

Ministerie van Binnenlandse Zaken en
Koninkrijksrelaties

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To the Chair of the House of Representatives of the
Netherlands

Ministry of the Interior and
Kingdom Relations

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Uw kenmerk

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Betreft Government response to the report by the Committee of Wise
Persons

In view of the concerns surrounding the state of governance of the public body St Eustatius, on 24 May 2017 the then Minister of the Interior and Kingdom Relations requested a Committee of Wise Persons ('the Committee') to conduct an investigation into the public body's functioning and to report its findings to him, including its conclusions and recommendations.

On 5 February 2018, the Committee, consisting of Mr Fredis Refunjol and Mr Jan Franssen, presented its report, entitled 'Nearness or Distance, a World of Difference'. In view of the nature of the Committee's conclusions and recommendations, the report had been communicated earlier under embargo to me.

The Committee's findings

The Committee finds that St Eustatius is in a state of serious socioeconomic and physical neglect. The island is contending with poverty, unemployment, lack of economic development, problems with young people and families, erosion, inadequate waste processing and other problems. The quality of its infrastructure, housing stock and government buildings is poor. Many of the Statians with whom the Committee spoke are concerned about the island's neglected state.

Moreover, the island's business and investment climate is unfavourable, due partly to arbitrary decision-making. While local taxes are levied, they are not always collected, and compliance is selectively supervised and enforced. Permit application and other procedures are time-consuming and decisions are sometimes discriminatory. The hurricanes last September hurt the tourist industry, and prices have risen sharply. Businesspeople believe that discussions

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with government are pointless, or are afraid that criticisms could have repercussions.

People at a number of institutions observe that the island authorities show no interest in such matters as the natural environment, culture or economic development. No funds are spent on these matters. They also observe that the local authorities are tending to take over tasks that were previously outsourced, regardless of whether the authorities have the expertise required for these tasks.

The situation in the public administration is characterised by lawlessness, financial mismanagement, disregard for other lawful authorities, discrimination, intimidation and the pursuit of individual power. Neither the island executive nor the island council respects the legal decision-making procedures. Rather than overseeing the executive, the island council has melded with it. The executive does not function as a collective. Its two members, the island commissioners, take their orders from a former leader of one of the parties in the council, and think that the governor is obliged to respect their wishes.

Relations between the executive's members and between the governing coalition and the opposition are seriously troubled. Ties between the government of the Netherlands and the St Eustatius authorities have almost completely broken down. A motion adopted by the island council repudiated the Public Bodies (Bonaire, St Eustatius and Saba) Act (WolBES) and the Public Bodies (Bonaire, St Eustatius and Saba) Finances Act (FinBES). The procedure for approving official appointments nor the assent and approval procedures are being followed any longer.

The St Eustatius authorities defend their conduct by invoking the right of self-determination and the administrative autonomy that it entails. The Committee believes that while the desire for autonomy can be justified, the form autonomy takes should be the outcome of a debate, not something unilaterally imposed by the island authorities. All the citizens of St Eustatius with whom the Committee spoke had criticisms of the local administration. They describe the conduct of the current administration as 'destructive' and 'worse than ever'.

The Committee concludes that the St Eustatius authorities have broken with the established legal and constitutional order, and are no longer willing to give up the autonomy that they have high-handedly seized. In the Committee's view, there is

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no longer any possibility of righting the administrative situation through proper consultations, because the St Eustatius authorities' attitude towards the Netherlands has definitively blocked any such solution.

The Committee's conclusions and recommendations

The Committee concludes that the possibilities of improving the situation by using the regular instruments have been exhausted. Given the administrative disarray in almost every field and the lawlessness within the administration, the Committee can only describe the local authorities as grossly neglecting their duty. In the Committee's view, there is only one possible response: administrative intervention by the Netherlands through the appointment of a government commissioner on the grounds of article 132, paragraph 5 in conjunction with article 132a of the Constitution.

The Committee believes that allowing the current situation to continue would be disastrous for the island's people. In the Committee's judgment, more time is needed for the Netherlands' intervention than the period remaining before the next island council elections in March 2019. The government commissioner will need at least two years to achieve visible, lasting changes. The Committee considers that the island authorities' gross neglect of duty is the fault not only of the current administration, but also of the previous administrations since 10 October 2010. They all failed to make any significant progress towards good governance and satisfactory financial management.

In order to attain more lasting good governance, the Committee recommends investing in prolonged, intensive courses and training programmes to be held in St Eustatius for officials and politicians. It also recommends tackling the physical neglect of the island's infrastructure through an acceleration of current plans and investments, in combination with the reconstruction work in the wake of the hurricanes in September 2017.

The Committee also has criticisms of the Netherlands. The Netherlands has stood by for too long without lending a helping hand or engaging in the debate around more autonomy for St Eustatius. In the Committee's eyes, the Netherlands' attitude has been characterised by disinterest and lack of a common vision.

Finally, the Committee recommends reconsidering several aspects of the system that was established on 10 October 2010. These aspects include the position of

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the Kingdom representative, the Financial Supervision Authority for Bonaire, St Eustatius and Saba, and what local office holders perceive as their lack of influence in the Dutch parliament. In the Committee's view, the outcome of this reconsideration should also be discussed with Bonaire and Saba.

The government's response

The government appreciates the report, and thanks the Committee for its thorough approach. The Committee's findings do not stand in isolation; the state of governance in St Eustatius has been a source of concern for the government for some time. This was the reason for the Committee's establishment.

The picture that the Committee paints of the administrative situation in St Eustatius exceeds the fears that led the government to establish the Committee. This situation has far-reaching consequences for the Stadians' daily lives. The delays in projects to improve the island's roads, water supply, housing and waste processing have a direct impact on the Stadian population. There is also room for improvement in the field of social services.

Stadians indicate that their politicians and administrators buy public support with promises, jobs and statements blaming everything on the Netherlands. Moreover, businesses and members of the public complain of inequality before the law: service provision is characterised by conduct that can be summed up with 'that's my decision' or 'that's up to me'. This gives rise to feelings of intimidation and powerlessness in the face of arbitrary power. In a nutshell, the culture of governance, maintained by a small group, can be described as one of inequality before the law, arbitrary power and exclusion.

Between 2011 and 2018, the members of government responsible for Kingdom relations have taken various measures to improve the administrative and financial situation. These measures have yielded few if any results. It has proved impossible to put governance in St Eustatius back on track using the general and specific supervisory instruments provided by WolBES and FinBES. The St Eustatius authorities have undermined the ability of the administrative authorities charged with supervision to deploy those instruments, by systematically ignoring the prescribed approval procedures and procedural steps. For example, contrary to section 221 WolBES, decrees have not been sent to the Kingdom representative, thus making it difficult if not impossible to use the supervisory instruments of suspension or quashing. Decrees that under WolBES can only enter

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into force after approval by the Kingdom representative are not being submitted to him, but are simply being implemented without the required approval. In this way the St Eustatius authorities have been frustrating the ability of the Kingdom representative and the responsible member of government to perform their supervisory task.

The report's conclusions are unambiguous. The government agrees with the Committee's view that it is unacceptable for an administrative body in the Netherlands to turn its back on the existing legal and constitutional order. Restoring relations and discussing cooperation have proved to be impossible. The St Eustatius authorities have broken with the Netherlands. Their refusal to cooperate with the Committee's work and their instructions to St Eustatius public servants not to speak with the Committee exemplify their attitude. Even during the visit last November by the State Secretary for the Interior and Kingdom Relations, only a few officials were willing to talk with him, and it proved impossible to conduct a substantive discussion with the authorities.

The government joins the Committee in concluding that, in the interests of St Eustatius's people, this state of disorder can no longer be tolerated. Due to the gravity of the situation observed and the demonstrated incapacity and unwillingness of the St Eustatius authorities to improve matters, steps must be taken as quickly as possible.

The government is therefore introducing a bill that authorises intervention due to gross neglect of duty. The government is aware of the exceptional character of this proposed intervention. This instrument must be used only as a last resort, and must certainly not be deployed lightly. It is a far-reaching measure, which has not been taken in the Netherlands since 1951. In resorting to it, the greatest possible restraint must be observed. Yet the Committee's findings lead unavoidably to the conclusion that this measure is necessary and inevitable.

The bill proposes the appointment of a government commissioner, who will be responsible for governing St Eustatius until such time as the local authorities can be considered capable of properly performing their tasks. Consequently, the island council will be dissolved and the island commissioners and acting governor will be dismissed from their posts. The government commissioner will perform all the tasks and exercise all the powers of the St Eustatius authorities, in accordance with the steps taken in the past in the event of gross neglect of duty

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by municipalities. The explanatory memorandum accompanying the bill gives further details.

The proposed intervention should restore order to the island's administration and fulfil the conditions for lasting improvement. It must avoid the possibility of a relapse into a situation such as exists at present after the restoration of regular administrative arrangements. To this end, at a minimum, St Eustatius' finances and civil service must be restored to an acceptable level. That is, there must in any case be proper human resources policy; regular, effective and accountable financial management; policy frameworks for the performance of administrative tasks; and public servants whose knowledge and expertise equips them adequately to carry out their duties in accordance with the requirements of good governance. In short, there must be an administration capable of properly promoting Statians' interests.

In the run-up to this decision there has been extensive discussion of what outcomes are envisaged, what needs to be achieved at a bare minimum, and at what point the situation could confidently be deemed sufficiently sustainable to hand back government responsibilities. The minimum requirements for ending this intervention – restoring public finances and the civil service to an acceptable state – have already been outlined above. It is difficult to state in advance what steps will have to be taken to meet these requirements. The initial experiences and findings of the government commissioner will determine what happens next.

In order to enable considered choices and decisions, a survey must be conducted to ascertain the scale of the problems affecting the civil service in St Eustatius, how these problems can be solved, and how quickly the solutions can be implemented. Crucial elements will in any event include human resources management, information provision, the way work in the organisation is structured, the way tasks and powers are assigned, financial management in the organisation, and ICT facilities. Another task will be putting in order the system of ordinances and licensing, and the associated enforcement and supervisory regime. It may also be advisable to contract out the existing local administrative and financial accounting functions in order to ensure a sustained basic quality of service.

It is impossible to predict whether lasting improvements to the conditions in St Eustatius will have been made by the time of the next island council elections on

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20 March 2019. The Committee expects that the necessary turnaround will take at least two years. The government takes the view that such a far-reaching intervention should not last any longer than necessary, but cannot rule out that a period of two years or longer will be required. The return to normal governance must be permanent, excluding the risk of a new intervention being needed in the near future.

Supporting measures

Making a temporary change to how the island is run will not in itself ensure that the local authorities are subsequently equipped to govern well. The government will adopt the recommendation to provide courses and training for civil servants and politicians in order to prepare them systematically, with a view to the long term, for assuming their responsibilities in accordance with the requirements of good governance. The government will invest in recruitment and selection to promote quality and mobility within the civil service.

The primary consideration underlying this intervention is the welfare of the people of St Eustatius. The government takes seriously the Committee's recommendation to tackle physical and other forms of deprivation. It is prepared to accelerate the implementation of previously contemplated measures, plans and investments that, partly as a consequence of the administrative situation on the island, have yet to be carried out. This will be done using the money already set aside in ministry budgets. Besides the budgets made available for reconstruction, the coalition agreement provides for regional envelopes that may also be put at the disposal of the Netherlands in the Caribbean, and funds will be made available on a structural basis via the Infrastructure Fund for operating infrastructure. The government is currently working out the details and preparing the allocation of these two budgets. Targeting and combining these funds should yield visible results for the people of St Eustatius. Possible investments to improve the situation in Bonaire and Saba will also be examined. As indicated in the coalition agreement, the government is prepared to increase investment on the islands provided that good governance and financial accountability are sufficiently ensured.

The results of a study on a minimum level of income for the Netherlands in the Caribbean will have an important bearing on the question of fighting poverty in St Eustatius. They are expected to be released in the spring of 2018. The coalition

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agreement states that the priority on the islands is to improve economic prospects, in part by reinforcing infrastructure and reducing poverty. The government will await the results of the study, after which the State Secretary for Social Affairs and Employment will respond.

The government acknowledges that, to date, the Netherlands has not succeeded in doing enough together with the islands to promote socioeconomic development for the benefit of residents and businesses. Beyond the improvements achieved in education and healthcare, there is work to be done in the areas of poverty, socioeconomic development and infrastructure. Various evaluations point to a 'fragmented and sometimes contradictory approach by the Netherlands'.¹ The government acknowledges the Committee's finding that this problem has not yet been solved and that a joint approach is lacking. The government is looking to achieve a breakthrough on this point, as can be seen from the ambitions expressed in the coalition agreement.

In view of these ambitions and the gravity of the current situation in St Eustatius, an interministerial steering committee will be set up for the Netherlands in the Caribbean, taking the place of the current interministerial consultative body (the CN-tafel). The steering committee will be chaired by the Ministry of the Interior and Kingdom Relations and will comprise senior civil servants drawn from the appropriate ministries. It will meet frequently for the purpose of advancing comprehensive decision-making, with the primary aim of achieving visible effects on the islands for the local population and in daily life. This is in line with the coalition agreement, which affirms the government's willingness to invest in the islands provided that good governance and financial accountability are sufficiently ensured. The steering committee will report to and advise a cabinet committee for the Netherlands in the Caribbean to monitor progress and remove any obstacles. This will bring to an end the current, sometimes non-binding, interministerial coordination arrangements. Both committees will discuss all themes relevant to St Eustatius, Bonaire and Saba, especially policy follow-up and implementation of the Act on the neglect of official duties that the government is now proposing.

The Kingdom Relations Department will play a coordinating role by preparing the meetings with the other ministries involved and where necessary conveying input

¹ *Vijf jaar verbonden: Bonaire, Sint Eustatius, Saba en Nederland* ('United for Five Years: Bonaire, St Eustatius, Saba and the Netherlands'), a report of 12 October 2015 by the Committee tasked with evaluating and elaborating the new political structure of the Netherlands in the Caribbean.

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from the islands. Further efforts will be made in the coming period within this framework to develop my coordinating role and achieve the goal of making more clearly defined choices and making central government policy more effective. As State Secretary for the Interior and Kingdom Relations, I will take the lead at both political and civil service level in devising a comprehensive approach that commands support, in which the government's ambitions tie in with the priorities for each island. Feasibility (in view of the small scale of operations and limited capacity) and impact will be key criteria. The government emphasises that the challenge is a substantial one, and that results will not be achieved overnight.

In the interests of effective action, the Committee puts forward a number of suggestions for reconsidering the current structure of the relationship between the European and Caribbean parts of the Netherlands. They concern the position of the Kingdom representative, the Financial Supervision Authority for Bonaire, St Eustatius and Saba, and local political office holders' perceived lack of influence in the Dutch parliament. In the Committee's view, any revision of the current arrangements should also be discussed with Bonaire and Saba. The government will return to this issue in due course.

Autonomy

St Eustatius's current administration is motivated by a strong desire to maximise the island's autonomy. The Committee questions the current coalition's claim to represent the majority of the population, including on the question of autonomy, in view of the low turnout in the referendum in 2014 and the election result in 2015. The Committee argues that it is currently unclear what the Stian people's views are on this issue.

The government notes that attempts to provide assistance will only be accepted if the Netherlands is prepared to accept the current administration's vision of far-reaching autonomy. This perspective, which is not shared by everyone on the island council, is essentially that St Eustatius should become an autonomous country within the Kingdom, retaining budget support but without the Kingdom having any opportunity to exercise supervision. The government does not support this view.

It goes without saying that the government recognises the right of the people of St Eustatius to pursue political, cultural, social and economic self-determination. The government underlines the permanent and enduring character of this right. In

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the postcolonial era following the choice freely made by the Stavian people in 1954 as part of the Netherlands Antilles for integration with the Kingdom, this right must in principle be exercised within the Kingdom (internal self-determination). The right to self-determination was exercised in this way in 2006 when St Eustatius reached agreement with the Netherlands on a new status as public body, as laid down in the Public Bodies (Bonaire, St Eustatius and Saba) Act.

Since November 2017, the Constitution has provided a specific basis for the establishment of public bodies in the Caribbean part of the Netherlands. The current bill is based on article 132, paragraph 5 of the Constitution. The government intends to create the conditions in which the people of St Eustatius can effectively exercise the right to self-determination and a local government can be formed that not only is representative of the people of St Eustatius but also acts in their interests. The right to self-determination does not imply that St Eustatius unilaterally determines the conditions for it. The government agrees with the Committee that it is important that a more substantive discussion take place on the issue of autonomy, both among the people of St Eustatius and between St Eustatius and the Netherlands in Europe.

At the same time, it is important to note that this discussion can only be conducted properly if all the participants, including the people of St Eustatius, feel they can speak freely. Both the government commissioner and the government will take action to foster a substantive discussion of this kind.

Communication

In view of the above, the provision of accurate information will be essential. The government is aware of the importance of fully informing the people of St Eustatius about how and why this intervention is being undertaken. Radio and television are key channels of communication on St Eustatius, as are Facebook and town hall meetings. All these channels will be used to inform the local population of the background to, and the purpose and consequences of, the intervention, and of the supporting measures to achieve lasting improvements to the situation in St Eustatius. Shortly after the bill has been submitted, I will explain to the local authorities and the people of St Eustatius why the government considers this intervention necessary.

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The planned administrative intervention is a last resort, for which there is unfortunately no alternative. The government is aware that it will give rise to questions, not only among those directly affected but also in the international arena. The government will answer these questions and will gladly explain its proposed measures. Promoting the interests of St Eustatius's residents and the island's further development were the main considerations for the government in reaching this decision. The Committee points out that, in the case of the Turks and Caicos Islands, the United Kingdom similarly saw no alternative to temporarily assuming the governance of the islands.

Finally, as the Committee emphasises, urgent consideration of the bill is more than justified in order to prevent the situation in St Eustatius going from bad to worse. The government trusts that both houses of parliament will be prepared to debate the bill at the earliest possible juncture. The government will then keep parliament regularly informed of developments in St Eustatius.

The State Secretary for the Interior and Kingdom Relations,

drs. R.W. Knops