



SINT MAARTEN

LANDSCOURANT

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ECHTSCHIEDING

Bij exploit van 22 februari 2013, waarvan een afschrift aan de E.A. Heer Officier van Justitie op St. Maarten, heb ik, Solange M. Apon, deurwaarder, voor burgerlijke zaken bij het Gerecht in Eerste Aanleg St. Maarten, ten verzoeken van Patricia Solis Sanchez, vonnis van het Gerecht in Eerste Aanleg, zittingsplaats St. Maarten, van de 21 januari 2013, is de echtscheiding uitgesproken tussen **Patricia Solis Sanchez**, wonende op St. Maarten, en **Lloyd Vincent Hinds**, wonende op Curacao, wier huwelijk op 23 november 1995 te Lima, Peru, werd voltrokken.

De deurwaarder S.M. APON

AANKONDIGING:

Op grond van artikel 5, zevende lid, van het Wetboek van Burgerlijke Rechtsvordering van Sint Maarten.

Bij exploit van 12^e februari 2013 van de ondergetekende deurwaarder voor burgerlijke zaken, waarvan afschrift is gelaten aan de officier van Justitie op St. Maarten die het oorspronkelijk voor "gezien" heeft getekend, is ten verzoeken van **WALTKOCH LIMITED**, gedomicilieerd aan de Kudu Drive 2 te Belair ten kantore van Bergman, Zwanikken, Snow & Essed Attorneys at Law op St. Maarten en gemachtigd de advocaat mr. J.G. Snow, **BETEKEND** de grosse van een vonnis van het gerecht in eerste aanleg van St. Maarten, dd. 15 januari 2013 aan **KARRAN SINGH H.O.D.N. SOUTH AMERICAN SEAFOOD** en de naamloze vennootschap **SOUTH AMERICAN SEAFOOD** wonende resp. gevestigd op St. Maarten, met onbekende adres, met bevel om binnen 2 dagen aan de inhoud daarvan te voldoen.

De deurwaarder, Mark J. Rabess

AANKONDIGING:

Op grond van artikel 5, zevende lid, van het Wetboek van Burgerlijke Rechtsvordering van Sint Maarten.

Bij exploit van de 13de februari 2013, heb ik, Ervin A. Arrindell, deurwaarder bij het Gerecht in Eerste Aanleg van Sint Maarten, gevolggevende aan een beschikking van de E.A. Heer Rechter in het G.E.A., Sint Maarten van de 4de februari 2013,

OPGEROEPEN:

BALSON FLANDERS, zonder bekende woon- of verblijfplaats op Sint Maarten, voor de terechtzitting van: woensdag de 3de april 2013, des voormiddags te 09.15 uur, ten Raadhuis te Philipsburg, teneinde op de door: CARIBBEAN CINEMAS OF ST.MAARTEN N.V., gedomicilieerd op Sint Maarten in de Vineyard Building, ten kantore van de advocaten mr. M. Le Poole & mr. J. Deelstra, tegen hem ingestelde vordering te antwoorden.

E.J. No: 21/13

De deurwaarder voornoemd,
E.A. Arrindell

AANKONDIGING:

Bij exploit van de 13de februari 2013, waarvan een afschrift is gelaten aan de Officier van Justitie op Sint Maarten, heb ik, Ervin A. Arrindell, deurwaarder bij het Gerecht van Sint Maarten, ten verzoeken van: **ANGELO'S INTERNATIONAL LIMITED**, gedomicilieerd op Sint Maarten in de Soualiga Building, ten kantore van de advocaat mr. R.F. Gibson Jr., aan: **INTERLINE CONNECTION INCORPORATION N.V.**, zonder bekende vestigings-, woon- of verblijfplaats op Sint Maarten betekend: de grosse van een vonnis dd. 17 juli 2012, door de E.A. Heer Rechter van het Gerecht in Eerste Aanleg van Sint Maarten, met bevel om aan de inhoud daarvan te voldoen.

De deurwaarder voornoemd,
E.A. Arrindell.

ST. MAARTEN CRANE CORPORATION N.V.

gevestigd te St. Maarten
in liquidatie

In de op 03 januari 2013 gehouden Buitengewone Algemene Vergadering van Aandeelhouders van bovenvermelde vennootschap is tot haar ontbinding en liquidatie besloten per 03 januari 2013.

Het plan van uitkering, houdende de grondslagen van de verdeling, is ten kantore van het Handelsregister, zomede ten kantore van de vennootschap ter inzage gelegd.

De vereffenaar

FAILLISSEMENT

Op 21 februari 2013 heeft het Gerecht in Eerste Aanleg van Bonaire, Sint Eustatius en Saba, zittingsplaats Sint Eustatius, in staat van faillissement verklaard: de naamloze vennootschap **STATIA PROVISIONING SERVICES N.V.** zulks met benoeming van de heer mr. R.W.J. van Veen tot rechter-commissaris en met aanstelling van de heer mr. N. Hijmans tot curator.

Schuldeisers worden opgeroepen om hun vorderingen schriftelijk in te dienen bij de curator, aangevende de aard en het bedrag van de vordering, vergezeld van de bewijsstukken of een kopie daarvan en met opgave of op voorrecht, pand, hypotheek of recht van terughouding aanspraak wordt gemaakt.

Curator, mr. N. Hijmans

Condensed Balance Sheet
CENTRALE BANK VAN CURAÇAO EN SINT MAARTEN

January 2013

(millions of NAf.)

| Assets | Difference compared to | | Liabilities | Difference compared to | |
|--------------------------------------|---------------------------|--------------|--|---------------------------|--------------|
| | 31-Jan-13 | 31-Dec-12 | | 31-Jan-13 | 31-Dec-12 |
| Claims on nonresidents | 3,431.0 | -20.1 | Liabilities to nonresidents | 591.2 | -14.6 |
| Gold | 1,252.7 | 0.6 | Deposits of nonresidents in foreign currency | 591.2 | -14.6 |
| Official reserves | 2,010.6 | -20.6 | | | |
| Securities and loans | 167.7 | 0.0 | | | |
| Domestic assets | 458.9 | -1.8 | Domestic liabilities | 2,128.9 | -7.3 |
| | | | Currency in circulation | 385.9 | -26.7 |
| Claims on the government | 0.4 | 0.2 | Government deposits | 168.5 | 4.7 |
| Government paper in portfolio | 0.4 | 0.2 | Government of Curacao | 61.5 | 0.9 |
| Government agencies and institutions | 0.0 | 0.0 | Government of Sint Maarten | 0.1 | 0.0 |
| Other | 0.0 | 0.0 | Former Central Government | 106.8 | 3.8 |
| | | | Government agencies and institutions | 0.2 | 0.0 |
| Claims on deposit money banks | 0.0 | -1.6 | Liabilities to deposit money banks | 1,286.8 | 71.5 |
| Current account balances | 0.0 | -1.6 | Current account balances | 325.0 | 66.1 |
| | | | Certificates of Deposit | 29.0 | 0.0 |
| | | | Required reserves | 932.8 | 5.3 |
| Claims on other sectors | 458.5 | -0.4 | Liabilities to other sectors | 287.7 | -56.7 |
| Other assets | 458.5 | -0.4 | Deposits of other residents | 193.9 | -56.5 |
| | | | Other liabilities | 93.8 | -0.2 |
| | | | Capital and reserves | 1,169.8 | 0.0 |
| Total assets | 3,889.8 | -21.9 | Total liabilities | 3,889.8 | -21.9 |

During the month of January 2013, the Bank continued to direct its monetary policy at reducing the liquidity in the domestic money market. The percentage of the reserve requirement, the main instrument, was increased by 0.75 percentage point to 15.00%. This instrument aims at influencing commercial banks' liquidity and, hence, the growth in credit extension. Due to the increase in the reserve requirement, the amount of required reserves expanded by NAf.5.3 million. During the bi-weekly CD-auctions¹, the Bank aimed only at the refinancing of maturing CDs. Therefore, the amount of outstanding CDs remained the same.

Base money² increased by NAf.39.4 million in January 2013, reflecting an increase in the current account balances of the commercial banks (NAf.66.1 million) mitigated by a decrease in the currency in circulation (NAf.26.7 million). The latter is characteristic for January, when the public's demand for cash decreases compared to the December holidays. The increase in the current account balances was largely the result of a transfer by USONA³ from its account at the Bank to its accounts at the commercial banks. This transfer is reflected also by the decline in the item "Deposits of other residents" on the liabilities side of the balance sheet.

The drop in the item "Deposits of nonresidents in foreign currency" (NAf.14.6 million) was due to a decline in the balance of the Central Bank of Aruba with the Bank. This decline, together with the net purchase of foreign exchange by the commercial banks, contributed to the decline in the item "Official reserves" on the assets side of the balance sheet (NAf.20.6 million).

Willemstad, February 18, 2013
Centrale Bank van Curaçao en Sint Maarten

¹ Certificates of deposit.

² The sum of banknotes in circulation and the current account balances of the commercial banks at the Bank.

³ USONA is the foundation that approves and funds development projects in Curaçao and Sint Maarten.



Bekendmaking

Ingevolge artikel 11 van het *Landsbesluit kosten toezicht trustwezen (P.B. 2004, nr. 81)* (“*Lktt*”)

Conform het bepaalde in artikel 5 juncto artikelen 6 en 7 van het *Lktt* heeft de Centrale Bank van Curaçao en Sint Maarten de bedragen vastgesteld die voor het jaar 2013 aan de trustkantoren, respectievelijk de personen met een ontheffing in rekening zullen worden gebracht.

Trustkantoor met vergunning:

Het vaste bedrag zoals bedoeld in artikel 6a van het *Lktt* bedraagt NAf. 1.000,-

Het variabele bedrag zoals bedoeld in artikel 6b van het *Lktt* bedraagt NAf. 400,-

Verlener van beheersdiensten met ontheffing:

Het vaste bedrag zoals bedoeld in artikel 7a van het *Lktt* bedraagt NAf. 500,-

Het variabele bedrag zoals bedoeld in artikel 7b van het *Lktt* bedraagt NAf. 40,-

Centrale Bank van Curaçao en Sint Maarten
Afdeling Toezicht Beleggingsinstellingen en Trustwezen
Simon Bolivar Plein 1
Willemstad
Curaçao

**Bekendmaking**

Ingevolge artikel 11 van het *Landsbesluit kosten toezicht beleggingsinstellingen en administrateurs (P.B. 2003. nr. 83)* (“*Lkba*”)

Conform het bepaalde in artikel 5 juncto artikelen 6 en 7 van het *Lkba* heeft de Centrale Bank van Curaçao en Sint Maarten de bedragen vastgesteld die voor het jaar 2013 aan de beleggingsinstellingen en administrateurs in rekening zullen worden gebracht.

Beleggingsinstelling:

Het vaste bedrag zoals bedoeld in artikel 6, lid 1a van het *Lkba* bedraagt NAf. 1.780,-

Het variabele bedrag zoals bedoeld in artikel 6, lid 1b van het *Lkba* bedraagt NAf. 17,80

Het vaste bedrag zoals bedoeld in artikel 6, lid 2 van het *Lkba* bedraagt NAf. 1.780,-

Administrateur:

Het vaste bedrag zoals bedoeld in artikel 7a van het *Lkba* bedraagt NAf. 17.800,-

Het variabele bedrag zoals bedoeld in artikel 7b van het *Lkba* bedraagt NAf. 1.780,-

Centrale Bank van Curaçao en Sint Maarten
Afdeling Toezicht Beleggingsinstellingen en Trustwezen
Simon Bolivar Plein 1
Willemstad
Curaçao

**Announcement**

Pursuant to article 11 of the *National Decree on the Supervisory Fees for Investment Institutions and Administrators* (N.G. 2003, no. 83) (“NDSF”)

The Centrale Bank van Curaçao en Sint Maarten has, pursuant to article 5 in conjunction with articles 6 and 7 of the NDSF, determined that the following amounts will be charged to the investment institutions and administrators for the year 2013.

Investment Institution:

The fixed amount referred to in article 6, paragraph 1, sub a of the *NDSF* equals NAf. 1,780

The variable amount referred to in article 6, paragraph 1, sub b of the *NDSF* equals NAf. 17.80

The fixed amount referred to in article 6, paragraph 2 of the *NDSF* equals NAf. 1,780

Administrator:

The fixed amount referred to in article 7, sub a of the *NDSF* equals NAf. 17,800

The variable amount referred to in article 7, sub b of the *NDSF* equals NAf. 1,780

Centrale Bank van Curaçao en Sint Maarten
Investment Institutions and Trust Supervision Department
Simon Bolivar Plein 1
Willemstad
Curaçao

**Announcement**

Pursuant to article 11 of the *National Decree on the Supervisory Fees for Trust Service Providers (N.G. 2004, no. 81)* (“*NDSF*”)

The Centrale Bank van Curaçao en Sint Maarten has, pursuant to article 5 in conjunction with articles 6 and 7 of the *NDSF*, determined that the following amounts will be charged to trust offices and trust service providers with a dispensation for the year 2013.

Trust Office with a license:

The fixed amount referred to in article 6, sub a of the *NDSF* equals NAf. 1,000

The variable amount referred to in article 6, sub b of the *NDSF* equals NAf. 400

Trust Service Provider with a dispensation:

The fixed amount referred to in article 7, sub a of the *NDSF* equals NAf. 500

The variable amount referred to in article 7, sub b of the *NDSF* equals NAf. 40

Centrale Bank van Curaçao en Sint Maarten
Investment Institutions and Trust Supervision Department
Simon Bolivar Plein 1
Willemstad
Curaçao

**LANDSBESLUIT****Van 28 januari 2013, no. LB-12/0885****DE GOUVERNEUR VAN SINT MAARTEN,**

Op voordracht van de Minister van Algemene Zaken, in overeenstemming met het gevoelen van de Ministerraad;

Overwegende:

- dat de President van de Territorial Council of the Collectivité of Saint Martin bij brief van 25 september 2012 aan de Regering van Sint Maarten heeft verzocht de overeenkomst met betrekking tot het afgeven van rijbewijzen aan ingezetenen van Saint Martin te verlengen tot en met 31 maart 2013;
- dat de Ministerraad, in de vergadering van 30 oktober 2012, akkoord is gegaan met het bovengenoemd verzoek;
- dat de Ministerraad daaropvolgend, in de vergadering van 6 november 2012, de tekst van het concept "Memorandum of Understanding" tussen de de openbare rechtspersoon Sint Maarten en Saint Martin ter verlenging van de overeenkomst om rijbewijzen aan ingezetenen van Saint Martin af te geven, heeft goedgekeurd;

Gelet op:

- de Staatsregeling van Sint Maarten;

HEEFT GOEDGEVONDEN:

Artikel 1

Dat de Minister-President wordt gemachtigd de openbare rechtspersoon Sint Maarten te vertegenwoordigen bij het tekenen van de "Memorandum of Understanding" tussen de openbare rechtspersoon Sint Maarten en Saint Martin, ter verlenging van de overeenkomst met betrekking tot het afgeven van rijbewijzen aan ingezetenen van Saint Martin, tot en met 31 maart 2013.

Artikel 2

Dit landsbesluit wordt gepubliceerd in de Landscourant.

Philipsburg, *achtentwintigste* januari 2013

De Gouverneur van Sint Maarten
E.B. Holiday

De Minister van Algemene Zaken



MINISTERIELE BESCHIKKING

Van 12 februari 2013

DE MINISTER VAN ALGEMENE ZAKEN

Overwegende dat het wenselijk is het Hoofd van de Afdeling Juridische Zaken & Wetgeving mandaat te verlenen teneinde namens de Minister van Algemene Zaken zorg te dragen voor de uitgifte van het Afkondigingsblad van Sint Maarten;

HEEFT BESLOTEN:

Artikel 1

In deze beschikking wordt verstaan onder:

- mandaat: bevoegdheid om in naam van de minister te beslissen;
- minister: Minister van Algemene Zaken; en,
- hoofd: Hoofd van de Afdeling Juridische Zaken & Wetgeving van het Ministerie van Algemene Zaken.

Artikel 2

1. De minister blijft bevoegd de gemandateerde bevoegdheid uit te oefenen en kan het mandaat te allen tijde schriftelijk intrekken.
2. Een door de gemandateerde binnen de grenzen van diens bevoegdheid genomen beslissing geldt als een beslissing van de minister.
3. Een krachtens mandaat genomen beslissing vermeldt dat deze namens de minister is genomen.
4. Van een intrekking als bedoeld in het eerste lid wordt mededeling gedaan in de Landscourant.

Artikel 3

1. Aan het hoofd wordt mandaat verleend om zorg te dragen voor de uitgifte van het Afkondigingsblad van Sint Maarten, bedoeld in artikel 2 van de Landsverordening bekendmaking en inwerkingtreding.
2. Het mandaat, bedoeld in het eerste lid, geldt niet indien voorafgaand aan de uitgifte van een Afkondigingsblad, nog een politieke beslissing is vereist.

Artikel 4

In geval van afwezigheid van de gemandateerde, beslist diens plaatsvervanger.

Artikel 5

Afkondigingsbladen die op basis van het mandaat, bedoeld in artikel 3, worden uitgegeven, vermelden:

Uitgegeven de

De Minister van Algemene Zaken

Namens deze,

Hoofd Afdeling Juridische Zaken & Wetgeving

Artikel 6

Deze beschikking treedt in werking met ingang van de eerste dag na plaatsing in de Landscourant.

Phillipsburg, *twaalfde* februari 2013

De Minister van Algemene Zaken



Sociaal Economische Raad
Social Economic Council

**SER advice nr.
2012 - 002**

The need for community based crime prevention programs

The Social and Economic Costs of Petty and Violent Crime in Sint Maarten and how to reduce them

Philipsburg, September 21th, 2012

The Social Economic Council Sint Maarten ("Sociaal Economische Raad", referred to below as "SER") is an independent advisory body to the government of Sint Maarten. The SER advises upon request by one or more Ministers (solicited) or on its own initiative (unsolicited) on all important social economic issues.

The SER was established by law ("Landsverordening Sociaal- Economische Raad GT no.19") in 2010.

The SER consists of representatives of employees' and employers' organizations as well as independent experts. The objective of the SER is to achieve a broad concept of wealth in Sint Maarten by offering quality advice and reaching consensus on social economic issues.

For more information, please visit our website www.sersxm.org

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1. Scope of Advice

The Social Economic Council (SER) chooses to advise on the social and economic costs of crime because if these costs are not addressed they will be significantly more severe in the future. This policy topic was deemed eligible for unsolicited advice by the Social Economic Council because the social and economic costs of crime undermine the quality of life and put a strain on the costs of doing business and the investment climate. The opinions and policy recommendations in this advice are held unanimously by all board members.

An unsolicited advice has an inherent goal. This goal is to draw attention to a certain policy area or (draft) law. This unsolicited advice requests the attention of government and urges for a well-balanced and thought through crime prevention policy regarding the social and economic costs of violent and petty crime in Sint Maarten.

This is an unsolicited advice for the Minister of Education, Culture, Youth and Sports Affairs, the Minister of Healthcare, Social Development and Labor and the Minister of Justice.

The social and economic costs of crime can be addressed from different angles. The SER has chosen to argue that a policy towards crime prevention is needed next to existing law enforcement policies in light of the development of the crime level and worries among the population. Even the most efficient and successful law enforcement policies have restraints. Sint Maarten needs an extra push to shift the balance towards a less violent and more socially robust society. The advice sets out how this policy could be implemented in order to reduce the costs of crime. This policy should aim to enhance the quality of life and reduce the costs of doing business and negative influences on the investment climate by decreasing the social and economic costs of petty and violent crime in Sint Maarten.

1.1 Limitations of the advice

Although the consequences of crime are at the center of this advice, law enforcement policies will not be addressed. From the point of view of law enforcement it is already researched extensively what needs to be done to protect the community. The 'Criminaliteitsbeeldanalyse Sint Maarten' prioritized four categories of petty and violent crimes with 'high priority' for law enforcement agencies. The new criminal code is another step to protect the community better. The police department is already implementing a community police program and has increased its strength considerably since 10-10-10.

If you take a further look into the social fabric which produces crimes, crime prevention programs are another way to change the behavior law enforcement aims to change as well. This advice focuses on the prevention of crime stemming from the social fabric of Sint Maarten

This advice will limit itself to petty and violent crimes. These crimes are considered to have a particularly negative effect on the quality of life, the costs of doing business and the investment climate as will be argued in the following chapters. Parts of these crimes are youth crimes (all crimes committed by perpetrators between the ages 9-17) and together with domestic violence form a large part of the concern for the wellbeing of the community in Sint Maarten. This advice proposal does not entail other crimes like organized crime (drug and arms trade, human trafficking) and various forms of fraud because, although these crimes have also serious consequences, these crimes are more difficult to target by crime prevention programs. Organized crime and fraud are more directly influenced by law enforcement efforts.

1.2 Outline of the advice

The second chapter offers a description of the development of violent and petty crimes in Sint Maarten by combining a number of crime surveys and reports published between 1981 and 2011. The added value of this description is to combine the separate reports and surveys to see the development of different crimes over a longer period than would be possible for each separate survey or report. This chapter determines what the extent of the problem at hand is.

The third and fourth chapters describe the social and economic consequences of crimes using data of Sint Maarten and data of other countries as an example when there is a lack of local data in a specific area. The data from other

countries is supported by some interviews with stakeholders in Sint Maarten. This chapter connects the social and economic costs of crime with the determined crime level. What is the impact on society?

The fifth chapter is about crime prevention programs. There are a variety of crime prevention programs available. Which evidence-based prevention programs are most effective? What are their outcomes in other environments? Which prevention program could be adapted to local circumstances and be effective in Sint Maarten.

The sixth chapter is about the lessons learned in Sint Maarten. Crime prevention programs aim to change part of the social world that produces crime. Sint Maarten has known earlier initiatives and programs which to a certain degree aimed to do the same. What are some recent experiences with this type of programs in Sint Maarten? What are the lessons learned from the past?

The seventh chapter draws a conclusion from the earlier chapters and comes towards a policy recommendation.

2. The crime level in Sint Maarten

There seems to be a growing concern about crime among the citizens of Sint Maarten. In March and April 2011 this concern peaked when a series of homicides were committed on the island. Other times this concern is expressed differently. Parents worry about deviant behavior or victimization of their sons and daughters. Schools develop programs for 'drug-free-zones'. Small businesses close earlier or keep a baseball bat under the counter. Medium and large businesses worry if (more) crime will deter tourists and hire (more) security personnel. There is a good deal of 'talk about crime' in the daily conversations of people. Especially when these crimes are committed by youth the community not only worries for its own safety but also for what will become of their younger members.

The concern for crime is supported by three different sources dealing with the recording of crimes in Sint Maarten. In 2008 a victimization survey⁴ on petty crimes was conducted in Sint Maarten and compared with a similar survey in 1992 and 1981. The report 'Plan Veiligheid Sint Maarten' (2007)⁵ contains some numbers regarding the number of crimes committed in 2006 and the years before. The third source is the 'Criminaliteitsbeeldanalyse Sint Maarten'⁶ (2011) which contains police statistics and more detailed data on different crimes with the 2008 victimization survey. Because this chapter deals with the development of the crime level it inevitably contains to a large extent statistics.

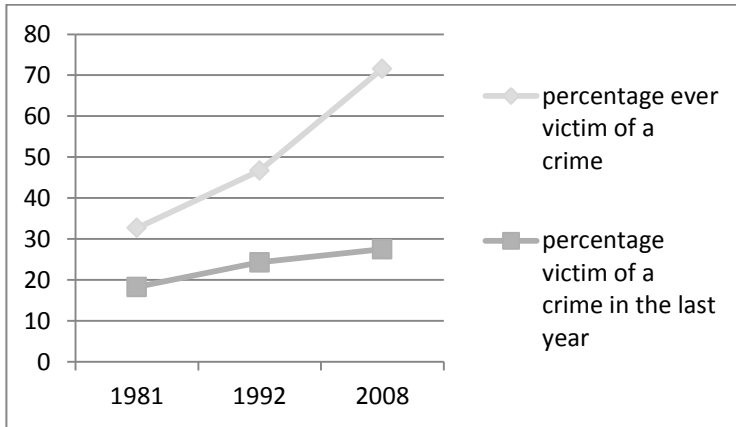
2.1 Victimization surveys

The victimization surveys of 1981, 1992 and 2008 paint a picture of rising crime on Sint Maarten. The percentage of people who have ever been a victim of one or more crimes jumped from 32.7% (1981) to 46.7% (1992) to 71.6% (2008). The percentage of people who have been a victim of any crime in the last year increased from 18.3% (1981) to 24.3% (1992) to 27.5% (2008). However, this steep rise is partially connected to the recording of new types of crime. If the results are corrected for registration of new crimes the number of people who have ever been victim to a crime is 68.5%.

⁴ This victimization survey was conducted in 1985, 1995 and 2008 on Bonaire, Curacao and Sint Maarten and published by the CBS of the former Antilles.

⁵ Plan Veiligheid Sint Maarten is an extensive inventory and analyses of safety and security issues in Sint Maarten, written on request of the Ministry of Justice of the Netherlands Antilles.

⁶ Criminaliteitsbeeldanalyse Sint Maarten is a report about the development of petty and organized crime in Sint Maarten between 2008-2010 written on request of the Public Prosecutor of Sint Maarten.

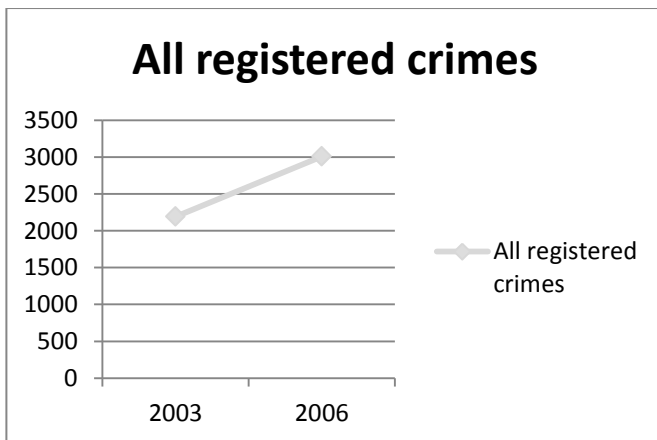


Some categories of crime are closely connected to the opportunities the development of the island brings. For example car vandalism and theft from a car have been increasing. Also people who have ever been the victim of 'hit and run' increased from 2.9% (1981) to 7.2% (2008). According to the victimization survey these increases correlate with the rising numbers of cars in Sint Maarten. But also the category robbery & theft rose from 8.7% (1981) to 14% (2008) and vandalism doubled from 1.9% (1981) to 4% (2008). Burglary increased from 12.5% (1981) to 16.6% (2008)⁷.

All in all, the increase in victimization between 1981 and 2008 is substantial.

2.2 Plan Veiligheid Sint Maarten

The report 'Plan Veiligheid Sint Maarten' (2007) contains, next to a number of recommendations for law enforcement, police statistics regarding the number of crimes committed up to 2006. The report concludes based on the aggregated registered crime with the police that crime has been rising with 27% between 2003 (2193 registered crimes) and 2006 (3008 registered crimes)⁸.



The report also states based on interviews and other indicators that especially 'street crimes' are a growing problem. Furthermore, the report argues the dark number; the difference between registered and committed crimes; must be considered high. The propensity to report crime was measured by the victimization survey and found to be respectively 41% (1992) and 31% (2008). This means that in 2008 less than one out of three victims of any crime reported the crime to the police. However, the propensity to report crime differs greatly between types of crimes. For example 90% of all car theft has been reported but burglary was only reported by 63% of the victims⁴.

⁷ CBS 2009, p. 14, 29

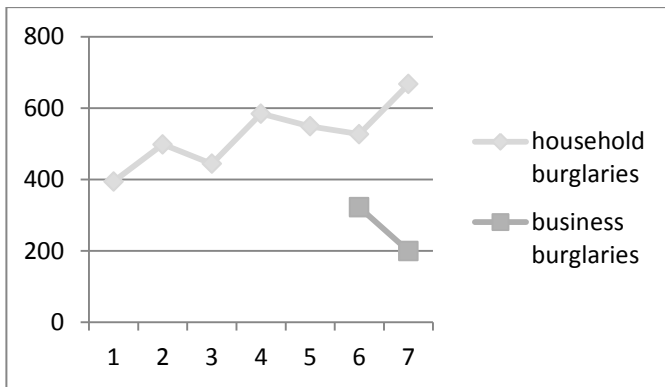
⁸ Plan veiligheid Sint Maarten, p. 23, 24

2.3 Report Criminaliteitsbeeldanalyse

The third source is the 'Criminaliteitsbeeldanalyse Sint Maarten (2011). This report describes the frequency of different criminal behavior on Sint Maarten and describes the most important aspects per crime. All the statistics below were taken from the Criminaliteitsbeeldanalyse Sint Maarten (2011) and combined with data from the Victimization Survey (2009).

2.3.1 Registered crime and projected committed crimes

The number of household burglaries climbed from 394 (2004) to 667 (2010)⁹. According to the victimization survey (2008) the propensity to report burglaries was 63%. Therefore the projected number of committed burglaries is 913 in 2010. The number of burglaries of businesses are 322 (2009) and 199 (2010). If all business burglaries would have been reported the total number of burglaries could be as high as 1,112 in 2010. The average value for stolen goods is \$1,464 and the average value of damaged materials is \$697 which together brings the total of cost per burglary to \$2,161. In chapter three all the costs will be added to calculate the direct costs of crime.



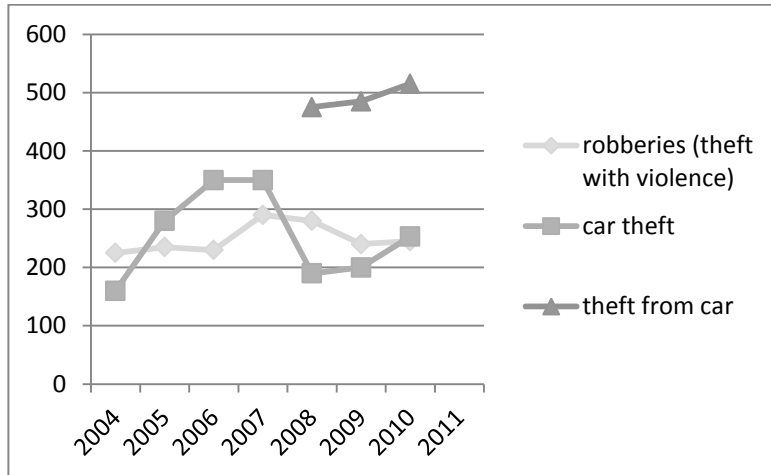
Based on crime registered with the police the researchers conclude that the number of robberies (theft with violence) are consequently 150 (2000), 230 (2006), 250 (2007-2010) and 296 (2011)⁶. According to the victimization survey (2008) the propensity to report a robbery is 38%. The projected number of robberies for 2011 is therefore 479. According to the victimization survey (2008) the average value of lost goods per robbery is \$3,379.

Theft of personal property (including pickpocketing and theft from the household) has decreased since 2005 and has been stable at around 450 registered crimes a year⁶. According to the victimization survey (2008) the propensity to report theft is 38 percent. The projected number of thefts is 756 for 2010. According to the victimization survey (2008) the average value of stolen goods is \$787.

Theft from a vehicle has been somewhat stable around 500 between 2008 and 2010⁶. According to the victimization survey (2008) the propensity to report theft from a vehicle is 44%. The projection for the number of committed thefts from vehicle is therefore 1136. The average value of stolen or damaged goods is \$967.

The numbers of car theft are 350 (2007), 190 (2008) and 253 (2010)⁶. According to the victimization survey (2008) the propensity to report car theft is 90%. Therefore the number of committed car thefts is projected at 278. According to the victimization survey (2008) the average value to replace (or repair a retrieved) stolen vehicle is \$2497.

⁹ Criminaliteitsbeeldanalyse 2011, p. 129-132, 135-140, 141-142, 143-144, 145-147



The number of homicides and manslaughter has been rising between 2007 and 2010. These numbers are: 4 (2007), 10 (2008), 9 (2009), 12 (2010). This translates into a homicide rate of 31 persons per 100,000 inhabitants in 2010¹⁰.

According to the Criminaliteitsbeeldanalyse violent crimes are considered to be assault, assault with weapon, battery resulting in grave bodily harm and public violence. Assault increased from 120 (2004) to 170 (2010). Assault with weapon declined from around 100 (2004) to 80 (2010). Public violence decreased from 20 (2004) to around 10 (2010). Battery resulting in grave bodily harm increased slightly from just a few (2004) to 16 (2010)⁷. The total number of violent crimes in 2010 is 276. According to the victimization survey (2008) the propensity to report these crimes is 36%. This would translate into 766 violent crimes.

The interviews conducted for the Criminaliteitsbeeldanalyse indicate for different reasons violent crimes are to a large extent excluded from the registered crime⁷. This is confirmed by the victimization survey which found a propensity to report violent crimes to be 36%. The interviews also point to more and more serious violent crimes committed by younger perpetrators. Especially disturbing is the ease with which these crimes are committed. Young perpetrators don't seem to realize the seriousness of their behavior according to the interviewees.

Domestic violence is almost entirely missing from police statistics until 2010⁷. Some information can be derived from institutions dealing with the consequences of domestic violence. Safe Haven for example registered 26 battered women in 2010.

Together these three sources confirm a aggregated higher crime level for violent and petty crimes on Sint Maarten in each timeframe compared to the years before although some crimes categories declined the last few years. There are also objective reasons for worries among the people of Sint Maarten.

The 'Criminaliteitsbeeldanalyse Sint Maarten' also prioritizes crimes according to the impact they have on the society of Sint Maarten. The report concludes that seven out of twenty-two categories of criminal behavior are labeled with 'high priority' for law enforcement agencies. Four among those seven categories are violent and petty crimes: robbery, violent crimes (homicide, manslaughter, assault, and domestic violence), youth crimes (all crimes committed by perpetrators between the ages 9-17) and the abuse (and trade) of cocaine and marihuana¹¹.

3. The direct social and economic costs of crime

The social and economic costs of crimes are traditionally divided into four categories: direct monetary costs, direct social costs, economic multiplier effects, and social multiplier effects. Direct monetary costs are the value of goods and services for treating or preventing crimes and the direct economic damage from property crimes for victims. Direct social costs are those which cause pain and suffering among victims and perpetrators and the anxiety and behavior related to the fear of crime. The economic multiplier effect influences the macro-economy, labor market

¹⁰ Criminaliteitsbeeldanalyse 2011, p. 160-164, 164-167, 199

¹¹ Criminaliteitsbeeldanalyse 2011, p. 276-279

and has inter-generational productivity effects. The social multiplier effects deal with the impact on inter-personal relationships and the quality of life in general¹².

3.1 Direct monetary costs of crime

The direct monetary costs of crime are considered to be the value of all goods and services used to prevent crime and offer treatment to victims or perpetrators and the direct economic damage from property crimes for the victim. These costs for example include the cost of the police department and the justice and prison system as well as resources spent on private security measures. For Sint Maarten these costs can only be partially determined.

The direct costs of crime for government can be approximately derived from the national accounts. The preliminary 2011 budget for the police department, the prison and the public prosecutor's office together are almost 48 million ANG¹³. Certainly not all these costs are related to petty and violent crime. Moreover, a 10 % decrease in the aggregated crime level would also not constitute a 10% reduction in spending. On the other hand these are not the only government departments dealing with the consequences of petty and violent crime.

The direct economic costs from property crimes for victims can be calculated using the police statistics and the different propensities to report crime in Chapter 1. The annual economic costs of property crimes in Sint Maarten are around \$6,568,337. See Appendix A for a calculation.

The resources spent on private security measures are not known in Sint Maarten. Several studies in the Caribbean give an indication for these direct costs.

3.2 Direct costs of crime to business in the Caribbean region

There are a number of ways to calculate the costs of crime for businesses. Below are some examples of findings of countries in the Caribbean region. These findings are projected onto Sint Maarten due to a lack of data in Sint Maarten.

More than half the managers interviewed in Jamaica (2003) reported a significant increase in cost of security. However the total amounts spent on security measures varied considerably between firms. Large firms reported to spend 0.7% of their revenue on security. Small firms reported to spend 17% and medium-sized firms 7.6% of their revenue. Overall 2% of the revenue of all businesses in the sample was spent on security measures¹⁴. Although Jamaica has a substantial higher homicide rate (53/100,000) than Sint Maarten (31/100,000) the results do give an indication in order to fill the gap due to a lack of data in Sint Maarten. These costs are estimated conservatively between 1 and 1.5% for Sint Maarten.

In the Dominican Republic 63% of the managers saw crime as a major obstacle to investment and 57% indicated their access to financing had declined as a result of crime according to the same World Bank report. Almost 50% of the managers reported lower worker productivity due to crime. But only 10% of these businesses were actually fallen victim to crime¹¹. This points out that the perception of insecurity influences the cost of doing business and slows business down.

According to the victimization survey (2008) the perception of insecurity is substantial in Sint Maarten. 44% of all the respondents determine they would be likely to fall victim to a crime in the next 12 months. If the findings in the Dominican Republic are combined with the level of insecurity on Sint Maarten it is likely crime also slows business down in Sint Maarten.

A study in Trinidad and Tobago (2003) calculated the cost of crime, excluding the judicial system, as 1.6% of the GDP. These cost include the value of lost productivity years of (ex)criminals (reduced earnings), funeral costs and business security costs. In 2003 Trinidad has a homicide rate of 36/100.000 where Sint Maarten has a homicide rate of 31/100,000 in 2010¹¹. Note the costs for the criminal justice system and health care are not included. If the

¹² Worldbank 2007, p.41, 42

¹³ Preliminary budget 2011

¹⁴ Worldbank 2007, p.47-50, 52

costs of crime in Sint Maarten are calculated in the same manner these costs would be, for 2008 with a GDP of 1.422 billion ANG in 2008, total to an amount of 22 million ANG¹⁵.

Another accounting study in the same World Bank report calculates the costs of crime differently. In Jamaica the costs of crime are considered to be 3.7% of the GDP. These costs include the health costs for private citizens and the public health system, the loss of productivity (death and injury) and the public expenditure on security¹¹. These regional research findings are only indications that the direct monetary cost of crime matters but partly remains to be determined for Sint Maarten. What conclusions can be drawn regarding the direct monetary cost for Sint Maarten?

- Annual Government spending on crime in 2011 is roughly 48 million ANG
- Annual (2010) calculated costs for property crime is around 10,762,500 ANG (without business) which constitutes 0.46% of the 2008 GDP
- Private security prevention measures business likely between 1 and 1.5 % of business revenues
- Projected 1.6% of GDP from Trinidad & Tobago (excluding government spending) would constitute 22 Million ANG in Sint Maarten

These numbers indicate that the direct monetary cost of crime are at a minimum around 1,5 % of the GDP (excluding government spending). This translates into 21.330.000 ANG annually. These are the 'variable' cost of crime meaning that a decline or increase in crime will influence these costs.

3.3 Direct social cost of crime

Although the economic side of crime is important for most people the social implications for crime are more important. Direct social costs of violent and petty crime include higher mortality and morbidity (suffering and incapacity) rates due to crime. These costs clearly influence the quality of life in Sint Maarten although for a limited number of people.

In 2010 the number of victims of violent crimes derived from police statistics is 779. The number of victims of property crimes derived from police statistics is 3,835¹⁶. Total number of victims for violent and petty crimes is therefore 4614. See Appendix A. Note these are not the numbers for all crime committed in Sint Maarten. According to the victimization survey the number of victims each year is 27.5% (2008). This translates into 10,704 victims of crime in 2008.

3.4 Direct social and economic cost of crime

The quality of life in Sint Maarten is strongly influenced by crime. There are around 4614 victims of violent and petty crime each year. The victimization survey estimates the total number of all crimes at 10,704 for 2008. These numbers give reason for 58 percent of the population to suffer from (strong) anxiety feelings related to crime¹⁷.

Businesses spend most likely between 1% and 1.5% of their revenues on crime prevention. Small and medium sized businesses spend disproportionately more, respectively around 17% and 7.6% of their revenue. The annual costs of petty and violent crime are calculated around 10,762,500 ANG (without business) which constitutes 0.46% of the 2008 GDP. These are annual 'variable' costs. If crime goes down these costs also go down. Moreover, the annual costs of crime for Sint Maarten are estimated to be around 1,5 % of the GDP (excluding government spending). This translates into 21,330,000 ANG annually. This means if crime goes down by 10% Sint Maarten would gain at least 1,076,250 ANG (calculation) and most likely 2,133,000 ANG (estimate) annually.

The next chapter will focus on the long term economic and social consequences of violent and petty crime. These long term consequences appear to be more severe than direct social and economic costs of crime.

¹⁶ The projected numbers of victims of violent and property crime taken from the criminaliteitsbeeldanalyse corrected with the propensity to report crime. See Appendix A for calculation.

¹⁷ CBS 2009, p. 36

4. The social and economic multiplier effects of crime

Although the direct costs of crime most likely slow the economy down and significantly increase the cost of doing business for smaller and medium sized companies and decrease the quality of life, the effects of the indirect costs are considered to have a particularly negative effect on the economy and the well-being of the community. These indirect costs are divided into economic and social multiplier effects.

4.1 The economic multiplier effect

The economic multiplier effects are considered to be¹⁸:

- Decreased labor market participation
- Reduced productivity on the job
- Lower earnings
- Increased absenteeism
- Intergenerational productivity impact (grade repetition and lower educational attainment)
- Decreased investment and savings
- Capital flight
- Decreased tourism
- Decreased government revenue

In Sint Maarten none of these effects have yet been linked to crime because research on this topic is missing for Sint Maarten. Research in other countries has determined what the aggregated results of these effects can mean elsewhere in the Caribbean. One way to assess the economic multiplier effect is to estimate the impact of crime on overall economic growth using cross country data. This comparison reflects the average relationship between crime and economic growth.

In the comparison below crimes are measured solely by the homicide rate. This rate is the least subject to variation in definitions between countries. The per capita GDP is regressed (statistical term) onto the homicide rates of different countries controlling for income inequality, the costs of investments and average male and female education.

In this study Costa Rica, one of the least violent countries near the Caribbean, is compared with Jamaica, Haiti, Guyana, and the Dominican Republic between 1996 and 2000. Costa Rica had an average homicide rate of 8.1/100,000. The average homicide rate for the other countries is respectively 33.8, 33.9, 16.1 and 16.5. Sint Maarten has a homicide rate of 31/100,000 (2010). In terms of homicide rate Sint Maarten society in 2010 is comparable to the societies of Jamaica and Haiti between 1996-2000¹⁹.

What would be the projected gain of economic growth for these Caribbean countries if they would bring down the homicide rate to the level of Costa Rica? The two most violent countries, Jamaica and Haiti, could potentially boost economic growth by 5.4% annually. Between 1996 and 2000 these countries had a comparable homicide rate (33-34/100.000) as Sint Maarten (31/100.000) in 2010. Guyana and the Dominica republic would also benefit substantially with an extra economic growth of 1.7 and 1.8% respectively²⁰. Because the projective results are cumulative the results over a longer term could be substantial.

These results cannot be translated directly to Sint Maarten but do make probable that a decrease in homicide rate, reflecting a general crime level, will have a positive effect on economic growth. A lower crime level in Sint Maarten expressed with a homicide rate of 8.1/100,000 most likely would contribute to a GDP growth between 1.8% and 5.4% annually.

¹⁸ Morrison, Buvinic and Shifter 2003, p. 15

¹⁹ Worldbank 2007, p. 58-59

²⁰ Worldbank 2007, p. 58-59, 41

4.2 The social multiplier effects

The social multiplier effects are intergenerational transmission of violence, erosion of social capital, and reduced quality of life¹⁶. Unlike the economic multiplier effects the social multiplier are described but not determined in this advice. None of these effects have yet been linked to crime in Sint Maarten through research due to a lack of data in Sint Maarten. Research findings in other countries give an indication what the social multiplier effects entail elsewhere.

Intergenerational transmission of violence has strong links with domestic violence. Young family members may witness or become victim of family violence. Since violence is mostly a learned behavior children confronted with violence simply learn this is as normal or at least acceptable behavior to get what you want, and will repeat it. An enormous amount of research shows a significant correlation between children exposed regularly to violence and increased delinquent behavior and the use of domestic violence when these children have become adults²¹. Although in Sint Maarten domestic violence is almost not registered it is considered by professionals in the reports mentioned in the previous chapter to be a relevant factor²². In other Caribbean countries research indicated the prevalence of relational violence is high. For Barbados, Jamaica and Trinidad and Tobago this prevalence is between 40% and 54% of all relationships²³.

Social capital means to a large extent the quantity and quality of social relations within a community. The central aspect of social capital is trust. Through trust a social network of reciprocity and social relations that can be drawn upon by community members is established²⁴. Another word for social capital is social cohesion. The relationship between violent crime and social capital has been established thoroughly by research, although not specifically for Sint Maarten. Research indicates clearly higher crime rates correspond with lower levels of social capital within the communities in the United States. This also indicates that if crime prevention programs succeed to strengthen social capital crime will decrease consequently. Not only does social capital establish norms through interaction between community members (social-control) it is also believed to inhibit criminal behavior within individuals (self control).

Social capital exists in relationship with others but the quality of life, or well-being, is here considered to be (non-economic) well-being of individuals. Next to direct victimization the community at large is also affected. According to the victimization survey (2008) the 65% of the respondents talk regularly about crime in Sint Maarten. 30% of the respondents think it is (very) likely they will be a victim of crime in the next year. Just over half the respondents think the chance that they will become a victim has increased compared to before and about one third of the respondents very often think about the possibility to become a victim. Even at home about one third of the respondents is afraid to be home alone and 37% thinks their own neighborhood is not safe. This impression leads 28% of the respondents to avoid certain streets or locations in their neighborhood after dark. As a result of these views 58% of the respondents suffer from (very) strong anxiety feelings caused by crime. Crime and the fear of crime clearly affect the well-being of respondents of the victimization survey in the first chapter.

Although the social multiplier effects have only partly been quantified and projected onto Sint Maarten the research finding in other countries indicates these effects exist elsewhere and should be taken seriously. Most registered crime takes place in public space and crime by itself is a social endeavor. Therefore crime can be decreased by strengthening the same social world which produces crime. This points towards crime prevention programs which aim to change aspects of the social world to reduce the economic and social costs of crime.

5. Crime prevention programs

Crime prevention is simply any policy which will cause a lower number of crimes to occur in the future than would have occurred without that policy. Therefore crime prevention is measured by consequence and not intention of the policy. Crime prevention should not only have an impact on the number of crimes but should also be cost-effective. Since crime prevention programs do not take place in a vacuum, the context where crime (prevention) takes place should always be taken in account. Traditionally there are seven 'institutional settings' where crime

²¹Morrison, Buvinic and Shifter 2003

²² Criminaliteitsbeeldanalyse 2011

²³ Le Franc and others 2008, p. 414

²⁴Galea, Karpati and Kennedy 2002, p. 1374

prevention can take place. If crime reduction actually takes place depends also on the local features of each of these settings and how they relate to each other. This chapter focuses on three institutional settings. These are family, school, and community. Other institutional settings are labor market, places, police agencies, and courts & correctional facilities.²⁵

This chapter will be limited to evidence based crime prevention programs. Evidence based means the outcomes of these programs have been researched, and evidence has been brought forward that a decreased crime level can be attributed to these prevention programs. Most of these programs have been implemented in the United States and in Europe. The authors of the book 'Evidence based crime prevention' (2002) have scrutinized 675 crime prevention programs. They found 29 programs clearly effective in decreasing crime or related problem behavior. Generally speaking programs that are active in more than one 'institutional setting' were found to be more effective. One crime prevention program, 'Communities that Care' (CTC) is such a program and is for several reasons especially relevant for Sint Maarten.

Since the 1990-ties CTC has been developed in the United States and has been constantly tested and improved. CTC is a coalition based community prevention program that uses a public health approach to prevent youth problem behavior. This entails delinquency and violence but also drinking, tobacco use, school dropout and substance abuse. CTC is primarily targeted to the children of any age in the community. CTC can be adapted to local circumstances because the program knows a palette of diagnostic tools coupled with intervention measures for the three 'institutional settings': family, school, and neighborhood. One can choose which intervention needs to be implemented after the diagnosis has been performed. An extensive description of CTC is placed on the website <http://www.sdrj.org/ctcresource/>. Because all the needed diagnostic and intervention tools are made available for the public and comes with a comprehensive implementation guide CTC is ready available and relatively easy to implement²⁶.

CTC is based on the idea that so called protective and risk factors for a large part determine whether criminal and deviant behavior will occur. Risk factors facilitate unwanted behavior and protective factors guard against deviant behavior. These factors are identified in domains like community, family, school and peers. Examples of risk factors are low neighborhood attachment, community disorganization, norms favorable to drug use and firearms. Examples of protective factors on neighborhood level are community rewards for prosocial involvement and opportunities for prosocial involvement. More examples can be found on the above mentioned website.

Research conducted between 2006 and 2010 on all five islands of the former Netherlands Antilles indicates crime prevention programs which target risk and protective factors, will most likely also be effective in Sint Maarten²⁷. This cannot be argued by crime prevention programs that do not target these factors. The results of crime prevention programs in one society cannot be simply projected onto another if the same prevention program is implemented. This research describes extensively risk and protective factors in Sint Maarten and conclude risk factors correlate positively and protective factors correlate negatively with criminal and deviant behavior. Moreover, the results also clearly indicate a high level of violence and delinquency among the youth that cannot be lowered by individual care. This is a very important observation. The idea that individual care of problem behavior will affect the general crime level is unrealistic. The authors state that "targeted social policy, and prevention, of youth problems should be considered seriously"²⁴.

This means if a crime prevention program targets risk and protective factors on a group or neighborhood level, and can be adapted to local circumstances, and is active in more than one 'institutional setting', it is the best option to decrease crime in Sint Maarten. 'Communities that care' (CTC) has all these characteristics and should therefore be considered to be implemented in Sint Maarten.

However, the most important factor of CTC is community mobilization. The CTC is designed to increase communication, collaboration, and ownership among community members and service providers. CTC involves neighborhood community boards appointed by key community leaders. The key community leaders form a board that supports and guides the boards on neighborhood level. In order for CTC to be effective it must delve deep in the community of Sint Maarten and be broadly supported. In other words, CTC needs to 'fit' in existing social

²⁵ Sherman, Farrington, Welsh, MacKenzie 2002, p. .

²⁶ <http://www.sdrj.org/ctcresource/>

²⁷ Jonkman, Cuijpers and Twisk 2010, p. 39

structure and be supported by service providers of different ministries. One other consideration should be made. If the existing social structure is too weak in communities associated with high poverty levels, implementation of CTC has proven to be more difficult.

5.1 Results 'Communities That Care' prevention program

The following results were measured after CTC was implemented in 24 communities in seven different states in the United States and compared with control communities. In CTC communities students between 5th and 8th grade were 41% less likely to initiate delinquent behavior. Lower levels of cigarettes (8%), Marijuana (4%) use was also found²⁸.

The likelihood of 10th graders to start delinquent behavior was 21% less than in control communities. The likelihood of 10th graders to start drinking alcohol in CTC communities was 38% percent lower and the likelihood to start smoking 50% lower than in control communities. The odds 10th graders have been smoking in the last months were 21% lower. In the past year 17% less 10th graders have been involved in any delinquent behavior and 25% less children have been involved with violence compared to control communities²⁹. Note these comparisons are between CTC and control community (where no CTC program was active). CTC does not predict to decrease a similar percentage in these behaviors in the general crime level.

These results were obtained in communities where CTC was implemented for a minimum of four years. CTC is a prevention program that only works if it is supported by the community and properly financed by authorities for four, and preferably more years depending on the results. The results also suggest that the improvement in behavior lasts.

The CTC program entails considerable time investments of all project partners. Therefore the project cannot depend, next to government workers, on volunteers. Members of community councils and other participants should be paid to secure a sustainable and effective program. Government workers should be allocated sufficient time for their activities. Crime prevention costs money and takes time.

The aspect of community mobilization and ownership of CTC on neighborhood level is vital. Therefore the success or failure of earlier and existing neighborhood programs in Sint Maarten must be considered. The next chapter is about the lessons learned from other social policies in Sint Maarten.

6. Neighborhood programs in Sint Maarten

This chapter will address two current projects that will be implemented shortly or are being implemented at the moment in Sint Maarten. These programs are the Integrated Neighborhood Development Program (INDP) and Community Policing program.

The INDP aims to raise the quality of life by establishing community help desks (CHD) in three neighborhoods (St. Peters, Dutch Quarter and Cole Bay) to address the needs of people in the neighborhoods. The information gathered by the CHD's also aims to ensure improvement of policy and decision making. The choice for INDP indicates that the access to services is decentralized and connected with the needs from the different neighborhoods. CTC has the same decentralized structure. What is needed to prevent crime can differ per neighborhood. This indicates the CTC program can use the same existing social structure as the INDP and does not need to be 'build up from the ground'.

Although data was collected in ten neighborhoods for selection purposes the INDP includes only three CHD's. The main reason to establish CHD in these three selected communities was that the strength of these three community councils. Earlier social policies on neighborhood level also brought forward that if not all social groups are represented in the community council, the policy will be blocked by groups not represented in the council and therefore would fail to be successful. Cutting corners in social policies works counterproductive.

The INDP also aims to activate unemployed youths in different neighborhoods. Young men and women currently 'hanging around' on the street will be given the opportunity to gain work experience to maintain buildings in their

²⁸ 2009. Hawkins e.a..2009, p. 794-796

²⁹ Hawkins e.a. 2012, p. 145-146

neighborhood. This work experience will be structured as micro enterprises financed by the INDP and managed by the different neighborhood councils and INDP project leaders. This aspect of the INDP could be a welcome addition next to the CTC program because CTC does not target potential delinquents directly but stays at a group level (school, neighborhood or training for family in parenting styles for example).

The police department is implementing the community policing project. Police officers are being trained to take responsibility for the security in a neighborhood. One of the goals is to get to know the population of the neighborhood and to respond or prevent crime using that knowledge. Community policing aims to deploy law enforcement resources depending on the needs of the community and tries to respond to crime in consultation with the neighborhood to enhance safety. CTC aims to do the same and both policies could be very helpful to each other.

The success of 'Communities That Care' elsewhere is closely connected with a specific project organization. CTC should therefore be implemented next to these existing projects with a separate budget, goals and project organization. CTC can only function successfully if it is an independent project with clear goals but cooperation with the INDP and the community policing project would benefit all parties involved. The current INDP and community policing project know a similar structure, borrow from the same principles, and have to a certain extent the same goals as CTC program. This presents an opportunity for crime prevention and should be embraced by working together with these projects.

For example, community police officers and members of the community councils would be an added value to the neighborhood community boards of the CTC. CTC needs community board members who know the community well. The facilities of the community help desk could also serve the CTC project. A social worker working in the Community Help Desk could also be provided with course materials of the CTC program and become an instructor on family parenting style but these activities would fall under the supervision of the neighborhood community board.

The board of key community leaders as supervisory board must be established to implement CTC. Other community councils can be strengthened by the goals CTC entails and form community boards supervised by the key community leaders. A crime prevention program can also activate community members to take responsibility for their neighborhood.

7. Advice and recommendation

The Social Economic Council (SER) has described the level of violent and petty crimes and the social and economic costs these crimes produce using local data and, where local data is missing, using data from other countries. According to the SER the development of crime and the associated costs form reasons to act next to existing law enforcement efforts. This report has elaborated on the general workings of crime prevention programs elsewhere and one evidence-based crime prevention program in particular; 'Communities That Care'. Two current existing neighborhood programs have been described which have promising links in goals and method with 'Communities That Care' (CTC).

Therefore, the SER unanimously advises the government of Sint Maarten:

- To implement a comprehensive crime prevention policy for Sint Maarten, with a trial in de communities with a Community Help Desk (St. Peters, Cole Bay and Dutch Quarter).
- To implement 'Communities That Care' as a crime prevention program with an independent project organization, budget and goals as recommended by 'Communities That Care'.
- To seek cooperation between Community Policing and Integrated Neighborhood Development Program.
- To seek cooperation between the Ministry of Education, Culture, Youth and Sports Affairs, the Ministry of Healthcare, Social Development and Labor and the Ministry of Justice for a crime prevention program.

- To make sufficient funds available from these Ministries to implement the full program for a period of at least four years and during the program to reimburse members of community boards to secure their lasting time investment and cooperation.

7.1 Recommendations

The SER further recommends to:

- Seek additional funding for 'Communities That Care' with the European Development Fund new grant cycle 2014-2020 due to the long-lasting time of the project.
- Continue the housing project for orphans and youth placed under supervision of the court of guardianship. The most vulnerable should be protected and guided not to enter into crime.
- To fill data gaps and to provide statistics needed for the areas mentioned in this advice.

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Sherman, Farrington, Welsh, MacKenzie 2002

Evidence based crime prevention. London and New York, 2007.

Worldbank 2007

Crime, violence, and development: trends, costs, and policy options for the Caribbean. Worldbank, 2007.

8.1 Stakeholder Interviews

The following interviews with stakeholders were conducted for this advice:

- Ministry of Education, Culture, Youth and Sports affairs. Head of Youth Department
- Ministry of Health Care, Social Development and Labor. Head of Social Development
- Ministry of Justice. Head of Judicial Affairs
- For a Change (INDP consultant)

Appendix A

| Direct economic costs of property crime | | | | | |
|---|--------------------|------------|-------------------|-----------------------|------------------------------------|
| type crime | registerd crime | % reported | calculated number | av. cost per crime \$ | total cost per type |
| burglary household | 667 | 63 | 913 | 2161 | \$1,972,993 |
| burglary business | 199 | 63 | 273 | 2161 | \$589,153 |
| robberies | 296 | 38 | 479 | 3379 | \$1,618,541 |
| theft personal property | 450 | 38 | 756 | 787 | \$594,972 |
| theft from vehicle | 500 | 44 | 1136 | 967 | \$1,098,512 |
| car theft | 253 | 90 | 278 | 2497 | \$694,166 |
| Total | 2365 | | 3835 | | \$6,568,337 |
| | | | | | \$5,979,184 (ex business burglary) |
| Direct social costs of violent crime | | | | | |
| type crime | registered victims | % reported | calculated number | | |
| homicides | 12 | 100 | 12 | | |
| assault | 170 | 36 | 472 | | |
| assault with weapon | 80 | 36 | 222 | | |
| public violence | 10 | 36 | 28 | | |
| grave bodily harm | 16 | 36 | 44 | | |
| domestic violence | | | | | |
| Total | 288 | | 779 | | |



Sociaal Economische Raad
Social Economic Council

To the Hon. Prime Minister of Sint Maarten
Mrs. S.A. Wescot-Williams
Philipsburg
Sint Maarten

Philipsburg, October 25, 2012

Our reference: SER /12/GR

Re: Letter of advice regarding the establishment of a National Library for country Sint Maarten

Honorable Prime Minister,

Recently the Social Economic Council (SER) received a letter from member Mr. W. Reed (WISCU/PSU) with a request to change the name of the library and convert it into "The National Library of Sint Maarten", that is for the protection of the library and also to make it the official library of country Sint Maarten.

The member proposal was brought to the attention of the board during the board meeting of Thursday, October 11, 2012. The secretary elaborated on the matter where after information on the topic was shared with the board. The board agreed to support Mr. Reeds proposal, the board decision is documented in the resolution list dated October 11, 2012. Furthermore, the board stressed the necessity to adapt and improve the Library's infrastructure and building to be able to successfully carry the additional responsibilities and execute the additional tasks. The board expressed a clear feeling that the present accommodation of the Philipsburg Jubilee Library is insufficient for its current tasks, and certainly a new or renovated building would be necessary to successfully carry the National Library tasks. During the board meeting of October 25, 2012 Mr. Reed elaborated further on his proposal, where after the board unanimously supported his motion.

The SER is of the opinion that the establishment of a National Library is of crucial importance for the further development of the country and its people. The Philipsburg Jubilee Library which at the moment mainly functions as a public library will develop into the National Library of St Maarten. In the English speaking Caribbean it is already common practice that public libraries perform National functions. Apart from being public libraries they also act as the national libraries of their countries. Within the boundaries of our own kingdom the Biblioteca Nacional Aruba (National Library of Aruba) is a good example of a library performing this dual function.

The general mission and tasks of a National Library can be summarized under three headings :

1. Collection and preservation
2. Access
3. Cooperation

1. Collection and preservation

The most important task of a National Library is to collect, preferably via a legal deposit, the national imprint, both in print and electronic format. National heritage in the form of manuscripts, archival materials, photographs and audiovisual documents are also collected by some National Libraries. Foreign publications about the country should be part of the collection of the National Library as well. For St Maarten this would mean that all written materials published in St Maarten, all materials written about St Maarten as well as written materials written by St Maarteners living abroad would be collected by the National Library. This national collection has to be preserved by the national library under the best possible conditions.

2. Access

Apart from maintaining the national collection the National Library also has to make sure that the general public has access to the materials of this collection. The materials should not only be accessible for visitors of the library but people should be able both to consult material in collections and to obtain specific items however distant they may be. In practice this means that the catalogue of the National Library should be placed on the internet. Documents with historical value and other relevant documents should be digitized and made available through the internet as well.

3. Cooperation

Cooperation is defined as cooperation on a national as well as on an international level. Cooperation on the national level in St Maarten would mean that the National Library cooperates with and provides assistance to the University library, the National archives as well as the school libraries on the island. On the international level it would be of the utmost importance to cooperate with libraries in the Caribbean as well as libraries in the Netherlands and the US.

SER advice

The SER advises:

- to officially designate the Philipsburg Jubilee Library as the National Library of Sint Maarten;
- to ensure that the annual subsidy granted to the PJJ will be increased in such a way as to sufficiently make the transition to National Library and to sufficiently fund existing and additional tasks of the National Library;
- to make the realisation of new and fitting accommodation of the PJJ/National Library an urgent policy priority.

Should you require any additional information after reading the above, please feel free to contact us at your earliest convenience.

Respectfully,

R.A. Richardson
Chairman

G. Richardson
Secretary-general



Sociaal Economische Raad
Social Economic Council

**SER advice nr.
2012 - 001**

Philipsburg, September 14th , 2012

Draft Ordinance short term labor contracts

Advice on the Draft Ordinance on the elimination of abuse of short term labor contracts

The Social Economic Council Sint Maarten (“Sociaal Economische Raad”, referred to below as “SER”) is an independent advisory body to the government of Sint Maarten. The SER advises upon request by one or more Ministers (solicited) or on its own initiative (unsolicited) on all important social economic issues. The SER was established by law (“Landsverordening Sociaal- Economische Raad”) in 2010. The SER consists of representatives of employees’ and employers’ organizations as well as independent experts. The objective of the SER is to achieve a broad concept of wealth in Sint Maarten by offering quality advice and reaching consensus on social economic issues. For more information, please visit our website www.sersxm.org

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Introduction

This advice is a solicited advice at the request of the Sint Maarten parliament. The request originates with the National Alliance faction and reached the SER through the then chairlady of parliament, drs. G.R. Arrindell.

It is noteworthy that presently the SER ordinance does not explicitly provides for the SER advising on initiative draft ordinances, i.e. ordinances originating in parliament. Nevertheless it seems suitable to proceed in the spirit of the law and honor this advice request.

The draft ordinance "Landsverordening houdende wijziging van Boek 7A van het Burgerlijk Wetboek" (Landsverordening oneigenlijk gebruik van kortlopende arbeidsovereenkomsten) or "Ordinance on the elimination of abuse of short term labor contracts" constitutes:

- The addition of a new article 1615fb, to the Sint Maarten Civil Code;
- The announcement of two decrees (LB-ham's) further elaborating the rules put forward in article 1615fb. Drafts of the applicable decrees are not included;
- A penalty clause, stipulating that transgression of article 1615fb is to be considered a crime (misdrijf) punishable by incarceration or a monetary fine;
- A clause stipulating the obligation of the Minister of Labor and Social Affairs to report to parliament annually about the execution of this law.

This initiative ordinance is part of a long-standing discussion on the topic of temporary labor contracts and the latest stage in an equally long process of rendering the labor market regulations more flexible.

It is the intention of the social economic council to follow up this advice with a broader unsolicited advice in the field of labor market regulation. Next to issues of temporary contracts, this advice will tackle the rules on dismissal and dissolution of labor contracts, the coordination of initial education, permanent education and the needs of the labor market, while at the same time addressing the job security and quality of life guarantees for employees. It will be a first contribution to a concept of 'flexicurity' on Sint Maarten.

1. Background and history

During the 1980s and 1990s the worldwide trend of 'deregulation' became prominent in the industrialized world, and reached the Netherlands Antilles as well. This trend was based on the conviction that decreasing government interference in the markets that constitute our economy would promote economic development. A more flexible approach towards labor contracts and the termination thereof was an important element of the global deregulation trend.

Concurrently, the general approach to labor relations changed during the late 20th and early 21st century. Lifelong employment with one employer is no longer the overriding goal, nor the ambition of the younger generation entering the labor market. Frequent changes of work environment and hence employment have come to be regarded as positive career attributes by employers and employees alike. The movement towards more dynamic and temporary labor relations has therefore become a permanent feature of the labor market in developed nations.

More flexible labor contracts can be seen as positive and conducive to economic development, provided this trend is accepted and carried by both sides of the labor market and the effects are fairly balanced between the two. At the same time however, there is no denying that certain advantages of permanent contracts, such as pension plans, and indirect benefits such as credit worthiness are compromised by the trend towards temporary employment. These issues will have to be addressed to ensure employees the quality of life they are entitled to and to ensure stable long-term labor relations. The recent introduction in Aruba of a compulsory pension plan for each employee, with contribution by both parties, regardless of the duration of each contract or the number of contracts an employee has during his or her career, is an example of a solution that reconciles flexibility of the labor market and long-term security for the employee.

In the 1990s in the European Union the term 'flexicurity' was coined to describe the combination of a flexible labor market and security for employees. The concept originated in Denmark and quickly became a familiar policy

concept in the EU. According to the EU definition " *Flexicurity*" is the strategy which aims to simultaneously strengthen flexibility and security for the benefit of both parties in an employment relationship. (It) has been recognised as one of the key objectives for European labour markets in the context of the European Employment Strategy and the Lisbon Strategy." ³⁰

In the 1990s in the Netherlands Antilles, lack of flexibility in the labor market became recognized as one of the factors hampering economic development. Therefore a host of recommendations and advices were brought forward, entailing wider possibilities for temporary contracts, and more liberal rules for contract termination.

The report of the Inter-American Development Bank of 1997, compiled by the UK based De Montfort University, recognizes a number of key factors contributing to a rigid labor market and therefore causing unemployment. ³¹ First off, a large informal market without any regulations co-exists with a very rigid formal labor market. Labor and business laws are qualified as outdated. Heavy bureaucracy causes long delays in processing labor applications. A mismatch between supply and demand is caused by an inadequate education system, and is fueled by a high percentage of drop-outs. Labor productivity is low compared to the wage level. A lack of trust and a confrontational attitude exist between business, labor unions and government. In the same breath, the IADB advises the (then Netherlands Antilles) SER to take the lead in addressing these issues. Little is said about Sint Maarten specifically, apart from highlighting the lack of data and drawing attention to the large proportion of informal labor market constituted of immigrant labor. The report follows up with a host of recommendations pertaining to the flexibilisation of the labor market. In a follow up summary by the IADB it is stated that "A key element of economic recovery will therefore require the urgent elimination of regulations and institutional mechanisms which inhibit competitive functioning of the labor market. The strategy should aim to forge greater consensus and/or compromise among the trade unions, Government and the private sector on the desirability of a flexible labour market as a precondition to achieving competitiveness and sustainable private sector led development." ³² These observations, though fifteen years old now, and pertaining to the Netherlands Antilles in general, sound surprisingly current and applicable to the present day Sint Maarten situation.

1.1 SER history on the topic of temporary contracts

It is no surprise therefore that the Netherlands Antilles SER covered the temporary labor contract issue in an extensive advice as early as 1998. ³³ The general tendency of this advice is to promote a flexible labor market while at the same time ensuring the legal position and long term security of employees. A more flexible approach to labor is understood to ensure the efficient allocation of available labor at the moment and in the place it is needed. This of course reduces labor costs, and increases labor productivity.

Economic literature on the topic of labor flexibility distinguishes primarily between internal and external flexibility. ³⁴ Internal flexibility is defined as the optimal allocation of existing personnel within a given business. Increases in this type of flexibility imply for instance making the work times during a day, a week or a year more flexible, increasing efficiency by ensuring that the employee is deployed when work is available, decreasing idle time. Another aspect of internal flexibility consists of broadening the competencies of each employee, making him or her able to be deployed in more different tasks or positions in the organization. This usually implies additional schooling and training, and again the efficiency gain hinges on avoiding idle time or avoiding extra hands to be hired. This would require changes in the Civil Code, the Labor regulation (Arbeidsregeling) etc. External flexibility on the other hand applies to the labor relation itself, the number and the nature thereof, for instance working with more zero-hour contracts, using temp agencies, freelance contracts and the like.

In the formal part of the economy, the proportion of fixed (including self-employed) to flexible labor contracts was 75-25 during the 1990s ³⁵, even then showing a high degree of rigidity.

To promote internal flexibility, the SER in 1998 advised to: Loosen the overtime restraints, (Arbeidsregeling 1952, since replaced in 2000) for instance by increasing the possibility for time-back instead of paying out overtime;

³⁰ EU 2008, p. 3

³¹ IADB, pages 43-45

³² IADB 1997 (2) p. 15

³³ SER 1998

³⁴ SER 1998, p. 5.

³⁵ SER 1998, p. 7.

increase the possibilities for evening and night shift labor; promote schooling of existing employees to increase the possibilities of flexible deployment throughout the company; financing of training programs through a tax levied on all companies, to finance schooling programs and promote full cooperation of all businesses. Furthermore, job mobility is advised, to promote employees changing jobs and seek for the best match between supply and demand at all times, while incentives for Antilleans to return home, reversing the current 'brain drain' are suggested as well. Finally, in 1998 the discussion was prevalent about abolishing the obligation for the employer to apply for a permit to terminate an employment contract. The majority of the SER wanted to keep this obligation in place. Without this 'preventive' dismissal permit, the only way for the employee to fight dismissal would be through the Court of Law, which was seen as insufficient protection, due to the costs of legal representation and the lengthy process involved.³⁶

Furthermore, to promote external flexibility, the SER advised to first limit the possibilities for abuse of sequential temporary contracts. Limits were set to so-called 'draaideurconstructies' (revolving door arrangements). The council recommended an increase of the intermission between two temporary contracts from one to two months (this eventually became three months) in connection with the rule that every fourth temporary contract would become indefinite. Also, the suggestion to legally convert into a fixed contract any sequence of temporary contracts spanning 36 months with intermissions shorter than 3 months, made it into law. Finally, an exception is made for extension of a three year or longer contract, which can be prolonged once by maximum three months, without creating an indefinite contract.

On a related topic, the maximum timespan for a temporary worker through an agency was suggested to be increased from 6 to 12 months, which was included in the law as well.

The SER suggestion to introduce in the Civil Code a wage guarantee for all labor contracts – including zero-hour or standby contracts was not followed up on.

In the year 2000 the Labor regulation 1952 was replaced, making significant changes possible in internal flexibility of labor, by setting new rules for work hours, overtime and compensation thereof, breaks, on-call time, public holidays and youth labor.

The discussion on short-term contracts continued in the first decade of the 21st century. One of the most notable contributions was the Policy paper drafted by the Netherlands Antilles Directorate of Labor in 2007³⁷. Important suggestions are the introduction of a Labor Court or Court of Arbitrage to simplify the judicial process in dismissal cases. Furthermore, there is an explicit plea for more enforcement, inspection and control. Changes in the dismissal regulations are proposed as well, although no consensus on this score was attained between employers' organizations and labor unions.

1.2 Current legal framework

As of 2012, the most applicable laws and regulations constituting the legal framework surrounding the issue of temporary contracts are the following. These are all transferred as of 10/10/10 from the Netherlands Antilles legal system. Sint Maarten as a country has introduced no new laws or amendments yet in this field.

- Civil Code, Articles 1615e – 1615x
- Landsverordening beëindiging arbeidsovereenkomsten (PB 1972, no. 111)
 - LB ham van 13 maart 1990 ter uitvoering van artikel 6 van de Landsverordening beëindiging arbeidsovereenkomsten.
- Landsverordening houdende vaststelling van nieuwe regels inzake arbeidsduur, arbeidstijden en overwerk (Arbeidsregeling 2000) (PB 2000, no 67)
- Landsverordening flexibilisering arbeidswetgeving (PB 2000, no. 68)

³⁶ SER 1998, p.34

³⁷ DirAZ 2007

- Landsverordening houdende regelen met betrekking tot het ter beschikking stellen van arbeidskrachten (PB 1989 No. 73)
 - LB ham van 25 oktober 1996 ter uitvoering van artikel 8 van de Landsverordening op het ter beschikking stellen arbeidskrachten

2. Extent of the temporary labor contract problem

2.1 Motives for the use of temporary contracts

According to the 2007 policy paper of the Directorate of Labor, employers are driven by a number of motives when choosing to fill vacancies temporarily³⁸. The first motivator is nature of the activities involved. Large part of production is seasonal (e.g. tourism) or project oriented (e.g. construction). Moreover, products and markets change fast, so permanent production and hence employment can seldom be guaranteed. This factor is compounded by the fact that permanent contracts are unattractive due to the heavy requirements for dismissal. The second motivator is the increased cost of doing business, driving employers to risk aversion and avoidance of the possibility of having to pay permanent employees in the absence of work. The third factor mentioned is the perceived deteriorating work ethics and insufficient education or competencies. In other words, employers act cautiously, wanting to use an ample trial period before hiring an employee permanently.

2.2 Trends in the prevalence of temporary contracts as a proportion of the labor force

The drafters of the proposed ordinance pertain there is a twofold problem that needs to be addressed through this proposal. On the one hand it is stated that employers offer employees temporary contracts, where the demand for labor is in fact of a permanent nature. On the other hand, it is maintained that sequential temporary contracts are offered with breaks of more than three months, in order to avoid the conversion of the fourth contract into a permanent one. It is not made clear however, what the extent of both phenomena is, nor are any statistics or verifiable sources provided.

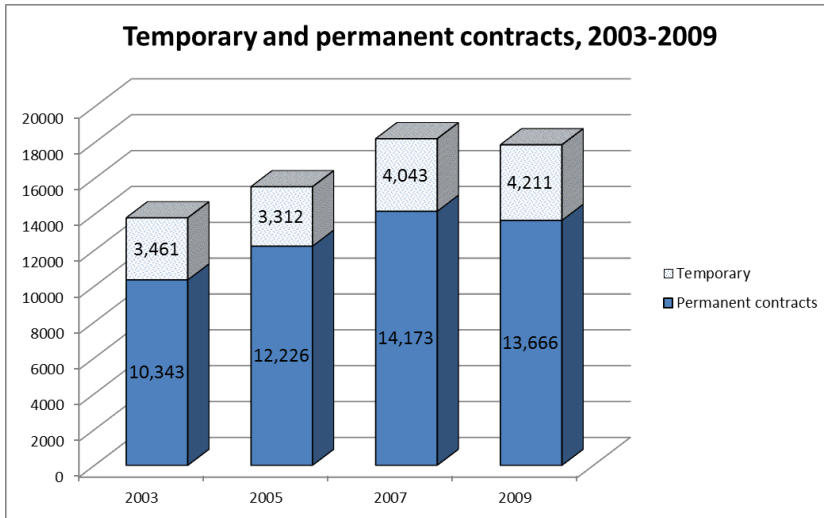
The most recent systematically collected data set available is the 2009 Labor force survey, compiled by the then Netherlands Antilles CBS.³⁹ The Antilles CBS used four sub-categories of temporary workers; those in part-time contracts, casual workers (no definite timespan), temporary contracts shorter than 6 months, and finally temporary contracts of 6 months or longer. For the sake of comparison, we add these four categories together as "temporary workers". If we take these "temporary workers" as a proportion of the labor force, their share actually dropped from 21.4 to 19.7% from 2003 to 2009. By contrast, the fraction of permanently employed remained stable 63.8 to 64.0% of the total labor force over the same period with larger percentages in 2005 and 2007. The remainder of the employed population consists mainly of employers and self-employed persons. Specifically, the number of employers and self-employed rose from 13.7% to 14.8% of total employed; from 2,214 to 3,145 persons, quite a dramatic increase in absolute terms.

Testing the hypothesis of a shift from permanent to temporary *contracted* employment, we have to ignore for a moment the self-employed, the employers and miscellaneous categories in the total workforce and focus on those in a contractual labor relationship. As a percentage of those in a contractual labor relationship, be it temporary or permanent, the permanent fraction rose from 74.9 to 76.4%, a very high percentage by any international standard. The remainder is then of course temporarily employed, dropping from 25.1 to 23.6%. The intervening years show even lower temporary percentages. This trend is illustrated in Figure 1.

³⁸ DirAZ 2007, p. 15, 16

³⁹ Labour Force Survey 2009.

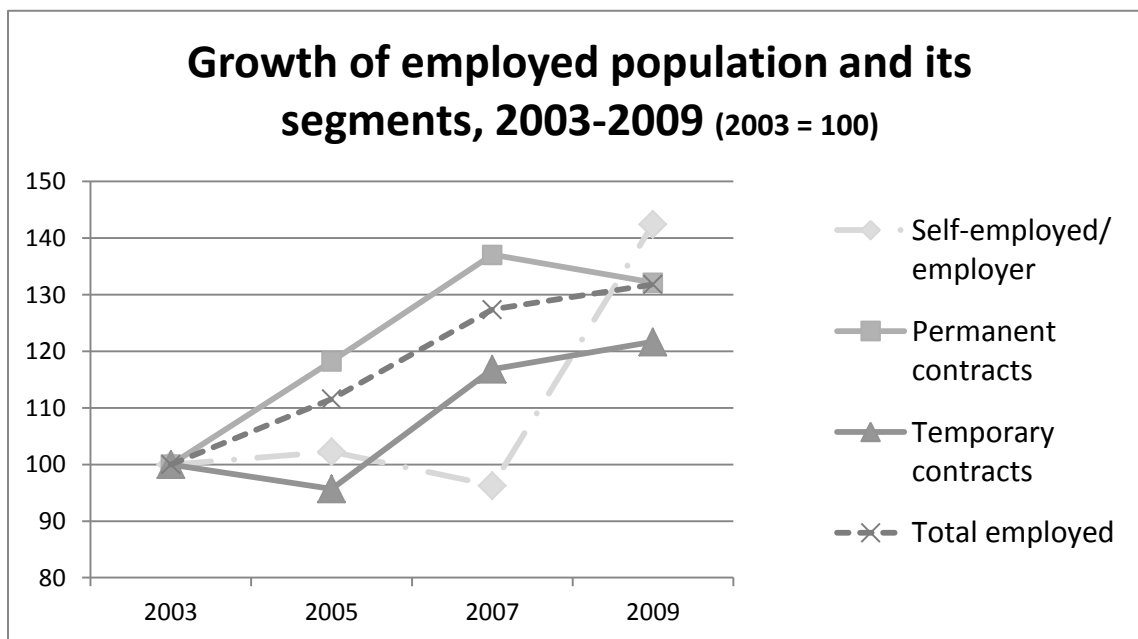
Figure 1 Temporary and permanent contracted labor 2003-2009
 (Sources: 2005 and 2009 Labor force survey)



In terms of growth compared to the base year 2003, the self-employed/ employer category increased most (42.5%) while other relevant categories grew with equal pace or slower than the total employed population (31.8%). Notably, the temporary category increased with only 21.7%, clearly shrinking in importance, while the permanent category grew 32.1% exceeding the growth of the overall population slightly. This development is shown in figure 2.

In conclusion, we have to observe that none of the indicators show any trend towards more use of temporary contracts, not as a percentage of the total employed population, nor as a fraction of total contracted employees. The only significant trend is towards more self-employed/ employers.

Figure 2 Indices of employed population and its segments 2003-2009
 (Sources: 2005 and 2009 Labor force survey)



2.3 Abuse of temporary contracts

As to the first type of abuse of temporary contracts – as stated by the authors of the draft ordinance –, which is the hiring of employees on a temporary basis where the need for labor is permanent, it is very hard to see the basis of this abuse in the data available. With a percentage of permanent contracts as high as it is on Sint Maarten, it is difficult to see how more than the current 76% of the available positions would in actual fact have to be qualified as permanent. The abuse in question would then pertain to a fraction of the 24% who are now employed on a temporary basis. This of course does not take into account the informal part of the economy. Furthermore, this type of abuse assumes that the employee hired would indeed prefer a permanent contract over a temporary one, and that employees would by definition be disadvantaged by a temporary contract.

The second type of abuse brought forward by the drafters of this ordinance, is the hiring of employees on sequential temporary contracts, with at least one interval longer than three months. This is a specific type of evasion of the law that could certainly be qualified as abuse. For obvious reasons, it is very hard to support the occurrence of this type of abuse with quantitative data. Theoretically, a full data base of labor contracts on Sint Maarten would be needed in order to filter out the occurrence of several contracts between the same employer and employee regardless of the time past between two instances. In any case, stakeholder interviews indicate that the problem of straightforward breaking of the law is far more significant. This entails hiring the same person multiple times temporarily, with little or no interval, while ignoring the obligation to make the fourth contract permanent. Enforcement of the law seems to be the overriding issue here, not the provisions of the law itself.

A cautionary note however is required with respect to the available data. Only the formal part of the economy is measured, while it stands to reason that abuse is to be found more often in the informal part of the economy. Data from the Netherlands Antilles era suggests that the informal – hard to measure – part of the economy is relatively large in Sint Maarten, certainly the largest of the former Antilles. This would point to giving priority to ‘formalizing’ the economy as soon and as comprehensively as possible. Needless to say that introducing new regulations will not in itself affect the informal part of the economy, and will hence not tackle the problem at hand. Worse even, businesses in the formal part of the economy will perceive to be hit with new layers of bureaucracy, possibly eroding the existing level of compliance.

3 The draft ordinance on the “Elimination of abuse of short term labor contracts”

This chapter will deal with the content of the draft ordinance and the measures contained therein, from a socio-economic impact perspective. Purely legal considerations will only be dealt with tangentially, as they are covered by the advice of the Advisory Council.

Article I - Section 1

Section 1 of the first article of the draft ordinance entails the introduction in the Civil Code of a new article 1615fb. This article contains the obligation of any employer, prior to hiring an employee on a temporary contract, in a case where the need for labor is permanent, to request a permit for engaging in a temporary contract by the Minister of Labor and Social Affairs.

This provision raises a number of questions that are not sufficiently answered in the draft law;

- How is an employer to determine whether the position he is hiring for, is “not temporary in nature”. Even the LB ham mentioned later in this ordinance, does not address this question, as the LB ham only considers the criteria based on which a permit would be granted, not the necessity to apply for a permit in the first place. As a consequence, one may assume that by default, a permit is needed for every instance where an employee is hired on a temporary basis. Such a permit requirement is currently not in existence.
- If a permit is requested for a temporary hiring, what are the eligibility criteria applied by the Minister of Labor? How does the Minister determine whether a permit will be granted? This question is addressed in the LB ham announced in article II.2. However, this LB ham has not been drafted or attached to the draft ordinance.

A blanket permit requirement for temporary hiring constitutes a sizable addition to the bureaucratic procedures employers are confronted with. Moreover, by its nature it delays the act of hiring an employee, possibly by several weeks, simultaneously harming the interest of the entrepreneur, who cannot react quickly to business opportunities, and that of the worker, who sees gainful employment and therefore income delayed for the same amount of time.

The SER is of the opinion that this section does not contribute to the solution of the problem at hand, and has important detrimental social economic side effects.

Article I - Section 2

The second section of Article I adds a provision, voiding any labor contract, concluded without the necessary permit (as per Section 1).

This provision can only be qualified as counter-productive from a social economic point of view. By voiding the contract, the employee is left in the cold, while the employer is penalized anyway by provisions later on in the law.

The SER is of the opinion that this section does not contribute to the solution of the problem at hand, and has important detrimental side effects, harming the interest of the employee.

Article I – section 3

The third section entails an addition to the existing Article 1615fa. Article 1615fa currently states that any fourth temporary labor contract is legally converted into a permanent one, if the intervals between contracts one through four were all less than 3 months in duration. The proposed Article I section 3 effectively removes the limitation of the three months interval. As a consequence, any fourth contract between the same employer and employee becomes a permanent one.

It is hard to see why the drafters did not opt for a straightforward amendment to Article 1615fa, - removing any mention of a maximum term - and instead adding this clause in a different Article 1615fb. This was suggested already in 2007 in the policy paper of the Directorate of Labor Affairs.⁴⁰

The effect of this section probably only tackles a marginal problem, i.e. employers going through the trouble of actually creating intermissions of more than 3 months between two contracts. The core of the abuse problem is the non-compliance with the existing contract-chain rules.

Article II – section 1

This section announces a decree (LB ham) that would stipulate the criteria to be used by the Minister of Labor, to determine whether a temporary contract would be permitted. There is no draft decree attached to this proposed ordinance however. Without this decree (LB ham), the proposed ordinance is as good as inoperative. It will create a legal obligation for employers, without handing the Minister of Labor the tools to implement the law. Furthermore, the basic question is not answered, how to determine whether the obligation to *apply* for a permit does or does not exist. In other words, how is an employer to determine whether the position he/she is recruiting for is 'not of a temporary nature' (niet van tijdelijke aard).

Article II – section 2

This section announces a decree (LB ham) that will exclude certain categories of labor contracts (assumed to be branches of industry, or types of positions) for which no more than three consecutive temporary contracts can be made regardless of the time between these contracts. As it follows from Article I that in effect any fourth contract becomes a permanent one, it is unclear what the added value of this stipulation is. An elucidation to this section of Article II is not attached to the draft ordinance.

⁴⁰ DirAZ 2007, p.20.

Article III

Article III entails a penalty clause for cases in which employers do not comply with the requirements of Article I. It is assumed here, that this obligation pertains to the requirement in section 1 of Article I i.e. to apply for a permit in case of hiring an employee temporarily.

Issues of legal formalities e.g. the question whether this ordinance, not being part of the penal code, is the right place for a penalty clause, are not covered in this advice. However, the SER feels that the introduction of a penalty of this magnitude for an essentially economic transgression should be dealt with in a comprehensive way, covering the full range of issues/ trespasses pertaining to the compliance with labor laws. To address one detail out of this range separately constitutes a disproportionate measure and sends an inconsistent signal.

Furthermore, as this ordinance deals with contracts in the civil realm, a provision along the lines of the Aruban civil code article 1613x, opening the possibility for the Court to grant the employee financial compensation would seem more fitting.⁴¹

4 Alternative solutions

Focussing on the advice at hand and the perceived problems addressed therein, the SER would bring the following alternative solutions forward:

- Increase of control by the labor inspection (arbeidsinspectie) on compliance with the existing legal provisions. One of the conditions for successfully enforcing the existing rules is of course upgrading and strengthening of this part of the government organisation. This also entails the connection of databases in different government services, making them more up-to-date, accessible and fit for cross-referencing. The 2011 annual report of the Inspectorate for Labor mentions a total manpower of four, of which one is covering the entire area of labor regulations.⁴² The report does not mention violations in the field of temporary contracts as an inspection objective. Compliance with the temporary contract rules should become one of the main focal points of the labor inspection. Related to this, industries with known issues in this field should get most attention. Also, efforts should be directed towards the informal part of the economy, as opposed to increased control of known and registered companies.
- Require every labor contract to be in writing. Lack of written proof of a labor relationship makes enforcement of rules by government agencies difficult, and compromises the position of the employee, especially in case of legal action.⁴³
- Increase the inclination towards compliance by employers by: simplifying the bureaucratic procedures where possible; dissemination of information regarding the rules and generally building a culture of compliance. This should be achieved not only by government pressure but also by self-regulation of the private sector.
- Increase the consciousness among employees with regards to their rights and entitlements. Especially among temporary employees (recent) immigrants are overrepresented, finding themselves in a by definition more vulnerable position. Awareness of one's rights as a citizen is an essential part of integration in society. Next to government the labor unions – and other NGO's - have a specific role and responsibility in this field.

⁴¹ See for instance the Aruba Civil Code, quoted in DirAZ 2007, page 23

⁴² Inspectorate 2012, p. 14

⁴³ See for instance the Aruba Civil Code, Article 1613x section 1, cited in DirAZ 2007, p 23.

5 Advice and recommendations

5.1 Advice

The unanimous advice of the SER on the different components of the proposed ordinance is as follows:

Regarding Article I, all three sections are regarded as inopportune, for reasons of undue increase in bureaucracy (section 1), counterproductive effects (section 2) and ineffectiveness regarding the problem at hand (section 3).

Regarding Article II, sections 1 and 2, the (draft) LB-hams announced are not attached to the draft ordinance. Without those however, the ordinance becomes hard to apply in any practical sense. Moreover, Article II is only relevant in relation to Article I.

Regarding Article III, the SER regards this kind of penalty applied to an economic transgression alone inadvisable. It creates a legal and economic imbalance between the handling of this particular issue and other labor related rules.

Article IV is relevant only in relation to the previous articles.

Summarizing, the SER unanimously advises not to submit the proposed ordinance in its current form.

5.2 Recommendations

To address the immediate problem(s) the draft ordinance is aimed at, the SER recommends the following:

- Strengthen enforcement of the existing rules pertaining to temporary contracts, reinforce and upgrade the labor inspection in terms of manpower, assets and organizational structure, refocus the labor inspection towards compliance with the temporary contract rules and making the informal economy visible;
- Increase knowledge of and compliance with said rules among employers;
- Encourage employees to assert their rights and entitlements under the existing rules; encourage the dissemination of standardized information on their legal rights – to be provided by government – in a language the employee commands.⁴⁴ The responsibility to provide this information should be shared by employers, labor unions and government.

To address the more general issues related to increased flexibility of the labor market, the SER recommends the following:

- Create a set of penalties related to transgressions against all labor laws that is consistent, internally and externally proportional and conducive of compliance with the law.
- Start the design of a system of *flexicurity* that on the one hand recognizes the necessity and the reality of a more flexible labor market, while at the same time ensuring temporary employees a degree of long term financial and economic perspective that would be comparable to that of a permanent contract.
 - It is generally recognized that strict dismissal laws make employers reluctant to hire permanently, and opt for temporary contracts instead. Recognizing this effect, and accepting the general tendency towards more flexible labor relations, the laws on termination of labor contracts should be revised.
 - Concurrent with the revision of dismissal laws however, the legal and socio-economic position of workers on a temporary contract should be strengthened.
 - To make dynamic careers within the same company and between companies feasible, and to stimulate individual and collective socio-economic development, permanent schooling and life-long learning should be incorporated in all labor relations.

It is the intention of the social economic council to contribute to the recommendations contained in this advice, by following up with a broader unsolicited advice in the field of labor market regulation. Next to issues of temporary contracts, this advice will tackle the rules on dismissal and dissolution of labor contracts, the coordination of initial education, permanent education and the needs of the labor market, while at the same time addressing the job security and quality of life guarantees for employees. It will be a first contribution to a concept of 'flexicurity' on Sint Maarten.

⁴⁴ DirAZ 2007, p 21.

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