

# YEAR REPORT 2014



## DELIVERY

*The Ombudsman Institution Sint Maarten Established*  
(customized to serve and protect the rights of the people without reinventing the wheel)



**OMBUDSMAN**

SINT MAARTEN



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## Foreword



*In the PREAMBLE of the Constitution of Sint Maarten WE, THE PEOPLE OF SINT MAARTEN resolve to work together, with our partners in the Kingdom of the Netherlands, with our neighbors in French Saint Martin and with all peoples of the world on the basis of freedom, equality, peaceful co-existence and international solidarity; and declare that we are a people that believe in the principle of democracy, the rule of law, the principle of the segregation of powers, the dignity and value of the individual, the entitlement of all persons to the*

*fundamental rights and freedoms; declare that we wish to establish a constitutional order based on an open and accessible government; and therefore, in order to record these goals and convictions, the provisions of the Constitution have the force of law.*

*Article 78 of the Constitution of Sint Maarten forms the basis for the Ombudsman, an internationally acknowledged institution to protect the rights of the people, new in the territory of Sint Maarten. Article 127 charges the Ombudsman with a special task as the Guardian of the Constitution. The last mentioned task allows the Ombudsman to present a ratified law to the Constitutional Court for review against the Constitution.*

*Together with the first Secretary General to head the Bureau of the Ombudsman, Ms. Patricia Philips, we set out to build this new institution. Having compiled a Handbook to describe what this High Council of State stands for, its organization and procedures, and established a Strategic Plan to reach specific goals in the period 2011-2021, a solid foundation was laid in the first year to build the institution in a structured manner. The year 2014 marked a period of finalizing the 'Punch List' after the completion of the structure.*

*In keeping with the Preamble to the Constitution we have worked closely with our partners in the Kingdom of the Netherlands; the National Ombudsman of the Netherlands and Curaçao, the Ombudsman of Amsterdam, as well as other colleagues, persons and institutions regionally and internationally. We have introduced our work procedures, trained staff to investigate the complaints of the people to protect and safeguard their rights in relation to the Government, and created the procedures to address the Constitutional Court. The decision in the first case presented to the Constitutional Court establishes the principles by which the Court will be guided. With the presentation of a tentative list of private entities with public authority to the Council of Ministers and Parliament, which will be further discussed in 2015, and completing the draft of a comprehensive Manual for the operation of the institution onward, delivery of the Ombudsman institution for full operation is finalized.*

*As the first Ombudsman of the country Sint Maarten it behooves me, and it gives me great pleasure to thank all persons and entities, who over the past four years lend their expertise and support in building the institution. A special word of thanks goes out to the first Secretary General of the Bureau Ombudsman and the staff for their dedication and zeal to excel in serving the public.*

*Dr. R. (Nilda) J.A. Arduin  
Ombudsman*

### **Vision Statement**

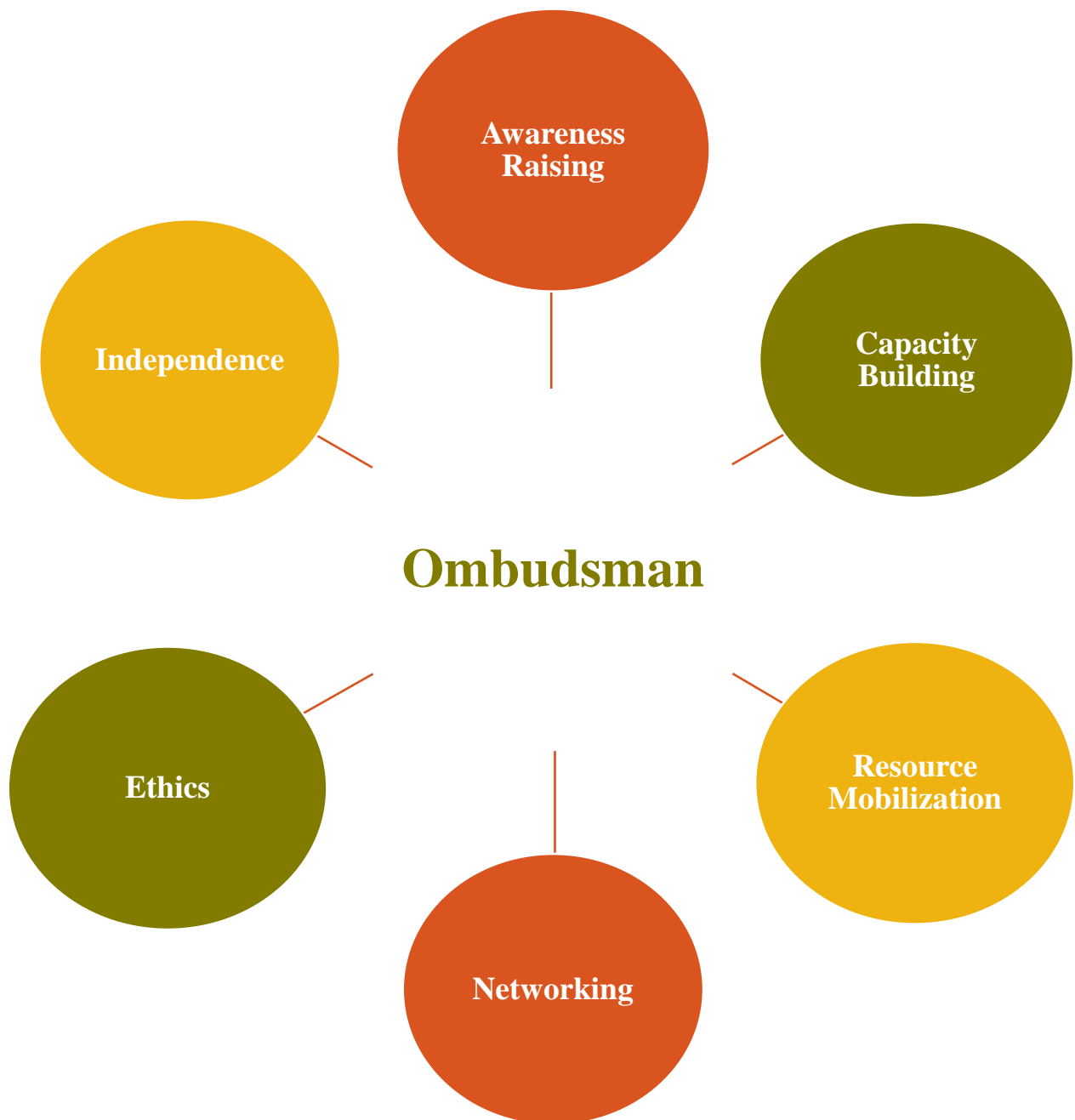
To promote good leadership for Sint Maarten, with government and related bodies, characterized by good governance and responsive to the needs of the citizens

### **Mission Statement**

The Ombudsman as protector of the citizens and guardian of the Constitution of Sint Maarten provides a system of checks and balances, which guarantees good governance and accountability of the government, where basic human rights and freedoms are safeguarded

## Strategic Areas of the Ombudsman

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## Executive Summary

- I. The Year Report 2014 titled *“Delivery, the Ombudsman Institution Sint Maarten established”* provides a review of the highlights of activities in 2014 and pictorial, - a picture says more than a thousand words- , a statistical overview of the complaints handled in 2014 and a comparison with 2013. The report is finalized with financial reporting on both the budget allocated by Government and USONA, which also reached its final financing stage of the IVB-program ( *‘Institutionele Versterking Bestuurskracht Programma’* ). With a professionally drafted Public Relations program, the Ombudsman reached out to the public. *“The Ombudsman listens, investigates and recommends government to act on the concerns of the people”* has been promoted with flyers, brochures, posters and advertisements in the media. A Face Book page was launched.
- II. A picture says more than a thousand words. Chapter two of the Year Report highlights the main events of the calendar year, including a pictorial.
- III. In 2014 sixty eight (68) new complaints were registered with the Ombudsman, while four (4) cases of 2012 and twenty four (24) cases of 2013 were brought over and handled in 2014. One hundred and thirty (130) complaints were closed in 2014, of which fifty four (54) were new complaints registered in 2014. In thirty (30) cases the Ombudsman issued recommendations. Twenty six (26), 43 percent of the total amount of recommendations (62 in total), were followed by Government. A tracking system to monitor longterm recommendations was developed at the end of the year.
- IV. The Ombudsman listens not only to complaints of the citizens, but provides information to the public whenever required. Chapter four provides statistics pertaining to Propriety violations, Incoming Complaints in 2014, Subjects of the Complaints filed in 2014 and issues handled at the Information Window of the Ombudsman.
- V. Chapter five discusses some complaints handled by the Ombudsman. In 2014 the Ombudsman for the first time made use of the competence provided for by law to inform Parliament immediately upon closing the investigation of a case regarding the findings and the decision. By letter dated June 10<sup>th</sup>, 2014 the Ombudsman reported pursuant to article 23 of the National Ordinance Ombudsman to Parliament regarding the findings in a complaint filed by a citizen against *‘Kadaster & Hypotheekwezen’* (further referred to as ‘Kadaster’). This action was taken due to continued disregard by Kadaster of the laws of the Land, and failure by the Minister of VROMI to adequately respond to appeals by the Ombudsman to look into the pertinent private entity charged with public authority.
- VI. Though no new case was presented to the Constitutional Court in 2014 for review by the Ombudsman, the decision rendered by the Court in November 2013 regarding the Penal

Code was kept alive, and frequently discussed or referred to by the local media and beyond the shores of Sint Maarten.

- VII.** In the year 2014 the operation of the Ombudsman Institution was financed from the budget of country Sint Maarten, with the exception of one project -the application system for the complaint handling and document management. The total budget allotted to the Institution for 2014 was Nafl. 1.418.123,00 of which a total of Nafl. 1.174.875,07 was spent for the daily operations. The funding from the IVB program ("Institutionele Versterking Bestuurskracht Programma") ended on December 31 2014. The last project the Ombudsman was able to secure from this program was a new application system- WORKPRO- for the complaint handling and document management at the cost of Nafl. 78.260,-.
- VIII.** Chapter eight includes Appendices to the Year Report.

## I. Introduction

With the theme ‘*Strengthening and Improve*’ Team Ombudsman set out to finalize the construction of the institution. The Year Report 2014 titled “*Delivery, The Ombudsman Institution of Sint Maarten Established*” provides a synopsis of the highlights of activities in 2014 and pictorial review, - a picture says more than a thousand words- , a statistical overview of the complaints handled in 2014 and a comparison with 2013. These two years marked full operation of the Bureau. The report is finalized with financial reporting on both the budget allocated by Government and USONA, which also reached its final financing stage of the IVB-program (‘*Institutionele Versterking Bestuurskracht Programma*’).

With a professionally drafted Public Relations program, the Ombudsman reached out to the public. In addition to efforts to communicate the service provided by the Ombudsman to the public through various presentations to organizations, press releases, interviews and talk shows, an in-house media training course was organized for the entire staff of the institution to better relate to, and inform the citizens.

“*The Ombudsman listens, investigates and recommends government to act on the concerns of the people*” has been promoted with flyers, brochures, posters and advertisements in the media. A Facebook page was launched to reach the wider social community.

Considering the first elections to be held in August 2014 since Sint Maarten became an autonomous country within the Kingdom of the Netherlands, all political parties and their candidates, as well as the public, were invited to information sessions pertaining to the constitutional structure of the country and the role of the Ombudsman as provided for by the Constitution. A School Program to educate students about the Constitution of the country and the Ombudsman institution started at the end of the year. Two surveys to measure awareness of the public regarding the Ombudsman and the services the institution offers were commissioned.

The Ombudsman received various courtesy visits from foreign visitors and fact finding Committees, and facilitated the CAROA<sup>1</sup> Council to meet at the Bureau of the Ombudsman.

Hearings between Government Departments and Complainants were increased to satisfy fact finding in the investigation of Complaints. The Minister of Justice and the Minister of Tourism, Economic Affairs, Transportation and Telecommunications were invited to be briefed about concerns and complaints pertaining to the respective Ministries.

Various meetings were held with the Secretary General (SG) and Department Heads of the Ministry of Finance, to improve compliance with investigations by the Ombudsman, as well as clarify concerns and questions from within the Departments. A course for civil servants to promote a ‘customers oriented approach’ in serving the public, initiated by VROMI in 2013, was cancelled due to the overload of activities within the government administration in preparation of the elections of 2014.

Besides the media training course, the services of SOAB were sought to train the staff of the Ombudsman to increase service and efficiency within the operation. The program titled “The

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<sup>1</sup> Caribbean Ombudsman Association. In 2013 Sint Maarten hosted the 7<sup>th</sup> Biennial CAROA Conference.



Productive Way' is considered a success. The training helped to identify weaknesses in the organization, and provided tools to improve the operation of the Bureau.

The investigative team has been strengthened by an in-house workshop facilitated by one of our Complaint Officers, after attending a Conference and Ombudsman training in Nebraska, USA, titled "The Modern Ombudsman: Changes, Challenges, and Opportunities". Monthly sessions prepared by the investigative team are held, to review and discuss decisions of the National Ombudsman, 'Ombudsprudentie' as a tool for learning and sharpening our investigations.

To promote team building and motivate staff, various out-of-office activities were organized.

On international level the Ombudsman was offered, and accepted life time membership of the Latin American Ombudsman Institute (ILO).

The Ombudsman was instrumental in opting for an anti-corruption training sponsored by the International Ombudsman Institute (IOI) for the Caribbean region. At the annual IOI Board Meeting held in Vienna, October 2014, together with the Ombudsman of Trinidad and Tobago, the Ombudsman held preparatory talks with representatives of the International Anti- Corruption Agency (IACA) seated in Vienna. The parameters for an anti-corruption training to be held in the Caribbean region in the first half of 2015 were agreed upon.

The efforts in establishing the Ombudsman institution were recognized beyond the shores of Sint Maarten, resulting in the Ombudsman being nominated as 'Woman of Great Esteem', and captured the 'Emerald Award of Excellence' from the WGE organization in New York, USA.

## II. Activities 2014

The following events and pictorial mark the highlights of the activities in 2014.

### Activities

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#### January 2014

##### Dates:

Jan 21

Jan 23-27-28-29

Jan 27

Jan 29- Feb 2

##### Events:

Meeting with Head Civil Registry

'Planningsgesprekken'

Meeting with representatives Supervisory Board and Management of Kadaster

Trip OBM<sup>2</sup> to the Netherlands re. Farewell National OBM Mr. Alex Brenninkmeijer; meeting with OBM Amsterdam and Curaçao; visit to Minister Plenipotentiary Sint Maarten, Curaçao and S4

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<sup>2</sup> OBM: Ombudsman

Farewell National Ombudsman Alex Brenninkmeijer  
'Binnenhof' The Hague



*From left to right: National Ombudsman Curaçao: Alba Martijn, The Netherlands: Alex Brenninkmeijer, Sint Maarten: Nilda Arduin and Minister Plenipotentiary Sint Maarten: Matthias Voges*

## February 2014

### Dates:

Feb 3

Feb 3

Feb 12

Feb 21-Jun 11

Feb 26-28

Feb 26

Feb 27

### Events:

Courtesy visit Law Enforcement Council to OBM

Meeting with Integrity Committee headed by Judge Jacob ('Bob') Wit

Meeting Mr. Vermeulen-VROMI re. course for civil servants Ministry VROMI

Media Training staff BOBM

Meeting CAROA Council at the Bureau of the OBM

Presentation at Parliament re. Decision Constitutional Court 8 November 2013 ( OBM accompanied by LA & SG)

Meeting Steering Committee Integrity (OBM and LA)

**Media Training BOBM**  
Facilitator: Mr. Fabian Badejo



## March 2014

Dates:	Events:
Mar 8	OBM speech on the occasion of Women's Day at USM
Mar 12	Rotary Presentation by the OBM
Mar 12	Discussion Complaint Handling with Korps Politie (OBM, SG, LA)
Mar 13	Meeting SMCU-Telecom Union (OBM and SG)
Mar 14	Meeting with Minister TEZVT, cabinet, SG & staff at the Bureau Ombudsman
Mar 26	Representative of Transparency International, headed by the director Mr. Alejandro Salas, paid courtesy visit to the OBM
Mar 27	Research Group University of Utrecht visited the OBM
Mar 27	Meeting Tax Office, Act. Head Mr. Saturnilia





*Courtesy visit representatives of Transparency International, headed by the director Mr. Alejandro Salas, to the OBM*



*Meeting with Minister TEZVT, Cabinet staff, SG, SG BOBM and Ombudsman*



*OBM and Rotary Club Sint Maarten President Pierre De Celles*

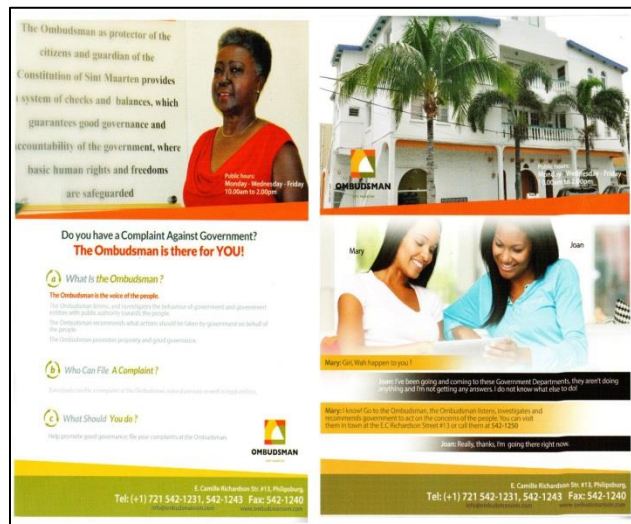


*Complaint Handling discussed at the Police Department*

## April 2014

Dates:	Events:
Apr 1	Launching Facebook page OBM
Apr 3	Bi-annual meeting OBM with Governor
Apr 9	Presentation jurisprudence LAR at Courthouse, attended by OBM, LA & CO
Apr 10	Bestuurlijke Tafel 'Ministerie Binnenlandse zaken en Koninkrijks relaties' re. Civil Registry Sint Maarten (OBM)
Apr 16	Webinar IOI: topic "The Role of the OBM" (OBM and Staff)
Apr 17	Meeting with Minister of Justice Mr. Dennis Richardson & Staff with the OBM and SG
Apr 21	Launching PR Campaign
Apr 24-25	Info meetings SOAB re. The Productive Way Training (coaching and efficiency training)

### PR-Campaign Ombudsman



*Ombudsman flyer as part of the PR Campaign*



*Ombudsman Facebook page:* [www.facebook.com/OmbudsmanSintMaarten](http://www.facebook.com/OmbudsmanSintMaarten)

## May 2014

### Dates:

May 3

### Events:

OBM of Sint Maarten nominee 2014 Woman of Great Esteem Award and awarded the 'Emerald Award of Excellence' at the 18<sup>th</sup> Annual Woman of Great Esteem (WGE) Emerald Awards Ceremony at the Ritz Carlton Hotel at Battery Park, New York, NY

May 13

Meeting Finance Dept. and Tax Office

May 19

Meeting with Tax Office: Director, Head Legal Dept. Tax Office, SG BOBM<sup>3</sup>

May 20-22

In-house efficiency training "The Productive Way"

May 28

Press Release: "Denial of passport renewals. Ombudsman weighs in for possible human rights violations."

May 28

Meeting Integrity Committee (Cabinet Governor)

May 30

Team Building: Lottery Farm Family Day

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**Ombudsman to check if human rights  
were breached with passport revoking**

**The Daily Herald, 6 June 2014**

<sup>3</sup> BOBM: Bureau Ombudsman

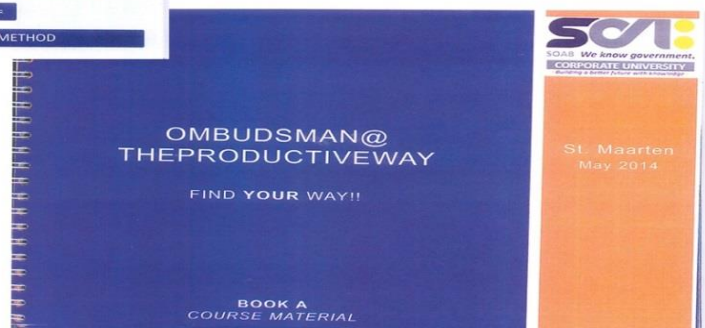
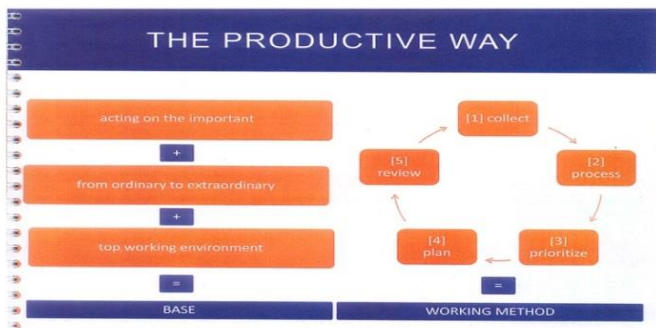


## Woman of Great Esteem

*From left to right: Citations, Obelisks Emerald Award of Excellence and Woman of Great Esteem Award; Ombudsman of Sint Maarten; WGE Ceremony Ritz Carlton Hotel, New York NY*



## The Productive Way training



## June 2014

### Dates:

June 3-6

June 12

June 13

June 17

June 17

June 17

June 20

June 21

### Events:

Mid Term Evaluation

OBM files report Kadaster at Parliament

Press Release: "As a result of the involvement of the Ombudsman the Civil Registry took a closer look at the file of a complainant, who took his case to the Ombudsman."

Bi-annual meeting with Governor

Interview Oral Gibbs Live

Meeting with Tax Inspector (SG and LA)

Presentation rotating obelisk Emerald Award of Excellence at BOBM on Sint Maarten

OBM speaks at Rotary Sunrise dinner and named a Paul Harris Fellow

*Ombudsman named Paul Harris Fellow  
by Sunrise Rotary Club*



**"Sarah says passport applications  
now being looked at individually"**

The Daily Herald, June 19, 2014

*Presentation Emerald  
Award of Excellence at  
BOBM. From left to right:  
Rt. Rev. Sylveta Hamilton  
Gonzales, OBM Nilda  
Arduin, Prime Minister  
Sint Maarten Sarah  
Wescott-Williams*



**Ombudsman's intervention  
leads to passport renewal**

~ Continues to monitor situation ~

The Daily Herald, June 16, 2014



*Ombudsman files report Kadaster at Parliament  
President of Parliament Drs. Gracita Arrindel and OBM*



## July 2014

### Dates:

July

### Events:

OBM engages students for vacation training/apprentice program

July 3

Meeting representatives of the Tax Inspector re. dealing with protest letters

July 15

Presentation Year Report 2013 to the President of Parliament Drs. G. Arrindell

July 28

ZBO (private entities with public authority) brainstorm session: Prof. Kunneman, Vice Chair Council of Advice Mrs. M. Brooks-Salmon, legal advisor Keith de Jong, Bas van den Bosch (lawyer) , and Reynold Groeneveldt (lawyer)

July 27

Interview Talk show Phenomenal Woman SOS Radio Station (FWI)

July 31

Interview Talk show-Valerie van Putten Hodge: "Now You Know"

*Presentation Year Report 2013 to the President of Parliament Drs. G. Arrindell*



*Brainstorm session re. private entities with public authority (ZBO): Prof. Frank Kunneman, RvA vice Chair Mrs. Mavis Brooks-Salmon, legal advisor Keith de Jong, Bas van den Bosch (lawyer) , and Reynold Groeneveldt (lawyer)*



*SG Ombudsman engages students Tashiana Webster and Nikita Wilson vacation training/apprentice program*

## August 2014

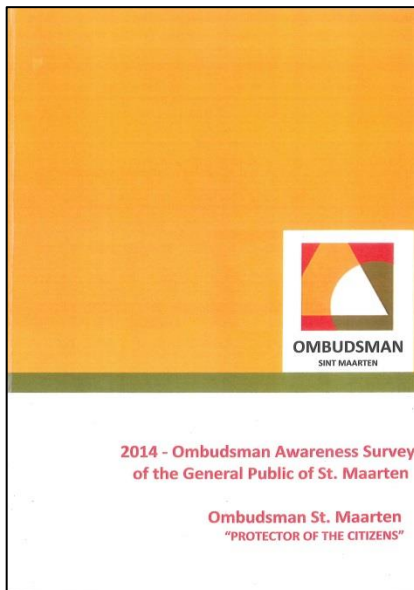
Dates:	Events:
Aug 7	Meeting IT company re. new software for BOBM (Mirto Brill & Jan Wilhelm)
Aug 8	OBM discusses Kadaster in Central Committee Parliament
Aug 11	Information Session for Political Parties
Aug 12	Signing MOU -CAROA & Instituto Latino Americano del Ombudsman (ILO)-, and inter regional Ombudsman Conference in Cali Columbia (OBM inducted as life time member and represented I.O.I. as Director Latin America and Caribbean region)
Aug 14	Meeting IT company Bearingpoint re. new software for BOBM (Sharon Lieuw-Sjong & Shadyra Francisca)
Aug 19	Public Info Session at USM ("Propriety and the Constitution")
Aug 20-21-22	Follow up Productive Way Training
Aug 26	Presentation Rotary Mid Isle

### Information Session for Political Parties and Public at USM



## September 2014

<b>Dates:</b>	<b>Events:</b>
Sept	System for registration and tracking of recommendations issued to Government bodies developed
Sept 3-13	Survey to ascertain the awareness of the public of the Institution by JS Consultancy Services o.b.o. the OBM
Sept 14-Dec 15	Employment Apprentice Chanelle Hart
Sept 17	Meeting integrity Bureau Amsterdam
Sept 17	OBM requests status report on the implementation of the recommendations from Ministers
Sept 25	Interview Radio Talk Show (Lloyd Richardson)
Sep 22-26	Job interviews for Complaint Officer position.
Sep 30-Oct 1-2	Second round job interviews



*Results Public Awareness Survey Ombudsman by JS Consultancy Services*



*Appreciation apprentice Chanelle Hart*

## October 2014

<b>Dates:</b>	<b>Events:</b>
Oct 3	Meeting IT company CAS Ltd. re. new software for complaint handling and document management BOBM
Oct 7	"Voorverkenning Evaluatie 2014" Olaf Wilders
Oct 10	Farewell CO Charleen Bell
Oct 10-20	CO (L. Williams) to Ombudsman Training and USOA Conference in Nebraska, USA
Oct 20	Meeting DFZ representatives re. SZV medical insurance

Oct 21	Personnel Meeting: evaluation Standard Doc and Complaints Procedure
Oct 22	Meeting “Voortgangscommissie Sint Maarten”
Oct 27-30	I.O.I. Board Meeting in Vienna Austria/IACA consultation
Oct 13-31	Introduction period new Complaint Officer (Carmencita Lammar)

### Conference and Training CO in Nebraska, USA



*Farewell CO Charleen Bell*



*Howard Sapers,  
Correctional  
Investigator, Office  
of the Correctional  
Investigator of  
Canada  
(Complex High  
Profile Cases:  
Impact on Public  
Sector Operations)*

*Sandra Stockall,  
Professor Emeritus,  
University of  
Nebraska (You Are  
Who You Are  
Because)*



## November 2014

Dates:	Events:
Nov 1	Employment new Complaint Officer –Carmencita Lammar
Nov 6	Meeting Mr. Veldtkamp re. evaluation KRS Applications and limitations/decision to discontinue this registration system
Nov 20	Presentation 2013 Annual Report in Central Committee Parliament
Nov 27	Briefing Work Pro, new registration and DMS, by internal IT person CO/ L. William
Nov 28-30	Team Building: Annual Retreat BOBM





*New Complaint Officer –Carmencita P. Lammar*



*Annual Retreat Bureau*



## December 2014

Dates:	Events:
Dec 2	Site visit OBM to the Census Office
Dec 3	Start School Awareness Program; presentation to MAC by CO (C. Lammar)
Dec 4	Pre-demo and internal discussions on Work Pro
Dec 10,16,17,18	In-house Work Pro Training by CAS (Debbie)

*Site visit OBM to the Census Office  
Dress code issue discussed*



*School Awareness Program; presentation to  
MAC by C. P. Lammar, CO*



*In-house Work Pro Training by CAS*

## III. Complaints Handled

The core task of the Ombudsman is to investigate ‘*propriety*’ applied by government bodies in their relationship and dealings with the public. In 2014 sixty eight (68) new complaints were registered with the Ombudsman, while four (4) cases of 2012 and twenty four (24) cases of 2013 were brought over and handled in 2014. One hundred and thirty (130) complaints were closed in 2014, of which fifty four (54) were new complaints registered in 2014. In thirty (30) cases the

Ombudsman issued recommendations. A tracking system to monitor longterm recommendations was developed at the end of the year.

The Ombudsman experienced an increase in visits from the public to the Ombudsman. Apart from an increase in complaints filed and handled, in 2014 the Ombudsman provided assistance in two hundred and sixty (260) cases to citizens, requiring information and or advice, compared to one hundred and seventy four (174) in 2013.

Having established the parameters within which the Ombudsman is mandated to execute its tasks, the next step in keeping with our Strategic Plan 2011-2021 has been; analyzing and evaluating our complaint investigations to strengthen and improve the services of the Ombudsman to the public as we promote good governance.

Following international standards, government's behavior - including the behavior of civil servants and personnel of government agencies - is assessed by standards of proper conduct drafted by the Ombudsman for Sint Maarten. A document titled "*Behoorlijkheidswijzer*" (Standards of Proper Conduct) was created and established in July 2011, patterned after the list of standards compiled by the National Ombudsman of the Netherlands ("*Lijstje van Oosting*").

The ***Standards of Proper Conduct*** are guidelines - categorized in four main groups<sup>4</sup> -, used for review of the behaviour of government in investigating Complaints filed by citizens, or by own motion investigations, against government bodies with public authority on Sint Maarten. The standards reflect basic norms required from government bodies and government agencies in dealing with the citizens. The scope of propriety goes beyond the law; it reflects the norms expected from government in executing laws, policies and established procedures. Government is expected to be: A) open and clear, B) respectful, C) involved and result oriented, D) honest and trustworthy.

Based on the experience of the past years, creating a greater understanding and application of the "*Standards of Proper Conduct*" among civil servants has been the focus of the Ombudsman in 2014. As such a few standards were selected, and received special attention in handling complaints: active and adequate information provision; the duty to give reason/motivate; fundamental human rights; correct treatment; fair play; cooperation; promptness; reasonableness and proportionality; generosity; adequate organization of services; and legal certainty. A paper to that extend was compiled and distributed via the Secretary General of each Ministry. (*Appendix # 1*)

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<sup>4</sup> The Standards of Proper Conduct categorized: Fundamental Human rights; Substantive propriety (content); Procedural propriety (procedures followed); Administrative accuracy.

## IV. Statistics

### ❖ Propriety violations

The following is a statistical overview of the Standards of proper conduct violated in 2014<sup>5</sup>.

Standards of Proper Conduct	Total 2014	Percentage
Reason	1	1.4%
Active and adequate information provision	19	25.7%
Promptness	9	12.2%
Legal certainty	9	12.2%
Correct treatment	6	8.1%
Adequate organization of services	9	12.2%
Fair play	10	13.5%
Reasonableness	2	2.7%
Cooperation	8	10.8%
Prohibition on the misuse of power	1	1.4%
<b>Total</b>	<b>74</b>	<b>100%</b>

*Fig. 1. Standards of proper conduct violated in 2014*

Standards of Proper Conduct	2013	2014
Reason		1.4%
Active and adequate information provision	34.0%	25.7%
Promptness	23.0%	12.2%
Legal certainty	15.0%	12.2%
Correct treatment	8.0%	8.1%
Adequate organization of services	8.0%	12.2%
Fair play	6.0%	13.5%
Reasonableness	3.0%	2.7%
Cooperation	3.0%	10.8%
Prohibition on the misuse of power		1.4%
<b>Total</b>	<b>100%</b>	<b>100%</b>

*Fig. 2. Comparison standards of proper conduct violated in 2013 – 2014*

<sup>5</sup> Investigation may conclude that more than one standard have been violated in a case.



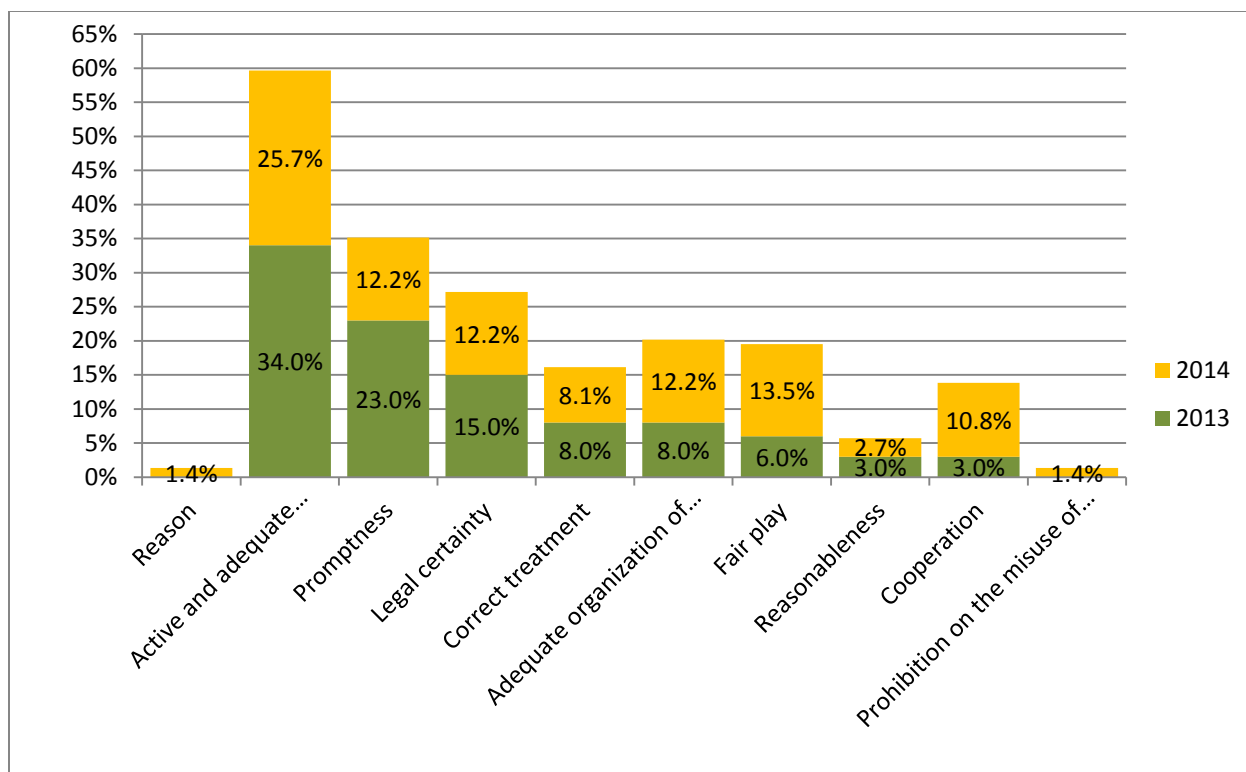


Fig. 3. Chart Comparison standards of proper conduct violated in 2013 – 2014

#### ❖ Incoming Complaints in 2014

Ministry	Complaints in 2014
Ministry of General Affairs	9
Ministry of Finance	12
Ministry of Justice	16
Ministry of Education, Culture, Youth Affairs and Sports	3
Ministry of Tourism, Economic Affairs, Public Transportation and Telecommunication	7
Ministry of Public Housing, Spatial Planning, Environment and Infrastructure	5
Ministry of Public Health, Social Development and Labor	9
Other Types	7

Fig. 4. Incoming Complaints registered per Ministry in 2014

Ministry	Department/Entity	Number of Complaints	Complaints per Ministry in %
AZ	AZ	1	13.24%
	Civil Registry	3	
	Facility Services	1	
	Fire Department	1	
	P&O	3	
		9	
FINANCE	Finance	1	17.65%
	Receivers	3	
	Loon & Salaris	2	
	Tax	6	
		12	
JUSTICE	Justice	2	23.53%
	IBP	2	
	Customs	2	
	Police	7	
	Prosecutor	3	
		16	
OCJS	Education	2	4.41%
	Study Finance	1	
		3	
TEZVT	TEZVT	1	10.29%
	Economic license	4	
	Inspection	2	
		7	
VROMI	Domain	2	7.35%
	Inspection	2	
	New projects	1	
		5	
VSA	VSA	2	13.24%
	Inspection	1	
	Public Health	1	
	Labor & Social affairs	5	
		9	
Others	Rent Board	1	10.29%
	Notary	1	
	Bureau Telecom. & Post	1	
	Vehicle Inspection	1	

	Court of Guardianship	1	
	Not competent	2	
		7	
<b>TOTAL:</b>		<b>68</b>	<b>100.00%</b>

Fig. 5. Incoming Complaints registered per Department in 2014

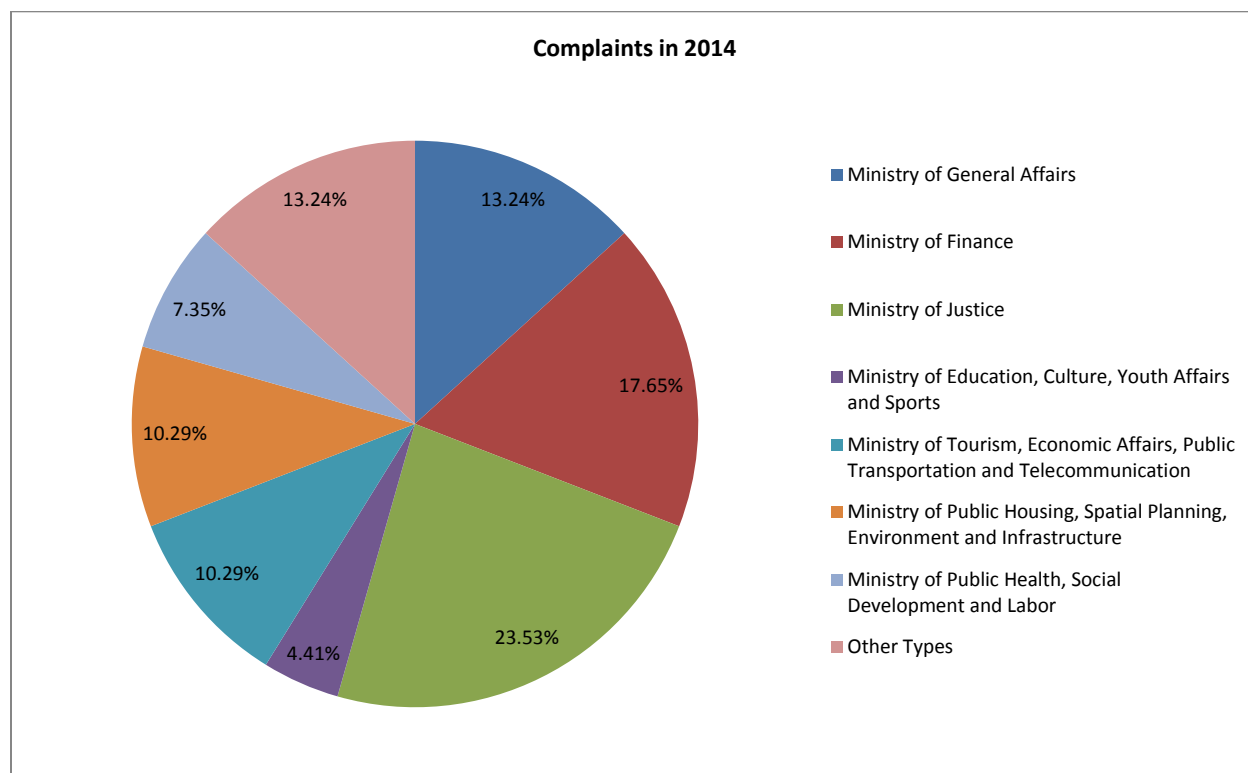


Fig. 6. Pie chart Complaints filed per Ministry in 2014

Ministry	Complaints in 2014	Complaints in 2013
VSA	9	3
VROMI	5	9
TEZVT	7	6
Others	7	5
OCJS	3	6
JUS	16	12
FIN	12	11
AZ	9	10

Fig. 7. Comparison Complaints filed per Ministry 2013-2014

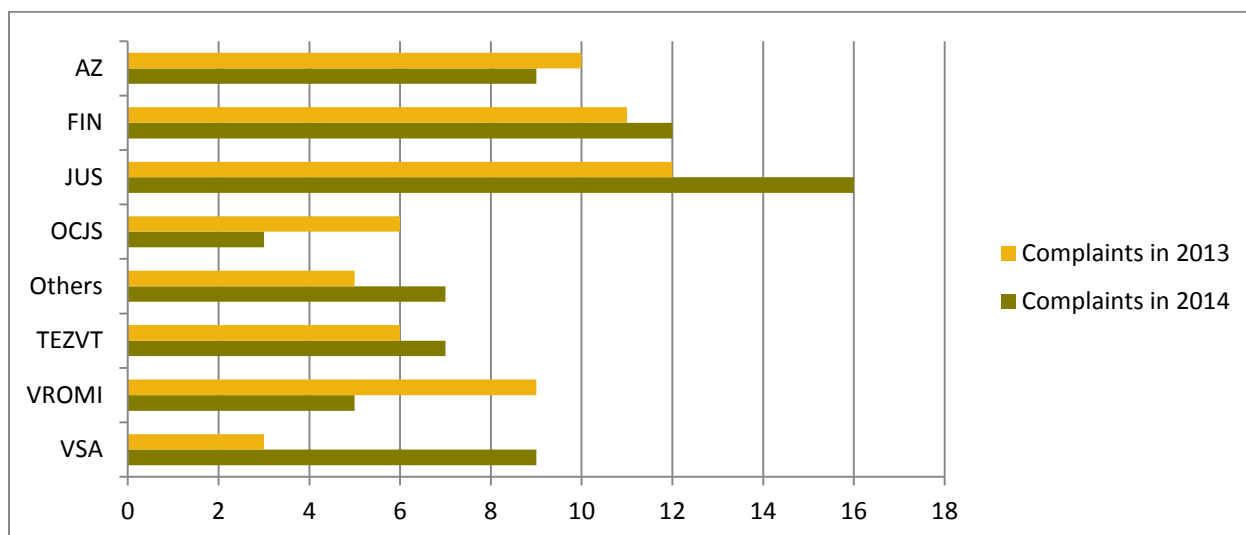


Fig. 8. Graph Comparison Complaints filed per Ministry 2013-2014

#### ❖ Subjects of the Complaints filed in 2014

❖ Complaints per topics			
Topic	Complaints in 2014	Topic	Complaints in 2014
Allowance	1	Payments	4
Civil registry	3	Pension	1
Court of Guardianship	1	Police Record	0
Economic License/P	6	Police Report	2
Enforcement Policy	12	Proper Service	7
Human Resource	17	Salary	0
Immigration	2	Study Financing	1
Infrastructure	5	Tax	5
Notary	1	Transparency Doc.	0
Total			68

Fig. 9. Table topics of complaints submitted in 2014

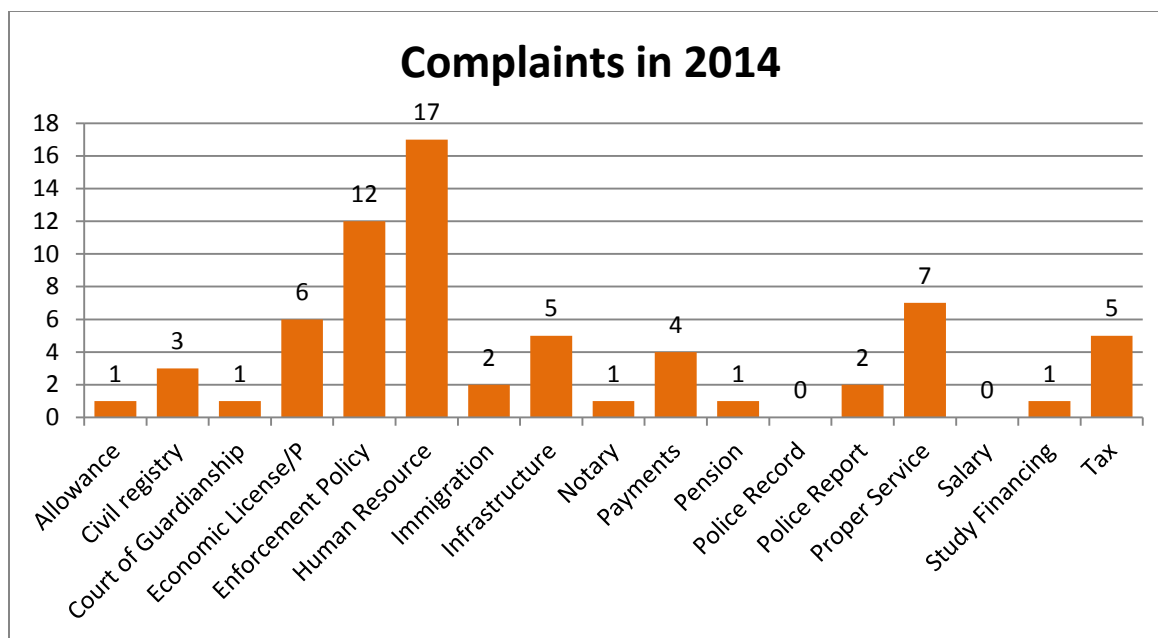


Fig. 10. Chart topics of complaints submitted in 2014

Complaints per topic		
Topic	Complaints in 2013	Complaints in 2014
Allowance	0	1
Civil registry	1	3
Court of Guardianship	0	1
Economic License/P	2	6
Enforcement Policy	2	12
Human Resource	11	17
Immigration	2	2
Infrastructure	9	5
Notary	0	1
Payments	3	4
Pension	3	1
Police Record	1	0
Police Report	8	2

Proper Service	5	7
Salary	4	0
Study Financing	3	1
Tax	7	5
Transparency Doc.	1	0
<b>Total</b>	<b>62</b>	<b>68</b>

Fig. 11. Table Comparison topics of complaints filed in 2013-2014

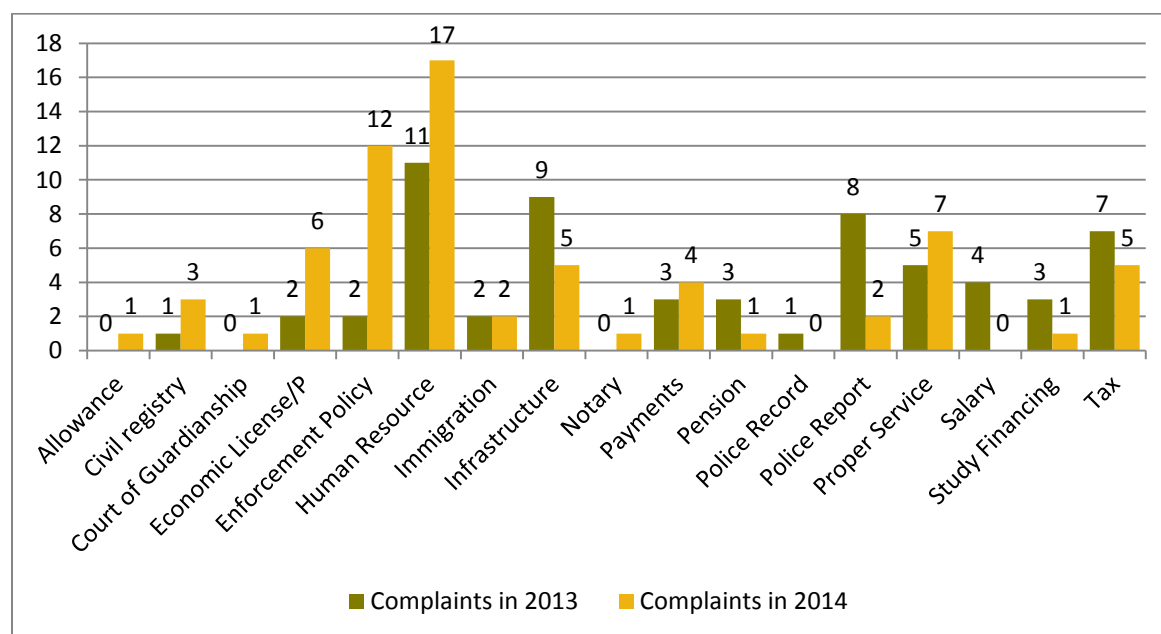


Fig. 12. Chart Comparison topics of complaints filed in 2013-2014

### ❖ Information Window Registry<sup>6</sup>

As an extension to the core task of the Ombudsman information requested by the public is provided. These services are registered as Information Window.

Information Window	
Topics	Amounts 2014
Human Rights	2
Tax	1
Education	3

<sup>6</sup> Previously referred to as 'Juridisch Venster'.

Justice	10
Pension	12
Nationality	12
Immigration	9
Inform Government Body	16
Labor	18
Government Service	5
HRM (Civil Servants)	19
Court of Guardianship	8
Information OBM	14
Inspection	5
Government assistance	9
Legal services	5
Parliament	2
Police report	5
Economic License	8
Spatial Planning	8
Criminal Case	6
Civil Registry	22
Civil Case	34
ZBO (other types)	8
ZBO (Public Authority)	19
Total	260

*Fig. 13. Table Information Window: requests registered in 2014 per topic*

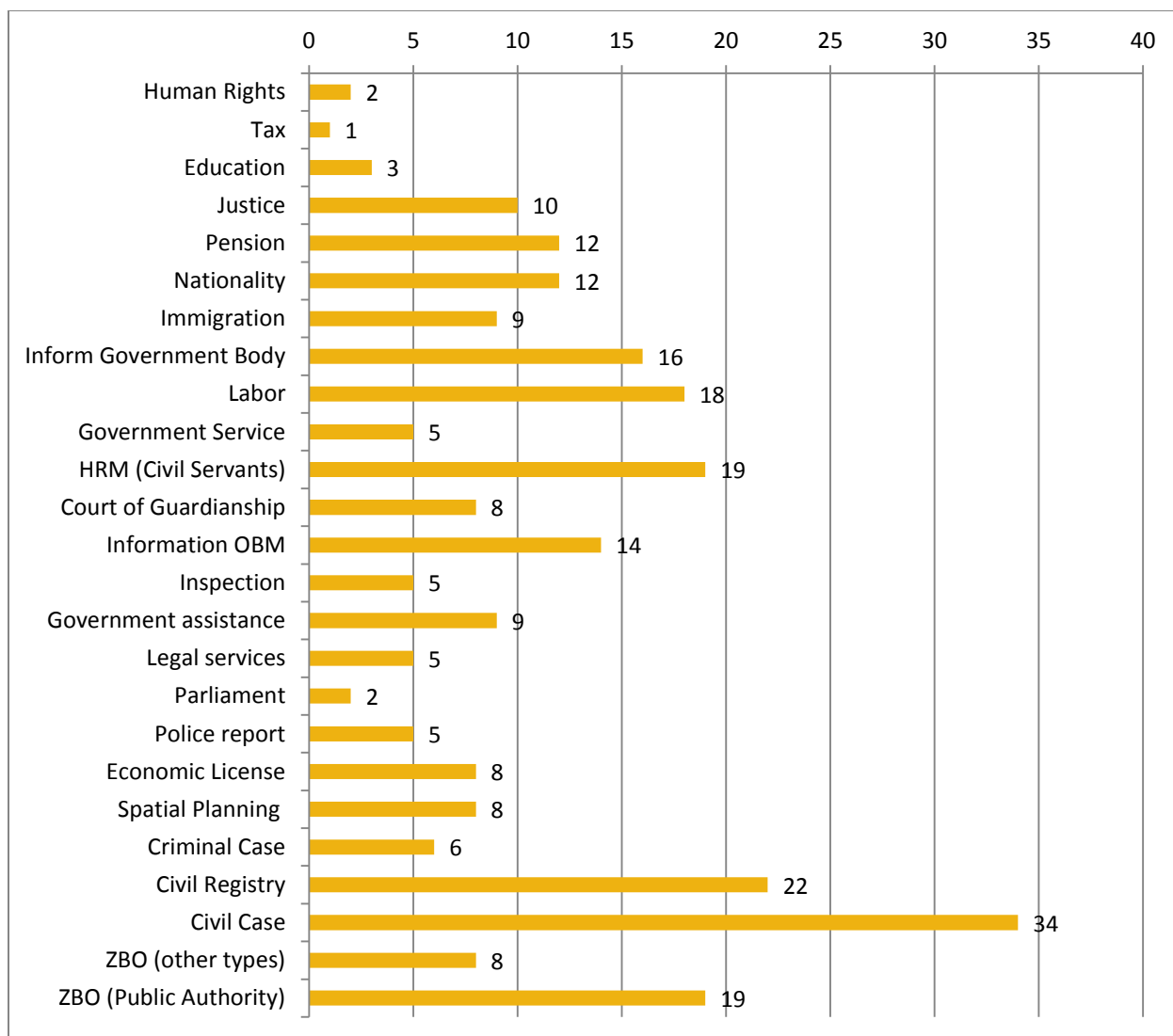


Fig. 14. Graph Information Windows: requests registered in 2014 per topic

Information Window		
Topics	Amounts 2014	Amounts 2013
ZBO (Public Authority)	19	16
ZBO (other types)	8	14
USONA		1
Tax	1	7
Spatial Planning	8	13
Reimbursement		2
Police report	5	
Pension	12	4



Parliament	2	1
Nationality	12	3
Legal services	5	3
Labor	18	23
Justice	10	11
Inspection	5	
Information OBM	14	
Inform Government Body	16	4
Immigration	9	11
Human Rights	2	2
HRM (Civil Servants)	19	
Government Service	5	5
Government assistance	9	10
Enforcement		1
Education	3	4
Economic License	8	4
Criminal Case	6	4
Court of Guardianship	8	
Community Council		1
Civil Registry	22	13
Civil Case	34	17
	260	174

*Fig. 15. Comparison Information Window: requests registered per topic in 2013-2014*

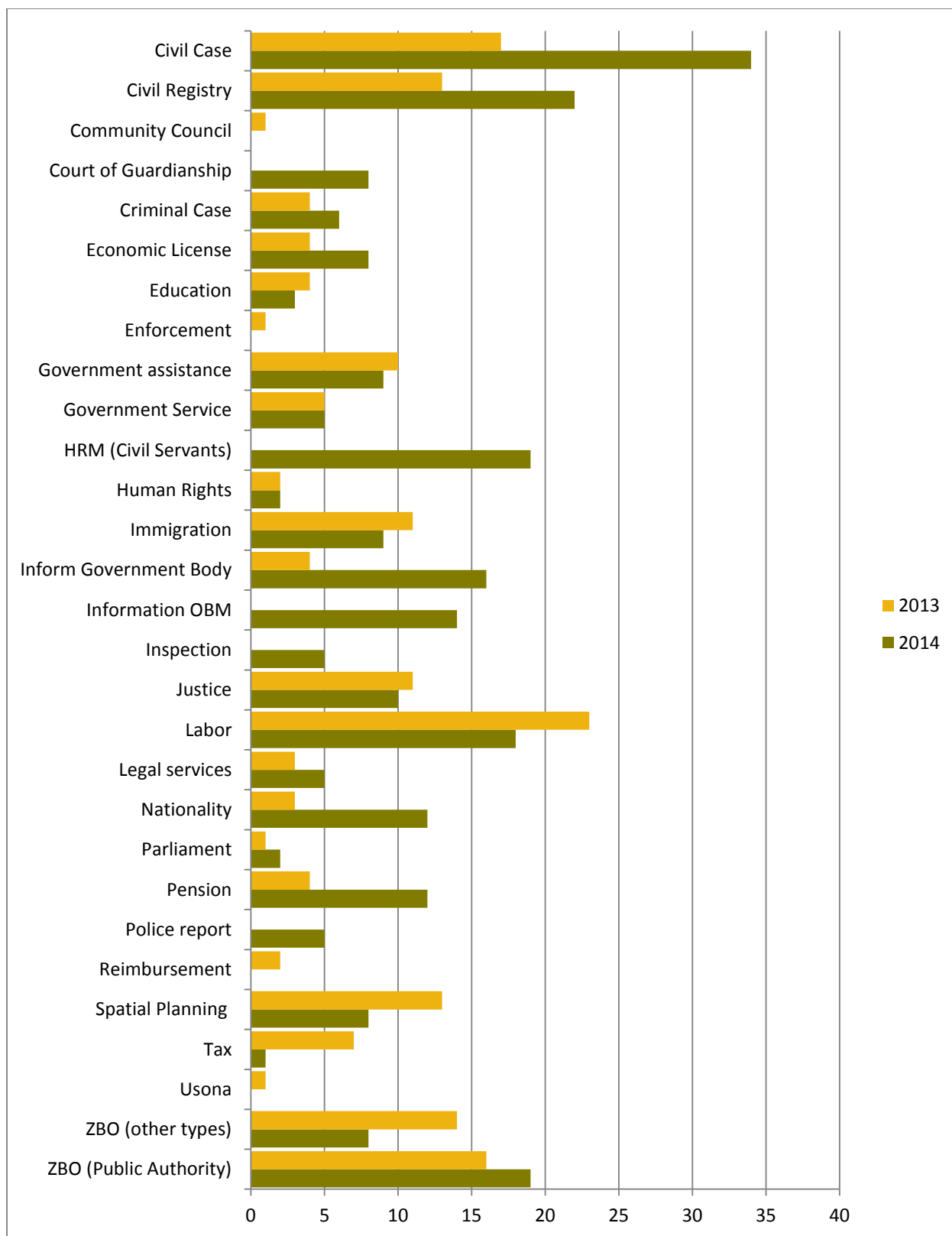


Fig. 16. Chart Comparison Information Window requests registered per topic in 2013-2014

## V. Complaints investigated

In 2014 the Ombudsman for the first time made use of the competence provided for by law to inform Parliament immediately, upon closing the investigation of a case, regarding the findings and the decision. By letter dated June 10, 2014 the Ombudsman reported pursuant to article 23 of the National Ordinance Ombudsman to Parliament regarding the findings in a complaint filed by a citizen against 'Kadaster & Hypotheekwezen' (further referred to as 'Kadaster'). This action was taken due to continued disregard by Kadaster of the laws of the Land, and failure by the Minister of VROMI to adequately respond to appeals by the Ombudsman to look into the operation of the pertinent private entity charged with public authority. Notwithstanding elaboration on the complaint in the Central Committee by the Ombudsman upon invitation of Parliament, no further follow up to this report and a Final Report regarding the outcome of a systemic investigation conducted by the Ombudsman about Kadaster, presented to Parliament in 2013 upon its request, has been forthcoming by the end of 2014. The following is the full text of the letter submitted to Parliament.

### ***Our Ref # OM-OBM 0213A/2014***

*Re: Report pursuant to article 23 National Ordinance Ombudsman*

*Honorable President,*

*I hereby present you pursuant to article 23 National Ordinance Ombudsman the Final Report of the investigation of a complaint filed with the Ombudsman by the citizen, Mr. X, against Kadaster. Although the complaint was filed since September 2012, the conclusion of the investigation and final report was seriously delayed due to continued failure by Kadaster to cooperate with the Ombudsman in executing her task.*

*After it became clear that this private entity, charged with public authority, continues to ignore its legal obligations, and fails to understand and respect the laws of Sint Maarten, a Final Report dated April 11, 2014 in the investigation of the complaint was drafted (Appendix X) including recommendations to promote propriety ('behoorlijkheid') in dealing with the citizens. The response to the Final Report dated May 23, 2014 from the Director of Kadaster (Appendix X), which is hereto attached with other documents, speaks for itself.*

*Propriety goes beyond the letter of the law!*

*Kadaster evidently fails to understand that as a public entity, executing government tasks, it is bound by the principles of good governance, including propriety, in dealing with the public. Unless Parliament as the highest oversight institution of the Land takes a goal-based approach on the matter, to guarantee checks and balances in our young democracy, our Constitution will be a farce and eroded from within.*

*It is therefore with high expectations that I, as 'Protector of the Citizens', look forward to the actions Parliament will undertake as the supreme oversight body of the country; pursuing all legal means provided by the Constitution, to ensure compliance with the law by all administrative bodies, in particular Foundation Kadaster and Mortgages. At this point Parliament, as 'the representative of the people', is the last resort provided by law, to restore trust of the citizens in the legal mechanism of Sint Maarten.*

*Trusting to have informed you adequately, I note that while the Final Report of the investigation of the complaint is drafted in English, the Report to Parliament pursuant to article 23 National Ordinance Ombudsman is drafted in Dutch for legal technical purposes.*

*I remain available for elaboration and questions regarding this matter.*

*Sincerely,*

*Dr. R. (Nilda) J.A Arduin*

*Ombudsman*

## ❖ Three investigated complaints in summary

### 1. Summary of Complaint

Complainant claims that she has not received a response to a letter dated November 1, 2012 to the Minister of V.R.O.M.I. In her letter Complainant requested the reason for the increase of her long lease fee.

#### *Findings*

Upon investigation the Secretary General of the Ministry of VROMI explained that the Ministry increased the long lease fee, because Complainant built apartments on the property. This changed the purpose of the long lease to a commercial purpose. Complainant did not request a change of the purpose of the long lease. In the long lease that was granted to Complainant, the purpose was set at the building of a stone dwelling. Had Complainant requested the change in purpose, she would have been informed of the possible consequences, which include an increased long lease fee.

The Department explained that the list of long lease fees is not a public document. In his explanation the Secretary General referred to article 2 sub b. of the “*Eilandverordening op de uitgifte in erfpacht van gronden toebehorende aan het Eilandgebied de Bovenwindse Eilanden*”; hereinafter “the Ordinance” (AB 1954, no. 1). This article provides that the long lease fees and the value of the property are determined by the then Island Council, currently the Minister based on the transitional provision. Internally the fees are set per district and purpose and administratively approved by an official note. As such a citizen can only be informed of the fee that pertains to their specific case, when a request is submitted to receive a property in long lease and or the purpose of the long lease is changed.

#### *Conclusion*

The following standards are violated in this case:

- Fair Play
- Active and adequate information provision

The citizen has an obligation to acquaint himself regarding governmental procedures and the consequences of decisions. However, if information needed by the citizen is not public, than the citizen has difficulty to acquaint himself of consequences that can be brought about by a

decision. In the case of Complainant the Ombudsman concluded that there is not enough transparency in the procedures and options involving long lease.

By not replying to the letters sent to the Ministry by the Complainant, she was deprived of the opportunity to react to changes made in the fees. On the other hand, the Ministry has been cooperative towards Complainant by allowing her to change the purpose of her long lease retroactively without asking for permission. However, the cooperation does not void the obligation of the Ministry to provide the Complainant with a detailed and motivated answer, or an explanation for the reason that the long lease fee (*'canon'*) has been amended. Not responding to the letter of Complainant, the Department violated the standard of *Fair Play*.

Based on all the facts presented by both parties, it seems that the long leaseholder, Complainant, was not aware of certain obligations pertaining to the execution of the purpose for which the long lease was given. In her letter dated November 1, 2012 she wrote to the Ministry of VROMI asking for an explanation concerning her obligations and rights regarding the long lease. However, no response was forthcoming. A more proactive approach towards the Complainant would have prevented the need for retroactive amendments. The Department violated the standard of *active and adequate information provision*.

The Secretary General assured the Ombudsman that a detailed response will be given to Complainant in regard to the decisions made pertaining to her long lease, and that the Ministry is committed to making the information regarding long lease more accessible to citizens albeit long term. While the Ombudsman will be monitoring the follow up on the recommendations, the parties were informed by "Notice of Termination" that the file was being closed, and the complaint was considered handled.

Considering the lack of knowledge a long leaseholder may have concerning their rights, obligations and consequences of their actions, which might be partly attributed to a lack of transparency and information on long lease, the Ombudsman issued the following recommendations.

### *Recommendations*

- Provide Complainant with a detailed and motivated answer to her letter no later than February 21, 2014;
- Provide information to current and possible long lease holders concerning their rights and obligations;
- Enhance the transparency as it pertains to the long lease fees.

### *Status update*

During a Hearing regarding another unrelated complaint, long lease matters in general were discussed with the Ministry. The SG of VROMI informed the Ombudsman that a project is underway to do a full review of the functioning of the different Departments of the Ministry of VROMI, including Domain Affairs. The review is to find the bottlenecks, optimize the

functioning of the Departments and provide structural solutions for the current issues the Departments are facing. This approach is preferred by the Ministry of VROMI instead of incidentally solving problems.

It was furthermore concluded during mentioned Hearing that VROMI does not have a complete overview of the available parcels of land that belong to the Government. The Ombudsman inquired if such an overview was requested at Kadaster. The Department explained that such an overview has been requested, however to date of the Hearing not received.

### *Standards of Proper Conduct*

The *Standard of Fair Play* provides that a public entity has the obligation to give the citizen an opportunity to make optimal use of its procedural possibilities. Fair play requires that administrative bodies and civil servants provide the citizen the opportunity to properly utilize procedural opportunities provided for by law and otherwise. Thus the behavior of the public body has to attest to openness, honesty and loyalty. A public body should be transparent and cannot prepare covert actions against a citizen. On the contrary a public body is required to actively assist the citizen in utilizing its procedural options.

The *Standard active and adequate information provision* implies that the government institution needs to be involved and active in providing information. The government institution has the obligation to approach the citizen in a pro-active manner concerning information that affects the interest of the citizen.

## **2. Summary of Complaint**

Complainant applied for a function with the Sint Maarten Ambulance services on April 12, 2013. On June 3, 2013 he received an offer letter to start on July 1, 2013 from the Department of Personnel Affairs (hereinafter the Department). By September 1, 2013 Complainant has not begun to work. Complainant contacts the Department on multiple occasions, and every time he is informed that the Minister has to make a decision still regarding his employment.

### *Findings*

Upon investigation, the Acting Department Head informed the Ombudsman on November 25, 2013 that the advice regarding the employment of Complainant did not leave the Department. Contrary to the information provided to the Complainant, the Minister could not take a decision, because the relevant documents for the decision making were still at the Department.

The Acting Department Head sent the documents to the Minister on November 26, 2013. The placement of Complainant with the Ambulance Services was finalized on January 1, 2014. Complainant however, wanted to know what the cause of the delay was. On February 7, 2014 the Acting Department Head informed the Ombudsman that the reason for the delay was that the employment of Complainant had to be discussed with various stakeholders. This to ensure that all stakeholders involved were in agreement with the employment of Complainant.

### *Conclusion*

The following standards are violated in this case:

- The standard of active and adequate information provision
- The standard of good cooperation

In response to the Ombudsman the Acting Head of the Department explained what the source of the delay was. According to the explanation, the policy on the hiring process is not the issue, rather the decision making that accompanies the hiring process caused the delay. Transparency requires that Complainant should have received a proper explanation for the reason of the delay. Complainant was not contacted by the Department. Complainant only received information when he called or emailed. The information to Complainant was standard and continuous throughout the process. Complainant was informed that the Minister's decision is being awaited, while the advice for his placement did not leave the Department.

The Ombudsman concludes that proper coordination and cooperation between the various Departments involved in the process, should have been better. The Department should have contacted Complainant on its own initiative.

### *Recommendations*

- Employ accuracy in the organization to avoid creating legitimate expectations towards third parties;
- Employ a policy of transparency and cooperation between Departments in the application procedure to employ persons;
- Timely inform interested parties properly and truthfully regarding the status of their application.

### *Status update*

No status update on the recommendations was available per year end 2014.

### *Standard of proper conduct*

The *standard of active and adequate information provision* requires that a public body actively provide adequate information to a citizen concerning the interest of the citizen. On the one hand, this entails adequately replying to a question posed by the citizen. On the other hand it entails that the public body actively inform the citizens of actions that affect their interests.

The *standard of good cooperation* provides that when fulfilling its task, the public body does not prioritize its own interests, rather prioritizes the interests of the citizen while cooperating with another public body. The cooperation between public bodies is for the purpose of providing needed or required service to the citizen, even if the cooperation might affect the public body negatively, the interest of the citizen is primary.

### 3. Summary of Complaint

Complainant claims that he visited the Police station in Philipsburg on August 29, 2013 to declare a theft; however he was not assisted. After intervention by the Ombudsman, the Complainant was able to make a declaration at the Police station in Philipsburg on September 20, 2013. The declaration was taken by Detective A. According to Complainant Detective A. acted biased and unprofessional towards him.

#### *Findings*

A Notification of Complaint dated December 20, 2013 and submitted to the Chief of Police was not responded to within the requested time frame of four weeks. Subsequently, a Preliminary Findings Report was compiled and sent to the Chief of Police on March 19, 2014.

A report dated April 10, 2014 drafted by the Chief of Police, including the results of the investigation conducted by the Police Department, based on the complaint submitted by the Complainant against Detective A., was submitted to the Ombudsman. The Chief of Police concluded as follows.

*The conclusion and consequences of the investigation are:*

1. The handling of the complaint submitted by Complainant did not proceed according to internal agreements. This matter will be addressed with the relevant responsible persons and further agreements will be made;
2. The manner in which the Detective handled the investigation is not in accordance with what can be expected of a good Detective; this counts in particular for the accuracy of the information provided by a Detective to the Public Prosecutor. The Chief of Police will concur with the persons in charge at the Royal Marechaussee to take the appropriate measures;
3. The Public Prosecutor Services will be contacted to re-confirm the agreements made regarding the lower ranking investigators contacting the Public Prosecutor on their own directly;
4. The Public Prosecutor Services will be informed of the findings in this case;
5. The Chief of Police is willing to meet with the Complainant to communicate his regrets regarding the turn of events, and to attempt to regain the trust of the citizen.

#### *Conclusion*

The following standards are violated in this case:

- I. the standard of correct treatment
- II. the standard of adequate organization of services.



Considering the evidence gathered through the internal investigation conducted by the Police Department in the case of Complainant, as well as the conclusion and the consequences established in the report, the Ombudsman concluded that follow up on the consequences stated in the report is required. Having arranged a meeting between the Chief of Police and the Complainant, the Ombudsman refrained from further investigation of the Complaint. After receipt of confirmation regarding the follow up on the consequences, established in the report dated April 10, 2014, the file was closed.

The Ombudsman requested a status report of the follow up of the conclusion and consequences mentioned in the report dated April 10, 2014, within two (2) weeks after receipt of the Notice of Termination Investigation.

### *Status update*

As a follow up to the report from the Chief of Police dated April 10, 2014, the Ombudsman investigated the procedures followed by the public Prosecutor's Office in the case. By letter dated May 7, 2014 the Chief of Police duly provided the Ombudsman an update on the recommendations and implementations thereof. (*Appendix # 2*)

### *Standard of proper conduct*

The *standard of correct treatment* provides that government acts with due care towards the citizens. Respect for human dignity, professionalism, service and courtesy are required as a norm in dealing with the public. A civil servant should be unbiased and reasonable.

Correctly treating a citizen can be subdivided in the following categories: dignity and impartiality.

A public body is required to show respect and treat its citizens with dignity.

A public body should be careful not to increase the dependency of a citizen on the government by giving the citizen a feeling of powerlessness. Furthermore, a public body is required to be impartial. This entails that a public body is to handle unbiased and without judgment. To support impartiality the principle of motivation is essential. In its motivation a public body can objectively explain the reason behind a decision.

The *standard of adequate organization of services* implies that administrative bodies are required to organize their administration and operation in a manner which guarantees proper service to the public. Proper service in general refers to the principle of meticulousness in the administration. Proper service also includes organizing the administration in a manner that is lawful, effective, transparent, accessible, equipped to provide prompt service and information. Continuity should be guaranteed; proper registration and archiving are essential in achieving and guarantee continuity in the administration.

## **VI. The Ombudsman as Guardian of the Constitution**

Though no new case was presented in 2014 by the Ombudsman to the Constitutional Court for review, the decision rendered by the Court in November 2013 regarding the Penal Code was kept

alive, and frequently discussed or referred to in the local media and beyond the shores of Sint Maarten. In an article entitled '*Constitutionele toetsing in de West*' (Constitutional review in the West)<sup>7</sup>, which appeared in '*Nederlands Juristenblad*', the authors applaud Sint Maarten for having a Constitutional Court, and present that the verdict is not only interesting because of its content, but that The Netherlands may take example of how constitutional review may be applied. The authors argue that the judgment answers potential future questions to the court in the Netherlands such as the compatibility of a life prison sentence with the European Convention of Human Rights.

The President of the Constitutional Court paid a courtesy visit to the Ombudsman. At this occasion recent developments and considerations pertaining to the National Ordinance Constitutional Court were discussed.

## VII. Financial reporting

The total budget allotted to the Institution for 2014 was Nafl. 1.418.123,00 of which a total of Nafl. 1.174.875,07 was spent for the daily operations. (*Appendix # 3*)

In the year 2014 the operation of the Ombudsman Institution was financed from the budget of country Sint Maarten, with the exception of one project -the application system for the complaint handling and document management.

The funding from the IVB program ("*Institutionele Versterking Bestuurskracht Programma*") ended on December 31 2014. The funds from this program was earmarked for the establishment of the Institution as one of the High Councils of State. The last project the Ombudsman was able to secure from this program was a new application system-WORKPRO- for the complaint handling and document management at the cost of Nafl. 78.260,-. This application is specifically made for Ombudsman Institutions and was customized to meet the requirements of the complaints procedures of the Ombudsman of Sint Maarten. (*Appendix # 4*)

With regard to the Balance sheet, all the assets reflected were financed from the IVB funds and in that regard all projects met the requirements of the Program.

The financial Reports presented are unaudited and prepared by the Institution Ombudsman.

## VIII. Appendix

- 1) Understanding Propriety in 2014
- 2) Status report Chief of Police regarding recommendations issued by the Ombudsman
- 3) Ombudsman Financial Report 2014
- 4) USONA Financial Report 2014

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<sup>7</sup> Written by Roel Schutgens & Joost Sillen ; NJB 2014/412