



Inspection: Illegal firearms in St. Maarten

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Law Enforcement Council

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Abbreviations

CCLEC Caribbean Customs Law Enforcement Council
CFATF Caribbean Financial Action Task Force
CBA Crime Pattern Analysis (*Criminaliteitsbeeldanalyse*)
CID Criminal Intelligence Agencies (*Criminele Inlichtingen Diensten*)
FO Forensic Department (*Forensische Opsporing*)
IGD Immigration & Border Protection Service
(*Immigratie en Grensbewaking Dienst*)
KMar Royal Marechaussee (*Koninklijke Marechaussee*)
KPSM Sint Maarten Police Force (*Korps Politie Sint Maarten*)
KWCARIB
Coast Guard Caribbean Region
(*Kustwacht Caribisch Gebied*)
MDT Multi-disciplinary Team
NFI Netherlands Forensic Institute
OM Public Prosecutor's Office (*Openbaar Ministerie*)
ORVG Mutual Agreement on Strengthening Border control
(*Onderlinge Regeling Versterking Grenstoezicht*)
Council Law Enforcement Council
RST Detective Cooperation Team
(*Recherche Samenwerkings Team*)
SUR Special Unit Robberies
Team Zwacri Team Major Crime (*Team Zware Criminaliteit*)

Preface

The Law Enforcement Council (Council) is charged with the general inspection of organizations within the justice chain on Curaçao, St. Maarten and the Netherlands insofar as Bonaire, St. Eustatius, and Saba (hereafter: Caribbean Netherlands) are concerned. Furthermore, the Council is charged with the general inspection of the quality and effectiveness of the judicial cooperation between the countries. The Minister of Justice requested the Council to conduct an inspection regarding combating illegal firearms, and the Council agreed.¹

The illegal firearms phenomenon poses a threat to the safety of society and is regarded as a serious problem on the island. Reports about armed robberies, crimes against human life or assaults with firearms regularly make the news. Efforts by the justice system to address the issue are encouraging, even though the problem remains serious, and incidents continue to occur.

This inspection reveals that the justice system lacks insight into the nature and scope of the problem. The Council notes that, despite the presence of some specific statistics concerning confiscations (possession of firearms), the exact volume of illegal firearms smuggled into the island and the related trade in weapons, remains a mystery. However, what is clear is that in any case the focus should be on the borders, where broader efforts are currently being undertaken. The Council welcomes all developments that contribute to a more decisive approach to the problem, such as the protocol to strengthen border control and the cooperation on judicial matters at the Kingdom and local level to combat, among others, the smuggling of illegal firearms.

Furthermore, the Council notes that the justice organizations involved in the approach, despite the many difficulties, remain committed to (successfully) taking firearms off the streets and investigating, prosecuting, and adjudicating their use and the related serious crime. Given the dangers of firearms, any firearm is one too many. According to the Council, the focus should be on determining crucial factors needed to achieve a(n) (more) effective approach to this problem. These are already known bottlenecks, such as the availability of sufficient capacity, resources, and the required cooperation (agreements), allowing the best possible use to be made of the expertise and powers of the respective justice agencies. In this regard, an integral approach is essential.

Considering the gravity and impact of firearm-related crime (and the drug-related crime that is closely associated with it), as well as the associated problems to individuals and society, the Council believes that an integral approach deserves high priority. In combination with a restrictive firearms policy and inter-ministerial preventative measures, good results could be achieved.

It is the Council's hope that the findings and conclusions from this inspection can contribute to a more effective approach, and, in this context, seven recommendations are made. The Council urges the responsible parties to provide the necessary follow-up. Furthermore, for this inspection, the Council spoke with various department heads and employees of the relevant organizations and wishes to express its gratitude for the constructive and pleasant discussions.

THE LAW ENFORCEMENT COUNCIL

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¹ Article 21 Kingdom Act Law Enforcement Council.

Summary and recommendations

Executive Summary

Introduction

The Council inspected the prevention and combating of illegal firearms in St. Maarten. The inspection covered both the smuggling and trafficking of illegal firearms and illegal possession of firearms. The Council examined the relevant (inter)national laws and regulations, applicable policy and cooperation agreements and reviewed the current practice of the justice organizations involved in the prevention and combating the illegal trade in firearms and illegal possession of firearms.

Nature and scope

Illegal firearms are used by individuals in St. Maarten to commit crimes, for self-protection, or for both. Regardless of the reason, this adversely affects the security of the community. The authorities are falling behind in their response to this issue. The reasons are that the respective elements of the investigative and enforcement chains suffer from a lack of capacity and resources which hinder the effectiveness of the existing control mechanisms.

The relative ease with which it is possible to obtain a firearm is a matter of great concern. Although firearms are regularly confiscated it has very little impact on the flow of firearms to the island. The Council believes that 24/7 coastal control, combined with more inspections at the ports, enhanced formal cooperation between the French and Dutch authorities and a larger deployment of multidisciplinary teams can make a difference in addressing the problem of illegal firearms. In addition to the repressive measures mentioned above, consideration must also be given to, and action taken on, prevention strategies, particularly when it comes to the youth.

The social-economic factors feeding the demand for illegal firearms have only been hinted at in this report, but the Council nevertheless observed that the problem is one that cannot be addressed by the Ministry of Justice alone. It requires inter-ministerial strategies and policies to ensure a holistic approach to the problem. Such an approach has already been advocated in previous Council reports covering other issues, including drug crime and drug-related offenses. Given the interconnection of drugs and weapons, the Council² is convinced that acting on prior recommendations from the Council will help to address the issue.

Legal framework and policies

National legislation provides the required parameters within which tasks is performed in accordance with international conventions. To create effective policy, however, there must be an understanding of the nature and scope of the problem. Increasing the investigative and analytical capacity of the relevant agencies will positively contribute to this goal. Furthermore, the Council believes that to develop and enforce proper policy, it is essential for policymakers to maintain good contact with (administrative and criminal) law enforcement agencies. The (firearms) weapons policy must fulfil an important role in this respect. Several stakeholders also pointed out to the Council the importance of conducting a separate inspection into the broader topic of firearms policy and its implementation and enforcement. Various stakeholders also expressed their concern about the potential risks related to the legal possession of firearms.

Similarly, the agreement on the mutual strengthening of border control can contribute to this. It imposes several obligations on the country of St. Maarten, including the drafting of a plan of approach by all stakeholders to reinforce the border whereby, for example, the objective of combating illegal trade in firearms is included. The protocol offers stakeholders the opportunity to identify the risks at the border

² Law Enforcement Council (2020), Inspection study on the approach to drug crime and drug-related problems on St. Maarten.

and to specify their needs to realize the stated objectives. In the opinion of the Council, this opens opportunities for structural improvements of St. Maarten's agencies.

Moreover, the Council believes that a comprehensive approach and enforcement are needed to address the illegal smuggling of firearms, illegal trafficking of firearms, and illegal possession of firearms.

Judicial approach

The Council's inspection reveals that, in practice, the enforcement and control of illegal firearms is primarily accomplished through administrative and criminal enforcement by the different investigative and enforcement agencies, including Customs, the Coast Guard and the KPSM. The criminal enforcement is primarily directed against major crimes resulting from the trade in, and use of, illegal firearms and where the KPSM and the Public Prosecutor play a central role. With sentencing of offenders and prosecution of several suspects for armed robbery, assault with a weapon and homicide involving a firearm, among other crimes, criminal enforcement is receiving considerable attention. However, the lack of detention capacity plays a negative role as well.

In addition, several law enforcement control mechanisms are used to combat illegal firearms, however, these do not function optimally in all cases. This is largely due to the lack of capacity and resources within the agencies. The inspection shows that the special units within criminal enforcement, such as the Teams Major Crimes and Special Unit Robberies at the KPSM, are an important component in investigating firearm-related crime but are seriously understaffed. Also, the limited capacity (no 24/7 presence) of the agencies in charge of border control leads to a situation of "fighting a losing battle".

With respect to the use of multidisciplinary teams, only the Alpha Team currently conducts joint border controls. Previously, there was also another multidisciplinary team that drew on the competencies and expertise of the respective agencies for roadside inspections. This cooperation produced good results but was not permanently embedded in the agencies. As a result, the activities no longer take place.

Finally, the Council notes that the cooperation between the local agencies is good, as is the case with the cooperation with international agencies and the French authorities. However, as far as the latter is concerned, the needed synchronization is still needed at the political level.

Conclusion

Although St. Maarten continues to struggle with a lack of resources to address the problems confronting the community, which includes the problem of illegal firearms, the hope is that with the combined efforts of the agencies, a great deal can be achieved. All concerned are aware of the bottlenecks and above all possess the resolve to address them. However, to realize specific plans, they will require the requisite support in the areas of policy and finance, among others, from politicians and the administration.

The Council would like to see an improvement in the effectiveness of the departments and has therefore issued the following recommendations.

Recommendations

Table 1. Recommendations

Recommendation
To the Minister of Justice
1. Develop a strategic vision regarding illegal firearms that at least includes prevention and a focus on the youth.
2. Take the initiative to consult with relevant ministries and establish inter-ministerial policies concerning illegal firearms that integrate safety and social-economic aspects.
3. Ensure that risks at the border (air and seaport) are addressed, for example in the plan of approach on the Agreement for Strengthening Border control in the Caribbean Countries of the Kingdom.
4. Invest in the (analysis and investigative) capacity at the agencies so more insight can be gained on the illegal firearm problems and that these problems can be acted upon.
5. Using input from the agencies, develop and implement specific plans for an integral/ multidisciplinary and structural approach to the problem of illegal firearms.
6. Contribute to the establishment at the administrative level of maritime cooperation between the Dutch and French authorities so that the agencies can effectively carry out their day-to-day work.
7. Follow up on the Council's earlier recommendations regarding the approach to drug crime and drug-related issues.

1 Introduction

1.1 Background

The Law Enforcement Council (Council) is responsible for the general inspection of the organizations of the justice chain in Curaçao, St. Maarten and the Netherlands insofar as Bonaire, St. Eustatius, and Saba (hereafter: Caribbean Netherlands) are concerned. Furthermore, the Council is charged with the general inspection of the quality and effectiveness of the judicial cooperation between the countries.

In a letter dated February 9, 2021, the Minister of Justice called on the Council to conduct an inspection on the issue of combating illegal firearms.³ The Minister indicated in this letter that reducing the number of illegal firearms is one of the action points for 2021. For an effective response, the Minister would therefore like to obtain insight into the smuggling of illegal firearms, illegal firearms trade, illegal firearms possession, and how these problems are dealt with within the justice system. Accordingly, the Minister deemed an inspection by the Council advisable, and the Council concurred.

Illegal firearms

The subject of illegal firearms is not only timely, but also broad. It ranges from illegal cross-border trade in firearms to the individual use of these weapons in, for example, a robbery on St. Maarten, often with far-reaching negative consequences. The common thread being that firearms are very dangerous and pose a threat to the safety of people, thus also St. Maarten's society. It is therefore very important that the issue of illegal firearms is addressed by the justice system.

1.2 Objective of the research

The purpose of the inspection is to gain insight into how the (integral) approach on St. Maarten is structured by the justice organizations and to what extent this approach contributes to the prevention and control of the illegal firearms trade and illegal firearms use. This is made transparent by, for instance, the nature and scope of the approach and checked against (international) legislation, policy, and the execution of tasks. The cooperation (integral approach) is also discussed.

1.3 Main question and evaluation framework

The main question in this inspection is as follows:

To what extent does the judicial approach support the prevention and control of the trafficking of illegal firearms and the possession of illegal firearms in St. Maarten?

Sub-questions that will be addressed are:

1. What is the nature and scope of the illegal trade in firearms and the illegal possession of firearms?
2. What are the applicable laws, regulations, and policies regarding firearms?
3. Who is responsible for implementing and enforcing (controlling) legislation and policy on firearms?
4. In practice, how has the justice approach to the issue of illegal firearms trafficking and illegal firearms possession been structured?
5. Which cooperation agreements are in place between the justice agencies to address the illegal trade in firearms and illegal possession of firearms?

The review framework consists of the following elements:

- Law, legislation, and agreements (protocols)
- Policy and other relevant information
- Research reports

³ Article 21 Kingdom Act Law Enforcement Council.

Based on the above, it appears that the elements of the legal framework, policy, approach, and cooperation are crucial for achieving an optimal approach for dealing with illegal firearms within St. Maarten's justice chain.

In this theme inspection, the Council reviewed relevant national and international legislation and regulations, prevailing policy, and cooperation agreements. The Council inspected the current practice of the respective justice organizations. To put it another way: how is the approach for preventing and combating the illegal trade in firearms and the illegal possession of firearms organized on paper, and how does this work in practice? The judicial/criminal law approach and (in general) the administrative enforcement that is instrumental in preventing and combating the illegal trade in firearms, and the illegal possession of firearms were examined. Also, the cooperation is looked at.

1.4 Scope of the inspection

As part of its annual plan for 2015, the Council included the inspection *'The firearms policy in St. Maarten'*. The purpose of that inspection was to examine the level of compliance in St. Maarten with the legislation and policies regarding weapons and permits. However, at the onset of the inspection that year, it quickly became clear that new permit applications had been suspended by the Minister of Justice pending the development and publication of a new policy. A working group was also established to address this issue. Consequently, the Council decided to postpone the scheduled inspection in anticipation of the establishment of the new policy and its subsequent implementation. The Council has retained the proposed framework of the 2015 inspection, with the understanding that the scope of the initial broader inspection into the licensing aspect of weapons has been adjusted to the topic of combating illegal firearms. An inspection into the licensing aspect of firearms will likely be conducted later.

In this themed inspection, the focus is solely on the justice organizations' approach to the illegal trade in firearms and illegal possession of firearms. The Council chose to limit the scope of the inspection to illegal firearms and not to firearms in general, considering the Minister's request.

1.5 Methodology

This inspection was conducted by means of a literature review and interviews with government officials, portfolio holders, (policy) advisors and employees of justice organizations/agencies that play a (legal) role in addressing illegal firearms trafficking and illegal firearms possession. The research period was from 2010 through the first quarter of 2021.

This inspection was conducted in five phases:

1. Orientation phase: global exploration of the topic to determine the research approach and write the plan of approach.
2. Desk research: literature review, detailing of the theoretical/legal framework, and preparation of interviews.
3. Data collection: conducting interviews.
4. Analysis and reporting: using the main and sub-questions as a guide, analysis of the collected information and preparation of the draft inspection report.
5. Review and finalization: respondents were given the opportunity to comment on the draft report, after which comments were incorporated, and the final report was approved by the Council and presented to the Minister of Justice.

1.6 Reading Guide

To answer the sub-questions for this report, the research results concerning the sub-questions on the nature and scope, the legal framework, the stakeholders, the judicial approach, and cooperation are presented in Chapter 2. Chapter 3 presents the Council's analysis regarding the prevention and control of the illegal trade in firearms and illegal possession of firearms in St. Maarten. Finally, Chapter 4 presents the Council's conclusions and recommendations.

2 Research findings

To answer the sub-questions, this chapter first generally describes the nature and scope of illegal firearms (Section 2.1). This is followed by a discussion of (inter)national laws, regulations, and policies in Section 2.2. Furthermore, some general insights about the responsible enforcement agencies and the judicial approach to the illegal trade in firearms and illegal possession of firearms are briefly discussed (paragraph 2.4). In Section 2.5, the Council presents the existing cooperation to address illegal firearms.

2.1 Nature, scope, and overview of the problem

The problem of illegal firearms in St. Maarten can be described in terms of three elements: the smuggling of illegal firearms, the illegal firearms trade, and the illegal possession of firearms. The illegal possession of firearms is considered a consequence of the illegal smuggling of, and trade in, illegal firearms. To prevent and combat the problem of illegal firearms (and the violent crimes directly related to them), an understanding of the smuggling and trafficking of illegal firearms is needed at the very least.

The smuggling of firearms is often associated with general smuggling in the region along routes used for multiple items, particularly the drug trade.⁴ St. Maarten's location has advantages for example not only in terms of tourism and the transport of goods, but also contributes to its attractiveness for cross-border crime. A previous report by the Council already highlighted that St. Maarten has a hub function for various smuggling routes and that it is part of the "Caribbean route" that is commonly used by criminal drug organizations from Colombia and Venezuela, as well as Jamaican and Dominican gangs. The Council concluded in that report that there was no overview on the exact nature and scope of drug crime and the associated problems.⁵ Much the same applies regarding the nature and scope of the smuggling of illegal firearms, the illegal trade in firearms and the illegal possession of firearms in St. Maarten. There is no legal trade in firearms on St. Maarten and the neighboring islands. This means that both legal and illegal firearms, by definition, must originate from outside the country and illegal firearms are smuggled and traded.

The smuggling and trafficking of illegal firearms remains relatively invisible even though the use of illegal firearms (firearms possession) greatly impacts the community. The victims who have died or been injured because of firearm violence are the most visible. But the impact of illegal firearms extends beyond the immediately observable victims. According to a report on the proliferation of firearms in the Caribbean, (firearms) weapons and ammunition are the main tools used in many of the current disputes - and are the cause of most deaths associated with armed violence in the region.⁶ This is so, even though the region itself is not a producer of arms and ammunition. An analysis of the responses of the reporting countries shows that illegal firearms enter the respective countries through legal routes and, in most cases, through the same routes used throughout the region for drug trafficking.

Based on the above, it seems appropriate to focus the respective enforcement and investigative agencies' activities (at the very least) along the border.

The crime pattern analysis (CBA) for St. Maarten from 2008 to 2010 was issued in 2011 and reports the following regarding illegal firearms:

"Investigative agencies on St. Maarten rarely encounter organized smuggling of, or trafficking in, firearms. The number of seizures of firearms and the information from criminal investigations make it clear that a black market for the import and export of (large) consignments of firearms simply does not

⁴ Caribbean Financial Action Task Force Risk, Trends and Methods Group (2016), The proliferation of small arms and ammunition.

⁵ Law Enforcement Council (2018), Inspection into the approach to drug crime and drug related problems in St. Maarten.

⁶ Caribbean Financial Action Task Force Risk, Trends and Methods Group (2016), The proliferation of small arms and ammunition.

exist on St. Maarten. In 2008, 2009 and 2010, the Sint Maarten Police Force and Customs registered seizures of 23, 26 and 41 firearms, respectively. According to several respondents, firearms are already present in sufficient quantities on St. Maarten to meet the demand. They pass from hand to hand, are resold within criminal networks and enter St. Maarten through various drug routes, mainly in support of drug smuggling. Those drug movements would render the establishment of an illegal firearms market unnecessary. Many of the firearms smuggled with the drugs are left behind on St. Maarten or are resold second hand. Finally, small caches of firearms are said to be smuggled via sailing ships or in shipping containers; in this context, the limited monitoring of sailing vessels and shipping containers is allegedly exploited by criminals. The information on this form of firearms smuggling, however, cannot be confirmed.”⁷

In 2015, the Prosecutor General's Office stated that illegal firearms possession on St. Maarten, among others, was cause for concern. This became clear, for instance, after the action "Stop, Drop & Go" in which many illegal firearms were impounded. In the process, heavier penalties were also announced. To emphasize the policy of the Public Prosecutor's Office (OM) of reducing violence and improving public safety, the existing guideline on firearms possession was modified and published by the Public Prosecutor's Office.

The Council's 2019 *'Inspection of the approach to drug crime and drug-related problems in Sint Maarten'* report found that the smuggling of illegal merchandise, such as weapons, is often accompanied by drugs trafficking. It was also confirmed by respondents in the Council's 2019 report *'Inspection of the approach of human trafficking/human smuggling in Sint Maarten'* that there are links between, and connections to, the smuggling of (illegal) goods - such as weapons, drugs, money, and jewelry - and persons. This is all still relevant.

In 2019, in part to determine common priorities in investigations, a regional crime pattern analysis was prepared for the 2020 to 2022 period under the amended protocol on specialized detectives' cooperation between the countries of the Kingdom on behalf of the Council of Police Chiefs. This regional CBA states that the increase in violence in the Caribbean region is largely related to the increase in transnational criminal activities.⁸ Moreover, it is estimated that around one and a half million illegal firearms circulate through Latin America and the Caribbean region. *'Have gun, will shoot'*, is argued in this context and although the relationship is not straightforward, the presence of firearms apparently increases the likelihood of a fatality during a disagreement. Just over half of all homicide victims in the Caribbean region were killed by a firearm. At the global level, this represents one-third of all homicide victims. In the region, homicide rates are high.

In addition, the report mentions that it is a well-known fact that illicit goods such as drugs and weapons are often transported along routes that have traditionally been used for other illicit or semi-illegal goods that are abundant in the Caribbean region. Also, transnational crime has implications worldwide, but its impact is especially tangible and visible on small developing island nations. Caribbean islands are frequently confronted with illegal goods such as weapons entering through their coastlines and airports. The violent consequences of this form of transnational crime are more directly felt within a small community compared to larger countries, and this comes at a cost to law enforcement. Indeed, transnational crime also leads to local problems, such as illegal weapons entering, being left behind and circulating in the local market and being used to commit violent crimes, for example.

In terms of the approach, the report states the following:

"There is an increasing body of knowledge about the effects of investigative activities undertaken worldwide to date. The picture that emerges is a bleak one. If there is any impact at all, it is hardly noticeable, especially in the communities that suffer most from the consequences of transnational crime. This is one reason why recent literature recommends shifting attention from the somewhat

⁷ National Police Forces, (2011) Crime pattern analysis Sint Maarten: An investigation into organized and communal crime.

⁸ Regional Crime Pattern: Trends in de Dutch Caribbean 2020 – 2022

abstract threat of transnational crime to the actual threat and harm to citizens and communities: from national security to human security.”

The 2021 Annual Plan of the Coast Guard goes on to describe the issues related to illegal firearms trafficking and illegal firearms possession as follows:

“Transnational Criminal Organizations (TCO). The Caribbean has difficult-to-monitor stretches of coastline and corresponding maritime borders. The geographic location of the countries in the Caribbean, between major drug producing and transit countries in South and Central America and major markets in the United States and Europe, makes them vulnerable to (organized) drug crime. This has an impact on the security of citizens, erodes the rule of law, and has broader implications for international stability. The hard-drug trade primarily moves in the direction from South to North, soft-drugs, and weapons from the United States, notably flow the other way around. This results in high murder rates committed with illegal weapons in the Caribbean. This has consequences for the deployment of the Coast Guard, which is also apparent from the Justice Policy Plan Coast Guard 2018-2021 and its stated priorities.” The Plan further states the following about transportation and trafficking of illegal firearms: *“Illegal arms trafficking, and possession remain a concern on the BES Islands, Aruba, Curaçao and St. Maarten. A part of these weapons and ammunition are illegally imported by sea from the United States, Venezuela, and Colombia. Migrants attempting to enter the islands illegally by boat also regularly bring illegal firearms with them. Illegal use of firearms is closely linked to the drug and gang problem, for example, on Curaçao.”*

During the inspection, the Ministry of Justice indicated that it had no insight into the nature and scope of the illegal smuggling of firearms, illegal trade in firearms and possession of firearms in St. Maarten. According to the Ministry, data in this area is mainly available through the enforcement agencies such as the Sint Maarten Police Force (KPSM) and the Public Prosecutor's Office (OM). Furthermore, the 2011 CBA would continue to be applicable because St. Maarten is not that dynamic, but plans do exist to update it in its entirety. In the meantime, the OM's and KPSM's incidental reports are used to provide the necessary insight.

Different justice agencies have indicated that they have little insight into the smuggling of illegal firearms, illegal trade in firearms and illegal possession of firearms. The KPSM, for example, states that it does not (yet) have a clear picture of the nature and scope of the illegal possession of, and trade in, firearms on the island, and of the persons and/or groups involved in this trade. The Public Prosecutor's Office also confirms the lack of a clear overview of the trade. The Coast Guard Caribbean (KWCARIB) and Customs confiscate few, if any, firearms at sea or at the (air) port(s). The KPSM confiscates most firearms during the conduct of its cases. Interviewees indicated that the KPSM's Alpha Team experienced a seizure of firearms at the seaport in April of this year that entered as cargo. There have also been several seizures of weapons in the past. Customs reportedly has no capacity to check all cargo at the seaport. The lack of capacity and resources combined with the amount of cargo makes this impossible.

The KWCARIB reported during the inspection that they have been informed by regional and national chain partners that weapons (firearms) are smuggled to St. Maarten by sea but that from an operational point of view they can neither confirm nor deny this information. Coast Guard Support center St. Maarten has not seized any illegal firearms during the past two years. However, this does not mean there is no problem, because the established smuggling routes can be used for different purposes. For St. Maarten, the islands of Saint Kitts, Nevis, Anguilla, Antigua, and Saba are the main channels for smugglers because of the distance. The United States (USA) and Guadeloupe can also not be left out as destinations for illegal goods. There are many ways in which the smuggling of illegal goods, including firearms, can take place. Illegal goods can be smuggled in by means of single ships and smaller vessels using smuggling routes, but also through regular (large) cargo shipments at the port and airport.

Beyond that, the free movement between the French islands is also considered by Customs and

KWCARIB to be a risk for St. Maarten since these frequent movements take place without mandatory control ('clearance' or Customs handling is optional). This contrasts with the 'Dutch Side' where Customs clearance is mandatory. They report that many ships choose the French Side because of this. To avoid delays, and in some cases, to avoid inspections. The French work information driven, which means that if there are no 'red flags', ships are free to sail. Although the foregoing is not an accusation, it is an observation that cannot be ignored in the context of the smuggling and trafficking of illegal firearms. A holistic approach is therefore needed, which includes the French Side (see further section 3.5).

KWCARIB also states that St. Maarten's government is not devoting the same attention to maritime border control as it does to other areas. It must play a bigger role in this matter. This applies especially to the port, because 100% checks are currently not performed by Customs at that location, unlike for example in the US where the focus is on hazardous materials. The focus on and commitment to, strengthening the borders must change.

According to practically all interviewees from the respective justice agencies, while it is commonplace for many weapons to be in circulation, there is often a lack of sufficient or reliable information to act on. The KPSM and the OM indicate that there are suspicions about the origin and the circumstances, but there is no hard evidence. However, according to the KPSM, firearm-related violence is common in the field. Supposedly, nine out of ten murder cases involve a firearm. Attempts are made in these cases to determine the origin of the firearms, often unsuccessfully because, for example, when arrested the suspects remain silent.

Customs believes that the firearms problem is extremely serious. According to them, Police statistics reveal that there are many illegal weapons on the streets, which implies not only that import has already taken place, but also that the weapons have entered the criminal system. It is not clear how the weapons enter the country. This is certainly a concern for Customs since it is also their job to control the borders. However, the Customs authorities indicate that they are aware of the bottlenecks and the possible risks associated with the problem.

Despite having scanners to detect certain items, shortcomings exist at night when Customs does not operate. The same bottleneck has been identified by KWCARIB. The absence of controls during the night by these agencies is therefore a major risk according to one interviewee. The coast should be surveilled 24/7 as a preventative measure, and KWCARIB, Customs and the KPSM would need to be visibly present (for example, by conducting preventative patrols) as a deterrence. This is currently not the case, which leaves opportunity for malevolent individuals to smuggle firearms, drugs, and people into the country, for example. Regarding KWCARIB, a long-term plan has been prepared. Based on this plan, a 24/7 deployment of personnel and equipment will be realized.

Customs received additional manpower, which is a positive development because it enables them to conduct more frequent searches, thereby increasing the chances of seizing illegal firearms. The inspection also revealed that the current trend of importing contraband (soft drugs) involves importing it by mail and by cargo (soft and hard drugs). The modus operandi has remained the same.

Firearms play a major role in the commission of (violent) crimes. In the 2019 Annual Plan of the Public Prosecutor's Office, one could easily find confirmation of the disruptive and escalating effect of the unchecked and out-of-control possession of firearms in several crimes; automatic firearms are used without hesitation in liquidations and that these take place on or near public roads, causing a great feeling of insecurity among the population. According to interviewees, most firearm-related crime involves murders (including liquidations by organized crime), threats (to extort money or property), and robberies. Consequently, according to the interviewees, the purpose of possessing a firearm is often to commit robberies, for intimidation or for self-defense. Several interviewees indicated that there is little information on the users of illegal firearms. What is striking is the use of firearms by both minors and adults in the commission of robberies, as well as their use by groups/youths, usually 18- to 30-year-olds, in the neighborhoods that have acrimony with each other, and which is settled using guns. Among

themselves, they have access to illegal firearms. Based on information from the Criminal Intelligence Department (CID), the police attempt to make arrests by means of raids on premises. There is also a trend towards increasing numbers of (armed) robberies and the perpetrators are becoming increasingly violent. Robbers are mainly young adults and minors. They are said to be comprised of gangs of young people with strong connections, which is reinforced by loyalty within the gang. Committing a robbery often provides a certain status within the gang. Together, these factors amplify elements that are mutually linked, making it difficult to break the negative spiral, and therefore creating an even more important requirement for the critical study of juvenile cases among the relevant chain partners. According to the KPSM, robberies also involve "ordinary groups of people" and often involve "robbing in the hood", where people commit robberies in their own neighborhoods.

In turn, businessmen in particular feel threatened by the frequent robberies and acquire a(n) (illegal) firearm for their self-protection. This creates a vicious circle, however. In recent years, the police have also noticed that robbery suspects flee the Dutch side to the French side. In these cases, it is impossible to determine whether they are French or Dutch nationals/residents. The fact that the firearms cross borders and are passed around among the suspects also makes it difficult to trace them.

Information about illegal firearms can be acquired, for example, through the KPSM's CID info unit, the RST's Criminal Intelligence Team or the KWCARIB, but also from neighboring islands. In addition to the work of the Forensic's Department (FO) of the KPSM on (firearms) weapons, the info desk traces all confiscated firearms through Interpol, including within the Caribbean region. The resulting findings may include, for example, whether the weapons were stolen and their origin (e.g., purchased in the U.S.). This year, tracing using this method produced one hit; the firearm had previously been used in Anguilla.



Photo: The Daily Herald⁹

Handguns are predominantly used to commit violent crimes. According to interviewees from the respective organizations, Glock, Smith and Wesson and Taurus (caliber .45 and 9 mm) are the most popular type of illegal firearms in use. Lately, heavier caliber firearms such as shotguns have also been discovered. An unusual find was a firearm with a laser aiming sight. Furthermore, shotguns with large cartridges are also used. There is no information on the average purchase price of an illegal firearm. During investigations, prices ranging from \$1200 to \$3000 were quoted, depending on the type of weapon.

First and foremost, all interviewees described the problem as serious. Several of the factors described above and several other elements have been identified by interviewees as characteristic of the problems of illegal firearms smuggling, illegal firearms trade and firearms possession as well as the associated firearms violence in St. Maarten. Understanding these factors is important for the approach. The following factors are involved:

- The island consists of two regions that have open borders and is a risk;
- The island is surrounded by water and bays that can be used for undetected anchorage, the waters and borders are not guarded 24/7;
- St. Maarten is used as a transit port for contraband;
- Weapons smuggling is often linked to drug smuggling and -trafficking;

⁹ Six illegal firearms confiscated, prosecutor seeks heavy penalties, 02-08-2021, The Daily Herald.

- Violence-related crime is high, and most criminals appear to be in possession of a (firearm) weapon;
- Illegal firearms circulate among individuals, groups and the neighboring islands;
- The trend seems to be towards mailing contraband (mainly drugs), and this is quite easy to accomplish;
- Illegal firearm possession is relatively common among young people, even minors;
- Possessing a firearm is considered normal and cool by young people (mindset change);
- In terms of organized crime circles, most of the people that act as assassins come from outside of St. Maarten;
- There is no manufacturer or vendor of legal firearms on the island or in the region.

2.1.2 Social-economic factors

The impression exists among several interviewees that it is easy to obtain a firearm on the island. The interviewee from the Public Prosecutor's Office believes that the situation on St. Maarten regarding illegal firearms is alarming compared to the Netherlands, but perhaps less serious compared to surrounding countries. A great many unlicensed weapons are available and are also widely used. A culture of gun/violence is said to prevail among certain people on the island. This means that gun ownership is considered cool by a certain group, and some people do not consider it strange to see a person with a firearm. Similarly, it seems that certain people do not mind storing a firearm for someone, and if they are aware that someone has a firearm, it is usually not reported to the police. It is also pointed out that there are, of course, people who consider it dangerous.

Interviewees also mention broader social-economic factors that play a role in the possession and use of an illegal firearm such as poverty, unemployment and not having a future. The age range of most suspects today is between 20- and 30 years, a few are even 16 or 17 years old. Poverty and the lack of prospects for the younger generation are thought to play a role in them becoming entangled in criminal activities. An interviewee from the KPSM indicates that there are few programs or community centers providing activities for the youth. Several interviewees also mentioned as relevant factors: the lack of attention for children (within, for example, single-parent families), and a lack of time for parenting. The offenders are therefore often school dropouts and people who do not have a job. As noted, unemployment is also cited as a social factor that plays into the commission of robberies. The KPSM reports that in interrogations of young people, they literally state 'we are hungry'.

Another possible factor contributing to the increase in firearm violence is the volume of narcotics on the island, according to one interviewee. Firearms are almost always present in the drug trade because the drugs also must be guarded, and rip-offs take place. Because of this, many deaths have already occurred on St. Maarten. An example of this is the Vesuvius case (2007). As a result of a large stolen consignment of narcotics, a wave of violence was unleashed which resulted in 7 firearms-related deaths.

2.1.3 Confiscations

According to a United Nations Office on Drugs and Crime (UNODC) report about illegal firearms trafficking, handguns are the world's most confiscated type of firearms.¹⁰ According to the report, most seizures of firearms take place not so much at the borders but within the territory. Firearms are by far the most significant objects used in homicides related to organized crime. In addition, the report mentions that confiscations alone cannot provide a sense of the scope of the illegal trade. This is because data on seizures reflect both the forms of firearms trafficking, the efforts of national law enforcement, and other relevant authorities in addressing the problem. As such, the data cannot be automatically considered an accurate representation of the flow in the illegal firearms trade.

Confiscation of firearms occurs when agencies such as police, Customs, or other law enforcement authorities discover firearms in circumstances that indicate or are suggestive of a violation of law or

¹⁰ United Nations Office on Drugs and Crime (2020), Global study on Firearms trafficking 2020

applicable regulation. Seizures by such agencies can occur, in part, during routine checks (including at border checkpoints), targeted operations, criminal investigations, and the response to reported violations. Confiscation therefore represents the first contact between the illegal practice and the government's efforts to combat it. Data on seizures are influenced by, and therefore reflect, two parallel dimensions: the extent to which the illegal phenomena occurs and the scope of any, specific form of response on the part of the authorities, according to the report.

Data on confiscations performed by the three justice agencies, Customs, KPSM and KWCARIB can provide a preliminary indication of the problem. As illustrated above, seizures are important for gauging the situation on the island. That is why it is essential that the agencies properly document these data. This information will not provide a complete picture but can reflect the possible scope of the problem. The Public Prosecutor's office reports that the image about illegal firearms is developed using both the confiscated firearms and the official reports issued by the CID containing information about the possible possession of firearms. Therefore, the Public Prosecutor's Office has a reasonable understanding of the nature and scope of the problem.

Firearms are primarily found in cases such as shootings and robberies. According to a KPSM interviewee, the number of firearms seizures is relatively low, due in part to the theft of firearms left at crime scenes and the fact that firearms are also transferred from one person to another.

As far as Customs is concerned, illegal firearms are occasionally found during inspections, impounded, and transferred to the KPSM for investigation. The KPSM then attempts to learn where they originated. Customs has found weapons originating in the U.S. at a courier service. A request for mutual legal assistance was then made to the US. However, in situations where information must be obtained from abroad, it is difficult to secure evidence. Depending on the situation, weapons may be confiscated or sequestered. In recent years, the most frequently confiscated weapons at the border were so-called 'pellet guns'. For each seizure, an official report is produced. In accordance with Articles 9 and 13 of the Firearms Regulation, the sequestration of a firearm means that the firearm must be handed over to the Customs authorities within a specified period. In this case, for example, a firearm found on board is returned by Customs to the owner just before the departure of the seagoing vessel. Consequently, placing a firearm in custody involves legal weapons and is not very common.

No firearms were seized by the Alpha Team in 2020. This year, as previously indicated, two firearms (handguns) were found by Customs at the port in a parcel originating in the US, after which the investigation was transferred to the KPSM. In June, an operation was conducted in the same case resulting in the arrest of three persons. During the search, a third firearm with ammunition was found. KWCARIB has not confiscated any firearms in the past three years. However, the fact that the police patrols failed to find firearms does not mean that firearms are not being trafficked, as there is a possibility that some other modus operandi is being used that is beyond the agencies' view.

The confiscated firearms from the respective agencies are all processed by the KPSM's Forensic Department. A record of all seized firearms is maintained by FO. The firearms analysis or gunshot residue analysis is carried out by the NFI on the request of St. Maarten.¹¹ The NFI also stores the weapons.

2.1.4 Data

The media regularly reports on the use of firearms, often related to fatal attacks. The table below, taken from the Council's 2018 report "*Forensic Department in Sint Maarten*", presents the volume of firearms confiscated during KPSM's investigations from 2013 through 2018.

¹¹ For the procedure, consult the report *Forensic Investigation in St. Maarten (2008)* by the Law Enforcement Council.

Table 2. Number of confiscated firearms

Year	Number of confiscated firearms
2013	34
2014	45
2015	34
2016	30
2017	37
2018	29

Source: Justice Division KPSM

Presented in the table below is the number of firearms confiscated by the respective agencies in St. Maarten from 2019 to 2021 (through June).

Table 3. Confiscated firearms St. Maarten 2019-2021

	2019	2020	2021 (Jan-June)
KPSM	26	22	13
Customs	2	3	1
Coast Guard¹²	0	0	0
TOTAL	28	25	14

Source: Justice agencies

To provide a feeling for firearm-related crime in St. Maarten, the Council reviewed 32 KPSM press releases mentioning the use of a firearm for the period February 2020 through May 2021.¹³ For each communique, a series of data is presented, namely type of crime, number of perpetrators, type of violence or injuries and location of the crime. The types of crimes are represented by different colors.

¹² In its annual report for 2020, the Coast Guard reports that the volume of illegal firearms confiscated remained almost the same as the year before. They classify this as remarkable given the fact that despite a long period of very low maritime traffic and illegal landings resulting from the corona crisis, virtually the same volume of illegal firearms was confiscated.

¹³ The Council relied on press releases displayed on the Police website. This is not intended to present a complete picture, but merely to provide an impression of firearms-related crime.

Table 4. Firearm-related crime

Date of release	Type of crime	Number of perpetrators	Types of violence or injury using a firearm	Location
18-02-2020	Firearm Possession	3	None	South Reward
20-02-2020	Robbery (motorcycle, jewelry)	2	Gunshot wound	Middle Region
20-02-2020	Homicide	Unknown	Gunshot wound	Middle Region
12-03-2020	Robbery (property/money)	3	Threat	Mullet Bay
27-03-2020	Robbery (scooter)	5	Threat	St. Peters
18-05-2020	Robbery (grocery store/money)	1	Threat	St. Peters
26-06-2020	Robbery (restaurant/money)	1	Threat	Cole Bay
08-07-2020	Firearm Possession	1	None	Cole Bay
27-07-2020	Homicide	2	Gunshot wound	Cay Hill
02-08-2020	Robbery (grocery store/money)	1	Threat	Pelican
14-08-2020	Robbery (lottery /money)	1	Threat	L.B. Scott Road
15-08-2020	Robbery (home/jewelry)	1	Threat	Saunders
24-08-2020	Robbery (telephone)	2	Threat	Cay Hill
24-08-2020	Robbery (lotto)	2	Personal injury	L.B. Scott Road
25-08-2020	Homicide	1	Gunshot Wound	Belvedere
06-09-2020	Robbery (grocery store/money)	1	Threat	Cole Bay
14-09-2020	Person with behavioral disorder	1	Threat	Cole Bay
29-09-2020	Firearm Possession	1	None	Cole Bay
20-10-2020	Robbery (grocery store/money)	3	Threat	Sucker Garden
20-10-2020	Robbery (grocery store/money)	3	Threat	L.B. Scott Road
27-11-2020	Robbery (grocery store/money)	2	Threat	Cole Bay
09-01-2021	Robbery (jewelry)	4	Threat	Philipsburg
01-02-2021	Robbery (jeweler/jewelry)	2	Threat	Philipsburg
13-02-2021	Robbery (property/money)	1	Threat	Fort William
15-02-2021	Robbery (property/money/car)	2+	Threat	Belair
24-02-2021	Robbery (grocery store/money)	1	Threat	Middle Region
08-03-2021	Robbery (jeweler/money/jewelry)	3	Threat	Maho
16-03-2021	Robbery (home)	3	Personal injury	St. Johns
20-03-2021	Robbery (jeweler/jewelry)	2	Threat	Philipsburg
20-03-2021	Robbery (jewelry)	4	Threat	Philipsburg
21-03-2021	Robbery (jewelry)	2	Threat	Philipsburg
19-05-2021	Firearm Possession	1	None	Cole Bay

Source: www.policexm.sx

Although firearm-related crime is certainly pursued by the Public Prosecutor's Office, often the more serious crime is the subject of prosecution (e.g., murder or theft), whether in combination with illegal possession of firearms. Consequently, it is not possible to generate specific data on illegal possession of firearms based on current records. However, based on Table 5, an initial overview can be developed based on court rulings which mention the possession of a firearm. These are verdicts from the Court of First Instance of St. Maarten between 2017 and 2021. In addition, in Table 6, the Council examined four verdicts from 2020 issued by the Court of First Instance of St. Maarten in which crimes in combination with the use of a firearm are mentioned to illustrate how such cases are composed. For each verdict, data is provided, specifically the date of the verdict, the proven facts, the prosecution's demand, and the judge's ruling.

Table 5. Number of firearm related verdicts

Year	Number of GEASXM rulings (based on date of verdict)
2017	8
2018	11
2019	12
2020	6
2021	3 (until February 2021)

Source: rechtspraak.nl

Table 6. Prosecution of firearm-related crimes

Date of ruling	Prosecutor's demand	Statement of Proven Facts	Court Verdict	
05/02/2020	-Murder; -Attempted murder, -Two armed robberies; -The fencing of a car; -Possession of drugs; -Possession of a weapon	20-year prison term	-Attempted Manslaughter; -Conspiracy to commit murder; -Theft involving violence committed with the intent to commit or facilitate the commission of such theft; -Accomplice of robbery in association with violence committed with the intent to commit or facilitate said robbery; - Violation of Article 3 of the Firearms Ordinance, punishable by Article 11 of that ordinance.	20-year prison term
18/03/2020	- Defendant, together with another, committed theft with violence resulting in death -Possession of a firearm	16-year prison term	-Manslaughter, associated with a criminal offense, committed with the intent to facilitate the execution of that offense or, upon apprehension in the act, securing possession of the unlawfully obtained object; - Violation of a restriction stipulated by Article 3 of the Firearms Ordinance.	18-year prison term
04/03/2020	-Murder; -Attempted murder; -Illegal weapons possession	20-year prison term	-Manslaughter; -Attempted manslaughter; - Violation of a restriction stipulated by Article 3 of the Firearms Ordinance.	13-year prison term
11/03/2020	-Manslaughter, -Attempted manslaughter -Illegal weapons possession	22-year prison term	Violation of a restriction stipulated by Article 3 of the Firearms Ordinance	21-month prison term

Source: rechtspraak.nl

2.2 Legal framework and policy¹⁴

Both international treaties and national legislation of St. Maarten include provisions for public safety including the prohibition against carrying a weapon on public roads or in any place accessible to the public.¹⁵

On the international level, the United Nations Convention against Transnational Organized Crime includes crime-fighting measures to prevent and combat the illegal trade in firearms/smuggling and illegal possession of firearms. There are also national laws and regulations, both criminal and administrative. The weapons policy oversees the administrative enforcement of the Firearms Ordinance and Firearms Decree which include provisions governing the lawful trade in firearms and lawful possession of firearms. In addition, there are criminal provisions in the Penal Code which are applied to firearm-related crimes. The following treaties, mutual regulations, protocols and national legislative articles and policies are relevant to this inspection.

2.2.1 Convention on Transnational Organized Crime

The following international treaty applies in Sint Maarten (and the entire Kingdom) to combat illegal trade in firearms and illegal possession of firearms:

¹⁴ This report contains unofficial English translations of Dutch regulations and policies. Reasonable efforts have been made 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.

¹⁵ National Ordinance containing further provisions regarding weapons (Weapons Ordinance), AB 2013, GT no. 331.

'United Nations Convention against Transnational Organized Crime', New York, 15-11-2000 and its Supplementary Protocol for Combating the Illicit Manufacture of, and Trafficking in, Firearms, their Parts and Components and Ammunition *'the Firearms Protocol'*.

By ratifying this treaty, St. Maarten pledged to enact a series of crime-fighting measures and to implement into the national legal system three sets of normative provisions:

- the first provision relates to the determination of criminal offenses related to the illegal manufacture of, and trade in, firearms based on the requirements and definitions of the Protocol;
- the second provision requires a system of government permissions or licenses designed to ensure the legitimate production and trade of firearms;
- and the third provision concerns the tagging and tracing of firearms.

Considering the above, the Penal Code provides criminal provisions on illegal use of firearms and reference is made to the Weapons Ordinance and Firearms Ordinance in this regard (for national legislation, see section 2.2.3). Furthermore, a system of government authorization is established. Permission must be obtained from the Minister of Justice for the import and transit of weapons and for obtaining a permit for the possession of firearms.¹⁶ Also, there are no weapons manufactured in St. Maarten therefore the requirement for tagging of firearms is not applicable. However, all firearms are sent by KPSM's Forensic department to the NFI for tracing.

2.2.2 Mutual agreements/ Protocols

The Kingdom Act Public Prosecutors offices of Curaçao, St. Maarten and Bonaire, St. Eustatius and Saba includes the following in article 33:

"Our Ministers shall consult on the investigation and prosecution of cross-border crime and shall make agreements on, in any event, the human and material resources to be deployed for policies to combat cross-border crime".

Cross-border crime is defined in Article 33, paragraph 2 of the Kingdom Act as, inter alia, 'international arms trafficking'.

Mutual Agreement on Strengthening Border Control (ORVG)

For combating cross-border crime and given St. Maarten's vulnerability following Hurricane Irma, St. Maarten is participating in the mutual agreement on strengthening border control as of December 2017¹⁷ and the associated protocol with Kingdom partners to strengthen border control which expired on July 31, 2021. To implement the measures in the country packages¹⁸ the countries within the Kingdom agreed on February 4, 2021, on a new protocol to strengthen border control, namely the *'Protocol on strengthening border control in the Caribbean countries of the Kingdom'*. The goal of the Protocol is to adopt measures on border control to contribute to the prevention of cross-border/transnational organized (undermining) crime in the Kingdom by making investments in the Caribbean countries of the Kingdom and improving inter-agency cooperation.

The explanatory memorandum accompanying the protocol specifies that the Caribbean borders of the Kingdom are involved in transnational organized (undermining) crime, such as drug smuggling, illegal immigration, human trafficking and smuggling, *arms trafficking* and money laundering. These varying forms of transnational organized (undermining) crime are said to affect not only the rule of law, but also the communities of the Caribbean countries in the Kingdom. The countries also expressed their desire for intensive cooperation in combating transnational organized and undermining cross-border crime as well as the improvement of border control at airports and maritime borders. This cooperation will include specifically: counteracting smuggling, which includes weapons.

¹⁶ National Decree for the Implementation of Articles 1, 2, 7 and 10 of the Firearms Ordinance], AB 2013, GT no. 832

¹⁷ Decree of the Minister of Justice dated December 19, 2017, number 72542, on the mutual agreement between St. Maarten and the Netherlands pursuant to article 38, paragraph 1, of the Charter of the Kingdom of the Netherlands to strengthen the border control of St. Maarten (*Onderlinge regeling versterking grenstoezicht Sint Maarten*).

¹⁸ Measure H11 country package St. Maarten. This measure deals with the further strengthening of St. Maarten's border control agencies.

The protocol stipulates the existence of a progress committee tasked with monitoring the progress of the implementation of the plans of approach (regarding combating, for example, the smuggling of weapons). A workgroup is established to prepare the progress committee.

Under this protocol, several departments and agencies are currently involved in developing a plan of approach for strengthening the border; with respect to justice the following operational agencies are involved: Coast Guard, IGD, KPSM, OM and Customs. Unlike the ORVG, the OM is also currently part of the working group. Within the framework of the ORVG, which solely concerned St. Maarten, a plan of approach was drafted which focused on, among others, personnel, uniforms, and training. This will serve as a starting point for the next plan of approach to be drafted. St. Maarten's earlier plan is being used as an example for the other countries, for example, in relation to establishing an Alpha Team. The baseline study¹⁹ is also part of the new plan.

The new plan of approach will focus on, among others, budget, resources, personnel, and training, whereby each agency can specify its needs. For example, Customs has a specific need for training. Customs has 24 cadets who still need to be trained. The training courses started, though schedules under the ORVG are stalled due to travel restrictions caused by the Covid pandemic. Teachers are not available locally and have to be flown in.

The process to come to a new plan of approach has started with an evaluation meeting between the representatives of the Ministry of Interior Affairs, the Ministry of Justice & Security (the Netherlands), and the respective organizations of St. Maarten to determine the focal areas for the new joint plan. The goal is for the new plan to be supported by the operational agencies. It was agreed in the JVO that the plan would be completed before September 1, 2021. Furthermore, a project leader must be appointed for each country. The workgroup proposed several names to the Minister of Justice, from which a choice was made.

The Judicial Affairs Department of the Ministry is also part of the workgroup and is involved in the drafting of the plan. The (acting) SG of the Ministry is involved by virtue of his membership in the SG consultation committee, which includes monitoring of the implementation of the country package. Like the ORVG, a financial contribution is provided by the Netherlands. According to the Ministry, this approach is the best way of working together and offers the greatest guarantee for success. Especially since previous agreements were made, and deadlines were agreed upon that proved not feasible for St. Maarten; coupled with a lack of funds it was (beforehand already clear that it was) impossible to meet these deadlines.

The countries also remain responsible for the policy and implementation of border control in accordance with the protocol. In this context, St. Maarten has not yet formulated a policy that includes the issue of illegal firearms.

Amended protocol on specialized detectives cooperation between the countries of the Kingdom

This protocol was amended on January 23, 2019, based on Article 57a of the Kingdom Act Police. According to Article 2 of the protocol, the detectives cooperation includes the availability of detectives at the respective police forces and the continued development thereof for the purpose of effective law enforcement. The availability of capacity and expertise is also mentioned, in part to support the countries' detectives. The cooperation also includes enhancing the collective processing of criminal investigation information within this framework.

¹⁹ Understanding borders Conference (November 21, 2018): "At the request of the JVO, each country listed the current level of security at its maritime and air borders via a working group consisting of experts from, among others, the Immigration Service, Customs, the Coast Guard, the Security Service, the police and the Royal Netherlands Marechaussee. Using the so-called 'traffic light model', the current processes, bottlenecks and areas for improvement relating to border security were identified. In addition, the working groups established a baseline for maritime and air borders."

The *'Management Plan 2020 RST'* (2019) further explains how the cooperation within the police forces in the countries will be organized. Within each of the police forces of the islands, RST employees are deployed at the major crime departments (zwacri) in joint tactical teams. They form - under the operational direction of the local chief of police - a visible joint team with colleagues from the respective police force that focuses on combating crimes that seriously affect the legal order. The point of departure is that the RST contributes a quality that matches the demand of the respective police force and strengthens the partnership. One-on-one twinning is possible if desired but is not mandatory.

The major crime team investigates, among other things, serious firearms-related crimes, often involving the use of an illegal firearm. Using the protocol on specialized detective cooperation, the investigative collaboration in the region has been intensified. In support of the major crime team on St. Maarten, three RST detectives are currently deployed. Two started in April 2021, and are being trained, given that KPSM-operations differ from the operations of the Dutch police. Documentation is also part of the support and efforts are underway to transfer knowledge to local colleagues to augment the quality of the files. However, due to a lack of human resources, local colleagues lack the time to address this issue.

2.2.3 National legislation

The Penal Code²⁰ contains several articles that make the use of a firearm punishable (articles 2:255, 2:273, 2:274, 2:373, 3:9).

The Weapons Ordinance, Firearms Ordinance and Firearms Decree include stipulations that govern the legitimacy of the trade and possession of firearms with the permission of the Minister of Justice. A policy has been drafted for this purpose (see paragraph 2.2.4).

In addition, the Weapons Ordinance²¹ (articles 1 and 2 paragraph 9), Firearms Ordinance²² (article 3 sub 1 and 2) and the Firearms Decree²³ also contain relevant provisions regarding the holding (possession) of a weapon (firearm).

See [appendix 1](#) for the substantive texts of the referenced legislation.

The national laws and regulations regarding illegal firearms (trade and possession) have not been updated. The weapons ordinance is from 1930 and the firearms ordinance from 1931. Despite this, all interviewees stated that the laws and regulations are sufficiently enforceable and that, in practice, they offer adequate leeway to conduct their tasks.

Customs reports that the legislation is very important for the execution of their tasks. Indeed, Customs has far-reaching powers in terms of administrative oversight. They are authorized to enter all places containing goods and is always allowed access to buildings and closed areas such as the port and airport. Customs may carry out controls of goods in the absence of any reasonable grounds for suspicion. Because of these powers, the Alpha Team conducts random checks together with Customs (as part of the Alpha Team). The Alpha Team depends on powers granted by law and cannot conduct a search without justification (probable cause).

Directive Illegal Firearm/ Ammunition Possession ²⁴

As of March 1, 2015, the directive *'Illegal possession of firearms/ammunition'* entered into force. In the directive, the Public Prosecutor's Office indicates that the availability and use of firearms has increased in recent years - also in St. Maarten.

²⁰ AB 2013, GT no. 2

²¹ AB 2013, GT no. 331.

²² AB 2013, GT no. 183.

²³ AB 2013, GT no. 832

²⁴ Instruction pursuant to Article 5 (4) Kingdom Act OM

“There is also evidence of an increase in the use of excessive violence. The directive is one of the measures intended to put a stop to this. The directive contains guidance regarding the penalty for possession of illegal firearms and ammunition. Furthermore, aggravating circumstances are considered.”

This directive focuses on the criminal procedure for the possession of (illegal) firearms and ammunition. Importing or exporting, selling, delivering, or providing firearms and/or ammunition do not fall within the scope of this directive. Crimes involving the possession of firearms and/or ammunition are primarily evaluated based on the type of criminal act and the overall hazard posed by the weapon. Penalties are higher for possession of heavy weapons. The directive contains a chart outlining the penalty requirements.

With respect to the Public Prosecutor's Offices' Directive, KPSM explains that in practice, despite the existence and application of this Directive (the application of the penalty requirements contained therein), it appears that convicted individuals are released early. This is believed to be due to a shortage of cell capacity. While cell capacity is prioritized in favor of firearms-related crimes, the prosecution is unable to overcome the limitations imposed on cell capacity when prioritizing between and within criminal offences. An example of this is when the Alpha Team arrested two suspects who were accused of involvement in the smuggling of 100 kilos of drugs and placed them in custody. A lack of cell capacity to allow extension of custody, however, resulted in both being released. In this case, there were no firearms involved, otherwise they would not have been released.

The Council concluded in its 2013 report "*Detention Capacity in St. Maarten*" that there is a lack of cell capacity, and that additional and alternative measures were needed beyond just expanding that capacity. The Council specified:

“Having studied possible alternatives to incarceration of criminals, the Council examined, among other things, best practices in the region. This reveals that cross-departmental policies designed to control risk factors such as alcohol consumption and firearms possession, as well as special programs geared toward specific target groups such as juveniles and women, are bearing fruit.”²⁵

2.2.4 Policy implementation and enforcement of legal requirements

Weapons policy

Within the framework of current legislation, certain groups of people are permitted to possess a firearm(s) under certain conditions. The possession of weapons outside of the framework of these laws, regulations and policies is considered illegal.

The Ministry has an important role in administrative enforcement and specifically in reviewing weapons permit applications. A sound firearms policy with its associated enforcement mechanism to prevent or address illegal possession of firearms is therefore essential. Since 2016, St. Maarten maintains an updated (firearms) policy regarding the legal possession of firearms and ammunition. The policy serves as a reference for the Minister to evaluate the granting of a firearms permit. The applications are first evaluated by an advisory committee consisting of representatives from the Public Prosecutor's Office, the KPSM and the Judicial Affairs Department of the Ministry, after which the Minister is provided with advice. Ultimately, it is the Minister who decides and is ultimately responsible for decision-making on the applications and permits (see paragraph 2.2.3).

At the time of writing this report, the current weapons policy was undergoing another evaluation and review by the Minister's cabinet. Once the policy is established and published, the intention is to enforce it.

²⁵ Law Enforcement Council (2013), *Detention Capacity in St. Maarten*.



Notice To The Public

The Minister of Justice herewith makes the following announcement:

The Ministry of Justice is currently evaluating and reviewing the weapon policy that was established in 2016¹. For that reason, all new applications for a weapon license are suspended until the new weapon policy is established and published. This includes, but is not limited to, applications for a firearm and e.g. crossbows, spearguns license.

The Minister wishes to prevent that persons, whose weapons have been registered with the Police and who have proof of having submitted a request for renewal of their weapon license but who, while awaiting a decision on their application are still in possession of their weapon due to the delay in decision making, run the risk of being prosecuted and fined for illegal weapon possession.

Therefore, the Minister grants these persons, from the date of this notice until the date on which a decision is made on their application, but no later than December 31, 2021, an extension of their license to have that weapon in their possession. This extension is deemed to have been granted under the same conditions as under which they have been previously granted a license for the weapon.

The public is hereby informed that anyone who is in possession of a firearm and/or ammunition without an official license, should hand these in at the police station. Also, if a license holder has passed away, the firearm with the ammunition must also be hand in as soon as possible, to the police.

Once the new weapon policy is finalized, the public will be informed via the (social) media and internet (e.g. Government's website).

Philipsburg: March 3, 2021
The Minister of Justice



¹ "Nota Wapenbeleid 2016" published in National Gazette of November 25, 2016 and published on the Government's website.

One bottleneck reported by interviewees is the failure to properly implement legislation (for example application and monitoring). When the relevant authorities do not adhere to these rules, a potential breeding ground for illegal gun possession is created. The Head of Judicial Affairs, among others, is a member of the advisory committee that, pursuant to the current weapons policy, must provide the minister with advice on whether to grant a weapon permit. The Ministry indicates that it is involved in the permit application process. It notifies applicants by letter whether their application is approved. A permit is initially issued for one year and the intention after that period is for the weapons to be transferred to the custody of the KPSM until a decision is made regarding renewal. In practice, however, the KPSM does not monitor this. The Public Prosecutor's office considers this troublesome as well. KPSM is not able to proactively carry out inspection of permit holders due to a lack of capacity. These inspections are important because they allow verification whether permit holders, for example, keep a safe in which the firearms can be stored. Without this, the risk is greater that the firearm can be stolen during a burglary and end up on the illegal market.

The Ministry is also involved in the import and export of firearms through the issuance of consents (permission letter). As indicated in section 2.2, import, export, transit, or transport does not take place without a permit, which may be granted on application by or on behalf of the Minister of Justice.

The process for issuing permits has always been a point of concern for the Ministry. The OM is under the impression that the issuance of permits is by no means consistently effective. The Ministry reports that ministers and their cabinets are often directly involved in the issuing process and that involvement of the Ministry in the process is deficient. This means, for example, that a complete overview of the total number of permits issued is unavailable at the Ministry. As of 2014, efforts to improve this process were initiated through the creation of the weapons policy. The advisory committee was also established at that time.

The registry - containing a record of each permit granted by the Minister pursuant to the Firearms

Decree - must be maintained by the KPSM. The final authorization/permit needs to be issued by the KPSM after payment of the associated fees. Despite the adoption of the policy, which creates an orderly process, permits were reportedly issued by Ministers bypassing the established procedure. The Ministry cites the example where, in the past, a Minister instructed the KPSM to prepare and issue eighty authorizations to the Minister. The procedure to be followed included having the KPSM record all the information including the serial number of the firearm and then the ministry would prepare the authorizations. In this instance, the procedure was not followed, leaving no overview within the KPSM nor the Ministry regarding the number of authorizations that were issued and to whom, since the signed or unsigned authorizations never were received at the Ministry.

One of the criteria that must be checked under the weapons policy for the issuance of a permit is the statutory term "reasonable interest". It is noted that the fact that someone previously held a permit cannot automatically imply that the permit will be renewed. One reason is that it is not always clear how the aspect of reasonable interest was previously assessed, and changes may have occurred which may be relevant (e.g., risk of abuse). The Public Prosecutor's Office's 2019 Annual Plan confirms this as well (see section 2.3). It states that permits will only be issued if there is a reasonable interest for the applicant to possess a firearm, as defined in the established policy. In addition, permit renewals also would no longer be automatically granted, but would once again be reviewed based on reasonable interest.

The drafting of permissions has been assumed by the Judicial Affairs Department as of September 2020, which means that they have a good overview of this matter since that time. As far as authorizations (Model B) are concerned, they only have insight into the applications and the letters sent in this context. Under the previous Minister of Justice, the cabinet sometimes prepared the documents directly, which meant that the department lacked insight.

Throughout the inspection, attention was directed to the fact that there is a liberal mindset on the island about firearm ownership, and that proper consideration must be given to how a legally obtained firearm is associated with the potential for serious abuse. Therefore, the licensing aspect of firearms also deserves due consideration.

Concerns were also raised during the inspection by certain stakeholders about the so-called exemption scheme that allows certain groups, including ministers, to possess firearms without a license and this highlights the potential risks involved.²⁶ Yet there are many opportunities to legislate firearms ownership, such as via a weapon policy.

In addition, at the request of the Minister of Justice, a paper was prepared by a third party in 2020, which provided an overview of the current legal framework and policy regarding firearms and outlined several areas of concern. Subsequently, an external party was commissioned by the Minister to review the weapons policy. The Judicial Affairs Department was not involved in this process but was able to provide feedback on a provided draft.

Prevention strategies

The Ministry indicates that it has not taken any initiatives around prevention of illegal firearms trade or illegal possession of firearms. However, the Minister and ministry are asked to give this attention, because an interdepartmental and therefore integral (preventive) approach is needed, due in part to the social-economic factors associated with the problem. In the past, the Minister held one consultation with the Ministers of Health, Social Developments & Labor and Education asking them to consider the problem, but interviewees noted that few initiatives resulted because of a lack of capacity, financial resources, and expertise within the Ministries.

²⁶ The Weapons Policy refers to the National Decree containing general measures for the implementation of Article 2, paragraph 1 of the Weapons Ordinance, in which government officials and other public employees are exempted from the prohibition to possess a weapon on public roads or in any place accessible to the public.

From the cabinet of the minister, at the time of writing of this report, an initiative was launched to organize a broad symposium in which attention was asked from various stakeholders in different professions for the issues concerning the prevention of juvenile crime. One reason for this is the increasing number of weapons and drugs confiscated at schools. In addition, in recent years various activities have been undertaken by, among others, the KPSM for the youth and the focus was specifically on awareness in schools. By decree the Minister of Justice has also designated specific areas where stricter enforcement of nuisance and criminal behavior among truant school children and youth will take place.

The "stop drop n go" campaign from 2014 was quite successful according to several interviewees and there was talk of a new campaign along the same lines last year, however, it never got off the ground. The KPSM also specifically indicates that the action - to surrender illegal weapons (firearms) within a certain period free of consequences - yielded good results in the past. The Public Prosecutor's Office suggests that such a hand-in campaign might be an option again, but also points out that the subject is sensitive because at the time, serious consequences were linked to illegal possession of firearms after the deadline. If an action were to be held again, the agencies are currently unable to effectively enforce the penalties and the new action could also involve stepping back from the previous announced penalties. Moreover, the goal should be to bring about a cultural change so that people would no longer want to own guns. But people are also realistic and indicate that this is almost impossible to achieve.

The KWCARIB reports that investment in the subject of prevention in general is still too low, although the intention is there. Internally, communication plans on prevention are being prepared. An example of a good preventive initiative is the Public Prosecutor's Office's warning of citizens about human trafficking in the media. These types of (good) initiatives could be applied more broadly - including also in the context of firearms – and are discussed by KWCARIB with the chief prosecutor and the chief of police. Beyond that, there is room to use the media to a greater extent for purposes of prevention rather than repression.

None of the interviewees appear to be familiar with the awareness campaign "Community fight against crime" that was posted, among others, on Facebook and in the local newspaper 'The Daily Herald'. Citizens were asked, for instance, to pass on or give tips about illegal firearms to the KPSM and Customs. Interviewees from the Ministry indicated that it may have been an initiative from the cabinet of the Minister of Justice, and this seems to be correct.

COMMUNITY FIGHT AGAINST CRIME
 CALL US 24/7

LOCAL EMERGENCY CONTACTS
 HOW TO PROTECT YOURSELF & COMMUNITY

- Police Force 911**
 - Domestic violence
 - Noise pollution
 - Illegal weapons & firearms
 - Violent crimes
- Coast Guard 913**
 - Illegal vessels entering shorelines
 - Search and rescue
- Immigration 915**
 - Undocumented immigrants
 - Human smuggling
- Customs 917**
 - Contraband: - Illegal weapons - Illegal medication - Counterfeit goods - Money laundering crossing the border - Drugs
- Child Protection 918**
 - Child(ren) abuse and/ or neglect

STEPS TO A SAFER COMMUNITY:

- ✓ KEEP CLOSE CONTACT WITH YOUR COMMUNITY COUNCIL
- ✓ REPORT CRIMES TO THE RIGHT AUTHORITIES
- ✓ RAISE COMMUNITY AWARENESS
- ✓ FAMILIARIZE YOURSELF WITH YOUR NEIGHBORS
- ✓ JOIN NEIGHBORHOOD WATCH
- ✓ NOTIFY NEIGHBORS OF ANY SUSPICIOUS ACTIVITIES
- ✓ KNOW AND CONTACT YOUR COMMUNITY POLICE OFFICER (CPO)

www.ministryofjustice.sx

In fact, news reports indicate that in April 2021, based on feedback from the representatives of the various districts regarding the range of problems in the neighborhoods, the Minister decided to launch an awareness campaign about the ways to and topics for contacting the different justice agencies. In this manner, the residents would be well informed on how they can address any problems and how they too can contribute to a safer community. The same is true because it is essential for residents to know which agencies to contact about a specific responsibility.

2.3 Judicial approach

Addressing illegal firearms and the weapons trade is, according to the report *'The load of firearms. A study on the impact of illegal firearms in the Netherlands'* urgent due to the societal impact and the facilitating role illegal firearms play in organized crime, along with the problem being composed of several components. The components of the approach relevant to this inspection are as follows:

- Investing in public awareness about the broad impact of the illegal firearms trade and use of illegal firearms;
- Deploying the amnesty measure upon hand-in, allowing the anonymous hand-in of guns and encouraging reporting of theft/loss of firearms;
- Framing firearms (and firearms expertise) differently or giving it a higher priority within law enforcement, specifically in terms of enabling major crime and being of interest to forensic investigations;
- Continue to investigate specific groups of perpetrators where possible within investigations;
- Emphasis on qualitative and quantitative information-driven efforts by investigators.²⁷

The local judicial approach will be assessed based on the above, in part, because these components are also very well suited to the St. Maarten situation.

There are several enforcement organizations on St. Maarten responsible for preventing and combating (investigation and prosecution) illegal firearms smuggling, illegal firearms trade and illegal firearms possession. All of them are familiar with their roles and responsibilities within that framework. The previously mentioned Caribbean Financial Action Task Force (CFATF) report noted that there are various control mechanisms that can be used by the respective organizations to effectively address illegal firearms:

- Firearms legislation;
- Protocols;
- Specialized units for criminal investigations;
- Intelligence units;
- Joint task forces;
- Use of scanners at the ports;
- Border and coast patrols;
- Random and targeted searches;
- small arms and ammunition detection dogs.

In the previous sections, two mechanisms were discussed in detail. In the following sections, the remaining mechanisms will be addressed (in more detail). Where relevant, these will be highlighted for each of the organizations, including a description of the judicial approach.

2.3.1 Public Prosecutor's office

The Public Prosecutor's Office policy plans provide insight into the priorities of the judicial approach towards illegal firearms trafficking and illegal firearms possession.

Perspective on crime combating 2016-2021

The Public Prosecutor's Office's *'Perspective on combating crime 2016-2021'* discusses the Public Prosecutor's Office's objectives for tackling crime. It mentions three strategic pillars including the (further) development of an integral approach. The OM states that the economic reality of countries would not significantly change in the coming years. Therefore, the point of departure must be to do more with the same level of resources (human and financial). A strategy needs to be developed that

²⁷ Ferwerda, H, Wolsink, J, van Leiden, I, (2020), *The burden of firearms, A study on the impact of illegal weapons in the Netherlands*; Police & Science.

structurally increases the effectiveness of the enforcement approach across the board, both in terms of repression and prevention.

According to the OM, an integral approach to law enforcement is indispensable for the realization of its goals. An integral approach means that the organizations within the justice system involving different disciplines must set common goals and ambitions and work together to achieve them. Concretely, this would mean the optimal use of each other's expertise, capacity and/or authority and information sharing. An example from 2018 of an integral approach specifically focused on weapons is the collaboration between the Immigration department, Customs, the Netherlands Marechaussee, the Coast Guard, and the Navy in combating the influx of heavy weapons into Curaçao. The organizations meet on a regular basis.²⁸

Studying the annual plan of the Public Prosecutor's Office reveals that to set the priority and associated actions for 2021, consideration was given to the various reports of the Law Enforcement Council from 2019, JVO developments and the nature and scope of crime as reflected in the results of the past 2 years. Moreover, the Public Prosecutor's Office is considering the various initiatives that have been undertaken as part of the reconstruction of St. Maarten.

The OM indicates that in the context of the integral cooperation in 2021, beyond the established investigative partners, KPSM, RST, Customs, Coast Guard, KMar, further cooperation will be sought with administrative and private partners. This cooperation is labeled by the Public Prosecutor's Office as information driven. All of this with the intention of developing joint intervention and prevention strategies.

The Public Prosecutor's Office has further set the following priorities for 2021 for each strategy, namely the integral approach in:

- youth and young adult problems
- domestic violence
- victim support
- human trafficking/human smuggling
- financial crime

Reading the priorities of the Prosecutor's Office, it is safe to say that the trafficking of firearms and firearms crime are not separately prioritized for 2021.

Prosecution Policy

Consistent with current policy of the Public Prosecutor's office, anyone found to be in possession of an unauthorized firearm will be arrested and taken into custody. The OM prosecutes all firearm possession and insists on searches to remove weapons from circulation. In addition, the Public Prosecutor's Office demands severe penalties. Using the Court's orientation points, the Public Prosecutor's Office set up its guideline for firearms possession and determined the penalty requirements. According to the OM, there was a time when the Court of First Instance issued lower sentences than those in their orientation points. The OM successfully appealed in those cases; the Court of Appeal imposed higher sentences. At present, the Public Prosecutor's Office still uses the orientation points as a point of departure and the threat to society and lack of safety is always emphasized in the cases. According to the OM, guideline-compliant verdicts are now again being imposed by the Court of First Instance.

Priority is given by the Public Prosecutor's Office and the KPSM to the investigation and prosecution of firearm crimes. The KPSM reports that despite the earlier mentioned guideline and prioritization of cases, the enforcement of sentences is a major bottleneck. As a result, detainees are released earlier and end up back in the criminal system. The availability of detention capacity remains a problem. Consequently, the Public Prosecutor's Office is forced to either refuse to take persons into pre-trial detention or to release them. The Ministry and the Public Prosecutor's Office indicate that to manage

²⁸ Reducing firearms on Curaçao main task for AG | Caribisch Netwerk (ntr.nl)

overcrowding at the Pointe Blanche prison they have started to apply (very) early VI. This involves detaining prisoners for a shorter period than their sentences require. However, there is a risk that serious offenders will be released at some point to make room for other serious offenders. To address the capacity problem, a work group called "release consultations" ("*heenzendoverleg*") was established that includes the Foundation Judicial Institutes St Maarten (SJIS), the Ministry, the prison, and the Public Prosecutor's Office. When granting early VI, the following is considered:

- The gravity of the offense
- The circumstances of the case

As far as firearms crimes are concerned, these are classified as very serious and as such are taken into consideration when deciding on granting VI or not.

The prosecution estimates that approximately 80% to 90% of inmates at the Pointe Blanche prison have been convicted of firearm possession or firearm violence. However, they are charged with the main crime and not always with firearm possession, even if firearms were involved. In the context of the statistics, this is not reflected. Furthermore, the OM asks attention for the subject of illegal firearms in the tripartite meetings with the Minister of Justice and the KPSM. The OM stresses that they are a partner in this process rather than the driving force, which according to the OM is the Ministry's purview.

The remaining findings on the Public Prosecutor's Office will be addressed in Sections 2.3.2, 2.3.3, and 2.3.4, since they are interrelated to the approach outlined for the other mentioned agencies.

2.3.2 KPSM

The KPSM operates information driven. Police officers from the KPSM, whenever they have a reasonable suspicion that weapons (firearms) are present in a location, execute a search to confiscate them. The KPSM has a strategic analyst with access to all investigations and can provide information on trends both to management and to teams upon request, for example, relating to the use of transmission towers and telephones, the neighborhoods with the most frequent incidents, or the average age of suspects. Within the KPSM there are three special criminal investigation units that, depending on the crime, specifically investigate firearm-related crimes: the Major Crimes Team (Team Zwacri), the Alpha Team and the Special Unit Robberies (SUR). The teams and the info-desk participate in a daily briefing during which information is exchanged.

KPSM interviewees mentioned that in the past, partly because of the problem with weapons, there was a multidisciplinary team consisting of the KPSM and Customs, in which powers were combined, and cars were inspected. Now, the Alpha Team works together with, among others, Customs and KWCARIB on inspections at the port and airport. The KPSM does not carry out controls focused on illegal firearms on public roads because the KPSM is not authorized to do so in the absence of a reasonable suspicion. However, the law does allow for the creation of a so-called "hot zone" for such actions to take place. The Public Prosecutor's Office can grant permission for this, upon request from the KPSM. According to a KPSM interviewee, however, this makes little sense because illegal possession of firearms on the island is not concentrated but spread out, making it difficult to designate a specific area. Another requirement is that such an action must be publicized in the media. This would then reduce the chances of apprehension and thus undermine the goal. On the other hand, it could possibly have a preventive effect.

There are currently no specific KPSM initiatives underway - except for the intensified attention in the school district - related to youth and illegal possession of firearms. This is despite the concerns expressed about this group. The SUR has noticed the trend of increasing numbers of young people being involved in (armed) robberies. At the request of the OM, the SUR, and the Team Zwacri were to produce an analysis of the youth problem but due to a lack of capacity, this was not completed. Furthermore, the relationship between the KPSM and the OM is described by the KPSM as generally good. Occasionally there are disagreements between the prosecutors and the KPSM, however, if

necessary, these can be escalated to the chief prosecutor, according to interviewees.

Major Crimes Team

Approach

A separate team for drugs and weapons previously existed within the KPSM, but it no longer does since the reorganization of the KPSM in 2010. The Team Zwacri replaced it. The Team Zwacri is charged with investigating cases related to illegal possession of firearms/violence, such as murder cases, among other things, and operates at the case level. As indicated, it functions in an information-driven manner and can only act on intelligence. The information about possible illegal possession of firearms comes in through the CID or the info unit, for instance. The information is provided to the Team Zwacri in the form of an official report (pv). The reports are processed as quickly as possible, though in any case within two weeks, based on the information obtained.

Occasionally, information is received during an investigation. In such cases, the information is examined to determine whether it can be processed. On average, one or two official reports (pv's) are received every two months. As of 2021 and until June, approximately 24 CID reports were received. The Public Prosecutor's Office reported that the on-duty officer is regularly contacted about possible leads or CID reports that the KPSM might want to act upon. The Public Prosecutor's Office has no overview of reports that possibly are not being addressed by the KPSM because information is not reliable or because of a lack of capacity.

Depending on the quality/reliability of the information, action is taken accordingly, but this does not always lead to a 'find'. A sticking point frequently is discovering the right location. Sometimes the information is too limited, so the Team Zwacri must try to secure additional information from the source via the CID. Doing so is not always successful and attempts must be made to obtain the information by other means. Premises are searched about once a month. The Public Prosecutor's Office states that there is a lot of work involved in a search, as these are substantial operations that require a lot of effort. Not only is the Team Zwacri deployed, but also the SWAT team considering the potential firearms danger. Activities include securing the area.

The case file of an investigation needs to be of the appropriate quality to facilitate further processing by the Public Prosecutor's Office. When registering cases, the weapon, the type of crime and the case name are noted. If weapons (firearms) are confiscated, they are transferred to the KPSM's Forensics department. This department is responsible for the registration of the weapons and further processing, such as forwarding them to the Netherlands Forensic Institute for ballistics and/or DNA research. The Team Zwacri always receives a copy of the report for their file.

Prioritization

KPSM stated that cases are prioritized based on how they are received and based on the disposition of previous cases. Every effort is made to address cases as quickly as possible (within 3 days). Given the type and severity of the cases, this cannot be done using a predetermined checklist. Sometimes the team must drop cases for more serious cases, such as a murder case. If a murder is reported, this is automatically a priority 1 case (hereafter prio 1). Prio 1 cases are: murder/death, rape, and robbery (violent force, use of firearms). Information related to illegal firearms is also treated as prio 1, since possession of an illegal firearm by individuals can lead to homicide or robbery situations. However, in practice when taking cases, attempts are made to balance cases involving drugs and illegal firearms. If the Team Zwacri has insufficient capacity, then another department is assigned to the case. According to the KPSM, the OM also prioritizes cases involving firearms and believes that information about a possible firearm should be acted upon as quickly as possible. The OM confirms the above and reports that it is also under the impression that the KPSM, in addition to the OM, gives priority to combating

illegal firearms.

Composition

According to the KPSM, there are 30 FTEs officially reserved for the team. However, the team currently consists of 9 staff members including 3 RST officers and the team leader. One employee is a case worker (RST) and the other 7 employees conduct the investigations. The RST staff is available under the previously mentioned protocol on specialized detectives cooperation. At the moment, they work almost exclusively on murder and manslaughter cases. The minimum number of FTEs for the Team Zwacri needs to be 15 people, to guarantee continuity in the handling of cases and to create more variety in the work. The team would thus be better able to investigate long-term cases (murder, firearms, and narcotics) that last longer than a year. With sufficient capacity, it would also be possible to have different specializations, including those firearms-related, within the team.

However, according to the KPSM, the importance of a separate/specialized team (flex team) for dealing with weapons and drugs is now recognized and the intention is to create such a team, though reference is also made to the fact that this is not possible due to a lack of money and capacity. A flex team would possibly provide a solution for a more focused approach to illegal possession of firearms in St. Maarten. To set up such a team, however, the required protocols and rules must be in place. A flex-team could investigate cases of firearms and drugs. There is also the idea of setting up a multidisciplinary team with the Customs and KMar. The implementation of the country package will speed up this process.

The Public Prosecutor's Office explains it has long been known that the KPSM does not have sufficient financial and human resources at its disposal. The staff works extremely hard and given the financial situation of country St. Maarten overtime is limited. An interviewee from the KPSM indicated that due to the lack of the basic financial resources, funds were made available by the RST. The KPSM has specialized dogs for, among other things, locating firearms. One of these dogs will soon be retired. Due to lack of finances, the dog will not be replaced.

Results

One interviewee from the KPSM mentioned that through June 2021, a total of four murders had been committed and quite a few arrests were made in 2019 and 2020 in robbery and violence related crimes resulting in certain friends/gangs of a slightly older generation (30- to 50-year-olds) being detained. Young people are either stepping into the resulting "gap" and taking charge or are being used to commit crimes. Furthermore, it is mentioned that unfortunately the police lag behind when it comes to this issue and the hope is that results can be achieved in the short term. Indeed, firearm use/possession is high. According to one interviewee, the problem is at the border, "the ports have to be closed". The focus of the authorities responsible needs to be directed more towards the port and the incoming vessels. Customs is not able to carry out effective (manual) checks given the volume of cargo containers entering the port, so possible illegal firearms are not intercepted and end up on the street. The Team Zwacri is already operating at maximum capacity and more staff needs to be added to make the approach more effective. In addition, it is essential to have the right information to undertake actions.

The Public Prosecutor's Office assesses the approach by the KPSM as good, especially considering the available capacity, and further states that nothing more can be asked of the KPSM. Several KPSM interviewees believe there is a need for a separate team for firearms given the seriousness of the problem. The OM also suggests that the Zwacri team should be expanded so that more detailed investigation of cross-border crime can be conducted, and so that there is the opportunity to conduct longer investigations. It is also specified that the RST already fulfills this function, to a degree, but that the desire is for the KPSM to be able to do so. An interviewee from the KPSM believes that it is indeed a shortcoming that bigger investigations cannot be carried out independently by KPSM. The reason being that they have a lot of in-house knowledge and expertise and are capable of quickly establishing important relationships.

Special Unit Robberies

Approach

In the Council's inspection report ²⁹ from 2015, the following was stated about the use of firearms for robberies and the approach to address this:

“From 2012 onwards, the OM's annual plans have prioritized violent crimes, including robberies, based on the CBA. The 2013 annual plan indicates that the use of force in combination with violent crimes is an ongoing area of concern on St. Maarten. Also, the plan mentions that the appointment of a special prosecutor for the Special Unit Robberies may be helpful in increasing the effectiveness of the investigation. The 2014 annual plan identifies the use of handguns as an additional area of concern. Due to the enormous impact that violent crimes have, investigating such crimes warrants high priority. Moreover, the plan indicates that the police have built up a good consistent modus operandi over the years with the SUR, while the SUR team is familiar with the criminals who usually commit the crimes. According to the OM, this makes the unit effective.”

The SUR is the specialized robbery team of the KPSM. The SUR team leader indicates that the SUR's modus operandi has remained the same as during the time of the Council's earlier inspection and describes the approach as follows. When a robbery is committed it is almost always in conjunction with the use of a firearm. The report usually comes to the attention of the SUR through the central dispatch of the KPSM. The SUR immediately visits the crime scene and if there are one or more victims, an officer also directly proceeds to the hospital to gather important information. Furthermore, as much evidence as possible is collected, also regarding the firearm used, such as ammunition. This will help in the investigation so that any connections can be made later. The SUR primarily operates incident based, but sometimes it also operates project based. The interviewee indicates that this happened recently during a series of robberies at jewelry stores. Furthermore, daily briefings take place involving all heads of all departments of the KPSM, including SUR, FO, General Detectives Department, the morals department, and the Alpha Team.

In case weapons (firearms) are confiscated, they are transferred to the Forensics department for further processing, like described for the Team Zwacri. This type of investigation is considered valuable by the interviewee. The type of firearm used is mentioned in the official report. The SUR department does not have a separate registration system for the amount and types of weapons used in robberies, but this can be retrieved from the files. All laws and regulations, procedures and working methods are accessible for all team members via the intranet. Daily updates are also provided via email. The intention is for the staff to take the initiative to access the information and stay up to date on everything.

There is daily personal or telephone contact with the public prosecutor about cases. The cooperation with the public prosecutor is described as good by the SUR team leader. The officer indicates that they are given the necessary leeway to solve the cases and that the team is well supported by the prosecutor. The short lines of communication with the prosecutor are also because they are a small team.

Cooperation with other departments within the Force also occurs. The SUR itself does not have access to other investigations within the KPSM. However, the analyst does have an overview of all cases and can therefore make connections. When it comes to analyses, the team relies on the general analyst working at the Information Unit. For example, the robberies in St. Peters were analyzed by looking at the type of clothing the perpetrators wore, the type of weapons (firearms) used, and the information based on the telephones used.

In addition, good cooperation exists between the SUR and their French counterparts. In case the SUR needs information about the airport, contacts go through the Alpha Team. All contact is on 'need-basis'. In case specific information is available, for example that a group or persons involved in armed robberies might want to flee to, for example, to Saint Kitts, then the relevant country or the Customs

²⁹ Law Enforcement Council (2015), Approaches to Addressing Robbery.

authorities are informed. Furthermore, if necessary, desired international arrests are also passed on and the so-called international watch list is also used.

Prioritization

As mentioned, the SUR consists of a small team, which means that the most recent robbery always takes precedence and is dealt with first to secure the evidence. Then, depending on the severity of the crime and the feasibility of the case (e.g., whether an offender is identified), it is determined which case will be handled first.

Composition

The SUR officially consists of 4 FTEs and does not have an in-house analyst. According to the SUR team leader, there is a major capacity shortage. As far as the interviewee is aware, no evaluation of the capacity of the SUR has taken place. In addition, colleagues have left for other departments.

The KPSM estimates that at least 4 to 5 additional FTEs are needed, given the large number of robberies. For each robbery, a team must be deployed to secure, among other things, photographs, escape routes and evidence (DNA and fingerprints). Unlike the Team Zwacri, there has been no request for temporary assistance from the RST or KMar for the SUR. In the past, the SUR received support from the KMAR, but because this was not in accordance with the established protocol, this support was discontinued. The KMAR staff was then deployed with the Human Trafficking/Human Smuggling Unit and the Alpha Team. The SUR recently received assistance from new police officers for a period of two weeks, but they were then deployed to the traffic unit to acquire more experience. There are currently no requests for assistance possible, but temporary exchanges could be made. In addition, the SUR is regularly assisted by experienced counterparts, when necessary, in larger investigations.

The SUR team members all possess criminal investigation training, but no specific specialist knowledge. In this regard, the interviewee commented that a great deal is learned 'on the job'. In addition, in 2021 the team participated in a digital training course. In 2020, a colleague also received this training. A training course on the creation of case files is currently planned but has not yet taken place.

Furthermore, squad cars are shared with other departments and are adequate. According to one interviewee, the office has also been renovated properly. The team also has all the minimum necessities to carry out its work.

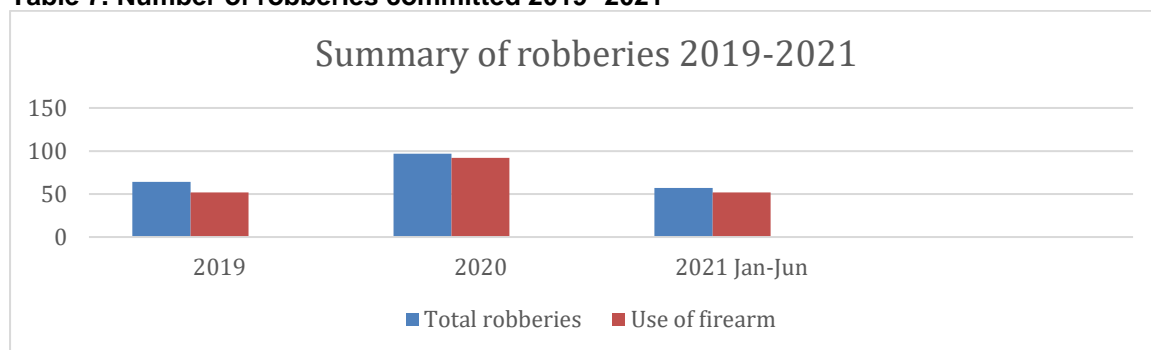
Results

According to the SUR, the number of robberies decreased after Hurricane Irma in 2017, however, the team has noticed a resurgence in 2021. In the first six months of 2021, over 50 robberies have been recorded (see Table 7), of which 17 cases have been resolved to date. The high solve rate is related to a single group responsible for several robberies of jewelry stores. These cases were solved simultaneously with the arrest of the perpetrators. Currently there are fewer robberies of jewelry stores than before. Previously, there were many robberies of Chinese supermarkets and casinos. Currently, the top three common robberies involving the use of a firearm are as follows:

1. Jewelry stores;
2. Taking scooters;
3. Taking jewelry from individual.

A SUR interviewee further points out that perpetrators of robberies that are being prosecuted receive high sentences.

Table 7. Number of robberies committed 2019 -2021



Source: KPSM

Alpha Team

Approach

The Alpha Team is a joint task force working on cross-border crime operating within the confined space (departure hall) of the airport and at the seaport. The approach is the same at the airport and at the port. The Alpha Team was stationed at the port at the beginning of the year, but due to a large seizure at the airport and a lack of capacity, they were unable to remain stationed there. However, a Mobile Control Unit has been placed at the port from where operations can be carried out if necessary. Beyond the closed areas, reasonable suspicion must exist and consultation with the Public Prosecutor must first take place to act (approach and targeted search).

The Alpha Team does not proactively search for illegal goods, including illegal firearms, because Customs is the primary authority with regard to import and export. The Alpha Team only conducts short investigations of illegal goods including drugs. All long-term investigations are transferred to Team Zwacri. Several interviewees feel that this is a shortcoming because there are advantages to long term investigations that can offer more insight into the origin of the goods (including illegal firearms) and the organized groups. Customs does not have its own investigation team. When they have indications for an investigation, it is first transferred to the KPSM's Detective's Department. In consultation with the OM and the KPSM, the investigation may be assigned to the Alpha Team.

Composition

The Alpha Team consists of a total of 25 FTEs including the team leader and a twinning partner from the KMar. There is an investigation team and a flex team composed of various disciplines; 6 KMar, 2 K9 detection dogs, 1 Customs officer and 1 Coast Guard officer. Additionally, there are 6 team members (KMar) who rotate monthly between the islands of Saba and St. Eustatius. Also, a document expert has been made available to the team by the KMar.

The team can make use of the powers of Customs, but this is not always feasible due to a lack of capacity. In the past, the Immigration and Border Protection Service (IGD) was also part of the Alpha Team. This was considered valuable because it provided a direct line with the airlines. According to the team leader of the Alpha Team, the current absence of the IGD does not immediately cause a bottleneck because there is still good contact with IGD-colleagues. However, the desire still exists for the IGD to return to the team.

Beyond that, the workspaces at the airport are not ideal because they are too noisy and cramped, especially so because of the current Covid measures. In view of the lack of space at the airport, the

joint team is based at the police station in Simpsonbay, but this is not ideal due to the aforementioned measures. The team also has access to three squad cars, two of which are from the KPSM and one from the KMar.

Prioritization

Currently there are not many cases handled by the Alpha Team. Interviewee believes that this is because the smuggling routes are now well-known and because a relatively large number of arrests have been made. However, illegal shipments still take place, but not in the large quantities as before. Recently, however, there have been two major investigations concerning drugs and firearms.

As previously indicated, the Alpha Team only conducts short term investigations (incident-based cases), the so-called 6-hour cases. In principle, the investigation team is charged with investigating cases but occasionally conducts a project-based investigation for which it is initially given six weeks, but extensions are possible. Extension requires permission from the KPSM division head, and the request must be submitted via the steering committee. The OM indicates that some investigations do not always yield the desired information, but that the residual information can be valuable and is precisely what is needed. This implies a proper prioritization/selection of cases, considering the available capacity as well.

Results

The performance of the Alpha Team is highly dependent on its composition. Because of its multidisciplinary nature, its powers are broad. According to the interviewee, the only challenge is the capacity (variety) of the team's disciplines, especially Customs and the absence of the IGD. A Customs officer has inspection authority and can therefore conduct inspections without reasonable suspicion. Reasonable suspicion applies to the rest of the disciplines. Therefore, with more staff capacity from Customs, more inspections can be carried out. The interviewee also indicated that an option for resolving this bottleneck is having the Minister issue the relevant officers with special tasks and/or powers (unremunerated investigating officers with the same powers as a Customs officer). According to him, the National Opium Ordinance provides the possibility to grant special powers to the officials appointed in St. Maarten to supervise compliance with this ordinance.

2.3.3 Customs

Customs is very important and indispensable in dealing with illegal firearms.

As mentioned in 2.2.2, there was a mutual agreement in which agreements were made about the implementation and strengthening of border control by the KMar and the Dutch Customs in St. Maarten. One of the considerations for the need of the ORVG was:

'Existing threats to the welfare of the people of St. Maarten, especially at the border involve serious drug and weapons crime, migratory crime, the influx of illegal immigrant workers and uncontrolled flows of money and goods'.

Approach

Customs' responsibilities include border control, and most of its activities take place at the port and airport. Based on the legislation, Customs has far-reaching powers to facilitate the approach/control of illegal goods, including possible illegal firearms. One of the tasks of Customs is to ensure that firearms do not end up on the illegal market. When monitoring the import and export of goods at the border, the difference between a control and an investigation is important for the approach. As soon as there is (a suspicion of) an illegal act, the Customs officer must switch from his control 'cap' to his investigating 'cap', the so-called 'attitude shift'.

At the airport, suitcases are initially scanned by airport security for possible illegal goods. If a weapon (firearm) is detected, this is immediately reported to Customs who then investigates the case. Most firearms found during checks at the airport are in the context of legal transit between French territories, being Saint Barths and France. Unlike the laws and regulations in the French territories, on St. Maarten

a consent must be issued by the Minister of Justice for each import or export of a firearm to or through St. Maarten. The consent contains details on the reason for transport, serial number, destination, etcetera. Because of this difference in legislation, any firearms found that are not accompanied by a consent are confiscated.

If a person is carrying a consent for a firearm, then they must report to airport security and notify Customs. Customs then conducts a check of all documentation. The serial number of the firearm is very important. This must always match the documentation. If everything is in order, the consent is signed and stamped by Customs. Customs keeps a record of all consents so that they can keep a proper oversight of the quantity of weapons that have been imported and exported.

According to an interviewee from the KPSM, Customs regularly performs checks at the airport and has recently acquired a cargo scanner, which facilitates its work.

Regarding the port, the interviewee indicated that there is simply too much cargo to check everything with the available capacity. Customs therefore uses risk analyses to determine which cargo containers should be checked. One of the aspects considered is the country of origin. High risk countries are for example Curaçao, Colombia, and Jamaica. In these cases, 100% inspection of the container takes place. The mega-yachts in the ports of Isle del Sol, Port de Plaisance and Simpson Bay are also jointly inspected by KWCARIB and Customs. The mega-yachts often have one or more firearms on board for security purposes but, according to Customs, they efficiently comply with the rules by reporting the number of firearms on board to the IGD during Customs clearance. Customs is then informed by the IGD, after which they do the checks.

KWCARIB and Customs have established good cooperation and regularly go on patrol together, combining powers. Among other things, they verify the way in which the firearm is stored. According to the law, a firearm must be stored separately from the ammunition. In case this is not done in accordance with the law, Customs will hold the firearm for a period of time or if possible have it sealed somewhere on board. The seal may only be broken when the ship is outside of territorial waters. In case a weapon (firearm) is imported by a skipper without the necessary documents, the illegal weapon (firearm) is confiscated immediately and the Public Prosecutor on duty is contacted. The latter then determines, based on the penalty policy, what fine should be levied. When a firearm is confiscated, an official report is always prepared. However, the aforementioned does not happen often.

Prioritization

After a risk analysis has determined which containers will be inspected, those are selected and blocked. If the containers are blocked by Customs, the port security is notified. These containers are then not allowed to leave the port. Prioritizing which containers will be inspected first is based on the number of selected containers and the type of goods they contain. Goods that are prone to spoilage, for example, are inspected or handled as quickly as possible. A roster is assigned to the Customs officers to whom the inspection of the containers is entrusted. The containers are emptied in their entirety at the port by the owners in the presence of the Customs officers. This is a labor-intensive and time-consuming process that requires the presence of two to three Customs officers.

Composition

Customs claims that it currently has sufficient FTEs, but as indicated previously, 24 cadets still need to be trained. At the moment, Customs have sufficient resources to properly perform their tasks, this is partly due to the agreements made in the context of the ORVG. There is, among other things, a mobile scanning device available. In addition, Customs has two narcotics dogs that can detect narcotics, money, and weapons. These are deployed if necessary to check containers. The other necessary (auxiliary) resources still need to be identified.

Results

Each year, an annual plan and annual report³⁰ are prepared by the Customs Department which includes the number of seized goods, including firearms. However, in recent years most of the goods confiscated involve narcotics. In addition, Customs indicates that the modus operandi of smuggling these goods varies daily.

The availability of Customs (between 7:00 a.m. - 10:00 p.m.) influences the level of results achieved. Customs only works day and evening shifts. The interviewee from Customs believes that this bottleneck should be solved to enhance the effectiveness of the department. Temporary cooperation with the KPSM and the Coast Guard at the port and airport could have a positive effect on the capacity required. Customs has therefore introduced this as a consideration for the new plan of approach for border control. Customs is aware that the aforementioned is only a temporary solution and that Customs itself must eventually be operational on a 24-hour basis.

2.3.4 Coast Guard Caribbean Region

Approach

The Coast Guard Justice Policy Plan was prepared at the request of the Ministers of Justice (and Security) of the four countries with the objective of establishing policy priorities for the Coast Guard. These are: preventing the transport of narcotics and strategic goods; human smuggling and trafficking; transport of and trade in illegal firearms; and combating terrorism.³¹ Additionally, the 2021 Annual Plan reflects the current approach, including regarding illegal firearms.

“The deployment of the Coast Guard as part of the broader policing tasks, such as operations to combat trafficking and smuggling of narcotics and firearms, occurs as much as possible based on IGP (intelligence-led policing) for use in the maritime domain. Information from local, regional, and international partners is used, as well as information gathered by the Coast Guard itself. In addition, the Coast Guard, in consultation with the Public Prosecutor’s offices of the countries within the Kingdom, establishes joint actions with the chain partners. For example, the Coast Guard cooperates with the Customs on Curaçao, with whom it has signed a cooperation agreement. The Coast Guard will also participate in consultations with chain partners in 2021. These include the various Information Fusion Centers on Aruba, Bonaire, Curaçao and St. Maarten. Information is shared with the entire enforcement chain in these centers.”

According to the KWCARIB, its mission is to ensure safety and security through intelligence-led policing, and its activities include combating threats at the borders. Therefore, these threats must be identified. However, this can only be done effectively if the entire chain of border protection organizations shares situational awareness (being aware of what is happening in the environment to determine how information, events and the agency’s own actions may affect its objectives) and understanding. This implies that the organizations will develop a better understanding and overview of the issues and initiate and implement sound and effective actions accordingly.

The KWCARIB conducts daily patrols and if an illegal firearm is found it is confiscated and a notice of confiscation (Kvl) and official report is issued. The suspect is apprehended, after which the firearm, the suspect and all associated documentation is handed over to Customs or the police depending on the case. The KWCARIB is currently operational for an average of 16 hours a day. This means that potential perpetrators have 8 hours to enter waters without control or a response from the KWCARIB. This bottleneck is now being addressed in the Country Package measures (Measure H11). KWCARIB’s capacity will gradually increase through 2025 to achieve 24/7 staffing at the operational level. The KWCARIB interviewee points out the importance of identifying risks and identifying the steps

³⁰ These were requested by the Council from Customs for the period 2018-2021 but were not received by the deadline.

³¹ Coast Guard justice policy plan 2018-2021

needed to mitigate security risks at the borders. Ideally, the KWCARIB would like to increase situational awareness of the environment and identify each incoming vessel and conduct risk assessments on their own, however, they do not yet have the necessary capacity to do so.

Prioritization

As outlined earlier, one of the policy priorities of the KWCARIB is to counteract the transportation and trafficking of illegal firearms. According to the annual plan of the KWCARIB, justice related investigative tasks in the context of the policy priorities are carried out under the authority and direction of the Public Prosecutor's Office. The plan further states that 80 percent of the available capacity is dedicated to the prioritized judicial investigation tasks.

Composition

The KWCARIB is engaged in a long-term personnel and equipment plan, the purpose of which is to achieve improved control capabilities. Currently, efforts are underway to identify qualified personnel. The mobile shore radar system has limitations as it only covers a small part of the waters around St. Maarten. With the equipment mentioned in the long-term plan, a greater coverage will be achieved, which includes the waters of St. Maarten, Saba, and St. Eustatius. The benefit would be a longer time frame for threat detection. This is another example of the importance of improved mutual situational understanding (situational awareness is transformed into situational understanding, by having a better understanding of the criminal groups, their environment, and the control mechanisms) for the whole chain of organizations in charge of protecting the borders.

Results

It has already been pointed out that there are no specific results around (confiscation of) firearms. The operational results only provide insight for the KWCARIB's area of operation concerned. The interviewee from the KWCARIB adds that at the local level steps can be taken by the judicial chain to improve activities. In particular, the sea border crossing points can be improved to make it more difficult to smuggle goods. At the moment the justice chain does not have the capacity to deal with the problem of illegal firearms, the demand is greater than the capabilities and in addition the cooperation in the chain needs to be improved.

2.3.5 Cooperation

In this section, the Council reviews how cooperation works between local agencies and several international organizations.

Local

According to the KWCARIB 2021 annual plan, the heads of the departments of Customs, the Police, the Public Prosecutor's Office, and the Coast Guard meet on average three times a year during the 'Four Party Consultation' to discuss the cooperation between the chain partners. This cooperation is aimed at exchanging information, carrying out joint actions, exchanging personnel and solving any bottlenecks within the chain. The contact between these agencies is currently described as good by all interviewees. However, aspects such as having patience and a high level of communication are also described as crucial to the cooperation.

As far as locating firearms is concerned, according to the OM, all organizations are on high alert for firearms, however, the KPSM is "in the lead." CID reports also originate from the other organizations and are investigated by the KPSM. On a broader departmental level, weekly consultations are held at the airport with the KMar Criminal Intelligence Team, the CID of the KPSM, the KPSM information unit, the French drugs team (OCRTIS), Police aux Frontiers (PAF), the Coast Guard, the IGD, Customs, and airport security, during which information is exchanged about border control. The information exchanged usually relates to forgeries and drugs and human smuggling. The information exchange does not specifically involve firearms.

Customs highlights the multidisciplinary team, mentioned earlier, which previously consisted of a collaboration between the KPSM, Customs and the IGD and was active until 2017. The team carried out joint inspections (almost daily) on public roads, combining the departments' powers. According to Customs, this team achieved good results in terms of taking weapons (firearms) and narcotics off the streets and was of added value because more inspections could be carried out. All interviewees described the cooperation in this team as good, but it was discontinued due to a lack of capacity and prioritization. Cooperation by Customs now mainly takes place with the Alpha Team and the KWCARIB. Cooperation between Customs and the Alpha Team takes place at both the airport and seaport. The Alpha Team receives immediate notification from Customs when incidents occur. As indicated earlier, joint patrols/ inspections also take place by Customs and KWCARIB. Customs reports that they make good use of each other's expertise, but that overall cooperation could always be improved. All services lack capacity and could therefore benefit from (more) cooperation and combined use of all powers.

The importance of Interpol is also stressed by the Customs authorities. Through Interpol it is possible to trace weapons (firearms). The serial number of the weapon is important because each weapon has a unique number that can be traced all over the world. Therefore, criminals remove the serial number.

There used to be a maritime multidisciplinary team with Customs and immigration but due to staffing shortages this collaboration was discontinued. The KWCARIB hopes that the same initiative can once again be included in the plan of approach to strengthen the borders. Closer cooperation has proven to yield better results, and more systematic integration of this cooperation and its formalization in agreements could contribute to this.

The KWCARIB goes on to say that there is also a lack of commitment at the political level. It is common knowledge that most agencies face the same bottlenecks. The Minister is the appropriate person to initiate and prioritize issues. If that happens, all agencies are required to follow up. A strategic approach of this kind would send a clear signal and would also 'force' the departments to work together if necessary.

Furthermore, it is mentioned that the Minister of Justice has worked hard to initiate a systematic multidisciplinary approach with the border control agencies. There are still challenges to be met, such as determining the scope of such a team. The priority is first to realize the plan of approach previously mentioned. This will be in the long-term interest of the justice chain. The issue of illegal firearms should be approached holistically. This would mean cooperation on an international and interregional level and specifically within the chain of border protection organizations. In this way, a shared situational awareness and understanding is created, which will allow St. Maarten's border security chain to function more effectively.

Saint Martin

Cooperation with the French authorities is essential because of the open borders. The experience is that weapons cross borders and are transferred between the countries. Judicial authorities are not initially allowed to operate freely on each other's territory and must first obtain permission to do so, for example if the KPSM observation team wants to carry out an operation on the French side. Since 2015, according to the ministry, there has been a police cooperation treaty which forms the formal basis for cooperation and information exchange between the two countries. There are also monthly consultations between the French and Dutch justice agencies where cross-border cases are discussed and information is exchanged, this may include firearms or names of suspects.

KPSM reports that information is exchanged and there can be daily contact between Team Zwacri, SUR and the French authorities regarding robberies, for instance. Information is shared immediately per incident about suspects in robbery and murder cases, for example, and every attempt is made to act immediately. These cases usually involve firearms. The problem is addressed incidentally and not

in a broader or project-based manner.

The Public Prosecutor's Office explains that cooperation with the French is going well, for example, in the case of robberies of jewelry stores. Cooperation at the operational level with the French counterparts is also described as good by all those interviewed by the KPSM. Cooperation by the KPSM also meant that, once or twice a month, joint controls were carried out at the border with the French counterparts on the weekends, but due to the COVID situation, this is currently not taking place.

Furthermore, in cases involving the Team Zwacri, Alpha Team and the SUR, searches are conducted by the French authorities on behalf of the KPSM and vice versa. Suspects in major cases such as robberies and shootings and in which, for example, an illegal firearm has been used may flee to the French side or reside there. In such cases, assistance can be requested from the French counterparts by the KPSM. For a house search, a request for legal assistance must be obtained from the Public Prosecutor's Office. The OM indicates that this is going well. However, some neighborhoods are 'off limits'. The KPSM must then continue the investigation by other means. In addition, the French do not surrender their nationals. Therefore, in the event of an arrest, an extradition process may be initiated.

According to the OM, the French police work with a different system for ballistic data than the Dutch police, so the systems are not compatible. This makes it difficult to compare weapons, casings, and other ballistic material. Logistically, the process is also very cumbersome. An interviewee from the Public Prosecutor's Office indicated that comparisons between several databases of surrounding islands - for example with Anguilla - have recently been made because, like the Netherlands, they also use the IBIN/IBIS system. However, the French use a different system (called EVO finder). As a result, it is not possible to match a firearm that has been used on the French side with a firearm that has been used on the Dutch side. The Public Prosecutor's Office does not currently view this as a major bottleneck because the solving rate of the cases is often not adversely affected by this.

KWCARIB reports that one of the main bottlenecks now is the lack of cooperation between the Coast Guard of France and the Netherlands, although this is necessary, for example in the case of pursuit of criminals. Without prior authorization from the inter-agency Coordination for French State Action at Sea, a department of the French Navy based in Martinique, KWCARIB is not allowed to enter French territorial waters. The French Prefet responsible for safety and security on the island has no authority in this regard, which hinders direct contact between the two parties, despite good communication in the field.

Steps have been taken toward the aforementioned agency to reach an operational solution, but they have not yielded the desired results so far. There is already an agreement between the French and the Dutch, but this agreement sets a minimum period of 24 hours for submitting a request to enter French waters. So, this only works for planned projects and not when there is an incident that requires an immediate response, in the case of "Hot Pursuit" for example. The Ministries of Foreign Affairs and of Defense in the Netherlands, as well as Foreign Affairs in St. Maarten are working on the subject. The goal is to establish a protocol between the Dutch and French Coast Guard to operate in both waters. Therefore, the focus now is on achieving an agreement on an operational level to create support for approval on a political level.

Other countries

According to interviewees from the KPSM, they also cooperate with agencies abroad. From, for example, the Drug Enforcement Administration and Homeland Security in the USA, they receive lead letters about drugs or firearms on which the KPSM can act. This occurs about three to four times a year (it used to be more frequent). The Alpha Team, for example, has direct contact with Homeland Security on a police-police basis. If the information proves relevant, then it is formally accessed via a legal assistance request and the information provision is formally provided to the prosecutor with the information portfolio. A workshop on firearms smuggling in the Caribbean was also organized by Homeland Security in August 2021.

Customs is affiliated with the Caribbean Customs Law Enforcement and Council (CCLEC). The intention is to have an annual meeting in which illegal activities, seizures, modus operandi, and experiences per country are broadly discussed. However, this was unable to take place in the past two years. There is good contact with the individual countries that participate in the CCLEC and there is a designated contact person with whom information can be exchanged and where questions can be directed to.

Netherlands Forensic Institute (NFI)

Within the Kingdom, no specific cooperation exists to address and combat illegal firearms. The reason for this is the fact that the problem does not arise within the context of the Kingdom, according to the interviewee from the Public Prosecutor's Office. The cooperation of the agencies would therefore be more focused on the U.S. and the neighboring islands because the weapons enter the borders from there. With the countries, at least, the KPSM works in an incident-oriented and not problem-oriented manner. However, as indicated earlier, there is cooperation with the NFI.

According to the Ministry, the NFI is St. Maarten's "home supplier" for forensic investigations in all areas, including firearms. Any confiscated firearms are sent by the Forensics department to the NFI for examination. The NFI carries out DNA and ballistics research, among other things. The NFI's investigations often provide essential evidence in cases. An example is cited of two shootings that are currently in court. The firearms and casings were examined, and a match was found. The results also provide the agencies insight into whether the firearm was used in another crime. Investigations by the NFI revealed that a few firearms were used in multiple crimes, which could mean that the weapons are circulating on the island.

There have been problems in the past with the payments to the NFI, but according to interviewees from the KPSM and the OM, this has never hindered the cooperation of the NFI in the investigations. The OM does indicate that at some point a solution must be found for the lack of payments. The Ministry indicates that all invoices from the NFI have been made payable but that the Ministry of Finance makes the actual payments. The financial situation of the country means that priorities must be set, but as far as is known, there are no urgent arrears as far as payments to the NFI are concerned.

Since 2016, the Minister of Justice has planned for a forensic lab in St. Maarten in combination with a shooting range and office space. Due to a lack of finances and the effects of the hurricanes, these have not yet been realized.

3 Analysis

In this inspection the Council examined the extent to which the justice approach contributes to preventing and combating illegal firearms trade and illegal possession of firearms in St. Maarten. To answer this question, the Council formulated five sub-questions and conducted the analysis based on these questions.

3.1 Nature and scope

What is the nature and scope of illegal firearms trafficking and firearms possession?

There is no accurate understanding of the nature and scope of illegal firearms smuggling, illegal firearms trade and illegal firearms possession in St. Maarten at either the Ministry or the agencies. The 2011 CBA, the 2019 Regional CBA and other relevant reports combined with the results of the approach in practice do provide insight into this. The information stated in the 2011 report regarding illegal firearms is in principle still relevant, such as geographical routes and the methods by which firearms enter the country. In the 2019 report, the consequences of transnational crime are highlighted. Furthermore, the same bottlenecks and risks about (combating) illegal firearms mentioned in previous reports also came to light in this inspection.

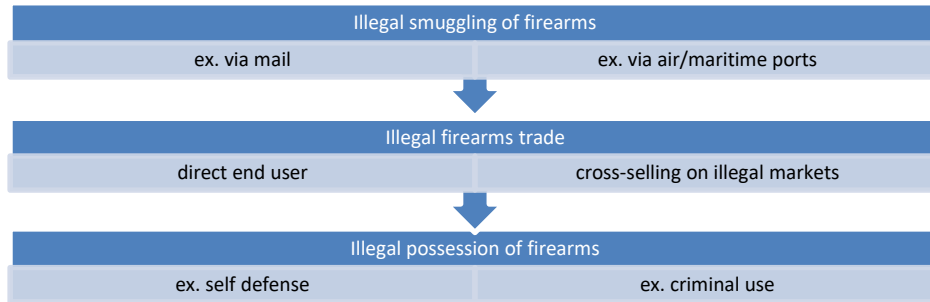
The (geographical) smuggling routes used are known to the agencies, however, the problem is the lack of capacity and resources which prevents the agencies from being deployed 24/7 and prevents them from carrying out the desired number of controls at the ports. These constraints have been identified as the biggest challenges for the agencies in terms of improving their approach to dealing with the smuggling of illegal firearms. Because the weapons come from outside the country, the focus must be on the border and it must be strengthened, read: the relevant agencies. KWCARIB, the Customs and the Alpha Team function as the gatekeepers of St. Maarten, which makes the plan of approach under the Protocol to strengthen the various agencies also crucial when it comes to the issue of firearms (see paragraph 3.2). The Council believes that the 24/7 deployment of both the KWCARIB and Customs is a welcome development.

Furthermore, the smuggling and trafficking of illegal firearms is not an isolated phenomenon and is directly related to the smuggling and trafficking of drugs. The approach to illegal firearms should therefore not focus solely on firearms but should be broad in scope. As long as the drug problem exists, there will also be a (firearms) weapon problem and vice versa. In its earlier report on the approach to drug-related crime, the Council indicated that preventing and combating drug-related crime and problems requires an integral approach that includes the related safety, health, and social-economic aspects. The Council emphasizes the importance of acting on the recommendations in the report.

Furthermore, the agencies have little insight into the people or groups involved in smuggling and trafficking illegal firearms and those who are in possession of illegal firearms. According to the Council, young people are a high-risk group that must be (continue to be) targeted.

Figure 1 depicts the flow of illegal firearms in St. Maarten, the mode of illegal smuggling, the illegal trade, and the eventual purpose for which the illegal firearms are used.

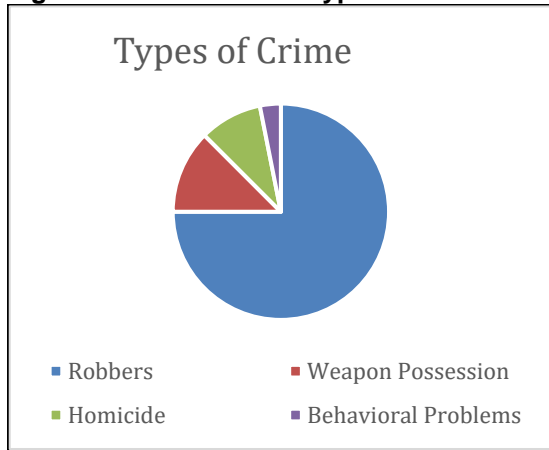
Figure 1. Circulation of illegal firearms



Besides the focus on the border, the emphasis should be on the problems present on the island itself. Everything mentioned in the UNODC report about confiscations can virtually be applied 1-to-1 on St. Maarten. In St. Maarten, as in the rest of the world, illegal firearms are usually confiscated in the country itself and not at the border. This means that (new) firearms cross the border undetected. The statistics support this view, KWCARIB and Customs hardly ever confiscates firearms at the border and most weapons are seized by the KPSM. The Council repeatedly stressed the importance of registration and that this is a permanent area of concern in St. Maarten. Registration is important for, among other things, being able to draft and implement (strategic) policy and to analyze achievements. The Council observes that in some area's registration/documentation is becoming more consistent, such as with confiscated firearms, which benefits the understanding of the problem. Based on the available statistics, it is safe to say that the average number of firearms seized has remained virtually unchanged over the years. Specifically, the statistics show that efforts are devoted to local issues and that the KPSM in particular - despite its limited capacity - manages to remove firearms from the street, regardless of the outcome of the investigation. Given the hazards of firearms, any firearm is one too many. Illegal possession of firearms and illegal use of firearms is prosecuted by the Public Prosecutor's Office and often successfully. Prosecution of firearms possession, as indicated earlier, is often accompanied by other crime(s), which is the reason why the prosecution consists of several components. Based on table 5, the Council concludes that the court only rarely, if at all, deviates from the Public Prosecutor's demand when a guilty verdict is issued. This is encouraging and demonstrates that prioritizing this type of crime pays off.

In accordance with Prosecutor's Office policy, anyone found in possession of an unauthorized firearm is arrested and taken into custody. A sentencing guideline is used for this purpose and lately the court increasingly rules in accordance with the guideline as well. Despite the positive results achieved by the Public Prosecutor's Office on the criminal procedure, convicted persons are often released earlier due to the lack of detention capacity. In the context of the above, the Council again points out the need for proper and adequate detention facilities and again urges the Minister to make the necessary provisions for the Pointe Blanche prison to solve, among other things, this bottleneck. The Council understands that, in the interim, a solution (release consultation) is being sought by the Public Prosecutor's Office and other stakeholders to address the lack of cell capacity so that new detainees/convicted persons can be incarcerated, however, a new prison with more cell capacity is needed.

Figure 2. Most common types of crime



The Council notes that the commission of a robbery in which a firearm is commonly used as a threat or worse, is the most prevalent form of crime. Of the 32 incidents examined, 24 of them involved robbery and the other 8 incidents concerned other forms. Figure 2 depicts this. Analyses of firearms use can provide better management that is more efficient with the limited capacity of the agencies. For example, understanding can be gained about the districts where crimes occur most frequently and where possible actions such as preventive inspections or searches can be encouraged.

Several factors relevant to the prevention and reduction of illegal firearms surfaced during the inspection. These can be divided into factors relevant to the smuggling and trafficking of illegal firearms, but also to illegal firearm use. Regarding the latter, the social-economic factors mentioned in section 2.1.2 are particularly important. This is because the problem of firearms cannot be viewed separately from the broader issue of social economics. Social-economic factors within the community contribute to the problem of illegal possession of firearms and collectively form a breeding ground for increasing firearm violence, especially among the youth. If there is an understanding of the social factors that influence the problem, more focused efforts can be made to control and prevent the problem, for example, developing prevention strategies to address the problem. What this means is that the approach to this problem should not be approached solely from a justice perspective (repressive) but requires a more holistic (preventive) - and therefore inter-ministerial - approach.

3.2 Laws, legislation, and policy

What are the applicable laws, regulations, and policies regarding firearms?

The applicable legal framework regarding firearms is clear on St. Maarten and is composed of treaties and national legislation. In addition to the legal framework, there are also protocols. The legislation is outdated but does not create any obstacles for the various agencies during the execution of their work. The Council observes that the organizations can handle this well. Given that St. Maarten already has experience with drafting plans and implementing them to reinforce the border, the Council expects that this experience will benefit the prompt drafting of the new plan of action. The agencies and the Ministry are joining forces and are optimistic about the intended contribution of this Protocol to the approach of the agencies at the border. The fact that financing is largely provided by the Netherlands increases the chance of success given the country's financial limitations. However, St. Maarten must also ensure that the necessary priority is given to its budget to guarantee the continuity of the activities in the long term. The Council believes that this form of cooperation is a positive development, also for the smuggling and trade in illegal firearms and ultimately the reduction and prevention (prevention) of illegal firearms on St. Maarten.

Even though firearm-related crime, as such, is not a specific policy priority of the Prosecutor's Office this year, it receives the required priority within the agencies' investigations (see 3.3). While the Council is aware that due to the limited capacity of the departments, tough choices must be made, the Council believes, nevertheless, that the issue must be prioritized and maintained at both the strategic and policy levels given the significant impact firearm violence is having within this small community. The Council recognizes the encouraging development of the judiciary also indirectly working on this issue, and the

broader attention that is now being paid to the problems of youth and young adults by the Ministry, the judicial agencies and the Public Prosecutor's Office (policy priority 2021). The Council believes, however, that the attention that is currently being paid to the subject must be permanent in nature to achieve results in the longer term and therefore asks for continuity in the activities and for specific attention to be paid to illegal possession of firearms.

Encouraging public awareness specifically about illegal firearms and the impact of the trade and use of illegal firearms is receiving more attention from the Justice Ministry. Earlier this year, there was an initiative (awareness campaign) coming from the Minister's office about reporting various forms of crime including illegal possession of firearms. Although the Council welcomes such initiatives, they do not (always) seem to be widely publicized or supported by the agencies involved, resulting in a lack of a joint approach. This constitutes a missed opportunity and, in the opinion of the Council, reduces the effectiveness of such an initiative. The Council wonders to what extent the results achieved can be recorded and analyzed, for example if the campaign resulted in an increase in calls to the agencies, if agencies were not aware of the campaign. The Council therefore advocates strengthening the communication, cooperation and coordination among the stakeholders involved in prevention to prevent and combat the firearms problem more effectively.

This inspection focuses specifically on illegal firearms and not on licensed firearms. The latter is an entirely different subject that involves other aspects. The Council did consider the firearm policy, because the licensed and illegal are two sides of the same coin. If the licensed side is not properly regulated, documented, and monitored, risks are possible and there can be consequences for the illegal side, for example, a firearm ending up on the illegal market. Although the Council did not undertake an in-depth inspection, it can nevertheless conclude that there is a lack of proper overview of the permits issued over the years and that after implementation of the firearms policy in 2016, the process was not consistently followed in accordance with the established procedure. The Council hopes that this will be considered during the current evaluation of the firearms policy. After all, a restrictive firearms policy and the enforcement thereof also contribute to keeping society safe. The Council will also consider, as a result of these findings, conducting an inspection at a later time into the broader subject of firearms policy.

3.3 Judicial approach

Who is responsible for implementing and enforcing (monitoring) firearms legislation and policy?

In practice, how has the justice approach to the issue of Illegal Firearms Trafficking and Illegal Firearms Possession been structured?

Illegal firearms smuggling, firearms trafficking, and firearms possession are identified by the enforcement agencies and prosecuted by the public prosecutor. The local implementing services involved (Customs, KPSM and KWCARIB) are all familiar with their roles and responsibilities in that context. In addition, they are also aware of the bottlenecks and risks associated with the problem of illegal firearms in St. Maarten.

The Council has observed that the approach to illegal possession of firearms in practice by the services in Sint Maarten, as in the Netherlands, consists of several components. Due to a lack of resources and capacity, several components, such as in-depth investigation and analysis capacity, cannot be (optimally) executed on St. Maarten. The agencies involved consider this a serious shortcoming.

The KPSM faces a capacity problem, and there are also limited financial resources and facilities for the optimal performance of its tasks. Based on the protocol on investigative cooperation, the RST provides the required support to the Zwacri Team to enable it to perform its daily activities, including firearms-related investigations. The support of the RST to the Zwacri Team therefore appears to be much

needed. Like the KPSM, the Council would prefer to see this support expanded to include more FTEs, but also understands the reality.

Figure 3. Number of FTE KPSM specialized units

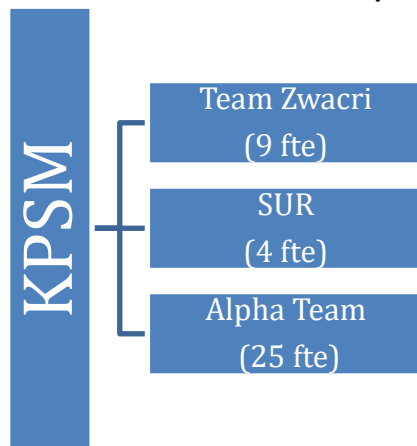


Figure 3 depicts the number of FTEs per specialized unit. While the Team Zwacri enjoys support from the RST and the Alpha Team of the KMar, there is currently no form of external support for the SUR despite the high number of cases. In its 2018 inspection report, the Council had issued recommendations about the SUR, including about expanding its capacity. Unfortunately, during this inspection, the Council found that the recommendations are largely (yet) unaddressed.

The Council finds that illegal firearms are given a high priority within law enforcement by both the agencies and the Public Prosecutor's Office. Serious forms of (firearm) crime are classified as priority 1 and efforts are made to deal with them as quickly as possible, however, the workload and available capacity influence this. The Council is of the opinion that all parties are on the same page regarding this issue and that everything that can be done with the limited resources is being done. Again, the Council reiterates its belief that even greater results could be achieved by combining efforts. The multidisciplinary team mentioned earlier - which everyone agrees achieved good results - is an excellent example of this. The Council believes that it is precisely because of the ever-present lack of capacity that there should be more cooperation and use of each other's competencies and powers. The lack of capacity also makes the importance of a qualitative and quantitative information-driven deployment of investigative work even more crucial. Here, however, the limited analysis capacity of the agencies has a negative effect.

Moreover, all confiscated firearms are sent to the NFI for forensic examination. Tracing the firearms by means of, among other things, forensic investigation provides the agencies with an impression of any previous use of the firearm. The Council notes that the NFI is very valuable in terms of evidence in the investigations of the agencies and therefore requests attention to the timely execution of payments to the NFI.

In 2014, the last time a surrender campaign ("*Stop drop n go*" for the anonymous return of firearms) was organized by the Prosecutor's Office. Although the action was declared successful by the agencies, a similar action never took place since. While the Council understands the considerations involved in terms of capacity and how to implement the necessary follow-up, the Council believes that a new campaign is worth considering.

The Council also found that, in practice, departments are using the nine (9) control mechanisms listed by the CFATF to effectively address illegal firearms. These are:

1. The requisite laws and regulations regarding firearms are in place.
2. A protocol for strengthening the agencies responsible for protecting the border and a protocol for strengthening the investigative capacity of the Team Zwacri have been established.
3. The criminal intelligence units (TCI, CID) provide the agencies with the required intelligence related to the detection of illegal firearms.
4. There are special units for criminal investigation; the Team Zwacri, the SUR and the Alpha Team.
5. The Alpha Team, a joint task force, is active at the port and airport.

6. Customs uses cargo scanners.
7. Border and coastal patrols are conducted by KWCARIB and Customs, also jointly.
8. Depending on the authority of the relevant agency, random and targeted inspections are carried out on a regular basis by Customs, Alpha Team, KPSM and KWCARIB.
9. Explosive sniffer dogs are used by Customs and the KPSM to carry out inspections.

While the Council is encouraged that the control mechanisms are in place, it notes that the lack of capacity and resources within these control mechanisms severely limits their effectiveness, preventing them from achieving the desired results.

Which cooperation agreements are in place between the justice agencies to address the illegal trade in firearms and illegal possession of firearms?

In accordance with the Protocol, the departments implement the commitments made therein by collaborating on a plan of action. The agreements include the use of multidisciplinary teams and knowledge transfer using twinning. The implementation of the plan of approach (on combating, inter alia, the smuggling of weapons) should bring about positive changes for the agencies involved, such as (greater) latitude to perform more inspections and 24/7 deployment. The Council looks forward to the developments in this context.

Moreover, locally within the chain, not enough use is (yet) made of the respective expertise, capacity, and authority. All agencies are aware of the importance of tracing illegal firearms and emphasize the importance of working together and the good results that can be achieved as a result. However, the Council has concluded that despite this, initiatives in this field are not permanently incorporated to guarantee the required continuity and therefore the cooperation subsequently 'bleeds to death'. The Alpha Team is currently the only example of a multidisciplinary approach in which systematic use is made of the respective disciplines and powers. The fact that the IGD no longer participates is, therefore, considered by the Council to be a failure. The team's focus is primarily on intercepting drugs at the border, but as previously indicated by the Council, this issue is closely related to illegal firearms. The Council is adamant that the formation of a multidisciplinary team must not remain simply the expression of a desire, rather it must lead to its realization.

Cooperation with the French is considered crucial, particularly because of the open borders. There is cooperation with the French for the purpose of exchanging information, conducting searches, and carrying out joint inspections, for instance. Cooperation at the political level is difficult to establish even though it is considered indispensable to the practical implementation of the daily activities of the agencies, particularly with respect to the KWCARIB. The Council believes that the Minister of Justice can act as a catalyst in this regard.

The Council also believes that there is little cooperation within the Kingdom between the agencies in the different countries on the issue of illegal firearms. Nevertheless, the Council is of the opinion that cooperation in this area and the exchange of best practices on how to approach the issue (comprehensively) can be beneficial. Perhaps this could be included in the formulation of strategic policies and plans.

4 Conclusion and recommendations

To what extent is the justice approach supporting the prevention and control of the trafficking of illegal firearms and the possession of illegal firearms in St. Maarten?

The Council believes that like the drug problem, the firearms problem in St. Maarten requires a comprehensive and integral approach to achieve real results. The Council is of the opinion that without a clear understanding of the problem, it is not possible to optimally manage the problem on the strategic level (management of the agencies together with the Ministry), a focused policy and an integral approach is only possible to a limited extent and the necessary investments cannot be prioritized. The current illegal firearms problem cannot be solved by the judiciary alone, and especially not by the KPSM. Ministries, agencies, and the community must work structurally collaborate to address the causes and consequences of illegal firearms and related issues. This should include consideration of the social-economic aspects and the development of (prevention) strategies with special attention to the youth.

The Council has concluded that there is not (yet) a comprehensive approach by the agencies about illegal firearms. During the inspection, it was not apparent that there are common goals specifically for preventing and combating illegal firearms smuggling, illegal trade in firearms and illegal possession of firearms. It is imperative that the Ministry play a greater role in this effort by drafting ministry-wide policies in which common goals can be achieved.

In addition, the Council has concluded that it is a matter of general knowledge that there are high numbers of firearms in circulation. The justice approach contributes to combating illegal firearms, but the Council believes that greater results can be achieved by joining forces, focusing on information (gathering) and concentrating on prevention. This last point is in the early stages. The resources of the justice agencies (financial, personnel, material) are not adequate to achieve the objective. The KPSM, for example, is already running at maximum and more cannot be asked of this agency. Although the KPSM's response to illegal firearms possession provides for the confiscation of some guns, it fails to get to the root of the problem, the smuggling and trafficking of illegal firearms. All agencies also concede that the problem begins/lies at the border and that Customs' and KWCARIB's approach is instrumental in this regard. The Council shares this view.

The effectiveness of law enforcement in preventing and combating illegal firearms trade and illegal firearms possession is inadequate and not commensurate with the severity of the problem. Therefore, the Council sees opportunities for improvement of the approach by the different agencies. The Council urges the Minister to strengthen the Customs Department and the KWCARIB by providing them with the necessary personnel and resources to ensure 24/7 operations and more inspections at the border. The above has already been initiated. The Council considers the lack of (investigative) capacity at the KPSM to be a major impediment to an effective approach and advocates strengthening the specialist units.

In closing, the Council recognizes that the impact of illegal firearms on the community is significant and that the lack of victim support may be a major shortcoming in this regard. The Council has raised the issue of victim support in several reports. Change seems to finally be on the way with the creation of a foundation by the Minister of Justice to provide victim assistance. The Council is hopeful that this will be functioning soon.

Based on its inspection, the Council issues the following recommendations to the Minister of Justice.

Table 8. Recommendations

Recommendation
To the Minister of Justice
1. Develop a strategic vision regarding illegal firearms that at least includes prevention and a focus on the youth.
2. Take the initiative to consult with relevant ministries and establish inter-ministerial policies concerning illegal firearms that integrate security and social-economic aspects.
3. Ensure that risks at the border (air and seaport) are addressed, for example in the plan of approach on the Protocol for Strengthening Border control in the Caribbean Countries of the Kingdom.
4. Invest in the (analysis and investigative) capacity at the agencies so more insight can be gained on the illegal firearm problem and that these problems can be acted upon.
5. Using input from the agencies, develop and implement specific plans for an integral/ multidisciplinary and structural approach to the problem of illegal firearms.
6. Contribute to the establishment at the administrative level of maritime cooperation between the Dutch and French authorities so that the agencies can effectively carry out their day-to-day work.
7. Follow up on the Council's earlier recommendations regarding the approach to drug crime and drug-related issues.

Appendix 1: National Legislation

Penal Code

Article 2:255

Threat to commit violence in public in association with individuals or property, with violence against an internationally protected person or their protected property, with any crime causing a threat to the public safety of individuals or property or a common danger to the provision of services, with rape, with actual sexual assault, with any crime against life, with kidnapping, with aggravated assault, with assault using weapons as referred to in article 1, second paragraph, of the Weapons Ordinance 1931 or with arson, shall be punished with imprisonment of not more than three years or a monetary fine of the fourth category.

Article 2:273

(...)

2. Assault committed using weapons, as referred to in Article 1, paragraph 2, of the Weapons Ordinance 1931, is punishable by with imprisonment for a term not exceeding six years or a monetary fine of the fifth category.

Article 2:274

(...)

2. Assault committed with use of weapons, as referred to in Article 1, paragraph 2, of the Weapons Ordinance 1931 and with premeditation, shall be punished by imprisonment for a term not exceeding nine years or a monetary fine of the fifth category.

Article 2:373

A person who intentionally commits an act of violence, with the use of a firearm, an explosive or otherwise generally dangerous substance or any other generally dangerous object, against a person who is in or in the immediate vicinity of the departure or arrival areas of an airport shall be subject to the following penalties:

- a. with imprisonment for a term not exceeding nine years or a monetary penalty of the fifth category, if this endangers the life of other users of the airport;
- b. to imprisonment for a term not exceeding twelve years or to a monetary fine of the fifth category, if this constitutes a danger to the lives of other users of the airport and the crime results in serious physical injury to another person;
- c. to imprisonment for a term not exceeding fifteen years or to a monetary fine of the fifth category if this endangers the lives of other users of the airport and the crime results in the death of a person.

Article 3:9

Detention for a term not exceeding fourteen days or a monetary penalty of the second category shall be imposed on a:

- a. person who discharges a firearm, ignites a firework, or starts, fuels, or maintains a fire at such a short distance from buildings or property that it may create a fire hazard (...).

Weapons Ordinance

Article 1

It is prohibited to carry a weapon on the public road or in any place accessible to the public.

Article 2

The stipulation of Article 1 is not applicable:

(...)

Paragraph 9. On those who are provided with an authorization to that effect and valid in accordance with the following provisions.

Firearms Ordinance

Article 3 paragraph 1

It is prohibited to possess a firearm or ammunition, subject to the exceptions set forth in the following paragraph.

Article 3 paragraph 2

The authority to possess a firearm only extends to:

- 1. to a public entity;
- 2. to a person who is in possession of the weapon on behalf of a public entity;
- 3. to a person who is authorized to carry the weapon pursuant to the Weapons Ordinance;
- 4. to shooting clubs with full legal authority while the permit referred to in Article 2a of the Weapons Ordinance is in force, as well as to the armed forces permitted by national decree, containing general measures;
- 5. to any person who possesses the firearm with a general or special permit from the Minister of Justice, hereinafter referred to as: the Minister. Conditions may be attached to the authorization. The authorization is only granted to the extent required by a reasonable interest and if there is no reason to suspect that the authorization or the firearm may be misused. It may be restricted to certain times and places.

Firearms Decree

Article 2

Import, export and transit of firearms and ammunition is prohibited. The transport of firearms is prohibited other than by a person, who pursuant to the Weapons Ordinance may carry the weapon in public, is prohibited on the public road or in a place accessible to the public.

Article 3

The prohibitions in Article 2 shall not apply with respect to import, export, transit, and transport:

- 1. by or on behalf of the Kingdom or St. Maarten;
- 2. authorized by or on behalf of the Minister of Justice, hereinafter referred to as: the Minister if this is done with due observance of the conditions which may have been stipulated upon admission.

Colophon

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