

Year Report 2011

Dr. Nilda Arduin

Ombudsman

Constitutional nation-building has been defined as focusing on “enshrining the political values of a political community in a constitutional document that ought to become the focus of nation-building initiatives”.

Max Planck UNYB 9 (2005)

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Foreword

There are three main tools available to constitutional nation building: the form and procedure of constitution-making itself, the institutional arrangements made in the constitution, and the values and symbols employed or referred to both during the political process and in the final text.

The year 2011 marks the first full year of Sint Maarten being an autonomous partner in the Dutch Kingdom. Article 78 of the State Regulation of Sint Maarten, popularly known as the Constitution, provides for an Ombudsman charged with the investigation of conduct of Government bodies upon request, or by Own Motion, the initiative of the Ombudsman. The Ordinance Ombudsman (AB 2010 GT no.20) outlines the legal position of the Ombudsman and the Bureau, the complaint procedures, as well as the duty of secrecy imposed on all who are involved with the execution of the task of the Ombudsman.

Though the present constitutional status provides for checks and balances previously practically unknown to the people of Sint Maarten., legal theory on public responsibility and accountability of Governments has evolved. Good governance is by international standards¹ considered a human right.

Not only Parliament and the Executive branch of Government are accountable to the people, but all institutions provided for by law to safeguard good governance are accountable to the people. As such Article 22 of the Ordinance Ombudsman provides that the Ombudsman reports yearly to Parliament.

In the period January 1 through December 31, 2011 the foundation was laid and the directives established for the period 2011-2021 for operation of the Ombudsman institution; the tasks, rules and work procedures, policies and strategies for the institution were compiled in a Handbook. In promoting transparency, the Handbook has been made available for public review at the Bureau and at the public library, Philipsburg Jubilee Library. A copy of the Handbook was presented to the President of Parliament and to government to be filed in the archives of Sint Maarten.

The vision and mission of the institution are defined in the Strategic Plan developed for the period 2011-2021, providing room for Meta-Analysis and External audit of the operation over the first years, with the opportunity for timely adaptation and adjustment of strategies to secure a smooth transition and continuation of the institution after expiration of the term of the first appointed Ombudsman of Sint Maarten. The undersigned strives to be public oriented in line with the vision and mission of our institution.

In keeping with the law of the country, transparency and accountability to Parliament and the citizens of Sint Maarten, I have the honor to present the Annual Report 2011.



Dr. Nilda Arduin , Ombudsman Sint Maarten

¹ See for example Treaty of Lisbon, December 1, 2009.

Vision and Mission Statement

VISION STATEMENT

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

MISSION STATEMENT

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

Executive Summary

1. Introduction

This report covers, and presents an overview of the activities of the Ombudsman and the Bureau in the period January 1 through December 31, 2011.

2. Building a Foundation

The brunt of the activities in 2011 was centered around building a foundation for the Ombudsman institution. Priorities were: establishing the necessary infrastructure, developing work procedures and training of the staff.

3. Financial Report

The Bureau has to its disposal two budgets; one budget to cover expenses related to the building of the institution, financed from the IVB-Program (USONA) and an operational budget, financed by the Government of Sint Maarten in accordance with art.12 of the Ordinance Ombudsman. The operational budget is provided for in chapter 2 of the budget of the country under Parliament and the High Councils of State.

4. “Dry Run Period”

As of January 2011 the Ombudsman created the possibility for citizens to file their complaints. This initiative was aborted at the end of June 2011 as a result of the tedious procedures involved with securing finances for the delivery of office equipment and services in building the institution. The delays caused by the bureaucracy affected equipping the Bureau effectively with guarantees of confidentiality and quality of service to the public, required from a High Council of State.

Results and experiences gathered through the complaints filed during the period January - June 2011, which is labeled by the Ombudsman and the Bureau as the “dry run period”, is used to further build and shape the foundation of the institution.

The prevalent complaint across all Ministries is “no response”. No response to letters, requests, complaints filed, or appeals. An overview of the types of complaints per Ministry is found in *appendix 5*.

A general conclusion resulting from the investigations conducted in 2011 by the Bureau is that compliance with the Standards of proper conduct requires, that those who are considered to act accordingly are familiar with the principles and norms of proper administration. However, while theories on the principles of good governance, including due care, legal certainty, equality, public participation, transparency, accountability, and effectiveness evolved and are practically considered to be a basic human right by international standards, in particular in Europe, Sint Maarten as a new nation is yet to understand and apply these principles full force. Responses from Government bodies to queries by the Bureau should be improved, and complied with in accordance with art. 19 section 2 of the Ordinance Ombudsman.

Good governance; transparency, procedural rules, policies, supervision, internal review and enforcement, is vital in the relationship between Government and its citizens to protect the interest of the citizens. A thorough review of the organizational policies and procedures of all Ministries is recommended, in particular those providing services directly linked to, and require close contact with the public.

Starting with such basic applications as properly addressing and assisting citizens seeking information at a window in person, or by telephone, will already make a difference. These basic expressions of courtesy should be promoted and applied immediately by all Ministries.

Proper instructions to the staff, well informed employees on the work floor, and securing efficiency of procedures, including the flow of documents between departments and Ministries should get the proper attention. The role of the Ministers in this process should not be underestimated; (s)he is ultimately responsible for his/her Ministry. Art. 1 sub 2 of the Ordinance Ombudsman provides that behavior of a civil servant or a member of a Government body when carrying out his/her function or office is considered to be an action of the pertinent Government body.

Where a formal act of a Minister is required, which is for example the case pertaining to establishing the Monument Council and the Appeal Committee as required by law or regulation, the Minister should immediately act not to further stagnate the work of the administration, and to ensure that the citizens can effectively execute their rights.

5. The Constitutional Court

Two meetings were held with the President of the Constitutional Court, discussing possible additional procedures in addressing and handling a request submitted to the Court by the Ombudsman.

The matter regarding notification of the Ombudsman when legal instruments have been approved and ratified was discussed with the Prime Minister, as well as the Secretary General of the Ministry of General Affairs together with a representative of the Department of Legal Affairs (JZ&W). This procedure is not yet formalized. Formalizing this procedure is urgently required in order to properly comply with the pertinent provision in the Constitution.

6. Strategic Planning

After a year experience with the various activities involved in executing the tasks of the Ombudsman, a Strategic Plan was prepared spanning over a period of ten years, projecting activities beyond the tenure of the first Ombudsman, to provide the Bureau with a measure of continuity.

A thorough review and analyses of the strengths, weaknesses, opportunities and threats (SWOT) of the institution was made through full participation of the Ombudsman and staff, guided by a professional organization expert.

The Core Values of the institution were identified and refined, as well as the strategic direction further outlined. The Strategic Plan 2011-2021 was made available to the public as part of the Handbook 2011-2012, a copy of which was presented to the public library, the Philipsburg Jubilee Library. A copy of the Hand Book was also presented to the Governor of Sint Maarten, the President of Parliament, the Prime Minister of Sint Maarten, and is available for review at the Bureau Ombudsman.

The Bureau strives to maintain the highest standards when delivering services to the public. Our Core Values are accessibility, independence and impartiality; we truly believe in confidentiality and integrity, and value highly accountability, transparency, efficiency and effectiveness. All these core values to be achieved with strong leadership and team work.

1. Introduction

Building is a process of constructing or structuring. State-building means the establishment, re-establishment, and strengthening of a public structure in a given territory capable of delivering public 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.

In the year 2011 all efforts were geared towards creating a proper foundation for the operation of the Ombudsman and the Bureau. A Handbook was compiled as a general directive for the institution, starting with a document entitled “*Taak Werkwijze en Inrichting*”, which outlines the tasks, procedures and formation of the Ombudsman and the Bureau.

The Handbook includes: copies of the main Ordinances and Regulations vital to the operations of the institution, the organizational structure of the seven Ministries, as well as listings of relevant laws; the Code of Conduct for civil servants pursuant to Chapter 7 of the Ordinance regarding legal proceedings for civil servants (L.M.A. AB 2010,GT no. 25); By-laws of the International Ombudsman Institute (I.O.I) and the Caribbean Ombudsman Association (CAROA) , plus certificates of Membership to both organizations; the Strategic Plan 2011-2021; an investigation tool, the “SYT Model”; work procedures, and more (See **appendix 1; Table of content Handbook**).

As a result of the small scale of the institution, a Service Level Agreement signed with Government, provides for support from the Government administration in matters of personnel, financial and material operation of the Bureau (**appendix 2**).

A “dry run period”, established from January through June 2011 for citizens to file complaints with the Ombudsman, provided material to review the work procedures drafted for the Bureau, get familiar with the needs of the community and identify areas within the government administration that need special attention.

Regional and international relations provided the Ombudsman the possibility to network with other Ombudsman institutions in building the Sint Maarten Bureau. Investigation techniques were acquired through attendance by the Ombudsman to a course in Vienna, offered and sponsored by the International Ombudsman Institute (I.O.I.). By means of exchanges of personnel with the Ombudsman Bureaus of Curaçao and Amsterdam, information, training and techniques were acquired from their experiences.

Solidifying the relationship with Parliament and the Executive branch of Government was sought through meetings with the President of Parliament and the Prime Minister. The bodies were informed regarding the progress made and the bottlenecks experienced in establishing the Bureau. Sessions were organized with each of the seven Ministries to exchange information and bond with management of the Ministries (the General Secretaries and Heads of Departments).

This Year report covers, and presents an overview of the activities of the Ombudsman and the Bureau in the period January 1 through December 31, 2011.

Summary of Events during 2011

Dates:	Events:
Jan 17	Bureau Ombudsman opened to the public.
Feb 19	Bureau Ombudsman moved to ground floor of former ECC Building (previously sharing office space with General Audit Chamber & Advisory Council).
Feb 1	Formation Plan of Bureau Ombudsman approved by Parliament.
Feb 1	Starting day Complaint Officer and All-around Adm.Clerk.
Feb 13-19	Exchange visit of Secretary General-P. Philips, Complaint Officer –C. Bell and Administrative Assistant-R. Davis to Curaçao Ombudsman (SG also visited Aruba-presentation of complaint registration system).
June 3-8 th	Ombudsman, Dr. Nilda Arduin to training in Vienna –“SYT Training.”
June 9-13 th	Ombudsman, Dr. Nilda Arduin working visit to the Netherlands.
June 14-18	Ombudsman attended the First Curaçao International Ombudsman Conference in Curaçao: Ombudsman one of the speakers on the topic “Confidentiality.”
June-July 2011	Year Report 2010 presented to : President of Parliament (June 1 st) , Prime Minister (June 3 rd), Chairman General Audit Chamber, Vice Chair Advisory Council (June 23 rd), Governor (July 6 th).
July 5-9 th	Working visit Ombudsman of Curaçao-Mrs. Alba Martijn- to Sint Maarten.
July 6 and 7	Courtesy visit Ombudsman Curaçao/SXM to Governor, Prime Minister, Vice Chairman Parliament, General Audit Chamber and Advisory Council.
June 28	Press conference: Agenda: Letters May 3 rd to Parliament; Year Report; Current Status Bureau Ombudsman.
Jul 23-Aug 5	Working visit to Sint Maarten by Miss May Pastoor-Complaint Officer (CO) Bureau Ombudsman Municipality of Amsterdam, Netherlands.
Aug 19	Presentation by dr. Nilda Arduin to the Secretary General and Department Heads (organized by the Secretariat of the Council of Ministers); “The Role of the Ombudsman in the lawmaking process“.
Aug 29-Nov 1	Information Exchange Sessions with Ministries : Secretary Generals and Department Heads.
Sep 2	Working visit paid to the Ombudsman by President Constitutional Court, Justice Jacob Wit.
Sept 25-30	Visit of Mrs. Petra Visscher Chef de Bureau Ombudsman of the Municipality of Amsterdam, Netherlands.
Oct 14	Symposium organized by the High Councils of State Theme: “Checks and Balances in a Democracy and the Role of the High Councils of State”. Featured Speaker justice Jacob Wit and guest speaker Dr. Samuel Polanen.
Oct 16	Courtesy visit paid to the Ombudsman by Representative of the Netherlands Mr. Gerard van der Wulp.
Oct 24-28	Exchange visit of CO- Ms Charleen Bell of Sint Maarten to Bureau Ombudsman Amsterdam, Netherlands.
Nov 9	Ombudsman Sint Maarten became a member of the International Ombudsman Institute.
Nov 23-26	Working visit Senior Complaint Officer Mrs. Majorie Tromp- of Curaçao to Sint Maarten.
Dec 16	Presentation Strategic Plan to High Councils of State.
Dec 29	Completion of the Strategic Plan.

2. Building a Foundation

Solid buildings have firm foundations; the more solid the foundation, the less likely the building is to suffer damage from storms. State building and Nation building are processes that should go hand in hand.

The brunt of the activities in 2011 was centered around building a foundation for the Ombudsman institution. Priorities were: establishing the necessary infrastructure, developing work procedures and training of the staff.

Infrastructure

Funding for the infrastructure and activities to build the institution are secured by funds from the “*Institutionele Versterking en Bestuurskracht*”, the IVB-Program; a program financed by the Netherlands, managed by USONA. A list of projects filed and approved per December 15, 2011 is hereto attached as **appendix 3**.

Work procedures for the operation of the Bureau were internally developed, including a Document Management System for handling complaints. The software for a Case Registration System (KRS) used by the Ombudsman in Curaçao was made available on trial basis to the Bureau by the developer of the software, FACE in November 2011.



Mr. Woldrink of FACE presenting laptop to Bureau Ombudsman with KRS for use on trial basis

Staff Training

Training exchange programs for the staff were organized with the Ombudsman of Curaçao and Amsterdam.

In February 2011 the Secretary General, Complaint Officer and All round Administrator visited the Ombudsman Bureau on Curaçao, while the Secretary General also visited Aruba together with the other High Councils of State of Sint Maarten on a fact finding mission to get acquainted with the possibilities of a Document Management System to be (possibly) used for all High Councils of State of Sint Maarten. The Ombudsman of Curaçao, Ms. Alba Martijn, visited Sint Maarten on an exchange in July 2011.



The Staff of Bureau Ombudsman with Ombudsman of Curaçao, Ms. Alba Martijn (second from right)

Bureau Ombudsman of Amsterdam partly pre-financed three exchanges arranged between the two offices, as funding to execute the exchange programs was not forthcoming with the diligence required and expected.

The exchange with Bureau Ombudsman of Amsterdam involved: a visit from a Senior Complaint Officer of the Bureau to work with a Complaint Officer in Sint Maarten on actual files during a period of two weeks; a visit from the Chef de Bureau of Amsterdam to Sint Maarten to review and discuss developed procedures with the Secretary General of Bureau Ombudsman Sint Maarten; a one week visit by the Complaint Officer of Sint Maarten to Amsterdam for training and firsthand experience of all areas of operation in an established Ombudsman Bureau.



Exchange Visit from the Chef de Bureau of the Bureau Ombudsman Amsterdam Mrs. Petra Vischer (extreme right)

A request was made to the National Ombudsman of the Netherlands for assistance with in-house training of our Complaint Officers and staff for a period of three to six months. Agreement was reached with the National Ombudsman in December 2011 to make available a senior Team leader for a period of six months to Bureau Ombudsman Sint Maarten for the purposes mentioned.

Courses followed locally by staff include:

- Principles of Administrative Law (the Complaint Officer)
- Dutch Language (the All Round Administrator)

The Ombudsman followed a course on Systemic investigation “*Sharpening Your Teeth*” (the SYT Model) in Vienna on a scholarship provided by IOI. The Ombudsman also attended a

Conference on “*Confidentiality and the duty of the Ombudsman*” in Curaçao. The Ombudsman was invited to make a presentation during the Conference on the topic: “The Ombudsman Guardian of the Duty of Confidence – Challenges and Lessons of Experience”.

The Ombudsman followed a course on island pertaining to lawmaking procedures and techniques (“*Wetgevingsprocedures*” and “*Wetgevingstechniek*”) organized by the Legal Department of Government (JZ&W).



*Ombudsman Dr. Nilda Arduin and
Dr. Peter Kostelka, General Secretary IOI
In Vienna*



I.O.I. members at the SYT Training in Vienna

The appointment by Parliament of a substitute Ombudsman brought forward by the Ombudsman pursuant to art. 14 of the Ordinance Ombudsman has not been ratified yet. Follow up is important to secure replacement of the Ombudsman during her absence. The Bureau experienced a void on several occasions, in particular during necessary travel of the Ombudsman, as well as her absence due to personal circumstances as a result of the passing of her spouse. Notification to Parliament by the Ombudsman regarding her intentions to engage in side activities (“*nevenactiviteiten*”), representing the corporate interests of her husband, deceased in March 2011, was cancelled due to gross misinterpretation of the pertinent request in community.

3. Financial Report

Promoting democracy as a set of values and, therefore, as an element of social identity, faces a serious challenge in the form of a possible reaction of resentment, if undermined by those in authority, leading to a backlash against democracy and democratic institutions. The aim of State-building is not the use of (physical) force, but rather the establishment of a State as a concentration and expression of collective power without the need to exercise coercion. Proper checks and balances within a democratic State is of utmost importance.

The Bureau has to its disposal two budgets; one budget to cover expenses related to the building of the institution, financed from the IVB-Program (USONA) and an operational budget, financed by the Government of Sint Maarten in accordance with art.12 of the Ordinance Ombudsman.

Project “Opbouw Hoge Colleges van Staat” (“Project OHCvS”)

On July 31st 2008 the Island Territory of Sint Maarten signed an agreement “*Afspraken over het Samenwerkingsprogramma Institutionele Versterking en Bestuurskracht 2008-2012*” with the Netherlands containing the intentions of parties to implement the IVB-Program 2008-2012 for the Island Territory Sint Maarten. In this program an amount of Nafl. 8.513.600,00 was made available to develop and execute projects under specified conditions.

The intention of the IVB-Program is to ensure a smooth transition of the constitutional change of the island territory to country status. As such the program focuses on six (6) main concerns: control on the government - checks and balances, confidence in government, financing and budgetary control, information, the civil servants apparatus and the executive apparatus.

Considering the above, the IVB-Program centers around four areas, namely: Strengthening of the Civil Service and the Executive corps; Creating a sound financial position; Quality law and regulations; Modernizing Government.

The projects approved for the IVB-Program are managed by (U)SONA, which functions as an advisory body to the Netherlands, and oversees the progress of the various projects.

On December 20th 2010 an agreement was signed by the Prime Minister of Sint Maarten and USONA for funding of the setting up of the High Councils of State and the SER (“*Project OHCvS/SER*”) to the total sum of Nafl. 4.198.115,00. The amount allotted to the Ombudsman is Nafl. 1.126.526, 50.

It is emphasized that these funds are strictly meant to be used for the costs involved with the setting up of the High Councils of State and the SER, while the operational costs should be borne by the Government of Sint Maarten.

The execution of the “*Project OHCvS*” encountered unforeseen bureaucratic obstacles, which were addressed in meeting with (U)SONA, the Department “*Binnenlandse Aangelegenheden Koninkrijksrelaties*”(BAK), representing the Government of Sint Maarten, the representatives of the High Councils of State and the SER. Arrangements to establish an account for working capital improved access to the USONA funds drastically.



Meeting USONA, BAK, HCOS/SER

Operational costs

In accordance with article 12 sub 1 of the Ordinance Ombudsman, GT 2010 no. 20, the budget of the Bureau Ombudsman forms an integral part of the budget of the Government of Sint Maarten (Chapter 2 “*Parlement en Hoge Colleges van Staat*, no. 2060, pag. 3”).

Budgets and Annual Reports (appendix 4)

Attached are the budgets of the Ombudsman and the Bureau approved by USONA (IVB-Program/“*Project OHCvS*”) and the Government of Sint Maarten for 2011.

The Budget of the Ombudsman approved by the Government of Sint Maarten contained only the operational costs; the capital investment and other costs related to the building up of the institution were financed with the IVB funding,

Subsequently, the Annual report for 2011 includes the following three reports:

- 1) The Budgets USONA and Bureau Ombudsman Government Sint Maarten
- 2) The Financial report from the Government funded operations;
- 3) The Financial Report from the IVB funded operations
- 4) The consolidated Financial Report (Government and IVB funded operations).

4. Dry Run”

State-building in general can only be achieved if the source of power and the rules governing it are widely regarded as legitimate. The foremost source of legitimacy in societies today is ‘the people’, a concept which in substance calls for a balance between both the differentiation between the governing and the governed, and a bond uniting the governing and the governed at the same time.

As of January 2011 the Ombudsman created the possibility for citizens to file their complaints. This initiative was aborted at the end of June 2011 as a result of the tedious procedures involved with securing finances for the delivery of equipment and services in building the institution. The delays caused by the bureaucracy affected equipping the Bureau effectively with guarantees of confidentiality and quality of service to the public, required from a High Council of State. Results and experience gathered through the complaints filed during the period January - June 2011, which is labeled by the Ombudsman and the Bureau as the “dry run period”, is used to further build and shape the foundation of the institution.

The prevalent complaint across all Ministries is “no response”. No response to letters, requests, complaints filed, or appeals. An overview of the type of complaints per Ministry is found in ***appendix 5***.

A total of 111 complaints were filed during the “dry run period”. One (1) systemic investigation was started in December 2010 by Own Motion of the Ombudsman, which investigation was continued, but not yet concluded in 2011.

Not being fully equipped to effectively and efficiently handle complaints, combined with the focus being the setting up of the Bureau, as well as the fact that the Government administration too was faced with new procedures, and had to get acquainted with the Ombudsman institution, lead to the decision to give priority to handling of the complaints filed during this period mainly by interventions.

KLACHTENFORMULIER/COMPLAINT FORM
(Conform artikel 15 lid 3 Landsverordening Ombudsman)

1.	Name of Complainant (persoon/entity): Naam van de Klager (rechts)persoon): Cel./tel.nr & E-mail:	
2.	Address of Complainant: Adres van de Klager:	
3.	Name of government entity against whom the complaint is lodged: (Government organization, Independent Government Agency or Civil Servant) Orgaan waartegen de klacht is gericht (Bestuursorgaan, Zelfstandig Bestuursorgaan of Ambtenaar):	
4.	Description of the conduct: Omschrijving van de gedraging: a) Waar/where: b) Wanneer/when: c) Tegen wie/against whom: d) Gedraging/conduct: (toevoegen extra blad indien nodig/add additional page if necessary).	
5.	Last date department was informed about the complaint: Laatste datum in kennis stellen orgaan van de klacht:	
6.	Reason why the complainant feels effected by the conduct (grievance): Reden waarom de klager zich door de gedraging getroffen voelt(ongenoegen):	
7.	Date of the complaint/ Dagtekening van de klacht: Handtekening: Signature:	

Bijvoegen relevante documenten/please include the relevant documents
For internal use/voor intern gebruik:

Complaint Procedures

After having received a complaint filed by a citizen, the Bureau first assesses whether the Ombudsman is competent to deal with the complaint. When the Ombudsman decides that the complaint is within her scope of authority she will start an investigation.

An investigation starts with sending a notification of the complaint to the administrative body concerned. This notification includes a summary of the complaint. Attached to the notification of the complaint is a form with questions addressed to the civil servant or department pertaining to the complaint. This way the administrative body is given the opportunity to provide information about the matter related to the complaint, and to inform the Ombudsman about its views on the case. The Ombudsman also asks the administrative body whether there is a possibility to solve the case in a quick manner. In that case the administrative body is requested to establish contact by telephone with the Ombudsman. The complaint can be dealt with by exchanging information and/or a solution by telephone, by e-mail or otherwise.

Examples of interventions

- Complainant turned to the Ombudsman because he needed assistance from the Tax Office. He was of the opinion that he received incorrect tax assessments, and wanted to discuss this at the Tax Office. The person at the front desk of the Tax Office could not answer his questions. The Ombudsman contacted the Tax Office regarding the complaint, and found out that indeed the person at the front desk could not provide the correct

information. When the Ombudsman contacted the department Head, the correct information was provided.

Applicable norm: In this case the standard of proper conduct of adequate organization of services is applicable. An organization has to make sure that a citizen can obtain the necessary information. This means that the person in the front desk might not have known the answer to the questions asked, but she should have known who in the organization would be able to provide the information, or where the information could be obtained to serve the citizen well.

- Complainant contacted the Ombudsman because she had a complaint about the Court of Guardianship. Complainant left her daughter with a relative until she would be settled in The Netherlands. After three years she returned to Sint Maarten to take her daughter with her to The Netherlands. Her relative refused to give the daughter into the care of her mother again. The mother contacted the Court of Guardianship from Holland and visited the Court of Guardianship when she was on Sint Maarten. The Court of Guardianship informed the mother that a relative was charged with the guardianship of her daughter, and that she had to submit a request to the court to retrieve guardianship over her daughter. The Court of Guardianship did not provide complainant any evidence of the court proceedings. Through intervention of the Ombudsman the complainant was able to obtain a copy of the decision of the court in which she was relieved of the guardianship over her minor child. The Ombudsman advised her to again contact the Court of Guardianship, where after the matter was handled properly, and the mother obtained custody of her daughter again.

Applicable norm: The standard of proper conduct; active and adequate provision of information, is applicable in this case. Administrative bodies are expected to provide the citizens actively, and upon request adequate information.

Information is an important issue in the relationship between administration and the citizens. When information is not given, it can damage the trust of the citizen towards the authorities. This standard of proper conduct implies on the one hand that administrative bodies have to provide information upon request, but also that they are obliged to provide information on their own initiative when certain actions of the administration will influence the interest of the citizen. The administration is expected to give a clear answer, dealing with the issue at hand. When it is not possible to give an answer right away, a reasonable time should be considered within which the information will be provided. And when it appears that more time is needed to adequately respond to the request, the administration should inform the citizen about this on its own initiative, and explain why an answer is delayed.

In most cases the Ombudsman prefers to look for a quick solution for the problem instead of conducting a full written investigation. When a quick solution is possible the citizen does not have to wait until the investigation will be concluded and a judgment will be formulated by the Ombudsman. Another advantage of dealing with complaints this way is that the administrative body is not burdened with providing written information to the Ombudsman. The administrative body is given the opportunity to restore the trust of the citizen in the administration by cooperating with the Ombudsman to come to a solution which serves the citizen. This way of conducting an investigation is mostly followed in cases where it is obvious that something went wrong on the part of the administration.

Example of finding a quick solution

- Complainant's mother turned to the Ombudsman on January 18th 2011 with a complaint about her son's scholarship payments, which were due in January 2010. Although they contacted the Department of Education numerous times the matter was not settled. The Department informed the Ombudsman that the delay in dealing with this matter was due the office being seriously understaffed, as well as communication challenges with complainant's mother. It appeared that based on information provided by the mother to the Department in October 2009 the funds were put on hold for January 2010. In January the mother went back to the Department to ask why payments stopped. Then it became clear that there was a misunderstanding. Still it lasted until the Ombudsman intervened that the Department submitted an advice to the Minister for approval regarding the January 2010 payment. The case was resolved and the money paid to the complainant.

Applicable norm: The standard of proper conduct of adequate organization of services implies that the Department of Education should be able to provide the necessary information to a citizen; in this case it was the mother of a student, who was entitled to a scholarship. The fact that the Department was understaffed explains the difficulties of the Department to deal with the problem, but does not justify the delay. However fortunately in the end the case could be solved through intervention of the Ombudsman and the willingness of the Department to cooperate.

Sometimes it becomes clear through the information provided by both parties during the investigation that something is structurally wrong and that the complaint of the individual complainant stands for many other citizens in the same situation. In such a case it is still possible to reach a solution for the individual complainant, but the Ombudsman might also decide to make recommendations to improve procedures which lead to the complaint. This will be done in a letter or in a report.

Example of a complaint handled in the general interest

- Such was the case in a matter where a citizen alleged having overheard a civil servant use profanity in the background towards him when he called a department to inquire about his request for a permit. Though the facts of the matter could not be established as stated in the complaint, investigation by the Ombudsman showed that the Minister had taken disciplinary measures against the civil servant for a similar act in the same period of the alleged incident filed by the complainant. A conclusion was forwarded to the complainant, the civil servant, the Department and the pertinent Minister establishing that in general it is not acceptable that civil servants use profanity directly or indirectly to citizens in the workplace. Such incidents need to be addressed immediately, and appropriate measures taken.

Applicable norm: The standard of proper conduct of correct treatment requires that administrative bodies treat the citizens with respect and deal with them in a polite manner. In this case that means that the civil servant violates the standard of proper conduct when he uses profanity. The Department and the Minister involved acknowledged this standard of proper conduct by making clear that it is not acceptable that civil servants use profanity directly or indirectly to citizens or towards other civil servants in the workplace.

When a solution cannot be reached the Ombudsman will prepare ‘preliminary findings’. This document is an account of the information exchanged during the investigation and the applicable legal framework. Both the complainant and the administrative body will be given the opportunity to give a comment. After having received the comments the Ombudsman will conclude the investigation with a report with her judgment. The Ombudsman will judge a conduct proper or not proper. When the investigated conduct is deemed not proper the Ombudsman might add recommendations.

The ‘Dry run period’ was used for all involved to get acquainted with the new Institution and its procedures. In the year 2011 no reports were drafted to include a judgment as a result of complaints filed. The complaints handled were resolved by intervention; the departments in general revisited their actions and or addressed the complaint when presented by the Ombudsman with a notification of complaint.

Example of revisiting an action

- Complainant, a bus driver, turned to the Ombudsman because he felt that the police did not deal with his case in a proper manner. Complainant was involved in a car accident with a truck on the 20th of January 2011. He claimed that the police only took note of the statement of the driver of the truck. According to the complainant the police stated that the complainant was to blame for the accident, only after having heard the truck driver. The Ombudsman started an investigation with a summary of the complaint, including questions about the relationship and procedures between the police and C.A.R.S.. This was reason for the police to conduct an internal investigation. It became clear that both drivers were given the opportunity to relate their stories to the police on the day the accident took place.
A report including pictures taken by C.A.R.S. was submitted to the Ombudsman. The Ombudsman assessed the information of complainant and the police. The Ombudsman refrained from further investigation because it appeared that as a result of the inconclusive report of C.A.R.S. on the date of the accident, the police department was consulted. Analyses of the accident based on visual information online, including pictures of the car accident was reported by the police in a ‘Proces-verbaal’ dated May 29th 2011. The police established that the bus hit the vehicle in the back at the right side, leading to the conclusion that the bus, driven by the complainant had stopped and drove off after the vehicle had (already) passed. The drivers were referred to their respective insurers.

Applicable norm: The standard of proper conduct providing for the right of both sides to be heard implies that the administration offers the citizen the opportunity to be heard so that he/she can look after his/hers interests. In this case the intervention of the Ombudsman resulted in a thorough investigation of the case by the police, which indicated that both parties were given the opportunity to relate their story to the police. No standard of proper conduct appeared to be violated.

Another way to effectively address complaints is to invite representatives of the administrative body involved to Bureau Ombudsman to discuss procedures in general, and in particular cases

brought forward by complainants. This has been the case with the department of P&O and Social Services. This approach gave the representatives of the pertinent departments the opportunity to explain the internal procedures and policies to the Ombudsman. This was beneficiary to all parties concerned. The Ombudsman seized the opportunity to explain the way she deals with complaints and what she expects from administrative bodies when she addresses them. At the same time the Ombudsman was informed in general about the procedures of P&O and Social Services, but also received answers in individual cases. Some of these complaints were solved shortly after.

Findings

General findings from the complaints filed:

- Lack of rules and regulations, policies, written procedures and directives on the work floor, and or lack of adequate knowledge thereof;
- Legal periods provided for by law to comply with requests are often not adhered to;
- Decision-making in general takes too long/unnecessary bureaucracy;
- No response to requests, queries, complaints, letters etc.;
- Lack of coordination and or cooperation within a department, between departments and or Ministries (inefficiency);
- Lack of proper procedures, registration and tracking systems of documents;
- Lack of administrative accuracy (decision-making procedures, and other administrative procedures not properly followed);
- Committees provided for by law not installed (f.e. Appeal Committees, Monument Committee);
- Lack of information to the public regarding procedures to be followed or requirements involved with applications; no clear information or proper instructions provided at the counter to the citizens;
- Lack of courtesy at windows, or at the departments when citizen is seeking information;
- Tardy response from government bodies to queries by the Ombudsman; the law provides that the entity is compelled to answer within the stipulated time appointed by the Ombudsman, or request an extension.

By letter of July 25th, 2011 to the Minister of General Affairs, the Prime Minister was informed regarding the findings (***appendix 6***).

Exchange sessions with each Ministry (the Secretaries General and Department Heads) contributed to better understanding of the function and tasks of the Ombudsman.



Exchange session with Ministry Economy Transport & Communication

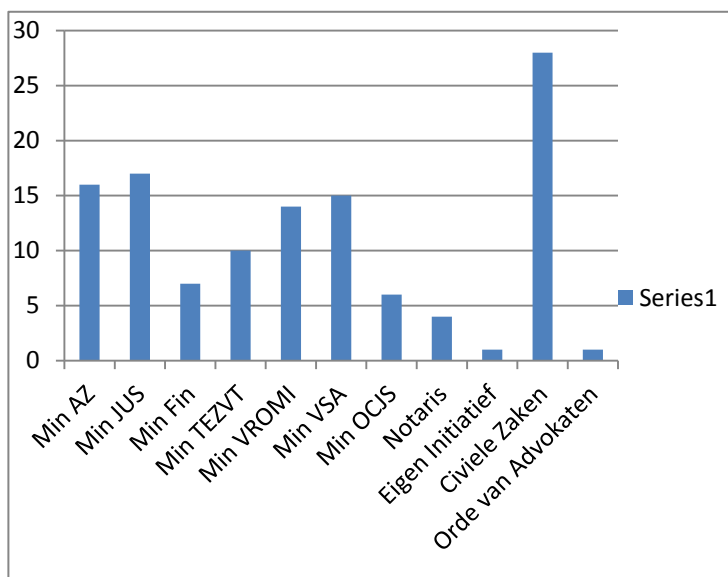


Exchange Session with the Ministry of Justice

A document outlining a Standard of proper conduct, modeled after the Netherlands, to be followed by the Executive and civil servants, and a Table of norm violations, modeled after experiences in Curaçao, were shared with the Secretaries General of all Ministries. A pledge was made to have yearly meetings between the Ombudsman and the Ministries to foster a closer relationship in the interest of promoting good governance.

Graphics of complaints filed per Ministry:

Min AZ	16
Min JUS	17
Min Fin	7
Min TEZVT	10
Min VROMI	14
Min VSA	15
Min OCJS	6
Notaris	4
Eigen Initiatief	1
Civiele Zaken	28
Orde van Advokaten	<u>1</u>
TOTAL:	119



In collaboration with the various departments preliminary solutions were sought to address the majority of the complaints. Special meetings were held with the Departments of P&O and Social Services. These Departments play a vital role in the relation government and the citizens. Complainants with a complaint not falling under the scope of the authority of the Ombudsman were directed to the relevant authorities, or provided with an advice to address the particular situation. The Bureau experienced that some complainants were reluctant to have their case investigated with mention of their name, and as such refrained from filing an official complaint

with the Ombudsman. Following are more examples of complaints filed, and how they were handled.

- Complainant turned to the Ombudsman because he could not get information about his pension from P&O, although he tried to obtain the information on several occasions. The Ombudsman scheduled a meeting and discussed the file of the complainant with the Department. The representatives admitted that their department was understaffed and as a result of that they were limited in their possibilities and could not give the necessary service on a regular basis. The Department agreed with the Ombudsman that civil servants need to be aware of how their pension is calculated. The result through the intervention of the Ombudsman was that the complainant could go to APNA to obtain the requested information.
- Complainant turned to the Ombudsman because the Census Office refused to renew his driver's license due to information obtained by the Census Office that he is allegedly living on the French side, although he is registered on the Dutch side of the island. During the investigation of the Ombudsman two letters addressed to the complainant dated July 7th 2011 and July 8th 2011 were faxed to the Bureau by the Civil Registry after the Ombudsman contacted the Census Office on the matter. The letter dated July 7th 2011 from the Civil Registry referred to the matter of the driver's license, while the letter dated July 8th 2011 from the Minister of General Affairs indicated that the Registrar was about to make changes to the basic administration with regard to complainant's residency. These letters were amply discussed with complainant, and he was advised to respond to the letter dated July 8th 2011 needed to be responded to promptly. After further investigation and discussion with the Head of the Civil Registry a follow up meeting on this matter was held with the complainant on August 24th 2011. By letter of August 31st, 2011 complainant was informed by the Ministry of General Affairs that the planned action pertaining to his registration in the basic administration has been cancelled as a result of the letter and statement he submitted to the pertinent Department. As such the matter pertaining to his driver's license has also been solved. Based on the above stated the complainant was informed that the Ombudsman refrained from further investigation of the complaint since the issue regarding the complaint was solved.
- Complainant turned to the Ombudsman with a complaint against the Immigration Department. Complainant, an employer, was denied a permit to employ a person with a foreign nationality. The Ombudsman had to inform complainant that the complaint was inadmissible because an administrative appeal could be still filed against the decision.

Conclusions

During the investigation process, whether it is by intervention or by a written investigation, the Ombudsman will constantly evaluate the information she receives. In the end she will deem a conduct proper or not proper. To establish whether a certain conduct is proper or not proper the Ombudsman uses standards of proper conduct. Partly these standards of proper conduct will

coincide with legal norms, but not always. The standards of proper conduct help us to define the way the administration should behave towards the citizens.

A general conclusion resulting from the investigations conducted in 2011 by the Bureau is that compliance with the Standards of proper conduct requires that those who are considered to implement these standards and act accordingly, are familiar with the principles and norms of proper governance. However, while theories on the principles of good governance, including due care, legal certainty, equality, public participation, transparency, accountability, and effectiveness evolved and are practically considered to be a basic human right by international standards, in particular Europe, Sint Maarten as a new nation is yet to understand, embrace and apply these principles fully. Responses to queries within the deadline given by the Bureau should be improved, and complied with in accordance with art. 19 section 2 of the Ordinance Ombudsman.

An attempt to codify policy rules, general and legal principles of proper governance in a General Ordinance of Administrative Law (“*Algemene Wet Bestuursrecht*”) as applicable in the Netherlands has not been realized, even though art. 17 section 2 under h. of the Ordinance Ombudsman makes reference to Chapter 9 of the draft Administrative Law (“*AWB*”). In the absence of such an ordinance it behooves the government administration to familiarize itself with the general principles of good governance required in relation to its citizens. A tool for such is the Standard of proper conduct (“*Behoorlijkheidswijzer*”) made available by the Ombudsman to the Government administration; the Council of Ministers and all Ministries.

Considering the nature of the complaints filed during the ‘dry run period’, **the principle of due care** requires urgent and prompt attention from the Government administration. Efficiency, administrative accuracy, active and adequate information to the citizens, adequate organizational provisions, correct treatment of citizens and professionalism are important norms of due care.

Adequate organizational provisions as a norm of due care requires that government bodies organize their administrative operation and functioning in such a manner that proper service to the citizens is guaranteed. Government administration needs to guarantee continuity in the service to the citizens; this requires adequate external (providing service) and internal (proper internal procedures) provisions (see examples above).

Promoting service awareness among civil servants and awareness that requests or complaints filed are serious matters, which represent real persons’ interest and subsequently deserves the immediate attention of the administration, is required. Non-action or wrong advice may have both material and immaterial consequences.

It is furthermore vital that private government entities (“*zelfstandige bestuursorganen*”) understand their public function and responsibilities. Some private government entities seem to be operating in a grey area. A legal opinion on the matter of private government entities was commissioned by the Ombudsman, and a tentative list of such entities was compiled for further deliberation (*appendix 7*).

Recommendations

Good governance; transparency, procedural rules, policies, supervision, internal review and enforcement, is vital in the relationship between Government and its citizens to protect the interest of the citizens. A thorough review of the organizational provisions (regulations and policies) of all Ministries is required, in particular those with direct service to, and in close contact with the public. Intra- and inter departmental communication should be aligned to improve efficiency, and maximize service to the public. Starting with some basic applications mentioned below will immediately make a difference:

- properly addressing and assisting citizens seeking information at a window or by telephone;
- confirming receipt of letters, requests and or complaints, as well as following up on it within a reasonable time;
- providing complete and accurate information to the public by supplying a list of requirements when applying for permits or licenses;
- proper signage visible to the public when visiting government departments;
- directing citizens to the proper window or department without they having to walk to and fro before getting help;
- proper filing, tracking and archiving of documents;

These basic applications should be organized and promoted immediately by all Ministries.

Proper instructions to the staff, well informed employees on the work floor, and securing efficiency of procedures, including the flow of documents between departments and Ministries should get the proper attention. The role of the Ministers in this process should not be underestimated; (s)he is ultimately responsible for his/her Ministry, and politically responsible for assigned private entities charged with public authority. Art. 1 sub 2 of the Ordinance Ombudsman provides that the behavior of a civil servant or member of a public body performed in the execution of his/her duty is considered to be an act of the pertinent government body. Where a formal act of a Minister is required, which is for example the case pertaining to establishing the Monument Council and the Appeal Committee as required by law or regulation, the Minister should immediately act not to further frustrate the work of the administration, and to ensure that the citizens can effectively execute their rights.

The matter of private government entities (*'zelfstandige bestuursorganen'*) needs to be further explored. Authority of the Ombudsman should be established by mutual agreement, as is the case in Curaçao and The Netherlands, in matters pertaining to entities charged with public authority presently operating in a grey area, to guarantee proper governance where accountability is concerned.

5. The Constitutional Court

Constitution-making offers the possibility to influence a nation building process towards establishing a set of ideas, values, and institutions as part of the collective, national identity.



Installation Constitutional Court November 15, 2010

The Constitution of Sint Maarten provides for Constitutional review in a specific case by the Civil Court (art. 119 Constitution), as well as Constitutional review of approved and ratified legal instruments by the Constitutional Court (art. 127 Constitution).

Pursuant to section 3 of art. 127 of the Constitution the Ombudsman is charged with requesting within six weeks of ratification of a law, (part) annulment of same through the Constitutional Court, if deemed incompatible with the Constitution. The authority and organization of the Constitutional Court is further outlined in an Ordinance (AB 2010 GT no. 29), whereas the procedural rules for the Court are not fully defined by law.

Two meetings were held in 2011 with the President of the Constitutional Court, to discuss possible procedures for addressing and handling a request submitted to the Court by the Ombudsman.



Judge Jacob ("Bob") Wit, President of the Constitutional Court, in meeting with the Ombudsman Dr. Arduin and Secretary General Ms. Patricia Philips

The matter regarding notification of the Ombudsman when legal instruments have been approved and ratified was discussed with the Prime Minister, as well as the Secretary General of the Ministry of General Affairs together with a representative of the Department of Legal Affairs (JZ&W). This procedure was not yet formalized in 2011. Formalizing this procedure is urgently required in order to properly comply with the pertinent provision in the Constitution.

It is observed and highly recommended that the procedure pertaining to notification and the publication of regulations promulgated by private entities charged with public authority pursuant to art. 81 sub j. juncto art. 98 section 2 of the Constitution be formalized as well.

A Research Paper was commissioned, and drafted by Lo Hillen (May 26th 2011), to outline the authority of the Ombudsman as Guardian of the Constitution pursuant to the Constitution and the relevant organic law (*appendix 8*). Follow up actions are on the agenda of the Ombudsman for 2012.

6. Strategic Planning

A vital tool to successful completion of any building project is a blue print in order to determine and keep abreast of progress made.

The result oriented approach established for the Ombudsman and the Bureau from the onset was further developed and anchored in a Strategic Plan 2011-2021.

After a year experience with the various activities involved in executing the tasks of the Ombudsman, a Strategic Plan was prepared spanning a period of ten years, projecting activities beyond the tenure of the first Ombudsman, to provide the Bureau with a measure of continuity. A thorough review and analyses of the strengths, weaknesses, opportunities and threats (SWOT) of the institution was made through full participation of the Ombudsman and staff, guided by a professional consultant.

The Core Values of the institution were identified and refined, as well as the strategic direction further outlined. The Strategic Plan 2011-2021 was made available to the public as part of the Handbook 2011-2012. A copy of the Handbook was presented to the public library, the Philipsburg Jubilee Library, the Governor of Sint Maarten, the President of Parliament, the Prime Minister of Sint Maarten, and is available for review at the Bureau Ombudsman.



Presentation of the Handbook to the President of Parliament drs. Gracita Arrindell

The Bureau strives to maintain the highest standards when delivering services to the public. Our Core Values are accessibility, independence and impartiality; we truly believe in confidentiality and integrity, and highly value accountability, transparency, efficiency and effectiveness. All these core values to be achieved with strong leadership and team work.

Strategic areas and Priorities

The Strategic areas and Priorities established for the first ten years are:

1. Awareness Raising and Accessibility
2. Independence
3. Capacity Building and Resource Mobilization
4. Networking
5. Ethics

Approximately ninety percent of our Strategic goals and Action Plan established for 2011 were met. Goals set out to meet in 2011, but not met are: acquiring a second Complaint Officer, design a website and organize an official opening of the Bureau.

On February 1, 2011 the Formation Plan for the Bureau was established by Parliament. A Complaint Officer and an All Round Administrator selected in December 2010 through a thorough application procedure were employed at the Bureau as of the same date.

Notwithstanding an extensive application drive to employ a second Complaint Officer with a legal background, it was not until the end of 2011 that the Bureau was successful to recruit a lawyer, who could only take up employment per March 1, 2012.

Six student-interns from various schools of Secondary Education were accepted throughout the year, and properly engaged in supporting activities at the Bureau such as compiling a Social Map, collecting and organizing various laws for our library.

Not being equipped with the required infrastructure, prevented the Bureau to have a website designed. An official opening of the Bureau was aborted for the same reason.

A most prominent area of the strategy of the Ombudsman in achieving the objectives is Awareness Raising and Accessibility of the Bureau. As such a Communication Plan has been drafted to target the various stakeholders. Not only public awareness about the existence of the Ombudsman and the Bureau is required, but equally important is that the mandate of the Ombudsman is understood by the Government and government agencies.

Scheduled meetings were held with the Governor, the Prime Minister and the President of Parliament. Exchange meetings were organized with all seven Ministries, the Secretaries General and Head of Departments, to exchange information and bond.

Together with the Advisory Council and the General Audit Chamber, a symposium on “*Checks and Balances in a Democracy and The Role of High Councils of State*” was organized to commemorate the first anniversary of these institutions.



From left to right: Dr. Nilda Arduin, Chairman General Audit Chamber, Mr. Roland Tuitt, Vice-Chair Advisory Council, Ms. Mavis Brooks-Salmon; Featured speakers Symposium: Judge Jacob (“Bob”) Wit, President Constitutional Court and Mr. Samuel Polanen, constitutional consultant from Suriname, after a Press briefing

The Ombudsman made herself available to the media by keeping Press Conferences, appearing on Talk Shows, and giving presentations to organizations upon invitation. A Newsletter with information of the Bureau's activities appeared twice in 2011.

The international network of the Ombudsman was expanded by presenting and leading a two hour workshop at the First International Conference organized by the Ombudsman of Curaçao in collaboration with the Caribbean International University to bring Ombudsmen of the Caribbean and Latin America together.

Institutional Membership of the International Ombudsman Institute was obtained in July 2011.

Attached is a listing of the main events and activities organized or attended by the Ombudsman in 2011. An Action Plan for 2012 has been developed (*appendix 9*).

Album of 2011 Events



Presentation Annual Report The Council of Advice



Ombudsman Dr. Nilda Arduin and Staff of Bureau Ombudsman



Meeting High Councils of State and SER, Project Leader, (U)SONA



Information session with the Board of SHTA



Courtesy visit representative of the Netherlands



Courtesy visit Ombudsman Curaçao Alba Martijn to Audit Chamber



Press Conference June 2011 at Bureau Ombudsman



Arrival Ombudsman Curaçao mr. Alba Martijn on Sint Maarten



Training Complaint Register by Mrs. M.Tromp (center)



Strategic Plan Session 2011



Presentation Training Module Complaint Register System



Meeting with SER in Aruba (SG Sint Maarten Patricia Philips far right)



*Presentation Annual Report to the Chair of the General Audit Chamber
Mr. Roland Tuitt*



Information Session Ministry of Finance

APPENDIX YEAR REPORT 2011

APPENDIX:	DESCRIPTION
1	Table of content Handbook
2	Service Level Agreement signed with Government and the High Councils of State
3	List of IVB/USONA projects filed and approved per December 15, 2011
4	The budgets of the Ombudsman and the Bureau approved by USONA (IVB-Program/“ <i>Project OHCvS</i> ”) and the Government of Sint Maarten for 2011
5	An overview of the type of complaints per Ministry
6	Letter of July 25 th , 2011 to the Minister of General Affairs, regarding the findings
7	A research paper and tentative list of government entities, possibly charged with public authority (<i>‘zelfstandige bestuursorganen’</i>)
8	A research paper drafted by Lo Hillen (May 26 th 2011), outlining the authority of the Ombudsman as Guardian of the Constitution
9	Action Plan 2012

