



The approach with regard to the penitentiary system at the BES-islands





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General information

Andrea M.C. Hesselink
G.J. van Heekstraat 146
7521EJ Enschede
06 23 73 23 74
a.m.c.hesselink@student.utwente.nl

Supervisors University of Twente

First supervisor - prof. dr. P.B. Boorsma
053 489 3217
p.b.boorsma@utwente.nl

Second supervisor - mr. drs. M. Harmsen
053 489 4348
m.harmsen@utwente.nl



Samenvatting

Deze scriptie betreft het gevangeniswezen op de BES-eilanden.

Er doen zich een aantal politieke veranderingen voor binnen het Koninkrijk der Nederlanden, waarbij het land Nederlandse Antillen wordt ontmanteld: Curaçao en St. Maarten krijgen net als Aruba een aantal jaren geleden een *status aparte*, Bonaire, St. Eustatius en Saba (de BES-eilanden) worden openbare lichamen van het land Nederland. Gevolg hiervan is dat Nederland in de toekomst grotendeels verantwoordelijk zal zijn voor de BES-eilanden en dus ook voor het gevangeniswezen aldaar. Naar aanleiding van deze veranderingen wil het ministerie van Justitie weten hoe zij het gevangeniswezen het beste aan kan sturen en hoe het gevangeniswezen samen kan werken met de politie en het Openbaar Ministerie (OM). De Raad voor Strafrechtstoepassing en Jeugdbescherming (RSJ) wil weten of zij in de toekomst een taak heeft op de BES-eilanden.

Een uiteenzetting zal worden gegeven over de huidige en toekomstige situatie ten aanzien van de Nederlandse Antillen. Hierbij zal specifiek worden ingegaan op de wettelijke en praktische implicaties en de verdeling van taken tussen Nederland en de BES-eilanden ten aanzien van de nieuwe status als openbare lichamen. Het huidige Nederlands Antilliaanse gevangeniswezen wordt beschreven en de mogelijkheden voor het toekomstige BES-gevangeniswezen worden onderzocht. Daarna worden opties voor de aansturing ervan geëvalueerd. Het huidige justitiële systeem van de Nederlandse Antillen zal worden besproken. Ook wordt het toekomstige justitiële systeem van de BES-eilanden onderzocht. De mogelijkheden voor samenwerking tussen de verschillende actoren binnen dit systeem zullen vervolgens worden geëvalueerd. Als laatste worden de supervisie op en de gevangenenrechten binnen het gevangeniswezen van respectievelijk Nederland en de Nederlandse Antillen besproken. Gekeken zal worden of en waar verbetering ten aanzien van het toekomstige BES-gevangeniswezen, het toezicht daarop en de gevangenenrechten nodig is. Op basis van deze evaluatie worden wettelijke en gewenste taken voor de RSJ aangewezen.

Conclusies die uit dit onderzoek volgen zijn dat het meest optimaal zou zijn om het huidige gevangeniswezen van de BES-eilanden uit te breiden met een multifunctionele justitiële inrichting waar alle voorzieningen aanwezig zijn (behalve TBS), op zowel Bonaire als St. Eustatius. Aansturing van het gevangeniswezen is de taak van de DJI. Ten aanzien van een zo optimaal mogelijke aansturing van het gevangeniswezen op de eilanden kan de DJI het beste een uitvoerend kantoor neerzetten op de eilanden. Het gevangeniswezen kan het beste samenwerken met de politie en het OM doormiddel van een overlegmodel vergelijkbaar met het Nederlandse driehoeksoverleg. Het huidige Nederlands Antilliaanse gevangeniswezen kent slechts één toezichthoudend orgaan. Ook is er geen formeel klachtrecht voor TBS'ers en gedetineerde jeugdigen. Er zijn geen gegevens bekend over de aard van de klachten, er zijn geen uniforme regels en de communicatie is gebrekkig. Hoewel de RSJ op dit moment geen wettelijke taken heeft, omdat deze niet vast zijn gelegd in wetgeving die van toepassing is op de BES-eilanden, is dit in de toekomst wellicht mogelijk, omdat de behoefte aan een orgaan als de RSJ groot is: hij kan de onafhankelijkheid bieden die zo hard nodig is. Ook kan zijn ruime expertise ten aanzien van gevangenenrechten bijdragen aan een verbetering van het gevangeniswezen op de BES-eilanden.



Abstract

This thesis regards the penitentiary system at the BES-islands.

Some political changes are taking place within the Kingdom of the Netherlands, whereby the country the Dutch Antilles is being dismantled: Curaçao and St. Maarten will like Aruba a couple of years ago get a *status aparte*, Bonaire, St. Eustatius and Saba (the BES-islands) will become public bodies of the country the Netherlands. As a result, the Netherlands will in the future be mainly responsible for the BES-islands and thus for its penitentiary system. Due to these changes, the ministry of Justice wants to know what the best way would be to manage the penitentiary system and how the penitentiary system can best cooperate with the Police and the Public Prosecution Service. The RSJ (free translated: Council for the Administration of Criminal Justice and Protection of Juveniles) wants to know whether there will be a future task for him at the BES-islands.

The current and future situation with regard to the Dutch Antilles will be described. By doing so, legal and practical implications will specifically be dealt with, as well as the allocation of tasks between the Netherlands and the BES-islands concerning their new status as public bodies. The current Dutch Antillean penitentiary system is described and the possibilities for the future penitentiary system will be studied. After that, management options will be evaluated. The current judicial system of the Dutch Antilles will be discussed. Also, the future judicial system of the BES-islands will be studied. The possibilities for cooperation between the different actors within the system will then be evaluated. In the end, the supervision on and the detainees rights within the penitentiary system of respectively the Netherlands and the Dutch Antilles will be discussed. It will be found out whether and where improvements with regard to the future BES-penitentiary system, its supervision and detainees rights is necessary. Based on this evaluation, legal and desirable tasks will be appointed to the RSJ.

Conclusions that can be drawn from this research are that it would be most optimal to extend the current penitentiary system of the BES-islands with a multifunctional institute where all facilities are present (excluding TBR), at both Bonaire and St. Eustatius. Managing the penitentiary system is the task of the DJI. With regard to the most optimal management of the penitentiary system, the DJI can best establish an executive office at the islands. The penitentiary system can best cooperate with the Police and the Public Prosecution Service through a deliberation model that is comparable to the Dutch triangle deliberation. The current Dutch Antillean penitentiary system has just one supervising body. Also, there is no formal complaint right for those entrusted to the government and juvenile detainees. There is no information available on the nature of the complaints, there are no uniform house rules and the communication is lacking. Although the RSJ currently has no legal tasks, because these have not been laid down in legislation that is applicable to the BES-islands, this might be so in the future due to the fact that the need for an organ like the RSJ is big: he can offer the independence that is so necessary. Also, his extended expertise with regard to detainees rights can contribute to an improvement of the penitentiary system at the BES-islands.

Keywords: the Dutch Antilles, the Netherlands, the BES-islands, public bodies, allocation of tasks, modes of governance, (de)centralization, de-concentration, penitentiary system, judicial system, detainees(rights), supervision, complaint rights.



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List of abbreviations

ABES	Aanpassingswet BES <i>Adjustment law BES</i>
Abg	Aanwijzingsbeschikking gestichten 1999 <i>Indication decree institutes</i>
Amvb	Algemene maatregel van bestuur <i>General measure of government</i>
BBRP	Besluit Beheer Regionale Politiekorpsen <i>Decree Management Regional Police Corpses</i>
BES	Bonaire, St. Eustatius and Saba
Bjj	Beginselenwet Justitiële Jeugdinrichtingen <i>Preliminary law Judicial Juvenile institutes</i>
BRSJ	Bestuursreglement RSJ <i>Administrative regulation RSJ</i>
Bvt	Beginselenwet verpleging terbeschikkinggestelden <i>Preliminary law Care for those entrusted to the government</i>
CPT	European Commission for the Prevention of Torture
DJI	Dienst Justitiële Inrichtingen <i>Judicial Institutes Department</i>
EPR	European Prison Rules
EU	European Union
Gm	Gevangenismaatregelen 1999 <i>Prison measures</i>
G.O.G.	Gouvernements Opvoedingsgesticht <i>Governmental Educational Institute</i>
GW	Nederlandse Grondwet <i>Dutch Constitution</i>
IBES	Invoeringswet BES <i>Institutional law BES</i>
IRSJ	Instellingswet RSJ <i>Institutional law RSJ</i>
ISt	Inspectie voor de Sanctietoepassing <i>Inspection for the Application of sanctions</i>
Lbg	Landsverordening beginselen gevangeniswezen <i>State regulation preliminaries penitentiary system</i>
LoL	Landsverordening organisatie Landoverheid <i>State regulation Organization State government</i>
OCT	Overseas Countries and Territories
Pbw	Penitentiaire beginselenwet <i>Preliminary penitentiary law</i>
Polw	Politiewet 1993 <i>Police law</i>
Pm	Penitentiaire maatregel <i>Penitentiary measure</i>
RSJ	Raad voor Strafrechtstoepassing en Jeugdbescherming <i>Council for the Administration of Criminal Justice and Protection of Juveniles</i>
RTC	Ronde Tafel Conferentie <i>Round Table Conference</i>
SBO	Samenwerkingsprogramma Bestuurlijke Ontwikkelingen



	<i>Cooperation Programme Governmental Development</i>
Sr	Wetboek van Strafrecht <i>Criminal code</i>
SNA	Staatsregeling Nederlandse Antillen <i>State regulation Dutch Antilles</i>
Statute	Statute of the Kingdom of the Netherlands (1954)
Sv	Wetboek van Strafvordering <i>Penal Code</i>
TBR	Terbeschikkingstelling <i>Entrustment to the government</i>
UPA	Ultra Peripheral Area
V-RTC	Vorbereidingcommissie Round Table Conference <i>Preparation commission RTC</i>
WolBES	Wet openbare lichamen BES <i>Law public bodies BES</i>



List of definitions

Commission for appeal	A commission from the RSJ that deals with appeals against verdicts of the complaint commission of the Commission for Inspection.
Commission for inspection	The commission that each judicial facility and police cells in a region have, existing of civilians who make sure that detainees are treated right.
Detainee	A person regarding to whom a punishment of freedom or a deprivation of freedom measure is taken.
Detention	Freedom punishment, executed in a judicial institute or police cell.
District attorney	Leader of a district court, in charge of detection research executed by the Police and supervisor of the execution of verdicts.
Governor	Highest authority in the overseas areas of the Netherlands, representative of the queen in the relevant part of the country.
House of custody	Cell complex in which people can undergo (temporarily) detention.
Judicial institute	An institute in which punishments and/or measures that hold a deprivation of freedom are executed. The execution is located in a penitentiary institute, judicial juvenile institute or TBR institute (an institute for those entrusted to the government).
Penitentiary institute	Prison or house of custody: a place to detain people.
Penitentiary system	The whole of judicial institutes.
Principle of subsidiarity	A political idea that forms a guideline to order different, conflicting authorities between countries and their lower governments. In a general sense, it implies that higher governments will not do what lower governments can do themselves.



1. Introduction

1.1 Research motive

The motive for this research is the intended political changes at Curaçao, St. Maarten, Bonaire, St. Eustatius and Saba (the Dutch Antilles) and its consequences with regard to the detention facilities at Bonaire, St. Eustatius and Saba (the BES-islands). The intended political changes are the result of the discontentment of the inhabitants of the Dutch Antillean islands with the situation, which showed from the referenda about the subject, held in 2004 and 2005. The intended changes have been laid down in the *Slotverklaring* (free translated: Final Declaration) and imply that Curaçao and St. Maarten, like Aruba a couple of years ago, will in the future get a *status aparte*, and that the BES-islands will become public bodies of the Kingdom of the Netherlands.

Once the BES-islands become public bodies, the Netherlands will become mainly responsible for the islands. It was agreed that the islands will achieve a for the Netherlands acceptable level in especially education, public health, social security and public safety. This was decided during a political meeting between the local governments of the three BES-islands and the State Secretary of the Dutch Ministry of the Interior and Kingdom Relations on 31 January 2008 in The Hague. 'Safety is a priority in which the development of the police organization, the quality of juvenile detention and detention capacities have special attention', thus concluded the parties during this meeting. The choice for prioritising safety was strengthened by the conclusions of the European Commission for the Prevention of Torture (CPT) in 2007, that state that the detention facilities at the Dutch Antilles are in bad shape and need drastic improvement.

The Dutch government will in the future be responsible for a good functioning penitentiary system at the BES-islands. Together with the local island governments, they should do their utmost to reach a desirable level, step by step. By doing so, the specific circumstances at the islands have to be kept in mind, to prevent unwanted political and social effects (*Besluitenlijst BES*, 31 January 2008). In this constantly moving process many problems will occur, which provides material for potential research.

1.2 Problem definition and research objectives

Far away overseas islands becoming public bodies is totally new for both the Dutch central government and the local governments of the BES-islands. It implies that laws have to be adjusted and tasks have to be reallocated. This research focuses upon the penitentiary system of the BES-islands, for which the Dutch central government will carry responsibility in the future. The detention facilities at the BES-islands are very limited: there is one house of custody and a few police cells. As stated before, the facilities are in bad shape. Of course there are multiple parties involved with the detention facilities at the BES-islands and its upcoming changes. These parties all have different views, demands and wishes. However, this research is written for the RSJ and the Dutch Ministry of Justice. In this research, the problems they have formulated shall be dealt with. This research deals with a dual approach in the sense that it explores both the external management and the internal detainees rights of the penitentiary system at the BES-islands.

When the BES-islands become public bodies of the Netherlands, the Dutch Ministry of Justice will carry responsibility for the penitentiary system at the islands. Given the geographical distance, she wants to know what the best way is to manage this system. She also wants to know how the penitentiary system at the BES-islands can cooperate with the Police and the Public Prosecution Service. This leads to a first research objective.

1. Finding a solution for managing the penitentiary system at the BES-islands.



The RSJ guards the proper treatment of detainees by executing administration of justice, and giving advice to the minister of Justice about policy and the application of rules with regard to the penitentiary system. The RSJ wants to know whether there will be a future task for him at the islands with regard to the penitentiary system once the BES-islands have become public bodies. This leads to a second research objective.

2. Identifying probable tasks for the RSJ at the BES-islands with regard to the penitentiary system.

1.3 Research questions

Based on the foregoing problem definition and research objectives, the following research questions have been formulated.

Main question

How can both the management and detainees rights be optimized¹ for the penitentiary system at the BES-islands, in relation to the concrete future situation?

Considering the questions from the RSJ and the Ministry of Justice, the main question can be further defined into six sub questions:

1. What ways are there to allocate tasks between the Dutch central government and the island governments?
2. What physical changes does the BES-penitentiary system need?
3. How can the penitentiary system at the BES-islands be strategically managed best, in relation to the concrete future situation at the BES-islands?
4. How can the BES-penitentiary system cooperate with the BES-Police and the BES-Public Prosecution Service, in relation to the concrete future situation at the BES-islands?
5. What deficiencies are there with regard to the Dutch Antillean penitentiary system, its supervision and detainees rights, compared to the Netherlands?
6. What probable tasks will the RSJ have at the BES-islands, in relation to the concrete future situation on the BES-islands, with regard to the penitentiary system?

1.4 Research methods

This paragraph describes the type of research and the research approach for each research question separately, followed by an explanation of the analysis of the material.

1.4.1 Type of research

The research mainly consists of literature study, and is qualitative and describing. According to Babbie, the definition of a case study is 'The in-depth examination of a single instance or some social phenomenon, such as a village, a family, or a juvenile gang' (Babbie, 2004: 293). Since this research studies the situation with regard to the penitentiary system of one specific group of islands (the BES-islands), it can be considered a case study.

1.4.2 Research approach

The legal consequences of the status of public bodies for the BES-islands shall have to be studied. The whole BES-penitentiary and judicial system need to be explored: its facilities, actors, deficiencies, and possible future changes. In order to gather the information that is necessary, mainly document

¹ The word 'optimal' is used, because multiple possibilities shall be discussed and evaluated.



study will be used: scientific literature, legislation, policy, and other documents. Also, interviews with Dutch policymakers, and specialists on the Dutch Antilles and the penitentiary system will be held. During the interviews, I shall mainly use open-ended questions, which makes it so called *qualitative interviews*. The idea was to interview people with practical experience at the Dutch Antilles as well. Unfortunately, there was no co-operation. Being able to do these interviews would have increased the value of the outcomes of this research substantially.

Here, the methods of data gathering shall be presented for each research questions separately. In order to answer the first sub question: 'What ways are there to allocate tasks between the Dutch central government and the island governments?', document study and scientific literature will be used to define and evaluate options. The second question: 'What physical changes does the BES-penitentiary system need?', will be answered mainly through document study and interviews with employees of the DJI. This method will be explained further on in this paragraph. For question three: 'How can the penitentiary system at the BES-islands be strategically managed best, in relation to the concrete future situation at the BES-islands?', both document study and interviews are needed. With regard to the future situation at the BES-islands, policy-documents, new BES-legislation and interviews with policy-makers will be used, Question number four: 'How can the BES-penitentiary system cooperate with the BES-Police and the BES-Public Prosecution Service, in relation to the concrete future situation at the BES-islands?', will be answered solely through using document study (scientific literature and new BES-legislation), in order to explore the future judicial system of the BES-islands. In order to answer the fifth sub question: 'What deficiencies are there with regard to the Dutch Antillean penitentiary system, its supervision and detainees rights, compared to the Netherlands?', policy-documents and the law will be studied. This also goes for the last sub question: 'What probable tasks will the RSJ have at the BES-islands, in relation to the concrete future situation on the BES-islands, with regard to the penitentiary system?', where the RSJ will be explored, based on studying policy-documents, and both the Dutch and Dutch Antillean (penitentiary) law.

1.4.3 Analysis of the material

Qualitative research requires qualitative analysis. Babbie defines this as 'the nonnumeric examination and interpretation of observations, for the purpose of discovering underlying meanings and patterns of relationships' (Babbie, 2004: 370). This qualitative analysis can further be typified into a case-oriented analysis which, according to Babbie is 'An analysis that aims to understand a particular case or several cases by looking closely at the details of each' (Babbie, 2004: 371).

The method that will be used in this research is multi criteria analysis. Here it will be explained what it implies and how it works.

1.4.3.1 Multi criteria analysis

Application

In this research, multi criteria analysis will be used to answer the questions what physical changes the penitentiary system needs and what the best way would be for the DJI to manage the BES-penitentiary system. Multi criteria analysis is an evaluation method to weigh alternatives. Its goal is to order and range data, and to provide transparency in a decision-making process.

A five point scale, with 0 representing the lowest and 4 the highest score, will be used. These scores will be given per option, per criterion.

The criteria and their standards

The criteria that will be used are: legality, controllability, acceptability and efficiency. These criteria have been chosen, because they each represent an important value for either the Dutch or BES-governments, the BES-inhabitants, or other parties that are involved with the penitentiary system at the BES-islands. Standards will be formulated per criterion in order to reduce subjectivity.

Legality



The first criterion is the law. Is the option legally sustained? Legal restraints can be derived from Kingdom, Dutch, Dutch Antillean, BES-laws, and/or laws and regulations from the EU. The legality can be diverted into the following standards:

- Kingdom/ Dutch law
- Dutch Antillean law
- BES-law
- EU-law

Per law, one point will be given when there are no legal restrictions to be found with regard to the concerning option.

Controllability

Second criterion is controllability. By controllability is meant the extent to which the Dutch central government can maintain the control that is necessary over the BES-islands for being able to execute both his legal and moral tasks with regard to the islands, and to guard the unity in policy and law. The criterion controllability can be diverted into the following standards:

- Transparency
- The presence of possibilities and means for the Ministry of Justice to execute supervision
- The presence of possibilities and means for the Ministry of Justice to carry its responsibilities
- Unity in policy and law compared to the Netherlands

Per present standard, one point will be given.

Acceptability

Third is acceptability. Hereby is meant the appropriateness of the option through the eyes of the BES-inhabitants (citizens and authorities of the BES-islands). It will be measured in terms of liveability. This criterion is chosen, because all inhabitants of the BES-islands and their values must be respected. The criterion acceptability can be diverted into the following standards:

- Mental burden BES-inhabitants (including detainees) and government
- Physical burden BES-inhabitants (including detainees) and government

Two points will be given per standard, when absent.

Efficiency

The fourth, and last criterion is efficiency. This has deliberately been chosen as the last criterion, because it weighs up the estimated costs against the benefits, which have already been assessed in the foregoing criteria. The idea is that the specific circumstances with regard to the BES-islands will be taken into account. The criterion efficiency can be diverted into the following standards:

- Costs for the BES-government/ Ministry of Justice
- Benefits for the BES-islands/ Ministry of Justice

In case there are few/ no costs or high benefits, two points will be given.

Possibilities and deficiencies

By using this method, objectivity can be increased through applying the same assessment each time. Its subjectivity lies in the sense that it is specially designed for the parties whose point of view needs to be taken into account: the BES-islands (government, inhabitants and detainees) and the Netherlands (especially the Ministry of Justice). The result is that it tells their side of the story and expresses their favourable outcome, not that of others. Since opinions, needs and demands can differ, this particular model with its standards is not generally applicable. The general model with its four criteria can be used for general purposes by changing the standards to what is suitable for the question each time.

1.5 Research plan

The next chapter discusses the political changes at the Dutch Antilles in general. What history do the islands have, what is the current situation like and what will the future bring? The three new public bodies of the Netherlands and its consequences will thoroughly be explored. Three ways of allocating



tasks between the central government and the BES-islands will be discussed. In chapter three, the Dutch Antillean penitentiary system will be explored. The detention facilities per island, as well as the current cooperation with regard to the detention capacities between the islands of the Dutch Antilles will be discussed. More in particular, the BES-detention facilities and its deficiencies will be studied. In the end, the possibilities with regard to the future penitentiary system of the BES-islands will be discussed and evaluated. In chapter four, the management of the new overseas penitentiary system will be discussed. The DJI, who will manage the system, will be introduced. Three options for management will be presented. The current judicial system of the Dutch Antilles and the future judicial system of the BES-islands will be studied in order to find out which cooperation model within the BES-judicial system is most suited. Chapter five explores the supervision on the Dutch and Dutch Antillean penitentiary system. It introduces thoughts about detainees rights. After a short introduction of the RSJ, both the legal and desirable tasks for the RSJ regarding the BES-islands will be discussed. In chapter six, the conclusions will be presented. The last chapter deals with the recommendations.



2. The political changes at the Dutch Antilles

This chapter regards the political changes at the Dutch Antilles. First, the history of the islands will shortly be described. Then, the intended changes in the governmental system will be explored, based on a description of both the current situation with regard to the Dutch Antilles, and the future situation in which there will be four separate countries: the Netherlands (including the BES-islands), Aruba, Curaçao, and St. Maarten. This information is needed to understand why the intended changes are necessary. It will also provide good background information for exploring the new status of the BES-islands and its implications. Then, last but not least, the future allocation of tasks between the Dutch central government and the BES-islands will be discussed. Based on theory, three governance options will be defined. These shall be used later on in the research. In the end, overall conclusions will be drawn.

2.1 History of the islands

Before doing research on the political changes and their implications for the BES-islands, the history of the Dutch Antilles and their relationship with the Netherlands shall briefly be discussed.

The islands were discovered at the end of the fifteenth century. Since then, they have been in the hands of several different European countries. After centuries of having a colonial status, the islands became part of the Kingdom of the Netherlands. On 15 December 1954, the *Statuut voor het Koninkrijk der Nederlanden* (free translated: Statute of the Kingdom of the Netherlands) came into force. This Statute regulates the political relations between the countries within the Kingdom, which at that time were: the Netherlands, the Dutch Antilles and Suriname. Since that day, the overseas areas have the right to regulate their own legal system and to choose their own government.

Then, in 1975, Suriname became independent. In 1986, Aruba got a *status aparte* within the Kingdom. From then on, the Kingdom of the Netherlands existed of the Dutch Antilles, Aruba and the Netherlands. A new legal position was acknowledged and the Dutch Antilles got a parliamentary system, based on the principles of democracy. It was decided that the Statute could only be changed when all countries of the Kingdom agree.

In 1992, a conference was held concerning the relationship between the Netherlands and the Dutch Antilles. In 1993 and 1994, referenda were being held at the Dutch Antilles, which resulted into the conclusion that the islands continue to stay a unity. However, in 2005, the debate about the status of the islands was reopened. This time, the referenda showed that the citizens of the Dutch Antilles were unhappy with the current situation and that political change is needed.

2.2 Current situation regarding Dutch Antillean legal and governmental practices

In order to understand why the intentional changes are needed, the current situation with regard to the Dutch Antilles shall be described, in terms of government, its deficiencies, and the Statute.

2.2.1 Legal practices: the Statute

The relation between the countries within the Kingdom (Netherlands, Dutch Antilles and Aruba) is arranged in the *Statute of the Kingdom of the Netherlands*. This is a constitutional regulation. (Borman, 2005: 17, 43). Together, the countries form one constitutional unity (Borman, 2005: 20). There is both a Statute and a Constitution of the Kingdom. The Constitution is partly the Constitution of the Kingdom and partly the Constitution solely for the Netherlands (Borman, 2005: 35), which gives the Constitution a mingled character (Borman, 2005: 31). Next to the Constitution of the Kingdom, each separate country has its own Constitution (Borman, 2005: 43). The state regulation and the island regulations

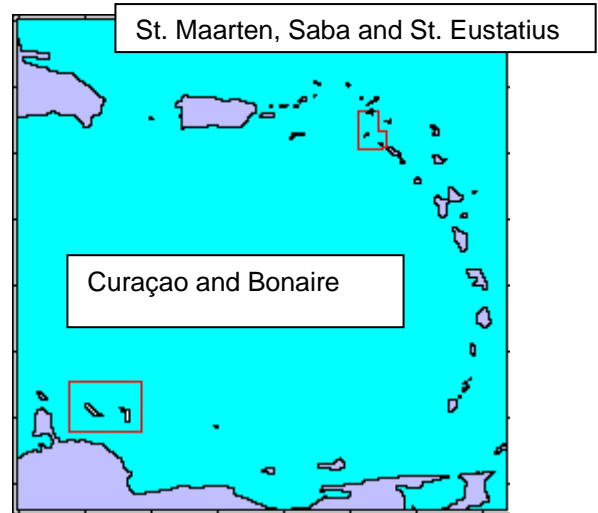


together form the Constitution of the Dutch Antilles (Borman, 2005: 56). The core of the Statute is to provide the separate countries with the autonomy to make their own regulations (Borman, 2005: 21). The Statute is superior to the Constitution (art. 5.2 Statute). That is why the Statute may differ from the Constitution (Borman, 2005: 3). Changes in the Statute occur by Kingdom law (art. 55 Statute).

Figure 1. Map of the Dutch Antilles

2.2.2 Governmental practices and deficiencies

Currently, there are two levels of government at the Dutch Antilles: a central government which is seated in Willemstad (the capital of Curaçao), and five island governments that each consist of a local governing body and an island council. The five islands all have seats in the central government, according to their number of inhabitants: Curaçao (14), St. Maarten (3), Bonaire (3), St. Eustatius (1) and Saba (1). According to the *Staatsregeling Nederlandse Antillen* (SNA; free translated: State regulation Dutch Antilles), the central government consists of the Governor of the Dutch Antilles and the Council of Ministers (art. 37 SNA). The queen of the Netherlands, who formally is the head of the Dutch Antillean government (Borman, 2005: 83-84), appoints the Governor to represent her (art. 11 SNA). The Governor has the executive power (art. 12 SNA), and chooses the ministers (art. 37.3 SNA). The State Council of the Kingdom advises the central government (art. 32 SNA, art. 13 Statute).



According to the *Samenwerkingsprogramma Bestuurlijke Ontwikkeling* (SBO; free translated: Cooperation Programme Governmental Development), unfortunately, both the island and central governments are not optimally functioning (Evaluatie SBO Nederlandse Antillen 2002-2006: 29). With regard to the BES-islands the SBO states that the formal control procedures and instruments concerning the execution of decision-making are insufficient, which results into little insight in and control over the policy cycle (p.67). According to the SBO, hardly any matters are fixed when it comes to tasks and responsibilities (p.58, 66, 74). It concludes that there is little external control on the government (p.59).

2.3 Future changes regarding Dutch Antillean legal and governmental practices

In this paragraph, the future situation with regard to the four separate countries shall be discussed. First, some background information about the choice for four separate countries will be given. Then, the concept public body will be defined, so that in the next paragraphs the contents and consequences of the three new public bodies (Bonaire, St. Eustatius and Saba) can be explored.

2.3.1 The decision process

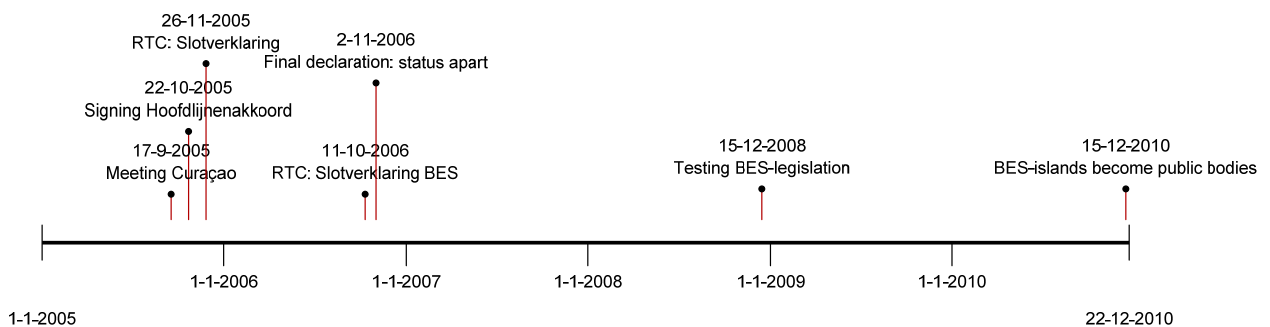
In the past years, the Dutch Antilles have not developed into one nation. That is why the inhabitants of the five islands voted by referenda for a new political future within the Kingdom of the Netherlands.

On 17 September 2005, a political meeting took place at Curaçao during which the future political changes were deliberated. The meeting resulted into signing the *Hoofdlijnenakkoord* (free translated: Main lines agreement) on 22 October 2005 at Bonaire. This agreement states that Curaçao and the Dutch part of St. Maarten will become separate, autonomous countries within the Kingdom, and that Bonaire, St. Eustatius and Saba will have a more direct connection with the Netherlands. On 26 November 2005, the first Round Table Conference (RTC) was held. During this meeting the



Slotverklaring (free translated: Final Declaration) was signed. On 11 October 2006 a small RTC was held in The Hague. During this meeting, a final declaration was signed which states that the BES-islands will get the formal status of *public bodies* within the Kingdom of the Netherlands (Slotverklaring 10-11 October 2006). At 2 November 2006, a final declaration between the Netherlands, Curaçao and St. Maarten was signed which states that the two islands shall have a *status aparte* within the Kingdom of the Netherlands. This means that the country Dutch Antilles will cease to exist. The formal change of the Statute was planned in December 2008, but is delayed until 2010. However, there was an RTC on 15 December 2008, during which a package of legislation was tested to the criteria as acknowledged in the Final Declaration. This RTC was meant to make a transition from the design phase to the implementation phase. During this writing (January 2009), the new legislation officially did not come into force yet – the new laws have now been laid down for advice at the State Council and the Second Chamber of Parliament. The implementation is however meant to happen soon.

Figure 2. Timeline decision process



2.3.2 Legal and governmental changes

The BES-islands will in the future become public bodies of the Netherlands. Public bodies can for example be the State, provinces, municipalities, district water boards, Tax Administration, and *Zelfstandige bestuursorganen* (ZBO; free translated: independent governing bodies). This means that the Dutch government exists of public bodies as well. Article 134 of the Dutch Constitution relates to public bodies. It states that public bodies can be instituted and discontinued. The tasks and construction of these public bodies are laid down in the law, as well as the composition and authorizations of their local authorities. By or under the operation of the law, tasks can be appointed to the local authorities of the public bodies. Destruction of decisions of these local authorities is only possible when there is a conflict with the law or the general interest. Supervision is arranged comparable to that on provinces, municipalities and water district boards.

During the *Overgangsakkoord* (free translated: Transition agreement) on 12 February 2007, it was decided that the BES-islands would become public bodies of the Netherlands in the sense of article 134 of the Dutch Constitution. Although the BES-islands will not be the Netherlands' first public bodies - former public bodies of the Netherlands were for example the Zuidelijke IJsselmeerpolders (1955-1996) and Rijnmond (1965-1986) - the situation with regard to the BES-islands differs from all others. For example, it will be for the first time that there exists a geographical distance between the Netherlands and one of their public bodies. Also, as stated before, the BES-islands find themselves in a total different situation than the Netherlands in Europe. This raises questions like whether it will be realistic and/or desirable to provide the BES-islands with the exact same rights and obligations as the Netherlands in Europe. Certain is that the BES-islands will have a status of *sui generis* (special nature).

Appointing the BES-islands as municipalities or provinces would mean that the islands have to comply with the territorial decentralized pattern of the Netherlands. The choice for the status of public bodies however, provides the flexibility that is necessary with regard to the special circumstances at



the islands and between the Netherlands in Europe and the islands in the Caribbean. These special circumstances are, for example: the insular character, the small scale, the geographical distance to the Netherlands, the geographical distance between Bonaire and the other two islands, the history of the islands, the (political) culture, social situation, public opinion, and the development level. According to Bröring, Kochenov, Hoogers and Jans, the fact that the BES-islands will fall under Dutch jurisdiction, says nothing about the allocation of tasks and authorities of the public bodies. Any form of supervision on the BES-islands is possible. It is open to be filled in by negotiation, deliberation and legislation (Bröring et al., 2008: 112).

In the future, the Netherlands will as a country exist of the Netherlands in Europe, and three public bodies: the BES-islands. It is important to understand both the contents and consequences of this new situation. This will be discussed in the following paragraphs.

2.4 Legal implications for the BES-islands

Now that the intended changes with regard to the BES-islands are discussed, it is time to explore the new regulations for the future public bodies of the Netherlands. These are of great importance for my research, because the answers to the question from the DJI and the RSJ will depend on them. First, the new drafts will in short be presented. Then, a practical interpretation of the new laws will be given. After that, the legal steps in the process towards becoming public bodies shall be explored. In the end, the consequences on a European level will be discussed with regard to the changing status of the BES-islands.

2.4.1 New laws

Since the BES-islands will be part of the country the Netherlands, one might assume that all Dutch legislation, including the Constitution, will come into force for the islands. In reality however, it turns out not to be that simple.

In principle, all current legislation with regard to the BES-islands will expire after the dismantling of the country Dutch Antilles. If current legislation needs to be maintained, it has to be laid down in the law explicitly. Also, new laws are being written especially for the BES-islands. In this subparagraph, I shall explore these new laws that, during this writing (December 2008), are still drafts. These are: the *Wet openbare lichamen BES* (WoLBES; free translated: Law public bodies BES) *Invoeringswet BES* (IBES; free translated: Institutional law BES) and the *Aanpassingswet BES* (ABES; free translated: Adjustment law BES). There will also be new Consensus state laws for the Police and the Public Prosecution Service. During this writing however these are not yet public.

2.4.1.1 Draft law WoLBES

The WoLBES regulates the institution of the public bodies, and the composition of and supervision on the government. This in accordance with the municipal law. It states that tasks and authorities of the public bodies will be regulated, that the public bodies can govern their own households, and that they have the authority to lay down regulations concerning their own households. It also offers the foundation to lay down other tasks for the public bodies through other regulations: co-government regulations (Pronk 2007, Project openbare lichamen BES).

The WoLBES appoints Bonaire, St. Eustatius and Saba as public bodies of the Netherlands. It states that each public body holds an island council, a governing body and a governor. The island council represents the inhabitants. The governor is chairman of the island council. The governor and the island deputies together form the governing body. The governor is also chairman of the governing body. The governor is appointed by royal decision, for a period of six years. Distinctions are allowed to be made between the public bodies. Article 134.1 of the WoLBES states that the authority to rule and manage the public bodies rests in the hands of the island councils themselves. This authority will only be taken away when explicitly laid down in the law (art. 134.2 WoLBES). The daily management is carried out by the governing body (art.166.1a WoLBES). Although, according to article 212.1 of the



WoIBES, the minister of the Interior and Kingdom Relations is charged with the coordination of the state policy that concerns the public bodies, article 213.1 WoIBES states that he encourages decentralization with regard to the public bodies.

2.4.1.2 Draft law IBES

In the IBES, general rules are laid down and the general transition laws are arranged. It states that when current Dutch Antillean legislation needs to be maintained, this has to be explicitly laid down in the law. It also states that there are so called *transition laws*. Legislation that has been given the status of law or *Algemene maatregel van bestuur* (Amvb; free translated: General measure of government) can be changed till one year after the implementation of the IBES by a ministerial decree (art. 4 IBES). A ministerial decree has to be converted into a draft law or Amvb as soon as possible, and the Second Chamber of Parliament has to approve before it comes into force (art. 5 IBES). When necessary, the minister can deviate from a maintained Dutch Antillean legislation till one year after the implementation of the IBES. When a deviation turns out to be structural, the law will be changed (art. 6 IBES).

2.4.1.3 Draft law ABES

In this law, the current Dutch Antillean legislation that needs to be maintained is laid down and converted into Dutch legislation that solely applies to the BES-islands. During this writing (January 2009), this law is not yet public.

2.4.2 The process towards becoming public bodies

Here, three different stages shall be described. The goal is to show which legal steps have to be taken in order for the BES-islands to become public bodies. Arranging things properly will take time and effort. There will be a focus on legislation, because this influences the answers on the research questions most. Before discussing the three stages, the types of regulations that the Dutch Antilles have shall shortly be dealt with. The highest regulation, comparable to a formal law in the Netherlands, is a so called State regulation. Second in rank is the State decision, which is comparable to a Dutch Amvb. Then there are ministerial decrees, Island regulations which are comparable to Dutch municipal regulations, and Island decisions comparable to Dutch Amvb's but then laid down by the board of governors.

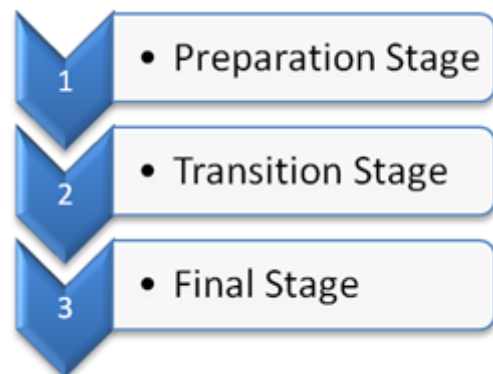
The three stages that can be distinguished are:

Figure 3. Three stages

1. Preparation stage

This stage started when the first meeting about the political changes was held, on 17 September 2005. It ends when the changes have formally taken place, which will probably be in 2010.

Currently, the BES-islands and the Netherlands together are preparing the intended political changes. In October 2008, the draft laws were presented to the local governments of the BES-islands. The laws are being adjusted when necessary and then dealt with by the regular process.



Process of legislation

A new law is prepared at the Ministries. When it is finished, relevant parties are being consulted. Then, it goes to the Council of Ministers. After their approval, the draft law goes to the State Council for advice. Then, it goes to the Second Chamber, which can still make suggestions for change. Finally, it goes to the First Chamber, which either accepts or rejects the new draft law.



Legally, the Netherlands have no formal authority yet, because the Dutch Antillean government is still formally responsible for the BES-islands. However, there are regular meetings between the involved Dutch and Dutch Antillean ministers in order to be optimally prepared for the authorities and tasks that have to be re-assigned. The Dutch ministers are already providing support and guidance towards the Dutch Antillean ministers in executing their tasks. According to the project *Political changes Dutch Antilles*, the current support and guidance by the Dutch government is important, because the Netherlands will in the end carry responsibility for the islands. Cooperation is necessary in order to anticipate on the changes and mutually agree on the new responsibilities.

2. Transition stage

This stage begins when the BES-islands formally have become public bodies of the Netherlands. When this happens, not all legislation and policy will be final. For example, most of the aforementioned draft laws are transition laws, meaning that eventually they will be replaced. Therefore, this is called the transition stage. It ends once things are arranged properly, when the primacy of the legislator is maintained.

As stated in the Final Declaration, as much as possible of the Dutch Antillean legislation will be maintained. The laws that will be maintained after the transition are laid down in article 2.2 of the IBES. All legislation that is not laid down in the IBES will not be maintained. Existing Dutch Antillean legislation will be transformed into Dutch legislation. This means that once the status of public bodies of the Netherlands is formal, Dutch legislation will not automatically apply to the BES-islands, unless it is explicitly laid down in a law that applies to the BES-islands. When there is no (adequate) legislation on a specific terrain and the minister cannot carry his responsibilities properly, Dutch legislation will be implemented. This of course also has to be explicitly laid down in the law. Of course, the responsibility for the maintained Dutch Antillean legislation shall after the transition be carried by the Dutch ministers. In the beginning, the primacy of the legislator will not be maintained due to the fact that some regulations will be laid down in Amvb's instead of formal legislation (explanatory memorandum IBES). This choice was based on the fact that changing an existing law or implementing a new law is an extensive undertaking. Amvb's and ministerial decrees however, which give a further, detailed interpretation of the main regulations in the law, cost considerably less time (website Ministry of Justice).

3. Final stage

The draft laws implicate the partial implementation of Dutch legislation and the partial maintenance of Dutch Antillean legislation. Also, Amvb's are chosen above formal legislation. These choices are practical, but not consistent because formally, when the public bodies are part of the Netherlands, they should fall under the Dutch law. The State Council argues however that this approach is defensible, because of the limited number of people for which these rules will apply and the temporary character of the legislation, since in the end, all legislation will be replaced by formal Dutch legislation. On the other hand, in the long term the primacy of the legislator has to be maintained. Also, changing legislation with lower legislation is confusing (explanatory memorandum IBES).

The choice for temporary regulations that can easily be changed when necessary, is in line with the thoughts of Dorbeck-Jung and De Jong, who state that 'Law can be regarded as an open and dynamic system that provides a reliable structure that can be revised in the course of societal changes.' (Dorbeck-Jung, De Jong, 1997: 120).

One must remark that this research deals with questions that concern the final stage. Since not all future legislation for the BES-islands has yet been formally laid down, this research mainly focuses on *what is desirable*.



2.4.3 Consequences on a European level

2.4.3.1 EU-Status.

Within the European Union (EU), the Dutch Antilles currently have the status of *Overseas Countries and Territories* (OCT), which means that the laws within the EU do not immediately apply to the BES-islands. The question rises whether the BES-islands can maintain this status, once they become public bodies of the Netherlands or that they become *Ultra Peripheral Areas* (UPA), like the European part of the Netherlands. Having a UPA-status will have drastic consequences, both legally and economically, due to the fact that the European law will fully come into force, and distinctions between the BES-islands and the rest of the Netherlands are no longer allowed to be made (Bröring et al., 2008: 41). A letter to the Dutch Second Chamber of Parliament at 20 June 2008 by Bijleveld, State Secretary of the Interior and Kingdom Relations, states that it was decided that for the time being the OCT-status will be maintained and that five years after accepting the *WolBES* this decision will be evaluated.

2.4.3.2 Equality between the citizens of the country the Netherlands.

In the new political situation there will be two categories of Dutch citizens: BES-citizens and European-citizens. One can argue that these citizens should be treated equally. The Dutch Constitution states that 'All who find themselves in the Netherlands should be treated equal in equal cases' (art.1 GW). Might we conclude that once the BES-islands have formally become public bodies of the Netherlands, the BES-citizens should be presented with the exact same rights as the European-citizens? The answer is no.

Article 17 of the EU Treaty states that 'Civilian of the Union is anyone who has the nationality of one of the member states', meaning that all citizens within the Kingdom of the Netherlands have European citizenship. According to Bröring et al., the consequence is that all rules of the European law that are connected to the European citizenship are applicable to the OCT's (Bröring et al., 2008: 15). However, article 299 of the EU Treaty states that exceptions can be made, in case of differing situations: big distance, the insular character, the small surface, nature climate, and the economical dependence, which makes development hard (Bröring et al., 2008: 16, 19, 111). On the other hand, would for example the protection of detainees in the for the BES-islands maintained Dutch Antillean criminal law be less than the Dutch regulations, a BES-citizen can claim protection of the Dutch law (Bröring et al., 2008: 113). Bröring concludes that differentiation between the European and BES-citizens should be laid down in the Constitution (Bröring et al., 2008: 116).

And what about article 1 of the Dutch Constitution? Legislators have specifically defined 'in the Netherlands' as the European part of the Kingdom, which means that the BES-citizens are not included in this definition (Bröring et al., 2008: 116).

2.4.3.3 European Prison Rules.

There is no direct relation between the need to live up to the European Prison Rules (EPR) and the possible changing status of the BES-islands within the EU, since the EPR are laid down by the Council of Europe, and there is no direct relation between the Council and the EU. The Council has 47 members, so it is bigger than the EU. Unlike EU-legislation, treaties of the Council of Europe are not strictly binding in national law, unless ratified by the normal parliamentary procedures of the member state concerned. Nevertheless, it might be concluded that although the EPR are not legally binding, it might be wise to take them into account, because of the relationship with the EU.

2.5 Governmental implications for the BES-islands: the allocation of tasks between the central government and the BES-islands

With regard to the BES-islands, the Dutch government and the islands chose the principle of subsidiarity: decentralizing as many as possible tasks to the island governments. Of course, there are



multiple possibilities with regard to the allocation of tasks between central governments and their lower governments and/ or bodies. These possibilities will be explored here with the help of theory. This information is valuable, since it will be used later on in the research to answer the question how the DJI can best manage the penitentiary system at the BES-islands.

2.5.1 The principle of subsidiarity

Although the content of the laws as discussed in the previous paragraph is clear, the laws have not yet been laid down formally, and therefore are still subject to change. Here, the reader will be presented with an interpretation of the new laws, in order to find out what they implicate for the relation between the Dutch central government and the public bodies.

In both the *Besluitenlijst BES* (31 January 2008) it is stated that the BES-islands will do as much as possible themselves. This choice is also laid down in the *Final Declaration* as following: ‘... as many as possible tasks will be executed on the island-level.’ (Slotverklaring 10-11 October 2006). Exceptions are made when the islands can (e.g. due to a shortage in capacity) or must not carry out a certain task (e.g. when it concerns a state task). When this is the case, the central government of the Netherlands will execute the particular task. This political principle is being referred to as the *principle of subsidiarity*. This principle holds a political idea that forms a guideline to order different, conflicting authorities between a country and its lower governments. Through this guideline, it has to be decided whether to centralize legislation and authorities or not. In a general sense, it implies that higher governments will not do what lower governments can do themselves.

The WoIBES places the new public bodies directly under the authority of the state. According to the project *Political changes Dutch Antilles*, the choice for the status of public bodies gives the government some leeway with regard to new legislation for the BES-islands. For example, the three islands will be appointed both provincial and municipal tasks. The islands have more autonomous tasks than a Dutch municipality. Tasks and authorities are in principle executed by the islands, unless the Constitution commands otherwise or when it is policy-wise smart to transfer authorities to the state. In that case, new legislation needs to be laid down to arrange the delegation(s) (explanatory memorandum WoIBES).

2.5.2 Theory about task allocation

The principle of subsidiarity was the choice of the Dutch government and the BES-islands. One can wonder whether this is the right choice, but this would not be relevant for this research. What would be relevant is knowing what other types of task allocation there are. This information can be useful later on in the research with regard to the question how the DJI can best manage the penitentiary system at the BES-islands. That is why, in this sub paragraph, theory about the different types of governance shall be discussed.

According to the revised book of Van der Pot and Donner, decentralization means that ‘regulations and governance are not just executed from the centre, but are executed by the state and by many other public bodies or organs, that within certain boundaries in freedom and own responsibility can practice the them entrusted tasks and authorities.’ By *within certain boundaries* it refers to the limitations of the law. The book states that decentralization can either occur by attribution, whereby the legislator creates or assigns a new task or authority, or by delegation, whereby an existing task or authority is being allocated (Van der Pot, Donner, 2001: 693-694). The revised book by Van der Pot and Donner makes a distinction between territorial and functional decentralization. It says that territorial decentralization refers to ‘self government’ by provinces and municipalities, which has two limitations: that of the own territory and that what are considered to be central tasks. Neelen, Rutgers and Tuurenhout (2003: 26-27) refer to this as the freedom for State, provinces and municipalities to take decision regarding their own territory. Van der Pot and Donner’s book says that functional



decentralization refers to the execution of tasks by public bodies aimed at certain interests. This can be either autonomous or through co-government, for either the whole or a part of the country (Van der Pot, Donner, 2001: 694). It also says that autonomy is independently arranging and governing the 'own' matters (the household) (Van der Pot, Donner, 2001: 699). The legal restriction of autonomy lies in the rule that no lower body can act in conflict with higher regulations (Van der Pot, Donner, 2001: 701). The revised book of Van der Pot and Donner describes co-governing as cooperating with higher regulations, implying that tasks are prescribed by the central government and executed at a lower level. This must be seen apart from the execution of tasks within the own household of the lower governments (Van der Pot, Donner, 2001: 700).

Kooiman states that 'The constitutional state requires the relation between state and citizens to be dominated by legal principles and rules.' (Kooiman, 2000: 153). He distinguishes three modes of governing: self-governing, co-governing and hierarchical governing (Kooiman, 2000: 146). *Self-governing* as formulated by Kooiman can be considered the same as what the revised book by Van der Pot and Donner refers to when it speaks of autonomy. Self-governing or autonomy implies that tasks are both autonomously carried and executed. Autonomy with regard to countries or public bodies can thus be seen as the authority to arrange internal affairs independent of a central authority, as long as there is no conflict with higher regulations. According to Neelen et al. (2003: 26-27), autonomy is the own authority to self-initiate and lay down rules. According to Kooiman, *co-governing* means that '... actors co-operate, co-ordinate, communicate without a central or dominating governing actor'. He refers to this type of governing as 'collaboration', which he defines as 'an interaction taking place between actors...' (Kooiman, 2000: 148). According to Neelen et al. (2003: 26-27), co-government represents laying down rules with free contents, but as prescribed by a central authority, which does not allow the rules to deviate from higher regulations. Kooiman stipulates the last mode of governing, *hierarchical governing*, as a classical mode of governing interaction between the state and the organizations (Kooiman, 2000: 151). Dahl and Lindblom (1963: 23) earlier defined hierarchical governing as 'the process in which leaders control non-leaders'. This mode of governing can be referred to as the centralization of tasks, which implies that tasks are both carried and executed by the central government.

According to Treisman (2007: 22), the ideal type of complete centralization is that one government has the whole national territory under its jurisdiction (Treisman, 2007: 22). Neelen et al. (2003: 26-27) refer to this as the *eenheidsstaat* (unity state) who represents coordination from above and equality in legislation. They state that the central government can at any time destroy decisions made by lower governments when conflicting with the law or with the general interest.

2.5.3 Defining the concepts

Based on the theory above, different concepts of task allocation can be defined. There are two opposites of task allocation: centralization and decentralization. Formulated in a simple way, one could state that decentralization implies that tasks are being contracted out away from the central level. This can be done by either co-government or self-government. Contracting out tasks can be based on both territory and function. It is possible to create a new task (attribution) or assign an existing task (allocation).



The three governance options therefore are:

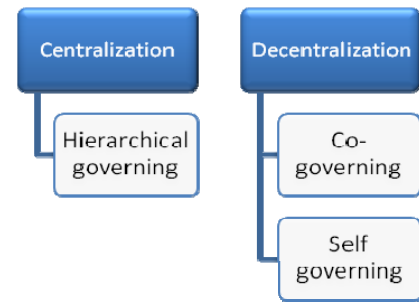
- centralization: hierarchical governing (1)
- decentralization: co-governing (2) and self-governing (3)

These definitions will be used later on in the research with regard to the question how to manage the BES-penitentiary system. They will be used as a starting point for defining three management options for the DJI.

2.6 Conclusion

In this chapter, the question ‘What ways are there to allocate tasks between the Dutch central government and the island governments?’, was answered. The Dutch Antilles share a long history with the Netherlands. Because the citizens of these islands were unhappy with the situation, change was necessary. This change implies that Bonaire, St. Eustatius and Saba will become public bodies within the Kingdom of the Netherlands, and that St. Maarten and Curaçao will get a *status aparte*, like Aruba. This means that the Dutch Antilles as a country will cease to exist. The choice for appointing the BES-islands as public bodies according to article 134 of the Dutch Constitution, provides the flexibility that is necessary with regard to the special circumstances at the islands. Although the BES-islands will be part of the country the Netherlands, their legislation differs. As many as possible Dutch Antillean legislation will be maintained, which in time will be replaced by Dutch legislation. It was decided that the islands will do as much as possible themselves. This idea can be referred to as the principle of subsidiarity. The Dutch central government carries out the state tasks and the tasks that can or must not be carried out by the island governments. The islands now find themselves in the so called preparation stage, which implies that the Dutch Antillean government is still politically responsible for the islands. The European laws do not automatically apply to the BES-islands. Because in the future, the country the Netherlands will have two types of citizens (BES and European citizens) differences in rights are allowed to be made, provided that they are laid down in the Constitution. With regard to the allocation of tasks between the BES-islands and the Dutch central government, three basic possibilities have been defined: hierarchical governing, co-governing and self-governing. These definitions will be used later on in the research to define options for the DJI to manage the penitentiary system at the BES-islands.

Figure 4. Governance options





3. The BES-penitentiary system under construction

Now that the political changes at the Dutch Antilles and their particular consequences for the BES-islands have been explored, it is time to have a look at the penitentiary system at the islands. First, important concepts regarding the penitentiary system will be made operational. Then, the current detention capacity and cooperation with regard to detention capacity at the Dutch Antilles will be explored. After that, more in particular, the detention facilities of the BES-islands will be discussed, including its deficiencies and the consequences for the future. This will be linked to their new status as public bodies. Since the plans with regard to the penitentiary system at the BES-islands are not final yet, the possibilities with regard to the future system will be explored, concerning both cooperation and physical changes. In the end, overall conclusions will be drawn. This information is necessary, together with the findings in the previous chapter, to find out what the best way is to manage the new Dutch overseas penitentiary system.

3.1 Important concepts

By defining the concepts, there will be references to the Dutch law, which implies the use of Dutch definitions. I have chosen to do so, because the research is executed for the Dutch Ministry of Justice and the RSJ, so it must be constructed from their point of view, within the boundaries of the law they know, work with and have to obey to. Further on, there will of course be referred to the Dutch Antillean law which will be maintained for the time being.

3.1.1 Judicial System

The concept judicial system has not been defined in the law, nor in scientific literature. One could argue that the penitentiary system, Juveniles protection, the Ministry of Justice, the Public Prosecution Service, the Police, the judiciary and Probation and After-care Services are part of it. This research however focuses on the penitentiary system and its judicial institutes, the Police and its police cell complexes, and the Public Prosecution Service and its Court of Justice. Also, complaint arrangements and verdicts resulting from complaint jurisdiction will be included.

3.1.2 Detention facility

The definition *detention facility* refers to all places where people can be detained. Both judicial institutes and police cells are captured by this definition. However, judicial institutes fall under the authority of the Ministry of Justice, while police cells fall under the authority of the Ministry of the Interior and Kingdom Relations: article 15 and 16 of the Dutch *Besluit Beheer Regionale Politiekorpsen* (BBRP; free translated: Decree Management Regional Police Corpses) states that the Corps chef is responsible for detaining people in police cells, and he falls under the authority of the Ministry of the Interior and Kingdom Relations.

3.1.3 Penitentiary system

The penitentiary system falls under the authority of the Ministry of Justice and can be defined as *the whole of judicial institutes*. Police cells must be seen separate from this penitentiary system, because they fall under another Ministry. It must be remarked that in the current situation, the Dutch Antillean Police does fall under the Ministry of Justice. However, the future situation is being studied, which is why we shall just refer to the Dutch construction.

3.1.4 Judicial institute

According to the law, judicial institutes can be distinguished into penitentiary institutes and institutes with special purposes: judicial juvenile institutes and TBR institutes (institutes for those entrusted to the government). Penitentiary institutes can be further distinguished into regular penitentiary institutes



and houses of custody. *Penitentiary* literally means ‘concerning punishment’. It implies that a penitentiary institute is made for punishment, in this case by taking away the freedom of detainees. A house of custody is an institute where people can temporarily be held. After a certain amount of time, detainees have to be replaced in a for them fitting other institute. The minister of Justice can appoint institutes or divisions of institutes for housing detainees with special needs. According to the *Penitentiare beginselenwet* (Pbw; free translated: Preliminary penitentiary law) these special needs can be connected with age, personality, the physical or mental health condition, or the type of crime that was committed (art. 14 Pbw). There are institutes or divisions specially appointed for juveniles. These are called ‘judicial juvenile institutes’. In these institutes, children under a certain age can be detained. The juveniles that are being kept there can be either offenders or just difficult to educate. The institutes are appointed by the minister of Justice and can be either private or governmental. Institutes for people with special needs other than age are referred to as TBR institutes. The people who have been placed there find themselves entrusted to the government.

3.2 Current detention capacity and cooperation within the Dutch Antillean penitentiary system

In this paragraph, the current detention capacity of the Dutch Antilles will be explored. Also, the current cooperation that exists within this system will be discussed.

3.2.1 Detention facilities

The Dutch Antillean *State regulation preliminaries penitentiary system* states that types of institutes are: prisons, houses of custody and TBR institutes (art. 2 Lbg). The Dutch Antillean minister of Justice appoints (divisions of) the institutes as such (art. 3.1 Lbg). Each island contains at least one (division of an) institute that is a house of custody (art. 3.2 Lbg) and there are special divisions for women (art. 3.3 Lbg). Suspects are preferably not placed with ‘regular’ detainees (art. 20.1 Lbg). Male detainees under the age of 21 will preferably not be placed with mature detainees (art. 20.2 Lbg). The Dutch Antillean minister of Justice appoints (divisions of) special institutes for people under the age of 21 (art. 7 Lbg). The daily management rests in the hands of the prison director (art. 14 Lbg), the main supervision is the task of the minister of Justice of the Dutch Antilles (art. 13 Lbg). The main director judicial institutes can decide that a female can be placed in the house of custody of Curaçao, Bonaire or St. Maarten for a maximum of three months (art. 4.2 Abg). Female detainees who have been entrusted to the government can also be put in an institute for those entrusted to the government for a maximum of six months (art. 4.3 Abg). Curaçao has a *Gouvernements Opvoedingsgesticht* (G.O.G.; free translated: governmental educational institute) in which young detainees from the BES-islands can be placed. This facility holds 50 places. Juveniles under the age of 16 and juveniles who have been entrusted to the government are being kept there. When juveniles turn seventeen, they go to a regular penitentiary facility.

These regulations are in fact preliminaries. This implies that although the law is binding deviations are allowed to be made. Whether the preliminaries have been put into practice has unfortunately not been researched. The following figure shows which detention facilities are present at the Dutch Antilles, per island.



Figure 5. Detention facilities at the Dutch Antilles

Penitentiary system DA	St.				
	Curaçao	St. Maarten	Bonaire	Eustatius	Saba
police cells					
penitentiary institute					
house of custody (males)					
TBR (males)					
Female department					
juvenile department					

2

3.2.2 Cooperation with regard to detention capacity

The judicial system of the Dutch Antilles is self-supporting. This means that they have their own Public Prosecution Service, Police, Court of Justice and penitentiary system. Therefore, the system can function on its own. However, not each island has all types of facilities themselves, deal with shortages in staff and lacking detainment capacity. Alternative punishments, fines and early releases are being applied, but this still does not solve the problem of under-capacity. This situation makes cooperation between the islands necessary. Van Kesteren however argues that cooperation is the wrong word. There is an exchange of detainees due to the lack of cell capacity. The directors of the institutes are responsible for these exchanges. Arrangements are made through telephone contact and hardly any matters are fixed. Therefore *assistance* would be a better term (Van Kesteren, 2007).

In the current situation, detainees from St. Eustatius and Saba (legally, these islands just have police cells to detain people for utmost eight days) are transferred to the judicial institute at St. Maarten or when necessary Curaçao (which has special facilities for those entrusted to the government). Both Bonaire and St. Maarten deal with a shortage in capacity. Therefore, their surplus of detainees is being transported to Curaçao. As one might guess, Curaçao deals with a shortage in capacity as well. Van Kesteren concluded that there is another problem. She states that there are no uniform house rules, with the result that the regimes of the institutes differ so much that detainees often object to transfers. For example, most detainees do not want to go to Bon Futuro (Curaçao), because of the hard regime and the big scale (Van Kesteren, 2007). In exceptional cases juveniles are being transferred to a juvenile facility in the Netherlands.

3.3 Current detention capacity at the BES-islands

The detention facilities are mainly concentrated at Curaçao. Currently, the Dutch Antilles are one country. In the future however, Curaçao will be a different country within the Kingdom, which implies that the BES-islands will have to have their own penitentiary system. The BES-islands however have a very limited penitentiary system: it exists solely of one house of custody. Because the other detention facilities (police cells) officially do not fit into the definition of penitentiary system, the BES-detention capacity will be discussed as a whole.

3.3.1 Detention capacity

Bonaire has two police cell complexes (Kralendijk police station and Rincon police station) and one house of custody (Bonaire remand prison). The house of custody is situated next to the Kralendijk police station, which was restored in 2005. According to the CPT, it is in bad shape. The facility has a theoretical capacity of fifty-three places, but an actual capacity of twenty-seven places due to both a shortage in staff and its bad shape (CPT Report, 2007: 19). The institute contains three consulting

² In the annex, the articles who appoint these institutes are recited



rooms, two punishment cells and a women's division that contains three cells. The police stations Kralendijk and Rincon both just have a couple of police cells to their disposal. All institutes deal with shortages in staff.

St. Eustatius has one police station. It was built in 1963 and broken down on 29 May 2008. Currently, a new facility is being built (website government St. Eustatius). What it exactly will contain is not clear yet. The old building contained a few police cells, which can be appointed as houses of custody by the Dutch Antillean minister of Justice (art. 2.2 Abg).

Saba also has one police station that contains a few police cells. It is situated on the main road that leads to the capital. There are serious damages, due to the last two hurricanes, but the government has not been doing anything about it. The police cells at the main police office at Saba can also be appointed as houses of custody by the Dutch Antillean minister of Justice (art. 2.2 Abg).

Preliminaries

The Dutch Antillean law states that houses of custody are meant for detaining those who are sentenced to temporary custody, others who have been deprived of their liberty in case there is no other place for them (available) and detainees that are passing through (art. 5.1 Lbg). Also, those who have been sentenced to prison for a maximum of eight months can be kept there (art. 5.2 Lbg). The minister of Justice can temporarily assign detainees to a house of custody, when it serves the public interest (art. 5.3 Lbg).

3.3.2 Deficiencies

The European Commission for the Prevention of Torture (CPT) is an independent committee of the Council of Europe. She is authorized to visit places where the government detains inhabitants (both police stations and judicial institutes). In 2007, she visited Aruba, Bonaire and Curaçao, and published a report about the deficiencies she found. Since this research concerns the BES-islands, solely the deficiencies regarding the detention facilities at Bonaire shall be discussed. This information is needed in order for the reader to understand the seriousness of the problems.

According to the CPT, the detention facilities at Bonaire are filthy and there is an absence of call bells. People are being locked up in police cells over eighteen days, which is considered to be ill-treatment (CPT Report, 2007: 6). There have been cases of physical ill-treatment and verbal abuse by police officers, which is why the CPT recommends training (CPT Report, 2007: 8). Detainees get insufficient outdoor exercise (minimum is one hour a day), there are not enough beds, the multi-occupancy cells are too small (CPT Report, 2007: 23), there are no purposeful activities, and the premises deal with staff shortages (CPT Report, 2007: 24). Also, there is no systematic medical screening, there is no nurse present and no doctors room (CPT Report, 2007: 27). There is a lack of ventilation, and sometimes the premises are being left alone for hours (CPT Report, 2007: 10).

According to the CPT, detainees should be allowed to inform someone of their choice about their situation and they should have access to legal assistance, a doctor and the right to appeal against the detention order (CPT Report, 2007: 13, 18). Also, detainees should be informed properly about their rights and applicable procedures, through a written form (CPT Report, 2007: 14).

3.3.3 Consequences

The BES-penitentiary system will in the future be the responsibility of the Dutch central government. Although the demands of the CPT are not binding, it might be wise to live up to them.

The BES-islands do not have all necessary detention facilities themselves. The ones they do have, are in bad shape. This implies that they must either cooperate or build the necessary facilities themselves. Possible solutions for the BES-islands' lacking penitentiary system will be discussed in the next paragraph.



3.4 Future penitentiary system of the BES-islands

The Final Declaration states that the new countries (Curaçao, St. Maarten and the BES-islands) will be responsible for sufficient detention capacity themselves. As we have seen in the previous paragraph, the BES-penitentiary system will be the responsibility of the Dutch Ministry of Justice. Bonaire, St. Eustatius and Saba however do not have a physically strong penitentiary system: it solely contains the house of custody at Bonaire. In this paragraph, the possibilities with regard to the future BES-penitentiary system shall be described and evaluated. The current plans with regard to the BES-penitentiary system will be discussed. The options for the BES-islands to cooperate with other islands shall be explored. Also, the possibilities with regard to the physical changes of the BES-penitentiary system will be described and evaluated.

3.4.1 Current plans

According to the DJI, the Dutch minister of Justice has assigned the following tasks to the DJI:

- make the house of custody at Bonaire CPT-proof and fully operational;
- realize temporarily capacity at Bonaire when necessary;
- realize new, multifunctional and flexible institutes at Bonaire and St. Eustatius, and;³
- provide support to Aruba, Curaçao and St. Maarten, based on the cooperation agreement.

The detention capacity needs to be multifunctional and flexible so that all kinds of detainees can be kept there. The DJI also states that it was decided that the house of custody at Bonaire needs a detention capacity of at least ninety-five places, and that the plan for St. Eustatius is to create room for thirty detainees. The DJI expects that in 2011 there will be a multifunctional and flexible detention facility at St. Eustatius. Currently (December 2008), preparations have not yet started. According to the project *political changes Dutch Antilles*, the current activities at Bonaire mainly regard physical changes, such as air-conditioning and new toilets. In order to realize these changes, the DJI has send a couple of employees to Bonaire. Also, in the end of 2008, approximately twenty prison wardens went to Bonaire, in order to temporary solve the shortage in capacity and to give the current wardens the chance to get education. According to the DJI, the goal is to find as much as possible local personnel. The recruitment, selection and training shall start in 2009. The Dutch personnel shall then slowly be replaced by local personnel. The DJI also states that during the next months, they will do research concerning those entrusted to the government and young detainees at the Dutch Antilles. The results of this research will show whether to realize special institutes for them at the BES-islands or not. The results will probably be known in the beginning of 2009.

During this writing (January 2009), the plans with regard to the physical changes of the penitentiary system are not yet final.

3.4.2 The options for cooperation

There are many forms of cooperation. In this case, cooperation shall just be explored on the level of exchanging detainees by using detention capacity of other countries.

It was stated in the Final declaration that cooperation of Bonaire, Saba and St. Eustatius with foreign islands in the region is considered to be a good idea. Curaçao and St. Maarten have stated in the Final declaration that they would continue to provide support towards the smaller BES-islands with regard to detention capacity.

However, according to the DJI, in 2008 a detention regulation has been laid down which states that in principle no detainees from the BES-islands will be placed at Curaçao, St. Maarten and/or Aruba. A member of the DJI says: 'This decision of course has to do with the ministerial responsibilities of the Dutch minister of Justice'. Considering the underlying reason, one must

³ According to the DJI the choice for St. Eustatius instead of Saba was made because the island is bigger, it houses more people and anticipated upon a combination between detention facility and police station.



conclude that BES-detainees will not be placed at other foreign islands either, since the Dutch minister is not able to carry his responsibilities then either. This implies that the islands will need to realize all facilities themselves. However, not being able to carry responsibility with regard to BES-detainees might not be the only reason for laying down such a detention regulation. One must take into account that there were reasons for Curaçao and St. Maarten to become independent in the first place. It might very well be so that there is a lack of willingness from their side to cooperate with the smaller islands now that they will become part of the Netherlands.

Decisions and regulations are subject to change. According to Selznick (1992: 338), established structures, rules, methods, and policies are considered to be undergoing a continuous process of revision. He refers to this as 'reflexive responsibility'. It could be useful to find out what the legal and practical possibilities and difficulties of such cooperation are. Therefore, the options for cooperating with Curaçao, St. Maarten and/or Aruba, and with foreign countries, will be included in this research.

Although Curaçao, Aruba and St. Maarten are still part of the Kingdom of the Netherlands, as separate countries they will in the future have their own central governments. When detainees from the BES-islands would be placed at any of these islands, they would fall under the islands' government and legislation instead of under that of the Netherlands, and thus would a minister of Justice other than the Dutch minister of Justice carry responsibility with regard to these detainees. That is why, for this model, Curaçao, Aruba and St. Maarten are considered to be foreign islands.

3.4.3 Possibilities with regard to the physical changes

Two scenarios with regard to the BES-penitentiary system shall be explored: one that excludes cooperation with foreign islands (situation 1), and one that includes such cooperation (situation 2). For both scenarios, a total of eight possibilities shall be defined. These will be evaluated based on the multi criteria analysis as presented in paragraph 1.4.

Scenario 1. Without cooperation with foreign countries.

In this situation, the condition is that the BES-islands together have all necessary facilities to their disposal, since they are not allowed to cooperate with foreign countries. The necessary facilities are those that are needed to be able to detain all possible types of detainees. Types of detainees are: 'regular' detainees, women, juveniles and those entrusted to the government. Therefore, all necessary facilities are: a multifunctional penitentiary institute with special divisions for women and juveniles, and a TBR institute.

1. All facilities at each separate island.
2. All facilities at Bonaire and all facilities at St. Eustatius.
3. All facilities at Bonaire, and a house of custody at St. Eustatius.
4. One multifunctional penitentiary institute with special divisions for women and juveniles at Bonaire and one at St. Eustatius.

Scenario 2. Cooperation with foreign countries.

In situation 2, there are the same possibilities as in situation 1, complemented with the following.

- 3.1 St. Eustatius and Saba cooperate with foreign islands.
- 4.1 Detainees who need special care go to a foreign island.
- 5 A house of custody at Bonaire and a house of custody at St. Eustatius.
- 6 A house of custody at Bonaire.



Table 1. Possibilities with regard to the physical changes

Scenario 1. Without cooperation	Scenario 2. With cooperation
1. All facilities at all islands	
2. All facilities at B and EUX	
3. All facilities at B, and hoc at EUX	3.1 EUX and Saba cooperate with foreign islands
4. Multifunctional pen. institute (women/ juveniles)	4.1 TBR to foreign island
	5. Hoc at B and EUX
	6. Hoc at B

Now that the possibilities with regard to the BES-penitentiary system have been defined, it is time to evaluate them one by one with the help of the multi criteria analysis.

Each possibility scores 0, 1, 2, 3 or 4 points per criterion, based on the standards as laid down in paragraph 1.4, with 0 representing the lowest score, and 4 the highest.

1. All facilities at each separate island.

In this situation, each island will be provided with all facilities. There are no legal restriction with regard to this choice. It therefore scores the highest possible points on legality (4). This is the most extensive possibility with regard to the BES-penitentiary system. Transparency might be jeopardized by the high amount of facilities at the islands. This fact increases the need for means to execute supervision and decreases its possibilities to properly execute it. However, supervision is something that can be arranged. The Dutch minister of Justice can carry his responsibility with regard to the BES-detainees, since they will all be situated on territory belonging to the country the Netherlands. When all islands have all facilities to their disposal it will be possible to maintain unity in policy and law compared to the Netherlands. Therefore, this possibility scores (3) points on controllability. Such an extended penitentiary system in a small community can cause negative effects. Feelings of un-safety can occur amongst the BES-inhabitants, which causes a mental burden. On the other hand, for the BES-detainees it will be a good thing to be detained close to their homes, because it encourages family contacts and social reintegration. Physical burdens can occur as well. Examples are increased criminality and drugs. This will be a burden carried by the community, and not by the BES-detainees. That is why this possibility scores (2) points on acceptability. Saba has 1.400 inhabitants, St. Eustatius 2.500. The low number of inhabitants makes it non-efficient to provide each islands with all facilities. It will cost both the Dutch and BES-government a lot of money, time and effort. It would mean that a lot of money must be spent on building specialized judicial facilities with much specialized personnel, for very few people. There is one good thing about this: all detainees can be detained at their own island. However, efficiency declines considering that St. Eustatius and Saba are situated so close to each other that they can easily share facilities, which makes that the benefits are not so high either. This is why this possibility scores (1) points on efficiency.

2. All facilities at Bonaire and all facilities at St. Eustatius.

Would both Bonaire and St. Eustatius (shared with Saba) be provided with all facilities, there would be no legal restrictions (4). This possibility is less extensive than the prior one. Therefore, possibilities and means to execute supervision are easier to realize. For the same reason as with regard to possibility one, the minister of Justice can carry his responsibility. Unity in policy and law can be guaranteed and it can be kept relatively transparent. That is why this possibility scores the full (4) points on controllability. For the same reasons as with regard to possibility one (the possible negative effects of extended judicial facilities on a small community, and on the other hand the fact that detainees can be



placed close to their homes), this possibility scores (2) points on acceptability. Although it will still cost a lot of money to build all facilities at both Bonaire and St. Eustatius, St. Eustatius sharing facilities with Saba makes it considerably more efficient. So, there will be benefits for both the BES-islands and the Netherlands. Therefore, it scores (2) points on this criterion.

3. All facilities at Bonaire, and a house of custody at St. Eustatius.

This possibility implies that Bonaire has all facilities and St. Eustatius shares a house of custody with Saba. Article 17.1 of the Dutch Antillean penitentiary law states that ‘detainees shall be allocated, when possible, to prisons close to their homes’, in order to stimulate social reintegration. This law however is a preliminary law and therefore not strictly binding. Nonetheless, it is a law. When St. Eustatius and Saba only have a house of custody to their disposal and no cooperation with foreign countries is allowed, it means that all detainees other than those in temporary custody have to be transported to Bonaire, which is situated over 800 kilometres away from the other two islands. This implies a violation of the Dutch Antillean penitentiary law. The other three laws do not lay down any restrictions on this possibility. It therefore scores (3) points on legality. There will be sufficient possibilities and means for the Dutch central government to execute supervision. The minister of Justice can carry his responsibility, since all detainees are situated in the country the Netherlands. For the same reasons, unity in policy and law can be guaranteed. Although the number of facilities keeps it transparent, having to transfer detainees heavily decreases transparency. That is why this possibility scores (3) points on controllability. This possibility is less extensive than the prior ones. That is why the mental and physical burden on the BES-inhabitants will not be so high. For the BES-detainees however, it is socially nor morally acceptable to be placed that far away from home. The argument in the penitentiary law as discussed above, makes that clear. Therefore, this possibility scores (2) points on acceptability. In this case, the existing house of custody at Bonaire needs to be upgraded and a house of custody has to be build. Although this will cost money, time and effort, it will not be as much as with regard to the foregoing possibilities. Also, considering the number of inhabitants at the islands, one flexible penitentiary institute seems to be efficient. However, due to the distance between Bonaire and the other two islands, benefits decrease heavily. Therefore, this possibility scores (2) points on efficiency.

4. One flexible penitentiary institute with special divisions for women and juveniles at Bonaire and one at St. Eustatius.

In this case, Bonaire and St. Eustatius are provided with a flexible penitentiary institute. Facilities for detainees who need special care (e.g. those entrusted to the government and severe cases of juvenile criminals) are lacking. Without the possibility of cooperating with foreign countries, these detainees have to be detained in the Netherlands in Europe. Due to the regulation in the Dutch Antillean penitentiary law as discussed above, this possibility loses one point. There are no further legal restrictions, which is why it scores (3) points on legality. There will be sufficient possibilities and means for the Dutch central government to execute supervision. The minister of Justice can carry his responsibility, since detainees stay within the country the Netherlands. For the same reasons, unity in policy and law can be guaranteed as well. The penitentiary system will not be that much extended, which is why it will not decrease transparency. Therefore, this possibility scores the full (4) points on controllability. As discussed above, extensive judicial institutes can have negative effects on small communities. The mental burden on the BES-inhabitants will not be too high in this case, especially considering the fact that there will not be TBR. This also goes for the mental burden on the BES-detainees: although placing detainees far away from home is not acceptable, it regards just the few TBR cases. Most detainees can be placed close to their homes. That is why it together loses one point on the standard ‘mental burden’. The physical burden on BES-inhabitants, expressed in increased criminality and drugs will still be present. That is why this possibility scores (2) points on acceptability. Building all these new facilities will be expensive for both the islands and the Netherlands. However,



due to the distance between Bonaire and the other two islands, providing both Bonaire and St. Eustatius with flexible institutes seems efficient. The detainees that have to be transferred cost a lot of money, but transfers will not be common. Therefore, on efficiency, this possibility scores (3) points.

3.1 St. Eustatius and Saba cooperate with foreign islands.

This possibility implies that Bonaire is provided with all facilities and can therefore manage on its own. St. Eustatius shares a house of custody with Saba, meaning that they have to cooperate. Cooperation with foreign countries is allowed. It would be most logical to cooperate with St. Maarten, since it is the nearest by island and part of the Kingdom. When this would be the case there is no direct violation of article 17.1 of the Dutch Antillean penitentiary law since detainees can still be placed relatively close to their homes. There is no violation of any other law, which is why it scores the full (4) points on legality. Proper supervision on detainees that have been placed outside the country the Netherlands, in this case at St. Maarten, cannot be guaranteed. Detainees in the Netherlands have certain rights. These rights cannot be protected when detainees are placed in other countries with other laws. These are also reasons why the minister of Justice cannot carry his responsibilities with regard to these detainees. Unity in policy and law can therefore not be guaranteed either. The fact however that St. Maarten is part of the Kingdom makes it less non-transparent/ non-controllable. But still, there will be little control over those detainees. That is why the possibility scores (1) point on controllability. This possibility does not regard a big physical extension of the penitentiary system at the BES-islands. Therefore, there will not be an increased mental or physical burden on the BES-inhabitants. For the BES-detainees on the other hand, there will be both physical and mental burdens: they have to be transferred away from home and their rights cannot be guaranteed in other countries. It therefore solely scores (2) points on acceptability. Hardly any costs have to be made for the BES-islands: transferring detainees from these two islands to St. Maarten is non-expensive, because it is nearby, plus it saves money by not having to build all necessary facilities at the small islands. On the other hand, detainees still have to be transferred, which decreases the benefits. Nonetheless, it is quite efficient and therefore scores (3) points on this criterion.

4.1 Detainees who need special care go to a foreign island.

Here, Bonaire and St. Eustatius are provided with a flexible penitentiary institute, meaning that they only lack TBR facilities. Cooperation with foreign islands is allowed. Curaçao would be the most logical choice to cooperate with, since it is part of the Kingdom. Most detainees can be placed at their own island. Those entrusted to the government stemming from St. Eustatius and Saba would have to be placed over 800 kilometres away at Curaçao. However, considering that the other option is to place them in the Netherlands, this is still relatively close by. Therefore, there is no direct violation of article 17.1 of the Dutch Antillean penitentiary law, which is why this possibility scores (4) points on legality. Proper supervision is not possible on detainees who have been placed outside the Netherlands, their rights cannot be guaranteed which is why the minister of Justice cannot carry his responsibility with regard to them. Due to these facts, unity in policy and law cannot be guaranteed either. Although it regards just a few cases of TBR, transparency and therefore controllability heavily decreases, which is why this possibility scores (2) points on controllability. As with the foregoing possibility, burdens are placed on the BES-detainees when they need to be transferred to foreign countries: they will be far away from home and their rights cannot be guaranteed. It here regards just a few cases of TBR, which decreases the total amount of negative effects. In this case however, the penitentiary system at the BES-islands will be extended as well, which brings along the negative effects for the BES-inhabitants too. Therefore, it scores (2) points on the criterion acceptability. Having to build two new institutes at Bonaire and St. Eustatius will be rather expensive. On the other hand does this solution decrease the expenses for transferring detainees. This makes it rather efficient after all. All detainees, except for those entrusted to the government, can be placed at the islands themselves. It just regards a few



cases a year that need to be transferred to Curaçao, which is less expensive than all the way to the Netherlands. Therefore, it scores (3) points on efficiency.

5 A house of custody at Bonaire and a house of custody at St. Eustatius.

This possibility implies that there will be a house of custody at Bonaire and one at St. Eustatius, shared with Saba. It means that all detainees, except for those held in temporary custody, have to be transferred to foreign islands. Not all detainees can be placed close to their homes, which is in conflict with article 17.1 of the Dutch Antillean penitentiary law. Since there are no other legal restrictions, it scores (3) points on legality. Having to transfer all detainees, other than the temporary ones, to foreign islands causes the possibilities and means for the Dutch central government to execute supervision to heavily decrease. Detainees rights cannot be guaranteed, which is why the minister of Justice cannot carry his responsibility with regard to them. For the same reason, the unity in policy and law cannot be guaranteed either. However, choosing for cooperation with islands within the Kingdom makes it less non-transparent and non-controllable. Nevertheless, it are foreign countries, and therefore it scores just (1) point on controllability. With just one house of custody at Bonaire and one at St. Eustatius, the BES-penitentiary system will not be extended much. The negative effects on the communities are therefore not likely to occur. On the other hand, there will be negative effects for the BES-detainees: except for those in temporary custody, all must be placed outside the country the Netherlands, where their rights cannot be guaranteed and they are far away from home. This is both socially nor normatively acceptable, which is why it scores (2) points on this criterion. Although building costs will be low because not all facilities need to be build at the islands themselves, transferring all these detainees will be expensive: it will cost a lot of time and effort. However, due to the possibility of cooperating with the nearby island St. Maarten, transfer costs can be reduced. Therefore, it scores (2) points on efficiency.

6 A house of custody at Bonaire.

This possibility implies no physical changes with regard to the current BES-penitentiary system, meaning there would be just one house of custody at Bonaire. It would be most logical to let Bonaire cooperate with Curaçao, temporary detainees from St. Eustatius and Saba go to Bonaire, 'regular' detainees go to Curaçao. This implies that all detainees need to be placed at foreign countries, away from their homes, and without the guarantee of the rights they are entitled to. This is in conflict with article 17.1 of the Dutch Antillean penitentiary law, which is why it scores (3) points on legality. The need to cooperate decrease possibilities and means for the Dutch central government to execute proper supervision on their detainees. The minister of Justice cannot carry his responsibility with regard to the BES-detainees that are being transferred, as can the unity in policy and law be guarded. This and the fact that is concerns the transfer of practically all detainees, decreases transparency so much that it scores (0) points on controllability. For the same reasons as with regard to the prior possibility, the situation in which there will be just one house of custody at Bonaire, scores (2) points on acceptability. Also, for the same reasons as with regard to the previous possibility, costs will be relatively low, but benefits will be relatively low as well. In this case, even more detainees need to be transferred to foreign countries, which is why it scores solely (1) point on efficiency.



Based on this evaluation, the following table is constructed.

Table 2. Assessing the future possibilities with regard to the BES-penitentiary system

Future possibilities			Scenario 1				Scenario 2			
	Criteria	Scale	1	2	3	4	3.1	4.1	5	6
	Legality	0-1-2-3-4	4	4	3	3	4	4	3	3
	Controllability	0-1-2-3-4	3	4	3	4	1	2	1	0
	Acceptability	0-1-2-3-4	2	2	2	2	2	2	2	2
	Efficiency	0-1-2-3-4	1	2	2	3	3	3	2	1
			10	12	10	12	10	11	8	6
			44				35			

3.5 Conclusion

In this chapter, the question ‘What physical changes does the BES-penitentiary system need?’ was answered. The BES-islands do not have a physically strong penitentiary system. It solely exists of one house of custody at Bonaire. Each island has a few police cells at its disposal, but these are not included in the future system. Most facilities are concentrated at Curaçao, meaning that the other Dutch Antillean islands have to detain their detainees there. In the future however, this might no longer be possible since it will concern different countries. The Dutch central government will in the future be responsible for the BES-penitentiary system. The BES-islands do not have all necessary detention facilities themselves. The ones they do have are in bad shape. This implies that the islands must either cooperate or build the necessary facilities themselves. Currently, there are no final plans with regard to the BES-penitentiary system. Two scenarios with regard to possible physical changes of the penitentiary system have been formulated: with and without cooperation. These scenarios were further distinguished into eight possibilities. Based on the multi criteria analysis, it can be concluded that the possibilities within the scenario ‘without cooperation’ (44 points) together have a substantially higher score than the possibilities in the scenario where cooperation with foreign countries is included (35 points). This is mainly due to the decreased controllability in case of cooperation with foreign countries. With 12 points, the best theoretical possibilities with regard to the physical changes in the penitentiary system at the BES-islands, are possibility 2 (All facilities at Bonaire and all facilities at St. Eustatius) and 4 (One multifunctional penitentiary institute with special divisions for women and juveniles at Bonaire and one at St. Eustatius). The difference between the two is that possibility 2 includes TBR facilities. Possibility 4 implies that those entrusted to the government should be transferred to the Netherlands in Europe. It can be concluded that the penitentiary system must be extended, not only at the biggest island Bonaire, but at St. Eustatius as well. Having to build more, means having to spend more money. On the other hand, not having to transfer all detainees from St. Eustatius and Saba to Bonaire saves a lot of time, money and effort as well. So this might be more efficient after all. Although option 4 is the most efficient, it conflicts with article 17.1 of the Dutch Antillean penitentiary law. The question then rises what is more important: to follow a preliminary law or to strive for efficiency. This question is for the Ministry of Justice to be answered. What is for sure, is that changes are needed, since the possibility that represents the current situation scores the lowest with 6 points.



4. Managing the future overseas penitentiary system

The Dutch Ministry of Justice wants to know how the penitentiary system at the BES-islands can best be managed by the DJI, taking into account the geographical distance with the main office in The Hague. They also want to know how the BES-penitentiary system can cooperate with the BES-Public Prosecution Service and the BES-Police. In order to answer these questions, the DJI shall be studied. The findings in chapter 2 with regard to different ways of task allocation and modes of governance shall be applied to the management of the future BES-penitentiary system by the DJI. Three management options will be defined. They will be evaluated based on the multi criteria analysis as presented in paragraph 1.4. Also, the possible influence that physical changes of the BES-penitentiary system might have on what the best way would be to manage the system will be taken into account. The current judicial system of the Dutch Antilles and the future judicial system of the BES-islands will be explored in order to answer the second question from the Ministry of Justice with regard to cooperation between the BES-penitentiary system, Police and Public Prosecution Service. Finally, an overall conclusion will be drawn.

4.1 The DJI

In the Netherlands, the execution of sentences and measures that concern a deprivation of freedom is reserved for the government. The care for the penitentiary system is a state task. Therefore, the final authority is carried by the central government - the minister of Justice (art. 3.2 Pbw). The government devolved this task to the DJI. The DJI is an agency functioning under the Ministry of Justice. This status provides him with a relative independence in executing his tasks. This concept refers to the attribution or delegation of tasks to state officials (Van der Pot, Donner, 2001: 693-694). The DJI cooperates with several organizations such as the Police, the judiciary and the Public Prosecution Service. Its hundred establishments and 19.000 employees make him one of the biggest organizations in the Netherlands. Once the penitentiary system at the BES-islands becomes Dutch, the DJI will be legally responsible for managing its judicial institutes as well.

In the previous chapter we have seen that during this writing (December 2008), employees of the DJI are at Bonaire to take care of the physical changes concerning the house of custody. But what will happen once they are finished? Will employees of the DJI stay at Bonaire or will they go back to The Hague and manage the penitentiary system from there?

4.2 Managing the future BES-penitentiary system

The situation with regard to the BES-penitentiary system asks for a different approach than the penitentiary system in the Netherlands does: the islands are situated far away from the Netherlands in Europe, the distance between the islands is big, the islands are small, have a total different culture, etcetera. The goal is to find the most optimal way in which the DJI can manage the BES-penitentiary system, bearing in mind the geographical distance with the main office in The Hague. By doing so, three management options will be evaluated. After that, these options will be discussed in the light of the two scenarios (with or without cooperation) as discussed in the previous chapter.

4.2.1 Three management options

The penitentiary system in the Netherlands is managed in a centralistic way. The task of the DJI is a form of *de-concentration*. According to Van der Pot and Donner, de-concentration is the geographical spreading of by attribution or delegation appointed tasks and authorities. Decentralization solely concerns regulations and governance. De-concentration concerns the assignment of tasks and authorities to officials (e.g. fieldwork/ staff and inspections), who are obliged to live up to the instructions of the concerning Ministry (Van der Pot, Donner, 2001: 694). Treisman also refers to this



as 'administrative decentralization' (Treisman 2007: 23-25). The situation with regard to the BES islands concerns the internal de-concentration of tasks, meaning 'within the organization of the DJI'.

Daft discusses (de)centralization on the organization level. According to him 'Centralization and decentralization pertain to the hierarchy level at which decisions are made'. He states that centralization means that decisions are made at the top and decentralization means that the decision authority is laid down in lower organization levels. Decentralization is believed to relieve the burden on top managers, make greater use of employees' skills and abilities, ensure that decisions are made close to the action by well-informed people, and permit more rapid response to external changes (Daft, 2006: 355). Although Daft speaks of decentralization, from now on, it will be referred to as de-concentration.

The final authority over the Dutch penitentiary system lies at the central level. However, this task is de-concentrated to the DJI. With the new BES-penitentiary system, the question rises whether and how it should be further de-concentrated. In line with that thought, three options for managing the BES-penitentiary system have been formulated. These are based on the three modes of governance as discussed in chapter 2: hierarchical governing, co-governing and self-governing.

Three options for the DJI to manage the BES-penitentiary system:

1. The DJI manages the BES-penitentiary system from The Hague.
2. The DJI establishes an executive office at the BES-islands to manage the penitentiary system.
3. The BES-islands institute their own DJI: the BES-DJI.

The question 'How can the penitentiary system at the BES-islands be strategically managed best, in relation to the concrete future situation at the BES-islands?' will be answered through evaluating these three management options for the DJI.

Each option scores 0, 1, 2, 3 or 4 points per criterion, based on the standards as laid down in paragraph 1.4, with 0 representing the lowest score, and 4 the highest.

1. The DJI manages the BES-penitentiary system from The Hague.

When the DJI manages the BES-penitentiary system from The Hague, it would mean that once in a while employees from the DJI have to come to the islands to execute supervision. It implies that there will be no permanent presence of DJI-employees at the islands. The care for the penitentiary system is a state task, which is why the central government carries the end responsibility for it.

There are no legal restraints for managing the penitentiary system of the overseas public bodies from The Hague, as long as the central government is able to carry this responsibility. Since it does by appointing the DJI as legally responsible for the BES-penitentiary system, it scores (4) points on legality. In practice however, the control by the DJI over the BES-penitentiary system will be moderate. When there would not constantly be employees of the DJI present at the island, transparency of the system would decrease, due to the lack of information and supervision. Possibilities and means for the Ministry of Justice to properly execute supervision cannot be guaranteed, because direct communicative connections with the other parties that are involved (e.g. the Public Prosecution Service and the Police) are missing. It will also be hard for the Dutch minister of Justice to make decisions and anticipate on rapid change when one is not close to the action. That is why he cannot optimally carry his responsibility with regard to the penitentiary system. These deficiencies are all due to the distance between the main office in The Hague and the BES-islands. There can be unity in policy and law, since all falls under the authority of the Dutch minister of Justice. However, the execution of policy and laws cannot be supervised correctly. Therefore, on controllability this management option scores (1) point. These facts cause the social and moral acceptability to be low as well. By applying this management option, the penitentiary system at the BES-islands hardly gets any attention, while it definitely needs it concluding from the CPT Report. The BES-government



would be on its own, which might weigh heavily upon them in terms of physical burden. Another reason why acceptance is low, is because people from the Netherlands will mingle in. While they know little about the situation, it will be up to them to decide what must be done. Although no research has been done on this matter, it is most likely that the people who have been working in the penitentiary system for years are not going to be happy with the Dutch DJI mingling and telling them what to do. These mental burdens will not be felt by BES-detainees, maybe a little bit by the inhabitants, but most by the government. That is why this option scores (2) points on acceptability. Although this option seems efficient in the sense that it will not cost a lot of people, money and time, the benefits on the other hand will not be high. The one positive fact - creating uniformity through top down management - does not weigh up to the deficiencies that this management option creates. That is why (2) points are given on the criterion efficiency.

2. The DJI establishes an executive office at the BES-islands to manage the penitentiary system.

Would the DJI institute an executive office at the BES-islands to manage the penitentiary system, it would imply that it has a certain amount of freedom in executing regulations. However, these regulations will be laid down by the central DJI in the Netherlands. To put it otherwise, tasks would be decentralized from the central DJI in the Netherlands to the executive office of the DJI at the BES-islands.

There are no legal restraints with regard to this management option, for the same reason as with regard to the previous option. That is why it scores (4) points on legality. The system will be increasingly transparent, since employees of the DJI will be present at all times to manage and supervise the penitentiary system at location. Because of their presence, direct communicative connections with the other parties that are involved (e.g. Public Prosecution Service, Police) can easily be maintained. This will contribute to being able to make (rapid) decisions and anticipate on rapid changes. This provides them with the ability to make well-informed decisions regarding the system. Therefore, the presence of possibilities and means for the Ministry of Justice to execute supervision and to carry its responsibilities can be guaranteed. For the same reasons, unity in policy and law cannot only be realized, but supervised as well. It therefore scores the full (4) points on controllability. In this case, there will be no physical burden on either the BES-government, inhabitants and detainees, since the Dutch DJI will do the job. There could however be some mental burden, due to the fact that the Dutch will take over a part of their system in their way, with their measures. This can cause a possible conflict as with regard to the prior option. On the other hand, the penitentiary system now gets the help and attention it needs and the DJI will be at location to deliberate with the people who work in the penitentiary system, which will probably make it more acceptable for the people at the BES-islands. That is why it scores (3) points on acceptability. Establishing a DJI-executive office will cost a considerably amount of people, time and money. On the other hand, the benefits are high too, in terms of for example controllability and acceptability. Therefore, on the criterion efficiency, this management option scores (2) points.

3. The BES-islands institute their own DJI: the BES-DJI.

When the BES-islands would institute their own DJI, it implies that it can function autonomously in the sense that it will not have to obey to a central Dutch DJI in the Netherlands in Europe. Of course, it will fall under the authority of the Dutch Ministry of Justice, like the DJI in the Netherlands. This BES-DJI would become a second DJI of the country the Netherlands.

There are no legal restraints for managing the BES-penitentiary system as long as the central government can carry its responsibility. The Dutch minister of Justice can still carry his ministerial responsibility with regard to the BES-penitentiary system, because the BES-DJI falls under his authority. Therefore, it scores (4) points on legality. Adding a new DJI for BES-islands can decrease transparency, since the minister of Justice has less control over it when it is not connected to the



Dutch DJI. It would also decrease unity in policy and law within the Dutch penitentiary system, and the supervision on it. On the other hand, the BES-penitentiary system needs another approach than the Dutch penitentiary system because the situation at the islands is totally different. So this might not be an objection after all. Anyway, presence of possibilities and means for the minister of Justice to execute supervision will heavily decrease, which is why he cannot carry his responsibility with regard to the penitentiary system. This is why, on controllability, it scores (2) points. When the BES-islands must establish their own DJI, this might cause both a physical and mental burden on the government. Physical in the sense that it would cost them a considerable amount of money, time and effort, especially since the BES-islands are not so much developed. It might be too much to ask from them, even with the help of the Netherlands. A mental burden can occur as well, in the sense that this would be something that is directed by the Dutch government. Directions that might not be taken friendly. This might be felt by the inhabitants as well, but not by the detainees. This option therefore scores (1) point on acceptability. A separate DJI, especially designed for the BES-islands has to be developed. This will cost a lot of people, time and money. More than it would when establishing an executive office, because it needs more organization to develop a new concept. Since the benefits are not so high either, this option scores (2) points on efficiency.

Table 3. Assessing three management options

Management options		The Hague	Executive office	BES-DJI	
	Criteria	Scale			
	Legality	0-1-2-3-4	4	4	4
	Controllability	0-1-2-3-4	1	4	2
	Acceptability	0-1-2-3-4	2	3	1
	Efficiency	0-1-2-3-4	2	2	1
			9	13	8

4.2.2 Optimal management in relation to the physical changes

As Daft stated: 'The amount of centralization or decentralization should fit the organization's strategy' (Daft, 2006: 355-356). We assume here that the most fitting type of management might depend on the choice for a particular scenario, meaning that scenario 1 needs another way of management than scenario 2. As discussed in the prior chapter, the choice for one of these scenarios is not definite yet. Therefore, the optimal management model for both scenarios shall shortly be discussed.

Scenario 1. Without cooperation with foreign countries.

This scenario implies an extension of the BES-penitentiary system, which means an extension of the task for the DJI. In combination with the already existing shortage in personnel and the need for educating personnel, the help of an executive office of the DJI would come in hand.

Scenario 2. Cooperation with foreign countries.

The task of the DJI includes judicial institutes only. When the choice falls on this scenario, it would mean that the DJI will not have a task at St. Eustatius and Saba, because according to the penitentiary law, police cells fall under the authority of the Ministry of the Interior and Kingdom Relations. However, the DJI would then have another task: coordinating the transfers of BES-detainees to foreign countries and guarding their detainment in foreign countries. It might also still be wise to support the house of custody at Bonaire, especially with regard to the conclusions of the CPT - the bad physical shape, the shortage in personnel and the need for educating personnel. The question



remains whether it will be necessary to either provide Bonaire with an executive office of the DJI, or that some help in the current situation to make sure that the house of custody is functioning well will be sufficient. Or perhaps, some periodical visits will due.

4.3 Current judicial system of the Dutch Antilles

The second question from the Dutch Ministry of Justice reflects on how the BES-penitentiary system can best cooperate with the Police and the Public Prosecution Service in relation to the concrete future situation on the BES-islands. In order to be able to answer this question, the current judicial system of the Dutch Antilles will be explored. Then, the future judicial system of the BES-islands, including its actors, will be explored. Based on this, in the end, the possibilities of cooperation within the BES-judicial system will be discussed.

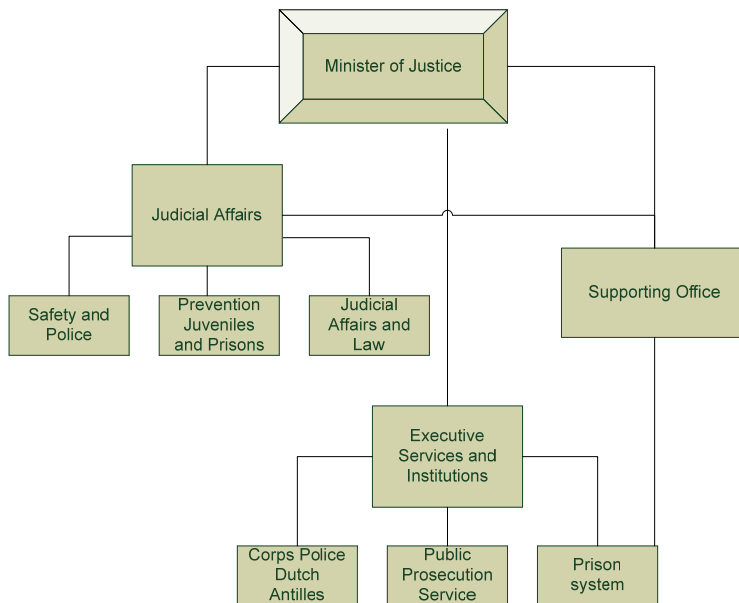
The Dutch Antillean *Landsverordening organisatie Landoverheid* (LoL; free translated: State regulation Organization State government) appoints the Ministry of Justice of the Dutch Antilles as legally responsible for among others the detention law, the judicial apparatus, judicial juveniles protection, policy concerning public order, detention care and the penitentiary system (art. 7 LoL). The authority over the Dutch Antillean penitentiary system is also laid down in the *Landsverordening beginselen gevangeniswezen* (Lbg; free translated: State regulation preliminaries penitentiary system), which states that the final authority over the penitentiary system is carried by the minister of Justice of the Dutch Antilles (art. 13 Lbg). In short, the minister of Justice of the Dutch Antilles is responsible for the entire judicial system.

The Dutch Antillean Ministry of Justice contains a board of directors *Judicial Affairs* (art. 13.1e LoL), which is responsible for the development of policy and advice, quality monitoring, and the preparation and control over state laws and regulations (website government Dutch Antilles). A division *Executive services and institutes* is responsible for, amongst others, the Corps Police Dutch Antilles, the Public Prosecution Service and the registry of the joint Court of Justice of the Dutch Antilles and Aruba (art. 16e LoL). The board *Judicial Affairs* contains three divisions: Safety and Police, Prevention, Juveniles and Prisons and Judicial Affairs and Law. The fact that the Police, the Public Prosecution Service and the penitentiary system fall under the same authority implicates that there is no strict separation of powers, as in the Netherlands. The Ministry gives advice and contributes to the development and execution of national policy and law with regard to judicial affairs and safety. Also, they guard the quality of maintenance of law, judicial complaint treatment, detention care, probation, after-care services and victim care, and judicial juvenile protection.



To clear things up, an organization chart of the current Ministry of Justice is given below.

Figure 6. Organization chart Dutch Antillean Ministry of Justice



During an RTC in March 2006, it was concluded that the Dutch Antillean judicial system deals with several deficiencies. Therefore, they recommend that rules should be laid down to guarantee the independence of the judicial power. Also, it was stated that the competences and independence of the Public Prosecution Service have to be guaranteed, through an adequate legal enforcement chain. The penitentiary system, the Security services, prevention and re-socialisation are important issues and therefore need attention. According to the report, unambiguous rules concerning management and authority of the Public Prosecution Service and the Police are needed (V-RTC, March 2006: 2-11).

4.4 Future judicial system of the BES-islands

With the dismantling of the country Dutch Antilles, the current judicial system will cease to exist and the four separate countries shall each formally have their own judicial system. The question rises what the future judicial system of the BES-islands will look like and who will have the authority over the different divisions. In order to answer this question, the actors within the BES-judicial system shall be studied. The focus lies on how responsibilities and authorities can best be adjusted to each other. The reader must be reminded that not all choices in legislation have yet been made, which is why both Dutch and Dutch Antillean legislation will be referred to.

Until 2010, the Dutch Antillean minister of Justice will remain responsible for the whole BES-judicial system. After that, the Dutch minister of Justice will take over this political responsibility.

During an RTC in May 2008, the Netherlands, the Dutch Antilles, Curaçao and St. Maarten reached an agreement about the contents of new Consensus national laws. These new laws imply that there will be a Joint Court of Justice for the countries Aruba, Curaçao, St. Maarten and the BES-islands. There will be separate Public Prosecution Services for Curaçao, St. Maarten and the BES-islands, which will fall under the authority of one attorney general. Also, there will be separate Police Corpses for Curaçao, St. Maarten and the BES-islands (RTC, 23 May 2008).

For the BES-islands, the main rule is that as many as possible responsibilities will be carried by the islands themselves. State tasks however will in the rule be carried by the Dutch central government. In the WoIBES, this idea is laid down by stating that the authority over the islands lays in the hands of the island governments and that this authority can only be taken away when explicitly laid



down in the law (art. 134 WoIBES). From now on, when something is a state task in the Netherlands, it will be considered a state task at the BES-islands, and that therefore these responsibilities will in the end be laid down in the law as such. However, we must keep in mind that although the final responsibility is laid down at a central level, certain tasks can and will be decentralized.

4.4.1 The actors

Three actors of the BES-judicial system shall be explored: the BES-penitentiary system, the BES-Police and the BES-Public Prosecution Service. The BES-penitentiary system has been thoroughly discussed in the previous chapter, but this will shortly be summarized here.

4.4.1.1 The BES-Police

The Police has two legal tasks: maintaining public and legal order. She has to account for her actions to different authorities. The maintenance of public order is executed under the authority of the mayor (art. 12.1 Polw) and therefore indirectly under the minister of the Interior and Kingdom Relations. The second task, maintaining legal order, is executed under the authority of the district attorney of the Public Prosecution Service (art. 13.1 Polw) and therefore indirectly under the minister of Justice. The Police is a typical hierarchical organization. She is a complex organization, because she cooperates with several different actors. She is both bounded to the law and binds inhabitants to the law. The final authority over the BES-Police Corps and the police cell complexes is a state task and is therefore carried by the Dutch central government. The BES-islands will have a shared Police Corps. Article 172 of the WoIBES states that the public authorities of the BES-islands are charged with the maintenance of public order and in charge of the Police. Since the final authority over the Police is a state task, it will be carried by the Dutch central government. The BES-Police will become the 26th Police Corps of the Netherlands.

4.4.1.2 The BES-Public Prosecution Service

The Public Prosecution Service, together with the judges, forms the judiciary. It has three main tasks: tracing illegal facts, prosecuting illegal facts and supervising the execution of sentences. The Police executes the task of tracing illegal facts, for which the Public Prosecution Service carries the end responsibility. Representatives of the Public Prosecution Service, district attorneys, therefore have authority over the detection research by the Police. The minister of Justice is politically responsible for the Public Prosecution Service. In court, the judge decides whether the Police and the Public Prosecution Service executed their job well. In the future situation, the six islands (Curaçao, St. Maarten, the three BES-islands and Aruba) will share one Court of Justice. The four countries will have four separate Public Prosecution Services, but share one Attorney general. The Attorney general is the legal adviser to the government. With regard to the BES-islands, this means that each island will have its own district attorney. A district attorney is an official prosecutor for a judicial district. They fall under the authority of the public prosecutor of the BES-Public Prosecution Service and the Attorney general. When the BES-islands have become public bodies of the Kingdom of the Netherlands, they will have their own Public Prosecution Service. Since the BES-islands will be public bodies of the Netherlands, this Public Prosecution Service will formally be Dutch. Although the final authority over the Public Prosecution Service is a state responsibility, the minister of Justice has a modest role, since the Public Prosecution Service must be independent as being part of the judiciary.

4.4.1.3 The BES-penitentiary system

The general goal of the penitentiary system is to lock up people that form a danger for society, to discipline and educate them and to prepare them for a return to society. The penitentiary system is a complex organization. It has to cooperate with several different actors, such as the Public Prosecution Service and the Police. There will be one penitentiary system for the BES-islands. Currently, this system solely exists of the house of custody at Bonaire. Due to the earlier discussed article 134 of the



WolBES, the management of the public bodies rests in the hands of the island councils themselves. The care for the penitentiary system is however a legal state task. Since the Dutch government takes over the state tasks regarding the BES-islands, that before were carried by the Dutch Antillean government, the Dutch minister of Justice will in the future carry the formal authority over the BES-penitentiary system, as it does in the Netherlands (art. 13 Lbg and art. 3 Pbw). The daily management of the house of custody at Bonaire is executed by a director (art. 14 Lbg and art. 3.3 Pbw), who provides the minister of Justice with information concerning the institute (art. 5a.2 Pbw). The care for the Dutch penitentiary system is devolved to the DJI. Their task will also apply to the BES-penitentiary system.

In short, the three actors all operate in the judicial chain and therefore have to cooperate: the police traces offenders - sometimes in cooperation with the Public Prosecution Service, the Public Prosecution Service prosecutes offenders, and the penitentiary system locks them up. After that, the Probation and After-care Services is called in. The BES-islands will have their own police, Public prosecution Service and penitentiary system. Local authorities carry responsibility for them, the end responsibility however will be carried by the Dutch government. The penitentiary system falls under the authority of the minister of Justice, as does the Public Prosecution Service, but then strictly in a political way, and the police under the minister of the Interior and Kingdom Relations. So, the actors already cooperate, because they are forced to cooperate. What is really missing is a good communication model with which they can optimize their future cooperation.

4.4.2 Communication within the BES-judicial system

The Ministry of Justice wants to know what the best way is for the penitentiary system to cooperate with the BES-Police and the BES-Public Prosecution Service. Therefore, a communication model will be designed. The Dutch triangle deliberation shall be used as a basis. Of course, the law and the particular situation at the BES-islands shall be taken into account by designing the new communication model for the BES-islands.

4.4.2.1 The Dutch triangle deliberation

The reader will be presented with a Dutch deliberation model, which is designed for optimizing the cooperation between the Police, the authorities and the Public Prosecution Service. It might be interesting to study this model in order to find out whether it can be useful for the intended cooperation at the BES-islands.

In the Netherlands, the Police is divided into 25 Corpses, that each cover several municipalities. It also has a national Corps (the KLPD). The Public Prosecution Service is responsible for maintenance of the law and the prosecution of criminals. The authorities are responsible for the public order and safety. In order to execute their tasks, they both need the Police, which falls under their authority. This creates a mutual need for cooperation and therefore communication. That is why in the Netherlands the so called *triangle deliberation* was established. It was instituted after the police organization was reformed in 1994, and provides in fulfilling the *role of publicity*. This deliberation exists on a regional and local level. Legal grounds for these deliberations are laid down in the *Politiewet 1993*. This law states that the mayor and the district attorney frequently deliberate with the chief of the territorial part of the regional Police Corps, within whose territory the municipality fully or partially falls, and, if necessary, with the Corps chef, about the task execution of the Police (art. 14 Polw). This article prescribes the deliberation on a local (municipality) level. The *Politiewet 1993* also states that the Corps manager and the main district attorney frequently deliberate with the Corps chef, about the organization, formation, the budget, the year account, the policy-plan and the year report for the regional Police Corps, the execution of the policy-plan and the realization of the goals. The Corps manager, main district attorney and the Corps chef, provide each other with the necessary inquiries



(art. 27 Polw). This article prescribes the deliberation on a regional level. Table 5 shows the Dutch local and regional deliberation models.

Table 4. The regional and local Dutch triangle deliberation

<i>Dutch triangle deliberation</i>	Police	authorities	PPS
local	chief of Police	mayor	district attorney
regional	Corps chef	mayor biggest municipality	main district attorney

The chief of Police and the Corps chef are the daily managers of respectively the local and regional Police Corps. The mayor and the mayor of the biggest municipality of the region are the strategic managers of respectively the local and regional Police Corps.

4.4.2.2 Cooperation model for the BES-penitentiary system

Since the BES-islands will formally be Dutch public bodies, it might be wise to provide them with a similar communication model, in order to create uniformity in the Dutch judicial system. The Dutch model however does not fully foresee in the intended cooperation as formulated by the ministry of Justice: it includes the authorities and excludes the penitentiary system. Also, it does not take into account the geographical distance between Bonaire and the other two islands. Here, a communication model will be designed that is fitted for the BES-islands.

Translating the Dutch triangle deliberation to a communication model for the BES-islands.

Would we literally translate the Dutch model to the BES-islands, the 26th Dutch Police Corps (the BES-Police Corps) would be managed by a Corps chef. This Corps chef would fall under the authority of both the governor of Bonaire, who represents ‘the mayor of the biggest municipality’ (public body), and the main district attorney. Since Bonaire is the biggest island, it would make sense to situate the BES-Public Prosecution Service and the main office of the BES-Police Corps at this island. Because this implies that all participants of the regional triangle deliberation would be situated at Bonaire, it will be logical to let the regional triangle deliberation take place at this island. However, as discussed before, there are two reasons why literally translating the Dutch model to the BES-islands is of little use.

Deficiencies:

1. the model does not take into account the geographical distance between the islands and;
2. it does not fully foresee in the intended cooperation model of the Ministry of Justice.

Here, these two deficiencies will be further explored and solutions will be put forward.

Deficiency 1. The Dutch model does not take into account the geographical distance between Bonaire and the other two islands: when everything would be situated at Bonaire, there will be hardly any supervision on St. Eustatius and Saba, since they are situated more than 800 kilometres away.

Solution 1. Both regional and local deliberations.

Deliberation at each separate island between the local chief of Police, the district attorney and the island governor, could considerably encourage communication and the possibilities of supervision. The chiefs of Police send regular reports to the Corps chef, letting the district attorneys send regular reports to the main district attorney and letting the island governors of St. Eustatius and Saba send regular reports to the island governor of Bonaire. In this way, the three chiefs of Police can be supervised by the main Corps chef, and the district attorneys at the separate islands can be supervised by the main district attorney. Or to put it otherwise, the islands secondary triangle deliberations can be supervised by the main triangle deliberation.

With regard to the need for independence and impartiality, the task that in the Netherlands is carried out by the mayor of the biggest municipality, could also be carried out by the new State



representative of the three public bodies. This would imply that he will be in charge of the main triangle deliberation.

Deficiency 2. The Dutch model does not fully foresee in the desired cooperation as formulated by the Ministry of Justice: the Dutch triangle deliberation takes place between the Police, the authorities and the Public Prosecution Service, while the BES-islands need a communication model for the penitentiary system, the Police and the Public Prosecution Service.

Solution 1. Create a communication model based on the current executive office.

A communication model can be created, based on the department *Executive Services and Institutes*. Since this existing department exactly contains the actors as mentioned by the Dutch Ministry of Justice, it might be an idea to maintain the communication within the current department.

The disadvantage of such a communication model is that the intentional idea of the Dutch triangle deliberation must be dropped. The Dutch triangle deliberation foresees in the role of publicity. The authorities play an important role in this since they are, together with the Police and the Public Prosecution Service, responsible for the public and legal order. Also, the authorities are the strategic managers of the Police Corps. It might therefore not be wise to leave them out of such a communication model.

	Dutch triangle deliberation
	Complementary parts
	Excluded parts

BES-cooperation model	Pen. sys.	Police	PPS	Authorities	Other org.
Dutch triangle deliberation					
<i>Desirable cooperation</i>					

4

Solution 2. Create a communication model for the whole judicial chain.

Another option would be to complement the Dutch cooperation model with all relevant actors within the judicial chain.

This would make it complete and therefore more effective. To make it more efficient, the actors could share one building. However, the risk of sharing one building is that independency of the separate actors might become jeopardized. Also, one can ask himself whether involving all actors within the judicial chain will be necessary at all times. It might be an option to do this structurally (ones or twice a year).

BES-cooperation model	Pen. sys.	Police	PPS	Authorities	Other org.
Dutch triangle deliberation					
<i>Desirable cooperation</i>					
<i>Possible communication</i>					

Solution 3. Complement the existing Dutch deliberation model with the penitentiary system.

The penitentiary system, represented by the DJI, could when relevant be invited to the regional triangle deliberation. On the local level, the penitentiary system, represented by the directors of the judicial institute(s) on the concerning island could when relevant be invited to the local triangle deliberations.

⁴ Pen. sys.: penitentiary system, PPS: Public Prosecution Service, Other org.: other organizations



The question then rises why the penitentiary system should deliberate with the authorities. A good functioning penitentiary system contributes to the public order and safety. Also, in the current situation, under the Dutch Antilles, the Police falls under the authority of the Ministry of Justice. Under the Netherlands, this will no longer be the case: the Police will then come to fall under the authority of the Ministry of the Interior and Kingdom relations. Since this is new for the involved parties, good communication with the authorities is important. Especially in the beginning it might be wise to closely inform each other.

BES-cooperation model	Pen. sys.	Police	PPS	Authorities	Other org.
Dutch triangle deliberation					
Desirable cooperation					
Possible communication					
<i>Advisable deliberation</i>					

To summarize:

- Good communication is important, especially in the beginning. This can be established by structural deliberation;
- In designing a cooperation model for the BES-islands, the Dutch triangle deliberation can best be used as a basis in order to create uniformity in Dutch policy and law;
- Due to the geographical distance, there should be deliberations on both the regional and local level;
- It is best to include the authorities with regard to any deliberation, because of the important role they play and the changing situation.

4.5 Conclusion

In this chapter, the questions ‘How can the penitentiary system at the BES-islands be strategically managed best, in relation to the concrete future situation at the BES-islands?’ and ‘How can the BES-penitentiary system cooperate with the BES-Police and the BES-Public Prosecution Service, in relation to the concrete future situation at the BES-islands?’, were answered. The execution of sentences and measures that concern a deprivation of freedom is reserved for the government. In the Netherlands this task is devolved to the DJI, an agency under the Ministry of Justice. This is a form of de-concentration. Three management options have been formulated for the DJI: managing the BES-penitentiary system from The Hague, establishing an executive office at the BES-islands and institute a BES-DJI. Based on the multi criteria analysis, the second option - establishing an executive office of the DJI at the BES-islands - has the highest score (13 points) and therefore seems to be the best option with regard to managing the BES-penitentiary system. This options’ high score is mainly due to its relatively high scores on controllability and acceptability. The next question regards the possible influence of future physical changes on this conclusion. In the first scenario the system is extended and therefore the DJI will have an extended task. In scenario two, where there is cooperation with foreign countries, coordinating the transfers of BES-detainees and guarding their detainment in foreign counties will be necessary. This will also extend the task for the DJI. From the foregoing, it can be concluded that in both situations, it would be wise to establish an executive office of the DJI at the BES-islands. The RTC concluded that the current Dutch Antillean judicial system has many deficiencies. With the dismantling of the country Dutch Antilles however, this judicial system will cease to exist. The BES-islands will be provided with: their own penitentiary system, which falls under the authority of the minister of Justice; a BES-Police Corps, which falls under the responsibility of the minister of the Interior and Kingdom Relations, and; its own Public Prosecution Service, which falls under the political responsibility of the minister of Justice, but as a part of the judiciary is independent.



For good communication within the judicial system, the Dutch triangle deliberation can be used as a basis. With regard to the intended cooperation between the penitentiary system the Police and the Public Prosecution Service, the Dutch model has two deficiencies: it does not take into account the geographical distance between the BES-islands, and it does not fully foresee in the intended cooperation model as formulated by the Ministry of Justice (it includes the authorities and excludes the penitentiary system). The first deficiency can be solved by establishing deliberations on both the regional and local level. The second deficiency has multiple solutions:

- create a communication model based on the executive office;
- a communication model for the whole judicial chain, and;
- complement the existing Dutch deliberation model with the penitentiary system.

It can be concluded that the best solution is to complement the Dutch triangle deliberation with the penitentiary system. In this way, uniformity can be created in Dutch policy and law, and the authorities are included in the deliberation, which is important because of the changing situation.



5. Detainees rights at the BES-islands reconsidered

Detainees rights are guarded, among others, by the supervision on the penitentiary system and complaint right for detainees. The goal of this chapter is to explore the probable tasks for the RSJ with regard to the BES-penitentiary system. First, the supervision on the Dutch penitentiary system will be explored by describing the tasks of three legal bodies: the Inspectie voor de Sanctietoepassing (ISt; free translated: Inspection for the Application of Sanctions), the Commissions for Inspection, and the RSJ. Also, thoughts about detainees rights in the penitentiary system shall be discussed. The Dutch Antillean supervision and complaint rights shall be explored, including its deficiencies. The future tasks for the RSJ at the BES-islands shall be discussed, in terms of legal tasks and desirable tasks, based on the deficiencies. In the end, an overall conclusion shall be drawn.

5.1 Supervision on and complaint rights in the Dutch penitentiary system

There are three different organizations that provide supervision with regard to the Dutch penitentiary system and therefore contribute to guarding the detainees rights. They each play their own role and carry their own responsibilities with regard to the penitentiary system. These organizations and their tasks shall be discussed.

5.1.1 Supervision

5.1.1.1 Inspection for the Application of Sanctions

The ISt was established in 2005. She watches the effectiveness and quality of the execution of sanctions. The main reason for establishing the ISt was the coordination between the different supervising bodies of the separate sectors of the DJI. The ISt is part of the Ministry of Justice. She provides the minister of Justice with advice concerning the execution of sanctions. The *Regeling ISt* (Regulation ISt) guards her independence. This regulation states that the work field of the ISt consists of all DJI-institutes, state institutes and places where sanctions are being executed (art. 2 Regeling ISt). According to the same law she has three tasks: executing supervision on the effectiveness and quality of the institutes, supervising the adherence to the law and coordinating the other supervisors (art. 3 Regeling ISt). Different than the other two organizations, it is her goal to create a country wide picture of the penitentiary system.

5.1.1.2 Commissions for Inspection

All places where people are detained are provided with a Commission for Inspection. However, due to the aforementioned difference in authority, a distinction has been made between 'regular' institutes and police cells.

1. Commissions for Inspection for judicial institutes

Article 7.1 of the Dutch penitentiary law states that the minister of Justice assigns a Commission for Inspection to each (division of) a judicial institute. According to article 7.2 of the same law, it is the task of these commissions to inspect the execution of freedom sentences, take notion of verbal complaints by the detainees and deal with written complaints. When necessary, they make suggestions to the institute director or give advice to the minister of Justice about the execution of freedom sentences. The members always have access to all places in the institute where detainees are being kept. Weekly conversations with detainees are being held.

2. Commissions for Inspection for police cells

Police cells have Commissions for Inspection as well. The Corps chef appoints a police official who is held responsible for the daily management and supervision of a police cell complex and its detainees



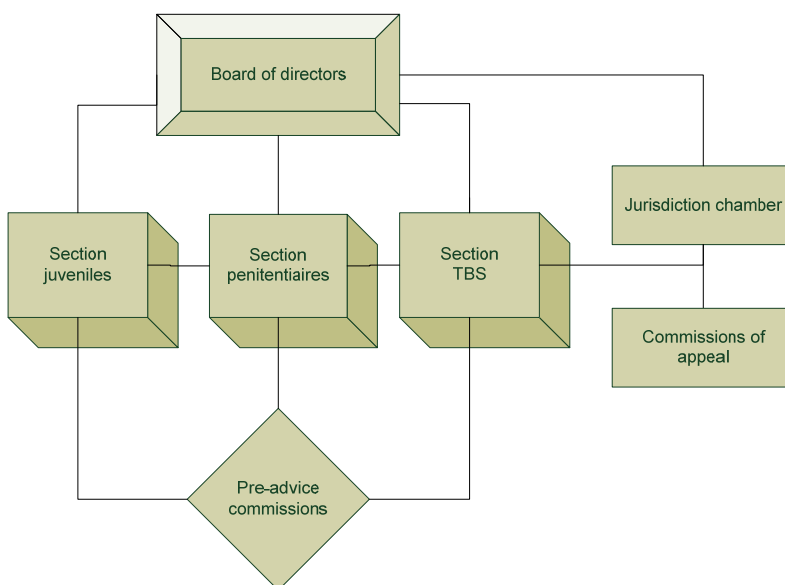
(art. 16.1 BBRP). Article 16a.1 of the BBRP states that the Corps chef establishes one Commission for Inspection for the police cell complexes in his region. It is the task of this commission to supervise the complexes, present the Corps chef with a yearly report and provide him with advice (art. 16.2 BBRP). The Corps chef can appoint the Commission for Inspection with the task of dealing with complaints regarding conduct of police officials (art. 16.3 BBRP and art. 61 Polw). Also, every year the Corps chef sends a report with findings of the Commissions for Inspection to the minister of the Interior and Kingdom Relations (art. 16.6 BRP).

5.1.1.3 Council for the Administration of Criminal Justice and Protection of Juveniles

The RSJ, known as the Council for the Administration of Criminal Justice and Protection of Juveniles, was established on 1 April 2001. The Council supports the government with regard to the care for offenders who face detention, those entrusted to the government and juveniles in judicial institutes. Offenders and juveniles find themselves in a fragile and subordinate position and therefore need protection against possible violation of their (fundamental) rights or relentless execution of authority. That is why the RSJ has access at all times to all places that fall under the authority of the minister of Justice, where people are detained (art. 15.1 IRSJ). The law states that the Council advises the minister about the execution of policy and legislation with regard to the execution of criminal sanctions and juveniles (art. 3.1 IRSJ). It also states that the Council executes administration of justice that is appointed to him by law (art. 3.2 IRSJ).

The Council contains a chairman and 60 members at most (art. 4.1 IRSJ). He deals with three sections: the penitentiary system, TBR and juveniles. Members are being assigned to one of these three sections. The members have an advice or jurisdiction task, or both. The *Bestuursreglement RSJ* (BRSJ; free translated: Administrative regulation RSJ) states that for the preparation of advices, pre-advice commissions can be appointed (art. 18 BRSJ). Commissions for appeal deal with the jurisdiction task (art. 22.1 BRSJ). The RSJ has his own jurisdiction chamber, which exists of the chairmen of the commissions of appeal. The general chairman, the chairmen of the sections and the chairman of the jurisdiction chamber together form the board of the RSJ (art 3.1 BRSJ). To clear things up, an organization chart of the RSJ is given below.

Figure 7. Organization chart RSJ



Next to the legal tasks with regard to the penitentiary system (administration of justice and providing advice to the minister of Justice), the RSJ gained a new task through the motion Weekers-Çörüz: stimulating Commissions for Inspection. By giving advice, the RSJ guards the legal protection of



detainees in a general sense. The judicial part concerns individual appeals about treatment, filed by detainees. Administration of justice is the Council's largest task.

5.1.2 Complaint rights for detainees: complaint and appeal

Detainees can file a written complaint at a complaint commission of the concerned institute that is substituted from the Commission for Inspection (art. 60.1 and 61.1 Pbw). When the verdict of the commission is not satisfying, the detainee can file appeal at the RSJ. The Commissions for Inspection deal with complaints concerning treatment. In case of other subjects, such as (re)placement, an appeal can sometimes be filed directly at a commission for appeal of the RSJ. This shall be discussed next. Complaint rights are also regulated for juveniles and those entrusted to the government, in the *Beginselenwet Justitiële Jeugdinrichtingen* (Bjj; free translated: Preliminary law Judicial Juvenile institutes) and the *Beginselenwet verpleging terbeschikkinggestelden* (Bvt; free translated: Preliminary law Care for those entrusted to the government) (art. 65.1 Bjj and art. 56.1 Bvt).

Article 6 of the Dutch penitentiary law states that the Council deals with written appeals in accordance with chapter 12, 13 and 15 of the of the penitentiary law and chapter 7 of the Penitentiary measure. Chapter 7 of the Penitentiary measure says that a detainee can file a written appeal against medical treatment by an institute physician (art. 28.1 Pm). Chapter 13 of this law says that a detainee has the right to file appeal against a verdict concerning placement, replacement, participation in a penitentiary programme, leave and punishment interruption (art. 72 Pbw). Chapter 15 of the penitentiary law states that a detainee can file appeal against a verdict concerning extension of the freedom sentence (art. 76.3 Pbw). Chapter 12 of the penitentiary law says that the director and the complainer can file appeal against a verdict of the complaint commission (art. 69.1 Pbw). These appeals are dealt with by a commissions for appeal that is substituted from the RSJ (art. 6.1 and 73.1 Pbw). The complainer has the right to assistance of a legal aid provider or another confidant, when sustained by the complaint commission. Also, an attorney can be called in (art. 65.1 Pbw). The tested decisions concern either decisions made by the director of the institute, a selection official, the minister of Justice and/or medical acting of an institute's doctor. Examples of cases are: placement and transfer, disciplinary punishments and measures, prescription of medicine by the institute's doctor and refusal to grant leave. Table 4. Cases RSJ

The verdicts of the RSJ are binding, meaning there is no further option to appeal. The Council tries to deal with a case within four months after appeal has been filed. The number of cases heard by the Council rose with more than 25% over the past years, with 2.700 cases in 2002 and almost 3.400 cases in 2006. In 2007 however, the RSJ dealt with a total of 2829 cases: 1620 regarding the Pbw, 352 regarding the Bvt, 67 regarding the Bjj and 790 remaining cases.

Cases RSJ	
'regular'	1620
TBR	352
juveniles	67
remaining	790
<i>total</i>	<i>2829</i>

5.2 **Thoughts about detainees rights**

In this paragraph, the early thoughts with regard to complaint rights for detainees shall be studied. The idea is to gain some background information on detainees rights.

Kelk (1978: 221) states that there is a great need of legal assistance amongst detainees. According to him, this is due to the difficulty to overview their internal legal position. Detainees find themselves in a subordinate position, because their right to freedom is take away. Therefore, the government bears responsibility with regard to them. He also states that an intramural life system can only be qualified as healthy when an individual has the highest possible self-commanding right and the highest degree in inviolability (Kelk, 1978: 6). This suggests that detainees should be provided with the right to protest against actions that concern them. Jonkers (1973: 501-502) earlier confirmed this idea by stating that all detainees should be provided with the right to file complaint about every decision, regardless of the



nature, that concerns them individually. According to Kelk (1978: 194), in incidental cases the legitimacy of a factual exception on the general regime should be tested in favour of the detainees, to standards of fairness. Van Veen (1974: 237-241) concludes that testing decisions has to take place by an independent judicial body. Feldbrugge (1968: 9) also came to the conclusion that whatever people acknowledge as rights and how far the point of views are apart, the attempt to solve a conflict through an impartial third, makes a good chance. Van Veen (1974) remarks that the treatment of complaints is a judicial task.

No system is perfect. However, as Kelk (1978: 3) states, with regard to the repressive situation in judicial institutes, it is almost impossible to approach the legal position of detainees without also normatively thinking about the bettering of their legal position. These thoughts form the basis for legally establishing the right for detainees to file a complaint, in the penitentiary law.

5.3 Supervision on and complaint rights in the Dutch Antillean penitentiary system

When Kelk wrote down his specific ideas about detainees rights, none of these rights had yet been laid down in the law. This was thirty years ago. Now, in 2009, detainees in many countries have the right to file a complaint about their personal situation and treatment in an institute. In the Netherlands, these rights are quite extensive. At the Dutch Antilles, detainees are granted the right to file a complaint. However, their rights are limited compared to the Dutch detainees rights. In this paragraph, both the supervision on the Dutch Antillean penitentiary system as well as the complaint rights will be discussed.

5.3.1 Supervision on the institutes

5.3.1.1 Commissions for Inspection

According to the Dutch Antillean law, every judicial institute has a Commission for Inspection at its disposal (art. 16.1 Lbg). It is the task of these commissions to supervise the execution of freedom sentences in (divisions of) institutes, take notion of detainees' complaints, deal with written complaints, and provide advice and information to the minister of Justice and the director of the institute (art.16.2 Lbg). Members of these commissions maintain personal contacts with the detainees (art. 16.3 Lbg). Written complaints are being dealt with by a complaint commission appointed from the Commission for Inspection (art. 42.1 Lbg). According to the *Gevangenismaatregelen 1999* (Gm; free translated: Penitentiary measures) the Commission of Inspection has monthly meetings (art. 37.1 Gm), and informs the minister of Justice every six months (art. 47.1 Gm). The members of the Commissions of Inspection have the right to all information concerning the institute (art. 38 Gm.) A month commissioner is appointed each month, to have conversations with the detainees for at least two hours a week (art. 39.1-2 Gm). The month commissioner brings out a report to the chairman of the Commission of Inspection about his findings as soon as possible or at least within two weeks after the period (art. 39.5 Gm). The director of the institute, who attends the meetings of the Commission of Inspection unless the commission decides otherwise (art. 37.2 Gm), will be informed about this report (art. 39.7 Gm).

5.3.1.2 Public Prosecution Service

The Dutch Antilles and Aruba have a joint Court of Justice. The Dutch Antillean Criminal Code states that this joint Court of Justice executes inspections on judicial institutes, one or two times a year. It is the task of the district attorneys to visit the institutes and report to the minister of Justice (art. 627 DA Criminal Code).



5.3.2 Complaint rights for detainees

Detainees can file complaint against a decision about placement in confinement, imposing disciplinary sanctions and denial of a request that concerns them (art. 40 Lbg). A written complaint must be filed at the Commission for Inspection of the concerning institute in which the detainee was staying at the time (art. 41 Lbg). The complaint will be dealt with by a complaint commission appointed from the Commission of Inspection (art. 42.1 Lbg). It will be dealt with within two weeks (art. 44.1 Lbg). The verdict results into declaring the complaint fully or partially non-receptive, unfounded or founded (art. 44.2 Lbg). The director will be informed about complaints filed by detainees (art.10.3 Sv). The detainee will be informed about the written reaction of the director (art. 42.2 Gm). Both the director and the complaining detainee can be heard at request (art. 43 Gm), as well as employees of the concerning institute or other detainees (art. 44.1 Gm). The complaining detainee can hire a councillor at his own expenses (art. 43.5 Gm). A written verdict will be sent to the main director judicial institutes (art. 45.6 Gm). It is the task of the director judicial institutes to ensure that the Commissions for Inspection and the complaint commissions have enough space to execute their tasks properly (art. 46 Gm).

On paper, this is comparable to the Dutch complaint rights for detainees. However, the practical execution of these rights has unfortunately not been studied.

5.3.3 Deficiencies of the penitentiary system, its supervision and detainees rights

Based on a comparison with the Dutch situation, the deficiencies of the Dutch Antillean supervision and detainees rights will be pointed out.

Just one supervising body.

Supervision by the Commissions for Inspection is comparable to the Dutch supervision by these commissions. The difference is that the Netherlands have multiple supervising bodies, the Dutch Antillean penitentiary system has just this one and a one or two times yearly visit by district attorneys.

No legal complaint rights for juveniles and those entrusted to the government.

The complaint rights for detainees are laid down in a State regulation preliminaries penitentiary system. However, the complaint right for juveniles is not formally laid down in the law. According to the project *Political changes Dutch Antilles*, juveniles can formally not file a complaint. It is however possible to let the legal guardian of the juvenile file complaint at a magistrate in a juvenile court. Also, for those entrusted to the government there are no formal complaint rights. 'This is problematic', says a member of the project *Political changes Dutch Antilles*. For now, there is no solution for this problem.

Complaining is expensive.

'Regular' detainees can file a complaint at the Commission for Inspection of the concerning institute. According to the project *Political changes Dutch Antilles*, when the verdict of a Commission for Inspection is not satisfying for one or both parties, a complaint can be filed at a civil judge. This is however at the complainers own expenses.

Nature of complaints unknown.

It is unknown how many complaints are being dealt with, by whom, and what the nature of these complaints is.

No uniformity of rules.

Van Kesteren (2007) notes that there is an internal need for uniformity of rules within the current Dutch Antillean penitentiary system. Each institute has its own house rules, which strongly differ from one another.

Lacking communication.

Van Kesteren also points out the lack of information towards detainees. To most of the detainees it is not clear which rules they have to obey and which rights they are entitled to. She also



found that transfers of detainees are not always reported to the concerning Commission for Inspection. Apparently, there is no protocol for such matters.

5.4 Future tasks of the RSJ at the BES-islands

The supervision on the Dutch Antillean penitentiary system and its complaint rights for detainees, including their deficiencies, have been explored. Now, it is time to discuss the value of the RSJ for the BES-islands. The RSJ wants to know which probable tasks there will be for him at the BES-islands, once the islands have become public bodies of the Netherlands. Two types of tasks will be distinguished: legal and desirable tasks. Legal tasks of course concern the future legal role of the RSJ with regard to the BES-penitentiary system. The desirable tasks will be derived from the needs of the BES-penitentiary system, based on the deficiencies of the Dutch Antillean supervision and complaint rights compared to the Dutch system. These desirable tasks are a measure for the value the RSJ can provide for the BES-penitentiary system. It has to be taken into account that not all choices in future legislation are known yet. In that case, both Dutch and Dutch Antillean legislation shall be referred to.

5.4.1 Legal tasks

In the Netherlands in Europe, the RSJ has two legal tasks:

- administration of justice, and;
- providing advice to the minister of Justice.

The motion Weekers-Çörüz, dated at 4 July 2007, provided the RSJ with a third task:

- supporting the Commissions for Inspection.

This task however is not appointed to the Council by law, but by a motion. It therefore is not a legal task.

Task 1. Administration of Justice.

Article 3.2 of the Institutional law RSJ states that the Council is charged with the jurisdiction that was appointed to him by law. In the Netherlands, her jurisdictional task is laid down in both the Penitentiary law and the Penitentiary measure. However, Dutch legislation will in principle not be implemented at the BES-islands, unless this will be explicitly laid down in the new legislation for the islands. Therefore, whether the RSJ will carry out this task with regard to the BES-islands will depend on the choices in future BES-legislation. When the Dutch laws regarding the penitentiary system will be implemented at the BES-islands, the RSJ shall have the exact same legal tasks there as in the Netherlands. If not, the legal task for the RSJ will depend on 'the jurisdictional task that was appointed to him by law', which then must be laid down in a law that applies to the BES-islands.

Task 2. Providing advice to the minister of Justice.

The Institutional law RSJ states that the Council advises the minister of Justice, asked or out of free movement, about the application and execution of policy and legislation with regard to the execution of criminal law and regarding juveniles (art. 3.1 IRSJ). In chapter 3, it was concluded that the judicial institutes at the BES-islands will fall under the authority of the Dutch minister of Justice once the islands have become public bodies of the Netherlands. This assumes that the advice task that the RSJ has in the Netherlands, will also apply to the BES-islands, since it concerns the same minister of Justice. However, this is a Dutch law and as stated before, Dutch legislation will not be implemented at the BES-islands, unless this will be explicitly laid down in the new legislation for the islands. Therefore, as with regard to their jurisdiction task, whether the RSJ will carry out their advice task with regard to the BES-islands will depend on the choices in future BES-legislation.

In short, there will not be a legal task for the RSJ at the BES-islands, unless explicitly laid down in legislation that applies to the BES-islands.



Loophole in the law

As concluded in the second chapter, in principle Dutch citizens should be treated equal, but distinctions are allowed to be made in case of differing situations. However, would for example the protection of detainees in the for the BES-islands maintained Dutch Antillean criminal law be less than the Dutch regulations, a BES-citizen can claim protection of the Dutch law (Bröring et al., 2008: 113). Article 6 of the IBES states that when a deviation turns out to be structural, the law will be changed. This means that when detainees claim their Dutch rights in a structural way, the law will probably be adjusted.

5.4.2 Desirable task

The BES-islands have a weak penitentiary system, so they are in need of professional support: in case of a physical extension of the penitentiary system, but also in case of having to detain people at foreign countries. Currently, there is just one supervising body, there are no legal complaint rights for juveniles and those entrusted to the government, complaining is expensive, the nature of complaints is unknown, there is no uniformity of rules, and there is a lack of communication. That is why, although not formally laid down in the law, the RSJ might have some task at the BES-islands with regard to the penitentiary system: provide independence and expertise. These are so called desirable tasks and will be discussed here.

1. Provide independence.

In 2007, Roomen did research on the satisfaction amongst detainees in the Netherlands about their opportunities to file a complaint. It appeared that many detainees did not know where to file a complaint. When they did, they were far happier with the RSJ than with the Commission for Inspection. The RSJ is, according to the interviewed detainees, more independent and deals more extensively with the complaints. 80% of the 40 interviewed detainees think that the complaint commissions are not independent. According to Roomen, this can be due to the fact that they deal with the daily matters that occur in the judicial institutes, which leads to a decreased objectivity of their judgements. In order to guard the independence of the penitentiary system, there needs to be an independent supervisor and adviser. The RSJ can provide such independence by guaranteeing the right to appeal against verdicts of the not always neutral Commissions for Inspection. The detainees state that it is a positive fact that the cases of appeal are being dealt with on 'neutral terrain', outside the prison walls (Roomen, 2007: 31-34).

With regard to the BES-islands, there is another problem. The islands are small, so most people know each other. This implies that the members of the complaint commission often know the detainees. Due to this fact, emotions can come to play a role. When this happens, equality of treatment can no longer be guaranteed. This strengthens the need for an independent body to watch over the interests and rights of the detainees and/ or non-judicial juveniles.

2. Provide expertise.

The knowledge and expertise of the RSJ can come in hand, especially when considering that the complaint rights for juveniles and those entrusted to the government have not been laid down in the law. The RSJ could provide advice in establishing these rights, or at least guarding their rights where the law is yet insufficient.

Currently, the BES-islands do not have special institutes for juveniles. When this remains so, juveniles from the BES-islands will be transported to either Curaçao, which has a governmental educational institute (the G.O.G.) to its disposal, or the Netherlands. If juveniles are transported to Curaçao, the BES-islands and the Dutch Ministry of Justice might need the help of the RSJ by carrying its responsibility with regard to the transported juveniles. Would the BES-islands be provided with special institutes for juveniles, the expertise of the RSJ can come in hand as well, since all will be new.



Current plans with regard to the RSJ

It has been decided that after the Statute has been changed, the situation with regard to the functioning of the penitentiary system at the BES-islands will be judged. According to the project *Political changes Dutch Antilles*, within two years after the Statute has been changed there will be an evaluation of the complaint rights within the penitentiary system. It also states that in the nearby future a research will be executed concerning TBR and juveniles. When the system functions well, the law with regard to the penitentiary system will be maintained. If not, there will be possible tasks for the RSJ.

5.5 Conclusion

In this chapter, the questions 'What deficiencies are there with regard to the Dutch Antillean penitentiary system, its supervision and detainees rights, compared to the Netherlands?' and 'What probable tasks will the RSJ have at the BES-islands, in relation to the concrete future situation on the BES-islands, with regard to the penitentiary system?', were answered. The Netherlands extensively supervise their penitentiary system: the ISt watches the effectiveness and quality of the execution of sanctions to create a country wide picture, each judicial institute and police cell complex is provided with a Commission for Inspection, and the RSJ provides detainees with the right to appeal and his expertise on juveniles. The Dutch Antillean penitentiary system does not know such extended supervision. It has Commissions for Inspection. Also, 'regular' detainees can file complaints. This right is however not laid down in the law for juveniles and those entrusted to the government. Appeal is not an option either. Also, there is no uniformity of rules and information towards detainees is lacking. In the Netherlands, the RSJ has two legal tasks: administration of criminal justice and providing advice to the minister of Justice. When the BES-islands become part of the country the Netherlands, these tasks do not automatically apply. This means that currently there are no legal tasks for the RSJ at the BES-islands, since for the time being there will not be any tasks for the RSJ laid down in legislation that applies to the BES-islands. The question is whether and when this will be formally laid down in BES-laws. Since the penitentiary system, its supervision and the complaint rights for detainees are not well developed compared to the Netherlands, there are desirable tasks for the RSJ. These tasks imply providing independence and expertise (especially on juveniles and TBR). Two years after the Statute has been changed, the complaint rights within the penitentiary system will be evaluated. Then, the possible legal tasks for the RSJ will be discussed.



6. Conclusions

Throughout the foregoing chapters, the sub questions were answered. To answer the main question, the answers to the sub questions shall be bundled. It has to be taken into account that the conclusions are solely based on document study and a few interviews with Dutch policymakers. There has been no practical research to substantiate these conclusions. This implies that possible stumbling blocks might occur by implementing the theoretical ideas, because some things that would solely have been noticed in practice might have been overlooked. For example, no research has been done on the opinion of people with practical experience at the BES-islands (governors, policemen, prison directors, (district) attorneys, members of the Commission for Inspection, etcetera).

Main question

How can both the management and detainees rights be optimized⁵ for the penitentiary system at the BES-islands, in relation to the concrete future situation?

Three basic possibilities have been defined with regard to the allocation of tasks between the BES-islands and the Dutch central government: hierarchical governing, co-governing and self-governing. These definitions have been used later on in the research to define options for the DJI to manage the penitentiary system at the BES-islands.

With regard to the future BES-penitentiary system, it was concluded that the possibilities within the scenario 'without cooperation' (44 points) together have a substantially higher score than the possibilities in the scenario where cooperation with foreign countries is included (35 points). This is mainly due to the decreased controllability in case of cooperation with foreign countries. It would be best to either provide both Bonaire and St. Eustatius with all facilities (possibility 2) or to provide these two islands with multifunctional penitentiary institutes that have special divisions for women and juveniles (possibility 4). The difference between the two is that possibility 2 includes TBR facilities. Possibility 4 implies that those entrusted to the government should be transferred to the Netherlands in Europe. Possibility 4 is more efficient, but conflicts with article 17.1 of the Dutch Antillean penitentiary law. The Ministry of Justice has to decide what is more important in their opinion: efficiency or legality. The possibility in which everything stays the same has the lowest score with 6 points, which leads to the conclusion that change is needed anyhow.

The best way for the DJI to manage the BES-penitentiary system is by establishing an executive office at the islands. This would strongly improve controllability and acceptability. The future physical changes do not influence this conclusion, because like an extended penitentiary system, having to cooperate with foreign islands needs close coordination and supervision from the DJI as well.

With regard to cooperation between the BES-penitentiary system, the BES-Police and the BES-Public Prosecution Service, it would be good to use the Dutch triangle deliberation as a basis. The model can take into account the geographical distance between the BES-islands by establishing both a regional and local deliberation. Also, it has to include the penitentiary system. This can be done in multiple ways: create a communication model based on the current executive office; create a communication model for the whole judicial chain, and; complement the existing Dutch deliberation model with the penitentiary system. It can be concluded that the best solution is to complement the Dutch triangle deliberation with the penitentiary system, since uniformity can be created in Dutch policy and law, and the authorities are included in the deliberation, which is important because of the changing situation.

Currently, there are no legal tasks for the RSJ at the BES-islands, since nothing has been laid down in legislation that applies to these islands. The RSJ however has desirable tasks with regard to

⁵ The word 'optimal' is used, because multiple possibilities shall be discussed and evaluated.



the BES-islands: he contributes to providing the independence that is necessary, and his expertise on juveniles will be more than welcome.



7. Recommendations

Based on this research and its conclusions, the following recommendations can be made towards the RSJ and the Ministry of Justice, with regard to the penitentiary system at the BES-islands.

Unfortunately, I have not been able to visit the BES-islands to do practical research. Therefore, I was not able to interview people living and working at the islands to find out what they want and need. For example, with regard to formulating the four standards, I have tried to formulate representative needs of the people at the BES-islands through reasoning. Therefore, this lack of practical research has decreased the value of the outcomes.

With regard to the second sub question concerning the physical changes of the BES-penitentiary system, there were matters that have influenced my research and maybe could have led to other insights. For example, the physical needs of the BES-penitentiary system can be further expressed in necessary cell capacity. This can be done in terms of numbers and types of detainees stemming from the BES-islands. This information could also have contributed to calculating the efficiency of the eight possibilities regarding the physical changes of the BES-penitentiary system. These numbers were however not available.

Concerning the fourth sub question regarding the cooperation between the penitentiary system them Police and the Public Prosecution Service, the problem of differing ministerial responsibilities needs further exploration. The BES-Public Prosecution Service will fall under the responsibility of the Dutch minister of Justice. The Court of Justice however is shared with Curaçao, St. Maarten and Aruba, while these countries each have their own minister of Justice who each carry the responsibility for this same Court of Justice. This can be problematic and therefore needs further research.

With regard to the last sub question that regards the probable tasks for the RSJ at the BES-islands, there are several recommendations. First, it is most likely that sooner or later, the BES-islands will get a UPA-status. I would therefore recommend the authorities of the Netherlands to anticipate on the demands of the European Union that would then come to force. The Council of Europe requires that each detainee shall have the right to appeal to an independent authority, after a request is denied or a complaint rejected (art. 70.3 EPR). Although this law is not legally binding, I consider it to be wise to grant this right for BES-detainees as soon as possible. Second, there will probably be differences in types of complaints between the Netherlands and the Dutch Antilles, since the penitentiary systems and cultures differ. That is why it would be wise to do research on the nature of the complaints at the BES-islands, before deciding whether there will be a legal task for the RSJ in the future. The outcomes of this research can influence my research and might lead to other insights. I unfortunately did not have such information at my disposal. Third, the practical execution of tasks for the RSJ needs further research, since the RSJ is situated far away from the islands. Options are, for example: permanently send members to the islands, occasionally let employees fly to the BES-islands, or court sessions by some form of telecommunication. Of course, the minister of Justice, who is also physically situated in The Hague, can easily be advised. It therefore just concerns the practical execution of the jurisdiction task. The question also rises whether the BES-islands should perhaps have their own BES-RSJ in time. Fourth, in this research, I have solely referred to the Commissions for Inspection of the judicial institutions. Police cell complexes at the BES-islands need such a commission as well, especially with regard to the poor circumstances at the islands.



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Annex

Annex 1. Original Dutch Legislation

Art. 4.2 Abg

Vrouwelijke gedetineerden bedoeld in artikel 5, eerste en tweede lid, van de Landsverordening beginselen gevangeniswezen, kunnen door de Directeur Gevangeniswezen tevens voor een aaneengesloten periode van maximaal drie maanden worden opgenomen in:

het Huis van Bewaring Curaçao, of;

het Huis van Bewaring Bonaire, of;

het Huis van Bewaring Sint Maarten.

Art. 4.3 Abg

Vrouwelijke gedetineerden die opgenomen zijn of behoren te worden in de landsinrichting voor ter beschikking gestelden bedoeld in het eerste lid, kunnen door de Directeur Gevangeniswezen, indien de voorzieningen of opnamemogelijkheden aldaar niet toereikend zijn, tevens voor een aaneengesloten periode van maximaal zes maanden worden opgenomen in de landsinrichting voor ter beschikking gestelden bedoeld in artikel 2, derde lid.

Art. 16.1 BBRP

De korpsbeheerder wijst een ambtenaar van politie aan die wordt belast met de leiding van het politiecellencomplex en het toezicht op de ingeslotenen.

Art. 16a.1 BBRP

De korpsbeheerder stelt ten behoeve van de politiecellencomplexen in zijn regio een commissie van toezicht in, bestaande uit ten minste drie en ten hoogste twaalf, onafhankelijke leden.

Art. 17.1 BBRP

De korpsbeheerder verstrekt Onze Minister periodiek gegevens over de omvang en samenstelling, alsmede over de werkdruk en de taakuitvoering van het regionale politiekorps.

Art. 65.1 Bij

Een jeugdige kan bij de beklagcommissie beklag doen over een hem betreffende door of namens de directeur genomen beslissing.

Art. 56.1 Bvt

Een verpleegde kan bij de beklagcommissie beklag doen over de volgende door het hoofd van de inrichting genomen beslissing.

Art. 627 DA Criminal Code

Het Hof van Justitie waakt voor de nakoming van de voorschriften van de artikelen 621 tot en met 625 en doet te dien einde de gevangenis en andere inrichtingen door een of meer leden op onbepaalde tijden, doch tenminste tweemaal 'sjaars, bezoeken.

Van de bevindingen wordt telkenmale schriftelijk verslag gedaan aan de minister van Justitie.

De officieren van justitie zijn verplicht tot het bezoeken en het doen van verslag op de voet als in het eerste en tweede lid is vermeld.

Art. 70.3 EPR



If a request is denied or a complaint is rejected, reasons shall be provided to the detainee and the detainee shall have the right to appeal to an independent authority.

Art. 1 GW

Allen die zich in Nederland bevinden, worden in gelijke gevallen gelijk behandeld. Discriminatie wegens godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht of op welke grond dan ook, is niet toegestaan.

Art. 134 GW

1. Bij of krachtens de wet kunnen openbare lichamen voor beroep en bedrijf en andere openbare lichamen worden ingesteld en opgeheven.
2. De wet regelt de taken en de inrichting van deze openbare lichamen, de samenstelling en bevoegdheid van hun besturen, alsmede de openbaarheid van hun vergaderingen. Bij of krachtens de wet kan aan hun besturen verordenende bevoegdheid worden verleend.
3. De wet regelt het toezicht op deze besturen. Vernietiging van besluiten van deze besturen kan alleen geschieden wegens strijd met het recht of het algemeen belang.

Art. 3.1 IRSJ

De Raad adviseert Onze Minister desgevraagd of uit eigen beweging over de toepassing en uitvoering van beleid en regelgeving op het terrein van de strafrechtstoepassing en omtrent jeugdigen, mede in het licht van de overige werkzaamheden hem bij of krachtens de wet opgedragen.

Art. 3.2 IRSJ

De Raad is belast met rechtspraak die hem bij de wet is opgedragen.

Art. 2 Lbg

De gestichten of afdelingen van de gestichten worden onderscheiden in gevangenissen, huizen van bewaring en landsinrichtingen voor ter beschikking gestelden.

Art. 3.1 Lbg

De minister wijst de gestichten of afdelingen van gestichten aan, die bestemd zijn voor gevangenis, huis van bewaring en landsinrichting voor ter beschikking gestelden.

Art. 3.2 Lbg

Op ieder eiland wordt tenminste een gesticht of een afdeling van een gesticht aangewezen dat een bestemming als huis van bewaring heeft.

Art. 3.3 Lbg

Voor de opneming van vrouwelijke gedetineerden worden afzonderlijke gestichten of afdelingen van gestichten aangewezen.

Art. 5.1 Lbg

De huizen van bewaring zijn bestemd:

- tot opneming van hen, die de straffen van hechtenis of van militaire detentie moeten ondergaan;
- tot opneming van alle anderen, aan wie krachtens rechterlijke beslissing of door het openbaar gezag rechtens hun vrijheid is ontnomen, voor zover geen andere plaats voor hen is bestemd of voor zolang opname in de voor hen bestemde plaats niet mogelijk is;
- tot verblijf voor doortrekkende gedetineerden.

Art. 5.2 Lbg



In de huizen van bewaring kunnen ook degenen worden opgenomen, die tot gevangenisstraf veroordeeld zijn en wier straftijd niet meer dan acht maanden bedraagt.

Art. 5.3 Lbg

De minister kan, indien dit door een openbaar belang vereist wordt, bepalen dat veroordeelden in artikel 4 bedoeld, tijdelijk in een huis van bewaring worden opgenomen.

Art. 7 Lbg

De minister wijst een of meer gevangenen aan, waarvan afdelingen in het bijzonder bestemd zijn voor de opneming van mannelijke tot gevangenisstraf veroordeelden, die de leeftijd van eenentwintig jaren nog niet hebben bereikt.

Art. 13 Lbg

Het opperbeheer van de gestichten berust bij de minister, die voor elk gesticht of elke afdeling daarvan een huishoudelijk reglement vaststelt.

Art. 14 Lbg

Het beheer van ieder gesticht berust bij de directeur of een hoofd op wie het in deze landsverordening omtrent de directeur bepaalde van toepassing is.

Art. 16.1 Lbg

Bij ieder gesticht is een Commissie van Toezicht, waarvan de leden door de minister worden benoemd en ontslagen.

Art. 16.2 Lbg

De Commissie van Toezicht heeft tot taak:
toezicht te houden op de wijze van tenuitvoerlegging van de vrijheidsbeneming in het gesticht of afdelingen daarvan;
kennis te nemen van door de gedetineerden naar voren gebrachte grieven;
zorg te dragen voor de behandeling van klaagschriften ingevolge het bepaalde in Hoofdstuk XII;
aan de minister, de directeur of het hoofd van een gesticht, al dan niet uit eigen beweging, advies en inlichtingen te geven omtrent het in onderdeel a gestelde.

Art. 16.3 Lbg

De Commissie van Toezicht stelt zich door persoonlijk contact met de gedetineerden op de hoogte van onder hen levende wensen en gevoelens. (...).

Art. 20.1 Lbg

Onveroordeelden worden bij voorkeur niet met veroordeelde gedetineerden in een vertrek geplaatst.

Art. 20.2 Lbg

Mannelijke gedetineerden beneden de eenentwintig jaren worden bij voorkeur afgezonderd van de volwassen gedetineerden.

Art. 7 LoL

Het Ministerie van Justitie heeft ten minste de volgende taken, voor zover niet behorende tot de specifieke zorg van een ander Ministerie of de eilandgebieden:

de ontwikkeling, codificatie en wijziging van het burgerlijk recht, strafrecht, bestuursrecht en handelsrecht;

de zorg voor vreemdelingenzaken;



de zorg voor het justitiële apparaat;
de zorg voor de justitiële jeugdbescherming;
de zorg voor het beleid inzake de openbare orde;
de zorg voor het beleid inzake de criminaliteitsbestrijding en de burgerlijke veiligheidszorg;
de zorg voor het beleid inzake de detentiezorg, het gevangeniswezen, de vrijheidsbeneming en invrijheidstelling, waaronder gratie en generaal pardon.

Art. 3.1 Pbw

Het opperbeheer van de inrichtingen berust bij Onze Minister. (...)

Art. 3.2 Pbw

Het opperbeheer van de inrichtingen berust bij Onze Minister. Onze Minister kan mandaat verlenen betreffende de hem bij of krachtens deze wet toegekende bevoegdheden tot het vaststellen van algemeen verbindende voorschriften aan het hoofd van de Dienst Justitiële Inrichtingen.

Art. 3.3 Pbw

Het beheer van een inrichting of afdeling berust bij de directeur, die als zodanig door Onze Minister wordt aangewezen.

Art. 5a.2 Pbw

De directeur verstrekt Onze Minister te allen tijde alle verlangde inlichtingen. Onze Minister kan nadere regels stellen omtrent de inhoud en de wijze van melding.

Art. 7.1 Pbw

Bij elke inrichting dan wel afdeling wordt door Onze Minister een commissie van toezicht ingesteld.

Art. 7.2 Pbw

De commissie van toezicht heeft tot taak:

toezicht te houden op de wijze van tenuitvoerlegging van de vrijheidsbeneming in de inrichting of afdeling;

kennis te nemen van door de gedetineerden naar voren gebrachte grieven;

zorg te dragen voor de behandeling van klaagschriften ingevolge het bepaalde in hoofdstuk XI;

aan Onze Minister, de Raad en de directeur advies en inlichtingen te geven omtrent het onder a gestelde.

Art. 12.1 Pbw

Onze Minister wijst de inrichtingen of de afdelingen aan waarin kinderen tot een in de aanwijzing aangegeven leeftijd kunnen worden ondergebracht.

Art. 14 Pbw

1. Inrichtingen of afdelingen daarvan kunnen door Onze Minister worden bestemd voor de onderbrenging van gedetineerden die een bijzondere opvang behoeven.

2. De bijzondere opvang, bedoeld in het eerste lid, kan verband houden met de leeftijd, de persoonlijkheid, de lichamelijke of de geestelijke gezondheidstoestand van de gedetineerden, alsmede met het delict waarvoor zij zijn gedetineerd.

Art. 60.1 Pbw

Een gedetineerde kan bij de beklagcommissie beklag doen over een hem betreffende door of namens de directeur genomen beslissing.



Art. 61.1 Pbw

De gedetineerde doet beklag door de indiening van een klaagschrift bij de beklagcommissie bij de inrichting waar de beslissing waarover hij klaagt is genomen.

Art. 28.1 Pm

Een gedetineerde kan een beroepschrift indienen tegen het medisch handelen van de inrichtingsarts. Met de inrichtingsarts wordt in dit hoofdstuk gelijkgesteld de verpleegkundige dan wel andere hulpverleners die door de inrichtingsarts bij de zorg aan gedetineerden zijn betrokken.

Art. 12.1 Polw

Indien de politie in een gemeente optreedt ter handhaving van de openbare orde en ter uitvoering van de hulpverleningstaak, staat zij onder gezag van de burgemeester.

Art. 13.1 Polw

Indien de politie optreedt ter strafrechtelijke handhaving van de rechtsorde, dan wel taken verricht ten dienste van de justitie, staat zij, tenzij in enige wet anders is bepaald, onder gezag van de officier van justitie.

Art. 2 Regeling ISt

Het werkterrein van de ISt omvat alle tot de DJI behorende inrichtingen en landelijke diensten, alle vestigingen van de reclasseringsorganisaties en alle overige plaatsen waar sancties ten uitvoer worden gelegd.

Art. 3 Regeling ISt

De ISt heeft met betrekking tot het werkterrein, bedoeld in artikel 2, tot taak:

- a. het houden van toezicht op de effectiviteit en kwaliteit van de uitvoering, in het bijzonder op de aspecten bejegening en beveiliging, en het daaraan gerelateerde beleid;
 - b. het houden van toezicht op de naleving van wet- en regelgeving.
2. Voorts is de ISt belast met de coördinatie en afstemming met andere toezichthouders.
3. De in het eerste en tweede lid genoemde taken kunnen gevraagd en ongevraagd uitgeoefend worden.
4. Uitoefening van de toezichttaken vindt plaats voor zover deze niet door anderen uitgeoefend worden, met uitzondering van de commissies van toezicht bij de inrichtingen van de DJI en de Raad voor Strafrechtstoepassing en Jeugdbescherming.

Art. 11 SNA

De Koning is hoofd van de Regering van de Nederlandse Antillen; hij wordt als zodanig vertegenwoordigd door de Gouverneur. De ministers zijn verantwoordelijk aan de Staten.

Art. 12 SNA

De Gouverneur heeft de uitvoerende macht.

Art. 32 SNA

1. De Raad van advies wordt door de Gouverneur gehoord (...)
2. De Raad is bevoegd de Gouverneur eigener beweging van advies te dienen in de gevallen, waarin hij zulks in het belang van het Koninkrijk of van de Nederlandse Antillen geraden oordeelt.

Art. 37 SNA

De Regering van de Nederlandse Antillen wordt gevormd door de Gouverneur en de Raad van Ministers. (...)



Art. 37.3 SNA

De ministers worden door de Gouverneur benoemd. De verantwoordelijkheid van de ministers wordt geregeld bij landsverordening.

Art. 5.2 Statute

De Grondwet neemt de bepalingen van het Statuut in acht.

Art. 13 Statute

Er is een Raad van State van het Koninkrijk. (...)

Art. 55 Statute

Wijziging van dit Statuut geschiedt bij Rijkswet.

Art. 37.2 Sr

De verpleging geschiedt bij voorkeur in een particuliere inrichting.

Art. 134.1 WoIBES

De bevoegdheid tot regeling en bestuur inzake de huishouding in het openbaar lichaam wordt aan het eilandsbestuur overgelaten.

Art. 134.2 WoIBES

Regeling en bestuur kunnen van het eilandsbestuur worden gevorderd bij of krachtens een andere dan deze wet of de Wet financiële verhoudingen BES (...)

Art. 166.1 WoIBES

Het bestuurscollege is in ieder geval bevoegd:

a. het dagelijks bestuur van het openbaar lichaam te voeren, voor zover niet bij of krachtens de wet de eilandsraad of de gezaghebber hiermee is belast (...)

Art. 172 WoIBES

De gezaghebber is belast met de handhaving van de openbare orde.

De gezaghebber is bevoegd overtredingen van wettelijke voorschriften die betrekking hebben op de openbare orde, te beletten of te beëindigen. Hij bedient zich daarbij van de onder zijn gezag staande politie. (...)

Art. 213.1 WoIBES

Onze Minister bevordert de decentralisatie ten behoeve van de openbare lichamen.



Annex 2. List of interviewed people

Dr. J. Rademaker - former representative of the Department of Justice at Curaçao

Prof. Mr. P.C. Vegter - chairman of the RSJ jurisdiction chamber

Drs. J.D. Jumelet - employee head office DJI, department *Penitentiary system*

Mr. G.M. Lieuw LL.M - member of the project *Political changes Dutch Antilles*

Mr. drs. R.R. Ter Kuile - chief of the project *Political changes Dutch Antilles*