

Year Report 2013



Completion

Pending finalizing the “Punch List”



OMBUDSMAN

SINT MAARTEN

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Foreword

It is a distinct honor to report this year that structuring the Ombudsman institution has reached “substantial completion”. Upon pre-final inspection of the operation at the end of the year 2013 a “Punch List” was prepared to be completed in 2014. Review by third parties of the work produced, landed Team Ombudsman with the nomination of “Person of the Year 2013” by the Daily Herald, as well as the nomination of the Ombudsman for the Emerald Award of Woman of Great Esteem for her achievements by a New York based organization.

Notwithstanding the many challenges, being a pioneer in building this new institute for our young country provides an opportunity to structure the organization to be exemplary and trend setting for good governance. The task of the Ombudsman as Guardian of the Constitution ensures that legislation is implemented in compliance with the international standards of a democracy. Team Ombudsman is committed to the Core Values and full completion of the Ombudsman institute. The “Punch List” drafted will be duly completed in 2014 pursuant to the Strategic Plan 2011-2021 as I report and give account of the work and activities of the Ombudsman in 2013.

State-building is the establishment, re-establishment, and strengthening of a public structure in a given territory capable of delivering goods. Nation-building is the most common form of a process of collective identity formation with a view to legitimizing public power within a given territory. The Ombudsman concludes that establishing and pre-delivery of the Ombudsman institute at the end of 2013 pending completion of the “Punch List”, contributed to both State and Nation building.



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

Vision and Mission Statements

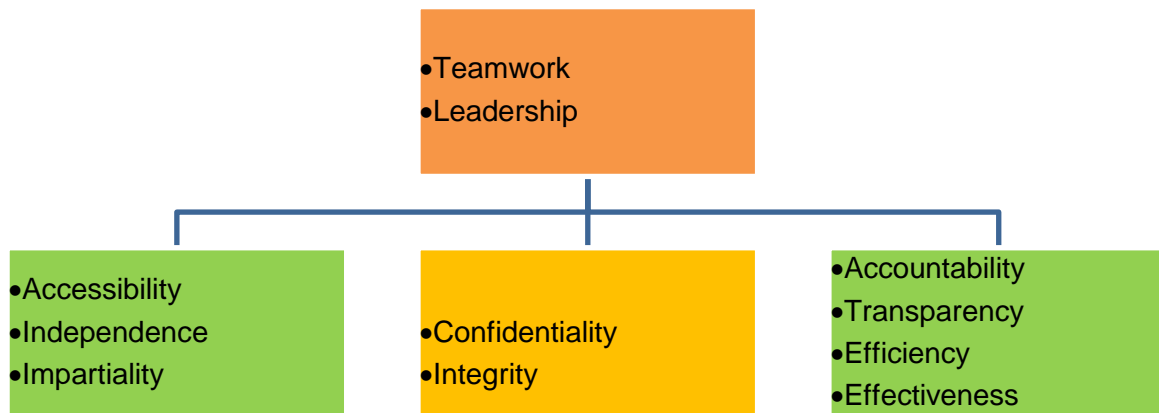
VISION STATEMENT

To promote good leadership for St 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



Executive Summary

1. Introduction

The year 2013 marks the first year of full operations of the Ombudsman with a full staff at the Bureau to service the community. In this Chapter a brief outline is given of the content of the Year Report.

2. The State of Affairs and Achievements 2013

In keeping with the strategic areas set out in the Strategic Plan 2011 – 2021 the basic structure of the new institute has been ‘substantially completed’ in 2013. Infrastructure, staff, work procedures and internal policies are operational and tested. An overview of important event is included in this Chapter. The Seventh Biennial CAROA Conference hosted by the Ombudsman of Sint Maarten with the Theme : ‘*Towards Exemplary Public Service Ethic In Challenging Times: The Role Of The Ombudsman*’ is highlighted.

3. Complaints handled and statistics

An improved screening procedure of complaints filed with the Ombudsman resulted in less complaints registered and investigated. Sixty two (62) new complaints were registered as filed in the year 2013. Though the number of complaints filed with the Ombudsman were proportionally less than the complaints filed in previous year, the Bureau handled more citizens in need of information. A total amount of 174 advises, referrals and or interventions are additionally registered in the registry of the Bureau’s Information Window.

Most prevalent complaints in 2013 came from civil servants, who had issues with their salary or placement in the new government structure, followed by complaints pertaining to infrastructure such as building permits and access to property, complaints against the Police about handling of investigations, reporting and filing complaints to the Police by citizens, the duration of actions taken by the Tax Department in cases of objections filed or information requested, as well as proper service provided to the public in general.

The Ministry of VSA and the Police Department were most active in following up on recommendations of the Ombudsman. Both resulted in less complaints filed against these bodies.

4. The Constitutional Court

History was written in 2013 when the Ombudsman made use of her role as Guardian of the Constitution by submitting the first case to the Constitutional Court for constitutional review.

The verdict of the Constitutional Court has been headlined in the Netherlands and on international forums, as human rights organizations took note of the decision of our Constitutional Court.

This Chapter includes an outline of the procedure followed by the Ombudsman prior to addressing the Constitutional Court and a synopsis of the decision of the Court.

5. Awareness and networking

Parliament: The Ombudsman experienced greater awareness from Parliament pertaining to the role of Parliament with regard to the reporting by the Ombudsman. Members of Parliament acknowledged that the function of Ombudsman enhances the effectiveness regarding proper conduct and restoring the trust of the people in government.

The Council of Ministers: The delays experienced by Departments in the following up on advices by the Ministers, the publication of Policies and Guidelines in use, and the matter of private entities with public authority, in particular Foundation Kadaster and Mortgages, were elaborated upon with the Council of Ministers. An apparent error in the consolidated text (GT) of the National Ordinance regarding privatization of Kadaster and Mortgages, charging the Minister of Finance with the supervision of tasks under the responsibility of the Minister VROMI, was brought to the attention of the Council. The Ministers were encouraged to implement proper tracking systems for requests filed within the Ministries.

The Ministries: The regular annual sessions were held with civil servants of all Ministries. This took place in the form of workshops. The focus of the sessions was geared at promoting good governance by empowering the civil servants to understand and apply the standards of proper conduct applied by the Ombudsman when investigating the behavior of Government.

Districts: Awareness regarding the function of the Ombudsman as protector and defender of the citizens through investigation of propriety was the focus of the sessions with the public. A healthy level of awareness pertaining to the relationship between government and the citizens is required to restore the trust of the citizen in Government.

The Media: Through Press Conferences organized by the Bureau and Press Releases sent to the media, the public was kept abreast of developments at the Ombudsman. The website of the Ombudsman (www.ombudsmansxm.com) was launched. It provides general information of the Institute, highlights events and reports published by the Ombudsman, and provides citizens the possibility to file a complaint online with the Ombudsman.

Regional and international network: The regional and international network was strengthened through extensive contact with stakeholders both locally and abroad. Highlight in fostering close contacts beyond the shores of Sint Maarten was the hosting of the Seventh Biennial Conference of the Caribbean Ombudsman Association on Sint Maarten. A visit from the Governor of Aruba to the Ombudsman to exchange ideas about the setting up of this High Council of State in Aruba, visits from Members of the “Progress Committee” (*Voortgangscommissie*), a delegation of the Netherlands lead by the Chairman of the Council of State, and a visit from the Members of the Integrity Committee, Chaired by justice Jacob (‘Bob’) Wit, recognizes the presence of an Ombudsman in the Country.

6. **Financial Reporting**

In accordance with article 12 of the National Ordinance Ombudsman, the budget of the Ombudsman forms an integral part of the budget of Country Sint Maarten. As such the 2013 budget of Bureau Ombudsman was approved by Parliament for an amount of Nafl. 1.416.623,00, and established by National Ordinance on September 16, 2013. Based on the unaudited financial report for the year 2013 a total of Nafl.1.186.115,11 was spent (see Appendix 2).

The Ombudsman, one of the High Councils of State, was allotted funds from the Kingdom program “*Institutionele Versterking Bestuurskracht Programma-IVB*”. Mentioned funds were managed by USONA as part of the project “*Opbouw Hoge College van Staat*”. As was the case in 2012, the majority of the capital investment in 2013 was paid from the budget of USONA. Throughout 2013 various projects were submitted and approved by USONA for funding to the tune of Nafl. 491.588,84 (See **Appendix 2** for the list of projects and a financial overview).

7. **Finalizing the Punch list: a brief outline of the next Strategic steps**

The process of building an institution, which is effective and efficient in promoting good governance by highlighting problem areas in the government administration, recommending actions for reform and transparency, and resolving issues arising from complaints, has been completed, pending total delivery after finalizing a few items on the “Punch list”. Ignorance about laws, rules and regulations severely obstructed the proper functioning of the Ombudsman. As such priorities on the “Punch list” to be addressed in 2014 are: activities to increase awareness of the mandate and accessibility of the institution; institutional capacity strengthening for effective and efficient functioning; elimination of administrative shortcomings of the Bureau. These activities are in line with the priority areas of the Strategic Plan 2011 - 2021.

8. List of Appendix

Appendix

1. Questionnaire Evaluation of sessions with Ministries: overall results
2. Financial Report from Budget Country Sint Maarten
3. 2013 USONA Projects Guaranteed/Paid
4. Consolidated Reports: Country Sint Maarten Budget & IVB (USONA) Funds

1. Introduction

The Ombudsman listens, investigates and recommends actions to promote good governance.

The year 2013 marks the first year of full operations of the Ombudsman with a full staff at the Bureau to service the community. The doors were open to receive complaints from January to and including December 2013.

Our efforts to connect with and inform our stakeholders continued unabated. The importance of continuity of government and propriety in dealing with the interest of the citizens was stressed in communicating with the administrative bodies, the Ministers and the various Ministries, in the course of the year.

Our regional and international connections and standing were fortified through among others the hosting of the Seventh Biennial Conference of the Caribbean Ombudsman Association (CAROA) in May 2013.



*Ombudsmen and Sint Maarten Officials at Opening Ceremony of the CAROA Conference
May 5-9 2013*

The second Chapter of this Year Report gives an overview of the State of Affairs, progress made and achievements of the Ombudsman in 2013, followed by Complaints handled in Chapter three. The first case presented to the Constitutional Court is discussed in the Chapter four, followed by a summary of activities including Awareness and Networking in Chapter five, Financial Reporting in Chapter six, and a brief outline in Chapter seven of the next Strategic steps to be taken. The report is concluded in Chapter eight with a list of Appendix supporting matters presented in this Year Report.

2. The State of Affairs and Achievements 2013

In keeping with the strategic areas set out in the Strategic Plan 2011 – 2021 the basic structure of the new institute has been ‘substantially completed’ in 2013. Infrastructure, staff, work procedures and internal policies are operational and tested.

Important events 2013

Dates:	Events:	Remarks:
January 23 2013	The first petition was filed with the Constitutional Court by Ombudsman regarding the Penal Code pursuant to art. 127 section 2 Constitution (case 2013/1).	A full report in Chapter 4.
February 1 2013	Employment new All-round Administrator, J. Peterson.	Replacement.
February 6 2013	The Ombudsman nominated as Women of Great Esteem.	Nominated by Women of Great Esteem Organization, New York, USA.
February 7 2013	Meeting upon the request of the Christian Community pertaining to changes in the new Penal Code approved by Parliament in May 2012.	Attended by Pastors of various denominations expressing concern regarding matters of prostitution on the island.
March 8 2013	Visit Coordinator IVB Funds – to assess the execution of the IVB-projects funded by USONA.	See Chapter 6 Financial Report.
March 19 2013	Meeting with the Minister VROMI and his legal advisor regarding the findings and recommendations of the Final Report of the Foundation Kadaster & Mortgages (“Stichting Kadaster & Hypotheek-wezen.”	Government acknowledged status Kadaster as a “Zelfstandig Bestuurs- orgaan” (“ZBO”) and Ministerial responsibility for supervision.
May 5-9 2013	CAROA Conference.	See Chapter 2 for brief report.
Mar 20 2013	Presentation Ombudsman regarding Constitutional Court at Symposium organized by the Advisory Council.	Cooperation activity with the High Councils of State.
July 2 2013	Case Management Session organized by the Constitutional Court on the petition of the Ombudsman regarding the new Penal Code (case no.2013/1).	Establishing procedural guidelines (videoconference session at the Court House).

Dates:	Events:	Remarks:
July 17 2013	Meeting with the Minister of VROMI, and his legal staff regarding Kadaster & Mortgages.	Meeting held upon the request of the Ombudsman for a status report and briefing regarding Kadaster.
July 18 2013	Meeting with Quality Manager of VROMI, regarding training for workers of the Ministry.	Request from VROMI to Ombudsman to collaborate with the Ministry to give training for the employees.
August 8, 13 & 15 2013	Workshops with all Ministries at the University of St Martin (USM).	Yearly activity (combined sessions).
August 13 2013	Presentation Annual Report 2012 to Central Committee of Parliament.	Yearly activity established by Parliament.
August 15 2013	Preliminary Decision Constitutional Court (case 2013/1).	The Ombudsman & Government are requested to review their positions on life sentencing in light of the case Vinter vs United Kingdom (European Court of Human Rights Appl.Npos. 66069/09, 130/10 en 3896/10) (See Chapter 4).
October 1 2013	Employment new Complaint Officer- L.William-Crestian.	Replacement.
October 3 2013	Presentation Annual report 2012 to the Council of Ministers.	Yearly activity to inform the Council on the findings in the past year, and the areas to improve good governance.
October - December 2013	Sessions on Good Governance attended by staff Ombudsman, organized and presented by Prof. G.H. Addink, Associate Professor University of Utrecht.	Ten hours videoconference and four local hours.
October 8, 15, 22, 29 2013	District information sessions at the USM, Belvedere, St Peters, Colebay.	Yearly activity for the public (See Chapter 5).
October 15 2013	Visit Governor of Aruba to Ombudsman regarding experience setting up the Ombudsman on Sint Maarten	Fact finding visit in connection with the establishing of the Ombudsman institution on Aruba.

Dates:	Events:	Remarks:
October 22 2013	Courtesy visit “Voortgangscommissie” members: Richard Gibson, Sr-SXM; Nico School -Ned; Ronald Bandell-Chairperson	Courtesy
October 25 2013	Workshop presented by Ombudsman for staff Bureau Ombudsman on Vision Ombudsman & SWOT analysis.	Internal training, evaluation and awareness
October 28 2013	Session at the Police Department upon request.	Police extended invitation to Ombudsman to create awareness of the institution among the Police Force.
November 6 2013	Launching of the Website Ombudsman	www.ombudsmansxm.com
November 8 2013	Decision Constitutional Court regarding constitutional grievances articles Penal Code (case 2013/1)	See Chapter 4
November 26 2013	End of the Year Press Conference.	Yearly activity to inform the public.
November 28 2013	Meeting with Prof. Hans Doelder regarding changes to the Penal Code considering the decision of the Constitutional Court of November 8 2013 (case 2013/1).	Courtesy visit advisor Minister of Justice.
December 6-7 2013	Staff Retreat. Theme: “Strengthen & Improving the Vision Ombudsman.”	Yearly event/activity to evaluate team work and operations.
December 17 2013	Meeting with the Integrity Committee: Chairperson Judge Jacob Wit, Members Richard Gibson Sr, Jan Beaujon.	Meeting upon request of the Committee to exchange views.
December 31 2013	Team Ombudsman appointed ‘Person of the Year’ by the Daily Herald.	Public acknowledgement and appreciation for the role of the Ombudsman institute as Guardian of the Constitution.

More citizens visited the Bureau in 2013 for information and complaints. A full report on cases investigated and handled is included in Chapter three of this report.

CAROA Conference

Highlight of the year 2013 was the hosting of the Seventh Biennial CAROA by the Ombudsman of Sint Maarten with the Theme : *‘Towards Exemplary Public Service Ethic In Challenging Times: The Role Of The Ombudsman’*. The Conference was attended by Ombudsmen, legal luminaries, scholars and practitioners from Antigua and Barbuda, Barbados, Bermuda, the Virgin Islands, Cayman Islands, Curaçao, Haiti, Montserrat, New Zealand, The Netherlands, St. Kitts/Nevis, Sweden, Trinidad and Tobago and Sint Maarten. Through the financial assistance of the International Ombudsman Institute, the Protector du Citoyen of Haiti, was able for the first time, to attend a regional Conference.



Participants Seventh Biennial CAROA Conference

The Conference was officially declared opened by His Excellency the Governor of Sint Maarten, Drs. Eugene Holiday. Ms. Marianne von der Esch, Head of the International Division at the Office of the Sweden Parliamentary Ombudsman, delivered the Keynote Address. Other presenters were the renowned founder of the SYT investigative method, Mr. Andre Marin, B.A., LL.L-J.D Ombudsman of Canada, assisted by Ms. Barbara Finlay, B.A., LL.B.-J.D Deputy Ombudsman Ontario, Canada, Mr. Mike Alexander, LLM Civil Law Notary, Mr. Gert Bergman Attorney at Law and Tax Attorney, Professor Dr. Arjen van Rijn, Legal scholar, Ms. Arlene Brock, JD, LL.B. Ombudsman of Bermuda, Ms. Alba Martijn, LLM, Ombudsman Curaçao, Ms. Lynette Stephenson, LLB (Hons), Ombudsman of Trinidad and Tobago, Ms. Nicola Williams, B.A. (Hons) Law, Ombudsman of the Cayman Islands and Madame Florence Elie, MA, Ombudsman of Haiti.

The Conference was happy to welcome the attendance and participation of the President of the International Ombudsman Institute and Chief Ombudsman of New Zealand, Dame Beverly Wakem, DNZM CBE. This event boosted the image of the institute locally, regionally and internationally.

Constitutional Court

The first case presented by the Ombudsman to the Constitutional Court in January 2013, which concluded with a historic verdict on November 8, 2013, captured the attention of many beyond the shores of Sint Maarten. The issue of life sentences without parole as stated in the ratified Penal Code caught the attention of interest groups in the Netherlands. The outcome was discussed in the Dutch press as well as in legal literature.



The Constitutional Court



Legal Advisor Marlon Hart & The Ombudsman, Dr. Nilda Arduin submitting supplement petition to the Constitutional Court

3. Complaints handled and statistics

Complaints handled

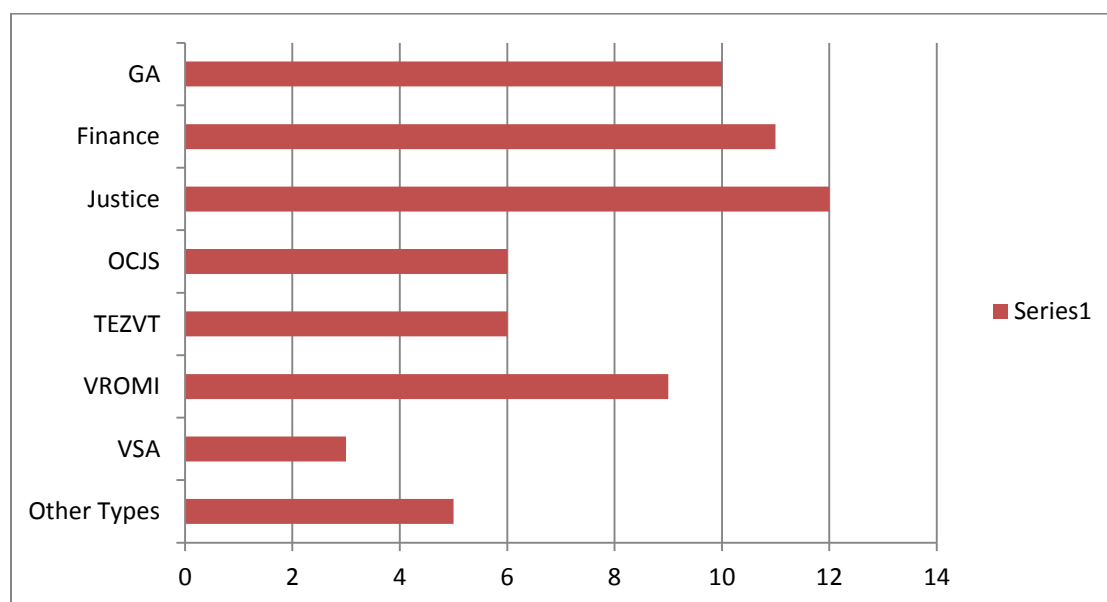
An improved screening procedure of complaints filed with the Ombudsman resulted in less complaints registered and investigated. Sixty two (62) new complaints were registered as filed in the year 2013. Though the number of complaints filed with the Ombudsman were proportionally less than the complaints filed in previous year, the Bureau handled more citizens in need of information. A total amount of 174 advises, referrals and or interventions are additionally registered in the registry of the Bureau's Information Window.

Statistics Complaints

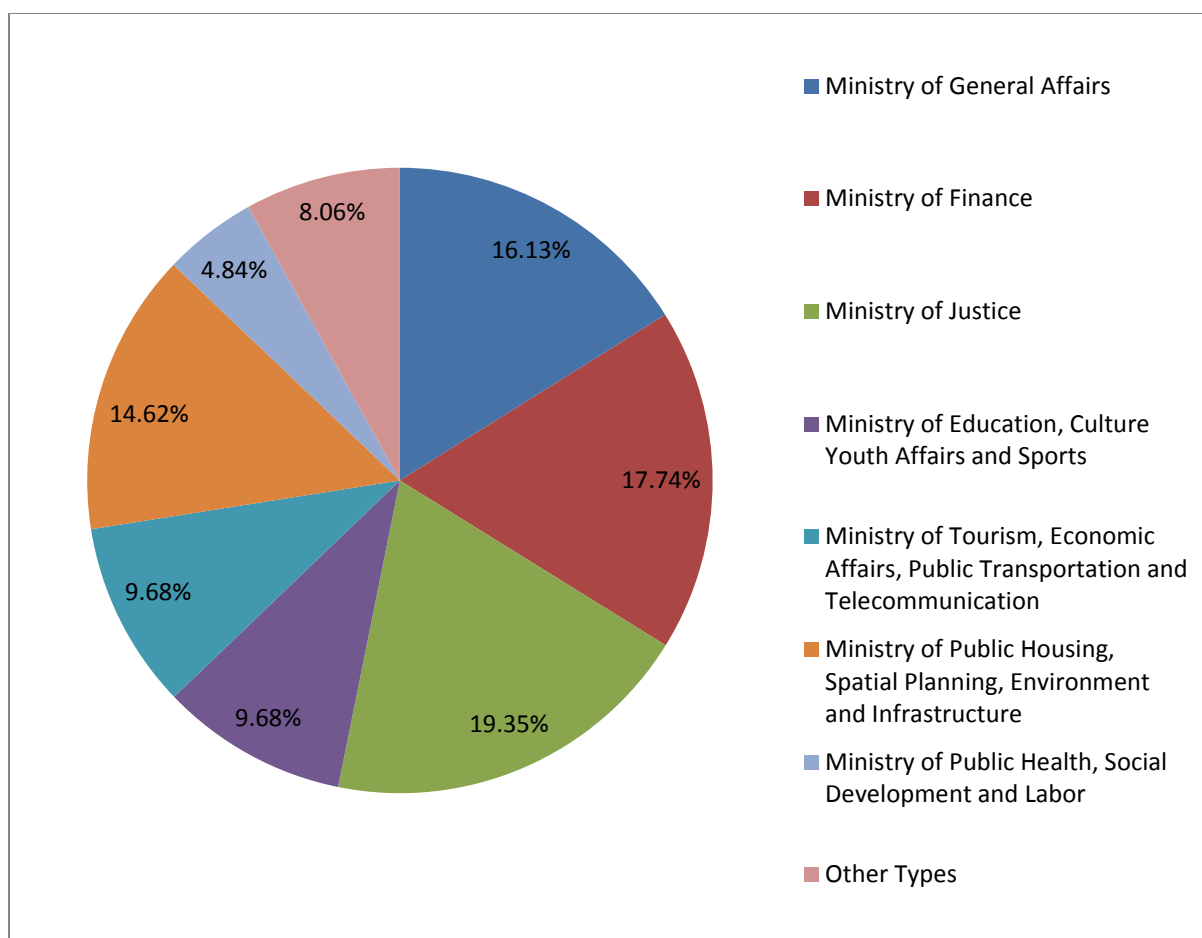
Ministry	Department/Entity	Number of Complaints	Complaints per Ministry in %
General Affairs (GA)	Civil Registry	2	16.13%
	Fire Department	1	
	Personnel Affairs	7	
Finance	Finance	2	17.74%
	Receivers	2	
	Tax	7	
Justice	Justice	2	19.35%
	Immigration Border	3	
	Protection		
	Police	3	
	Prosecutor	4	

Ministry	Department/Entity	Number of Complaints	Complaints per Ministry in %
Education, Culture Youth and Sports (OCJS)	OCJS	1	9.68%
	Education	1	
	Inspection	1	
	Study Finance	3	
Tourism, Economic Affairs, Public Transportation and Telecommunication (TEZVT)	TEZVT	1	9.68%
	Economic license	1	
	Inspection	4	
Ministry of Public Housing, Spatial Planning, Environment and Infrastructure (VROMI)	Domain	5	14.62%
	Infrastructure	1	
	New projects	3	
Public Health Social development and Labor (VSA)	VSA	1	4.84%
	Ambulance	1	
	Labor & Social affairs	1	
Others	KADASTER	1	8.06%
	PENSION FUND	1	
	SZV	1	
	OBM Not Authorized	2	

Table: Overview of number of complaints filed per Ministry in 2013



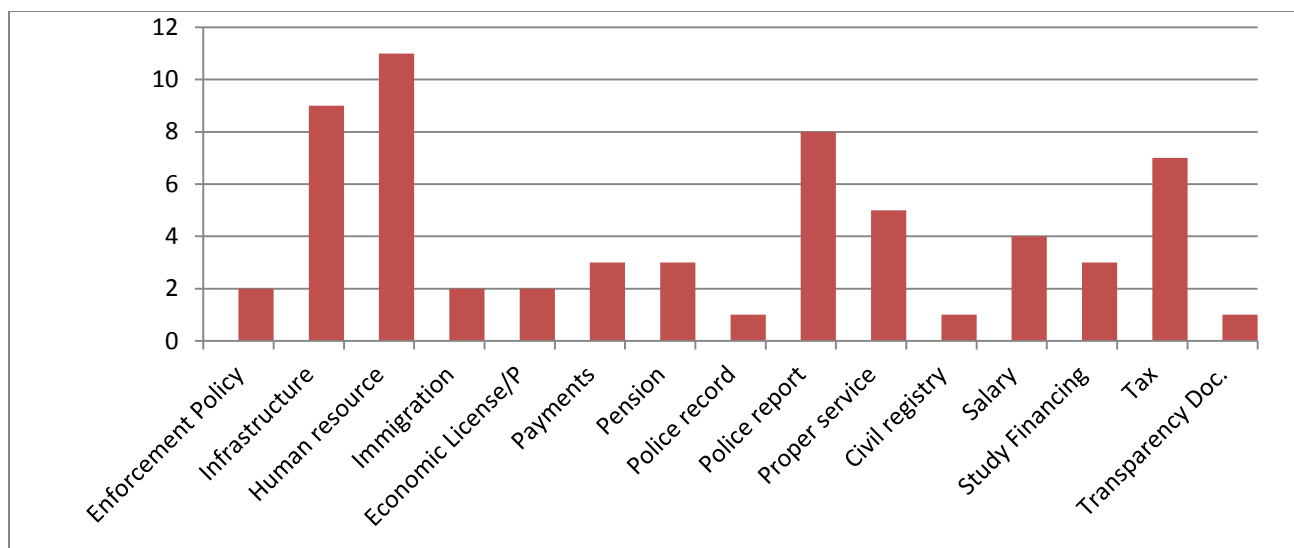
Graphic: Number of new Complaints registered per Ministry in 2013



Graphic: Percentage of new Complaints registered per Ministry in 2013

In 2013 the Ombudsman closed 108 complaints files of which 68 are files carried over from previous years. Fifty nine (59) reports were drafted, while 49 were closed after a simple intervention by the Ombudsman as Government quickly came to action after the Ombudsman reported the complaint and intervened to solve the complaints. The Ombudsman wrote twenty one (21) Final Reports, establishing improper behavior of the Government as a result of the investigations. Thirty eight (38) Notifications of Termination (NOT) were sent out, informing the administrative body that the Ombudsman refrained from further investigation of the complaint due to compliance with the recommendations by the departments. The standards of proper conduct violated are mentioned in both the Final Reports and Notifications of Termination.

Complaints and issues investigated by the Ombudsman vary from non-enforcement of policies to issues related to non-response to appeals and tax matters. A categorized overview of issues investigated is stated below.



Graphic: Complaints investigated categorized and reflected by numbers

Most prevalent complaints in 2013 came from civil servants, who had issues with their salary or placement in the new government structure, followed by complaints pertaining to infrastructure such as building permits and access to property, complaints against the Police about handling of investigations, reporting and filing complaints to the Police by citizens, the duration of actions taken by the Tax Department in cases of objections filed or information requested, as well as proper service provided to the public in general.

Much progress has been marked in response time and content to questions asked by the Bureau in investigating complaints, however various Departments still need improvement in understanding the queries by the Ombudsman and the legal obligation by the administrative bodies to respond timely and comprehensively as requested by the Ombudsman.

The Ministry of VSA and the Police Department were most active in following up on recommendations of the Ombudsman. Both resulted in less complaints filed against these bodies.

Apart from active investigation of complaints the Ombudsman keeps a register of all services provided to the public. The motto of the Bureau is that nobody may leave the Ombudsman without obtaining information pertaining to the matter at hand. By means of the “Information Window” the Ombudsman provides information and or refers the citizens to the relevant authorities and entities when the Ombudsman is not competent to engage the request. Request for information varies. The Register of the “Information Window” provides the Ombudsman an indication of the areas that requires attention within the community. Issues about labor and questions involving government owned companies and agencies are regular at the “Information Window”. In general it appears that the information provided by government bodies, public and private agencies, is insufficient or not sufficiently clear or accessible to the citizens.

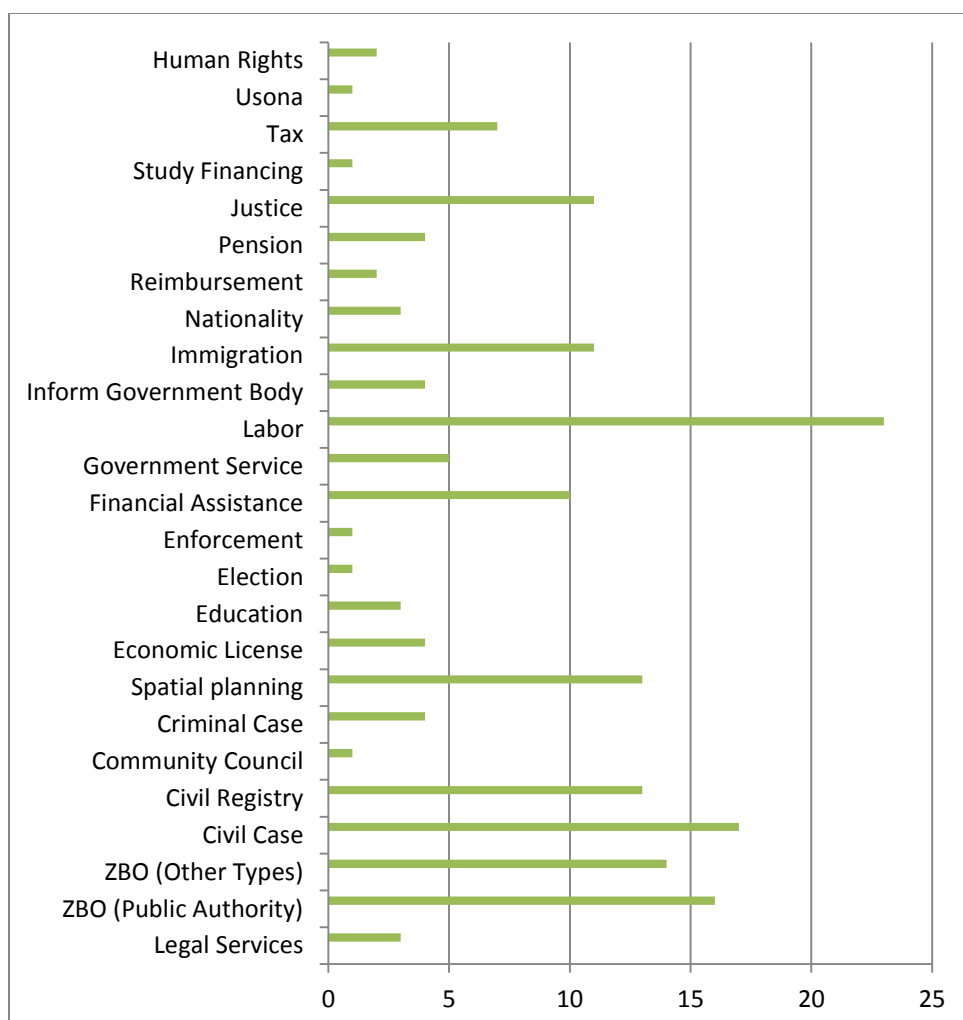


Table: Information Window per topic in 2013 (Note: Labor inquiries reflected in this chart are mainly complaints related to employer/employee conflicts, which the Ombudsman is not competent to investigate).

Standards of proper conduct violated in 2013

The standards of proper conduct most violated are still: Active and adequate information provision, Promptness and Legal certainty. Next to Adequate organization of services, the standard of Correct treatment of the citizen also need extra attention from the administration.

Standards of proper Conduct	Percentage
Active and adequate information provision	34 %
Promptness	23 %
Legal certainty	15 %
Correct treatment	8 %
Adequate organization of services	8 %
Fair play	6 %
Reasonableness	3 %
Cooperation	3 %

Table: Registered Standards of Proper Conduct violated in 2013 reflected in percentages

Own Motion investigations

Notwithstanding meetings held with the Minister(s) of VROMI regarding the Final Report dated June 27, 2012 drafted by the Ombudsman upon finalizing an Own Motion investigation of the Kadaster, no follow up was received from the Foundation Kadaster and Mortgages nor the Minister of VROMI regarding the execution and or implementation of the recommendations issued in the pertinent report. Investigations into complaints filed against Kadaster were put on hold, pending talks with the Minister of VROMI, charged by law with the supervision of the tasks executed by mentioned private entity with public authority.

No other Own Motion investigation was initiated by the Ombudsman due to the many areas of the operation of the Bureau which required much attention. The intentions to initiate an investigation in the operations of the Prison as previously discussed with the Inmate Association and their lawyer was aborted due to pre-research on the matter and the ongoing investigation by the Council for Law Enforcement into matters within the Prison system. The Inmate Association was accordingly informed by notification to their lawyer.

4. The Constitutional Court

History was written in 2013 when the Ombudsman made use of her role as Guardian of the Constitution by submitting the first case to the Constitutional Court for constitutional review. The verdict of the Constitutional Court has been headlined in the Netherlands and on international forums, as human rights organizations took note of the decision of our Constitutional Court. The Court ruled that it cannot be excluded that at some time in the future a life sentenced prisoner will be fully rehabilitated and that continued detention can no longer be justified on legitimate penological grounds. The Constitutional Court, applying the case law of the European Court of Human Rights, decided that in such a case even a life sentenced prisoner must have both a possibility of review and a prospect of release. This flows from section 3 of the Constitution of Sint Maarten prohibiting cruel, inhuman and degrading treatment or punishment.

Outline of the procedure followed by the Ombudsman prior to addressing the Constitutional Court

Upon receipt of a ratified law or regulations, each law is scrutinized by the Ombudsman on the content and procedures followed by Government and Parliament. Subsequently the Ombudsman may request the Recorder of Parliament to provide detailed information regarding the procedures followed in approving a specific law. Important is that this information is sent to the Ombudsman immediately, but certainly within two days; bearing in mind that the Ombudsman has only six weeks to study a law, which has been in the making sometimes for years, and reviewed by various entities.

Sometimes a law may have been brought to the attention of the Ombudsman by persons or groups in the society. This has been the case pertaining to two provisions of the Criminal Code presented by the Ombudsman to the Constitutional Court for review in 2013. The Constitution is however the only measuring stick for the Ombudsman in reviewing a ratified law or regulation. Whatever the moral issue ‘concerned citizens’ may have with the law, the only justified reason for the Ombudsman to present a law for review and possible annulment to the Constitutional Court is contravention with the Constitution. This means that either the rights of the people, or procedures followed may possibly be in conflict with the Constitution.

The first case presented to the Constitutional Court

On January 23, 2013 the Ombudsman submitted the first petition for Constitutional review to the Constitutional Court. After a response to the petition by the Government, the Ministers of Justice and General Affairs, written submissions were drafted and presented to the Court by both parties. On July 2, 2013 the Court heard oral arguments from both sides in a public session, and questioned parties on the arguments presented. The public hearing lasted a whole day. The constitutionality of several articles in the amended Penal Code of Sint Maarten approved by Parliament and ratified by Government were presented to the Court for (partial) annulment. In the first part of the petition to the Court a few legal technical issues pertaining to procedures followed, or not followed, by government were addressed. Sections of the Penal Code presented to the Constitutional Court for review include articles pertaining to maltreatment/cruelty against animals, crimes committed against a tourist visiting the island for recreational purposes, parole for prisoners with a life sentence, probation, early release as a result of overcrowded prison cells and prostitution.



Ombudsman Dr. Nilda Arduin presenting oral arguments at Hearing Constitutional Court

The decision of the Court

The decision of the Court is divided in two parts. First the Court established five principles as a guide for future cases, followed by a decision of the Court on the seven (7) constitutional complaints brought forward by the Ombudsman, using the five principles to explain its decisions.

The five principles established by the Constitutional Court regard: Jurisdiction and task of the Constitutional Court; Judicial restraint; Presumption of Constitutionality; Constitutional review needs to be practical and effective and Concordance.

Of the seven Constitutional Complaints filed by the Ombudsman, four (4) were considered founded, with regard to two (2) complaints the Court applied the principle of Judicial restraint, and as such they were considered unfounded, namely the complaints filed against the articles pertaining to animal cruelty and prostitution. One (1) complaint filed by the Ombudsman was considered in itself unfounded, namely increased punishment for theft against tourists. Both animal abuse and prostitution remain illegal until such time that government drafts additional legislation to organize a proper system for permits, which would allow legal engagement of ‘animal fighting’ and “prostitution”.¹

¹ Presently a policy of tolerance is applied regarding prostitution.

The Ombudsman was briefed by the professor working with the Minister of Justice regarding a possible way forward as a follow up to the verdict of the Constitutional Court. The Ombudsman will remain vigilant regarding the follow up legislation in these matters.

The Ombudsman and staff of the Bureau are proud to have recognized the issue of ‘lifers’ not being eligible for parole as being in conflict with basic human rights.

5. Awareness and networking

Parliament

The Year report 2012 was presented to Parliament in July 2013, and elaborated upon in a Central Committee Meeting on August 13, 2013. The Ombudsman experienced greater awareness from Parliament pertaining to the role of Parliament with regard to the reporting by the Ombudsman. Members of Parliament acknowledged that the function of Ombudsman enhances the effectiveness regarding proper conduct and restoring the trust of the people in government. With questions regarding among others the relatively large number of complaints against VROMI and VSA, as well as the status quo pertaining to Kadaster, Parliament established that the body needs to deliberate how to proceed on the information acquired from the Year Report 2012, and act upon improving compliance by the administrative bodies with the law.

At the closing of 2013 no information or follow up on possible actions taken by Parliament were communicated to the Ombudsman.

The Council of Ministers

On October 3, 2013 the annual meeting to discuss the Year Report 2012 with the Council of Ministers was convened. Highlights of the meeting involved a status report on the basic targets set for 2012 to improve operations and services, as well as follow up on recommendations included in reports regarding findings upon investigation of individual complaints. The delays experienced by Departments in the following up on advices by the Ministers, the publication of Policies and Guidelines in use, and the matter of private entities with public authority, in particular Foundation Kadaster and Mortgages, were elaborated upon with the Council of Ministers. An apparent error in the consolidated text (GT) of the National Ordinance regarding privatization of Kadaster and Mortgages, charging the Minister of Finance with the supervision of tasks under the responsibility of the Minister VROMI, was brought to the attention of the Council. A structured approach to reporting to the Ombudsman on progress made on the target objectives was discussed. Special attention was requested from the Minister TEZVT for compliance with deadlines and follow up on recommendations by the Departments under his supervision. The Ministers were encouraged to implement proper tracking systems for requests filed within the Ministries.

At the closing of 2013 the Ombudsman noted that various Appeal Committees were established; the Ministry of VSA implemented most of the recommendations. Receiving requested documents regarding entities executing government tasks, or having agreements with government such as VKS, CARS, Vehicle Inspection and Sint Maarten Housing and Development Foundation remains a challenge.

Addressing the Constitutional Court in January 2013 pertaining to the ratification procedures for legal instruments and notification of same to the Ombudsman pursuant to article 127 section 2 of the Constitution resulted in this matter being properly organized by Government.

The Ministries

The workshops organized for the civil servants of all Ministries dealing with the public, or in charge of drafting policies, were a success. The overall result of the evaluation of the sessions is hereto attached as **Appendix 1**. The focus of the sessions was geared at promoting good governance by empowering the civil servants to understand and apply the standards of proper conduct applied by the Ombudsman when investigating the behavior of Government.

Upon the request of the Ministry of VROMI for a follow up on the workshops in 2014 by means of a training, to promote a ‘customers oriented approach’, a course was developed by the Quality Manager of VROMI and discussed with the Ombudsman. This course could be used as a pilot to train the civil servants of VROMI, followed by use of the concept with other Ministries.

Districts

District information sessions were organized in collaboration with Community Councils, Community Centers and or concerned citizens. Awareness regarding the function of the Ombudsman as protector and defender of the citizens through investigation of propriety was the focus of the sessions with the public. A healthy level of awareness pertaining to the relationship between government and the citizens is required to restore the trust of the citizen in Government. A change of mindset necessary to clear the tension between personal and public interest was discussed at the meetings, as well as the importance of citizens to file complaints with the Ombudsman, to promote propriety within the government administration. Active participation of the public has been registered during the question and answer segment of the sessions. The main questions revolved around actions available to the Ombudsman to enforce cooperation and compliance by administrative bodies. Awareness about the constitutional organization of the country with the role of Parliament as the representative of the people and the highest oversight body of the Land was also a topic of discussion.

The Media

Contact with the media as a link to the public was maintained. Through Press Conferences organized by the Bureau and Press Releases sent to the media, the public was kept abreast of developments at the Ombudsman. Much attention was given to the proceedings in the historical case filed with the Constitutional Court. In the second half of the year the website of the Ombudsman was launched. The website (www.ombudsmansxm.com) provides general information of the Institute, highlights events and reports published by the Ombudsman, and provides citizens the possibility to file a complaint online with the Ombudsman.

On December 31, 2013 Team Ombudsman was nominated ‘*Person of the Year*’ by the Daily Herald, a regional newspaper operating from Sint Maarten.



Regional and international network

The regional and international network was strengthened through extensive contact with stakeholders both locally and abroad. As a Regional Director on the Board of the International Ombudsman Institute (IOI) the Ombudsman attended two Board meetings. This resulted in the President of the IOI attending and speaking at the Seventh Biennial Conference of the Caribbean Ombudsman Association (CAROA), hosted by the Ombudsman of Sint Maarten in May 2013. A Resolution of the Board at the second IOI Board meeting in September 2013 in New York gives the staff of Bureau Ombudsman Sint Maarten access to a training to be held in the region in 2014, sponsored with IOI funds. Arrangements were made for the Latin America Ombudsman Institute (ILO) and CAROA to meet in November 2013 in Mexico, to foster greater cooperation and exchange of best practices within the two regions.

Highlight in fostering close contacts beyond the shores of Sint Maarten was the hosting of the Seventh Biennial Conference of the Caribbean Ombudsman Association on Sint Maarten. This event brought many regional and international Ombudsmen to Sint Maarten. The presence of this esteemed group of Ombudsmen on the island exposed the staff of the Bureau first hand to valuable information, increasing the awareness and understanding of the institution and their tasks, as well as stakeholders and the general public through interviews and participation in sections of the Conference upon invitation.

A visit from the Governor of Aruba to the Ombudsman to exchange ideas about the setting up of this High Council of State in Aruba, visits from Members of the “Progress Committee” (*Voortgangscommissie*), a delegation of the Netherlands lead by the Chairman of the Council of State, and a visit from the Members of the Integrity Committee, Chaired by justice Jacob (‘Bob’) Wit, recognizes the presence of an Ombudsman in the Country.

As a result of the case brought forward to the Constitutional Court contact was sought with the Ombudsman by groups in the Netherlands advocating Human Rights, in particular a group championing the cause of persons sentenced for life.

Nomination of the Ombudsman for the Award of Woman of Great Esteem by a New York based organization established visibility of the work of the Ombudsman beyond the shores of Sint Maarten. Due to the hosting of the CAROA Conference on Sint Maarten, acceptance of the honor was declined by the Ombudsman.

Photo Gallery of events



Presentation Year Report 2012: Drs. Gracita Arrindell, President of Parliament and Dr. Nilda Arduin



Presentation Year Report 2012: Council Ministers



Visit of the Governor of Aruba, His Excellency Mr. Fredis Refunjol (third from left) and advisor



Press Conference on the Penal Code Constitutional Court Petition.



District information session at USM



Workshop Ministries at USM



Session with the Police Department



District Information Session at Cole Bay



Launching of Website: Ms. Deshanna Richardson, Designer of the Website (2nd from right), Ms. Angela Dekker, representative USONA (1st from right)



Presentation Annual Report to the Salvation Army



Meeting with Council of Churches and the Ombudsman, Dr. Nilda Arduin



Team Ombudsman



IOI Board Meeting in New York September 23-24 2013



CAROA delegates from British Virgin Islands, Haiti, Bermuda & Barbados (from left to right)



Presentation 2012 Annual Report during District Information Session



District Information Session at St. Peters

6. Financial Reporting

Financial review for the year 2013

In accordance with article 12 of the National Ordinance Ombudsman, the budget of the Ombudsman forms an integral part of the budget of Country Sint Maarten. As such the 2013 budget of Bureau Ombudsman was approved by Parliament for an amount of **Nafl. 1.416.623,00**, and established by National Ordinance on September 16, 2013.

Based on the unaudited financial report for the year 2013 a total of **Nafl. 1.186.115,11** was spent from the budget of the country Sint Maarten (see **Appendix 2**).

The Ombudsman, one of the High Councils of State, was allotted funds from the Kingdom program “*Institutionele Versterking Bestuurskracht Programma-IVB*”. Mentioned funds were managed by USONA as part of the project “*Opbouw Hoge College van Staat*”. A total sum of Nafl. 1.126.526,50 has been allocated for establishing the Ombudsman. As was the case in 2012, the majority of the capital investment in 2013 was paid from the budget of USONA. Throughout 2013 various projects were submitted and approved by USONA for funding to the tune of Nafl. 483.564,18. (see **Appendix 3** for the list of 2013 projects).

The Financial Overview from the Budget of Country Sint Maarten and the USONA Projects are also reflected in a Consolidated Report (see **Appendix 4**).

The USONA funding officially ended on September 30th 2013; approved projects can be executed beyond mentioned date.



Delegation IVB-Projects to assess the execution of the projects

7. Finalizing the Punch list: a brief outline of the next Strategic steps



The core function of the Ombudsman is to serve as an independent complaint agency, accessible to the public of Sint Maarten, with the assurance of impartial and confidential handling of complaints against administrative bodies; government bodies and private agencies with public authority. The process of building an institution, which is effective and efficient in promoting good governance by highlighting problem areas in the government administration, recommending actions for reform and transparency, and resolving issues arising from complaints, has been completed, pending total delivery after finalizing a few items on the “Punch List”. In keeping with the Strategic Plan 2011-2021 the vision of the Ombudsman 2013-2014 was presented to the staff of the Bureau, to strengthen and improve the organization in the year to come.

Learning to deal with autonomy and awareness of what the new status of the country implies proved at times to be a challenge for administrative bodies, including private entities with public authority such as the Kadaster. Ignorance about laws, rules and regulations severely obstructed the proper functioning of the Ombudsman. As such priorities on the “Punch list” to be addressed in 2014 are: activities to increase awareness of the mandate and accessibility of the institution; institutional capacity strengthening for effective and efficient functioning; elimination of administrative shortcomings of the Bureau. These activities are in line with the priority areas of the Strategic Plan 2011 - 2021.

8. List of Appendix

1. Questionnaire Evaluation of Sessions with the Ministries: overall results
2. Financial Report from Budget Country Sint Maarten
3. 2013 USONA Projects Guaranteed/Paid
4. Consolidated Reports: Country Sint Maarten and IVB (USONA) Funds