW Committee report CEDAW/C/NLD/CO/6 (18-11-2016); CRC Committee report CRC/C/NLD/CO/4 (16-7-2015); report UNICEF-study 'Kingdom children' [Koninkrijkskinderen] (2013)

¹⁶ Work plan of the Kingdom Taskforce 2018-2019 (Aug. 2018) [Interlandelijke Taskforce Kinderrechten Werkplan 2018-2019]

¹⁷ MoU Kinderrechten

¹⁸ And the action plans of Aruba, Curacao, Bonaire, Saba en Sint Eustatius and the work plan of the Kingdom Taskforce.

by the department of Youth of the ministry of Education, Culture, Youth and Sport (ECYS). To prevent and address child abuse this action plan formulates five development points: 1) parenting support, education and other preventative measures, 2) training of professionals to identify child abuse and increase the preparedness to report to the competent authorities, 3) improvement of the advice- and reporting centers for domestic violence and child abuse, 4) improvement of the collaboration between health care, support services, education, the police and the public prosecution service, 5) legal standardization that no form of violence against and around children is justifiable. According to the action plan, the implementation of the necessary steps/actions on these points is only possible in collaboration with the responsible government agencies, organizations and foundations. Furthermore, possibilities for partnerships and the exchange of information and knowledge between the Kingdom countries should be pursued. One such concrete initiative agreed upon in July 2019, during the conference 'Ready, Set, Protect', organized by the Kingdom Taskforce, is that Curacao and Sint Maarten will collaborate to prepare and introduce their respective reporting codes.

While progress has been made in certain areas, other concrete plans by the Kingdom Taskforce representatives (EYCS) in Sint Maarten have yet to be completed and carried out, such as the implementation of a child abuse protocol; the training of professionals; implementation of a children's hotline; assessment of the protocol youth assistance; introducing a consultation structure; promoting collaboration with chain partners; and drafting legislation and regulations, policies and procedures.¹⁹ In 2019 the 'Workgroup Child Protection' was re-established with professionals from various departments and organizations of the ministry of VSA and ECYS. Respondents note that collaboration with justice chain partners is also especially of importance in this context, however, there have been no accomplishments in this area as yet. According to respondents of ECYS, having the necessary legislation (justice) in place in combination with a dedicated policy counterpart within the ministry of Justice is key in order to make progress in all the aforementioned areas related to the execution of the Sint Maarten action plan of the Kingdom Taskforce. In order to facilitate cooperation between the various organizations in the field, the necessary mechanisms (e.g. reporting code) need to be in place.

At the time of this inspection, neither the ministry of Justice nor the ministry of VSA of Sint Maarten had an overall public policy implemented to address domestic violence. However, both ministries do have departments and or organizations, that play an important role in the tackling of domestic violence based on separate regulations and policies (also see chapter 4 in this report). In 2016, the department of Social Development and the department of Community Development, Family and Humanitarian Affairs of the ministry of VSA initiated the process (fact-finding and stakeholder discussions) of developing a new policy 'for preventing domestic violence, child abuse, forced prostitution, trafficking in persons and gender-based violence in Sint Maarten'.²⁰ This policy was first drafted in 2018 and is being developed in collaboration with the Court of Guardianship (COG), Sint Maarten Police Force (KPSM) and Safe Haven. It includes proposals ('policy commitments') for, among others, the reporting of domestic violence and collaboration with (justice) chain partners in that regard, but has not been finalized, published or implemented as yet. During the interview with respondents of the ministry of EYCS it was indicated that they have not yet been approached for input in the

¹⁹ Ministry ECYS Actualised Action plan Sint Maarten (08-2019)

²⁰ As this concerns an unfinished and unpublished draft policy the Council could only provide a brief description of its content.

drafting of this policy. However, in the reply provided by the Women's Desk, it stated that the ministry of EYCS had been consulted on various levels for their input as they are the authority on children.

3.2 Criminal Law Enforcement

The Criminal Code of Sint Maarten²¹ does not contain specific legal provisions for domestic violence. Domestic violence can be prosecuted under a range of (violent) offences depending on the circumstances of the case. For example, offences as defined in title XVII *Criminal Offences against Personal Freedom* including stalking (sect. 2:257) or title XVIII *Criminal Offences against Human Life* including manslaughter (sect. 2:259) and murder (sect. 2:262) and or as defined in title XX *Assault* (sect. 2:273 - 2:281). In the Explanatory Memorandum [Memorie van Toelichting] of the Criminal Code of Sint Maarten 'domestic violence' is mentioned a couple of times with regard to various (non-custodial) sentences or measures. It stresses that when an offender is sentenced to follow a training course [leerstraf] it must focus on the specific behavioral skills needed to prevent recidivism (special prevention), for a perpetrator of domestic violence it might be appropriate to follow a course dealing with aggression. It also emphasizes the demonstrated need for the imposition of a restraining order in case of (ex-partner) stalking (sect. 2:257) or domestic violence, in order to prevent that the offender continues to harass or harm the victim.

The PPS and - under its authority - the police, are responsible for the enforcement of the legal order and the criminal law. To ensure an effective, efficient and uniform approach to domestic violence in Sint Maarten, Curacao and the BES-islands, the PPS issued the 'policy instruction relational violence' (hereinafter: instruction). This instruction contains a number of guiding principles on how the police and prosecutor should respond to, investigate and prosecute domestic violence incidents. In accordance with the Explanatory Memorandum mentioned above, the instruction points out the importance of the prevention of recidivism, through early interventions and proper assistance for offenders and victims. Furthermore, one of the principles is that in domestic violence cases that are brought to the attention of the police, the victim has to file a criminal report. If the victim is not willing to file a report, the case is discussed with the prosecutor or 'contact-officer [contact functionaris] relational violence' who assesses the options for ex officio prosecution [ambtshalve vervolging]. Police officers should inform the victim about the criminal proceedings and encourage the victim as much as possible to file a report or in case of stalking to file a complaint. In addition, the instruction emphasizes the vulnerable position of children that the police and the PPS must take into account when investigating and prosecuting domestic violence cases that involve minors. Children are legally and socially dependent on their parents or legal guardians. They might not be able to report abuse or file a complaint themselves, and also the investigation process (hearing and forensic medical examination) may entail difficulties, because of their level of physical and mental development, and or emotional bond. The instruction states that in general authorities should show restraint with the hearing of children. Considering loyalty conflicts that may occur, children should only be heard as a witness if crucial for the evidence in a domestic violence case. It is important, however, that law enforcement professionals are aware of the possibility that children might also be victims themselves. To implement an effective domestic violence,

²¹ Criminal Code Sint Maarten (AB 2015, no. 9)

approach the instruction highlights the importance of close collaboration between the PPS, the police, the probation service and other partners. These 'other partners' are not specified in the instruction and, besides aforementioned general principles for the handling of domestic violence cases, the instruction primarily focuses on the existing (regular) work procedures of the PPS, the police and the probation service.²² In the following chapters the Council presents its findings on how this approach works in practice in Sint Maarten.

²² Instruction relational violence [Aanwijzing relationeel geweld 2017.01]; Note: at the time of this inspection the PPS' Prosecutors General Office was conducting an evaluation of the Instruction relational violence.

4. Institutions involved

In Sint Maarten different institutions play a role in dealing with domestic violence cases, both in the judicial field as well as in support services. In this chapter the Council presents an overview of these institutions, their legal task and the specific legal interventions available to them when handling a domestic violence case.

<i>Institution</i>	The Sint Maarten Police Force [KPSM]
<i>Legal task</i>	Enforce the criminal law. Maintain public order and safety, provide aid and assistance in emergencies. Investigate criminal offences, under the authority of the public prosecutor. ²³
<i>Interventions</i>	Intake / emergency assistance / criminal investigation of domestic violence. Arrest or place suspects of domestic violence in police custody.

<i>Institution</i>	The Public Prosecution Service [PPS]
<i>Legal task</i>	Enforce the criminal law. Investigate and prosecute criminal offences, oversee the implementation and execution of the criminal sentence, in collaboration with the police and probation service. Exercise civil powers and duties in child protection cases, in collaboration with the Court of Guardianship. ²⁴
<i>Interventions</i>	Initiate criminal proceedings: investigate and prosecute domestic violence. Place suspects of domestic violence in custody and order pre-trial detention. Order conditional dismissal / conditional release / execute and supervise (conditional) sentence and special conditions. Impose criminal protection orders, such as a no-contact or (location) restraining order. Order child protection remedies, such as custodial control over a minor [ondertoezichtstelling] or the removal and deprivation of parental authority [onthefing en ontzetting van het ouderlijk gezag].

<i>Institution</i>	The Foundation Judicial Institutes Sint Maarten [SJIS]
<i>Legal task</i>	Inform the judge, the PPS and or the Parole Board about the personal circumstances of clients and advise on special conditions and punishment. Provide psycho-social guidance and support for adult offenders with probation or parole ordered by the court, the PPS or the Minister of Justice. Organise community service and mandatory trainings. Supervise compliance with the general and special conditions and execute electronic supervision. ²⁵
<i>Interventions</i>	Advise on protective special conditions, such as restraining orders. Give psycho-social guidance, counselling and or mandatory trainings to domestic violence offenders: Provide (family) aggression regulation training (ART) and counseling to offenders and their partners (upon their request) by the SJIS, or in the case of drugs-/alcohol problems refer for treatment by the Turning Point Foundation, or in the case of psychological problems refer for treatment by the Mental Health Foundation. Supervise ordered release-conditions, report violations of conditions back to the

²³ Consensus Kingdom Act police [Rijkswet politie]; Instruction relational violence [Aanwijzing relationeel geweld 2017.01]; Criminal Code (AB 2015, no. 9); Code of Criminal Procedure (AB 2012, no. 25)

²⁴ Consensus Kingdom Act public prosecution service [Rijkswet openbare ministeries]; Instruction relational violence [Aanwijzing relationeel geweld 2017.01]; Criminal Code (AB 2015, no. 9); Code of Criminal Procedure (AB 2012, no. 25); Sint Maarten Civil Code Book 1, Law of persons and family law (AB 2013, GT no. 825) [Burgerlijk Wetboek Boek 1, Personen- en familierecht]

²⁵ Reclasseringsbesluit 1953; Criminal Code (AB 2015, no. 9); Code of Criminal Procedure (AB 2012, no. 25)

	PPS.
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<i>Institution</i>	The Court of Guardianship [COG / Voogdijraad]
<i>Legal task</i>	Exercise custodial control and interim guardianship over minors [maatregelen met betrekking tot het gezag]. Visit locations where minors are placed in care in order to assess the condition of the minors. Operate a central registry for child abuse [centraal meldpunt kindermishandeling] to: advice and support; investigate; assess next steps; inform judicial authorities; register; inform reporter and or the general practitioner and or the teacher of the minor, in cases of (suspected) child abuse. investigate the safety of the child; advise individuals and or authorities by reporting or intervening in child abuse cases. ²⁶
<i>Interventions</i>	Care for the minor who is entrusted to the COG to exercise custodial control or interim guardianship by order of the court or the PPS. Request custodial control or interim guardianship over a minor [ondertoezichtstelling] or the removal and deprivation of parental authority [onthefing en ontzetting van het ouderlijk gezag].

<i>Institution</i>	Department of Community Development, Family and Humanitarian Affairs/ The Women's desk (ministry VSA)
<i>Legal task</i>	To empower and enhance the position of women within society. ²⁷
<i>Interventions</i>	Empower and support victims of domestic violence and their support network (e.g. family) by networking and collaborating with various agencies. Offer one on one basic psycho-social counseling. Refer victims to the various agencies not limited to KPSM or a general practitioner.

<i>Institution</i>	Safe Haven
<i>(Legal)²⁸ task</i>	Offer free shelter, counselling and supportive services to women and their minor aged children who are the victims of domestic violence.
<i>Interventions</i>	Provide temporary refuge; mediate with (judicial) authorities; host workshops for its clients that promote amongst others self-esteem/confidence/establishes boundaries.

²⁶ Sint Maarten Civil Code Book 1, Law of persons and family law (AB 2013, GT no. 825) [Burgerlijk Wetboek Boek 1, Personen- en familierecht]. According to sect. 1:238 sub 2 of the Civil Code the duties and powers of the COG shall be set by National Ordinance. In previous research the Council has emphasized the importance of this legal requirement, however, this National Ordinance is still non-existent (see also: the inspection report on Juvenile Probation, RvdR 2013/2015). There is a National Decree that regulates the composition and working methods of the (members of the) COG based on sect. 1:238 sub 4 (AB 2013, GT no. 722) [Landsbesluit, houdende algemene maatregelen, ter uitvoering van artikel 238, vierde lid, van Boek 1 van het Burgerlijk Wetboek]. Furthermore, in 2014 Sint Maarten adopted a National Ordinance for the implementation of a central registry for child abuse (AB 2014, no. 5) [Landsverordening van de 9de januari 2014 tot wijziging van Boek 1 van het Burgerlijk Wetboek (Invoering centraal meldpunt kindermishandeling)]. For this inspection the legal tasks of the COG were derived from aforementioned laws.

²⁷ Landsbesluit, houdende algemene maatregelen tot onderverdeling en nadere uitwerking van het ministerie van Volksgezondheid, Sociale Ontwikkeling en Arbeid (AB 2013, GT no. 75)

²⁸ The tasks being executed by the non-profit organization Safe Haven stem from the legal tasks assigned to the Community Development Family and Humanitarian Affairs Department of the Ministry of VSA via it's Women's Desk.

<i>Institution</i>	The Sint Maarten Medical Center [SMMC] or General Practitioner [GP]
<i>Legal task</i>	Carry out medical examinations. Diagnose, treat, nurse or provide medical care for individuals with diseases or disabilities. Give an expert statement/expert witness' report in a criminal trial. ²⁹
<i>Interventions</i>	Carry out medical examinations and offer medical (emergency) treatment and guidance to victims of domestic violence. Issue a medical report (expert statement) in a domestic violence criminal case. Refer victims to KPSM.

²⁹ Landsverordening houdende regels ten aanzien van instellingen voor gezondheidszorg (AB 2013, GT no. 755); Landsbesluit, houdende algemene maatregelen, tot aanwijzing van zorginstellingen als ziekenhuisvoorziening als bedoeld in artikel 1, onderdeel I, van de Landsverordening zorginstellingen alsmede ter uitvoering van artikel 28 van die landsverordening (AB 2013, GT no. 188); Code of Criminal Procedure (AB 2012, no. 25)

5. Approach in practice

5.1 Background

Domestic violence is steadily gaining the attention of authorities and the general public of Sint Maarten. While the topic is still often considered taboo by many, the need for tackling this serious social problem has become increasingly more visible. In December 2019 (international human rights day), in the spirit of awareness, the ministry of ECYS supported a presentation of a short film that was produced at the request of Safe Haven and two music videos on domestic violence.³⁰ A conference was also held in the same period by the PPS, which was geared towards building awareness amongst professionals in the field.³¹ And at the time of this research there was a radio campaign running in Sint Maarten, calling on the general public to end the cycle of domestic abuse.³²

Although general statistics on domestic violence are not available in Sint Maarten, various organizations noted fluctuations in the number of domestic violence reports in the past few years. According to the Women's Desk (see also paragraph 5.6) there was an increase of cases of domestic violence within the community in 2017 after hurricane Irma, partially due to the effects of the hurricane. They stressed in a news article however that cases of domestic violence were already prevalent before the hurricane, but that they had merely become highlighted due to the lack of services available for displaced families after the hurricane. *"All these incidences are indications that we do have a challenge with relational violence and persons do not know how to respond in cases of relational conflict."*, stated the Women's Desk. Safe Haven especially recorded an increase in requests for assistance from women seeking refuge after the hurricane.³³ Early 2019 the then minister of ECYS indicated that he had received signals that there had been an outpouring of reports on social media by members of the Sint Maarten community, regarding cases of child abuse and molestation.³⁴ Signals can come from various places (e.g. victims, witnesses, institutions), there is not one fixed point. These signals can be received and acted upon by the various institutions as described in chapter 4.

As mentioned previously in chapter 1, during the focus group the Council presented the participants with different examples of domestic violence cases based on which the approach was discussed in accordance with the policy of the organizations involved. Furthermore the role that professionals play in dealing with such cases was discussed, the available interventions; the needs or conditions for professionals to be able to fulfill their role and the collaboration with (other) judicial organizations and or support services. This information, amongst others, was then used to describe the approach and any associated bottlenecks.

In this chapter the Council will describe how domestic violence cases in Sint Maarten are currently handled in practice, dependent on the receiver of the signal or report and

³⁰ sintmaartengov.org pressrelease 7-12-2019: 'Short film on domestic violence premieres on international human rights day'

³¹ The Daily Herald weekender 20-02-2020: 'Domestic violence conference building awareness within key organizations'

³² Source not available

³³ dutchcaribbeanlegalportal.com news 28-11-2017: 'Women's desk St. Maarten: Relational violence spiked since Irma'

³⁴ The Daily Herald 29-20-2019: 'Smith takes note of child abuse reports'

characteristics of the case. The following paragraphs include the findings from the focus group session and additional interviews. The findings are discussed per organization.

5.2 Findings Sint Maarten Police Force

During the focus group session respondents of the KPSM indicated that the procedure is that when the police receive a signal/report of an acute case of domestic violence, they attend the scene. The officers assess the situation, de-escalate and provide aid and assistance where necessary and possible. The officers collect evidence and interview the victim(s) and witnesses (where possible). Community officers play a large role in this as they are also tasked with earning the trust of victims and witnesses. The information gathered is then related to the officers tasked with investigating the case. Depending on the circumstances of the case (reasonable suspicion of a (severe) criminal offence), the suspect is arrested and taken to the police station for questioning. The police officer prepares a written record of the relevant findings of facts and of the questioning of the suspect and other persons, in accordance with the instruction relational violence.

According to the KPSM, when victims come to the police station to file a report they are first attended by intake and service officers. The KPSM has recently made a point of continuing to further develop the handling of these victims in a more customer-friendly manner. The KPSM also pointed out that there is a standard operating protocol in place when it concerns a case for the Youth and morals department and the detectives of that department are unavailable. If the victim chooses to file a report of domestic violence (the KPSM also has interrogation studios available to hear vulnerable witnesses), the police can take several protection measures. According to the instruction, the police record, in cases of domestic violence, should motivate whether the victim wishes a restraining order to be imposed on the suspect. Additionally, the officers must explain the possibility of choosing 'domicile' at the police station or a postal address, to avoid that a confidential address becomes known to the suspect.³⁵ If the situation is deemed highly unsafe and the victim(s) (female and her minor aged children) are in need of temporary shelter, the KPSM refers them to Safe Haven.³⁶ If it is a case whereby children are also involved and the environment is deemed unsafe for them as well, the KPSM informs the COG.

Standard procedure dictates that officers, when attending the scene, inquire who is residing in the home (children included), according to the KPSM this is emphasized by (senior) team leaders/coordinators to officers within the police force with less experience. While there are requirements³⁷ that prevent officers from entering a dwelling without the consent of the occupant, there are exceptions, such as when the immediate safety of an individual (adult or minor) is being threatened. If necessary in some cases neighbors or other possible witnesses are also asked to provide information or give a witness-statement. However, due to the fact that witnesses might be acquaintances of the family or fear reprisal by the suspect, they often do not want to get involved.

³⁵ Instruction relational violence [Aanwijzing relationeel geweld 2017.01]

³⁶ An official police report and medical report are required for registration at Safe Haven.

³⁷ As laid down in the Code of Criminal Procedure (AB 2012, no. 25) and the Kingdom Consensus Kingdom Act police [Rijkswet politie]

Furthermore, respondents state that the public is not sufficiently aware as to what the difference is between giving notification of an incident [melding] and actually filing a report [aangifte] or complaint [klacht] with the police and also the difference it makes in case-handling when someone is caught red-handed, although, this is considered important in order to manage the expectations of the victim.

Officers can at times be confronted with aggression by suspects when responding to cases of domestic violence. Although no specific domestic violence training is given, training in the area of aggression is provided for officers during the annual integral vocational skills training. In its review report '*On the use of force by and against the police in Sint Maarten*' by the Council, the following is mentioned with regard to training offered to officers for dealing with aggression during the performance of their duties: "*During the annual integral vocational skills training attention is paid to coping with and avoiding the use of violence, verbal violence and disproportionate force by police officers. In particular, the component approach techniques provide an opportunity to (eg. in the case of using disproportionate force) for officers to identify risky behavior, whereby instructors are able to advise on how to deal with it.*"³⁸

Furthermore the KPSM notes that given the size of the force, the fact that their capacity is always under pressure and the intensity of the use of specialisms, a joint training with KPCN, KPA, KPC and the KPSM was initiated in 2018, and that resulted in four morals detectives from the KPSM (level 1) being trained. Since then, portfolios regarding scarce expertise are divided amongst the different police forces. The morals portfolio was allocated to the KPSM, meaning that further training will be received to reach level 2 expertise and that assistance is given to other police forces if needed. When needed level 3 expertise is provided by the Dutch National Police. Other trainings that were planned for 2020 are currently on hold.

According to the KPSM respondents, there are cases whereby a victim (adult) refuses to file a report with the police, despite the efforts of the officers to convince the victim to report the violence. The procedure is that the officer attending the scene then offers assistance by providing them with advice on how to deal with the violence and suggest they get in contact with social services.³⁹ However, even though there is a governmental organization (Women's Desk) which provides continuous and extensive support for victims of domestic violence, they do have their limitations and challenges (see chapter 5.6). The community police officers also try to monitor the situation. Involuntary reporting (the victim refuses to file a report) by authorities and ex officio investigations are not encouraged and are only used as a last resort by the various institutions, as it can have grave consequences for the family involved.

There can be many reasons why a victim refuses to file a report, an example given by KPSM respondents is that a victim might be hesitant to file a complaint when the victim is a (undocumented) foreigner and the suspect is the guarantor, as it might affect their immigration application or residency permit.

According to respondents of Safe Haven, victims do not always receive appropriate assistance on the scene or at the police station, this is namely dependent on the officer on duty. This topic was also addressed in a recent review report by the Council regarding victim support.

³⁸ Law Enforcement Council (2019). 'Review investigation on the implementation of the recommendations on the use of force by and against the police in Sint Maarten', Philipsburg.

³⁹ According to the instruction this communication between the victim and the police is based on article 5 of the Kingdom Police law of Curacao, Sint Maarten, Bonaire, Sint Eustatius and Saba. It also states that this contact with the victim should be recorded in order to build a proper file on the case.

According to this report a reporting process has been established and implemented by the KPSM, which includes quality standards for the correct treatment of victims. Victims can for example make their wish to be informed about the progress of their criminal case known on the reporting form. When they do this, they are informed by the KPSM about a possible arrest of the suspect and follow-up proceedings. However, this does not happen consistently in every case. Although it should be standard procedure that all victims are properly informed, it is still dependent on the individual police officer whether or not this happens.⁴⁰

The respectful treatment of domestic violence victims by the KPSM was also addressed by respondents of Safe Haven. Victims are not always taken seriously and sometimes turned away by the police. Examples were given of officers having treated victims in a dismissive manner. One respondent mentioned a case of a male victim that was laughed at by a police officer when he wanted to file a report against his female aggressor. The taboo (men should be able to 'control' their own partners) plays a problematic role. But even if male victims would be taken (more) seriously, there is still no support service or assistance available to them, as respondents point out.

Cases of domestic violence were/are registered by the KPSM according to the type of criminal offence e.g. assault, aggravated assault etc. Since August 2019, cases are also being registered as 'domestic violence' in the police information system for statistical and management information purposes. This also assists in the (timely) referral of cases to and involvement of other organizations. Statistics provided by the KPSM show that five cases have since (August-December 2019) been registered as cases of domestic violence. Three of these cases were solved in 2019. However, due to the aforementioned manner of registration, this is an incomplete picture of the total cases of domestic violence in 2019. For example, the number of assault cases stood at 108 and the amount of threats filed stood at 99. As it relates to cases of child abuse, there was only one case registered by the Youth and morals department in 2019. This case was initiated based on a report filed with the KPSM. The KPSM believes that there are many more cases of child abuse, but that these are not being reported.

The KPSM, under the authority of the PPS, can be seen as the starting point for criminal justice involvement in cases of domestic violence. The criminal procedure is initiated by the pre-trial investigation carried out by the KPSM as soon as they are informed of a criminal offence. The report filed by the victim, or ex officio investigation, forms the basis for the involvement of other entities such as the COG, the SJIS or Safe Haven. Collaboration therefore exists between the KPSM and these organizations with established points of contact. For the manner in which this takes place per institution please see the respective paragraphs. The KPSM stresses on the importance of focusing on the development of the entire (justice) chain with regards to domestic violence.

⁴⁰ Law Enforcement Council (2019). 'Second Review Investigation on the implementation of the recommendations regarding victim support in Sint Maarten', Philipsburg.

5.3 Findings Public Prosecution Service

Once a domestic violence incident is reported to the KPSM (by the victim her-/himself or a third person) or if the offender is caught red-handed, the KPSM starts an investigation. The investigation takes place under the authority of the prosecutor. As mentioned before, if the victim refuses to file a report or later wishes to withdraw the report, the prosecutor can nevertheless decide to investigate the case *ex officio* and have the suspect arrested on legal grounds. The public prosecutor has the discretionary power to initiate or waive (further) investigation and prosecution, and employs the expediency principle [*opportuïteitsbeginsel*] in this regard. The 'policy instruction relational violence' (as mentioned in chapter 3) does not contain specific guidelines to harmonize the utilization of this discretionary power in domestic violence cases. According to respondents of the PPS, in the decision to (further) investigate and or prosecute a domestic violence incident *ex officio*, the severity of the case and or recidivism, the presence of a medical report by a physician and witness statements play an essential role. There are no official decision criteria documented within the PPS for domestic violence cases.

When a suspect is taken into police custody [*inverzekeringstelling*] the auxiliary to the public prosecutor [*hulpofficier van justitie*] or the public prosecutor informs the SJIS about the domestic violence case. The SJIS is requested to make an early intervention report [*vroeghulp rapportage*] within three days, including the recidivism risk, context info (relation victim, children, etc.), assistance options, advise on the need for special conditions and advise on the imposition of an appropriate punishment (see paragraph 5.5 for the procedures of the SJIS). The instruction sets as a guideline that, in principle, a writ of summons [*dagvaarding*] is issued in domestic violence cases involving serious injury, recidivism, alcohol- and or drug abuse, and or abuse with the use of a weapon. Only (relatively) less serious cases can be settled out of court by means of a transaction and or fulfilment of one or more (financial) conditions laid down by the PPS. If the pre-trial detention is suspended by the investigative judge, the PPS stimulates the imposition of special conditions, such as assistance and supervision by the SJIS and or a restraining order. According to the instruction, the PPS has to make sure that the victim, the KPSM and the SJIS are informed in a timely manner about the judge's decision. When it appears that the suspect has violated the special conditions, the PPS must immediately bring the case to court.⁴¹ It appears from this research, that in practice this is not always done accordingly. Victims are not always informed in a timely manner about the termination of (pre-trial) detention and or special conditions, and also in the monitoring of special conditions bottlenecks occur (also see paragraph 5.5). Furthermore, at the time of this inspection, the PPS had not yet issued a sentencing directive [*richtlijn voor strafvordering*] for domestic violence that harmonizes the sentences requested by public prosecutors in individual cases.

Respondents state that the approach of the PPS is more suspect- than victim-oriented and that there is room for improvement when it comes to protection measures. The imposition of certain special conditions (such as a restraining order) is at times considered problematic or fruitless, as these are difficult to monitor and enforce or are disproportionate. This is partly due to the small scale of the island. According to the respondents there are also few, if any,

⁴¹ Instruction relational violence [*Aanwijzing relationeel geweld 2017.01*]; Note: at the time of this inspection the PPS' Prosecutors General Office was conducting an evaluation of the Instruction relational violence.

consequences associated with a perpetrator violating conditions. Also, due to the lack of capacity at the Pointe Blanche prison, perpetrators often go free.

In 2016 a protocol regarding victim support was drafted by four entities in Sint Maarten, amongst which the PPS. In this protocol it states that the prosecution phase commences from the moment a suspect in the case has become known and the case is registered at the PPS. Once a decision has been taken to prosecute, based on the investigation findings of the KPSM, the public prosecutor has certain responsibilities towards the victims. These include: providing information; claims handling and mediation; and conducting a victim interview (at the request of the victim) by the prosecutor or advocate general handling the case.⁴² This protocol has not been finalised however.

In the second review report concerning victim support, by the Council, it was also established that the PPS had made a start with drafting an internal policy and procedure to provide for the dissemination of information to victims. Also, the new draft Criminal Procedure Code has provisions that deal with victim support and mediation, which will eventually lead to new agreements needing to be made in this area. At this time criteria, to inform victims of the decision of the PPS to waive (further) prosecution, still haven't been developed. There is however the agreement that victims are called to a hearing (this has been arranged as part of the form used for the '*seven-week deliberation*'⁴³). The chief prosecutor has indicated however that there is not enough insight as to whether or not this actually takes place consistently. Intensive guidance of victims no longer takes place by the PPS, therefore no criteria have been developed in this regard. Furthermore, the public prosecutor has indicated that intensive guidance is not their task but that of a victim support office, although that is lacking in Sint Maarten. The core task of the prosecutor regarding victims is to inform them of their case and in serious cases have a consultation at the most.⁴⁴

The power of the PPS to order child protection measures, such as custodial control over a minor or the removal and deprivation of parental authority, and the collaboration with the COG to that end, is not incorporated in the instruction. Paragraph 5.5 of this report contains the findings of the collaboration with the COG in domestic violence cases.

The PPS does not register domestic violence cases as such. In the information system of the PPS criminal offences, that pertain to cases of domestic violence, are being registered in the manner in which they are classified in the Criminal Code. For example, when a man abuses his wife the case is registered as an assault (sect. 2:273), the intimate relation between the suspect and the victim (which makes this assault count as a case of 'domestic violence') cannot be derived from this registration. This registration-practice limits the possibility to retrieve accurate data and subsequently effectively monitor and manage the handling of domestic violence cases by the PPS.

⁴² Draft protocol victim support 2016

⁴³ During this deliberation, a standard form is used which contains all the points (e.g. informing the victim) that must be arranged in order for a case to be 'ready for hearing'. The form must also indicate by default whether a victim is registered in the case so that he or she can be informed about the upcoming hearing.

⁴⁴ Law Enforcement Council (2019). 'Second Review Investigation on the implementation of the recommendations regarding victim support in Sint Maarten', Philipsburg.

5.4 Findings Foundation Judicial Institutes Sint Maarten

As mentioned in the previous paragraph, the involvement of the SJIS starts when the KPSM (the auxiliary to the public prosecutor) or the PPS requests the SJIS to make an early intervention report. According to the SJIS, it has namely been agreed between the SJIS and the PPS that the SJIS will be requested to advise in all domestic violence cases. As stated previously the deadline for the intervention report is three days. This deadline is always met unless it has been determined that the client requires outpatient care by Turning Point. More time is then required as it would mean that Turning Point has to conduct two site visits before signing off on the report. In order to be able to compile the intervention report, the SJIS receives the complete case file of the KPSM and can request additional information from the KPSM and or the PPS. The SJIS visits the suspect in the police cell and contacts the victim for a complete 'quick scan/picture' of the situation. Attention is paid to both stable and unstable factors, injuries, earlier incidents, what is needed to prevent recidivism and what the victim and the suspect want. When minor children are involved these are left to the authority of the COG. The SJIS has an internal work instruction (not on paper) on how and when to consult the COG, and reports this in the early intervention report for the PPS. The SJIS never interviews/questions minor children. The information (interview of the minor) provided in the police report is utilized if available. Interviews with adult victims are however mandatory. The SJIS does not have a specific domestic violence policy or programs. There are internal working arrangements on how to deal with these types of cases and the SJIS follows the instruction of the PPS. The early intervention report includes a conclusion and advice for the PPS.

Intervention options that can be ordered by the court, the PPS or the Minister of Justice are aggression regulation training (ART) by the SJIS, or if drugs-/alcohol problems play a role treatment by the Turning Point Foundation, or in the case of psychological problems treatment by the Mental Health Foundation (MHF). The SJIS gives ART in group sessions, and sometimes (if needed) individually. The SJIS has indicated that while many have benefitted from the ART program, a more specific training is required whereby various aspects of domestic violence are addressed, such as gender inequality and culture in order to better equip offenders with the necessary tools. There is also a 'family ART'-option, where at times the victim also participates, but according to the SJIS this is not suited or sufficient for cases of domestic violence as it does not focus on domestic violence characteristics and patterns but merely on (general) aggression regulation for the offender.

The respondent of the SJIS indicated that, roughly a year ago the SJIS submitted a crime fund project proposal to the ministry of Justice. With this proposal, the SJIS aimed to provide for a specific training order (leerstraf) for domestic violence suspects and an (implementation) training for all professionals involved in the sector, such as the COG, KPSM, Women's Desk, Safe Haven etc. The training was based on an existing training program in Bonaire but modified to fit the context of Sint Maarten. The SJIS stated that they have not yet received a response on the submittance of this project proposal. The probation officers of the SJIS are also slated to receive a separate training on how to apply a specific diagnostic instrument in order to better advise the PPS and the Court regarding the risk level of clients and will also receive training on how to guide offenders of domestic violence and their partners.

According to the SJIS the majority of the couples in domestic violence cases (that are reported at SJIS) separate and victims request protection orders, such as a no-contact or (location) restraining order. The SJIS is tasked with monitoring the offenders' compliance to these orders. This was not easy, as up to recently it lacked possibilities for electronic monitoring.⁴⁵ Victims had to report violations of the order themselves. The SJIS would therefore inform and sometimes pro-actively contact the victim about the special conditions, although this is not the task of the SJIS. In the case of a (supposed) violation the SJIS would contact the victim to get more information on the (impact of the) violation. In the case of a first, minor violation the SJIS would then issue a warning to the offender. Electronic monitoring has now however, become operational.⁴⁶

In all other cases (repeated or severe violations) the SJIS reports back to the PPS. Oftentimes the SJIS has to mediate between the offender and the victim, for examples in cases whereby persons are being stalked, subtle threats are being issued, visiting arrangements of children and payment of child support have to be regulated. With regards to the latter the SJIS works closely with the COG and clients are referred to the COG if necessary.

Although exact numbers are unknown, the SJIS estimates that roughly 21% of their caseload concerns domestic violence. After hurricane Irma, there has been a noticeable increase. Until the end of 2018, the SJIS noticed a clear trend in the storylines of their clients, e.g. "before Irma things were going ok, after Irma I lost my job, got really stressed and everything went downhill". Effective trauma treatment is lacking in Sint Maarten, the chances that victims become offenders and vice versa are high, according to the SJIS. The majority of the men in the programs of the SJIS claim to be victimized in the past (by their parents or partners) themselves.

5.5 Findings Court of Guardianship

The COG, as stated in chapter four, has been assigned various tasks when it comes to ensuring the safe upbringing of minors. Where it concerns investigating domestic violence cases in cooperation with the KPSM the following steps are taken. The KPSM contacts the COG when they encounter a case whereby children are involved, depending on the severity of the case, either immediately or after the criminal report has been processed. This can sometimes take a few days. The COG receives basic (contact) information from the KPSM and makes its own assessment of the situation within the family. If a child's mental, moral or physical health is seriously threatened and it is necessary to remove the minor from the residence, the COG always first tries to accommodate the child with family members. If it is not possible to ensure the safety of the child in this way, the COG can request custodial control or interim guardianship over a minor or the removal and deprivation of parental authority. Facilities that cater for these instances are however severely limited in Sint Maarten.

The COG can also be contacted directly by the victim, family member or another concerned party (e.g. neighbor, relative). If it concerns an acute case of domestic violence the COG initiates contact with the KPSM and attends the scene together with them, due to amongst

⁴⁵ During this inspection a covenant was signed by the Minister of Justice, the PPS and the SJIS to implement electronic monitoring

⁴⁶ On february 25th 2020 the Minister of Justice, the Chief public prosecutor, the Chief of police and the Chairman of the board of SJIB signed a covenant for electronic monitoring.

others safety concerns. If the parent/guardian of the child refuses to file a report, the COG can file a report under its own authority, if necessary. It is also possible for the PPS to issue interim guardianship [Voorlopige Toevertrouwing] for urgent cases, which means that the child will be removed from the home and placed under the supervision of the COG. The COG has to present the case in Court within six weeks to request a child protection order. If the case is not considered urgent, the COG drafts a safety plan whereby the victims are referred to various institutions for help.

Even though the criminal cases are being investigated by the KPSM under the authority of the PPS, the direct contact between the PPS and the COG is limited. According to the respondents, this is because the COG operates under civil law and the PPS's main concern is criminal prosecution and is, in that sense, more suspect oriented.

Another task of the COG regards the operation of a central registry for child abuse. While this entity has been established on paper⁴⁷, it has not been implemented in practice. The reason for this being that, according to respondents, the new legislation was not accompanied by an implementation plan including the necessary finances, education and IT-requirements etc. The COG does not have sufficient staff neither the resources to fulfill this new (major) task. Besides that, Sint Maarten does not have the necessary institutions and social services (e.g. a victim support office) to effectively refer to and assist those in need. As a consequence, some respondents also foresee problems in the preparation and introduction of the reporting codes for child abuse. This despite the aforementioned initiative agreed upon in July 2019, during the conference 'Ready, Set, Protect', organized by the Kingdom Taskforce, whereby Curacao and Sint Maarten agreed to collaborate in order to prepare and introduce their respective reporting codes.

The COG provided the Council with statistics on the number of investigations the COG conducted based on reports [zorgmeldingen] of suspected cases of child abuse from 2014 until 2019:

Type of abuse	2014	2015	2016	2017	2018	2019
Neglect	14	61	67	25	29	39
Physical abuse	14	13	22	15	3	4
Psychological/emotional abuse	2	1	5	7	10	2
Sexual abuse	19	8	6	2	1	4
Total	49	83	100	49	43	49

These statistics only show investigated cases by the COG and does not give an accurate picture of the total number of abused children in Sint Maarten. Reports that are handled via the walk-in consultation hour are not included in these statistics. According to the COG it is known that neglect often goes hand in hand with physical abuse. In many cases the COG encounters multiple forms of abuse. The COG plans to adjust the registration-process in 2020 to be able to provide more accurate statistics on the number of child abuse reports.

⁴⁷ National Ordinance for the implementation of a central registry for child abuse (AB 2014, no. 5) [Landsverordening van de 9de januari 2014 tot wijziging van Boek 1 van het Burgerlijk Wetboek (Invoering centraal meldpunt kindermishandeling)]

5.6 Findings Women's desk

The Women's desk, as part of the department of Community Development, Family and Humanitarian Affairs (CDFHA), plays a role in providing support to victims of domestic violence by offering them advice and programs to build their resilience as women and build a safe home. The Women's desk has one staff member who is supported when necessary by two staff members of the CDFHA and is responsible for carrying out the various tasks for which it has received a legal mandate. These include offering support and basic psycho-social counseling to registered clients and networking and collaborating with various organizations in the interest of said clients. While the initial intake is on a voluntary basis, persons have to go through the intake process and undergo an assessment in order to become a client and receive ongoing assistance from the Women's desk. Once the assessment has been finalized an intervention strategy or care plan is developed in consultation with the client. Based on the assessment referrals can be made to the KPSM and other organizations, such as Safe Haven or the COG. Contact with the PPS is currently nonexistent. This is because the Women's Desk considers the KPSM as the first point of contact. When a referral is made by the Women's desk, they do not provide the organization with a complete case file. Only excerpts of information are shared and this only with the explicit permission of the client. Besides the aforementioned, the Women's Desk also assists individuals who come seeking information on a one-time basis. These individuals do not necessarily always become clients.

The Women's desk has identified various challenges in practice, one of these is the inability of victims to start over in their own (safe) home, due to their lack of personal resources. Another is that oftentimes police officers and other frontline workers do not refer victims. Also, the various organizations involved are limited in resources and capacity to provide for the necessary support. According to the respondent's statistics regarding domestic violence cases are needed in order to substantiate allocating resources to tackle this problem.

5.7 Findings Safe Haven

Safe Haven offers shelter to adult female victims of domestic violence and their minor children for the short and long term (max. 3 months). Minor boys are accepted up to the age of 14 and girls up to the age of 18. The reason for enforcing an age limit for minor male children is to bar other clients from feeling uncomfortable/unsafe in their presence. Female victims who have not yet reached the age of 18 cannot be registered unless they are accompanied by a parent or guardian. The parent or guardian is required to remain at Safe Haven along with them. This is because Safe Haven cannot assume authority/responsibility over/for the minor. As it concerns male victims of domestic violence, Safe Haven (nor any other organization) does not offer shelter, only advice via their hotline, and if necessary, refers them to the police, a physician or a psychologist for help.

In order to be eligible to register at Safe Haven female victims must present a police and forensic medical report. The first point of contact for clients is therefore the KPSM. Even

though clients are required to submit a forensic medical report upon admission they still receive a physical checkup from a doctor that Safe Haven has on-call. Upon entering the facility clients are required to commit to a 13-week program and give their consent in order for their information to be shared with the necessary stakeholders (e.g. the Women's desk, the COG). As is the case with the Women's desk, complete files are not shared with these organizations, only basic personal details.

The clients at Safe Haven are residents and former residents that still require counseling. Both groups are offered two workshops that are based on the "NANE" program⁴⁸. One is a general workshop promoting amongst others self-esteem, confidence, assertiveness and learning to set one's boundaries that consists of 14 sessions. Upon completion of the first workshop, clients can then enroll in a workshop specifically geared towards domestic violence. This workshop, upon request of the clients, now also consists of role-playing. The women taking part in the groups have different experiences with domestic violence, ranging from mild to extreme cases.

Safe Haven supports its clients in the contact with the various (judicial) organizations, for example the KPSM and the COG. Respondents of Safe Haven indicate that they also relay information regarding the filing of a report with the KPSM as clearly as possible to victims who contact them. They emphasize the distinction between the two different types of reporting that can be done. This in order to ensure that it is clear to victims that the type of reporting (notification or report) that they do can lead to a different outcome. This is important as the KPSM primarily acts based on an official report by the victim and also often that of witnesses. The fact that a suspect's pre-trial detention is often not only based on a report by the victim but also needs to be substantiated by that of a witness, delays the suspect's arrest and is to the detriment of the victim, according to Safe Haven. Safe Haven is also of the opinion that victims need to be informed properly as they are sometimes not dealt with in a correct manner by officers. Respondents feel that some officers lack training on how to deal with cases of domestic violence.

There is currently a good working relationship with the organizations within the judicial chain, namely the KPSM, the PPS, and the COG. According to Safe Haven, work agreements and fixed points of contact have been established with the various organizations, that for example facilitate appropriate response times. According to respondents, the working relationship was not always this good, this was due to for example understaffing within the organizations. Respondents of various organizations (other than Safe Haven) consider the admittance threshold of Safe Haven too high (requirement of a police- and medical report).

⁴⁸ NANE Women's Rights Association (Hungary)

5.8 Findings SMMC/GP

Based on desk research and the input of the participants of the focus group session⁴⁹, the Council found that when a victim of domestic violence is treated by the SMMC or a general practitioner they may refer them to the KPSM or one of the support services. According to the respondents, medical practitioners require the victim's permission in order to inform and share their medical report with the police. If a minor is involved, the social worker at the SMMC will assess the case and depending on the severity contact the COG. With the adoption of the National Ordinance for the implementation of a central registry for child abuse, sections 1:243b, c and d have been added to the Civil Code.⁵⁰ These sections allow professionals, such as medical practitioners, to break their professional confidentiality and (anonymously) report to a central registry for child abuse without the permission of the involved individual(s), if that is deemed necessary to end a situation of child abuse or investigate a reasonable suspicion of child abuse. Through a National Decree, for certain professions it can be made mandatory to draft and implement a reporting code, that includes the steps to be taken when noticing signals of child abuse. Requirements regarding the elements of the reporting code can be determined by regulation of the Minister of Justice. At the time of this research a reporting code for medical practitioners in Sint Maarten hasn't been developed and implemented as yet.

5.9 General observations

This paragraph contains general observations of the respondents that apply to more than one specific organization. According to some respondents, in new (draft) regulations and policies the limited resources and capacity of the various organizations involved in the implementation, is not always sufficiently taken into account. For these organizations the execution of their initial core task is often already challenging due to the limited resources and capacity. If extra tasks do not come with additional financing, it is difficult (or impossible) for the organizations involved to implement these new regulations or policies, respondents point out. Furthermore, respondents indicate that in general training and tools are lacking at the various organizations which hampers, for example, specialized (dedicated) capacity building and collaboration on the subject of domestic violence. The definitions of, or criteria to determine what is 'severe' or what is 'unsafe' (risk assessment) have not been collaboratively determined and formalized and may vary between organizations and professionals. Therefore, actions taken based on these interpretations (e.g. when to do a crisis intervention or ex officio investigation) may also vary. It is also not specified in work agreements which organization is responsible for risk assessment in the different phases when dealing with domestic violence cases and what is needed in order to do so.

According to respondents, the information sharing between the various organizations is predominantly limited to basic personal details. Each organization has to conduct its own investigation into a case. Respondents state that the focus of care institutions and or support services is often only on the victim and not necessarily on the rehabilitation (for example

⁴⁹ During this inspection the Council wasn't able to interview a medical practitioner, although an invitation for the focus group session was sent to a GP.

⁵⁰ Sint Maarten Civil Code Book 1, Law of persons and family law (AB 2013, GT no. 825)

through voluntary counseling) of the perpetrator. On the other hand, the judicial approach is more focused on the offender and thus far hardly includes the victim. According to one respondent, the inability to effectively deal with cases of domestic violence can also be attributed to (cultural) differences between the professionals and their target groups. Attitudes toward domestic violence and perceptions of what is acceptable may vary. Therefore, it is also important to increase general awareness within the community.

6. Analyses

To answer the main research question of this inspection ‘How are domestic violence cases handled within the criminal justice system of Sint Maarten?, the Council looked at international norms as well as Sint Maarten’s government policies and criminal law enforcement. The Council described the institutions that play a role in dealing with domestic violence cases and accordingly discussed the approach in practice. Based on the findings, in this chapter the Council will present its view of the current approach to domestic violence in Sint Maarten.

6.1 Regulations and policies

6.1.1. International regulations and Government policies

International regulations provide norms and standards for the governmental response to domestic violence. Although efforts have been made on a policy- and executive level, it appears from this research that there is room for improvement in the current national approach of Sint Maarten to this problem. Based on the findings of this research the Council concludes that the necessary policies, protocols, criteria and procedures that could facilitate in this area are not finalized and or currently lacking. These should tackle areas such as effective identification, reporting, referral, investigation, interventions and follow-up of instances of domestic violence that are crucial for the appropriate judicial involvement.

The various ministries (VSA, ECYS, Justice) that are involved in, amongst others, drafting policy in this area lack an integral approach to the issue. This even though all ministries have departments and or organizations that play an important role in the tackling of domestic violence based on individual regulations and policies. The policy currently being drafted by the ministry of VSA strives to engage all stakeholders and detail an approach to combat domestic violence. The EYCS has been identified by the ministry of VSA as one of the ministries mandated to deal with the issue, however it is unclear as to whether or not they have been approached. Moreover, the Council has noted that both the draft policy of the ministry of VSA and the published action plan on children's rights of the ministry of EYCS partly include the same activities yet appear to differ in proposed approach, for example where it regards the implementation of a reporting code and the improvement of the collaboration between judicial organizations and support services. The Council is of the opinion that the development of policies for an integral governmental response to domestic violence, requires a dedicated policy counterpart within the ministry of Justice. Because these draft policies are not being jointly coordinated, finalized and implemented, with the necessary government funding, the government’s response to domestic violence is not determined nor effective. Therefore, the Council urges the ministry of Justice to become involved in the coordination, finalization and implementation of these policies. The recently launched Policy Platform, an initiative of the ministry of General Affairs, might also be able to contribute to a cohesive domestic violence policy.⁵¹ The Council looks forward to the developments in this regard.

⁵¹ The Daily Herald 3-3-2020: ‘Jacobs launches policy platform’

6.1.2. Criminal Law Enforcement

The instruction by the PPS aims to offer guidance for an appropriate response to domestic violence by the partners within the judicial chain, primarily the PPS and the police. The Council notes that the instruction refers to the importance of close collaboration between the PPS, the police, the probation service and *other partners*. However, (examples of) these other partners are not mentioned and the instruction offers little guidance as to the common goal of the judicial organizations and other partners in dealing with domestic violence cases and how this goal can be achieved. The instruction begins with emphasizing the importance of the prevention of recidivism. Yet, the assessment of the recidivism risk is only mentioned as part of the early intervention report of SJIS in the phase that a suspect is taken into police custody. It would appear from this research that it is not determined which organization makes a risk assessment in other phases and based on which criteria certain (early) interventions are applied to prevent recidivism and ensure the safety of those involved. The Council notes, moreover, that the word 'safety' is not cited once in the instruction and would like to encourage the PPS to address this in the near future.

Furthermore, the instruction strongly emphasizes the importance of the victim filing a report to initiate a criminal procedure, but does not elaborate on the underlying reason for this nor the possible added value of criminal justice involvement in domestic violence cases. The vision of the PPS in this regard is also not apparent. As a consequence, it might be difficult for *other partners*, such as the COG, to recognize the added value of collaboration with the PPS in domestic violence cases. Besides that, the difficulties that refrain victims from filing a report, as partly mentioned in the instruction and as brought forward by respondents, seem to be overlooked. Guidelines for ex officio investigations are also not included in the instruction. The Council, moreover, found that access to the women's shelter, Safe Haven, is dependent on the victim filing a criminal report with KPSM. Various respondents, as well as the Council, considers this questionable in the light of the accessibility of this important support service. Especially since there is room for improvement in the reporting process. Victims might be intrinsically willing to file a report, but might have other (external) reasons not to do so, for example a pending immigration application, fear of not being taken seriously by the authorities, age or other vulnerabilities.

While attention is paid in the instruction to the criminal investigation and prosecution of cases that involve minors, and child abuse is included as a form of relational violence, guidelines for cooperation (with e.g. the COG) to ensure the safety of the minors are lacking.⁵²

Based on these findings, the Council is concerned that domestic violence victims, who might benefit from interventions that are available to criminal justice authorities and or support services, are being withheld the necessary assistance.

⁵² Since the PPS' Prosecutors General Office was conducting an evaluation of the Instruction relational violence at the time of this inspection which may lead to a renewed version, the Council will not include recommendations regarding the instruction based on the findings in this report. Nonetheless, the Council will follow the developments in this regard and, if necessary, the Council will evaluate these in a review report.

6.2 Handling of domestic violence cases in practice

As mentioned in the introduction of this report, the Council inspected the approach to domestic violence within the judicial organizations and in collaboration with the justice chain, from the first signal or report until the closure of a case (with the exception of the procedures/case handling by the Joint Court of Justice). Based on the findings of this research, the Council defines four phases in the (criminal justice) response to domestic violence. In this paragraph the Council analyses the relevant research findings per phase.

Phase 1: Identification and Reporting

As it appears from chapters 4 and 5, domestic violence can be identified by and or reported to various institutions. Criminal justice involvement starts as soon as the KPSM is informed of a domestic violence case. Based on the findings the Council concludes that there is room for improvement in the identification and reporting practice in Sint Maarten. The Council marks the importance of the preparation and introduction of (currently lacking) reporting codes that include the steps to be taken by professionals when they receive signals of domestic violence. If cases are not consistently recognized and reported to the competent authorities, victims will not receive the necessary assistance and it is highly likely that the violence continues or even worsens.

The Council is concerned that, due to a lack of specific training and experience on how to deal with cases of domestic violence, victims are not always taken seriously and handled correctly by KPSM officers. These factors can hamper the necessary follow-up within the criminal justice system and collaboration with support services. Having an accurate case file of all incidents is of importance as recidivism is one of the factors that is taken into account when deciding on a further approach (e.g. ex officio investigation or issuing a writ of summons). Moreover, incorrect treatment of domestic violence victims (men or women) can cause secondary victimization, which is very harmful and must be prevented at all costs. The Council is therefore pleased by the PPS' recent efforts to bring attention to the topic of domestic violence, because increasing awareness among (law enforcement) professionals can improve the identification and reporting practice.

As the Council concluded in its (review)report(s) on victim support, clear information on the (steps in the) criminal procedure is also important to victims and or others filing a report. Additionally, the difference between giving a notification and actually filing a report needs to be made clear to victims and the public in general. All this in order to manage their expectations of the criminal justice response.

Finally, the Council is pleased to hear that the KPSM started registering domestic violence cases as such and calls on the PPS to follow this example. This in order to retrieve accurate data and subsequently effectively monitor and manage the handling of domestic violence cases within the criminal justice system and in order to substantiate allocating resources to tackle this problem. In addition, the Council stresses the importance of giving insight into the registration of the amount of domestic violence cases as to get a better understanding of the magnitude of the problem and to better assess the necessary approach and or measures.

Phase 2: Investigation and Referral

The Council shares the opinion (and the concern) of the respondents that improvements in the identification and reporting practice can only have the desired impact, if the organizations involved have sufficient resources to properly investigate and respond to signals of domestic violence. As indicated earlier in paragraph 6.1, the lack of resources impedes organizations from functioning properly and being able to carry out the necessary measures in order to combat domestic violence. Resources such as access to (specialized) trainings, effective information systems, policies and procedures, victim support office and personnel to name a few. This can be partially attributed to the lack of funding; however, the Council is of the opinion that the involved ministries and organizations can achieve more if the available resources are effectively coordinated.

Although various organizations are legally tasked to deal with domestic violence, it appears from this inspection that only basic personal details are shared between the organizations involved, procedures with regard to collaboration are not always standardized in covenants and investigation activities of the various organizations are not coordinated. Each organization conducts its own investigation into a case, with its own work procedures, which are not always formalized. This can be problematic as victims might be forced to have to tell their story over and over again to the various organizations. This is not only a burden on the victim, it could also damage a criminal case as victim and or witness statements might be considered influenced or directed, due to them having to repeat it. Also due to the time lag in between, referrals, important traces or evidence might get lost.

Respondents stated that ex officio investigations are not encouraged and are only used as a last resort, as it can have grave consequences for the family involved. In the Council's view it is indeed important to take the wishes of the victim seriously. However, it also became apparent from this research that the current reporting and investigation process is not flawless. As a consequence, organizations might not always have a clear, complete picture of the family situation and for example the safety of children involved.

Criteria for unambiguous risk assessment and the definition of terms such as 'severe' and 'unsafe' have not been collaboratively determined and formalized. As a result, the investigation and referral process may vary and lead to different outcomes (e.g. when to intervene or refer) depending on the organization or professional involved. The Council considers this problematic as it may contribute to discrepancies in the handling of domestic violence cases between and or within organizations. Of course, it must be taken into account that the tasks and powers of the different organizations vary and regulations for the exchange of information must be followed. Yet, the Council is of the opinion that this does not necessarily impede effective cooperation.

In order to stimulate a more coordinated approach, a common goal, vision and consistent policies are needed. In the current practice timely referral of victims at times appears to be a problem and organizations primarily work alongside each other instead of taking joint actions. For example, in cases whereby children are involved and the KPSM has to inform the COG. Even though in domestic violence cases the criminal investigation by the KPSM, under the authority of the PPS, may run parallel to the (civil) investigation by the COG and some powers might even overlap, respondents state that the contact between the PPS and the COG is

limited. It appears to the Council that the civil and criminal handling of domestic violence cases are considered two different worlds. However, the investigation, interventions and consequences affect the same family-system.

Based on the foregoing, the Council considers it of great importance that the involved organizations standardize, align and implement work procedures to (where possible collaboratively) investigate cases of domestic violence, including clear criteria for risk assessment, consultation and joint action.

Phase 3: Interventions and Follow-up

The third phase the Council identified concerns interventions and follow-up in domestic violence cases. The research findings show that also in this phase there is room for improvement. For a large part the same aforementioned bottlenecks (the lack of resources) play a role in this regard.

Different institutions advise and or decide on interventions and follow-up. The COG for example drafts a safety plan and the SJIS advises the PPS on the further handling of a case with an early intervention report. The public prosecutor decides on the requested special conditions and or sentences. A sentencing directive [richtlijn voor strafvordering] for domestic violence is, however, currently non-existent. As is the case in the investigation phase, the Council has established that the advices and decisions to intervene in domestic violence cases are not consistently coordinated.

The SJIS does not have a specific domestic violence policy or programs for offenders. A few interventions that have been brought to the attention of the Council by respondents (and as referred to in the Explanatory Memorandum of Sint Maarten's Criminal Code) are considered insufficient in domestic violence cases, such as the ART program and the restraining order. As mentioned, the SJIS has indicated that a more specific training is required whereby various aspects of domestic violence are addressed. Furthermore, there are currently no organizations such as a victim support office that can provide (extensive) support to victims. This has already been established in various reports by the Council. This is problematic as victims are often not aware of their rights and are left to their own devices. Support services such as the Women's desk and Safe Haven have limited resources at their disposal. Even though victims require much care due to the fact that the relationship between perpetrators and victims is often marked by factors such as legal, practical and or economic dependence, social expectations, or strong emotional ties. Victims are often not able to start over in their own (safe) living environment, and at the same time there is a lack of institutions and or capacity to provide for the necessary assistance and to help stop the violence. As a consequence, domestic violence victims in Sint Maarten are vulnerable to repeat victimization.

Although the Council acknowledges the constraints each organization faces, the Council is of the opinion that the approach to domestic violence can be improved, by organizations having (better) knowledge of the different interventions that are available and being better able to coordinate these.

Phase 4: Closure of a case

As can be concluded from the foregoing, the approach to domestic violence in Sint Maarten is primarily based on separate actions by various institutions. The criminal justice involvement

consists of the actions taken by the KPSM, the PPS and the SJIS (and of course the final decision of the criminal judge). The COG has an important role where it regards providing advice and requesting civil measures in domestic violence cases involving minors. Although there is some overlap, only to a certain extent are procedures aligned and collaboration sought. Because of the different tasks assigned to each of the organizations the duration and level of involvement with domestic violence cases varies. It would appear from this research that the level and duration of criminal justice involvement is dependent on the circumstances of the case, the wishes of the victim and prosecutorial decisions by the PPS. In some cases, victims are referred to support services when criminal justice involvement ends. Yet victims are not always properly referred and or informed, for example regarding the termination of (pre-trial) detention and or special conditions.

As far as the Council could establish the involved organizations do not collectively evaluate the process when a case is closed. Additionally, because of the lack of continuous and extensive support for victims of domestic violence and the lack of effective treatment for offenders, the Council has serious doubts whether a sustainable solution to the violence is reached upon closure of a case. This despite the efforts of the dedicated professionals involved. Considering the nature of domestic violence and the high risks of repeat victimization, in combination with the local context of a small island community where the impact of domestic violence is substantial, the Council calls on the Minister of Justice to make the necessary effort to improve the approach to domestic violence in Sint Maarten.

7. Conclusion and recommendations

Domestic violence is a serious problem in Sint Maarten that affects not only the direct victims, but forms a threat to complete family structures, future generations and society as a whole. Although it was not the focus of this inspection, the Council again would like to emphasize the importance of general awareness, prevention and (after)care and encourages all initiatives in this regard. Services and measures to ensure the safety and security of victims of domestic violence, including refuge, counselling and support, law enforcement, rehabilitation and criminal protection measures, should be available to all in need. In order to stimulate a more coordinated approach, a common goal, vision and consistent interministerial policies are urgently needed.

To improve the approach to domestic violence (including child abuse) in Sint Maarten the Law Enforcement Council makes the following recommendations to the Minister of Justice:

1. *Stimulate, and actively participate in, an interministerial program to jointly finalize, coordinate and implement an overall and consistent domestic violence policy, with the necessary government funding.*
2. *Provide the Court of Guardianship with the necessary resources to implement and structurally fulfill its legal task as a central registry for child abuse.*
3. *Follow up on the recommendations already made by the Council regarding the establishment of a victim support office.*
4. *Draft and implement a reporting code for professionals, including at least medical and educational professions.*
5. *Ensure that law enforcement personnel (continue to) receive training, in order to effectively deal with cases of domestic violence.*
6. *Create awareness in the community of the different types of reporting available.*
7. *Standardise and implement written work procedures with the judicial organizations to effectively investigate, track and refer cases of domestic violence.*
8. *Ensure that domestic violence cases remain/are registered separately by the KPSM and the Public Prosecution Service in order to effectively monitor and manage these cases and provide reliable statistics.*
9. *Stimulate the drafting and publication of a sentencing directive for the prosecution of domestic violence.*
10. *Finance and implement a specific training order (leerstraf) for domestic violence.*

Given the urgency of the subject, the Council stresses that a determined effort by the Minister of Justice is necessary in order to carry out the recommendations as soon as possible. Taking into account the necessary prioritization, the Council expects that the ten recommendations are carried out within a maximum period of 2 years. This two-year period corresponds with the first opportunity for the Council to carry out a review of this report.

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Appendix 1

Convention on the Elimination of All Forms of Discrimination against Women (New York, no. 000837, 18-12-1979) General recommendation No. 19: Violence against women (1992):

Comment 6: The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence. ´

Comment 23: Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality. ´

Convention on the Rights of the Child (New York, no. 003908, 20-11-1989)

Article 19: ´1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.´

´2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.´

Convention on preventing and combating violence against women and domestic violence (Istanbul, CETS No. 210, 2011) [not ratified by Sint Maarten]

Preamble: recalling the Convention for the Protection of Human Rights and Fundamental Freedoms and recognizing that ´domestic violence affects women disproportionately, that men may also be victims of domestic violence, and that children are victims of domestic violence, including as witnesses of violence in the family´.

Article 3 defines domestic violence as: ´Acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.´

Policy instruction relational violence (2017.01) Public Prosecutor's Office Sint Maarten

Definition: Relational violence does not only take place inside the home. It is about violence committed by someone with a family- or love relationship with the victim, regardless of the place where the violence takes place. [...] Child abuse, partner abuse and elder abuse are forms of relational violence.

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