

2017

YEAR REPORT

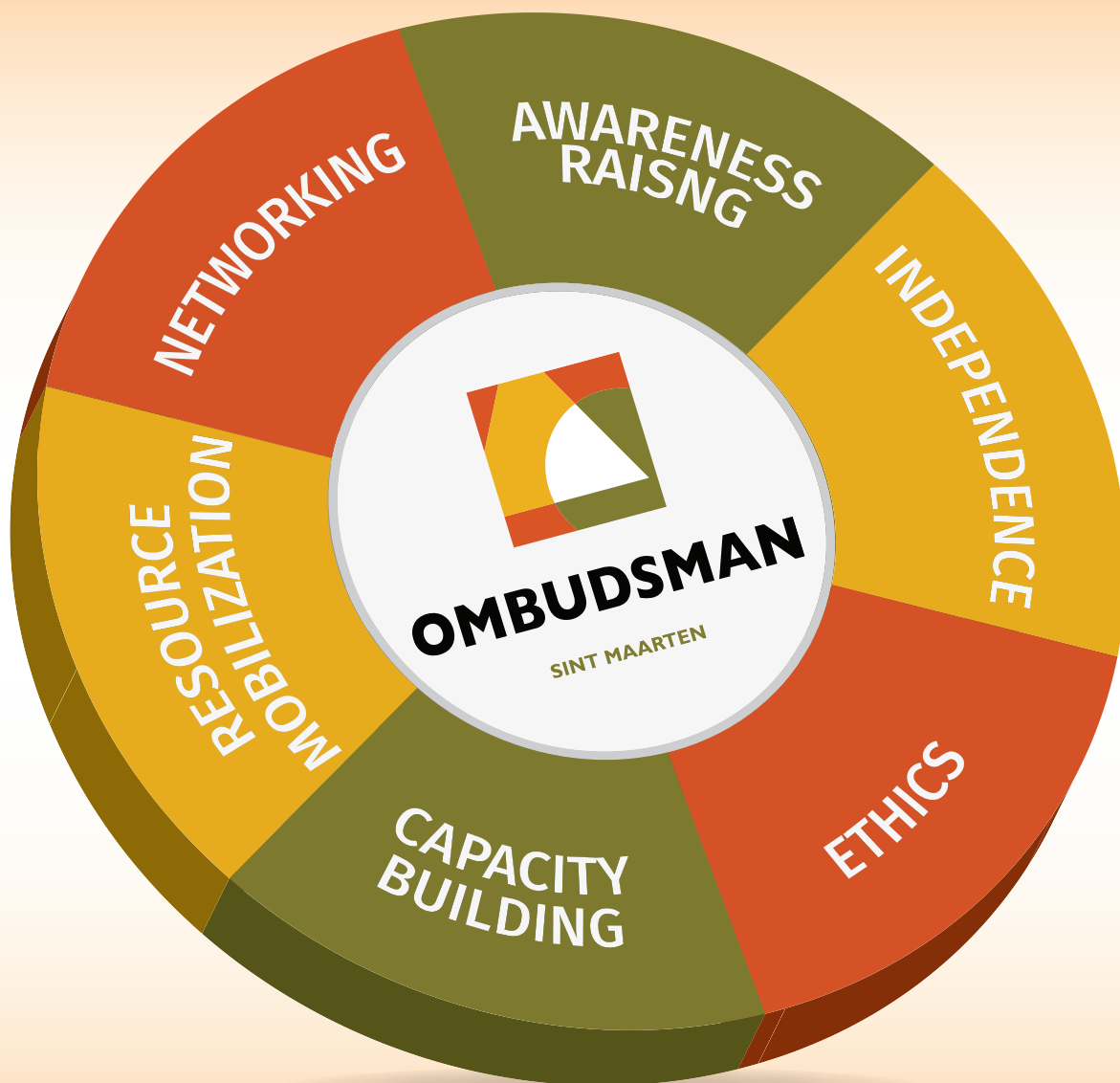


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Foreword



Dr. R.J.A. Arduin
(Woodwork by artist Lambert Holder)

Notwithstanding the frequent changes of government over the past years, the Ombudsman continued its mission unabated as the protector of the rights of the people and the guardian of the Constitution of Sint Maarten. Following its motto of 'Gearing towards Excellence', the Ombudsman continued to provide a system of checks and balances to guarantee good governance and accountability of the government, where basic human rights and freedoms are safeguarded.

In the month of January and February 2017 meetings were held with various private entities with public authority, the so called "zelfstandige bestuurs orgaan/ZBO" for which the Ombudsman intended to assume authority to investigate complaints from the public. After a presentation of the criteria applied for assuming the pertinent authority, and a discussion on same, a tentative list of ZBO's against which the public can file complaints with the Ombudsman was presented to the public via the media and the website of the Ombudsman¹.

In 2017 the Ombudsman also continued to play a significant role regionally and internationally. In the first half of the year the Ombudsman attended the annual Board meeting of the International Ombudsman Institute (IOI) in Vienna on behalf of the region. In the capacity of President of the Caribbean Ombudsman Association (CAROA), the Biennial CAROA Conference was organized on the island of Bonaire in collaboration with the host of the Conference, the National Ombudsman of the (Caribbean) Netherlands, Reinier van Zutphen. As Regional President on the IOI Board, a Complaint handling training was secured for the region, and facilitated by the Queen Margaret University following the CAROA Conference in Bonaire.

The crisis caused by the impact of Hurricane Irma in September 2017 required swift action, prompting undersigned to reconsider demitting office at the end of her term. As such the incumbent Ombudsman was reappointed by Parliament for a second term. A second term in office was accepted under the adage 'a captain does not abandon ship in the midst of a storm', with a clear understanding that the Parliament will be informed as soon as the situation on the island is stabilized and a successor is ready to assume the position to further steer the institute. Investigations regarding 'going concerns' were put on hold, and all attention of the Bureau was focused towards the relief, recovery and rebuilding needs of the public. The destabilization in government compounded the challenges of the institute in executing its task in the wake of the storms. Upon the request of the Ombudsman of Sint Maarten, the International Ombudsman Institute provided the region a grant to launch a regional campaign to remain visible and relevant in the midst of the desperation felt on various islands. An infomercial² produced on Sint Maarten was distributed throughout the region to provide hope and assure the public that the Ombudsman remains vigilant and available to the people.

¹See www.ombudsmansxm.com.

² The infomercial can be viewed via our Facebook page: www.facebook.com/ombudsmanSintMaarten.

As inquiries about the criteria and procedures to be followed by government to provide relief and recovery aid to the public after the hurricanes did not yield the required results, the Ombudsman turned to Parliament for information sought from government in its supervisory role. Since Parliament did not acquire any tangible information from the government regarding the relief and recovery procedures, and preliminary investigations by the Ombudsman into the preparedness of the country before and after the hurricanes hit Sint Maarten gave reason for concern, other methods to gather information to curb similar destruction in time for the hurricane season 2018 were considered. A systemic investigation, to be launched early 2018, was drafted regarding the preparedness of the country to deal with a disaster.

An increase of issues regarding among others housing and complaints filed by citizens against the Rent Committee for not providing much needed information and or assistance regarding rental disputes, prompted the Ombudsman to visit the Rent Committee and inquire about its operations. The preliminary findings led to the preparation of a systemic investigation against the Rental Committee, to investigate its operational procedures and possible reasons, which may prevent the institution to optimally execute its tasks. A complaint filed regarding the functioning of the Dismissal Advisory Committee was the reason for the Ombudsman to initiate a systemic investigation against the Ministry of Public Health, Social Development and Labor, in order to comprehensively address and promote fairness in a foreseeable increase of dismissal requests filed with the Labor Department as a result of the negative effects of the hurricanes on businesses.

It is again with great pleasure that I hereby present the Year Report 2017 to Parliament pursuant to article 22 of the National Ordinance Ombudsman, and the people of Sint Maarten.



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

Executive Summary

I. Introduction

Though all activities were in place for the Ombudsman to demit office at the expiration of her term in October 2017, as a result of the state of emergency the country was pummeled into after the devastating hurricanes in September, the incumbent consented to stay in office to bridge the period of relief and recovery. The scope of the island-wide devastation and the issues that could ensue in the wake of the hurricanes, prompted the Ombudsman to put all investigations regarding going concerns on hold to concentrate on more pressing matters, including housing and labor. In order to structurally and comprehensively deal with present and anticipated concerns regarding labor, housing and hurricane preparedness of the country, three systemic investigations were prepared pertaining to: 1) the Dismissal Advisory Committee, 2) the Rent Tribunal and 3) the state of Disaster Risk Reduction and Management Plan³.

II. Activities

After thorough research and discussions, including ‘Ombudsprudence’ of the National Ombudsman of the Netherlands, a list of private entities with public authority, so called “*zelfstandig bestuurs orgaan/ZBO*”, was established and published in May 2017.

Apart from individual courses followed by staff to enhance their performance at the Bureau, the 9th Biennial CAROA Conference held in June on Bonaire provided ample opportunity for the Ombudsman and members of the staff of the Bureau to broaden their knowledge and investigation skills. The Conference was followed by a Complaint handling training provided for Caribbean Ombudsman institutions, sponsored by the IOI. The Conference afforded the staff the opportunity to learn and be informed more regarding pivotal topics concerning the work of the Ombudsman institute in general and receive training in complaint handling to enhance and compliment their daily tasks.

III. Complaints handled

This chapter provides a statistical overview of complaints handled, a registry of the overall visits and queries to the Ombudsman (Information Window), as well as recommendations issued in 2017. A considerable drop in registered complaints and visits is noted after the hurricanes devastated the island.

After the hurricanes hit Sint Maarten, the focus of the Bureau was placed on relief and recovery matters, while complaints regarding going concerns were put on hold. As such the overall amount of registered complaints in 2017 are less than the year before, but the amount of complaints handled and closed through investigation or intervention increased significantly. Seventy (70) new complaints were registered, of which 81.4 % were closed either through investigation (52.9%) or an intervention (28.5%) by the Ombudsman. It should be noted that due to an improved approach to complaint handling, starting with a direct intervention to solve the matter at hand swiftly, 28.5% of the complaints filed were handled and closed without a full investigation when the pertinent department complied with the proposed solution presented by the Ombudsman. In addition, the investigation of forty-three (43) complaints carried over from 2016 continued, of which approximately seventy percent (70 %) were closed.

³ An outline of these investigations is provided in chapter IV.

Hearings were scheduled and held with the Ministry of VSA and General Affairs. Upon investigation of complaints filed pertaining to the removal of the Market kiosks in Philipsburg without prior consultation or informing the Market vendors, the Ombudsman concluded that the complaints were founded, and the standards of *Reason, Reasonableness and proportionality* and *Active and Adequate Information provision* were not observed in the case.⁴

As a result of the Ombudsman having formally established competence to investigate complaints against a published list of ZBO's, an increase of complaints against the behavior of private entities with public authority is noted in 2017. The most complaints were filed against the Social and Health Insurance (SZV), an entity which is frequented by the public. Considering that the status of the Court of Guardianship within the Ministry of Justice remained obscure, it was removed as a department of the Ministry of Justice, and listed as a ZBO. This situation is one of the many pending issues within the Ministry of Justice that requires urgent attention (see also Year Report 2016, page 38).

The majority of recommendations issued in 2017 were geared towards quick actions and solutions of the complaints, short term (63.3%). Close to thirty percent (26.7%) were long term recommendations, which require the implementation of improved information or administrative procedures and or policies. In 10% of the cases government was recommended to revisit (3.3%) or review (6.7%) existing regulations⁵.

IV. Systemic Investigations

Upon indications or suspicion that certain administrative tasks are structurally hampered, or for whatever reasons not properly executed, the Ombudsman is authorized to initiate an investigation on its own initiative. Considering the various facets of the impact the hurricanes of September 2017 had, and will continue to have on the community, the Ombudsman initiated in the general interest of the public investigations of the Dismissal Advisory Committee, the Rent Tribunal and the Disaster Risk Reduction and Management. All three investigations were in a preliminary stage at the end of 2017.

V. The Constitutional Court

On 18 December 2017 a new National Ordinance Integrity Chamber, replacing the squashed National Ordinance of 21 August 2015 to establish the Integrity Chamber, was ratified. The Ombudsman established that the concerns presented to the Constitutional Court, which led to the first Ordinance on the Integrity Chamber being squashed and the contours offered by the Court for consideration in drafting a new law, are adequately addressed in the new Ordinance. The Ombudsman considers the rights of the people sufficiently protected.

VI. Financial Audit

A meta-analysis commissioned by the Ombudsman, and performed by the accounting and advisory firm BDO, was executed in the form of an Operational and a Financial audit.

⁴ A synopsis of the conclusions and recommendations in this case is provided in chapter IV.

⁵ Revisit to actually make changes to a regulation/policy, or review whether amendments to existing regulations/policies are required to possibly better deal with a certain unfavorable situation.

While the preliminary results of both audits were provided in the 2016 Year Report, the final version of the Financial audit of the 2015 financial statements was received in November 2017. In the independent auditor's report BDO concluded that the financial statements gave a true and fair view of the financial position of Ombudsman Sint Maarten as at 31 December 2015 and its result for 2015 in accordance with the *Comptabiliteitsverordening*, AB 2010 GT 23.

VII. Financial reporting

The total budget provided to the Ombudsman in 2017 amounted to Nafl. 1.565.407,00. Based on the unaudited financial report for the year 2017, a total of Nafl. 1.444.679,71 was spent.

VIII. Appendices

Appendix 1: List of important events 2017; Appendix 2: Balance Sheet 2017; Appendix 3: Financial Report 2017.

I. Introduction

After having commissioned and received a positive assessment of its operational procedures, the activities of the Ombudsman were formally extended to include investigations of complaints against private entities with public authority, the so called “*zelfstandige bestuurs orgaan/ZBO*”. Upon having established the criteria to assume authority to investigate complaints against ZBO’s, meetings were held with the pertinent bodies to discuss same. Subsequently a list of the ZBO’s against which the public can file complaints was published via the media and on the website of the Ombudsman. This resulted in an increase of complaints against semi-government bodies.

Though all activities were in place for the Ombudsman to demit office at the expiration of her term in October 2017, as a result of the state of emergency the country was pummeled into after the devastating hurricanes in September, the incumbent consented to stay in office to bridge the period of relief and recovery. Under the adage ‘*a captain does not abandon ship in the midst of a storm*’ the Ombudsman set out to be the ears and the voice of the public during the difficult days. Through an infomercial sponsored by the International Ombudsman Institute (IOI), the presence and relevance of the Office of the Ombudsman remained visible throughout the region.

A formal request to the Council of Ministers (COM) for plans of approach, policies/criteria, requirements and selection procedures to provide relief and services to those in need, in particular regarding housing, went unanswered. Collaboration with Parliament to obtain the pertinent information to better address questions and complaints from the public neither yielded the required results, as Parliament did not obtain tangible answers to its queries to the executive body. Considering that Parliament resolved in its motion dated 4 October 2017 among others that ‘*review of the disaster management structure in all its facets will take place*’, the Ombudsman continued its initiated investigation regarding preparedness of the country in the aftermath of the hurricanes.

The scope of the island-wide devastation and the issues that could ensue in the wake of the hurricanes, prompted the Ombudsman to put all investigations regarding going concerns on hold to concentrate on more pressing matters, including housing and labor. In order to structurally and comprehensively deal with present and anticipated concerns regarding labor, housing and hurricane preparedness of the country, three systemic investigations were prepared: 1) the Dismissal Advisory Committee, 2) the Rent Tribunal and 3) the state of Disaster Risk Reduction and Management.

The following will be presented in this report: an outline of the main activities of the institute in 2017 plus pictorial (chapter II), a statistical overview of complaints handled (chapter III), systemic investigations (chapter IV), the Constitutional Court (chapter V), the financial audit (chapter VI), financial reporting (chapter VII), and a list of appendices (chapter VIII).

II. Activities

After thorough research and discussions, including ‘Ombudsprudence’ of the National Ombudsman of the Netherlands, a list of private entities with public authority, so called “*zelfstandig bestuurs orgaan/ZBO*” was established and published in May 2017. The main sources and or principles used to establish authority of the Ombudsman Sint Maarten are: the Dutch “*Kaderwet 2007*”; Prof. Scheltema concluding that the term ‘public authority’ (Awb-Netherlands) is not adequate in relation to the authority of the Ombudsman; the principle that a broad interpretation is required as the Ombudsman is a safety net (protection of the people); Ombudsprudence of the Netherlands establishing in the general interest of the public that the Ombudsman is authorized to investigate all actual behavior of private entities charged with government tasks (*‘if it looks like government, it is government’*); and the report ‘*Klachtbehandeling bij uitbesteding van overheidstaken in de zorg*’ (9 augustus 2010-RA1054269). The general criterion is that everything that government pays for, decides about and organizes is subject to the same norms applicable to government. As such the following criteria have been applied to establish the ZBO-list for Sint Maarten: 1) legal basis (national ordinances, decrees and or contracts governing the pertinent entities); 2) public interest (impact of the entity on the public); 3) subsidy received from government.

Apart from individual courses followed by staff to enhance their performance at the Bureau, the 9th Biennial CAROA Conference held in June on Bonaire provided ample opportunity for the Ombudsman and members of the staff of the Bureau to broaden their knowledge and investigation skills. As a result of the wide regional and international network, a most valuable conference with the theme “*The Ombudsman-A Key Actor in the Quest for Good Governance/Challenges facing Modern Day Ombudsman.*” was organized by the Ombudsman of Sint Maarten in her capacity as President of CAROA, in collaboration with the host of the Conference, Reinier van Zutphen, the National Ombudsman (Caribbean) Netherlands. The Conference was followed by a Complaint handling training, provided for Caribbean Ombudsman institutions and sponsored by the IOI. The Conference afforded the staff the opportunity to learn and be informed more regarding pivotal topics concerning the work of the Ombudsman institute in general, and receive training in complaint handling to enhance and complement their daily tasks. Special attention and support were provided to the Conference by the President, Secretary General and Director of the IOI, who attended the CAROA Conference as speakers. In order to widely promote the presence of the IOI in the Caribbean region, the IOI Secretary General visited Sint Maarten to support media efforts organized by the Ombudsman of Sint Maarten. A press conference, partly intended as the last media exposure of the incumbent, was organized. A Memorandum of Understanding was signed at the Conference on Bonaire between IOI and CAROA on behalf of the region.

The annual retreat organized away from the office to refocus and strengthen the team, was this year geared towards preparing the staff to the pending transition and supporting a new Ombudsman. Considering the devastation of the island and state of emergency followed by the hurricanes, the incumbent accepted a new term in office. All attention of the institute was (re)directed towards relief and recovery activities, including preparing and taking measures to assist both the public and government to find direction.

Apart from visitors at the annual Open House organized by the Bureau, the institute welcomed various visitors, including interns, to the institute. Attached is a list of major activities and events of 2017 (Appendix 1).

2.1. Pictorial



Sessions held with ZBO's



*Visit Mr. Hans Leijtens
(quartermaster Integrity Chamber)
and Mr. Eric Brakke*



Open House



*Briefing Central
Committee on decision
Constitutional Court
regarding Integrity
Chamber*



*Press Conference OBM and
SG-IOI re. CAROA Conference 2017 in Bonaire
and Complaint handling training sponsored by IOI*



*Press conference during annual meeting
'Ombudsmannen van het Koninkrijk' in Curaçao*



*Exchange training visiting Officer of the
Complaint Commission Turks & Caicos, Ms.C. Skippings*





Farewell certificates provided to intern Sonrissa Regales and visiting apprentice (HBO) from the Netherlands Kristen St. Jago



Mediation course and training in Curaçao attended by the Legal Advisor Gwen Mossel



Work Retreat BOBM on Anguilla



Meeting with Mr. Nico Schoof, Head of Dutch Civil Mission

III. Complaints handled

3.1. Statistics

As a result of the impact of the hurricanes in September 2017 the approach of the institute to the handling of complaints was adjusted in order to accommodate the pressing issues in the aftermath of the disaster. Complaints regarding going concerns were put on hold. As such the Bureau registered overall less complaints in 2017 than the year before, but the amount of complaints handled and closed through investigation or intervention increased significantly. Seventy (70) new complaints were registered, of which 81.4 % were closed either through investigation (52.9%) or an intervention (28.5%) by the Ombudsman. It should be noted that due to an improved approach to complaint handling, starting with a direct intervention to solve the matter at hand swiftly, 28.5% of the complaints filed were handled and closed without a full

investigation when the pertinent department complied with the proposed solution presented by the Ombudsman. In addition, the investigation of forty-three (43) complaints carried over from 2016 continued, of which seventy percent (70 %) were closed. Hearings were scheduled and held with the Ministry of VSA and General Affairs.

	2017	2016
TOTAL SUBMITTED COMPLAINTS _____	70	78
Complaints closed in _____	37	35
Closed through intervention _____	0	0
Complaints on hold _____	5	4
Open complaints _____	8	39

Fig. 1: New complaints registered in 2017 vs 2016

Tardy or non-responses to investigations initiated by the Ombudsman remain a challenge with the Ministries of General Affairs and Finance, even though complaints against these Ministries have decreased. A training for civil servants in the Ministry of General Affairs requested by the liaison officer, charged with the coordination of investigations of the Ombudsman, is still pending.

The Ministry of Justice continues to bear concern with the most complaints filed against this Ministry. Notwithstanding efforts by the ‘*Korps Politie Sint Maarten*’ (KPSM) to improve its service to the public in collaboration with the Ombudsman, a significant increase of complaints against the Police department has been registered. HR related complaints at the Ministry, followed by proper service and requests of police reports top the list. Recommendations and letters of concern to the Minister of Justice regarding personnel matters (see also Year Report 2016) remained unattended. A systemic investigation regarding the handling of domestic violence cases by the police has been put on hold as a result of the shift of focus from the going concerns in the wake of the hurricanes. A request from KPSM to again assist with a workshop on integrity within the department could regretfully not be honored by the Ombudsman in 2017.

Notable is an increase of complaints against the Ministry of Education, Culture, Youth Affairs and Sports (OCJS): fifty percent of these complaints are personnel related. On the other hand, a noticeable decrease of complaints against the Ministry of Public Health, Social Development and Labor (VSA) is observed. This can be partly attributed to rather prompt follow up on recommendations and action taken upon notification of concerns by the Ombudsman. A complaint filed regarding the functioning of the Dismissal Advisory Committee led to the start of a systemic investigation against the Ministry of Public Health, Social Development and Labor in the wake of the September hurricanes.

Complaints against The Ministry of Public Housing, Spatial Planning, Environment and Infrastructure (VROMI) regarding long lease matters remain prevalent. Though the complaints filed against the Ministry of Tourism, Economic Affairs, Transportation and Telecommunication (TEZVT) drastically decreased as a result of implementing recommendations issued by the Ombudsman, a collective complaint filed by thirty (30) Market Place vendors - following the hurricanes in September - provided reasons for great concern regarding the decision-making procedures followed. Upon investigation of the complaints filed pertaining to the removal of the Market kiosks in Philipsburg without prior consultation or

informing the Market vendors, the Ombudsman concluded that the grievances were founded, and the standards of *Reason, Reasonableness and proportionality* and *Active and Adequate Information provision* were not observed in the case. The Ombudsman issued two recommendations, which were accepted by the Minister as provided. Mention should however be made about the decrease of complaints filed against the Ministry of TEZVT pertaining to the duration of decision-making on applications for licenses, which is reflected in Fig. 6.

	2017	2016
Ministries		
▪ General Affairs	4	7
▪ Finance	3	5
▪ Justice	17	16
▪ Education, Culture, Youth Affairs & Sport	6	2
▪ Tourism, Economic Affairs, Transportation and Telecommunication	6	16
▪ Public Housing, Spatial Planning, Environment and Infrastructure	8	8
▪ Public Health, Social Development and Labor	7	15
ZBO's		
▪ Algemeen Pensioenfonds St. Maarten (APS)	1	0
▪ Central Bank of Curaçao and Sint Maarten	1	0
▪ Court of Guardianship (CoG)	2	0
▪ Postal Services St. Maarten (PSS)	4	1
▪ Rental Committee	2	0
▪ Sociale Ziektekosten Verzekering (SZV)	7	4
▪ Stichting Kadaster & Hypotheekwezen	1	3
▪ St. Maarten Port Authority (SMPA)	1	0
▪ SXM Housing & Dev. Foundation	1	0
Total	70	78

Fig. 2: Incoming complaints registered per Ministry in 2017 compared to 2016

Ministries

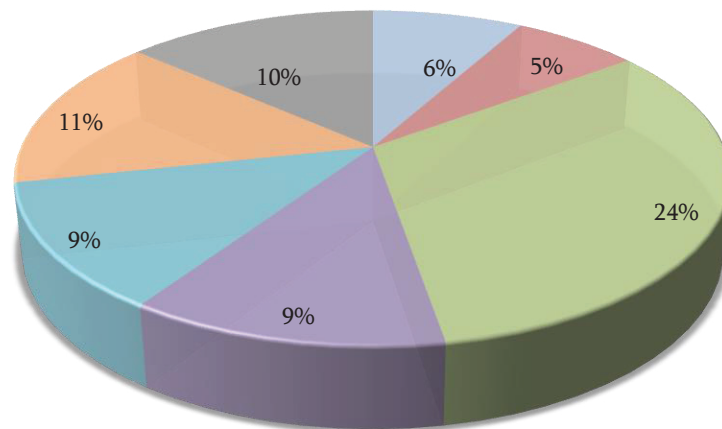
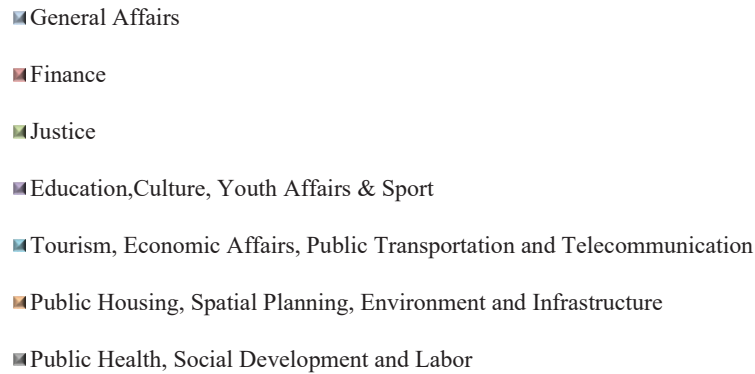


Fig. 3: Pie Chart Complaints filed per Ministry in 2017

As a result of the Ombudsman having formally established competence in 2017 to investigate complaints against a published list of ZBO's, an increase of complaints against the behavior of private entities with public authority is noted. The most complaints were filed against SZV, an entity which is frequented by the public. The SZV is however to be commended for promptly responding and cooperating with investigations initiated by the Ombudsman, and following up on recommendations. Better structuring the internal complaint procedures and informing the public accordingly will improve operations and the service to its clients.

Considering that the status of the Court of Guardianship within the Ministry of Justice remained obscure, it was removed as a department of the Ministry of Justice and listed as a ZBO. This situation is one of the many pending issues within the Ministry of Justice that requires urgent attention (See Year Report 2016, page 38).

Complaints

Ministry of General Affairs	4 (6%)
Facility Services department	1
ICT department	1
Internal & Kingdom Affairs	1
Minister	1

Ministry of Finance	3 (5%)
Tax department	3

Ministry of Justice	17 (24%)
House of Detention	1
Immigration & Naturalization Department	2
Minister	1
Personnel Affairs Department	1
Public Prosecutor Services	1
Police Department	11

Ministry of Education, Culture, Youth Affairs & Sport	6 (9%)
Education department	4
Culture Department	1
Inspection Department	1

Ministry of Tourism, Economic Affairs, Public transportation And Telecommunication	6 (9%)
Minister	6

Ministry of Public Housing, Spatial Planning, Environment and Infrastructure	8 (11%)
Domain Affairs	7
Licenses VROMI	1

Ministry of Public Health, Social Development and Labor	7 (10%)
Labor Department	2
Minister	2
Public Health Department	3

Complaints

Algemeen Pensioenfonds St. Maarten	1 (1%)
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Central Bank of Curaçao and Sint Maarten	1 (1%)
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Court of Guardianship	2 (3%)
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Postal Services St. Maarten	4 (6%)
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Rental Committee	2 (3%)
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Sociale Ziektekosten Verzekering	7 (10%)
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Stichting Kadaster & Hypotheekwezen	1 (%)
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SXM Housing & Dev. Foundation	1 (1%)
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Fig. 4: Incoming Complaints registered per Department in 2017

ZBO's

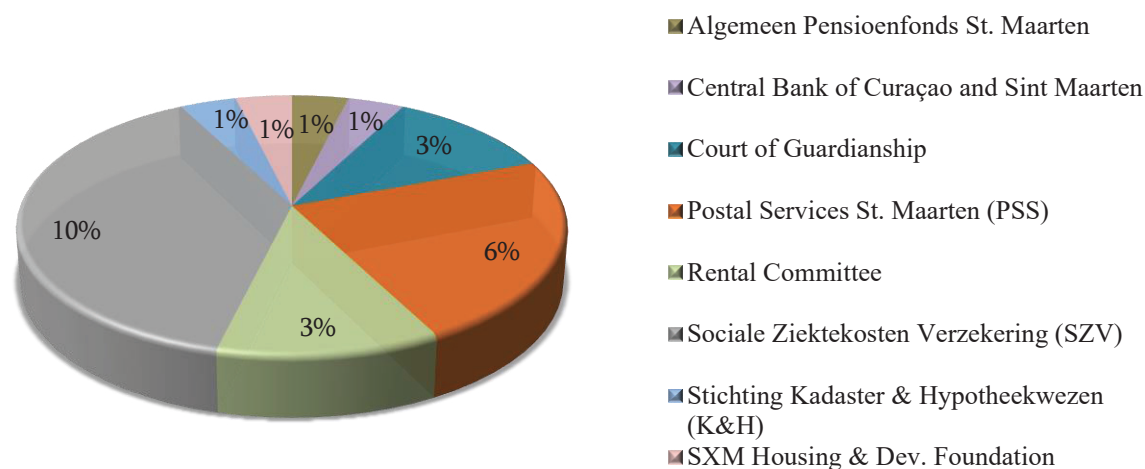


Fig. 5: Pie Chart Complaints filed per ZBO in 2017

Matters regarding proper service, in particular providing prompt and proper information top the list of complaints handled. Personnel matters remain above average, which include complaints against the Ministry of Justice and the Ministry of Education Culture Youth and Sports, but also matters pertaining to long lease, followed by enforcement of policies. Compliance with recommendations issued by the Ombudsman to improve propriety resulted in a drastic decrease of complaints filed against the Ministry of Tourism, Economic Affairs, Transportation and Telecommunication regarding pending licenses.

Proper briefing and transfer of pending matters is required to guarantee effective and smooth continuation of operations of the ministries whenever there is a change within the Executive. Adequate registration systems of incoming mail on department level for prompt handling and follow up is important to improve services to the public. Better cooperation between departments and ministries is required pertaining to outstanding payments or reimbursement of monies.

Topic	2017	2016
Appeal procedure	1	0
APS Pension	1	0
Assistance financial	0	2
Assistance housing	0	1
Billboard permit	1	0
Court of Guardianship	2	5
Demolition	1	0
Driving license	1	0
Enforcement policy	4	1
Financial disputes	1	0
Function Dismissal committee	3	1
Health care	0	1
Human resource	6	10
Immigration department	0	2
Information Cadaster	1	2
Information PSS	0	1
Information request	2	0
Inspection OCJS	0	1
Inspection VROMI	0	1
Job dispute	2	0
License economic	3	11
Long lease	5	6
Minister of Labor	0	1
Not competent	0	1
Not classified	0	1
Parking permit	1	1
Payment	3	4
Permit building	1	0
Permit daycare	0	1
Permit residence	0	1
Permit work	1	1
Police report	3	1
Police traffic	0	1
Proper service	14	3
Rental Committee	2	0
Reimbursement	2	2
Sewage water	0	1
Subsidy	0	1
SZV Assistance medical	1	1
SZV Insurance card	1	1
SZV Pension	1	1
SZV St. Maarten	3	2
Taxation	3	2
Transfer water rights	0	1
Vehicle inspection	0	4
Total	70	78

Fig. 6: Table of topics complaints filed in 2017

Complaint Topic 2017

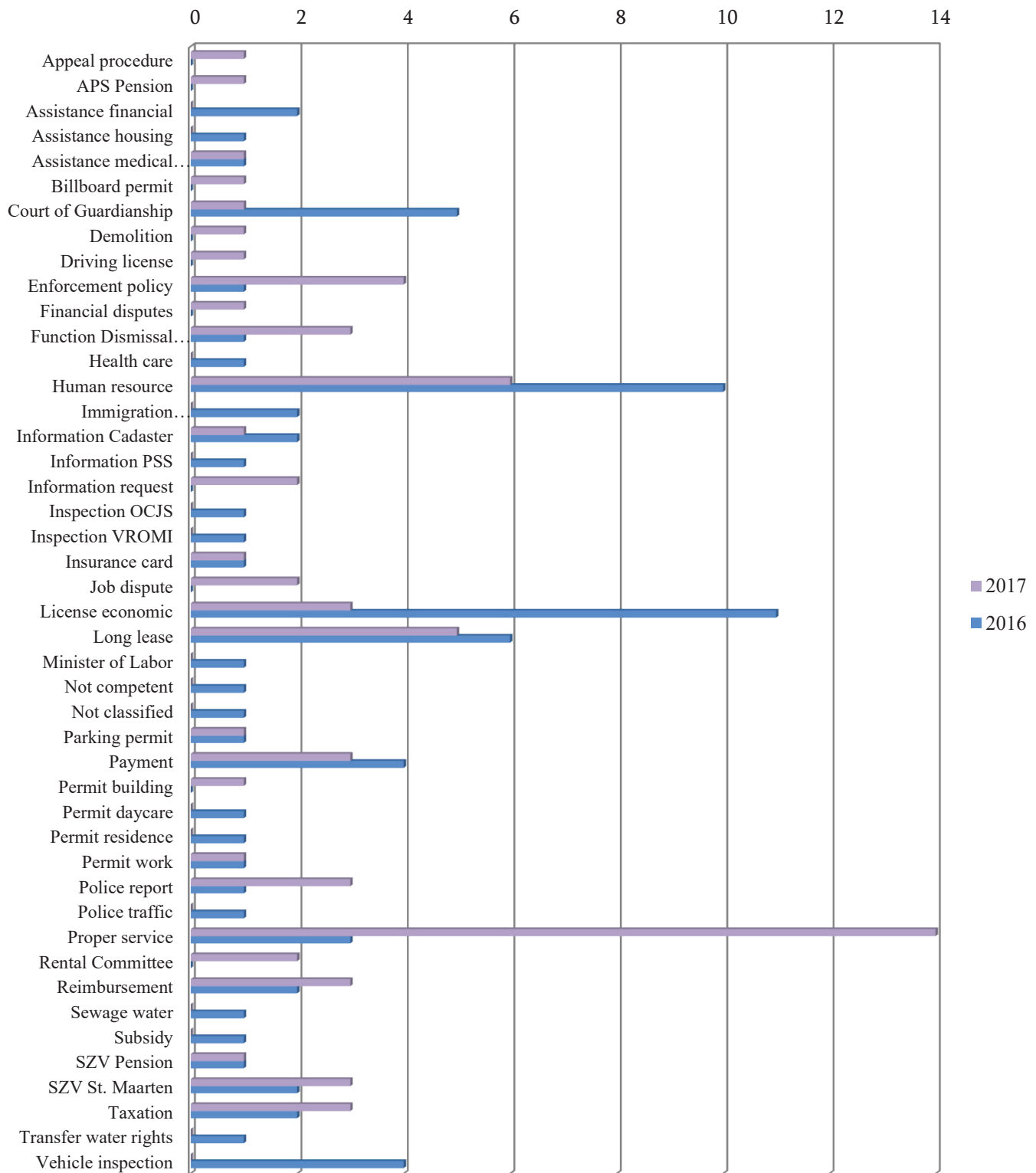


Fig. 7: Chart of topics complaints filed in 2017 vs 2016

It is alarming to note that the number of complaints regarding proper service (Fig. 6 and 7) is rather high. Mainly due to a lack of *Active and adequate information provision* and *Promptness* (Fig. 8 and 9). The ministries must work on implementing a system to timely respond to written requests and queries from the public, as well as see to it that all questions are responded to, and properly motivated. Where there is a complaint system in place, it is prudent that it is regularly reviewed and adapted for practical application and efficiency.

No complaints regarding violation of human rights were registered in 2017.

Standards of proper conduct	2017	2016
Active and adequate information gathering	0	4
Active and adequate information provision	12	3
Adequate organization of services	4	5
Cooperation	1	2
Correct treatment	1	1
Fair play	1	1
Legal certainty	1	0
Legitimate expectation	1	0
Proportionality	1	1
Propriety	0	1
Promptness	11	7
Reason	1	0
Reasonableness	1	1
Right of both sides to a hearing	0	1

Fig. 8: Comparison standards of proper conduct violated in 2017 vs 2016

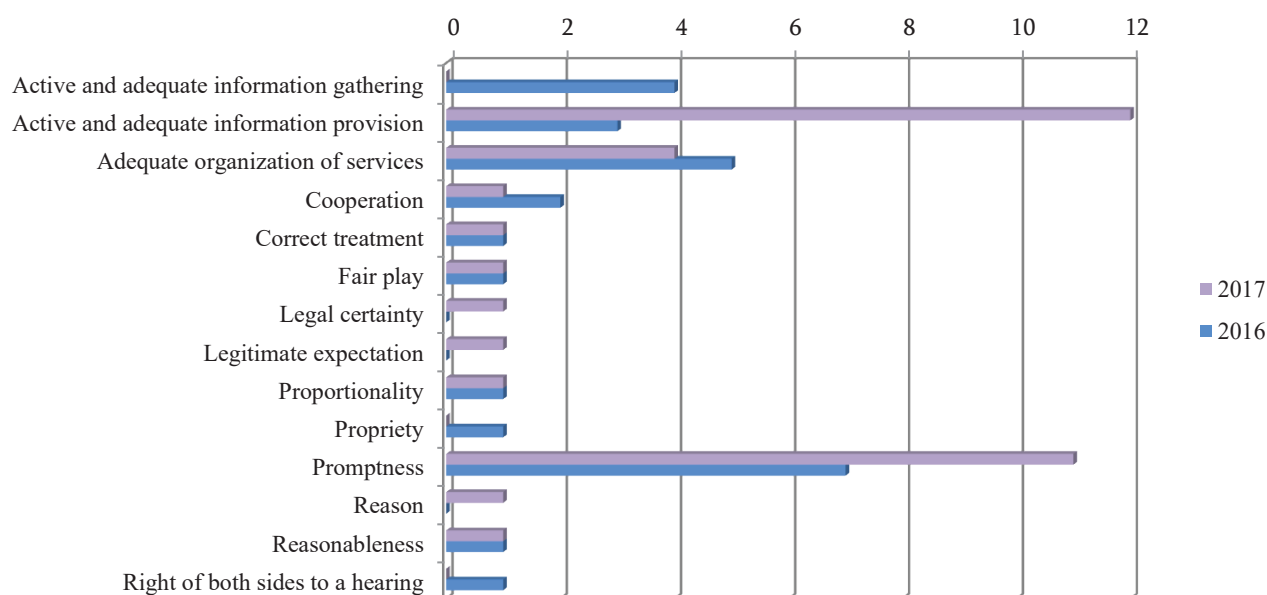


Fig. 9: Graph comparison standards of proper conduct violated in 2017 vs 2016

3.2. Information Window

Not all visits to the Bureau of the Ombudsman fall within the competence of the Ombudsman for investigation. A separate registration '**Information Window**' is kept for inquiries, which fall outside the jurisdiction of the Ombudsman, or do not comply yet with the duty to inform the governing body prior to a complaint being filed with the Ombudsman. All visitors are however directed to the competent entities or are provided information or assistance to address the pertinent administrative body. A considerable drop in registered visits is noted after the hurricanes.

Information Window registered by Topic	2017	2016
Civil Case	41	35
Civil registry	12	16
Correct treatment	9	12
Criminal case	3	0
Economic permits and license	7	22
Enforcement policy	4	6
Entities with public authority (ZBO)	29	11
Entities without public authority	10	4
Human resource	30	18
Immigration	25	25
Information requirement (Duty to inform)	-	2
Infrastructure	22	21
Kingdom affairs	2	2
Openness documents	3	1
Payments (incl. reimbursements)	10	13
Pension	7	5
Police report	12	8
Salary	8	13
Social support	6	11
Study financing	-	1
Tax	11	15
Other	57	123
Total	267	364

Fig. 10: Table requests per topic registered in 2017 in comparison to 2016

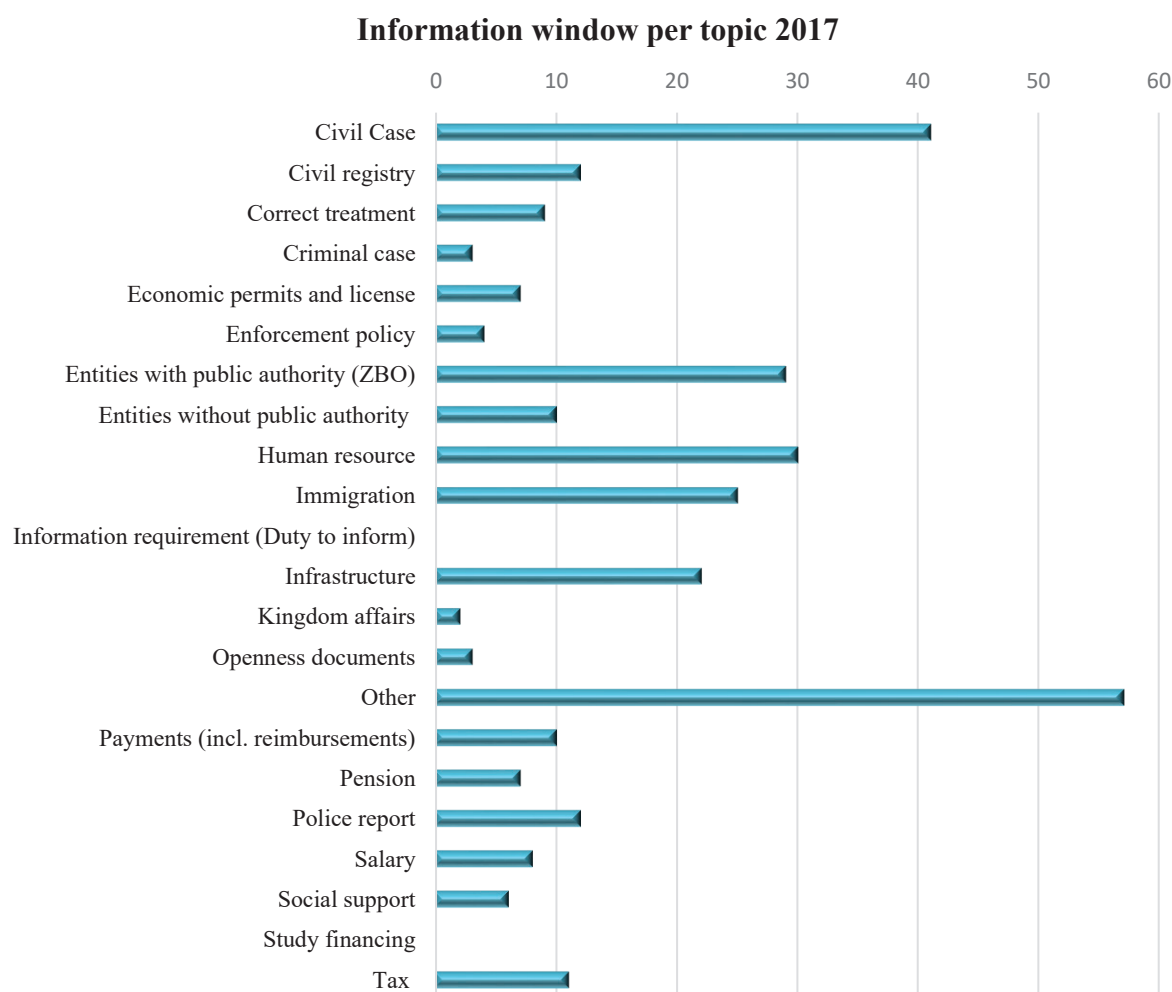


Fig. 11: Graph requests per topic registered in 2017

3.3. Recommendations

A total of thirty (30) recommendations⁶ were issued in fourteen (14) cases during or at the end of an investigation. In eleven (78.6%) cases government had fully complied with the recommendations by the end of 2017. Recommendations are also provided in the intervention stage of a complaint. Those recommendations are not included in the following statistics, when complied with by the departments prior to full investigation of the case.

Compliance with recommendations by adjusting policies or procedures resulted in greater efficiency in the operation of the Ministries of TEZVT and VSA, and as such less recommendations issued by the Ombudsman to these ministries in the year 2017. Fifty percent of the recommendations were issued in cases where government supported the investigations. Subsequently, the cases were closed with a Notification of Termination (NOT) of the investigation due to compliance, or the department agreeing in principle with the recommendations issued (see Fig. 14)⁷.

⁶ It should be noted that more than one recommendation can be issued in an individual case.

⁷ PFR=Preliminary Findings Report; NOT=Notification of Termination; FR=Final Report.

	2017	2016
COMPLAINT CASES INCL. RECOMMENDATIONS	14	16
Complied with	11	15
Partly complied with	0	0
Not complied with	3	1
TOTAL GIVEN RECOMMENDATIONS	30	27

Fig. 12: Compliance registry 2017 vs 2016 (per case)

	TOTAL CASES 2017	TOTAL CASES 2016
Ministries		
▪ General Affairs	3	1
▪ Finance	0	1
▪ Justice	4	3
▪ Education, Culture, Youth Affairs & Sport	1	0
▪ Tourism, Economic Affairs, Transportation and Telecommunication	1	4
▪ Public Housing, Spatial Planning, Environment and Infrastructure	2	3
▪ Public Health, Social Development and Labor	1	4
ZBO's		
▪ Algemeen Pensioenfonds St. Maarten	0	0
▪ Central Bank of Curaçao and Sint Maarten	1	0
▪ Court of Guardianship	0	0
▪ Postal Services St. Maarten (PSS)	0	0
▪ Rental Committee	0	0
▪ Sociale Ziektelkosten Verzekering (SZV)	1	0
▪ Stichting Kadaster & Hypotheekwezen (K&H)	0	0
▪ St. Maarten Port Authority (SMPA)	0	0
▪ SXM Housing & Dev. Foundation	0	0
Total	14	16

Fig. 13: Cases including recommendations 2017 vs 2016 (per Ministry & ZBO)

Ministries & ZBO	Cases	PFR	NOT	FR	Total
Ministries					
▪ General Affairs	3	0	5	2	7
▪ Finance	0	0	0	0	0
▪ Justice	4	4	4	4	12
▪ Education, Culture, Youth Affairs & Sport	1	0	2	0	2
▪ Tourism, Economic Affairs, Transportation and Telecommunication	1	0	0	2	2
▪ Public Housing, Spatial Planning, Environment and Infrastructure	2	1	2	0	3
▪ Public Health, Social Development and Labor	1	0	1	0	1
ZBO's					
▪ Algemeen Pensioenfonds St. Maarten	0	0	0	0	0
▪ Central Bank of Curaçao and Sint Maarten	1	0	1	0	1
▪ Court of Guardianship (CoG)	0	0	0	0	0
▪ Postal Services St. Maarten (PSS)	0	0	0	0	0
▪ Rental Committee	0	0	0	0	0
▪ Sociale Ziektelkosten Verzekering (SZV)	1	0	0	2	2
▪ Stichting Kadaster & Hypotheekwezen (K&H)	0	0	0	0	0
▪ St. Maarten Port Authority (SMPA)	0	0	0	0	0
▪ SXM Housing & Dev. Foundation	0	0	0	0	0
Total	14	5	15	10	30

Fig. 14: Recommendation issued in the various stages (per Ministry & ZBO) in 2017

**PFR-Stage
Ministries & ZBO's**

	Cases	Agree	Disagree	Partly agree	Total
Ministries					
▪ General Affairs	3	0	0	0	0
▪ Finance	0	0	0	0	0
▪ Justice	4	0	4	0	4
▪ Education, Culture, Youth Affairs & Sport	1	0	0	0	0
▪ Tourism, Economic Affairs, Transportation and Telecommunication	1	0	0	0	0
▪ Public Housing, Spatial Planning, Environment and Infrastructure	2	1	0	0	1
▪ Public Health, Social Development and Labor	1	0	0	0	0
ZBO's					
▪ Algemeen Pensioenfonds St. Maarten	0	0	0	0	0
▪ Central Bank of Curaçao and Sint Maarten	1	0	0	0	0
▪ Court of Guardianship (CoG)	0	0	0	0	0
▪ Postal Services St. Maarten (PSS)	0	0	0	0	0
▪ Rental Committee	0	0	0	0	0
▪ Sociale Ziektekosten Verzekering (SZV)	1	0	0	0	0
▪ Stichting Kadaster & Hypotheekwezen (K&H)	0	0	0	0	0
▪ St. Maarten Port Authority (SMPA)	0	0	0	0	0
▪ SXM Housing & Dev. Foundation	0	0	0	0	0
Total	14	1	4	0	5

Fig. 15: Recommendation issued in the PFR-stage (per Ministry & ZBO) in 2017

**NOT-Stage
Ministries & ZBO's**

	Cases	Agree	Disagree	Partly agree	Total
Ministries					
▪ General Affairs	3	5	0	0	5
▪ Finance	0	0	0	0	0
▪ Justice	4	4	0	0	4
▪ Education, Culture, Youth Affairs & Sport	1	0	2	0	2
▪ Tourism, Economic Affairs, Transportation and Telecommunication	1	0	0	0	0
▪ Public Housing, Spatial Planning, Environment and Infrastructure	2	2	0	0	2
▪ Public Health, Social Development and Labor	1	1	0	0	1
ZBO's					
▪ Algemeen Pensioenfonds St. Maarten	0	0	0	0	0
▪ Central Bank of Curaçao and Sint Maarten	1	1	0	0	1
▪ Court of Guardianship (CoG)	0	0	0	0	0
▪ Postal Services St. Maarten (PSS)	0	0	0	0	0
▪ Rental Committee	0	0	0	0	0
▪ Sociale Ziektekosten Verzekering (SZV)	1	0	0	0	0
▪ Stichting Kadaster & Hypotheekwezen (K&H)	0	0	0	0	0
▪ St. Maarten Port Authority (SMPA)	0	0	0	0	0
▪ SXM Housing & Dev. Foundation	0	0	0	0	0
Total	14	13	2	0	15

Fig. 16: Recommendation issued in the NOT-stage (per Ministry & ZBO) in 2017

**FR-Stage
Ministries & ZBO's**

	Cases	Agree	Disagree	Partly agree	Total
Ministries					
▪ General Affairs	3	0	2	0	2
▪ Finance	0	0	0	0	0
▪ Justice	4	0	4	0	4
▪ Education, Culture, Youth Affairs & Sport	1	0	0	0	0
▪ Tourism, Economic Affairs, Transportation and Telecommunication	1	2	0	0	2
▪ Public Housing, Spatial Planning, Environment and Infrastructure	2	0	0	0	0
▪ Public Health, Social Development and Labor	1	0	0	0	0
ZBO's					
▪ Algemeen Pensioenfonds St. Maarten	0	0	0	0	0
▪ Central Bank of Curaçao and Sint Maarten	1	0	0	0	0
▪ Court of Guardianship (CoG)	0	0	0	0	0
▪ Postal Services St. Maarten (PSS)	0	0	0	0	0
▪ Rental Committee	0	0	0	0	0
▪ Sociale Ziektekosten Verzekering (SZV)	1	2	0	0	2
▪ Stichting Kadaster & Hypotheekwezen (K&H)	0	0	0	0	0
▪ St. Maarten Port Authority (SMPA)	0	0	0	0	0
▪ SXM Housing & Dev. Foundation	0	0	0	0	0
Total	14	4	6	0	10

Fig. 17: Recommendation issued in the FR-stage (per Ministry & ZBO) in 2017

The majority of recommendations issued were geared towards a quick solution of the complaint, short term (63.3%). Approximately thirty percent (26.7%) were long term recommendations, which require implementation of improved information or administrative procedures and or policies. In 10% of the cases government was recommended to revisit (3.3%) or review (6.7%) existing regulations (Fig. 18).⁸

⁸ Revisit to actually make changes to a regulation/policy, or review whether amendments to existing regulations/policies are required to possibly better deal with a certain unfavorable situation.

Ministries & ZBO's	Cases	Short	Long	Revisit	Review	Total
Ministries						
▪ General Affairs	3	3	1	1	2	7
▪ Finance	0	0	0	0	0	0
▪ Justice	4	9	3	0	0	12
▪ Education, Culture, Youth Affairs & Sport	1	0	2	0	0	2
▪ Tourism, Economic Affairs, Transportation and Telecommunication	1	2	0	0	0	2
▪ Public Housing, Spatial Planning, Environment and Infrastructure	2	2	1	0	0	3
▪ Public Health, Social Development and Labor	1	0	1	0	0	1
ZBO's						
▪ Algemeen Pensioenfonds St. Maarten	0	0	0	0	0	0
▪ Central Bank of Curaçao and Sint Maarten	1	0	1	0	0	1
▪ Court of Guardianship (CoG)	0	0	0	0	0	0
▪ Postal Services St. Maarten (PSS)	0	0	0	0	0	0
▪ Rental Committee	0	0	0	0	0	0
▪ Sociale Ziektekosten Verzekering (SZV)	1	1	1	0	0	2
▪ Stichting Kadaster & Hypotheekwezen (K&H)	0	0	0	0	0	0
▪ St. Maarten Port Authority (SMPA)	0	0	0	0	0	0
▪ SXM Housing & Dev. Foundation	0	0	0	0	0	0
Total	14	19	8	1	2	30

Fig. 18: Type of recommendation (per Ministry & ZBO) in 2017

“Perfection is not attainable, but if we chase perfection, we can catch excellence.”

Vince Lombardi

IV. Systemic Investigations

Upon indications or suspicion that certain administrative tasks are structurally hampered, or for whatever reasons not properly executed, the Ombudsman is authorized to initiate an investigation on its own initiative. Considering the various facets of the impact the hurricanes of September 2017 had, and will continue to have on the community, the Ombudsman initiated in the general interest of the public investigations of the Dismissal Advisory Committee, the Rent Tribunal and the Disaster Risk Reduction and Management. All three investigations were in a preliminary stage at the end of 2017. As a result of thirty complaints filed by Marketplace vendors, a comprehensive investigation was launched pertaining to the decision-making procedure followed by the Minister of TEVT to remove the Philipsburg Market kiosks in the aftermath of the hurricanes.

4.1. Dismissal Advisory Committee

History

On 2 October 2017 a complaint was filed with the Ombudsman against the Labor Department/Ministry of Public Health, Social development and Labor (Ministry VSA).

Summary of Concerns

- Employees or former-employees of an employer requesting permission to layoff one of its employees should not be allowed to take part in the dismissal process as members of the Dismissal Advisory Committee, as such may be biased and leads to unbalanced and biased decisions;
- The decision of the Secretary General should at all times be sufficiently motivated regarding the advice received from the Committee.

By decision of 23 March 2017 a request to obtain permission to terminate the labor agreement with an employee was denied by the Secretary General of the Ministry of VSA. According to the Complainant the decision lacks the required motivation; reference is made to the advice of the Dismissal Advisory Committee dated 14 March 2017, stating that the Secretary General agrees with that advice. The Complainant furthermore alleged that the Dismissal Advisory Committee at the time consisted of two (2) former employees and one (1) current employee of the petitioner, who according to the complainant were highly critical of the employer during the meeting held; allegedly repeatedly referring to (negative) personal experiences with employer in the past, and clearly showing a high level of bias.

The Ombudsman *considered* that:

- the core of the complaint filed is of general interest of the public;
- as a result of the passing of the recent hurricanes businesses were badly affected. As such an increase of dismissal requests to the Labor Department may be expected;

- preliminary research and queries by the Ombudsman into the “*Reglement van Orde*” as stipulated in article 14 “*Landsbesluit procedure beëindiging arbeidsovereenkomsten*” and other possible policies and procedures regarding the functioning of the Dismissal Advisory Committee warrant a thorough investigation of the complaint filed;
- cooperation from the Secretary General of the Ministry of VSA to obtain the “*Reglement van Orde*” as stipulated in article 14 “*Landsbesluit procedure beëindiging arbeidsovereenkomsten*” remained unanswered;
- transparency and proper procedures in the handling of dismissal requests is required to promote trust in the decisions of the Secretary General of the Ministry of VSA (SG).

The Ombudsman *resolved* to conduct a systemic investigation regarding:

- 1) The compilation of the Dismissal Advisory Committee and application of the rule of law in order to prevent possible bias;
- 2) The application of an advice provided by the Dismissal Advisory Committee in the decision-making process of the SG regarding a request to dismiss an employee;
- 3) Motivation of a decision providing permission (or not) for the dismissal of an employee.

4.2. Rent Tribunal

History

According to the Interim Report of the Workgroup National Recovery Plan, commissioned by the government of Sint Maarten in the aftermath of the Hurricanes Irma and Maria, the prime challenge on the social front relates to providing the community with housing; repair and rebuilding existing housing damaged by the storm, as well as replacing the sub-standard housing on the island. In the short-term emergency housing must be provided (October 2017).

Summary of concerns

Following various complaints reaching the Ombudsman from citizens seeking a decision from the Rent Tribunal regarding housing disputes between tenant and landlord allegedly as a result of Hurricane Irma, preliminary investigations by the Ombudsman indicate an increase of visitors to the Rent Committee post-Hurricane Irma. However, the office of the Rent Tribunal is understaffed and -equipped to handle the increase of visitors. With poor infrastructure and no vehicle available to engage site visits in order to objectively and effectively execute its task, *the standard of proper conduct Fair play*, among others, is seriously under threat with regard to proper handling of requests filed with the Rent Tribunal post-Hurricane Irma.

Considerations

- The shortage of housing post-Hurricane Irma and increased demand for assistance from the Rent Tribunal;
- No clarity and transparency having been provided to the Ombudsman regarding the allocation of short term emergency housing, assistance with building material and or repair, or rebuilding of existing housing damaged by the storms;

- Government's announcement that it will seek to act swiftly and accelerate the restoration of the social and economic infrastructure using the NRP as a roadmap for sustainable recovery, while no attention is directed to the main entity charged by law to deal with rent (*Landsverordening huur, AB 2014, no 8*);
- The jurisdiction of the Rent Tribunal regarding pricing of housing to a maximum of Nafl. 200.000, constituting the importance of the agency for middle to low income housing;
- The services of the Rent Tribunal being free compared to addressing the Court regarding establishing rental prices and termination of rent, and more so the Court being an instance of appeal pursuant to article 246 National Ordinance Rent;
- 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.

The Ombudsman *resolved* to conduct a systemic investigation regarding:

- 1) The yearly budget of the Rent Tribunal in order to execute its task adequately pursuant to article 273 National Ordinance Rent.
- 2) The daily operations, including accessibility of the Rent Tribunal to the public.
- 3) Application of the law by the Rent Tribunal, in particular pertaining to article 257 sub 2 of the National Ordinance Rent.
- 4) Impediments of the Rent Tribunal resulting in excessive complaints being filed with the Ombudsman regarding the Rent Tribunal.

4.3 . Disaster Risk Reduction and Management (DRR)

History

After almost five (5) months since the passing of the devastating hurricanes in September 2017, queries by both the Ombudsman and Parliament regarding preparation and the aftermath of the events remain unanswered.

Based on the National Ordinance Disaster Risk Reduction (*'Landsverordening Rampenbestrijding: AB 2013, GT no. 7 – AB 2015, no. 9'*), a Disaster Management Plan was established by National Decree (*'Rampenplan Sint Maarten: AB 2013, GT no. 150'*).

Preliminary investigation by the Ombudsman could not establish the availability of the sub-plans for all ESF-groups, neither the action plans to be drafted by the different departments, services and institutions of government pursuant to paragraph 2.2. of the Disaster Management Plan (*'2.2. Deelplannen'*). Only the Ministry of VROMI provided a sub-plan, an ESF-3 Hurricane Response Plan dated October 2014. The Ombudsman could neither establish whether a Ministerial Regulation pursuant to article 4 of the National Ordinance Disaster Risk Reduction (DRR) was established prior to the passing of Hurricane Irma.

The Parliament of Sint Maarten resolved in its motion dated 4 October 2017 among others that *'review of the disaster management structure in all its facets will take place'*.

Summary of Concerns

The Disaster Management Plan requires that, for the effective prevention of disasters or serious incidents, preparatory work must be carried out by establishing sub-plans by the ESF-groups. On the basis of these sub-plans, the departments, services and institutions must draw up their action plans.

Notwithstanding queries from the Ombudsman neither (updated) sub-plans nor action plans have thus far been made available to the Ombudsman. This warrants serious concerns, as the next hurricane season starts on 1 June 2018.

A formal request to the Council of Ministers (COM) for plans of approach, policies/criteria, requirements and selection procedures to provide relief and services to those in need, in particular regarding housing, also went unanswered.

Considering that:

- query by the Ombudsman regarding the required sub-plans and action plans have in general gone unanswered;
- there are suspicions that most sub-plans and related action plans appear not to be in place;
- it is in the general interest of the country Sint Maarten to have a yearly updated Disaster Management Plan, including contingency plans, to be drafted and followed in case of an emergency;
- the procedures to draft a Ministerial Regulation in preparation of an anticipated disaster should be available;
- queries by Parliament did not result in tangible responses regarding hurricane preparedness prior to the passing of Hurricane Irma and actions taken by government after the hurricanes;
- pursuant to the DRR the Prime Minister must evaluate a disaster within six (6) months after it occurred, and inform Parliament regarding the results of the evaluation;
- the next Atlantic hurricane season is four (4) months away and experts have predicted that as a result of climate change future hurricanes can be stronger;
- the Ombudsman is authorized to initiate an investigation on her own regarding the conduct of government, if the Ombudsman suspects that a certain task is structurally not complied with.

As a result of abovementioned considerations, the Ombudsman *resolved* to conduct a systemic investigation regarding:

- The state of preparedness of the government of Sint Maarten pursuant to the National Ordinance Disaster Risk Reduction and the Disaster Management Plan.

4.4. The Philipsburg Market Place

Summary of Complaint

On 12 October 2017 thirty (30) Marketplace vendors informed the Ombudsman that they were negatively affected by the decision of the Minister of Tourism Economic Affairs, Transport and Telecommunication (Minister TEVT) to breakdown and remove all kiosks in Philipsburg. Complainants alleged that they were not consulted, nor informed on the matter, nor could their concerns be properly addressed by representatives of the Department of Economic Affairs.

Conclusion

The core task of the Ombudsman is the investigation of *propriety* applied by government bodies and government agencies in their relationship and dealings with the public. The scope of *propriety* goes beyond the law; it reflects the norms expected from government in executing the laws, policies and established procedures. Government is expected to be open and clear, respectful, involved and result oriented, honest and trustworthy.

The main question for consideration in evaluating the complaints filed is:

Did the Minister of TEVT observe propriety in the decision and execution to remove and relocate the Marketplace kiosks without informing the affected vendors?

Considering:

- that the statement made by the Minister of TEVT in The Daily Herald Newspaper of 12 October 2017 (unsanitary, unsafe and deplorable conditions and rodents) and the facts reported in the letter dated 5 October 2017 to the Head of Public Works Department (structures pose a threat to the surrounding area), are not covered by the reports of the *Marktmeester* and the Inspectorate of TEVT, conducted respectively on 16 November 2016, 27 September 2017 and 24 October 2017;
- that the impact of the decision on the livelihood of the Market Vendors, and no area for relocation was in place at the time of the decision, nor had such been identified properly before 5 November 2017 as promised to the vendors;
- that timely communication with the vendors, whose interests are at the core of the pertinent decision, had not been observed;

The Ombudsman concluded that propriety had not been observed and had been violated in the decision-making process to remove the Philipsburg Marketplace kiosks and by the letter of instruction to VROMI, dated 5 October 2017. The decision of the Minister lacked proper reason, motives and grounds. The standard of *Reason* is applicable.

The Ombudsman further observed that based on the standard of *Active and Adequate Information provision* administrative bodies are expected to act in the interest of managing the affairs of the citizens. Administrative bodies are required to actively and upon request provide adequate information to the public. Providing adequate information can clear the air between public bodies and the citizens. In general, an individual is more willing to accept a situation when there is an explanation, or the outcome of a request is motivated. To ensure a high level of credibility in public bodies, transparency is essential. Being open and clear in providing adequate information regarding plans and actions of the government, that affect the interest of the citizen is a requirement for enhancing the credibility of public bodies.

That administrative bodies are required to actively and upon request provide adequate information to the public, entails on the one hand the duty to provide citizens with information upon request, as well as the duty to inform the citizen on its own initiative about proceedings that have a direct effect on them. Proper information creates legal certainty for all.

Considering that the decision taken by the Minister of TEZVT to remove the structures would affect the livelihood of the Marketplace vendors, the complainants should have been informed promptly by way of a meeting with the department, when it was clear that the alleged letter dated 3 October 2017 would/could not reach the Market vendors before the removal of the structures. A meeting was held with the Ministry of Economic Affairs and the Market vendors after the intervention of the Ombudsman, and more than two weeks after structures were already (being) removed. As such the *standard of Active and adequate information provision* is applicable in this case.

Pursuant to the “*Landsverordening Openbare straathandel*”, the Minister TEVT designates the place for keeping markets and issues the licenses to persons to sell merchandise on these locations. As such it behooved the Minister to carefully weigh the impact of the decision taken against the interests of the vendors. The standard of *Reasonableness and Proportionality* requires that the negative consequences of an action to achieve a certain goal may not be disproportionate to the interests of the citizen, or group of persons. Considering the reports provided before and after the onslaught of the hurricanes, the state of the kiosks could have possibly allowed quick repair and restoration, hence the decision maybe to only temporarily remove them. The considerations presented by the Minister in response to the investigation of the Ombudsman do not establish however that proportionality has been observed in the decision to (temporarily) remove and not restore the kiosks. In this light the Ombudsman observes that the standard of *Proportionality* requires that the measure that interferes the least with the interest of the citizen should be employed.

The Market vendors filed a complaint with the Ombudsman because they were not consulted, nor informed of the matter prior to taking said decision, nor could their concerns be properly addressed by the Department of Economic Affairs, when so requested. Conflicting information shared with the vendors compounded the matter.

Judgment

- The complaints filed are founded.
- The standards of *Reason, Active and adequate information provision*, and *Reasonableness and proportionality* have been violated.

Recommendations

- Ensure that at all times proper reasons, motives and grounds be observed, provided and explained to the citizen in general, and the complainants in particular in all pending decisions.
- Inform complainants in writing about the steps taken and the action plan regarding the relocation of the Marketplace structures, with copy to the Ombudsman.

V. The Constitutional Court

On 18 December 2017 a new National Ordinance Integrity Chamber, replacing the squashed National Ordinance of 21 August 2015 to establish the Integrity Chamber, was ratified. The Ombudsman established that the concerns presented to the Constitutional Court, which lead to the first Ordinance on the Integrity Chamber being squashed and the contours offered by the

Court for consideration in drafting a new law, are adequately addressed. Subsequently the Ombudsman considered the rights of the people sufficiently protected.

The main reason for the petition to the Constitutional Court against the first National Ordinance Integrity Chamber revolved around *the lack of protection of the fundamental rights of the persons involved in an investigation*, whether it being a party of interest, witness, expert, service provider, whistleblower or the like. The Court observed that the core of the matter related to the question whether administrative investigation by the Integrity Chamber infringed on essential guarantees for a fair procedure, including the right to defend oneself. In its ruling the Court considered that a mere nullification of the Ordinance on procedural grounds would not suffice, and therefore sought to formulate preconditions pointing at parts of the Ordinance that are unclear; and made suggestions to provide guidance with regard to the constitutional safeguards to be observed when drafting a new Ordinance. The Court established that both in light of article 5 (the right to privacy) and article 26 (the right to a fair trial) of the Constitution and for reasons of effectiveness, essential flaws and substantial ambiguities would need to be avoided in a new Ordinance. The Ombudsman concludes that these matters are adequately addressed in the new law. The new Ordinance clearly distinguishes between administrative and criminal law to the extent that the law no longer refers to the term integrity breaches (*'integriteitsschending'*), which may include a 'criminal charge', but defines the acts under investigation by the Integrity Chamber in terms of suspicion of misconduct (*'misstand'*). A behavior that is wrong and urgently needs to be corrected. Non-cooperation with an investigation by the Chamber can be fined, however is no longer subject to possible imprisonment.

VI. Financial Audit

In keeping with the Strategic Plan 2011-2021 drafted to establish this institution, introduced to Sint Maarten by the Constitution on 10 October 2010, a meta-analysis of the period 2011-2016 was commissioned in the last quarter of 2016 to ensure the Bureau of the Ombudsman meets the legal requirements and the needs of its stakeholders to maintain its authority. The meta-analysis was executed in the form of an Operational and a Financial audit and was performed by the accounting and advisory firm BDO. While the preliminary results of both audits were covered in our 2016 Year Report, the final version of the Financial audit of the 2015 financial statements was received in November 2017.

The Ombudsman's financial statements comprised of the following documents:

1. The balance sheet as at 31 December 2015;
2. The income statement for the year 2015;
3. The notes comprising a summary of the applicable accounting policies and other explanatory information.

In its independent auditor's report BDO concluded that the financial statements gave a true and fair view of the financial position of Ombudsman Sint Maarten as at 31 December 2015 and its result for 2015 in accordance with the *Comptabiliteitsverordening*, AB 2010 GT 23.

VII. Financial reporting

The annual budget (general and capital ledger) of the Ombudsman for 2017 amounted to Nafl. 1.565.407,00. Just as in previous years, the Ombudsman remained within the confines of the available budget to the institution through maintaining strict budgetary discipline.

While the Bureau was very fortunate to sustain minimal damages due to the passing of Hurricane Irma, the building wherein the Bureau is located sustained major damages to the second and third floors, the ground floor did not incur much damage.

Furthermore, during Hurricane Irma two vehicles from the institution were damaged. The Suzuki Celerio vehicle was declared total loss and a settlement in the amount of Nafl. 5,555.29 was received from the insurance company. This vehicle was subsequently sold for Nafl. 890.00. The Ford Taurus allocated for the use by the Ombudsman sustained damages for which a claim settlement of \$11,168.80 was received. According to a formal agreement, all costs related to this vehicle, including the insurance premium, are for the private account of the Ombudsman. The settlement paid out by the insurance will be used to cover the cost for repair, or part thereof. Any surplus to be paid will be for the personal account of the Ombudsman.

Based on the unaudited financial report for the year 2017 a total of Nafl. 1.444.679,71 was spent from the budget of Sint Maarten (see appendices 1 and 2), which is, just like last year, 92 % of the available budget to the Ombudsman.

Expenditures in 2017	Amount	2017 Budget
		1.496.607,00
		68.800,00
Total Operational Expenses	1.444.679,71	
Not spent		120.727,29

VIII. Appendices

Appendix 1: Important Events List 2017

Appendix 2: Balance Sheet

Appendix 3: Financial Report

**OMBUDSMAN**

SINT MAARTEN

APPENDIX 1**IMPORTANT EVENTS IN 2017**

	Dates:	Events:	Remarks:
	JANUARY		
	Jan 17	First Zelfstanding bestuursorgaan (ZBO) Session	The first meeting whereby ZBO's (private entity with public authority) were invited to be informed of the plans of the Ombudsman with reference to investigations of complaints from citizens against ZBO's.
	Jan 19	Second ZBO Session	
	Jan 25	Capacity Training Workshop on Health Economics and Insurance organized by Ministry VSA	Attended by SG
	Jan 26	2- day conference National Health Insurance (Ministry VSA)	Attended by SG and LA
	Jan 27	2- day conference National Health Insurance (Ministry VSA)	Attended by SG and LA
	Jan 31	Sonrissa Regales (intern) farewell	
	FEBRUARY		
	Feb 9	Third ZBO session	
	Feb 9	Lecture organized by the RvA: 'St Maarten and the European Union after 2020'.	Attended by OBM and SG
	Feb 14	Introductory meeting with Mr. Hans Leijtens (kwartiermaker integriteitskamer) and Mr. Eric Brakke	OBM, LA and SG
	Feb 23	Start mw. Kristen St. Jago, student from the Netherlands (Hogeschool van Amsterdam)	Research regarding recommendations issued by the Ombudsman
	Feb 25	Ombudsman Open House 2017	Ombudsman annual Open House
	MARCH		
	Mrt 6-9	Cursus module Staatsrecht (organized by RvA)	Course attended by SG
	Mrt 10	Ombudsman Travel to Bonaire icw CAROA conference preparations (June 2017)	Trip sponsored by conference host, the Nationale Ombudsman (Caribbean) Netherlands

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	Mrt 14	CAS (WorkPro) in-house training I	WP training organized for staff
	Mrt 28-30	Cursus module Bestuursrecht (organized by RvA)	Course attended by SG
	APRIL		
	Apr 6	CAS (WorkPro) in-house training II	WP training organized for staff
	Apr 7	Productive Way presentation (refreshing session)	Presentation provided by AA and CO-FM to staff
	Apr 26	Kings Day Celebration at Westin Resort	SG and LA attendance at the Kings Day celebration at the Westin Resort
	Apr 26-29	IOI Board meeting Austria	Attended by OBM
	MAY		
	May 4	National Day of Remembrance	Attended by SG
	May 15-18	Cursus module wetgevings-technieken (organized by RvA)	Attended by LA
	May 19	Central Committee meeting re. Integrity Chamber	Meeting attended by OBM, SG and LA
	JUNE		
	June 5	Presenting OBM Year Report 2016 to the President of Parliament, S. Wescot-Williams	OBM and SG
	June 6	Presenting OBM Year Report 2016 to acting Prime Minister, R. Boasman	OBM and SG
	June 6	Arrival of G. Krauter, SG IOI	Working visit in support of Sint Maarten Institution
	June 8	Press Conference OBM and SG IOI re. CAROA Conference 2017 (in Bonaire) and complaint handling training sponsored by IOI	OBM, SG- IOI, SG-SXM
	June 11-15	CAROA Conference 2017 (Bonaire) and complaint handling training sponsored by IOI	OBM, SG, CO's
	June 16	Ombudsmannen van het Koninkrijk (Curaçao); visits to Governor, Prime Minister and others.	Annual meeting with the Ombudsmannen of the Kingdom (NL, SXM, CUR)
	June 23	Governor's Symposium 2017: ICT Governance, American University of the Caribbean (AUC)	Symposium attended by SG and OBM



	June 26-30	Ms. C. Skippings of the office of the Complaint Commissioner Turks & Caicos internship / training at BOBM	
	June 26-29	Cursus module “beoordeling juridische teksten” (organized by RvA)	Attended by LA
	JULY		
	Jul 14	Presentation updated Shared Drive (Kristen St. Jago)	OBM and staff BOBM
	Jul 28	Farewell Kristen. St. Jago	
	AUGUST		
	Aug 4	Presentation OBM 2017 YR to Parliament	OBM & SG
	Aug 20-30	Centrum voor Conflict hantering (CvC) Mediation training (Curaçao)	LA
	Aug 24	Presentation OBM 2017 YR to COM	OBM & SG
	Aug 25	Installation new Judge (Paula van der Burgt) at Courthouse	OBM
	SEPTEMBER		
	Sep 1-3	Ombudsman Retreat 2017 (Epic Villa, Anguilla)	
	Sep 6	Hurricane Irma	
	Sep 18	Office meeting post Hurricane Irma	
	Sep 25	Bureau OBM reopens after Hurricane Irma	
	OCTOBER		
	Oct 6	Reappointment Dr. R. (Nilda) J.A. Arduin as Ombudsman Sint Maarten	
	Oct 9	Constitution day Church service	Attended by OBM
	Oct 10	Staff meeting new strategies and BOBM policies	All Staff
	Oct 17	IOI Executive Board electronic meeting	OBM
	NOVEMBER		
	Nov 4	Filming of OBM informercial / PSA	Bureau Ombudsman
	Nov 11	Sint Maarten’s Day church ceremony and program	Attended by OBM
	DECEMBER		
	Dec 3	Government annual Thanksgiving Service	OBM
	Dec 12	Introductory meeting with Mr. Nico Schoof (head of Dutch Civil Mission)	OBM, SG, LA



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APPENDIX 1

	Dec 15	Launch of Systemic Investigation Dismissal Committee (DAC)	
	Dec 15-22	Preparation of Systemic Investigation Rent Tribunal (launched in January 2018)	
	Dec 15-22	Preparation of Systemic Investigation Disaster Risk reduction and management (launched in February 2018)	



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APPENDIX 2

BALANCE SHEET DECEMBER 31 2017

CURRENT ASSETS:

Money Card WIB	1,056.74	
Petty Cash Account WIB (new)	16,144.46	
Cash on Hand	49.14	
Petty Cash WIB Naf Account (old)	117.00	
TOTAL CURRENT ASSETS:		17,367.34

OTHER CURRENT ASSETS:

Prepaid Expense	35,233.32	
Total Other Current Assets	NAF.	35,233.32

TOTAL CURRENT & OTHER ASSETS

52,600.66

FIXED ASSETS:

VEHICLES:

Vehicles	110,551.00	
Acc.Depr'n 31/12/2017	-42,270.20	
Book-Value:	68,280.80	

OFFICE EQUIPMENT:

Fotocopier Machine	15,894.90	
Acc.Depr'n 31/12/2017	-12,715.90	
Book-Value:	3,179.00	

ICT Equipment	247,933.86	
Acc.Depr'n 31/12/2017	-158,223.50	
Book-Value:	89,710.36	

Projector & Screen	2,034.20	
Acc.Depr'n to 31/12/2017	-2,034.20	
Book-Value:	0.00	

Televisions	3,118.80	
Acc.Depr'n 31/12/2017	-3,118.80	
Book-Value:	0.00	

Office Furniture	44,936.00	
Acc.Depr'n 31/12/2017	-17,974.50	
Book-Value:	26,961.50	

TOTAL FIXED ASSETS:

188,131.66



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SINT MAARTEN

APPENDIX 2

LEASEHOLD IMPROVEMENT:

Archive Room	5,733.00
Acc.Depr'n 31/12/2017	-1,543.20
Book-Value	<u>4,189.80</u>

Server Room	8,910.00
Acc.Depr'n 31/12/2017	-4,455.00
Book-Value	<u>4,455.00</u>

Renovation Kitchen	8,736.00
Afschrijving Renovatie Keuken	-2,894.40
Book-Value:	<u>5,841.60</u>

TOTAL LEASEHOLD IMPROVEMENTS:	<u>14,486.40</u>
TOTAL ASSETS IN NAF:	<u><u>255,218.72</u></u>

LIABILITIES:

Current Liabilities	5,159.47
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Other Current Liabilities:

AOV.AWW Payable	62,517.99
AVBZ Payable	15,263.83
FZOG Payable	14,667.35
Pension Payable	112,455.93
Dues Payable -WICSU	240.00
Sickness Premium Payable	<u>9,167.11</u>
Total Other Current Liabilities:	<u>214,312.21</u>

TOTAL LIABILITIES:	<u>219,471.68</u>
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CAPITAL:

Capital	<u>35,747.04</u>
TOTAL LIABILITIES & CAPITAL NAF:	<u><u>255,218.72</u></u>

This report has not been audited

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SINT MAARTEN

APPENDIX 3**INCOME STATEMENT
FOR THE YEAR 2017**

BUDGET			
Budget Allocated	NAF:		1,496,607.00
OTHER OPERATING EXPENSES:			
Travel & Accommodation Expense	46,713.68		
Electricity Expense	21,922.22		
Water Expense	5,957.98		
Gasoline Expense	3,149.98		
Office Supplies Expense	5,442.82		
Kitchen Supplies Expense	3,803.61		
Security Expense (Building)	2,348.93		
Subscription Fees Expense	585.00		
Books & Other literature Expense	<u>534.87</u>		
Total Books & Subscription Fees Expense		1,119.87	
Repairs & Maintenance Expense-Building		936.00	
Repairs & Maintenance Expense-Vehicle		2,282.45	
Other Repairs & Maintenance Expense		1,103.40	
Rent Expense		136,259.04	
Insurance Expense - Office Furniture & Equipment		1,388.59	
Insurance Expense - Vehicle		2,162.10	
Advertisement Expense		17,582.22	
Telephone Expense		15,896.36	
Postage Expense		357.15	
Representation Expense		840.33	
Legal & Other Professional Fees Expense		21,010.50	
Training & Courses Expense		20,067.73	
Membership Fees Expense		1,395.00	
Miscellaneous Expense:			
Bank Charges	248.00		
Currency Exchange Adjustments	<u>139.53</u>		
Miscellaneous Expense		387.53	
Other Goods & Services Expense		108,843.67	
Cleaning Supplies Expense		3,221.89	
CAROA & Andere Conferenties		<u>549.00</u>	
TOTAL OPERATING EXPENSES:			424,742.05
PERSONNEL COSTS:			
Salaries & Wages Expense:			
Gross Salary	748,325.82		
Vacation Allowance	47,185.25		
Other Remuneration & Allowances	28,332.24		
Child Allowance	6,180.00		
Retroactive Salary	1,257.00		
Employer Pension Premium	79,352.31		
Employer's AOV.AWW Pemium	33,491.79		
Employer AVBZ Premium	3,816.03		
Advanced Salaries	<u>7,227.00</u>		
Total Salaries Expense-Ombudsman & Staff		955,167.44	
Temporary Workers Salaries & Wages		<u>8,360.55</u>	
Total Salaries & Wages Expense			963,527.99
TOTAL PERSONNEL & OTHER OPERATING EXPENSES			1,388,270.04
SURPLUS, before Depreciation Expense & Incidental Income:			108,336.96
DEPRECIATION EXPENSE:			
Depreciation Expense-See Depreciation Schedule:			<u>56,409.67</u>

SURPLUS, before Incidental/Other income:		51,927.29
INCIDENTAL/OTHER INCOME:		
Net Result Sale of Vehicle Bureau Ombudsman	1,445.29	
I.O.I. - Advertising Fund	6,890.46	
Refund from Retreat	126.00	
TOTAL INCIDENTAL INCOME		8,461.75
*NET SURPLUS	NAF	60,389.04
*The Net Surplus booked to Government.		60,389.04

This report has not been audited



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SINT MAARTEN

*“Excellence is to do a common thing
in an uncommon way.”*

-Booker T. Washington-