

General Audit Chamber

Algemene Rekenkamer



Quickscan

Crime Prevention Fund

February 2018

PREAMBLE

A review of the Crime Prevention Fund was included in the annual work plan for 2017, approved by the Board of the General Audit Chamber. There were several reasons underlying the decision to conduct the review. Firstly, our analysis of Sint Maarten's 2015 Financial Statement indicates that revenues and expenses are not properly and fully accounted for. Initially, we expected to use the 2016 Financial Statement as the basis for our analysis, however, the presentation of the 2016 documents has been postponed by the Minister of Finance.

Our objective is to create more awareness about this fund by producing a report that is accessible to both Parliament and the public. Moreover, we chose to analyze the Fund's income and expenditure for fiscal year 2016, as well as to identify the persons responsible for the Fund. In addition, we examined the Fund's compliance with financial management procedures.

We understand that government is dealing with the aftermath of the devastation caused by hurricane Irma. The General Audit Chamber also must recover and rebuild. Improvement of the financial management system of the Crime Prevention Fund should be part of the reconstruction process. Sint Maarten, government and the General Audit Chamber, must all persevere. As evidence of our resilience, we present this first public report since the hurricane.

CONTENTS

Preamble.....	1
Summary	3
Recommendations	4
1. OUR AUDIT	5
1.1 Basis for the audit.....	5
1.2 The audit questions.....	5
1.3 Reading guide	5
2. 2016 INCOME AND EXPENDITURES	6
3. LEGAL ANALYSIS	7
3.1 National Ordinance Crime Prevention Fund	7
3.2 The ministerial decree	7
3.3 The 'applicable texts' project	7
3.4 Policy regarding the implementation of the National Ordinance Crime Prevention Fund	8
4. LEGAL COMPLIANCE.....	10
4.1 Overview of legal compliance.....	10
4.2 National Ordinance Crime Prevention Fund	12
4.3 Ministerial Decree	12
4.4 Policy Memorandum of November 30, 2010	12
4.5 Opinion.....	12
5 FINANCIAL MANAGEMENT	13
5.1 Findings.....	13
5.2 Opinion.....	13
6 THE MINISTER'S RESPONSE AND OUR EPILOGUE.....	14
6.1 Response from the Minister of Justice	14
6.2 Our epilogue	15

SUMMARY

The Crime Prevention Fund was established by means of the National Ordinance Crime Prevention Fund. The Fund's objective is financing crime prevention projects. The Fund is managed by the Minister of Justice. Because the Fund's income and expenditures were not correctly and completely accounted for in the 2015 Financial Statement, a review is appropriate. Though we intended to use the 2016 Financial Statement for our investigation, we were unable to do so, because the document is not yet available. The most recent financial information available can be found in the 2015 Financial Statement and is therefore the basis for our investigation.

The General Audit Chamber seeks additional insight into the Crime Prevention Fund. As such, we conducted exploratory research in the form of a Quick Scan.¹ Our objective is to develop an overall impression of the size of the Fund, its legal compliance, as well as its financial management. In addition, we reviewed areas that could benefit from improvement. Based on the results, as well as the reaction received from government, the Board of the General Audit Chamber reserves the right to conduct a more in-depth investigation of the fund in the future. With the current review, we answer the following audit questions:

- What was the scope of the Fund's expenditure and income in 2016?
- What are the applicable laws and regulations?
- Was the Fund compliant with the applicable laws and regulations?
- Is the Fund's financial management adequate?

An undated Excel file, obtained from the Ministry of Justice, reports the value of the Fund as ANG 292,429.65, as of January 1st, 2016. The total income in 2016, was ANG 1,862,722.21, with total expenditures of ANG 713,733.45. At the end of 2016, the balance reported was ANG 1,441,418.41. We emphasize that the information obtained was not drawn up in accordance with relevant regulations and is unaudited. As a consequence, we cannot unequivocally confirm the size of the fund for fiscal year 2016.

Our investigation reveals a lack of legal compliance, inadequate financial management, and a Minister of Justice who is not 'in control'.² Consequently, there is a risk that allocation of funds in 2016, may not have occurred in keeping with the objective of the Fund, which constitutes legal non-compliance, or violation of the relevant regulations.

The Fund is subject to both the National Ordinance Crime Prevention Fund as well as the National Accountability Ordinance. Our analysis reveals poor compliance with both of the ordinances, which, in large measure contributes to the unsatisfactory financial management of the Fund.

¹ A Quick Scan is a research method in which a limited number of topics are investigated. The goal is to develop a general impression of the size of the Fund, legal compliance, and the level of financial management. The results will determine whether further in-depth investigation is warranted.

² Being 'in control' means that the responsible person has and exercises the authority to promote good governance. This person must adjust and make changes where possible, and ensure that norms, values and rules are complied with. The drafting (and timely presentation) of a budget and financial statements are important examples of this.

RECOMMENDATIONS

Based on our conclusions, we issue the following recommendations to the Minister of Justice:

- Remove all ambiguity regarding the authorities within the Fund. Choose either the Secretary-General or the Head of Judicial Affairs as the person responsible for the Fund. Amend the legislation if necessary, and take into account article 21 of the Kingdom Law on Financial Supervision;
- Act in accordance with the National Ordinance Crime Prevention Fund in terms of the preparation and submission of the annual policy plan and the financial statements;
- Include the Fund's income as potential financial resources in the national budget;
- Improve financial management by:
 - o Developing procedures to ensure accountability in keeping with article 2, second paragraph and article 5 of the National Ordinance Crime Prevention Fund;
 - o Indicating how the Crime Prevention Fund's income will be deposited into the Fund's bank account;
 - o Drawing up the required quarterly written reports on financial and policy management of the Fund;
 - o Clearly indicating in the Ministry of Justice's annual budget how, and for what purpose, the Fund's monies will be spent;
 - o Reporting in the financial statement about the receipt of funds and the manner of receipt of funds for the Crime Prevention Fund by the Minister of Justice;
 - o Being accountable to the Minister of Justice, the Council of Ministers and, in particular, the Minister of Finance, in the annual report regarding the Fund's bank account.

1. OUR AUDIT

1.1 Basis for the audit

During our review of the financial statement of Sint Maarten³ we found that expenditures and income of the Crime Prevention Fund (hereafter: CF) were not correctly and completely accounted for. This led us to:

- Identify the scope and volume of the CF expenditure and income for 2016;
- Catalog the applicable laws and regulations;
- Check whether the Minister of Justice, and other officials, acted in accordance with the relevant legislation and procedures;
- Review whether the financial management meets minimum requirements.

We wish to improve our understanding of the CF. It is for this reason that we chose to conduct an exploratory review, in the form of a Quick Scan. A Quick Scan is a limited investigation of, in this case, the Crime Prevention Fund. The goal is to develop a general impression of the size and scope of the CF, the level of legal compliance, as well as its financial management. Moreover, we reviewed areas that potentially can benefit from improvement. Based on the findings, conclusions and recommendations, as well as the reaction from government, we will determine whether further in-depth investigation is warranted.

The CF was established by National Ordinance, specifically the National Ordinance Crime Prevention Fund (hereafter: NCF).⁴ The CF is meant to finance crime prevention projects⁵ and is managed by the Minister of Justice.⁶ Income and expenditures of the CF are part of the income and expenses of the Ministry of Justice, and as such, of Sint Maarten. The General Audit Chamber is therefore authorized to audit the CF.⁷

1.2 The audit questions

In this report, we answer the following audit questions:

1. What is the size and scope of the expenditures and income of the CF in 2016?
2. What are the applicable laws and regulations?
3. Did the Minister of Justice and other officials act in accordance with the relevant laws and regulations?
4. Is the financial management adequate?⁸

1.3 Reading guide

This report discusses: the scope of the fund's income and expenditure in 2016 (Chapter 2), the analysis of relevant legislation and regulations (Chapter 3) and, in Chapter 4, our findings regarding legal compliance. In Chapter 5, we answer the question whether the financial management meets the relevant requirements and whether the Minister of Justice is 'in control' of the financial management. This report concludes with the reaction of the Minister of Justice on the report, supplemented with our epilogue (Chapter 6).

³ Reports by the General Audit Chamber "Legal Compliance: Financial Statement 2011, page 19, Financial Statement 2012, page 17, Financial Statement 2013, page 16 and Financial Statement 2015, appendix 3.

⁴ National Ordinance Crime Prevention Fund, AB 2003, GT, no. 170.

⁵ Article 2, first paragraph, NCF.

⁶ Article 4, first paragraph NCF.

⁷ Article 74, second paragraph of the Constitution and article 23, first paragraph National Ordinance General Audit Chamber.

⁸ Financial management: the entirety of decisions, actions and regulations intended for management and control of, as well as accountability for, the financial transactions and the balances for which the minister bears (co-) responsibility. The accounting, which is kept up to date for the financial management, is also considered as financial management.

2. 2016 INCOME AND EXPENDITURES

According to the financial information we received regarding the CF, eight projects were funded in 2016 for a total of ANG 710,697.99. Total income amounted to ANG 1,862,722.21.⁹ We emphasize that the information received was not prepared in accordance with the relevant regulations and is unaudited. As such, we cannot unequivocally confirm the size of the CF for fiscal year 2016. In table 1, we provide a listing of the projects, the funding per project, as well as the type of income and related amounts.

Table 1 – List of income and expenditures of projects funded in 2016

INCOME AND EXPENDITURE CRIME PREVENTION FUND 2016	
INCOME	Amount in ANG
Type of revenue	
Fines	420,600.49
Remittance by the registrar	142,809.40
Bientu verdict	1,299,312.32
TOTAL INCOME	1,862,722.21
EXPENDITURE	
Project description	
Implementation license plate registry	15,940.00
Electronic ankle bracelets	13,500.00
Technical assistance MOT	14,687.50
Renovation office of the national detectives	16,200.00
Transportation suspects to SXM	4,713.20
Set up dog brigade	226,515.57
Assistance Police Force SXM	91,661.72
Insurance of personnel of Ministry of Justice	204,480.00
Total project costs	710,697.99
Transaction and banking expenses	3,035.46
TOTAL EXPENDITURES	713,733.45
BANK BALANCE	
Bank balance as of Jan 1, 2016	292,429.65
Income	1,862,722.21
Expenditure	-713,733.45
Bank balance as of Dec 31, 2016	1,441,418.41

The table shows that income in 2016 exceeded expenditures. Were it not for the incidental income from the Bientu verdict, expenditures would have outstripped revenue in 2016. Furthermore, the information indicates that a number of expenses seem to be at odds with the goal of the CF, which is the prevention of crime.¹⁰ Specifically:

- Transporting a suspect to the Netherlands;
- Implementing the license plate registry for vehicles;
- Acquiring ankle bracelets for electronic surveillance; and
- Insuring personnel of the Ministry of Justice.

A detailed investigation can determine how these expenditures were specifically related to crime prevention.

⁹ Undated Excel-file provided to the Audit Chamber by the financial controller of the Ministry of Justice.

¹⁰ Article 2, first paragraph, National Ordinance Crime Prevention Fund.

3. LEGAL ANALYSIS

3.1 National Ordinance Crime Prevention Fund

The NCF stipulates that there is a fund with the objective of financing crime prevention projects. The NCF stipulates that the CF is managed by the Minister of Justice and that the day-to-day management of the fund is entrusted to the Head of the Judicial Affairs Department. To guide the operational management of the CF, the Secretary-General of the ministry is given a number of authorities by ministerial decree.¹¹ Details regarding the management of the fund are outlined in the document entitled "Policy concerning the implementation of the National Ordinance for the Crime Fund".¹²

The NCF stipulates that among other things:

- The provisions from the National Accountability Ordinance (hereafter: NAO) concerning the budget and the financial statement, are applicable to the management of the Fund¹³;
- The Minister of Justice is required to present a policy plan along with the annual budget. This policy plan must identify the projects that will be eligible for financing for the year in question;¹⁴
- The Minister of Justice must prepare an annual financial statement;¹⁵
- The Head of the Department of Judicial Affairs is tasked with the daily management under supervision of the Minister.¹⁶

3.2 The ministerial decree

The ministerial decree of November 30, 2010¹⁷, stipulates that as of December 1st, 2010, the Secretary-General is tasked with daily management of the CF. In addition, under the authority of the Minister, the Secretary-General may carry out all financial activities necessary for daily operations. After some inquiries we learned that this ministerial decree remains in effect.¹⁸

The authorities outlined above, are at odds with the task that is legally assigned to the Head of Judicial Affairs. After all, in accordance with the relevant legal text, the Head is charged with the day-to-day management of the CF. In fact, this ministerial decree allows the Head of Judicial Affairs to be pushed aside, as it were. The situation begs the question, "must the Head request permission from the Secretary-General to carry out financial transactions?" Obviously, the responsibility of the Head, as the person in charge of daily management, is limited in this scenario.

3.3 The 'applicable texts' project

The national ordinance currently in use (NCF), is based on the National Ordinance Crime Prevention Fund of the Netherlands Antilles (hereafter: NCF NA).¹⁹ Article 4, second paragraph of the NCF NA, stipulates that the *Director of the Department of Justice* is charged with the daily operation of the fund.

During the execution of the project "applicable texts", interpretations of regulations prior to, and after the establishment of country status for Sint Maarten, were done. After some inquiries, we learned that the Ministry of Justice decided to interpret the title of *Director of the Department of Justice* as Head of the Department of Judicial Affairs.²⁰ We find this a curious choice.

¹¹ MB 009/MJ/2010 dated November 30, 2010.

¹² Signed on November 30, 2010 by the Minister of Justice.

¹³ Article 2, second paragraph NCF.

¹⁴ Article 5, first paragraph NCF.

¹⁵ All articles of the National Accountability Ordinance.

¹⁶ Article 4, second paragraph NCF.

¹⁷ MB 009/MJ/2010 dated November 30, 2010.

¹⁸ E-mail from the Department of Legal Affairs & Legislation dated January 31st, 2018.

¹⁹ P.B. 1996, no.1.

²⁰ Correspondence with the Department of Legal & Legislative Affairs, dated November 13, 2017. The correspondence asks why the 2013 project 'applicable texts' chose to interpret the title of Director of the Department of Justice (ref. Article 4, second paragraph NCF NA) as Head of Judicial Affairs? After all, the Minister of Justice, by Ministerial Decree of November 30, 2010, explicitly charges the Secretary-General with the daily management of the fund. The correspondence states that the choice was based on advice and as such, it was included in the interpretation.

The ministerial decree, as well as the policy dated November 30th, 2010, identify the Secretary-General as the person charged with the daily management of the CF. No mention is made of a role for the Head of Judicial Affairs, contrary to the NCF. This creates confusion regarding the responsibilities at the CF. A logical option would have been to interpret the title of *Director of the Department of Justice* as equivalent to *Secretary-General*, with as consequence, the harmonization of the National Ordinance, the ministerial decree and the policy.

On the day that the Secretary-General received our letter and the draft report (November 30th, 2017)²¹, the Minister signed a power of attorney designating the Head of Judicial Affairs as signatory to the CF bank account.²² Clearly, the power of attorney is an important document for our investigation because it relates to the authorities within the CF. It would appear that, given the findings and conclusions outlined in the report, the Minister sought to remove any confusion about the authorities within the Fund. However, a power of attorney is not equivalent to a ministerial decree. The legitimacy of the decree remains unaffected.

Given that the “applicable text” (the name says it all) is valid, we believe that the Head of the Department of Judicial Affairs is charged with the daily management of the CF. The NCF is of a higher order than a ministerial decree. Since entering into force, both the ministerial decree and the policy of November 30th, 2010, deviate, in our opinion, from the NCF.

3.4 Policy regarding the implementation of the National Ordinance Crime Prevention Fund

In this section, we present an analysis of the policy developed for the implementation of the NCF. According to the policy of November 30th, 2010, the goal is: “establishing a procedure for daily management of the CF, in order to ensure that it is clear and transparent how resources are used in keeping with the NCF.”²³

In terms of the daily operations, the policy memorandum specifies “everything related to income, the allocation of funds, and reporting of financial and policy matters to the Minister”. According to the policy, this means:

- Development of procedures for financial management of funds;
- Establishment of procedures for financial accountability;
- Reporting how the income of the CF is deposited on the fund’s bank account;
- Development of procedural rules (criteria) for projects that are eligible for funding.

For the purpose of the supervision of the daily management of the CF, the policy assumes that a written report on the financial and policy management will be drafted on a quarterly basis and presented to the Minister.

In terms of financial management, the Ministry of Justice’s budget must clearly indicate the way in which CF monies will be spent including the purpose of the expenditure. How the Minister of Justice comes into possession of the funds, and the manner in which the funds are used, must be accounted for in the annual financial statement. According to the policy, the CF’s income is not guaranteed and must therefore be reported as *possible or potential* financial resources on the ministry’s budget.

With regard to clarifying the deposit of income, the policy states:

- The Minister of Justice, the Council of Ministers and, in particular, the Minister of Finance, are entitled to financial accountability by means of the annual report regarding the bank account on which funds are deposited;
- The Attorney General is informed in writing by the Secretary-General of the Ministry of Justice, regarding the bank account number and the purpose of the bank account;

²¹ Our reference: AR191217/255.

²² We note that we received the power of attorney (reference: 335-17B/JUS) from the Department of Legal & Legislative Affairs, and not from the Minister or his ministry.

²³ Introduction of the “Policy related to the implementation of the National Ordinance Crime Prevention Fund”, dated November 30th, 2010.

- The Secretary-General of the Ministry of Justice must request, in writing, that the Attorney General deposits the monies stipulated in article 3 of NCF, on the bank account. The Minister of Justice is informed of each deposit by the Secretary-General.

Finally, the policy includes procedural regulations (criteria) regarding the allocation of funds for projects. In order to be eligible for financing via the CF, descriptions must be provided regarding the purpose of the projects or activities.

4. LEGAL COMPLIANCE

In Chapter 3, we briefly discussed a few of the stipulations of the NCF. In this chapter, we present our findings regarding legal compliance based on our investigation.

4.1 Overview of legal compliance









In table 2, we show the legal compliance, or lack thereof, per requirement of the NCF. Later in the chapter, we provide an elucidation.

Table 2 – Overview legal compliance

	Requirements according to regulation	Legal Compliance	Opinion
A.	NCF		
	The Minister of Justice must submit a policy plan each year when submitting the budget. ²⁴	There is no policy plan for 2016	✘
	The Minister of Justice must draft annual financial statements. ²⁵	No financial statement was drafted for 2016.	✘
	Expenditures are meant to finance crime prevention projects.	Subsequent review may determine if the actual expenses meet the criteria. See Chapter 2.	?
	The CF is managed by the Minister of Justice.	Based on our Quick Scan, we find no evidence to the contrary.	✔
	The Head of Judicial Affairs is charged with the daily management of the CF.	Based on our review, the role of the Secretary-General <i>vis a vis</i> the Head of Judicial Affairs is not clear.	?
B.	Policy memorandum of November 30, 2010, "Policy regarding the implementation of the National Ordinance Crime Prevention Fund"		
1	Daily management		
	The Secretary-General must:		
	- Ensure that procedures for financial management are developed;	The procedures are absent.	✘
	- Ensure that procedures are developed to allow accountability in keeping with the NCF;	The procedures are absent.	✘
	- The procedure for depositing funds on the bank account of the CF must be described;	The description is missing.	✘

²⁴ Article 5, first paragraph, NCF.

²⁵ All articles of the National Accountability Ordinance.

Requirements according to regulation	Legal Compliance	Opinion
- Procedural rules (criteria) must be developed for projects eligible for financing by the fund.	The procedural rules are included in the policy memorandum of November 30 th , 2010.	
2 Supervision of the daily management		
On a quarterly basis, at a minimum, a written report of the financial and policy management of the monies in the CF must be drafted and presented to the Minister.	Written reports are not drafted.	
3 Procedural rules regarding financial management of funds.		
The way CF monies will be spent, and the purpose thereof must be clearly stated in the budget of the Ministry of Justice.	The information is missing in the budget.	
The annual financial statement must account for the income and the expenditure.	The annual financial statement is not drafted.	
Because the CF's income is uncertain, income must be included as <i>possible or potential</i> financial resources in the budget of the Justice Ministry.	The income is not included in the 2016 budget.	
4 Insight into the deposit of income		
The Minister of Justice, the Council of Ministers, and in particular, the Minister of Finance, are entitled to financial accountability by means of the annual report regarding the bank account for deposited funds.	The annual financial statement has not been prepared. A draft document that provides an overview of income and expenditure is available.	
The bank account number and the purpose of the bank account must be reported in writing to the Attorney General by the Secretary-General of the Ministry of Justice.	The chief prosecutor was informed (letter dated April 14 th , 2011, no. 098-1 F/Jus).	
The Secretary-General of the Ministry of Justice must request, in writing, that the Attorney General deposit the monies stipulated in article 3 of NCF, on the bank account. The Minister of Justice is informed of each deposit by the Secretary-General.	A request was made to the chief prosecutor (letter dated April 14 th , 2011, no. 098-1 F/Jus). There is no evidence that the Minister of Justice was informed by the Secretary-General of every deposit.	

4.2 National Ordinance Crime Prevention Fund

The NCF states that the provisions of the National Accountability Ordinance are applicable in terms of the budget and the financial statement. The budget and the financial statement must provide sufficient insight into the financial position and revenue and expenses, to form opinions.²⁶

The 2016 budget of the Ministry of Justice does not include the income and expenditures for the CF. An annual policy plan drafted by the Minister of Justice, as required by the NCF, is also missing.²⁷ A summary of expenditures and income for 2016 was drawn up by the Ministry of Justice. This summary does not meet the requirements set by the NAO for financial statements. For example, the information regarding the objectives for the projects financed through the fund, the activities and the results thereof, and an analysis of the differences between the budget and actual costs, are missing.

4.3 Ministerial Decree

The ministerial decree of November 30th, 2010, stipulates that the Secretary-General is authorized to carry out the necessary financial transactions required for the day-to-day management of the CF. In Chapter 3, we indicated that this authority, in accordance with the applicable text of the NCF, in our opinion, is assigned to the Head of the Judicial Affairs Department of the Ministry of Justice.

4.4 Policy Memorandum of November 30th, 2010

In terms of the day-to-day management, we note that there are no procedures for the financial management, the budget, the policy plan and the financial statement. This concerns topics such as:

- organizing the policy plan;
- drafting the policy plan;
- setting up the interim accounting;
- drafting of the annual accountability (financial statement);
- audit of the accounts;
- administrative preparation of project proposals;
- setting up and maintaining a project administration.

With regard to providing insight into the deposit of income, we note that:

- we were not provided with proof that the Attorney General received written requests for the deposit of funds into the bank account, as required by article 3 of the NCF. Because the Public Prosecutor's Office deposited funds on the bank account, it is plausible that requests were made.
- we did not receive proof that the Attorney General informed the Minister of Justice, via the Secretary-General, regarding deposits. According to the Ministry of Justice, the Minister is informed during every so called "quadripartite" meeting.²⁸

4.5 Opinion

Based on the above findings, we are of the opinion that there is a lack of clarity about 'who is responsible for what' at the Crime Prevention Fund. Moreover, of the 16 requirements we examined, only 4 (25%) were legally compliant. For two of these requirements, we were unable to obtain definitive answers during our exploratory research. We believe that improvement of the financial management, and proper accountability to the Parliament, is required.

²⁶ Article 2 National Accountability Ordinance.

²⁷ Article 5, second paragraph, NCF.

²⁸ Memo dated June 27, 2017, from the financial controller of the Ministry of Justice. The meeting is comprised of the Minister of Justice, the attorney general, the Police and the Ministry of Finance.

5 FINANCIAL MANAGEMENT

According to the National Ordinance General Audit Chamber, we investigate whether income, expenditure and balance sheet changes were made in accordance with the approved national budget and other regulations. In addition, we review whether care was taken to ensure an orderly and auditable financial management.²⁹

By financial management we refer to the entirety of decisions, actions and regulations that are intended for the control and management of, as well as the accountability for, financial transactions and balances for which the minister is (co-)responsible. The records kept for financial management purposes are also considered as part of financial management.

Financial management is deemed to be orderly when the authority to act is clearly outlined in rules, and actions are taken according to these rules. Financial management is verifiable when the available financial information enables external auditors to easily reconstruct decision-making.

5.1 Findings

To achieve objectives, every organization must agree on tasks, authorities and responsibilities. Based on Table 2 in Chapter 4.1, it is clear that few, if any, management agreements were made for the CF.

5.2 Opinion

Table 2 lists the legal requirements for establishing financial management: i.e. ensuring the efficient and effective realization of the policy objectives and reliable (financial) accountability projects that were implemented. Because an important part of the requirements was not met, we are of the opinion that the financial management is inadequate and that the Minister of Justice is not 'in control'³⁰.

The Minister has provided insufficient evidence of effective supervision of the day-to-day management of the CF. With regard to spending in 2016, the Minister of Justice did not indicate in advance which objectives he wished to realize by means of identifying specific projects. No (interim) financial accounting was prepared nor presented to the Minister regarding the implementation of projects, or for financial and policy management.

²⁹ Article 23, second paragraph, of the National Ordinance General Audit Chamber.

²⁷ With 'In control', it is important that the responsible person actually has and exercises the authority to promote good governance. He has to adjust and make changes where possible, and ensure that all norms, values and rules are complied with. The drafting (and then timely presentation) of a budget and financial statement are important examples of this.

6.1 Response from the Minister of Justice

The Minister of Justice provided his reaction to this report by letter dated January 11th, 2018.³¹

In his response, the Minister states that the projects mentioned in Table 1 of Chapter 2, were carried out at the request of his predecessor. He goes on to mention that the responsibility of the Minister remains, nevertheless, unaffected. We agree. After all, the current Minister of Justice remains politically responsible. Moreover, there was sufficient time during the minister's tenure, to improve the financial management of the CF.

In Chapter 2, we state that absent the incidental income received due to the "Bientu verdict", expenditures would have exceeded income for the year 2016. In his reaction, the Minister opines that this is not correct, because in the case of the "Bientu verdict" the balance is still positive. We agree with the Minister on the balance, however, we never claimed that the balance was not positive. Instead, we state that without the income derived from the "Bientu verdict", expenses would have exceeded income.

In his response, the Minister asserts that he is not familiar with the ministerial decree of November 10th, 2010 (MB 009/MJ/2010, dated November 30th, 2010). In this decree, the Secretary-General of the Ministry of Justice is designated as the official authorized to perform financial operations regarding the CF. The Minister agrees that this decision is at odds with the legal prescribed task of the Head of Judicial Affairs. The decree will therefore have to be withdrawn. Inquiries at the Department of Legal & Legislative Affairs indicate that the ministerial decree remains in effect.³² The fact that the Minister is unaware of the decree is, in our opinion, inexcusable, given that we received the document from his ministry. Moreover, in the policy drafted for the CF, the Secretary-General's authorities are described several times, while the Head of Judicial Affairs is not mentioned.

According to the Minister, there are no responsibilities for the Secretary-General as relates to the CF. On November 30th, 2017 (on the same day that we submitted our draft report to the Secretary-General), he granted a power of attorney to the Head of Judicial Affairs as signatory to the CF's bank account.³³ The Minister did not inform us of this, nor did he provide us with the relevant document, despite the relevance to our investigation.

We recommend that the Minister withdraws the ministerial decree along with the policy derived from the decree, if he is of the opinion that there are no responsibilities for the Secretary-General in terms of the CF. However, he should first consider the hierarchical situation at the ministry that will result as a consequence of the withdrawal. Specifically, the Secretary-General, as a higher-ranking functionary, will have no authority over the person in charge of the day-to-day management of the CF. It begs the question, "Would the Secretary-General be considered an authorized supervisor of the Head of Judicial Affairs in the event he instructs the head to take action with regard to the CF?" The Secretary-General's function as the person ultimately responsible for the operational management of the ministry, pursuant to article 3 of the National Ordinance on the structure and organization of government, is in effect, restricted.

In addition, we refer to article 6, third and fourth paragraph of the Organizational Decree for the Ministry of Justice, which stipulates that the Head reports to the Secretary-General in the performance of his daily operational duties, and that the Head is required to provide the Secretary-General with information regarding the drafting and implementation of policy. The fact that the Head is under the direct responsibility of the Minister in terms of the CF, does not, in our opinion, diminish the legally stipulated requirement of both the National Ordinance on structure and organization of government and the Organizational Decree for the Ministry of Justice.

³¹ Response to the report Crime Prevention Fund, Minister of Justice, January 11, 2018.

³² E-mail from the Department of Legal & Legislative Affairs dated January 31st, 2018. The e-mail mentions (among other things), that the ministerial decree remains in force.

³³ Letter of the Minister of Justice dated November 30th, 2017 (with reference: 335-17B/JUS).

The Minister is not surprised that the applicable text for the National Ordinance Crime Prevention Fund, translates the function of "*Director of the Department of Justice*" as the Head of Judicial Affairs. He argues that the Department of Judicial Affairs is the only policy department at the Ministry, and that the ministry does not maintain management subdivisions.

Although we do not dispute this assertion, we believe that for the sake of the hierarchical organization, it would have been more logical if, at the time of the translation, the applicable text had designated the Secretary-General as the person charged with the day-to-day management of the CF instead of the Head of Judicial Affairs.

In his reaction, the Minister notes that a policy plan was drafted for one subject, specifically the use of electronic anklets for juveniles. He agrees that the procedure required by the National Accountability Ordinance, was not followed. We take note of this reaction. It would have been helpful if the policy plan in question, had been included as part of the Minister's response to our report.

In Chapter 4, Table 2, section B4, it is stated that there is no evidence to prove that the Secretary-General informed the Minister about each payment to the CF. The Minister notes that the previous Minister of Justice received overviews of income and expenditures during the second half of 2016. In the third column of the first row of section B4, we indicated that a financial overview exists. In our opinion, the intent of the law is for the Minister to be informed in a timely fashion regarding the latest income. Based on the income, decisions can be taken regarding the execution of new projects. The financial overview that we evaluated concerns an annual statement drafted after the fact. If information was available, we would have preferred to receive it when we requested it or during the conduct of our investigation.

In reacting to our opinions, conclusions and recommendations, the Minister acknowledges that the financial management of the Crime Prevention Fund was faulty in 2016. Moreover, there were few management agreements made. As far as expenditure in 2016 is concerned, with the exception of the (electronic) anklets project, few objectives were specifically developed for the execution of projects. In addition, during implementation of projects, no (interim) reports were drafted nor provided to the Minister.

With the exception of our first conclusion, the Minister, agrees with our conclusions and recommendations. We previously substantiated that, based on the responsibility of the Minister, the Head of Judicial Affairs, is responsible for the day-to-day running of the fund.

The reaction received from the Minister does not justify amendment of our report. After all, the Minister indicates that he is not familiar with the current ministerial decree, which states that the Secretary-General performs all financial transactions with regard to the CF. This decree, the policy that is derived from it, and the power of attorney given to the Head of Judicial Affairs, dated November 30th, 2017, are sufficient for us to recommend either the adaptation of the applicable text of the NCF, or withdrawal of the ministerial decree as well as a review of the policy.

6.2 Our epilogue

Our results indicate the lack of legal compliance in the past, inadequate financial management, and a Minister of Justice who is not 'in control'. Therefore, there is a risk that in 2016, allocation of funds for projects did not occur in keeping with the stated objective of the CF. This constitutes a violation of law. Moreover, the fact that there is uncertainty about the use of the CF's resources, is confirmed in a recent media report which contends that the resources from the CF will be used to establish a 'victim's fund'.³⁴ The allocation of the monies of the CF is at odds with its stated objective, namely financing crime prevention projects.

In accordance with our audit methodology and protocol, the entities under audit are given the opportunity to take note of our findings, conclusions and recommendations, prior to publication of the report. In our letter of November 30th, 2017, the Secretary-General was informed that he had

³⁴ "Parliament concludes talks about Asset Recovery Team", The Daily Herald, December 7, 2017.

until December 15th, 2017, to respond to our findings. It is unfortunate that the Secretary-General chose not to provide us with his views regarding potential inaccuracies or to express differences of opinion.

Despite the lack of a reaction to the draft report from the Secretary-General, the report seems to have spurred activities in terms of (signing) authorities related to the CF. On the day that the Secretary-General received our letter along with the draft report (November 30th, 2017), the Minister signed a power of attorney authorizing the Head of Judicial Affairs as a signatory to the CF's bank account. Clearly, such a document is relevant to our investigation. We would have expected the Minister to provide this document, but, unfortunately, he did not.

Subsequently, we sent the draft report to the Minister on December 19th, 2017. The Minister failed to respond within the timeframe allotted for his reaction. We value a high degree of due diligence prior to publishing a report. As such, we granted two deferments and agreed to the Minister's request to delay his response until January 10th, 2018. The Minister's reaction was received on January 11th, 2018. We do note that elevated work pressure, does not excuse his tardiness. The Minister has full-time staff within the ministry at his disposal. As such, we are not persuaded by the excuse offered to explain the late response.

Despite the current political climate, with elections on the horizon, we find the Minister's method of cooperation unacceptable. Especially because the Minister publicly expressed his intention to fully cooperate with audits conducted by the General Audit Chamber (*Today*, June 22nd, 2017). The reality is sadly quite different. We expected more interest and commitment from the Minister given the report's objective, which is improving the financial management of the CF.

Our task is to research and investigate, to highlight areas for improvement and, where necessary, to make recommendations in the benefit of the country. Proper cooperation is an indispensable component in this regard.



General Audit Chamber

Algemene Rekenkamer