

2015

YEAR REPORT



STEPPING UP

O U R G A M E



OMBUDSMAN

SINT MAARTEN

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Foreword



2015 marked the fifth year of Sint Maarten obtaining an autonomous status as country within the Dutch Kingdom. The road travelled was not without some major challenges. One such challenge has been the frequent change of formation of the Executive branch of Government. This phenomenon had its influence on investigations carried out by the Ombudsman, resulting in its theme for 2015 'Stepping up our game' not fully having been met. Responses by government bodies to queries by the Ombudsman regarding delays in decision-making procedures were met by delays upon delays. This caused the Ombudsman to bring the matter to the attention of the Prime Minister in a letter titled: '(...): two steps forward three steps backward', expressing her concerns. The letter dated April 10th 2015 was copied to the President of Parliament. The awareness and trust established within the community in the system of checks and balances provided by the Ombudsman, was in danger of being eroded from within the government's administration if compliance with investigations by the Ombudsman continued to be ignored. In response a follow up meeting was requested by the Secretary General of the Ministry of General Affairs, to discuss the matters addressed in the pertinent letter. Subsequently a meeting and a working session were held with the Secretary General and support staff of General Affairs to address the concerns.

On October 22nd 2015 a Complaint was filed with the Ombudsman against the conduct of the Prime Minister for not stepping down after he and the members of his Cabinet¹ no longer had the confidence of a majority in Parliament. A thorough investigation started, which was halted when the Prime Minister and his Cabinet made their positions available to the Governor. A Notification of Termination was issued, informing the Prime Minister that the Ombudsman refrained from further investigating the Complaint, which included a synopsis of the investigation, conclusions and recommendations. Even though Sint Maarten is in the infant stages of its constitutional development, because of failure by Government to diligently consider the rule of law, including not properly observing the obligation of the administration pursuant to the National Ordinance Ombudsman during the investigation, the Ombudsman considered it prudent to issue recommendations, which are applicable for the government in general to promote propriety and good governance.

Considering the frequent change of Ministers since Sint Maarten obtained its new status, by means of a letter dated December 17th 2015 to the (new) Prime Minister, the Ministers were requested to thoroughly review the daily operation of their Ministries with the respective Secretary General, with due consideration of articles 3, 4 and 7 of the 'Landsverordening inrichting en organisatie landsoverheid'. Decision making seemed to be delayed as a result of among others insufficient clarity in the chain of command between the Secretary General of some Ministries, the Cabinet of the Minister and executing bodies ('uitvoerende organisaties'). On this note the operational year 2015 of the Ombudsman ended with great anticipation to apply lessons learned over the first five years since opening its doors to the public, to its future operations.

Notwithstanding the rather difficult year behind us, I am pleased to present my annual report 2015 to the Parliament and the people of Sint Maarten. The challenges we faced in 2015 are mere stepping stones towards achieving our vision for Sint Maarten.

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

¹ Cabinet Gumbs.

Executive Summary

(The Ombudsman listens, investigates and recommends government to act on the concerns of the people.)

I. Introduction: Guided by the vision of ‘*Stepping up our game*’ for the calendar year 2015, the Ombudsman and the team of the Bureau set out a course to move to the next level. Notwithstanding the challenges faced, the course set ‘to step up our game’ at the Ombudsman continued unabated. The Manual including all operational directives of the Bureau was updated, training of staff through internal workshops and courses were followed, which included an Anti-corruption training in Curaçao sponsored by the IOI². Information sessions for the public and schools, collaborating with the media, regional and international networking, as well as addressing the Constitutional Court for constitutional review of the National Ordinance establishing the Integrity Chamber were highlights in 2015.

II. Activities: Throughout the year the Ombudsman continued its awareness campaign by distributing posters, flyers and brochures. This activity has proven to be even more necessary as the distribution of posters, to inform the public that complaints can be filed free of charge with the Ombudsman, met at times with reluctance from businesses to place posters or information material in the business. This out of fear that the business will be negatively branded by government officials and have adverse consequences for their business.

Considering that the Ombudsman has investigative authority over private entities with public authority (‘ZBO’) a tentative list of such entities was produced, and discussed with the Council of Ministers. It was agreed that the Department of Judicial Affairs would review same for further discussions. An advice from the Department of Legal Affairs to the Council of Ministers was forwarded to the Ombudsman for further deliberation.

The Minister of Justice was invited to discuss the concerns of the Ombudsman regarding the pertinent Ministry.

At the 8th CAROA Biennial Conference held in Curaçao, the Ombudsman of Sint Maarten was unanimously elected President of the Caribbean Ombudsman Association (CAROA). Representatives of Parliament, the Ministry of Justice and the Council of Advice joined the Ombudsman at an Anti-corruption training sponsored by IOI also held in Curaçao.

Private consultations at the IOI Board meeting in Namibia with colleagues from Belgium and Sweden, who have a mandate to investigate integrity breaches in the public sector, provided cardinal support and information for the case brought forward by the Ombudsman to the Constitutional Court regarding the National Ordinance establishing the Integrity Chamber.

III. A pictorial of activities is provided in chapter III.

IV. Complaints handled: This chapter provides an overview of statistics regarding complaints handled in 2015. The Ombudsman registered an increase in the number of persons visiting the Bureau for advice. However, many were reluctant and not willing to file a formal complaint to have their issues investigated, as the trust that an investigation will make any difference had drastically eroded. Even so the Ombudsman registered 288 visits as ‘Information Window’, an increase of twenty eight (28) requests for advice compared to 2014.

² The International Ombudsman Institute (IOI).

Queries about enforcement of policies, immigration and infrastructure, reimbursement of monies owed by government to citizens, personal treatment and social support stand out remarkably compared to 2014. An unprecedented amount of persons expressing some kind of uneasiness of what is happening in society, compelled the Ombudsman to add a category 'Other' to the 'Information Window' registry, representing a range of topics, related to the political climate.

V. **A selection of complaints handled** and closed in 2015 is featured in this chapter, including a complaint filed against the Prime Minister for not tendering the resignation of himself and his Cabinet to the Governor after the Government lost majority support in Parliament. The approach of resolving complaints by short interventions either by picking up the phone and discuss a quick approach to the complaint at hand, or providing the Department a proposal on how to handle the matter swiftly, was intensified. This method proved to work satisfactory to all involved.

VI. **The Constitutional Court:** On 18 September 2015 the Ombudsman presented the National Ordinance dated August 21, 2015 Integrity Chamber (*'Landsverordening Integriteitskamer'*) for constitutional review to the Constitutional Court. The Court was requested to review the grievances brought forward by the Ombudsman against the following articles of the Constitution: article 5 - the right of respect for a person's privacy (*eerbiediging persoonlijke levenssfeer*); article 7 - the right to privacy of the home (*huisrecht*); article 8 - the right of respect for a person's correspondence and the privacy of the telephone (*briefgeheim en telefoon geheim*); article 26 - the right to a fair trial (*eerlijk proces*); article 28 sec. 2 and 4 - *nulla poena* and the minimum rights of a person being persecuted (*nulla poena and minimum rechten bij vervolging*); article 29 - legal aid (*rechtsbijstand*); and article 31 sec. 1 - restriction of the fundamental rights (*beperkingen van grondrechten*).

VII. **Financial reporting:** The budget for the Ombudsman is covered pursuant to article 12 National Ordinance Ombudsman by the Government. Parliament, in collaboration with the Ombudsman and the Minister of General Affairs (i.e. Prime Minister), is charged with ensuring that the Ombudsman is provided all facilities necessary for the proper and independent performance of the duties. The total amount budgeted by the Ombudsman for 2015 was **Nafl. 1.427.624,00**. Based on the unaudited financial report for the year 2015 a total of **Nafl. 1.374.684,02** was spent from the budget of Sint Maarten.

VIII. **Appendices:** Appendix 1. *'Integrity in Public Life'* by Dr. Terrence W. Farrell (pages 40-42); Appendix 2. Balance sheet 2015; Appendix 3. Financial Report.

I. Introduction

Guided by the vision of ‘*Stepping up our game*’ for the calendar year 2015, the Ombudsman and the team of the Bureau set out a course to move to the next level. An assessment score of ‘relatively strong’ from Transparency International³ in its report ‘St. Maarten 2015 National Integrity System Assessment’ gives evidence that the team was ready to further enhance its mission of promoting good governance as provided for by law.

A new software application system ‘Work Pro’ was installed, and staff thoroughly trained to facilitate the investigation procedures established by the Bureau. However, it did not take long to realize that the administration within government needed more time to adapt to the goals set forth by the Ombudsman for 2015. After a first meeting in March 2015 with the Council of Ministers regarding a list of ‘private entities with public authority’ for which the Ombudsman intends to assume investigative authority, sent to the Prime Minister for discussion, a letter of concern (‘*zorgbrief*’) dated 10 April 2015 was sent to the Prime Minister stating the following:

‘As one of the new institutions the Ombudsman had its share of challenges, however we managed to create a level of awareness within the Government administration regarding the constitutional mandate of the Ombudsman in the process of checks and balances, as well as establish a measure of trust within the community, notwithstanding reluctance as a result of apparent lack of continuity within Government. Through an elaborate media campaign we assured the public that the Ombudsman listens, investigates the complaints of the people, and recommends Government to act on the concerns of the people.

While the theme of the Ombudsman for 2015 is “Stepping up our Game” to promote good governance, our experience in the first quarter of this year is that we made two steps forward over the past years, and are presently drastically making three steps backward as responses to investigations and requests pertaining to the status of recommendations are not forthcoming as required by law. This does not go unnoticed by our clientele. By means of this ‘zorgbrief’ I therefore urge you to implore on all Ministers to instruct their Secretary General and their Cabinet to see to it that all queries by the Ombudsman be addressed forthwith in accordance with article 19 of the National Ordinance Ombudsman, including letters addressed to the Ministers. Special attention is requested for article 16 of the National Ordinance Ombudsman providing for a response from an Administrative body to the recommendations issued by the Ombudsman. As such a response to my requests for a status update of pending recommendations is required from each Ministry no later than April 17th, 2015.’

The verdict in the case brought forth by the Minister Plenipotentiary of Curaçao against the Ombudsman and the Government of Curaçao established important principles regarding the investigations of the Ombudsman⁴, which are equally applicable for Sint Maarten. This verdict was shared with the Government for reference.

The matter of ‘*Kadaster*’, which was addressed in the meeting of 10 March 2015 with the Council of Ministers remained unattended. Notwithstanding queries from individual Members of Parliament and elaborate discussions thereafter with Parliament, the report drafted by the Ombudsman in 2012 regarding the findings, conclusions and recommendations after a systemic

³ See report ‘St. Maarten 2015 National Integrity System Assessment’ (pages 85 – 94), as well as the presentation ‘Integrity in Public Life’ (Appendix 1: pages 40 – 42) given by Dr. Terrence W. Farrell on the occasion organized by the Council of Advice, the General Audit Chamber and the Ombudsman of Sint Maarten in celebrating the fifth anniversary of these High Councils of State.

⁴ *Gerecht in eerste aanleg Curaçao, KG 74057/2015, 26 Juni 2015.*

investigation of the operations at the ‘*Kadaster*’, again remained unattended or at least not complied with by the end of the calendar year 2015.

Even so the course set ‘to step up our game’ at the Ombudsman continued unabated. The Manual including all operational directives of the Bureau was updated, training of staff through internal workshops and courses were followed, which included an Anti-corruption training in Curaçao sponsored by the IOI⁵. Information sessions for the public and schools, collaborating with the media, regional and international networking, as well as addressing the Constitutional Court for constitutional review of the National Ordinance establishing the Integrity Chamber were highlights in 2015. The main activities will be presented in the following chapter.

II. Activities

After thorough training of staff and test runs of a new Document Management System for case handling, Work Pro went live in January 2015. This system provides closer monitoring possibilities, and is capable of producing comprehensive statistics of cases handled.

Whereas it has been established that the Ombudsman will be invited to present the annual report of the institution every year in August, the invitation to discuss the Year Report 2014 with the Members of Parliament was extended and took place in September after the Opening of the new Parliamentary year. An interesting activity of the year was a presentation made to, and discussions held with members of the Youth Parliament at the Parliament House upon their request. The youth was applauded and complimented for their initiative.

Personnel

The Bureau of the Ombudsman saw three members of the staff move on in 2015. Per 1 May 2015 the legal advisor of the Bureau, Marlon Hart, Esq. was replaced by Gwendolien Mossel, Esq., who was lastly employed at the Ministry of Justice. As of 1 June 2015 the Secretary General Patricia Philips moved on to enjoy a well-deserved pension after serving the people of Sint Maarten for more than forty years as a civil servant. In a private dinner attended by the Governor, the Prime Minister, the President of Parliament, family and friends, the Ombudsman and staff took leave of Ms. Philips, who played a vital role in establishing the Institution. Words of appreciation were expressed to Ms. Philips by the Governor considering their longstanding relationship in various organizations, as well as by the Prime Minister on behalf of Government. The function of Secretary General was filled by Randolph Duggins, Esq., who before taking up the position volunteered two weeks of his time to work together with Ms. Philips to ensure a smooth transition of the operation. The Ombudsman thanked the incoming Secretary General for his dedication showed towards the Bureau. Per October 2015 the All-around Administrator, Joseanne Peterson, left her position, which was filled by a temporary worker, Nakomi Houtman, who was employed through our Apprentice program. Ms. Houtman continued her service to the Bureau, while waiting to further her studies in the Netherlands. Pursuant to the Service Level Agreement signed with Government, the services of the Department of Personnel Affairs were requested to assist with the application procedures for all new staff members.

⁵ *The International Ombudsman Institute (IOI).*

The HR-Cycle (planning, mid and end evaluation) was closely followed, establishing end of year targets for each member of the staff. The relevant targets were satisfactorily met.

The main *courses/training* followed and *conferences* attended by one or more staff and or the Ombudsman:

- *‘Effectief overtuigen’*; a two-day course offering insight and understanding into the key points of verbal and non-verbal communication, including the different types of negotiation/mediation styles and the significance of stature (March).
- *‘Politiek en bestuur’*; a three-day course highlighting the differences between Politics and Governance as well as illustrating the influence of one on the other (May).
- *‘Protocol training’*; a course of five (5) days providing tips on Protocol and Etiquette (August/September).

Above mentioned courses were organized by the Council of Advice.

- The 8th CAROA Biennial Conference held in Curaçao with the theme: “Human rights good governance and the Ombudsman” (May).
- Anti-Corruption training held in Curaçao, facilitated by International Anti-Corruption Academy (IACA) and sponsored by IOI (May).
- Annual Team building retreat Bureau Ombudsman (August).
- Report writing facilitated by Katja Mans, Esq, judge Administrative Court (September).

Upon the request of the Ombudsman permission was received to invite designated persons to the Anti-corruption training sponsored by IOI. As such invitations were extended to Members of Parliament, the Council of Ministers, the Council of Advice and the General Audit Chamber. Representatives of Parliament, the Ministry of Justice and the Council of Advice attended. The sessions were highly welcomed and appreciated by the invitees. The Ombudsman of Sint Maarten is a Director for the Latin American and Caribbean region on the Board of the IOI. A Self-assessment was executed in June based on a questionnaire provided by IOI. The Ombudsman was invited as High Council of State to participate in the National Economic Summit organized by the Ministry of TEATT (May and June).

Networking

- Courtesy visit from Justice Jacob (‘Bob’) Wit, President Constitutional Court (January).
- Meeting Council of Ministers to discuss a paper drafted by the Ombudsman regarding ‘private entities with public authority (‘*zelfstandige bestuurs organen/ ‘ZBO’*) (March).
- At the 8th CAROA Biennial Conference held in Curaçao, the Ombudsman of Sint Maarten was unanimously elected President of Caribbean Ombudsman Association (CAROA).

- A meeting and a work session were held at the Bureau Ombudsman with the Secretary General of General Affairs and support staff as a follow up to a letter of concern written by the Ombudsman to the Prime Minister (March & July).
- Telephone conference with the newly appointed National Ombudsman of the Netherlands, a courtesy call to introduce himself was received (June).
- Meeting held with the Minister of Justice, the Secretary General, Chef of Cabinet and liaison officer upon invitation of the Ombudsman to discuss concerns regarding consistent issues within the Ministry of Justice (July).
- Participation Bureau Ombudsman in the Business Outreach and Placement Program (BOPP) coordinated by Government (July).
- Meeting with the judge Katja Mans, Administrative Court (‘LAR’), in preparation of an internal workshop to be given to the staff of Bureau Ombudsman (August).
- IOI Board meeting in Namibia, representing Latin America and the Caribbean (September).
- Visit to Aruba to meet the Ombudsmen of the Netherlands and Curaçao for talks on collaboration between the Ombudsmen of the Dutch Kingdom, as well as to support Aruba in its efforts to establish an Ombudsman institution for the country (November).
- The Ombudsman received various courtesy visits throughout the year from foreign dignitaries and civil organizations wanting to acquaint themselves with the Ombudsman.

Considering that the Ombudsman has investigative authority over private entities with public authority (‘ZBO’) a tentative list of such entities was produced, and discussed with the Council of Ministers. It was agreed that the Department of Judicial Affairs would review same for further discussions. A response was received in July 2015, including an advice from the Department of Legal Affairs to the Council of Ministers.

Having established that proper cooperation and follow up by the Ministry of Justice to investigations by the Ombudsman was lacking, the Minister of Justice was invited to discuss the concerns of the Ombudsman. With the exception of the Police Department, the Ministry of Justice continued to respond inadequately to investigations by the Ombudsman.

Added value was obtained from participation at the IOI Board meeting in Namibia through private consultation with colleagues from Belgium and Sweden, who have a mandate to investigate integrity breaches in the public sector. These consultations provided cardinal support and information for the case brought forward by the Ombudsman to the Constitutional Court regarding the National Ordinance establishing the Integrity Chamber (to be discussed in chapter VI hereafter).

Public relations

- An Open House was held at the Bureau in January to acquaint the public with the work and operations of the Ombudsman. The public in general, schools and the media were invited. Every hour a presentation on the Constitution and the role of the Ombudsman was provided, and information material from other High Councils of State and Government Departments shared.

- Upon invitation of DCOMM in March the institution was highlighted in an extensive interview outlining the experiences of the Ombudsman since its inception.
- In an effort to inform and involve the community, starting at the level of elementary schools, various presentations were given to students, and information sessions held on the request of organizations such as the Catholic Parish and the Philipsburg Jubilee Library.
- Collaboration with the media was extended beyond the publication of press releases. As of July 2015 a monthly column '*The Ombudsman Corner*' is published in every first Weekender of the Daily Herald, and '*What's Happening at the Ombudsman*', discussing a complaint filed with the Ombudsman, is featured every third Monday on the Opinion page in the Today newspaper.
- A Press Conference was called in June to introduce the new members of the staff of the Bureau to the public, and present a report about the main activities of the first half of the year as well as activities planned to boost awareness of the services provided by the institution.
- Together with the Council of Advice and the General Audit Chamber the fifth anniversary of the High Councils of State was commemorated by means of a symposium held for a selection of civil servants and an event called 'Information Village'. Speakers at the symposium were Justice Jacob Wit and Dr. Terrence W. Farrell, addressing Integrity and Corruption in the public sector. Other foreign guests to the celebration were: Cynthia Astwood and Sheila Brathwaite, respectively Complaint Commissioners of Turks & Caicos Islands and British Virgin Islands/Tortola. Both last mentioned persons are Members of the CAROA Council.
- In collaboration with the Ministries all government departments were invited to share information with the public at the 'Information Village', held at the Festival Village on Pond Island. Civil servants were at hand to answer questions from the public. The event was closed off with a presentation on 'Integrity in Public Life' by Dr. Terrence W. Farrell.
- Following the recommendation provided by Transparency International in its report "St. Maarten 2015, National Integrity System Assessment", a large number of anonymized reports of closed investigations were published on the website of the Ombudsman.⁶

Throughout the year the Ombudsman continued its awareness campaign by distributing posters, flyers and brochures. This activity has proven to be even more necessary as the distribution of posters, to inform the public that complaints can be filed free of charge with the Ombudsman, met at times with reluctance from businesses to place posters or information material in the business. This out of fear that the business will be negatively branded by government officials and have adverse consequences for their business.

⁶ www.ombudsmansxm.com

III. Pictorial archive

The Ombudsman and staff in action



Clockwise from top-left: transferring the baton SG to SG; Ombudsman and staff of the Bureau; workshop with Judge Katja Mans; working session with representatives of General Affairs



*Team Building
Retreat Bureau Ombudsman*

General Audit Chamber conducting personnel audit at the Ombudsman



*Staff General
Audit Chamber*

Creating awareness is key!



Clockwise from top: Students at Open House; Visit to Sint Maarten Academy; Visit to Sint Joseph School; Visit to Sundial School; Visit to CPS

Visits to the Ombudsman



Clockwise from top-left: Governor Statia Hon. Gerald Berkel and entourage; Representatives of the National Ombudsman Netherlands with Ombudsman and staff; Visit Dir. BZK– Netherlands, Erwin Arkenbout; Visit representatives Lions Club

Public relations



Open House Bureau Ombudsman

Empowering the youth



Session with Youth Parliament at Parliament House

Reporting about 2014



*Presentation to President of
Parliament the Honorable
Lloyd Richardson*

*Presentation to the Prime
Minister the Honorable
Marcel Gumbs*



Networking



*Delegation Sint Maarten -
Anticorruption training in Curaçao*



*Left: Visit to Aruba - Prime
Minister of Aruba the Hon.
Mike Eman.*



*Right: Visit to the President
of Parliament Hon.
Marisol Lopez-Tromp.*



IOI Board in Namibia

Celebrating 5th Anniversary



Celebration 5th Anniversary High Councils of State with Civil Servants at Bel Air Community Center

Information Village at Festival Village



Top-left: VSA;

Middle-left: TEATT

Bottom-left: Fire Department

Bottom-right: CPS



Representatives High Councils of State Sint Maarten with visitors: second left - Sheila Brathwaite (Ombudsman UVT), speaker Terrance W. Farell (Trinidad), second right - Cynthia Astwood (Ombudsman T&C)



IV. Complaints handled

Statistics

The lack of continuity in Government and the many debates about the interpretation of the Constitution created uncertainty among the public. The Ombudsman was practically on a daily basis faced with many questions from members of the public, both in- and outside the office, seeking direction on how to move forward. The Bureau registered an increase in the number of persons visiting the Bureau for advice, reluctant and not willing to file a formal complaint to have their issues investigated, as the trust that an investigation will make a difference had drastically eroded. Even so the Ombudsman registered 288 visits as ‘Information Window’, an increase of twenty eight (28) requests for advice compared to 2014. Queries about enforcement of policies, immigration and infrastructure, reimbursement of monies owed by government to citizens, personal treatment and social support stand out remarkably compared to 2014 (*see Fig. 8 and 9*). An unprecedented amount of persons expressing some kind of uneasiness of what is happening in society, compelled the Ombudsman to add a category ‘Other’ on the ‘Information Window’ registry, representing a range of topics related to the political climate.

Although the willingness and courage to file a formal complaint dwindled, the Bureau still registered a slight increase of new complaints filed with the Ombudsman compared to 2014. Among the new complaints registered in 2015 is a complaint filed against the behavior of the Prime Minister for refusing to resign his post, and submit the resignation of the Ministers of his Cabinet, when the entire Council of Ministers lost the confidence of a majority in Parliament. After a thorough investigation of the complaint, the Ombudsman refrained from further investigating this complaint as the Prime Minister submitted the resignation of his entire Cabinet to the Governor during the course of the investigation. However, the Ombudsman drafted a full report of the findings, and issued various recommendations to the government to address and possibly prevent a similar situation in the future. A synopsis of the report is included in this Year Report, which can be reviewed in its entirety on the website of the Ombudsman: www.ombudsmansxm.com.

A visible drop in complaints against the Ministry of Finance, specifically the Tax department is noted. This suggests that the many meetings held with representatives of the Tax department and the Receiver’s office in 2014 were productive. It also underscores the relevance of the Ombudsman as an independent and impartial institution, assisting government in applying propriety when dealing with the public. Considering the nature of the queries registered in the ‘Information Window’ registry (*Fig. 8 and 9*) however, it should be noted that the drop in registered complaints against the Ministry of Finance does not mean that all issues have been resolved. The frequent queries about reimbursement matters and other complaints established a lack of coordination and cooperation between the Receiver and the Tax department, as well as the collection activities regarding other Ministries.

An increase of complaints against other Ministries frequently dealing with the public has been registered in 2015. Complaints against the Ministry of Justice remained high. A meeting was convened with the Minister of Justice, the Secretary General and staff of his cabinet to discuss reoccurring issues in the pertinent Ministry. A matter of concern is the steady flow of complaints of civil servants pertaining to matters of remuneration, salary scale and compensations. Below a comparative list of incoming complaints per Ministry and Other private entities with public

authority 2015-2014 is featured, followed by incoming complaints per Department (*Fig. 1-3*). The list of topics of complaints filed is expanded compared to 2014 (*Fig. 4 and 5*).

The matter of non-response by government to queries from citizens, such as requests for permits, responses to letters and the like, is reflected more specific in the statistics stated below (*Fig. 6 and 7*); the standards of *active and adequate information provision* and *promptness* top the list of propriety having been violated.

One of the challenges faced is the lack of follow up by government in providing status reports on the recommendations issued by the Ombudsman upon closing investigations of complaints. The lack of follow up prevented the production of statistics of compliance with recommendations issued in 2015.

❖ *Complaints per Administrative body: Ministries & Others*

Ministry	2015	2014
Ministry General Affairs	9	9
Ministry of Finance	3	12
Ministry of Justice	16	16
Ministry of Education, Culture, Youth Affairs and Sport	7	3
Ministry of Tourism, Economic Affairs, Public Transportation and Telecommunication	13	7
Ministry of Public Housing, Spatial Planning, Environment and Infrastructure	10	5
Ministry of Public Health, Social Development and Labor	6	9
Other Types	6	7
Total	70	68

Fig.1. Incoming Complaints registered per Ministry in 2015 compared to 2014

Ministry	Department/Entity	Number of Complaints	Complaints per Ministry in %
General Affairs	P&O	6	13%
	Facility Services Dep.	1	
	Civil Registry	2	
		9	
Finance	Minister	2	4%
	Tax Department	1	
		3	
Justice	Customs Department	1	23%
	House of Detention	1	
	IND	4	
	Personnel Affairs	3	
	Police Department	7	
		16	
OCJS	Culture Department	1	

	Education Department Personnel Affairs Study financing	2 1 3 7	10%
TEZVT	Minister Economic Licenses Statistics Inspections Dep. Tourism Department	1 7 2 1 2 13	19%
VROMI	Minister Domain Affairs Infrastructure Man. Inspections New Works	1 2 2 3 2 10	14%
VSA	Health Inspection Labor Department Social Services	2 2 2 6	8%
Other Types	Vehicle Inspection BTP Cadaster SZV Council of Ministers	1 2 1 1 1 6	9%
Total		70	100%

Fig.2. Incoming Complaints registered per Department in 2015

“Start doing what’s necessary; then do what’s possible; and suddenly you are doing the impossible”

Francis of Assisi

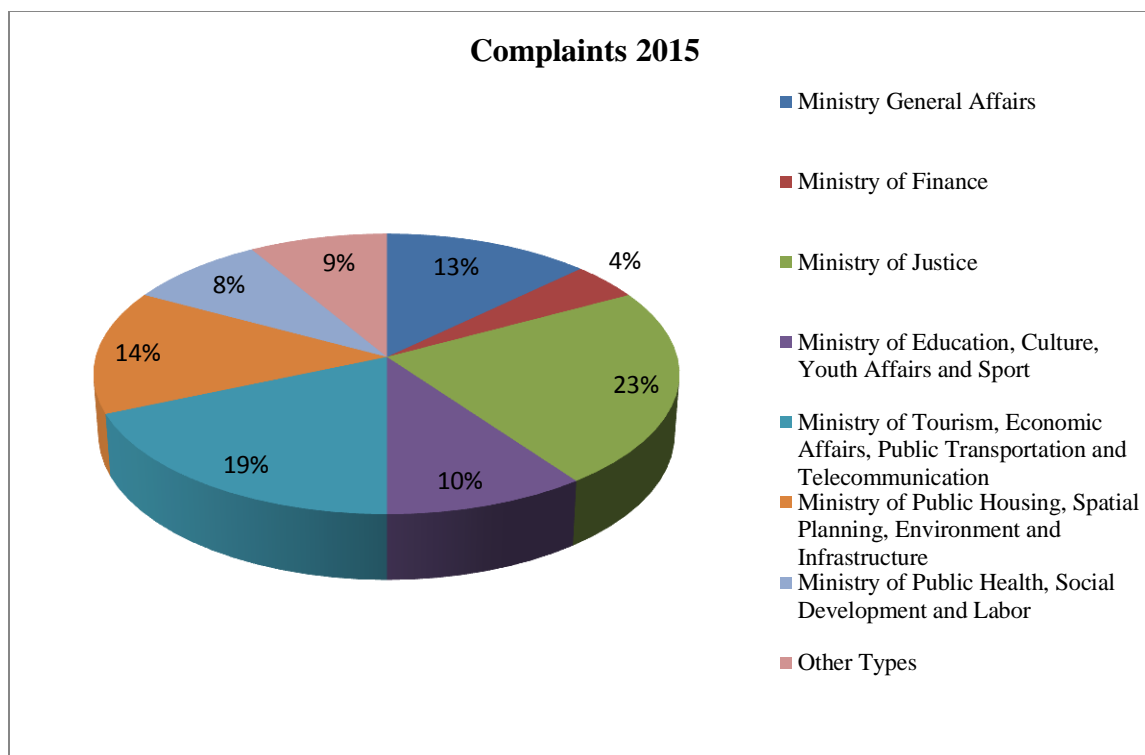


Fig.3. Pie chart Complaints filed per Ministry in 2015

❖ Topics of the Complaints filed in 2015 compared to 2014

Topic	2015	2014
Allowance	0	1
Access Property	2	
Assistance financial	2	
Assistance medical	1	
Civil Registry	1	3
Court of Guardianship	0	1
Dismissal	1	
Employment	1	
Enforcement Policy	8	12
Foundation Cadaster	1	
Gratification	1	
Human Resource	12	17
Job application	1	
Job placement	2	
Lease agreement	2	
License Economic	6	6

Long Lease	3	
Not Classified	4	
Payment	5	4
Pension	2	1
Permit Residence	1	2
Permit work	1	
Police Report	0	2
Proper Service	5	7
Public Construction	1	5
Registration census	1	0
Salary	1	0
Study Financing	3	1
Taxation	1	5
Treatment	1	0
Notary	0	1
Total	70	68

Fig.4. Table of topics complaints filed in 2015-2014

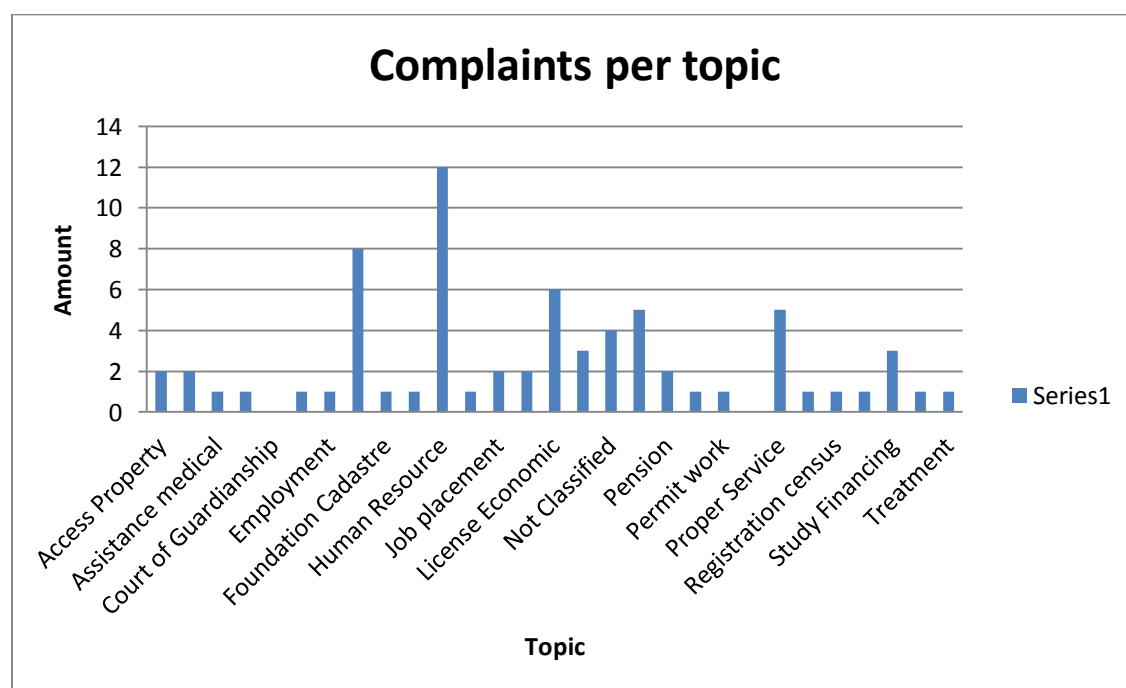


Fig.5. Chart topics of complaints registered in 2015

❖ *Propriety Violations*⁷

Standards of Proper Conduct	2015	2014
Reason	3	1
Active and adequate information provision	26	19
Promptness	18	9
Legitimate Expectation	1	0
Legal certainty	7	9
Correct treatment	3	6
Adequate organization of services	9	9
Fair play	5	10
Reasonableness	5	2
Cooperation	5	8
Prohibition on the misuse of power	0	1
Right of both sides to a Hearing	1	0
Fundamental Human Rights	1	0

Fig.6. Comparison standards of proper conduct violated in 2015 – 2014

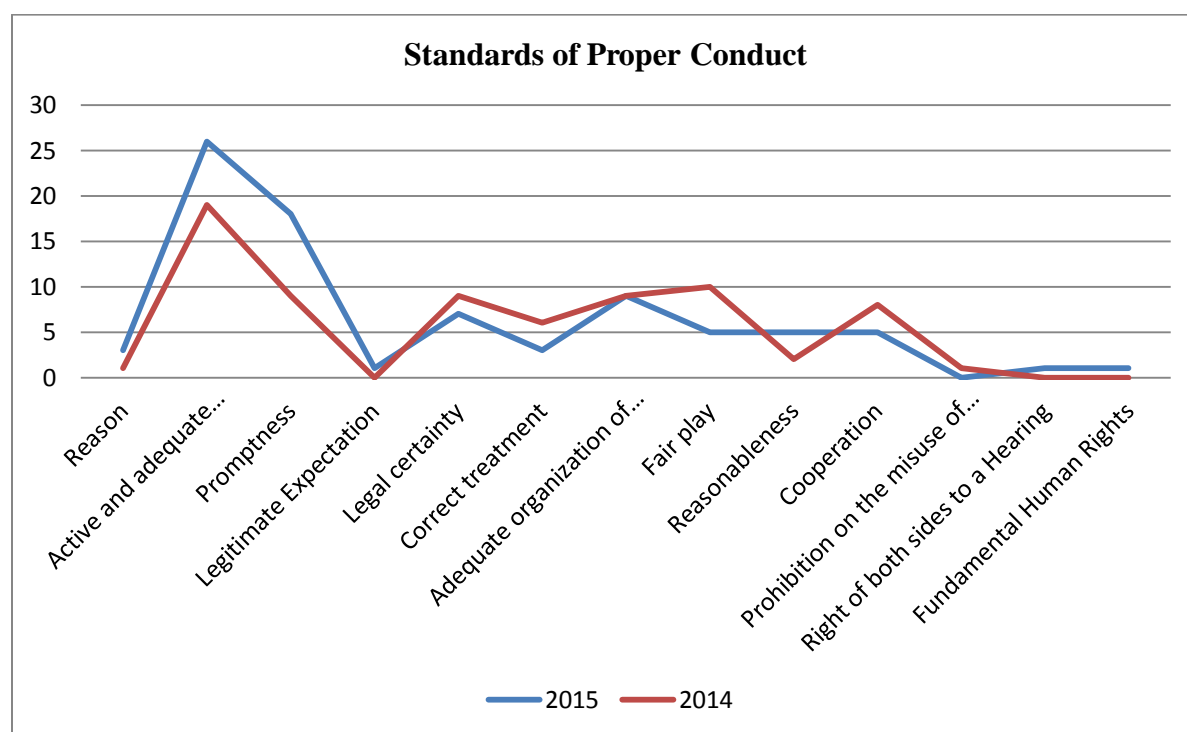


Fig. 7. Graph Comparison standards of proper conduct violated in 2015 – 2014

⁷ A complaint may include multiple Propriety violations.

❖ *Information Window Registry*

Information Window Registered by Topic	2015	2014
Civil Case	35	34
Civil Registry	21	22
Criminal Case	4	6
Court of Guardianship	0	8
Economic permits and license	8	8
Education	0	3
Enforcement Policy	14	0
Entities with Public Authority ('ZBO')	13	19
Entities without Public Authority ('niet ZBO')	3	8
Human Resource	21	19
Human Rights	0	2
Immigration	24	9
Information OBM	0	14
Information requirement ('Kenbaarheidvereiste')	8	16
Infrastructure	20	8
Inspection	0	5
Justice	0	10
Kingdom Affairs	2	0
Labor	0	18
Legal services	0	5
Nationality	0	12
Openness documents	1	0
Other	44	0
Parliament	0	2
Payments (including reimbursements)	14	0
Pension	7	12
Personal treatment	20	9
Police report	8	5
Salary	5	0
Social support	10	0
Study Financing	2	0
Tax	4	1
Total	288	260

Fig. 8. Table Information Window: requests registered in 2015 in comparison to 2014 per topic

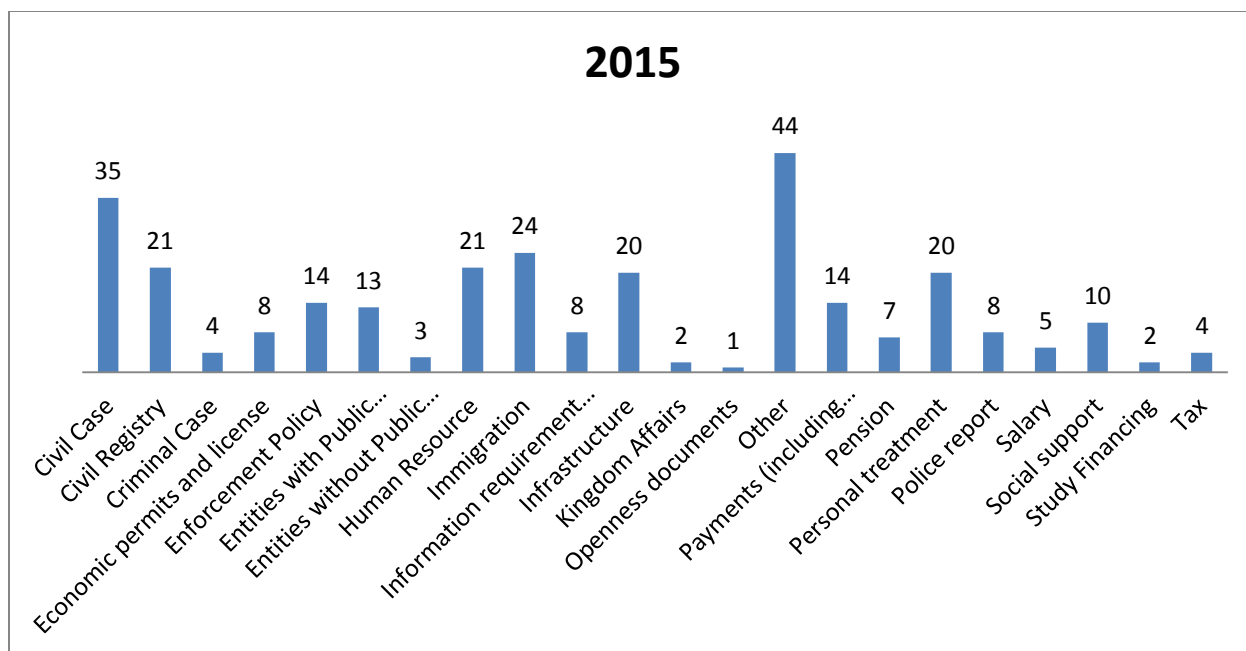


Fig. 9. Graph Information Windows: requests registered in 2015 per topic

V. A selection of Complaints investigated and closed in 2015

Whereas the vision to step up our game was not fully met in 2015 mainly due to a drop in proper compliance by the government administration with investigations of the Ombudsman, the statistics establish that the year did not go by without making significant progress. The approach of resolving complaints by short interventions either by picking up the phone and discuss a quick approach to the complaint at hand, or providing the Department a proposal on how to handle the matter swiftly, was intensified. This method proved to work satisfactory to all involved. As such some cases were closed with a 'Thank you letter' to the administrative body, or a Notification of Termination issued to inform the Department that the Ombudsman refrained from further investigating the complaint, while still pointing out the standards of proper conduct which were not observed. Promoting good governance being the mandate of the Ombudsman pursuant to the Constitution, recommendations to improve propriety in dealing with the public are issued, whenever appropriate.

The political climate in 2015 resulted in a formal complaint having been filed against the Prime Minister. A synopsis of the complaint and conclusion of the investigation is outlined in this chapter.

1. Final Report

Ministry of Education, Culture, Sports and Youth
Department: Inspection Division

Summary of Complaint

Complainant's son was expelled from the St. Maarten Academy PSVE (PSVE), a school for Secondary Vocational Education. Complainant did not agree with the expulsion of her son, because she is of the opinion that her son has the right to compulsory education.

Subsequently Complainant visited several secondary schools requesting that her son be admitted, however he was denied admittance. Complainant spoke to the Head of the Inspection Division of the Ministry of Education, Culture, Sports and Youth Affairs (Ministry of OCJS), and claims that she was told that her son cannot be admitted to any secondary school on the island.

Complainant feels that her son's right to compulsory education is not guaranteed by the Inspection Division of the Ministry of OCJS, and filed a Complaint with the Ombudsman.

The investigation

After extensive investigation of the Complaint a Hearing was convened by the Ombudsman in order to acquire more information regarding the Complaint. Present at the Hearing were the Ombudsman, the Complaint Officer handling the case, the Department Head of the Inspection Division (the Department Head) and the Truancy Officer assigned to this case. The Complainant did not attend the Hearing, notwithstanding having received an invitation to attend.

Based on the information gathered the Ombudsman concluded that the situation, with regard to safeguarding the interest of students, needs to be looked into by the Inspection Division of OCJS. The following questions need to be reviewed:

- How can parents be assisted with enrolling their child in a school, when schools are allowed to refuse admittance of a child?
- How far does the authority of the Inspection Division go in situations when a school board wants to expel a student? Are there any coercive means available?

In a follow-up conversation Complainant informed the Bureau of the Ombudsman that her son was enrolled at, and is attending classes at NIPA.

The NIPA is classified as a vocational school offering advanced vocational and technical education. According to the information found on the institution's website, the courses given at NIPA are open to students between 16 and 18 years old, provided they have completed their secondary education, and adults 18 years and older.

Conclusion

In the letter of expulsion the PSVE referred to its ZERO tolerance policy against the use of drugs as the grounds for expulsion. In the course of investigating the Complaint, the Department (Head) of Inspection Division asserted that a secondary school can expel a student based on

applicable school rules; and that it was the responsibility of the parent to enroll a youngster into a school.

The Ombudsman observed that pursuant to article 18 section 1 of the Constitution of Sint Maarten the government is tasked with the protection of children and young people and the promotion of their right to education, welfare, cultural development and leisure activities. The right to education is considered a fundamental human right and is recognized by a number of international bodies such as United Nations Educational, Scientific and Cultural Organization and the International Covenant on Economic, Social and Cultural Rights, and anchored in the National Ordinance containing general orders for the Regulation of Compulsory Education. The National Ordinance containing general orders for the Regulation of Compulsory Education provides that all youngsters between the ages of 4 and 18 years are subject to compulsory education (article 2 in conjunction with article 3). The obligation as stipulated in the law is valid until the youngster turns 18 years, or is in possession of a secondary education diploma recognized by the Minister of OCJS.

Complainant's son, age 15, had not attended school for approximately ten (10) months when he began classes at NIPA. As such the Ombudsman concluded that the right to education of Complainant's son was impeded as he was obstructed to complete his secondary vocational education in accordance with the National Ordinance of Compulsory Education.

Based on the aforementioned the Ombudsman considered Complainant's expectation that Government should ensure education for her son founded.

Complainant's son was not removed from the St. Maarten Academy PSVE (a school for Secondary Vocational Education) as a result of poor academic performance as stated in the National Decree regulating the implementation of articles 11, 21 and 29 of the National Ordinance on Secondary Education, but based on the Zero Tolerance Policy stated in the Student Rule Book of the St. Maarten Academy PSVE. This is contrary to the National Ordinance establishing regulations for Secondary Vocational Training and Education, as confirmed by the Department Head of Inspection in the notes to the Preliminary Findings Report (PFR); the prohibition of expulsion before admittance to another school is applicable to "*Primary & Advanced Secondary Vocational education institutions (...)*".

Considering the standard of *Legal Certainty* the Department should ensure that the laws regarding compulsory education on Sint Maarten are upheld. The Department should not have allowed the expulsion of Complainant's son to proceed before he had been admitted to another school. Moreover, based on propriety, expulsion during the course of the school year before the son had been accepted into another institution should have been prohibited. As such the standards of *Legal Certainty* and *Safeguarding Fundamental Human Rights* were violated by the Department of Inspection at the Ministry of OCJS (the Department).

The Ombudsman observed that although the National Ordinance containing general measures for the Regulation of Compulsory Education provides that all youngsters between the ages of 4 and 18 years are subject to compulsory education, this is not properly safeguarded in the National Ordinance regulating Secondary Education and the National Ordinance establishing regulations for Secondary Vocational Training and Education with regard to the expulsion of students.

Standard(s) of proper conduct

The Ombudsman investigates whether the behavior of public bodies towards citizens is correct. The applicable standards of proper conduct in this case are *Legal Certainty* and *Safeguarding Fundamental Human Rights*.

The standard of *Legal Certainty* provides that government should be compliant with the laws of the land and decisions of the Court, and that government honors legitimate expectations. Organizational issues may not be an excuse for non-compliance. Moreover, court decisions and the laws of the land have to be followed with ample precision.

The standard of *Safeguarding Fundamental Human Rights* provides that government is to treat all its citizens with equal care and respect. Generally, this means that similar cases get similar treatment and cases not being similar cannot be handled in the same manner. If a public body does not act accordingly, it violates the principle of equality. Distinction made in the treatment of citizens may only serve a set purpose.

Examples can be found in selectively checking of citizens, not being clear or consistent in the application of procedures, discrimination should in particular be avoided in service to the public when it comes to age, gender, nationality, language etc.

Judgment

The complaint filed by Complainant that her son's right to compulsory education until the age of 18 years has not been guaranteed by the Inspection Division of the Ministry of OCJS is founded, albeit that the respective laws inadvertently provide the possibility to divert. The standards of proper conduct *Legal Certainty* and *Safeguarding Fundamental Human Rights* have been violated.

Recommendation(s)

- Review the effect of the provisions stated in the National Ordinance regulating Secondary Education, the National Decree containing general orders for the implementation of articles 11, 21 and 29 of the National Ordinance on Secondary Education, and the National Ordinance establishing regulations for Secondary Vocational Training and Education in relation to the National Ordinance containing general orders for the Regulation of Compulsory Education, to safeguard the interest of students under the age of 18 years. In particular where it pertains to the authority of school boards to establish

and implement regulations for the admittance and expulsion of youngsters subject to compulsory education.

2. Thank you letter

SZV Social & Health Insurance

A 'Thank you letter' was sent to SZV for promptly handling a complaint filed with the Ombudsman after the complaint was brought to the attention of Management by the Bureau of the Ombudsman.

Summary of Complaint

In 2014 the Complainant reached an agreement with SZV to become "*zelfstandig premieplichtig*" for the FZOG payments. The Complainant had requested the APC (*'Algemene Pensioenfonds Curaçao'*) to transfer the payment of his pension, from which the FZOG premiums were being deducted originally, to the APS (*'Algemene Pensioenfonds Sint Maarten'*). To avoid falling behind on his FZOG payment during this period of transition, the Complainant requested to become "*zelfstandig premieplichtig*". However, once the transfer from his pension from APC to APS was completed, the FZOG premiums would be deducted from his pension with APS. The Complainant further claimed that the agreement made in 2014 was because SZV indicated that if he did not agree, he would not get his doctor card renewed.

After the APS resumed the deduction of the FZOG premiums from his pension, the Complainant informed the SZV. SZV was requested to halt the deduction of the premium as per the agreement made in 2014. The Complainant alleged that he went back to SZV to discuss the payments of the FZOG premium over the period which he had already paid. According to the Complainant SZV informed him that they are looking into it. However when no response to his letter, or action as requested was received, Complainant filed a complaint with the Ombudsman.

After contacting the SZV on the matter, the Ombudsman proposed an intervention to resolve the complaint on short term. Consequently, SZV swiftly held a meeting with the Complainant to discuss the case. The Ombudsman was shortly after informed by the Complainant that SZV agreed to pay back the FZOG premiums retroactively. Complainant furthermore informed the Ombudsman that he had to check back with SZV within a week to finalize the matter. Subsequently the Complainant informed the Ombudsman that his complaint has been resolved to his satisfaction.

Based on the aforementioned course of actions SZV was informed that the complaint will not be investigated further, and the file closed. The Ombudsman thanked the SZV for its cooperation in resolving this matter promptly.

3. Notice of Termination Investigation

Ministry of Tourism, Economic Affairs, Transportation & Telecommunication

Summary of Complaint

Complainant applied for a taxi permit in 1999 and alleged to have applied again in 2009. In 2012 Complainant reminded the Minister of Tourism, Economic Affairs, Traffic and Telecommunication (TEZVT) in writing of his 2009 application and resubmitted his request to obtain a taxi permit. In 2013 Complainant was granted a touring car permit. This was not in accordance with his application. Subsequently, Complainant requested that the error be corrected, and for the touring car permit to be exchanged for a taxi permit. To date of filing the complaint with the Ombudsman the Complainant did not receive a response to his letter sent to the Ministry in 2014.

Findings

After more than thirteen years finally issuing complainant a different permit than requested, it took the intervention of the Ombudsman to have the error corrected after no response on the letter from complainant to the Ministry was received.

In January 2014 Complainant informed the Minister of TEZVT of the above-mentioned error and requested that a taxi permit be issued to him instead. After no response was received and the matter not corrected, Complainant filed a complaint with the Ombudsman.

After a Notification of Complaint (NOC) from the Ombudsman was sent to the Department, requesting to:

- Explain why Complainant received a touring car permit instead of the taxi permit for which he applied;
- Explain why Complainant's letter of January 2014 has not been answered;
- And to provide the Ombudsman a copy of the request for a touring car permit, if any;

the Department Head of the Inspectorate of Economic Affairs at the Ministry of TEZVT, informed the Ombudsman that:

"...based on a written directive of former Minister TEZVT dated December 16, 2014, the Inspectorate prepared an advice in response to the original request of Mr. (...) submitted July 4, 2013 wherein he requested a Taxi permit.

This advice has been submitted for decision making. ..."

The Department Head of the Inspectorate of Economic Affairs was informed that the information provided was not adequate in light of the ongoing investigation-

Following up the Department Head of the Inspectorate of Economic Affairs provided the documents in response to the NOC:

- Taxi permit request dated 10 December 1999;
- Reminder request dated 2 April 2012;
- Reminder request dated 26 March 2013; and
- Internal Memo from the Minister of TEZVT dated 16 December 2014.

In the memo, the instructions were given to the Department to honor Complainant's request as he had been issued a 'G and T permit' instead of a taxi permit due to a clerical error.

On 9 March 2015 Complainant informed the Ombudsman that the situation was resolved, as he received the taxi permit on 6 March 2015. As such Complainant withdrew his complaint.

Conclusion

After the intervention of the Ombudsman, Complainant informed the Ombudsman that he received the taxi permit and considered his complaint resolved. Considering the Complainant's request, the Ombudsman refrained from further investigating this complaint. The Ombudsman however observed that, despite the fact that Complainant continued to send reminders about his request for a taxi permit, Complainant was never informed about the status of his request. After many years an incorrect permit was issued. It then took another year and the intervention of the Ombudsman before the error was corrected.

The standard of proper conduct *adequate organization of services* requires that administrative bodies, among other things, be equipped to provide proper and prompt service and information. The issuance of an incorrect permit after more than ten years cannot be considered as being proper; the standard of proper conduct *adequate organization of services* has not been observed.

Standard(s) of proper conduct

The Ombudsman investigates whether the behavior of public bodies towards citizens is correct. The applicable standard of proper conduct in this case is *adequate organization of services (administrative accuracy)*.

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

Recommendation(s)

The Ombudsman recommends that applicants for all permits be promptly informed in writing of the status of their requests.

4. Notice of Termination Investigation

Ministry of General Affairs

The Prime Minister of Sint Maarten

Summary of Complaint

By letter of 19 October 2015 addressed to the Prime Minister of Sint Maarten Mr. M. Gumbs, the Complainant and a concerned group of Citizens of Sint Maarten complained that they are disappointed in the impasse created in the governance of Sint Maarten, allegedly due to the actions or lack thereof by the Prime Minister following the passing of a Motion of no-confidence in the Prime Minister and his Cabinet.

Mentioned letter further outlines that based on the fact that the Prime Minister and his Cabinet no longer enjoy the backing and support of the majority of Parliament, the Constitution clearly states that the Prime Minister should make his position and the positions of his Cabinet available to the Governor of Sint Maarten.

Considering that the Prime Minister also received official correspondence from the Governor to the above stated with a request that all Ministers only take the necessary actions to maintain the day to day operations of government, Complainant and the pertinent group signatory to the letter, considered the conduct of the Prime Minister unlawful and in contravention of the Principle of trust, thereby alleging that his conduct is a breach of the standards of proper conduct/propriety, as well as detrimental to the stability of the country.

The letter concludes with a request to the Prime Minister to make his position and that of his Cabinet available to the Governor by 17:00 hrs. on Wednesday October 21, 2015. The letter further indicated that failure to comply with the request will result in a complaint to be filed with the Ombudsman regarding the propriety of his conduct as Prime Minister.

Since no follow up was given to the request, nor a response received on the letter of 19 October 2015, Complainant filed a Complaint with the Ombudsman on 22 October 2015.

The investigation

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

laws, policies and established procedures. Government is expected to be: open and clear, respectful, involved and result oriented, honest and trustworthy.

Considering the Complaint filed in addition to the many calls from citizens upon the Ombudsman to offer an opinion regarding in particular the issue of the 'Principle of trust', the Ombudsman investigated⁸:

- The actions and public statements made by the Prime Minister as of the date of the vote of no-confidence in the Gumbs Cabinet passed by Parliament on 30 September 2015;
- The motivation of the decision of the Prime Minister not to make his position and that of the Ministers of his Cabinet available to the Governor;
- The explanations given to the public on the impasse alleged by the Complainant and the signatories to the letter dated 19 October 2015 presented to the Prime Minister.

While the Prime Minister answered the questions posed by Notification of Complaint in part, no comments or remarks were forwarded pertaining to the findings, conclusions or recommendations provided in the Preliminary Findings Report (PFR) drafted by the Ombudsman. As such the Ombudsman considered the content factual, and the recommendations accepted and to be followed.

Conclusion

After thorough investigation of the Complaint, the Ombudsman refrained from further investigating the case when the Prime Minister and his Cabinet tendered their resignation to the Governor. A Notification of Termination of the investigation was drafted and issued to the Prime Minister, including the following conclusions.

The main questions for consideration in concluding were:

- a) Whether not adhering to, and honoring the fundamental Principle of trust is a breach of the standards of proper conduct.
- b) If yes, whether the actions of the Prime Minister established above can be considered a breach of propriety.

Ad a) Conclusion: In the absence of a National Ordinance regarding the explanation and execution of the Principle of trust, not adhering to this principle constitutes a breach of the constitutional order according to the elucidation (*'Memorie van toelichting'*) of the pertinent article. As such the Ombudsman concludes that not adhering to, and not honoring the fundamental Principle of trust is a breach of propriety.

The Complaint filed regarding the application of the Principle of trust is therefore founded.

⁸ *The Ombudsman is in principle always authorized to investigate grievances from the public, either as a result of a complaint filed or on her own initiative.*

Ad b) Conclusion: Considering the elucidation on the Principle of trust established in the Constitution (the rule of law), combined with the premise of the application of this principle as explained by the authors discussed in the PFR, propriety requires that the Principle of trust should have been observed by the Prime Minister in the absence of a National Ordinance, further explaining the execution of the Principle of trust. The elucidation on article 33 of the Constitution establishes that the Minister shall tender his/her resignation, failure to do so is considered a breach of the constitutional order, as such a breach of propriety.

The Ombudsman observes that the elucidation on article 33 anticipated on the possibility of the present situation. Section 3 explicitly provides for further explanation and specification regarding the execution of the Principle of trust by National Ordinance. As such the execution of article 33 section 2 applies as is without further interpretation. It should be noted that in the absence of clarity of the meaning, implementation or execution of a law, legal matters can in general be clarified by the Courts. The Courts then create jurisprudence in anticipation of clarification of the law through amendments.

Considering the Findings the Ombudsman further concluded: The Prime Minister has argued that based on expert advices, he is justified in his request for the dissolution of Parliament. While this is correct, each expert first established the Principle of trust applicable under the circumstances, referring to the balance of power between Parliament and government. Propriety is not observed by claiming the right to dissolve Parliament without acknowledging the right of Parliament to withdraw its support from the Cabinet, and observing the consequences of same. More so, in the absence of a National Ordinance further explaining and specifying the execution of the Principle of trust. The Ombudsman observed that it may be obvious that the lawmakers of the Constitution opened the possibility for Sint Maarten to write its own history.

As Sint Maarten is a young country it is understandable that the application of the Constitution and other laws will need further explanation in actual situations; prudently weighing the effects of a public debate (a “standoff”) and the uncertainty it creates among the public is however pivotal. Loss of public trust in the Constitution and respect for the institutions provided for by the Constitution erodes the democracy of the country from within.

Propriety requires that the public is properly informed about all facts under the circumstances. More so, considering the wide uncertainty ensued regarding the interpretation of the Constitution over the weeks preceding the resignation of the Prime Minister and the Ministers of his Cabinet, and the consequences of same. (The consequences do not form part of this investigation, and as such would not be elaborated upon). Failure to present the facts (e.g. the elucidation on article 33) and premise pertaining to the application of the Principle of trust prevented the public to form an informed opinion on the alleged difference of interpretation of the Constitution and subsequent conflict that captivated the community for almost one month.

Though the questions put before the constitutional experts discussed in the PFR was - according to the advices available to the Ombudsman- limited to the right of the Prime Minister to make use of the right to dissolve Parliament, the experts first established the premise of the Principle of trust after a Cabinet loses its majority support in Parliament. This information was not fully shared with the public. The focus was geared towards the right of the Prime Minister to strike back with the dissolution of Parliament by National Decree.

In addition: The Principle of trust was reiterated and confirmed on 9 November 2015 when the Prime Minister of Curaçao tendered his resignation and that of the Ministers of his Cabinet to the Governor in Willemstad after the coalition in Willemstad lost the majority support in Parliament on 6 November 2015. The Prime Minister justified his action by emphasizing that the Principle of trust established by the Constitution requires same.

Recommendations

The Ombudsman issued the following recommendations to the Government:

- 1) Government should at all times lead by example and adhere to the rule of law and standards of proper conduct;
- 2) Government should actively and adequately gather comprehensive advice and information on issues affecting the general interest of the people;
- 3) Government should consider creating a mechanism by means of a pool of experts to function as an independent ‘think tank’ to brainstorm with and advise government on complex issues that may affect the country and people of Sint Maarten;
- 4) Government should actively and adequately inform the public on issues pertaining to the general interest of the community, and do so promptly to encourage citizens to develop informed opinions and to avoid misunderstandings;
- 5) Government should seek to make use of section 3 of article 33 of the Constitution promptly, as well as implement other regulations and rules to address the issues reflected in the National Decree to dissolve Parliament, signed as a result of the conflict ensued in response to the Principle of trust;
- 6) Government should respect the Constitution at all times, and should see to it that the powers and bodies of the State provided by the Constitution are not undermined from within.

VI. Constitutional Court

On 18 September 2015 the Ombudsman presented the National Ordinance dated August 21, 2015 Integrity Chamber (*‘Landsverordening Integriteitskamer’*) for constitutional review to the Constitutional Court. The grievances presented against the Ordinance are categorized in three main groups:

- 1) The relation and entanglement of Administrative and Criminal law;

- 2) The extensive authorities available to the Integrity Chamber and subsequent delegation of same to staff of the Chamber and hired experts;
- 3) The lack of protection of the fundamental rights of the persons involved in an investigation by the Integrity Chamber.

Whereas not seeking the advice of the Council of Advice after cancelling an important article of the Ordinance (art. 31 sec. 1) was established, this procedural matter was not the major concern of the Ombudsman. Considering that the Constitutional Court is guided by the grievances presented by the Ombudsman, the Court was however requested to take note of this. The cancelled article introduced additional options to interested parties under, or involved in an investigation of the Integrity Chamber.

The Ombudsman requested the Court to review the grievances brought forward by the Ombudsman against the following articles of the Constitution: article 5 - the right of respect for a person's privacy (*eerbiediging persoonlike levenssfeer*); article 7 - the right to privacy of the home (*huisrecht*); article 8 - the right of respect for a person's correspondence and the privacy of the telephone (*briefgeheim en telefoon geheim*); article 26 - the right to a fair trial (*eerlijk proces*); article 28 sec. 2 and 4 - nulla poena and the minimum rights of a person being persecuted (*nulla poena and minimum rechten bij vervolging*); article 29 - legal aid (*rechtsbijstand*); and article 31 sec. 1 - restriction of the fundamental rights (*beperkingen van grondrechten*).

The petition was handed to the Court recorder of the Constitutional Court by the Secretary General and the Legal Advisor of Bureau Ombudsman.



SG Randolph Duggins, LA Gwendolien Mossel, and Court Recorder Maritsa James-Christina

VII. Financial report

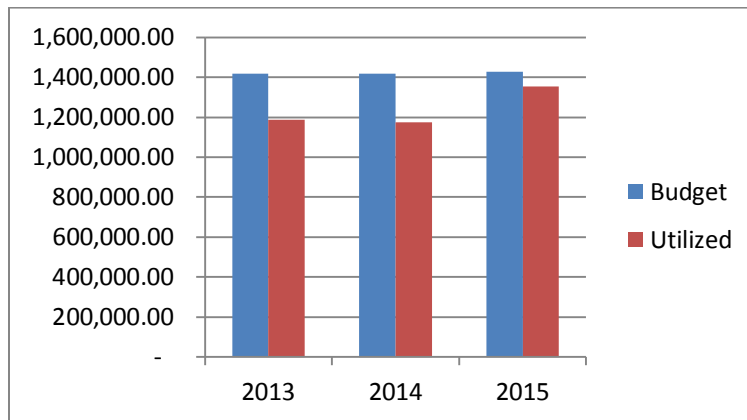
Financial Reporting

The budget for the Ombudsman is covered pursuant to article 12 National Ordinance Ombudsman by the Government. Parliament, in collaboration with the Ombudsman and the Minister of General Affairs (i.e. Prime Minister), is charged with ensuring that the Ombudsman is provided all facilities necessary for the proper and independent performance of its duties. The total amount budgeted by the Ombudsman for 2015 was **Naf. 1.427.624,00**.

In the year 2015 the operations of the Ombudsman were entirely financed from the budget of Sint Maarten. The operations of the preceding four (4) years, 2011 – 2014, were partly financed via funding of the IVB program (“*Institutionele Versterking Bestuurskracht Programma*”), which ended on 31 December, 2014.

The conclusion of the IVB program is immediately evident. In 2013 and 2014 approximately 85% of the allotted budget was used. However, in 2015 this percentage increased to 95% (see graph below).

Based on the unaudited financial report for the year 2015 a total of **Naf. 1.374.684,02** was spent from the budget of Sint Maarten (see appendices 2 and 3).



The institution continues to upgrade its IT infrastructure in order to continue to serve the general public optimally. In 2015 additional hardware was purchased in this regard.

The amount not spent of the available budget in 2015 is summarized below:

Type of Expenditures in 2015	Amount:	2015 Budget
		1.427.624,00
Total Operational Expenses	1.354.270,22	
Total Assets acquired in 2015:	20.413,80	
Total Amount Allocated:		1.374.684,02
Not spent:		52.939,98

VIII. Appendices

Appendix 1: ‘Integrity in Public Life’ by Dr. Terrence W. Farrell (pages 40 – 42)

Appendix 2: Balance Sheet

Appendix 3: Financial Report

Improving Governance and Anti-Corruption Measures in Sint Maarten

- Transparency International completed and published in 2015 a review of the National Integrity System in Sint Maarten.
- The assessment report covered 12 areas:
 - Legislature
 - Executive
 - Judiciary
 - Public Sector
 - Law Enforcement Agencies
 - Electoral Management Bodies
 - Ombudsman
 - Supreme Audit Institution
 - Political Parties
 - Media
 - Civil Society
 - Business
 - Anti corruption agencies (non-existent)
- Across 3 dimensions:
 - Overall capacity in terms of Resources and Independence
 - Internal Governance regulations and practices (do the agencies/institutions act with integrity and are they transparent and accountable)
 - Role of the agency/institution in the integrity system with regard to preventing and fighting corruption

Improving Governance and Anti-Corruption Measures in Sint Maarten

- The assessment took into account the political, societal, economic and cultural context in Sint Maarten. In this regard the study noted:
 - High rate of emigration (one third of the population moves to America or Europe every 3-5 years)
 - Income is unevenly distributed
 - Limited societal awareness of good governance
 - Political system is based on personal relations and the political environment tends to be unstable
 - Weak criticism because of close relationships (family and friends) between members of Sint Maarten society
- The scoring for each area or pillar was scaled as:

• Very Strong	81-100
• Strong	61-80
• Moderate	41-60
• Weak	21-40
• Very Weak	0-20

Improving Governance and Anti-Corruption Measures in Sint Maarten

- The results of the assessment were:
 - Relatively Strong – Electoral Management System, Ombudsman and Supreme Audit Institution
 - Relatively Weak – Public Sector and Civil Society
 - Independence of public sector employees is not secured by law and not protected in practice
 - Public sector does not engage in significant efforts to educate the general public on corruption, nor collaborate actively with civil society and the private sector on corruption.
 - Law enforcement agencies have not been strengthened sufficiently both in terms of human resources and financial resources
- Study recommendations:
 - Members of legislature, executive and senior public servants should receive regular training on regulations
 - Disclosure of public procurement decisions and contracts; publication of annual reports and accounts of public companies and foundations
 - Disclosure by political parties of funding and expenditure
 - Civil society organisations should become more active in holding government and private sector accountable.

BALANCE SHEET
PER DECEMBER 31 2015
IN NAF

Appendix 2

ASSETS:

Current Assets

Money Card WIB	23.49		
Petty Cash WIB Account	77.22		
Cash on Hand	35.77		
Total Current Assets:			136.48

Fixed Assets:

Archive Room	5,733.00		
Acc.Depreciation to 31/12/2015	129.32		
Book Value		5,603.68	-
Server Room	8,910.00		
Acc.Depreciation to 31/12/2015	605.88		
Book-Value		8,304.12	
Renovation Kitchen Area	8,736.00		
Acc.Depreciation 31/12/2015	269.44		
Book-Value:		8,466.56	
Total			22,374.36
Company Vehicles	83,629.00		
Acc.Depreciation to 31/12/2015	30,515.20		
Book-Value :		-	53,113.80

Office Furniture & Equipment

Fotocopies Machine	15,894.90		
Acc.Depreciation to 31/12/2015	7,629.54		
Book Value		8,265.36	
ICT Equipment	278,533.86		
Acc.Depreciation to 31/12/2015	104,469.72		
Book Value:		174,064.14	
Projector and Screen	2,034.20		
Acc.'Depreciation to 31/12/2015	1,627.20		
Book Value:		407.00	
Televisions	3,118.80		

Acc.Depreciation to 31/12/2015	2,494.80	
Book Value:		624.00
Total Office Equipment:		183,360.50

Office Furniture	44,936.00	
Acc.Depreciation to 31/12/2015	10,784.70	
Book-Value:		34,151.30
TOTAL ASSETS:		293,136.44

LIABILITIES & EQUITY:

Current Liabilities:

Accounts Payable	-	8,162.40
	-	

Other Current Liabilities

AOV.AWW Payable	5,843.31	
AVBZ Payable	870.35	
FZOG Payable	2,002.34	
Pension Payable	61,866.31	
Employees Advance Payable	17,059.91	
Employees'Union Dues Payable	20.00	
Tax Reservation Payable	1,686.75	
Sickness Premiums Payable	1,303.68	
Total Other Current Liabilities	90,652.65	

Total Liabilities:		90,652.65
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Total Equity Account	194,321.39
Total Liabilities and Equity:	293,136.44

Appendix 3

FINANCIAL REPORT FOR THE YEAR 2015

Total Budget Allocated in NAF:		1,354,270.22
Travel and Accommodation Expense	-	40,791.85
Electricity Expense	-	13,364.36
Vehicle Expense		
Motorvehcile Tax	287.50	
Repairs and Maintenance Expense	2,184.74	
Total Vehicle Expense	2,472.24	2,472.24
Water Consumption Expense		1,191.39
Office Supplies Expense		9,831.18
Kitchen Supplies Expense		3,939.69
Literature & Subscription Expense		436.77
Repairs and Maintenance Buiding Expense		889.00
Repairs & Maintenance Expense-Hardware		45,504.00
Other Repairs and Maintenance Expense		810.00
Rent Expense		133,587.36
Insurance Expense-Off.Furniture & Equipment		1,388.59
Insurance Expense-Vehicle		912.33
Advertisement Expense		21,618.93
Telephone & Internet Expense		27,596.60
Postage Expense		192.30
Courses and Training Expense		9,423.21
Security Expense		1,718.93
Comtribution and Membership Fees Expense		2,835.00
Other Goods and Services		
Bank Charges	331.73	
Other Goods and Services	80,940.68	
Total Other Goods and Services	81,272.41	81,272.41
Depreciation Expense:		74,811.92
Cleanin g Supplies Expense	1,896.63	1,896.63
Personnel Costs:		
Salaries and Wages Expense	638,357.28	
Vacation Allowance Expense	68,167.96	
Various Allowances Expense	59,044.84	
Children Allowances Expense	3,460.00	
Retroactive Payments	6,201.04	
Pensioen Employer's Premium	53,167.63	
AOV.AWW Employer's Premium Expense	28,661.77	
41070 2060 Werkg. Bijdr. AVBZ	3,617.94	
Temporary Workers	17,107.07	
Total Personnel Costs		877,785.53
Total Expenses in Naf:		1,354,270.22

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OMBUDSMAN

SINT MAARTEN

"Start doing what's necessary; then do what's possible; and suddenly you are doing the impossible"

- Francis of Assisi

