

# Summary, recommendations and final considerations

## 1. Summary

### *Introduction*

The Council on Law Enforcement (also: the Council) has carried out research into the methods employed within the criminal justice system in St. Maarten for helping the victims of crime. The Council took the UN-recommendations on the fundamental rights of victims of crime, as set out in the UN-declaration 'Basic Principles of Justice for Victims of Crime and Abuse of Power', as its starting point and has compared these to the relevant statutory law of St. Maarten. The Council has also used these UN-recommendations as a standard for the assessment of the victim support procedure.

### *Entrenching victims' rights in the law*

The Parliament of St. Maarten adopted a new Criminal Code in May 2012 and the Code of Criminal Procedure (CCP) is currently being reformed. The proposed amendments to the CCP clearly improve the legal position of victims of crime in several ways. However, the Council on Law Enforcement also notes that the new law at some points falls short of the level of protection for victims of crime as recommended by the UN. The Council welcomes that the proposed wider concept of 'victim' includes surviving relatives, but at the same time notes that the concept of 'victim' in the UN-recommendations also includes immediate family or dependants of the victim including persons who were involved in the occasion which gave rise to the victimization. Neither the present CCP nor the proposed amendments to it include these categories of victims. As for the treatment of victims, it is proposed that the new CCP sets out that it is the Public Prosecutor who ensures the correct treatment of victims. The Council on Law Enforcement is in favour of this codification as it provides better guarantees than the current unwritten rules. The subject of the provision of information to victims about the possibility of claiming compensation, envisaged in the proposed amendment to the CCP, is also considered an improvement. The draft proposal of the new CCP, unlike the present CCP, does not contain a general provision stating that the government should provide the victim of a crime, who is in need of help and support, with the necessary assistance. The Council on Law Enforcement advises that such a provision remains incorporated in the CCP, the more so since it will provide a legal basis for an Office for Victim Support. The UN-declaration contains recommendations that urge governments to set up a compensation fund for victims of crime in order to compensate victims in certain cases. There is no such fund in St. Maarten, nor does the new legislation provide for the establishment of such a fund.

### *Victim Support in Practice*

In 2011 the Minister for Justice decided that an Office for Victim Support would be established in St. Maarten. At the time that the Council on Law Enforcement carried out its research the establishment of this Office had not yet been completed. As long as such an Office is not in operation, it is mainly the police and the Public Prosecutor's Office who are faced with providing care and assistance to victims of crime.

### *The Police*

The first contact for victims wishing to report a crime will be with the police. It appears that the provision of information by the police, and their treatment of victims who report crimes, pose various problems. As part of the case screening project the police and the Public Prosecutor's Office have arranged that the latter will be responsible for providing information to the victim if it decides not to prosecute. However, no arrangements have been made about the provision of information in the meantime. Since victims reporting a crime are by law entitled to be informed about the progress of their case on request, it is necessary to satisfy their need for information. According to the Police Force Management Team great emphasis is placed in the force on the correct treatment of victims who report a crime. However, there is a lack of concrete criteria or quality standards. The fact that the victims, interviewed by the Council on Law Enforcement during their research, had different experiences as to their treatment by the police seems to indicate that the treatment of victims largely depends on the police officer concerned. This emphasizes the importance of developing and setting out clear standards.

#### *The Public Prosecutor's Office*

The Public Prosecutor's Office, in charge of criminal investigations, acknowledges that victims are not structurally informed about matters such as settlements, trial dates and sentences. The research has also shown that the Public Prosecutor's Office fails to comply with the arrangements it made with the police about providing information to the victim if it decides not to prosecute. Consequently, the victims involved do not receive any information at all. In its Draft Annual Plan 2013, the Public Prosecutor's Office has included suggestions on how to improve the provision of information to victims. The Council agrees with these suggestions. It stresses the importance of the victim, wishing to join in criminal proceedings, being adequately informed about those proceedings. Failing to do so will make it impossible for the victim to exercise his rights as set out in the CCP, by joining in criminal proceedings. The Council compliments the Public Prosecutor's Office on having a monthly consultation hour and for the personal assistance it provides to a number of victims of serious crimes. Incidentally, it is exactly these kinds of tasks that could be carried out by an Office for Victim Support.

Victim's compensation mediation may be an appropriate way of obtaining compensation for the victim's financial loss within a relatively short time. Each year the Public Prosecutor's Office settles a number of cases by way of victim's compensation mediation. Since there are no criteria in place for arranging this it depends on the Public Prosecutor in charge whether or not this route is chosen. The execution of sentences proves to be problematic in St. Maarten. Compensation ordered by the trial Judge is often not collected, leaving the victim empty-handed. Moreover, there is no compensation fund for victims of crime in St. Maarten. The Council is of the opinion that the situation in which victims of crime pay for all damage themselves is undesirable.

#### *Office for Victim Support in the process of being established*

Those involved in the criminal justice system of St. Maarten agree on the usefulness of an Office for Victim Support and the Foundation for Judicial Institutions of the Upper Antilles (SJIB), on the instigation of the Minister for Justice, has been working on setting up such an Office since mid 2011. However, since the Articles of Association of the SJIB do not mention the offering of support to victims, it lacks a legal basis for this work. The Council agrees with most of SJIB's starting points, but some aspects need to be elaborated upon in more detail. The issue of funding, for one thing, needs to be properly arranged in order to avoid the implementation of the plans being discarded. The exchange of information between the SJIB and its partners in the chain could also be improved. Moreover, the Council found that the SJIB and the Ministry of Justice communicate too little and that the SJIB has failed to adequately account for the process of establishing the Office for Victim Support. As a consequence, this process has not been properly managed.

At the end of 2011 the Minister for Justice stated that he intended to incorporate the tasks of the SJIB and, in so doing, the yet-to be established Office for Victim Support, within a new department in his Ministry. The Council wishes to make some remarks regarding this. First of all, the Council points out that a reserve needs to be allocated in the Ministry's Budget for the implementation of this plan. In addition, the Ministry seems slightly too optimistic with regard to the time frame within which a new department in the Ministry can be realized. The required amendment to the relevant statute will take at least six months. The Council, however, trusts that an Office for Victim Support will be established in St. Maarten within a reasonable timeframe and expects that the support of victims of crime will receive a real boost from this. In addition, the envisaged amendment of the CCP will contribute to a further improvement in the position of victims of crime.

2. Recommendations

On the basis of the outcome of its research the Council makes the following recommendations:

*To the Minister of Justice:*

**Entrenching victims' rights in the law**

1. In reforming the CCP the definition of 'victim' as set out in the UN-declaration should be taken as a starting point.
2. Examine whether the existing divergencies between the recommendations in the UN-declaration and the statutory provisions of St. Maarten can be bridged, in particular by maintaining the provision on victim's compensation mediation and by inserting a provision in the new CCP on the establishment of a compensation fund for victims of crime.

**Procedure for victim support**

*As regards the management of the St. Maarten Police Force:*

3. Written standards for police procedures should be developed promptly and they should be followed without delay.<sup>2</sup>
4. Criteria should be developed together with the Public Prosecutor's Office, setting out when, how and at what stage the victims receive information on the progress of the case, before a decision on whether or not to prosecute is taken and the responsibility for the provision of information shifts to the Public Prosecutor's Office.
5. These criteria should be included in the police procedures and it should also be ensured that police officers act accordingly.
6. Quality standards for the correct treatment of victims should be set up together with the Public Prosecutor's Office.
7. These criteria should be included in the police procedures and it should also be ensured that police officers act accordingly.

*As regards the management of the Public Prosecutor's Office:*

8. The suggestions for improving the provision of information to victims as set out in the Draft Annual Plan 2013 should be formalized and set out as standard procedures in a Protocol.
9. In the event of non-prosecution, the reporting victim should be informed about this in accordance with the arrangements that have been made with the police as part of the case screening project.
10. Criteria should be developed setting out when, how and at what stage the victims get information about the proceedings, if it is decided to prosecute, and it should be ensured that these arrangements are observed.
11. Criteria should be developed for cases when considerable assistance needs to be provided to victims and the possible content and scope of this assistance and these should be set out in a written document which should be brought to the attention of the Public Prosecutors.
12. Criteria should be developed setting out when victim's compensation mediation can take place. These should be set out in a written document which should be brought to the attention of the Public Prosecutors.
13. The police should be informed about these criteria and their role in this regard.
14. The execution of orders granting awards to victims should be ensured.

*As regards the Minister for Justice and the management of SJIB:*

15. Funding for the Office for Victim Support in the 2013 Budget and future budgets should be guaranteed in order to secure the long-term operation of the Office.
16. The establishment of the Office for Victim Support should be more directly controlled and communication with third parties who play a part in the criminal justice system should be stepped up in order to make proper (co-operation) arrangements in time. This also applies if the Office for Victim Support will, as planned, be brought into the Ministry of Justice.

*As regards the Ministry of Justice:*

17. Explore the possibilities for setting up a compensation fund for victims of crime in St. Maarten.

<sup>2</sup> See also paragraph 2.2.3, sub a, of this report.

3. Final considerations

St. Maarten has been an independent state within the Kingdom of the Netherlands since 10 October 2010. It is still in the process of organizing itself and in many areas progress has been made. One of the major tasks for the government is the enforcement of the law. Crime figures in St. Maarten are relatively high and the police force and the Public Prosecutor's Office are forced to manage their limited financial resources as efficiently and effectively as possible - the police force in particular is faced with tight staffing levels. The Council, much to its satisfaction, has found that within the criminal justice system the position of victims has gained considerable attention lately. The police force and the Public Prosecutor's Office have both realized that victims need to be better informed and assisted and have taken steps to achieve this. Improvements in the provision of information and assistance to victims may contribute considerably to the effectiveness of victim support. The Minister for Justice, in deciding that an Office for Victim Support must be established in St. Maarten, has taken an important step. The Council's opinion is that an Office for Victim Support could raise victim support and assistance to a new level. A well-functioning Office for Victim Support is not only of major importance to individual victims but for society as a whole as well.

Public confidence in the justice system is indeed of the essence and adequate victim support may be a contributory factor. Moreover, an Office for Victim Support could take over some tasks relating to victim support which at present the police and the Public Prosecutor's Office are more or less forced to carry out. The time thus saved may be used to perform their core tasks of criminal investigation and prosecution.

Another positive aspect worth mentioning is that the proposals for the reform of the CCP provide for a much stronger position for the victim, in line with the recommendations made by the Dutch Antilles Law Enforcement Assessment Committee in 2006 (chaired by mr. S.F.C. Camelia-Römer).

The Council hopes that the establishment of the Office for Victim Support and the amendment of the CCP will be effected without delay and that the government of St. Maarten will provide proper funding, as these are of the utmost importance. The Council is of the opinion that the society of St. Maarten in general and the victims of crime in particular deserve this.