

2016

YEAR REPORT



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Foreword



With the theme “Gearing towards Excellence” the Ombudsman set out to achieve its goals, notwithstanding the set-backs experienced with the Government administration due to early elections having been scheduled for September 2016. The frequent changes of Ministers over the past years, and the effect of same on the governing bodies, did not stop the Institution of the Ombudsman to diligently work towards its vision.

However, 2016 has been the first year that the Ombudsman was not invited to elaborate and be questioned by the Members of Parliament on the Year Report of the previous year. This was an opportunity missed by the representatives of the people to query the Ombudsman in a public session on the state of affairs within Government with regard to propriety in dealing with the business of the people.

Agreements made in 2015 in Aruba between the Ombudsman Institutions of the Kingdom of the Netherlands to yearly meet to discuss matters of common interest and lend support where needed, resulted in a rather productive gathering on Sint Maarten with more than hundred civil servants holding the top positions in government and those directly engaged with the public. Three workshops were organized, actively engaging the input of the participants: “Politics and Administration” facilitated by Reinier van Zutphen, National Ombudsman Netherlands; “Internal Complaint Handling” presented by Keursly Conconcion, Ombudsman Curaçao, and “Understanding Propriety” conducted by the Ombudsman of Sint Maarten. Last mentioned workshop produced a comprehensive document listing actual bottlenecks and solutions brought forward by the civil servants working in group sessions. A document titled “Bottlenecks and Solutions” was compiled and presented to all Ministers and Secretaries General with a request to the Prime Minister to have it discussed in the Council of Ministers, and acted upon. A copy of the document was also presented to the President of Parliament. An interactive session held with Members of Parliament, the Executive, Judiciary and representatives of various invited Private entities with public authority, the so called “ZBO’s” (“Zelfstandige Bestuursorganen”), brought forward and discussed many topics needing Government’s attention in building Sint Maarten together.

In keeping with the Strategic Plan 2011 – 2021 an Operational Assessment of the Institution and a Financial audit of the year 2015 was commissioned at the end of the year. These were scheduled to be executed in the first quarter of 2017. Agreement was reached with a student studying law at an institution of Applied Sciences (“HBO”) in the Netherlands, to do the research for her final paper as an intern at the Bureau of the Ombudsman.

She is assigned to research the level of compliance and the impact of recommendations issued by the Ombudsman over the period 2014 – 2016.

The results of the mentioned evaluations are expected to provide the information required to adjust operational and investigative procedures in time before the present Ombudsman demits Office in October 2017.

The Regional and International network of the Institution was expanded at the International Ombudsman Institute (IOI) World Conference in Bangkok, Thailand. The Ombudsman of Sint Maarten was elected to be the Regional President on the Board of the IOI, representing Latin America and the Caribbean region. Closer ties with regional institutions were pledged, while agreements were reached with the National Ombudsman of the (Caribbean) Netherlands to host the 9th CAROA Biennial Conference on Bonaire. Commitments were acquired from the IOI Board to sponsor a most needed Complaint Handling Training for the region as part of the CAROA Conference. The Conference is scheduled to be organized in June 2017.

It gives me great pleasure to present the Year Report 2016 to Parliament and the people of Sint Maarten, which is the last year report of the undersigned before my term in office comes to an end in accordance with the Constitution. It has been indeed a great honor to serve the people of Sint Maarten in the capacity of the first Ombudsman of Sint Maarten, and establish this invaluable institution for the community from scratch.



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

Executive Summary

I) Introduction

The Introduction provides an overview of the topics presented in this report. Chapter II presents a highlight of the most important activities of the Ombudsman and the Bureau in 2016, followed by a chapter (III) providing statistics regarding Complaints handled in 2016, including comparisons with the previous year. Chapter four (IV) provides statistics of recommendations issued over the past years, followed by an overview of the main challenges experienced by each Ministry (chapter V). Chapter six (VI) discusses the decision of the Constitutional Court to protect the fundamental human rights of the public by squashing a National Ordinance on the establishment of an Integrity Chamber for Sint Maarten. The results, conclusion and recommendations of an Operational and Financial audit commissioned at the end of 2016 (chapter VII) precede the Financial Report 2016, presented in chapter eight (VIII). The Report is closed with Appendices meant for review by Parliament (chapter IX).

II) Activities

This chapter reflects on the main activities engaged by the Ombudsman and the Bureau in 2016. The most important and far reaching activity of the year has been by far the hearing held on January 22, 2016 by the Constitutional Court to listen to, and question the Ombudsman and the attorney representing the Government, on arguments presented by both parties regarding the National Ordinance on establishing the Integrity Chamber, ratified by Government on 21 August 2015.

Networking and keeping close ties with Ombudsman Institutions regionally and internationally throughout the years is considered a major strength of the young organization. The value of these ties and travel to meetings and conferences played an invaluable role in establishing the Ombudsman Institution of Sint Maarten. In general the Office of the Ombudsman is relatively young, and a rather specialized function in modern democracies; direct contact and discussions with peers cannot be replaced by advices from hired consultants.

III) Complaints handled

In 2016 the Ombudsman experienced an increase in Complaints handled and closed. Seventy eight (78) new cases were registered of which thirty five (35) or 45% were closed in the same calendar year. Non-response, or not timely responding by the Government administration to investigations initiated by the Ombudsman, delayed the progress in various cases.

Again a new group of Ministers having been sworn in to take up the reign of public administration, and uncertainties regarding new elections scheduled for the second half of the year, clearly had its effects on the service to the public. Of the 364 visits registered in the Information Window¹ Registry, compared to 288 in 2015, about one third of the visitors (123) expressed, or had questions of general concern, listed as ‘Other’ in the registry.

IV) Recommendations

Follow up to recommendations issued has been a weakness in the first years of the Institution. With the introduction of an improved registration system in 2016, this part of the investigation procedure could be better monitored. Notwithstanding the reasonable progress made in this area, obtaining timely status reports regarding the implementation of recommendations remains a bottleneck to be dealt with in 2017.

The statistics indicate that most recommendations were directed to the Ministries Tourism, Economic Affairs, Traffic and Communication (TEZVT); Justice; General Affairs; Housing, Spatial and Environmental Affairs and Infrastructure (VROMI). Most recommendations are provided in an early stage of the investigation, after the preliminary findings have been established. The response to the recommendations is reasonably well in this stage, considering however that non- response establishes agreement to same. This could be an indication that the Ministries take the complaints and recommendations rather serious, and try to solve the problem in an early stage through the intervention of the Ombudsman. Full compliance with the recommendations and reporting regarding the implementation need however be improved.

V) An Overview per Ministry

Though the Ministries continue to struggle with timely responses to the inquiries from the Ombudsman, some have shown significant improvement; notably the Ministries TEZVT, VSA and VROMI. The response time, or rather the non-responses from the Ministries of Justice and General Affairs remain reason for concern.

Many complaints filed at the Ombudsman continue to be from civil servants. Uncertainty about their status, dissatisfaction with the manner in which their concerns and interests are handled top the list. In connection herewith the Ombudsman communicated to Government on numerous occasions the need for the review and proper implementation of mandates and responsibilities provided by the ‘*Landsverordening inrichting en organisatie landsoverheid*’ (LIOL). No Management agreements pursuant to article 8 are signed. Considering the standards of proper conduct most violated in dealing with the affairs of the public, the adequate organization of services should be high on the agenda of all Ministries to properly and promptly respond to the needs of the public.

¹ The Information Window Registry reflects queries from the public to the Ombudsman, which are not immediately pursued as an investigation.

VI) The Constitutional Court

On 22 January 2016 a public Hearing was held in the Courthouse on Sint Maarten to hear arguments brought forward by both the Government and the Ombudsman regarding the National Ordinance of 21 August 2015 to establish the Integrity Chamber. Though at the end of the Hearing the date for decision making was established to be 31 March 2016, it took the Court several months thereafter to pronounce its verdict publicly in summary on 7 July 2016.

The Court declared the complaint of the Ombudsman concerning not consulting the Council of Advice on the introduction of the Amendment to the National Ordinance leading to establishing the Integrity Chamber well founded. The Court took into account the many substantive grievances presented to support the pertinent complaint, and squashed the Integrity Chamber Ordinance in its entirety.

Lessons learned:

- Importance of the Constitutional Court in the protection of the Constitution and the fundamental rights of the people;
- Importance of properly consulting the Council of Advice in the legislative process, including when vital amendments are proposed at the end part of the procedure.

From the inception of establishing the Institution, the Ombudsman advocates and encourages the public to be vigilant regarding new laws before Parliament, and to address possible concerns timely with the Ombudsman in the role as Guardian of the Constitution. The road to the Constitutional Court is however limited to provisions established by the Constitution, and regulations which are in contravention with the Constitution. Beyond these limitations the Ombudsman has no standing before the Constitutional Court. This was firmly established in another decision of 7 July 2016 taken by the President of the Court regarding a petition filed by a concerned citizen. A petition was filed with the Court against the National decree of 14 December 2015, LB 15/1110 announcing Government's decision to dissolve Parliament per 31 October 2016 and have elections on 26 September 2016 pursuant to article 59 of the Constitution.

VII) External Operational and Financial Audit

At the end of 2016 an Operational Assessment of the Institution and a Financial Audit were commissioned to an independent Accountant firm. The outcome of the assessments, which should be available in the first half of 2017, is expected to provide the Ombudsman sufficient time to follow up on the results and recommendations before the expiration of the term of the Ombudsman in October 2017. Considering that the assessments cover evaluation of the Institution up to the end of 2016, the (preliminary) findings are included in this report.

The (preliminary) Main Findings of the Assessments are:

- a. Follow-up on the recommendations as a result of a complaint is not done in a systematic/timely manner.

- b. The Ombudsman submits a Financial Report to Parliament and the Minister of Finance annually. This report is not prepared based on generally accepted accounting principles (GAAP). In addition no feedback is received from Government on the financial report.
- c. Financial management of the Ombudsman is outsourced to Government which creates a dependency on an outside party.
- d. The Ombudsman is not consistently consulted when budget amendments are applied by government.

VIII) Financial Reporting

The total budget afforded to the Ombudsman in 2016 amounted to Nafl. 1.543.550,00. Based on the unaudited financial report for the year 2016, a total of Nafl. 1.416.942,98 was spent from the budget of Sint Maarten.

IX) Appendices

Appendix 1. Balance sheet 2016; Appendix 2. Financial Report 2016.

“If you are going to achieve excellence in big things, you develop the habit in little matters. Excellence is not an exception, it is a prevailing attitude.”

Colin Powell

I. Introduction

The Ombudsman stands for continuous quality improvement in its organizational structure and management process to develop prompt responses to complaints. It is therefore with great enthusiasm, optimism and determination that Team-Ombudsman set out to make its motto for the year “*Gearing towards Excellence*” a reality. Keeping the highest standards of integrity and transparency is required. The strategic direction of the institution is reflected by the core values established in the Strategic Plan to serve the public of Sint Maarten with the assurance of impartiality, effectiveness and efficiency. Pursuant to the goals set out in the Strategic Plan 2011-2021 an independent meta- analysis of the period 2011-2016 has been commissioned, to ensure that the Bureau of the Ombudsman meets the needs of its stakeholders and maintains its authority as the current Ombudsman demits Office in October 2017.

The next chapter (II) of this report presents a highlight of the most important activities of the Ombudsman and the Bureau in 2016, followed by a chapter (III) providing statistics regarding Complaints handled in 2016, including comparisons with previous years. Chapter four (IV) provides statistics of recommendations issued over the past years, followed by a general overview of challenges experienced by each Ministry (chapter V). Chapter six (VI) discusses the role of the Constitutional Court in protecting the fundamental human rights of the public by squashing a National Ordinance on the establishment of a Integrity Chamber for Sint Maarten. The results, conclusion and recommendations of the Operational and Financial audit commissioned at the end of 2016 (chapter VII) precede the Financial Report 2016, presented in chapter eight (VIII). The Report is closed with Appendices meant for review by Parliament (chapter IX).

II. Activities

The most important and far reaching activity of the year has been by far the Hearing held on January 22, 2016 by the Constitutional Court to listen to, and question the Ombudsman and the attorney representing the Government, on arguments presented by both parties regarding the National Ordinance on establishing the Integrity Chamber, ratified by Government on 21 August 2015. The law was cancelled in its entirety by unanimous decision of the Court on 7 July 2016.



Constitutional Court

The annual Open House of the Bureau was held on 26 February 2016. The focus was to empower the youth of Sint Maarten not only with knowledge of the High Council of State as it relates to other institutions provided by the Constitution, but also to inform the youngsters about the requirements to be an Ombudsman and aspire a function in the Bureau of the Ombudsman at some time in the future. Approximately 250 students and teachers from the various High schools on the island attended. The students appeared to be well engaged during the presentations given by the Ombudsman. Collaboration was sought from the Indian Merchants Association, which provided transportation for the students to and from Bureau Ombudsman back to the schools.



Open House 2016

Apart from the youth, staff of the Bureau as well as fellow colleagues on the international stage, have been empowered with information in 2016. In March 2016 the Secretary General of the Bureau visited the Office of the National Ombudsman in the Netherlands to gather experience and compare notes. Refresher Media training sessions were organized to equip staff to better deal with the public and the media. The Ombudsman travelled to Barcelona, Spain, upon the invitation of the IOI and IOI-Europe to exchange thoughts and regional experiences regarding ‘Ombudsmen under threat’. The presentation delivered by the Ombudsman on mentioned forum was well received. This followed with an invitation to speak on the pertinent topic at the 11th IOI World Conference to be held later in the year in Bangkok, Thailand.



Panel Discussion in Barcelona—IOI Europe



Internship SG at the National Ombudsman

Meetings with stakeholders and concerned citizens continued according to the open door policy, and efforts to reach out to the public by the Ombudsman and the Bureau.



Meeting with Indian Merchants Association



Visit from St. Dominic High School Students

The work of the Ombudsman and the importance of the institution for the public was once more highlighted when the Ombudsman was honored with the PW-AML Leadership Award in recognition of her outstanding leadership (a.o. integrity, vision, decisiveness and relevant leadership). This award is named after Ambassador Alicia M. Liverpool (AML), a distinguished leader in our society and under whose guidance Prominent Woman (PW) was established.



The Ombudsman (forth left) receiving the PW-AML award and fellow Honorees

In the month of June 2016, the Ombudsman presented the Year Report 2015 to the President of Parliament, the Prime Minister and the Governor. Though not invited as customary by Parliament to discuss the report in a public session of the Central Committee and be questioned, upon the request of the Legislator the Ombudsman gave a presentation to the Financial Committee of Parliament about the budget 2017.



Presentation of 2015 Year Report

The month of June ended on a high note with sessions held for civil servants in collaboration with the National Ombudsmen of the Netherlands and Curaçao meeting on Sint Maarten to exchange views on issues of common interest and best practices. The Ombudsmen provided the quarter master charged with establishing the Ombudsman Institution on Aruba much needed support. The workshops: *"Politics and Administration"* facilitated by Reinier van Zutphen, National Ombudsman Netherlands; *"Internal Complaint Handling"* presented by Keursly Concincion, Ombudsman Curaçao, and *"Understanding Propriety"* conducted by the Ombudsman of Sint Maarten were deemed to be a success. Last mentioned workshop produced a comprehensive document listing actual bottlenecks and solutions brought forward by the civil servants. A document titled "Bottlenecks and Solutions" was compiled and presented to all Ministers and Secretaries General. The Prime Minister was requested to have the document formally discussed in the Council of Ministers and acted upon. An interactive session held with Members of Parliament, the Executive, Judiciary and representatives of various invited Private entities with public authority, the so called "ZBO's" (*"Zelfstandige Bestuursorganen"*), brought forward and discussed many topics needing Government's attention in the building stages of the young country.



Information Session Civil Servants

The decision of the Constitutional Court on 7 July 2016 after lengthy deliberations in the case brought forward by the Ombudsman for review pursuant to the Constitution, created a momentum for continued discussion on the matter. The Ombudsman petitioned the Court to review the National Ordinance establishing an Integrity Chamber and strike down the law on the basis of incompatibility with the Constitution, both in substance and form. The Court deemed the arguments of the Ombudsman concerning not consulting the Council of Advice on the introduction of a major amendment to the Ordinance well founded, and took into account the many substantive and essential flaws and serious ambiguities in the Ordinance.



Constitutional Court

The Annual Ombudsman Retreat focused on the theme for the year '*Gearing towards Excellence*'. The Wheel of Excellence training facilitated by one of the Complaint Officers, Ms. Carmencita P. Lammar, brought out the strengths of each member of the team, and provided valuable tools for 'Evaluative Learning'. Excellence requires that you develop an effective process for personal evaluation, and act upon the lessons drawn from these evaluations. The team engaged in constructive assessments, including looking for the positive characteristics in each person, and provided insight and assistance in targeting areas for improvement of the team and its individual members. Exercises like these are the backbone of the Bureau; building trust and confidence in each other and the team in order to deliver quality work and improve service to the public on a daily basis.



Ombudsman Retreat 2016

In an effort to better serve our clients and to be optimally informed about the procedures and policies of the department of Economic Licenses (Ministry of Tourism, Economic Affairs, Traffic and Telecommunications), the Ombudsman invited the management of the department to give the Bureau a presentation regarding same. In September 2016 an information session was held at the Bureau of the Ombudsman.



Information session Economic Licenses

Upon the request of the Commissioner of Police Mr. Carl John and his team, the Ombudsman provided integrity training to management and senior staff of KPSM in collaboration with the Vice-Chair of the Council of Advice in November. The training was well received; participation was very constructive.



Integrity training KPSM

At the end of the year an orientation presentation was given to the newly elected Members of Parliament on the tasks and responsibilities of the Ombudsman. Emphasis was placed on the relationship between the Ombudsman as protector of the rights of the people and Parliament, the body representing the people.



Presentation to Parliament

Networking and keeping close ties with Ombudsman Institutions regionally and internationally is considered a major strength of our young organization. The value of these ties, including travel to meetings and Conferences should not be underestimated for the role they played in establishing the Ombudsman Institution of Sint Maarten. The Ombudsman is in general a relatively young institution, and a rather specialized Office in modern democracies; direct contact and discussions with peers cannot be replaced by advices from hired consultants. This was underscored at the 11th IOI World Conference held in November 2016 in Bangkok, Thailand.

Sint Maarten was charged to chair the regional meeting, which nominated the Ombudsman of Sint Maarten to be the next Regional President, representing Latin America and the Caribbean on the IOI Board. Commitments were received at the World Conference from both the incoming IOI President and the IOI Secretary to attend and speak at the 9th CAROA Biennial Conference to be held in June 2017, as well as the possibility created to organize an IOI sponsored Complaint Handling Training in the Caribbean in 2017. A commitment from the National Ombudsman of (Caribbean) Netherlands to host the CAROA Conference and Training on Bonaire was also obtained and discussed in Bangkok. The Ombudsman of Sint Maarten is the CAROA President until July 2017.



11th IOI World Conference

“Excellence is not a skill. It is an attitude.”

Ralph Marston

III. Complaints handled

In 2016 the Ombudsman experienced an increase of Complaints handled and closed. Seventy-eight (78) new cases were registered of which thirty-five (35) were closed (45%) in the same calendar year.² Due to non-response, or not timely responding by the Government administration to investigations initiated by the Ombudsman, the progress in various cases was delayed.

A new group of Ministers having been sworn in to take up the reign of public administration, and uncertainties regarding new elections scheduled for the second half of the year, clearly had its effects on the service to the public. The mistrust and loss of confidence in the administration by the public was evident in the rather big increase of people visiting the Bureau of the Ombudsman to ask questions or voice their concerns, and yet being very reluctant to file a Complaint, stating that it would probably not make a difference. Issues of Human Resources among civil servants, in particular at the Ministry of Justice, and matters pertaining to the issuing of economic licenses remained vocal areas for grievances in 2016. Though having made much progress in dealing with the public regarding social aid and labor affairs, the Ministry of Public Health, Social Development and Labor had a considerable increase of complaints filed against the Ministry.

Complaints against the Court of Guardianship stand out in comparison with 2015, when no complaints were registered against this entity.

Some improvement has been registered regarding the application of standards of proper conduct by the public administration. Administrative accuracy, in particular the standards of promptness, active and adequate information provision, and cooperation between departments are better observed. Nevertheless, while improvement has been registered compared to previous years, promptness in dealing with the affairs of the people and adequate organization of services to effectively and efficiently serve the public, need more attention.

Of the 364 visits registered in the Information Window Registry, compared to 288 in 2015, about one third of the visitors expressed, or had questions of general concern, listed as ‘Other’ in the registry. Questions pertaining to economic licenses and permits, HR issues of civil servants, immigration, infrastructure, financial support and taxes remain a constant at the window. Complaints pertaining to Private entities with public authority keep reaching the Ombudsman. This matter is to be further discussed with so-called *ZBO’s* (*‘zelfstandige bestuursorganen’*). Which were invited to attend a series of meetings planned for the beginning of 2017.

² In 2015 - 38.5 % of the new cases were closed in the same calendar year.

❖ **Complaints per Administrative body: Ministries & Others**

Ministry	2016	2015
Ministry General Affairs	7	9
Ministry of Finance	5	3
Ministry of Justice	16	16
Ministry of Education, Culture, Youth Affairs and Sport	2	7
Ministry of Tourism, Economic Affairs, Public Transportation and Telecommunication	16	13
Ministry of Public Housing, Spatial Planning, Environment and Infrastructure	8	10
Ministry of Public Health, Social Development and Labor	15	6
ZBO's/Others		
SZV	4	1
BTP		2
Vehicle Inspection		1
Council of Ministers		1
Stichting Kadaster & Hypotheekwezen	3	1
St. Maarten Port Authority	1	
Postal Services Sint Maarten	1	
Total	78	70

Fig.1. Incoming Complaints registered per Ministry in 2016 compared to 2015

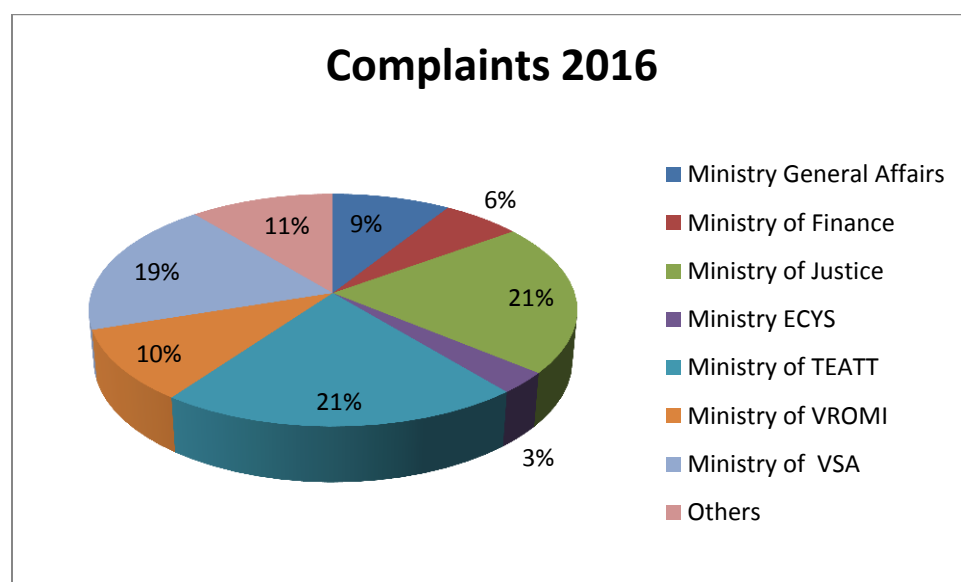


Fig.2. Pie chart Complaints filed per Ministry in 2016

Ministry	Department/Entity	Number of Complaints	Complaints per Ministry in %
General Affairs	Fire Department Minister Personnel affairs Civil Registry Facility Services department	2 1 2 1 1 7	9%
Finance	Receiver department Tax department Finance department	1 2 2 5	6%
Justice	Court of Guardianship House of Detention IND Police department Personnel affairs	5 1 3 5 2 16	21%
OCJS	Education department	2 2	3%
TEZVT	Economic licenses department Inspections department Ministry TEZVT Personnel affairs	10 4 1 1 16	21 %
VROMI	Domain Affairs Inspections	7 1 8	10%
VSA	Ambulance department Labor department Public health department	1 4 4	

	Social services Ministry Personnel affairs	3 1 2 15	19%
ZBO's/Other types			
SZV		4 4	5%
Stichting Kadaster & Hypotheekwezen	K&H	3 3	4%
St. Maarten Port Authority	SMPA	1 1	1%
Postal Services Sint Maarten	PSS	1 1	1%
Total		78	100%

Fig.3. Incoming Complaints registered per Department in 2016

❖ Topics of Complaints filed in 2016 versus 2015

Topic	2016	2015
Access Property	0	2
Assistance financial	2	2
Assistance housing	1	0
Assistance medical	1	1
Civil Registry	0	1
Court of Guardianship	5	0
Dismissal	1	1
Employment	0	1
Enforcement Policy	1	8
Foundation Cadaster	0	1
Gratification	0	1
Health care	1	0
Human resource	10	12
Immigration department	2	0
Information Kadaster	2	0
Information Postal Services St. Maarten	1	0
Inspection OCJS	1	
Insurance card	1	0
Job application	0	1
Job placement	0	2

Lease agreement	0	2
License Economic	11	6
Long Lease	6	3
Minister of Labor	1	0
Not Classified	1	4
Not Competent	1	0
Parking permit	1	0
Payment	4	5
Pension	1	2
Permit day care	1	0
Permit Residence	1	0
Permit work	1	0
Police Report	1	0
Police Traffic	1	0
Proper Service	3	5
Public Construction	0	1
Registration census	1	1
Reimbursement	2	0
Salary	0	1
Sewage water	1	0
Study Financing	0	3
Subsidy	1	0
SZV St. Maarten	2	0
Taxation	2	1
Transfer water rights	1	0
Treatment	0	1
Vehicle inspection	4	0
VROMI inspection department	1	0
Total	78	70

Fig.4. Table of topics complaints filed in 2016-2015

“Great things are not done by impulse, but by a series of small things brought together”

Vincent Van Gogh

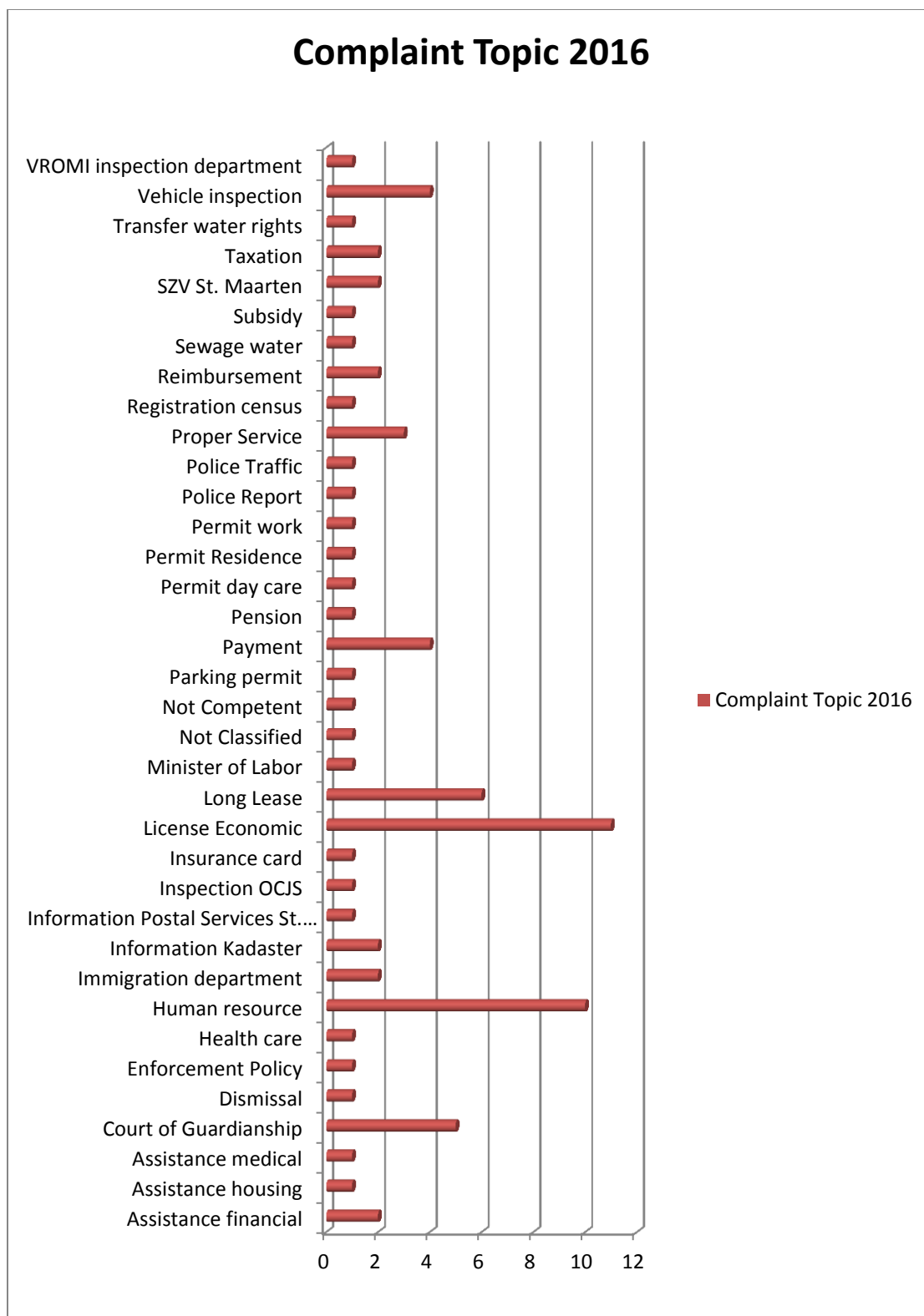


Fig.5. Chart topics of new complaints registered in 2016

❖ **Propriety Violations registered in the closed cases in the pertinent years**

Standards of Proper Conduct	2016	2015 closed in 2016	2015
Active and adequate information gathering	4	2	0
Active and adequate information provision	3	15	26
Adequate organization of services	5	5	9
Cooperation	2	5	5
Correct treatment	1	0	3
Fair play	1	1	5
Fundamental Human Rights	0	0	1
Legal certainty	0	4	7
Legitimate Expectation	0	4	1
Proportionality	1	1	0
Propriety	1	0	0
Promptness	7	14	18
Reason	0	1	3
Reasonableness	1	1	5
Right of both sides to a Hearing	1	0	1

Fig.6. Comparison standards of proper conduct violated in 2016 – 2015

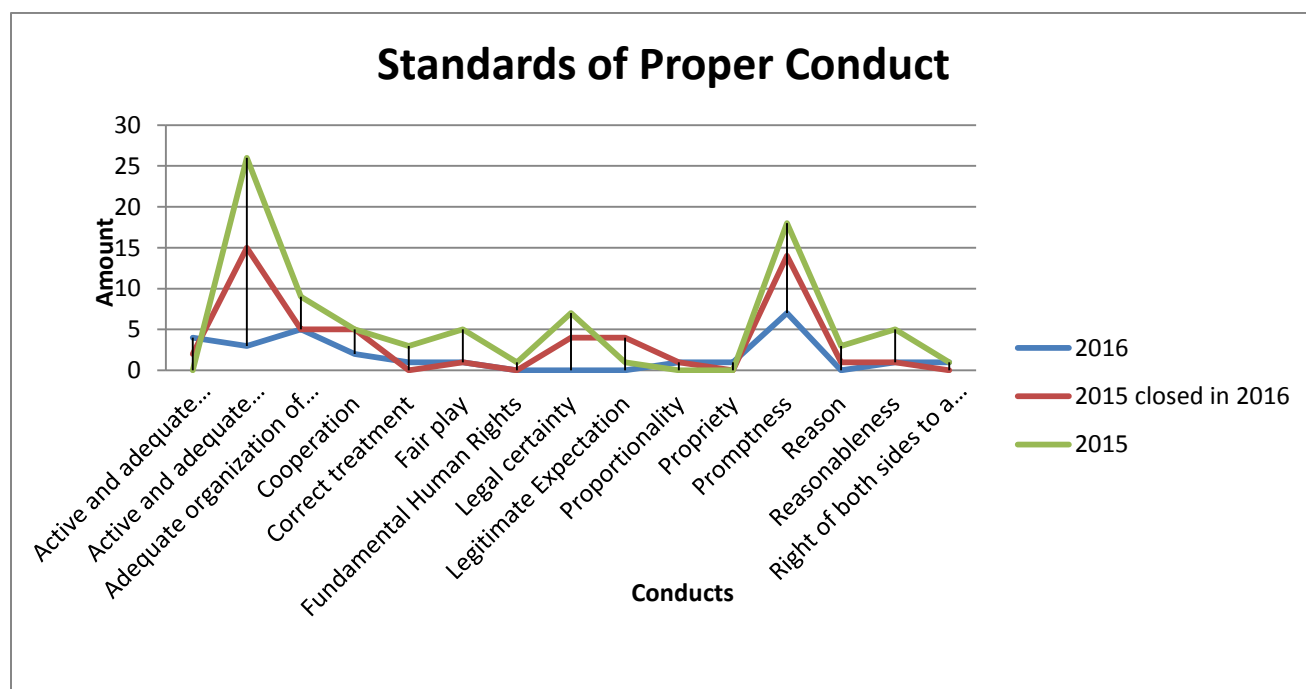


Fig. 7. Graph Comparison standards of proper conduct violated in 2016 – 2015

❖ **Information Window**

Information Window Registered by Topic	2016	2015
Civil Case	35	35
Civil Registry	16	21
Criminal Case	0	4
Economic permits and license	22	8
Enforcement Policy	6	14
Entities with Public Authority (ZBO)	11	13
Entities without Public Authority (niet ZBO)	4	3
Human Resource	18	21
Immigration	25	24
Information requirement (Duty to inform)	2	8
Infrastructure	21	20
Kingdom Affairs	2	2
Openness documents	1	1
Other	123	44
Payments (including reimbursements)	13	14
Pension	5	7
Personal treatment	12	20
Police report	8	8
Salary	13	5
Social support	11	10
Study Financing	1	2
Tax	15	4
Total	364	288

Fig. 8. Table Information Window: requests registered in 2016 in comparison to 2015 per topic

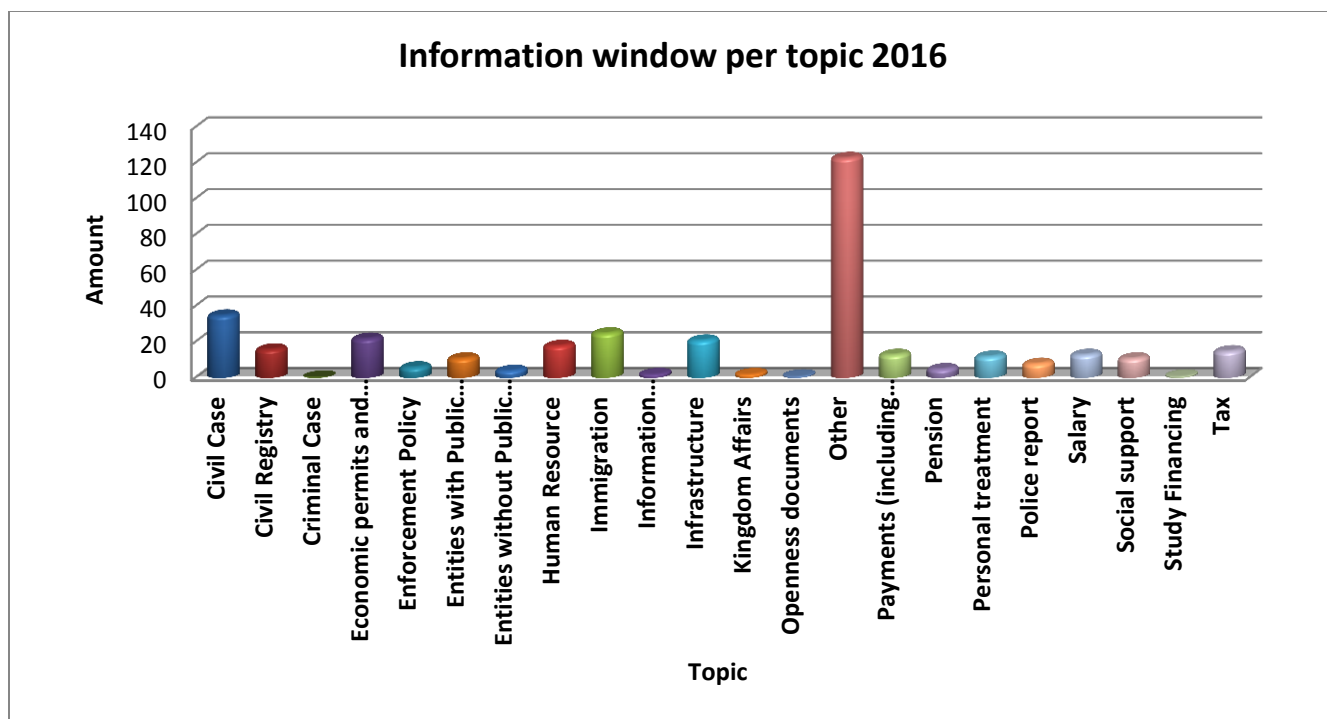


Fig. 9. Graph Information Windows: requests registered in 2016 per topic

IV. Recommendations

Recommendations are issued to promote propriety in governance and better serve the public. Government's behavior is scrutinized and judged by the Ombudsman based on universal standards of proper conduct, which Government needs to observe in dealing with the people.

Upon having established the preliminary findings in the investigation of a complaint, recommendations are issued to remedy the situation immediately, or within a short time. As such the majority of recommendations are issued in a Preliminary Findings Report (PFR) with a request for the Ministry to react to both the findings and the recommendations. A special note is made that in case the administrative body provides no response to the PFR, the findings will be considered to be factual, and agreement with the recommendations issued is established.

Additional recommendations can be issued after the findings stated in the PFR have been formally established as being the facts regarding the complaint. This may be the case when the follow up to the PFR requires same.

Not in all cases recommendations are issued and registered in the registry of the Ombudsman. Since 2016 all cases start with an intervention proposal to the Government body to readily remedy the situation, rather than the Ombudsman initiating a full investigation.

The law requires an administrative body to motivate its decision not to follow a recommendation issued by the Ombudsman. Considering that status reports regarding the implementation of recommendations issued have not been forthcoming from the Ministries, a system to better monitor and follow up on compliance with recommendations was developed in 2016. The following statistics reflect the amount of registered recommendations issued to the administrative bodies in closed files, including outstanding recommendations of 2013 and 2014 still outstanding in 2015. An overview of statistics regarding recommendations issued in the various stages of investigation, and the responses to these by the administrative bodies is limited to the years 2015 and 2016.

❖ Complaints and recommendations in the years 2015 and 2016

The Ombudsman registered seventy (70) new complaints in the year 2015, of which 27 cases (38.5 %) were handled and closed in the same year. The investigation in the open cases continued in 2016.

Complaints 2015	
	Total
Complaints	70
Closed in 2015	27
On hold	1
Merged	1
Open	41

Table 1: new complaints registered in 2015

The Ombudsman registered seventy eight (78) new complaints in the year 2016; handled and closed a total of 35 of these cases (45 %) in the same year. The investigation of thirty-nine (39) open cases continues in 2017.

Complaints 2016	
	Total
Complaints	78
Closed in 2016	35
On hold	4
Merged	0
Open	39

Table 2: new complaints registered in 2016

Recommendations in the year 2015

The tables below provide an overview of the number of closed cases (12) per Ministry in which recommendations were issued (Table 3) in the year 2015. The Ministries responded in 8 of the 12 cases positive to the recommendations. Table 4 is an overview of compliance and the amount of recommendations issued. The total amount of recommendations is more than the number of closed files, because some files contain more than one recommendation.

Cases including recommendations per Ministry		Total cases 2015
	General Affairs	3
	Finance	1
	Justice	1
	OCJS	1
	TEZVT	3
	VROMI	2
	VSA	0
	ZBO: Stichting Kadaster & Hypotheekwezen	1
	Total cases	12

Table 3: recommendation registry 2015 (per ministry)

Recommendations 2015		2015
	Complaints (Cases)	12
	Complied	8
	Partly Complied	3
	Not complied	1
	Recommendations	35

Table 4: compliance registry 2015 (per case)

Recommendations in the year 2016

The following tables provide an overview of the number of closed cases (16) per Ministry in which recommendations were issued in the year 2016 (Table 5). The Ministries responded positive on the recommendations in 15 of the 16 cases. Table 6 is an overview of the cases closed in 2016 with recommendations issued, as well as outstanding recommendations of the previous years. The total amount of recommendations issued is more than the number of closed files with recommendations, because some files contain more than one recommendation.

Cases including recommendations per Ministry 2016	
Ministry & ZBO	Total cases
General Affairs	1
Finance	1
Justice	3
OCJS	0
TEZVT	4
VROMI	3
VSA	4
Stichting Kadaster & Hypotheekwezen	0
St. Maarten Port Authority	0
SZV	0
Total	16

Table 5: recommendation registry 2016 (per ministry)

Recommendations 2016			
	2016	Outstanding recommendation from 2014/2015	Total
Complaints (Cases)	16	28	44
Complied	15	28	43
Partly Complied	0	0	0
Not complied	1	0	1
Recommendations	27	58	85

Table 6: Compliance registry 2016

❖ Type of recommendations

The Ombudsman issues different types of recommendations categorized as: short term, long term, review and revisit. Short term recommendations are those to be executed within a short period of time. Long term recommendations need a longer period of time to be complied with. Review and revisit are recommendations to analyze and or evaluate the current system to improve and prevent future conflicts.

Whereas an improved system was developed in 2016 to monitor compliance with recommendations issued by the Ombudsman, an overview of outstanding recommendations categorized by type, not complied with in 2013/2014 is provided in table 7. The system provides the Ombudsman the possibility to follow up on compliance and report to Parliament accordingly in the future, if required.

Type recommendation outstanding from 2013/2014 in 2015						
	Ministry	Short	Long	Revisit	Review	Total
	General Affairs	3	0	0	0	3
	Finance	1	1	0	0	2
	Justice	8	7	0	1	16
	OCJS	3	1	0	1	5
	TEZVT	6	0	1	0	7
	VROMI	0	0	0	0	0
	VSA	1	2	0	1	4
	* ZBO: Stichting Kadaster & Hypotheekwezen	0	0	0	0	0
	Total	22	11	1	3	37

Table 7: type of recommendation (per ministry) outstanding from 2013/2014 in 2015

*Note: The recommendations issued in an Own Motion investigation closed on 27 June 2012 are still outstanding and have not been complied with by Cadaster nor the Minister of VROMI and/or Finance.

Table 8 provides an overview of the issued recommendations in the year 2015 categorized by type.

Type recommendation 2015						
	Ministry	Short	Long	Revisit	Review	Total
	General Affairs	3	9	0	1	13
	Finance	1	0	1	0	2
	Justice	0	3	0	0	3
	OCJS	0	1	0	0	1
	TEZVT	1	4	1	1	7
	VROMI	1	6	0	1	8
	VSA	0	0	0	0	0
	ZBO: Stichting Kadaster & Hypotheekwezen	0	1	0	0	1
	Total	6	24	2	3	35

Table 8: type of recommendation (per ministry) 2015

Table 9 provides an overview of outstanding recommendations not complied with in 2014/2015 and still outstanding in 2016.

Type recommendation outstanding from 2014/2015 in 2016						
	Ministry	Short	Long	Revisit	Review	Total
	General Affairs	1	4	2	3	10
	Finance	1	2	0	1	4
	Justice	7	2	0	2	11
	OCJS	3	1	0	1	5
	TEZVT	7	3	0	4	14
	VROMI	5	6	1	2	14
	VSA	0	0	0	0	0

	Stichting Kadaster & Hypotheekwezen	0	0	0	0	0
	St. Maarten Port Authority	0	0	0	0	0
	SZV	0	0	0	0	0
	Total	24	18	3	13	58

Table 9: type of recommendation (per ministry) outstanding from 2014/2015 in 2016

Table 10 is an overview of the issued recommendations in the year 2016 categorized by type.

Type recommendation 2016						
	Ministry & ZBO	Short	Long	Revisit	Review	Total
	General Affairs	1	0	0	1	2
	Finance	0	0	0	1	1
	Justice	2	1	0	0	3
	OCJS	0	0	0	0	0
	TEZVT	4	2	0	2	8
	VROMI	1	3	0	1	5
	VSA	1	1	3	3	8
	Stichting Kadaster & Hypotheekwezen	0	0	0	0	0
	St. Maarten Port Authority	0	0	0	0	0
	SZV	0	0	0	0	0
	Total	9	7	3	8	27

Table 10: type of recommendation (per ministry) in 2016

❖ Recommendations issued in the different stages of investigation

Recommendations are issued in the various stages of the investigation of the complaints. Recommendations to address complaints are first given in the Preliminary Findings Report (PFR). Additional recommendations can be provided in the Final Report (FR) or in the Notice of Termination (NOT). In 2015 the Ombudsman issued in a total of 12 closed files

recommendations. First an overview of outstanding recommendations issued in the various stages of investigation, not complied with in 2013/2014 and still outstanding in 2015, is provided in table 11.

Stages of recommendation outstanding from 2013/2014 in 2015			Stage		
	Ministry	PFR	NOT	FR	Total
	General Affairs	3	0	0	3
	Finance	2	0	0	2
	Justice	7	2	7	16
	OCJS	3	0	2	5
	TEZVT	6	0	1	7
	VROMI	0	0	0	0
	VSA	2	0	2	4
	ZBO: Stichting Kadaster & Hypotheekwezen	0	0	0	0
	Total	23	2	12	37

Table 11: stages of recommendation (per ministry) outstanding from 2013/2014 in 2015

Table 12 reflects the recommendations provided in the various stages of investigation in 2015.

Stages of recommendation 2015			Stage		
	Ministry	PFR	NOT	FR	Total
	General Affairs	12	0	1	13
	Finance	2	0	0	2
	Justice	2	1	0	3
	OCJS	1	0	0	1
	TEZVT	5	2	0	7
	VROMI	6	0	2	8
	VSA	0	0	0	0
	ZBO: Stichting Kadaster & Hypotheekwezen	1	0	0	1
	Total	29	3	3	35

Table 12: stages of recommendation issued (per ministry) in 2015

An overview of outstanding recommendations issued in the various stages, not complied with in 2014/2015, and still outstanding in 2016, is provided in table 13.

Stages of recommendation outstanding from 2014/2015 in 2016					
	Ministry	PFR	NOT	FR	Total
	General Affairs	8	0	2	10
	Finance	4	0	0	4
	Justice	7	3	1	11
	OCJS	4	0	1	5
	TEZVT	11	0	3	14
	VROMI	9	4	1	14
	VSA	0	0	0	0
	Stichting Kadaster & Hypotheekwezen	0	0	0	0
	St. Maarten Port Authority	0	0	0	0
	SZV	0	0	0	0
	Total	43	7	8	58

Table 13: stage of recommendation (per ministry) outstanding from 2014/2015 in 2016

In 2016 the Ombudsman issued recommendations in a total of 16 closed cases in the different stages of investigation. Table 14 reflects the recommendations provided in the various stages of investigation in 2016.

Stages of recommendation 2016					
	Ministry	PFR	NOT	FR	Total
	General Affairs	1	1	0	2
	Finance	1	0	0	1

	Justice	2	1	0	3
	OCJS	0	0	0	0
	TEZVT	6	2	0	8
	VROMI	3	1	1	5
	VSA	8	0	0	8
	Stichting Kadaster & Hypotheekwezen	0	0	0	0
	St. Maarten Port Authority	0	0	0	0
	SZV	0	0	0	0
	Total	21	5	1	27

Table 14: stages of recommendation issued (per ministry) 2016

❖ **Responses to recommendations per stage/ per Ministry**

The tables below reflect the responses of the Ministries to the recommendations provided in the 12 closed cases in 2015. Each table reflects the responses from the Ministries in a particular stage of investigation: PFR, NOT and FR.

PFR stage						
	Ministry	Cases	Agree	Not agree	Partly agree	Total
	General Affairs	3	6	0	6	12
	Finance	1	2	0	0	2
	Justice	1	2	0	0	2
	OCJS	1	1	0	0	1
	TEZVT	3	5	0	0	5
	VROMI	2	6	0	0	6
	VSA	0	0	0	0	0
	ZBO: Stichting Kadaster & Hypotheekwezen	1	0	1	0	1
	Total	12	22	1	6	29

Table 15: PFR stage of recommendation (per ministry) in 2015

NOT stage						
	Ministry	Cases	Agree	Not agree	Partly agree	Total
	General Affairs	3	0	0	0	0
	Finance	1	0	0	0	0
	Justice	1	1	0	0	1
	OCJS	1	0	0	0	0
	TEZVT	3	0	0	2	2
	VROMI	2	0	0	0	0
	VSA	0	0	0	0	0
	ZBO: Stichting Kadaster & Hypotheekwezen	1	0	0	0	0
	Total	12	1	0	2	3

Table 16: NOT stage of recommendation (per ministry) in 2015

FR stage						
	Ministry	Cases	Agree	Not agree	Partly agree	Total
	General Affairs	3	1	0	0	1
	Finance	1	0	0	0	0
	Justice	1	0	0	0	0
	OCJS	1	0	0	0	0
	TEZVT	3	0	0	0	0
	VROMI	2	2	0	0	2
	VSA	0	0	0	0	0
	ZBO: Stichting Kadaster & Hypotheekwezen	1	0	0	0	0
	Total	12	3	0	0	3

Table 17: FR stage of recommendation (per ministry) in 2015

The following tables reflect the responses of the Ministries to the recommendations provided in the 16 closed cases in 2016. Each table reflects the responses that the Ministries provided in the different stages of investigation: PFR, NOT, FR.

PFR stage						
	Ministry	Cases	Agree	Not agree	Partly agree	Total
	General Affairs	1	1	0	0	1
	Finance	1	1	0	0	1
	Justice	3	1	1	0	2
	OCJS	0	0	0	0	0
	TEZVT	4	6	0	0	6
	VROMI	3	3	0	0	3
	VSA	4	8	0	0	8
	Stichting Kadaster & Hypotheekwezen	0	0	0	0	0
	St. Maarten Port Authority	0	0	0	0	0
	SZV	0	0	0	0	0
	Total	16	20	1	0	21

Table 18: PFR stage of recommendation (per ministry) 2016

NOT stage						
	Ministry	Cases	Agree	Not agree	Partly agree	Total
	General Affairs	1	1	0	0	1
	Finance	1	0	0	0	0
	Justice	3	1	0	0	1
	OCJS	0	0	0	0	0
	TEZVT	4	2	0	0	2
	VROMI	3	1	0	0	1
	VSA	4	0	0	0	0
	Stichting Kadaster & Hypotheekwezen	0	0	0	0	0
	St. Maarten Port Authority	0	0	0	0	0
	SZV	0	0	0	0	0
	Total	16	5	0	0	5

Table 19: NOT stage of recommendation (per ministry) 2016

FR stage						
	Ministry	Cases	Agree	Not agree	Partly agree	Total
	General Affairs	1	0	0	0	0
	Finance	1	0	0	0	0
	Justice	3	0	0	0	0
	OCJS	0	0	0	0	0
	TEZVT	4	0	0	0	0
	VROMI	3	1	0	0	1
	VSA	4	0	0	0	0
	Stichting Kadaster & Hypotheekwezen	0	0	0	0	0
	St. Maarten Port Authority	0	0	0	0	0
	SZV	0	0	0	0	0
	Total	16	1	0	0	1

Table 20: FR stage of recommendation (per ministry) 2016

Conclusion

It should be noted that many recommendations issued in the period 2013 to 2014, even though short term, were not complied with in 2015 and 2016. Failure to follow up by the Ministries of Justice and General Affairs on older recommendations, as well as VROMI and VSA, is noted.

During the first years of the Institution, short term recommendations dominated (see Table 7). While the responses to deal with complaints filed required more time from Government in 2015 (see Table 8), by 2016 the recommendations issued suggest an improvement in the time of decision making by the government apparatus, nevertheless thorough review of policies and procedures is required (see Tables 9 and 10). The newly established policy within the Bureau of the Ombudsman to intervene and offer a short term proposal to quickly resolve a complaint, rather than immediately initiate an investigation, has proven to improve efficiency and yield positive results.

As the institution progressed, issuing long term and recommendations to review existing policies and or procedures increased. This as a result of repeated complaints on certain issues being filed. Structural interventions in the administration appeared to be required to prevent recurring complaints. Most recommendations are issued as soon as the preliminary findings have been established (PFR-stage), and are in general agreed to by the government bodies.

Monitoring and follow up on recommendations issued has been a weakness in the first years of the Ombudsman Institution. With the introduction of an improved registration system in 2016, this aspect of the investigations can be better monitored. Notwithstanding some progress having been made in this area, obtaining timely status reports regarding the implementation of recommendations remains a bottleneck to be dealt with in 2017.

The statistics indicate that over the years most recommendations were directed to the Ministries of TEZVT, Justice, General Affairs and VROMI. Most recommendations were provided in the PFR stage and are agreed to by the Ministries. This could be an indication that the Ministries take the complaints and recommendations rather serious, and try to solve the problem in an early stage through the intervention of the Ombudsman. Full compliance with the recommendations and reporting regarding the implementation need however be improved. Recommendations are issued to improve efficiency and service to the public. Monitoring and evaluating the effects of same requires the input of the administration. Status updates on the implementation of long term recommendations, and the results of review or revision of policies, procedures or regulations should be communicated to the Ombudsman to complete the cycle of improving propriety within public administration.

V. An Overview per Ministry

Ministry of General Affairs

Though the tardy or non-responses to the inquiries from the Ombudsman remain a challenge throughout the public administration, the non-responses from the Ministry of General Affairs deserve special attention. The late and/or non-responses from this Ministry are evident throughout all stages of the investigations. Many letters go unanswered and (partial) responses to the queries from the Ombudsman are received after multiple reminders. This appeared to be mainly due to no system being in place to deal with investigations initiated by the Ombudsman, nor proper coordination within the Ministry.

Considering the support provided by General Affairs to all Ministries pursuant to article 13 of the *LIOL* (*'Landsverordenening Inrichting en Organisatie Landsoverheid'*), the Minister was requested to thoroughly review the daily operations of the Ministry with the Secretary General to coordinate efforts among the Ministries. Poor communication and cooperation among the departments within the Ministry, and with other Ministries, too often resulted in deficient compliance throughout Government with the Ombudsman. This has been in particular evident with regard to matters of personnel affairs and the distribution of documents both internally as to third parties upon request.

Ministry of Finance

The majority of complaints against the Ministry of Finance are related to and/or a result of:

- Lack of proper communication within the Tax Administration and (with) other departments/entities such as the Inspectorate, Receivers and SZV;
- Lack of clarity and information regarding invoices collected by the Receivers Office;
- Lack of communication between the Receivers as collection agency, and other departments such as Domain Affairs and Economic Affairs;
- Inadequate coordination between the Tax Administration/Receivers and the Civil Registry for address verification;
- Lack of a transparent procedure regarding application for “penshonado-status”.

Ministry of Justice

Akin to the Ministry of General Affairs, the Ministry of Justice has been dominant regarding non-responses to inquiries from the Ombudsman, notwithstanding having a liaison officer, charged with the coordination of investigations by the Ombudsman. The legal basis, organization and functioning of the Human Resource department within the Ministry of Justice is a major source of concern, considering article 13 of the *LIOL* and the many complaints filed by civil servants employed within this Ministry. The Ministry of Justice is the only Ministry which did not provide the Ombudsman the “*functie boeken*”, applicable to persons employed at the Ministry, as requested. Despite meetings with the different Ministers of Justice over the years, there is a repeated neglect by the Ministry regarding the mentioned issues.

Notwithstanding the various letters of concern (*‘Zorgbrieven’*), outlining the main bottlenecks within the Ministry, and research papers regarding procedures established by law but not properly followed, not much progress has been made.

The challenges within the Ministry, based on the complaints filed are in general terms:

- No clarity and/or compliance with the policy for housing/rent allowance for police officers;
- Lack of information on HR-policies, procedures and the legal basis; placement of staff, remunerations and transfers;
- Proper compliance with the complaint procedure of KPSM ; the right to be heard or properly informed are sometimes not observed;
- Clarity on the organizational structure and accountability of the Court of Guardianship (CoG) and other independent agencies such as SJIB (*‘Stichting Justitiële Inrichting Bovenwinden’*);
- Lack of transparency regarding enforcement of the laws and regulations governing the functioning of the CoG (such as child support).

Ministry of Education Culture Youth and Sports

The main bottlenecks observed within the Ministry of Education Culture Youth and Sports, based on the complaints filed were:

- Lack of clarity pertaining to the (draft) ordinance governing the granting of study financing; the discrepancy between a version of a Dutch and English draft should be cleared and ratified the soonest possible;
- The effect of the provisions stated in the National Ordinance regulating Secondary Education and the National Decree containing general orders for the implementation of articles 11, 21 and 29 in relation to the National Ordinance containing general orders for the Regulation of Compulsory Education, to safeguard the interest of students not having reached the age of 18 years, must be reviewed. 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.

The relation between Government and School boards has been thoroughly reviewed by the Ombudsman to establish authority to investigate grievances broad forward by the public against School boards. Considering the full subsidy provided by Government to School boards, authority to investigate such complaints has been established. The School boards have been invited to meetings to be held in the beginning of 2017 in order to be informed.

Ministry of Health Social Welfare and Labor

The Ministry has been exemplary over the years in responding to investigations initiated by the Ombudsman. While the response time decelerated as the investigations progressed, the efforts of the Ministry to respond timely to the inquiries of the Ombudsman deserves to be mentioned.

The main challenge within the Ministry of Health, Social Welfare and Labor, based on the complaints filed in 2016 pertains to the lack of information and transparency for recipients of social aid regarding requirements and calculations pertaining to social welfare and medical aid. As such the decisions are not properly motivated. The pertinent department agreed to address this matter structurally by including the calculation of the amounts awarded in the decision establishing the financial aid.

Ministry of Tourism Economic Affairs Traffic and Tele Communications (TEZVT)

Though the department of Economic Affairs has shown willingness to provide better service to the public, based on the complaints filed, the following bottlenecks within the Ministry proved to be major challenges:

- Responses/decisions from the Minister were not forth coming where it pertains to the issuing of Public Transportation and Business licenses.

This has resulted in an increase of concerns expressed at the Information Window and complaints against the Ministry. The absence of the Minister of TEZVT when a new government took office after the early elections held in September 2016 contributed even more to this factor;

- Lack of comprehensive action (inspection/enforcement) regarding noise pollution;
- No clarity with regard to the chain of command between the Inspection Department and the Motor Vehicle Inspection Center, a private company charged with the execution of a government task.

Ministry of Housing Spatial Affairs Environment and Infrastructure (VROMI)

Considering the nature of the complaints filed, the challenges within the Ministry are:

- Transparency in the issuance of land in long lease to citizens;
- Publishing of the Building Guidelines for the Ebenezer Estate;
- Rectification of the National Ordinance governing Cadaster in order to properly establish the functional responsibility and accountability of the Minister of VROMI for this Private entity with public authority, executing tasks of the Minister of VROMI provided for by article 9 of the *LIOL*;
- Lack of progress regarding various plans of action drafted for the neighborhoods;
- Decisive action pertaining to parking on the Boardwalk near the Walter Plantz square.

Conclusion

The core task of the Ombudsman is the investigation of propriety applied by government bodies and government agencies in their relationship and dealings with the public. The scope of propriety goes beyond the law; it reflects the norms expected from government in executing the laws, policies and established procedures. Government is expected to be; open and clear, respectful, involved and result oriented, honest and trustworthy. As such first and foremost it should be reiterated that stability of Government is a condition sine qua non for continuity and growth of our young nation. Considering the standards of proper conduct most violated in dealing with the affairs of the public, the ***adequate organization of services*** should be high on the agenda of all Ministries to properly and promptly respond to the needs of the people. Awareness and more consideration should be observed to the impact (non) actions by Government has on the lives of the people.

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. This includes organizing the administration in a manner that is lawful, effective, transparent, accessible, equipped to provide prompt service and information.

Continuity should be guaranteed; proper registration and archiving are essential to achieve and guarantee continuity in the administration. Basic requirements to guarantee proper service are: accessibility of a Department (by phone, electronically and physically), waiting time for the citizen to be attended to should be minimized, efficiency in providing service. Adequate provisions should be in place for among others: handling of incoming mail and responding to same, the registration systems should be accurate and up to date, privacy of documents and information, adequate supervision of operations, proper internal communication and cooperation, proper registration and handling of complaints filed by citizens.

VI. The Constitutional Court

The Constitution empowers the Constitutional Court to strike down a law on the basis of its being incompatible with the Constitution, either in substance or in form (because of constitutional flaws in the manner in which the law has been established). Although the Court can strike down a law, it is not necessarily bound to do so. Even so, the importance of this Institution in the Constitution of Sint Maarten has proven to be pivotal.

The lessons learned on the road to the Constitutional Court are many, but foremost:

- The importance of the Constitutional Court in the protection of the Constitution and the fundamental rights of the people;
- The importance of properly consulting the Council of Advice in the legislative process, including when vital amendments are proposed at the end of the procedure.

The public has a role to play in the checks and balance of the country. Though the Ombudsman is charged with guarding the Constitution and present a law for review to the Court, when there are indications that the law is in contravention of the Constitution, citizens should be vigilant, and discuss their concerns about new legislation at any time with the Ombudsman. Such legislation can at all times be considered for review, providing this is within the mandate and limitations provided by the Constitution. The willingness to take collective responsibility for matters of importance to our community, and do our homework in the interest of all, are also lessons learned.

In 2016 the Constitutional Court handled and decided in two cases.

1) National decree of 14 December 2015, LB 15/1110

After a request to the Ombudsman to challenge and present the publicly much debated National decree of 14 December 2015, LB 15/1110 to the Constitutional Court for cancellation, a concerned citizen directed herself to the Court with a petition that the Court order the

Government not to enforce the pertinent National decree, and to give effect to two earlier National decrees.

Considering that the National decree of 14 December 2015, LB 15/1110 announcing Government's decision to dissolve Parliament per 31 October 2016 and have elections on 26 September 2016 pursuant to article 59 of the Constitution, is not a decree pursuant to article 81 under g, h, i or j as provided for by article 127 section 2 of the Constitution of Sint Maarten, the Ombudsman advised the citizen, who requested to present the pertinent decree to the Constitutional Court for annulment, that the request could not be honored. This prompted the concerned citizen to address the Constitutional Court directly. As such on 6 January 2016 a petition was filed with the Court that the pertinent decree is in violation of article 89 of the Constitution and under the circumstances should not be given effect.

The Court ruled that it has no jurisdiction to entertain a petition seeking to challenge the constitutionality of a regular National decree; a decree not containing general measures.

The Court indicated that although the decree of 14 December 2015, LB 15/1110 is of a general character and the issue is of great general interest, it is not a National decree containing general measures within the meaning of section 81 (h) of the Constitution. These considerations underscore the advice of the Ombudsman provided to the citizen when consulted on this.

Furthermore the Court ruled that the petitioner has no standing to bring this case to the Court. Article 127 section 2 of the Constitution provides beyond doubt that a review matter can only be brought before the Constitutional Court through a written petition by the Ombudsman, and not an individual citizen.

From the inception of establishing the Institution, the Ombudsman advocates and encourages the public to be vigilant regarding new laws before Parliament and address all concerns timely with the Ombudsman in the role as Guardian of the Constitution. However, the road to the Constitutional Court is limited to regulations provided for by the Constitution and provisions which are in contravention of the Constitution. Beyond these limitations, the Ombudsman has no standing before the Constitutional Court.

2) National Ordinance of 21 August 2015 to establish the Integrity Chamber

The arguments

On 22 January 2016 a public Hearing was held in the Courthouse on Sint Maarten to hear arguments brought forward by both the Government and the Ombudsman regarding the National Ordinance of 21 August 2015 to establish the Integrity Chamber. Though at the end of the Hearing the date for decision making was established to be 31 March 2016, it took the Court several months thereafter to pronounce its verdict publicly in summary on 7 July 2016.

Though not the primary grievance, the most far-reaching complaint the Ombudsman brought against the legislation was that the Council of Advice had not been consulted about a substantial amendment of the law which had been introduced during the course of the Parliamentary debates.

The Ombudsman presented various substantive grievances against the National Ordinance Integrity Chamber, 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.

The main reason for the petition to the Constitutional Court revolved around *the lack of protection of the fundamental rights of the persons involved in an investigation*, whether it being a party of interest, witness, expert, service provider, whistleblower or the like.

The Ombudsman argued that laws do not serve themselves, but the law governs and needs to serve the people who are bound by it. Every report written on the integrity situation on Sint Maarten stressed the importance of an awareness campaign on the subject of integrity.

Ratifying a National Ordinance whereby everyone has the duty to cooperate with an integrity investigation - whether one is neither aware nor involved with the matter at hand -, without any recourse or possibility to be heard by an independent judge on the measures to be taken against you, was certainly not the intension of the many recommendations provided in the various integrity reports.

During the proceedings the Court correctly observed that the core of the matter regards the question whether administrative supervision/investigation by the Integrity Chamber infringes on essential guarantees for a fair procedure, including the right to defend oneself. Whereas the right to remain silent and the principle against self-incrimination are not observed in administrative law, questionable was how information provided under the obligation to cooperate with an investigation of the Chamber, and the threat to be fined or imprisoned, would be dealt with.

Acts of non-cooperation with an investigation by the Integrity Chamber could be prone to prosecution with enforcement of imprisonment provided for by article 32 section 1 of the pertinent National Ordinance. The Ombudsman concluded that without the right of persons involved to have the actions taken by the Integrity Chamber reviewed by a Court beforehand, should be deemed contrary to all principles of criminal law.

The Ombudsman indicated that while everyone, including the public figures (*'bestuurders'*) under investigation have the right to remain silent, and be protected against self-incrimination in a criminal case, third parties may suffer the consequences of an investigation, while the person under investigation may go free.

There is a thin line between information acquired in investigations through applied administrative supervision and criminal investigation of the same act. The rights of a person turned suspect after the case is turned over to the prosecuting agency could be compromised in the transition of the information. Leaving it up to the discretionary authority of the Chamber to decide, which information acquired under the duty of cooperation will be transferred to the Prosecutor, was contrary to the right to a fair trial guaranteed by the Constitution. The information acquired under the duty of cooperation should therefore be protected in the Ordinance. The Ombudsman emphasized that the law should be complete and transparent; the law should provide for the protection of the rights of the people.

The Decision

Declares the complaint of the Ombudsman concerning not consulting the Council of Advice on the introduction of the Amendment to the Law leading to the *Integrity Chamber Ordinance* well founded. *Strikes* down the *Integrity Chamber Ordinance* in its entirety.

Reasons: The Court ruled that nullification of the Ordinance was necessary and notes, that the Constitution highly values the role of the Council of Advice as well as its participation in the legislative process with a view to the necessary constitutional expertise and administrative thoughtfulness. The Council of Advice is important as it is aimed at increasing the quality of both legislation and the legislative process. The Council therefore needs to be fully involved in the legislative process. In deciding to strike down the law the Court also took into account the many substantive and, from a Constitutional perspective, essential flaws and serious ambiguities in the Ordinance.

The Court considered the complaints brought forward by the Ombudsman to be justified as the Amendment adapted in Parliament introduced substantial changes - both compared to the initial draft legislation commented on by the Council of Advice and to the draft that was eventually introduced in Parliament. The Court considered that in the course of the legislative process the balance between effectiveness, legal protection and supervision in the legal framework of this law has fundamentally changed to such an extent that it would have been incumbent upon the Government to formally re-consult the Council of Advice. This is particularly the case as the Ordinance sought to create an entirely novel institution – the Integrity Chamber – that cannot be compared to anything remotely similar within the Kingdom of the Netherlands.

The Court considered a mere nullification of the Ordinance on procedural grounds would not suffice, and therefore sought to formulate preconditions, pointing at parts of the Ordinance that are unclear, and made suggestions which may provide guidance with regard to the constitutional safeguards to be observed when drafting a new Ordinance.

The Court observed that both in light of article 5 (the right to privacy) and article 26 (the right to a fair trial) of the Constitution, and for reasons of effectiveness essential flaws and substantial ambiguities would need to be avoided in a new Ordinance. In drafting such legislation, it should be considered and clarified to what extent the Integrity Chamber's authority to hear persons under oath or penalty of a fine should be maintained, particularly (but not exclusively) with respect to the primary subject of the integrity investigation. Further consideration is also necessary concerning the issue of evidentiary privilege: how broad should such privileges be during, exclusively, the integrity investigation by the Chamber and to which persons should such privileges be extended?

Another issue the Court explored are the powers of the Integrity Chamber with respect to search of, and investigation in premises. The Court holds that these powers would need oversight and supervision by an institution, not necessarily the judiciary, with sufficient safeguards for independence and expertise.

The Court noted however, that the Commission of Supervision as created by the Ordinance under review could not serve as such an institution as its independence and expertise are not guaranteed by this law and it did not have the necessary powers properly to fulfil that role. More generally, the supervising body of the Integrity Chamber would need sufficient powers with respect to that Chamber.

VII. External Operational and Financial Audit

In line with the Strategic Plan 2011 – 2021 the Ombudsman identified the need to analyze the status of the organization against the Plan and vouch the organization against best practices. As such an Operational and a Financial audit were commissioned towards the end of 2016.

The Financial audit is to evaluate the efficiency and accuracy of the internal financial administration, as well as assess the budget of the Bureau in relation to its activities; the Operational Audit is intended to provide an independent evaluation of the operations of the Bureau related to its organizational goals and objectives. The focus and scope of the audit has been an assessment of the efficiency and effectiveness in meeting the legal requirements and organizational goals.

The extent to which the Bureau's activities are compliant with applicable legislation (*"Landsverordening Ombudsman, Landsverordening Constitutioneel Hof, Comptabiliteitslandsverordening"*), the Strategic Plan, internally established policies and procedures related to the tasks of the Ombudsman, has been reviewed. The (preliminary) findings and results of both audits are in summary incorporated in this Year Report.

The outcome of the assessments is expected to provide the Ombudsman sufficient time to follow up on the results and recommendations before the expiration of the term of the current Ombudsman in October 2017.

The Methodology used by the auditors to execute the assignment:

- Desk research based on gathered documentation considered relevant for the assignment;
- Interview key personnel;
- Review design of internal control structure;
- Test functioning of internal control structure with regards to complaint process; and
- Report findings.

During the conducted interviews the different process owners were asked to share their general opinion of the organization (design and functioning), what should be done to further develop/optimize the organization and which roadblocks (if any) they see that could prevent achieving this.

Operational assessment

The assessment started with an analysis of the Legal framework consisting of: the Constitution of Sint Maarten; National Ordinance Ombudsman (AB2010, GT no.20); National Ordinance Constitutional Court (AB2010 GT no. 29); *Comptabiliteitslandsverordening* (AB2010 GT no. 23); Labor agreements and National decrees of the employees; Internal Regulations (“*Huishoudelijk reglement/Handboek Ombudsman*” and Manual); Internal policies and procedures.

It was noted that even though the National Ordinance Ombudsman defines the legal status and tasks of the Ombudsman, this has not been translated to rules of procedures for the Ombudsman. The Ombudsman indicated that rules of procedures currently documented are the procedures designed by the Ombudsman and cover the relationship between the Ombudsman and the Bureau of the Ombudsman, as well as internal policies and regulations for the Bureau.

Scope Ombudsman

Based on the documentation reviewed it was concluded that there is room for (mis)interpretation with regards to the extent of the scope of the Ombudsman.

The Ombudsman indicated that the interpretation is based on article 1 of the National Ordinance Ombudsman and the “*Landsverordening Administratieve Rechtspraak* ” (LAR) article 2.

These articles define the scope of authority for investigation by the Ombudsman, however they do not define what should actually be considered administrative/statutory bodies (“*een bestuursorgaan*”).

Based on research it can be concluded that also internationally the scope of the Ombudsman is not always clearly defined. Does the Ombudsman cover complaints against only government? Also government agencies? Government subsidized foundations? Government owned entities? The auditors concluded that the uncertainty can be resolved by clearly defining the scope applicable for country Sint Maarten.

This is currently not well defined which can lead to misinterpretation. The auditors indicated that a presentation developed by the Ombudsman, can serve to outline the starting points on this matter and be the building blocks for the scope applicable for the Ombudsman Sint Maarten. The auditors recommend to further define the scope of the organization as interpreted by the Institute Ombudsman Sint Maarten where after it should be ratified by the different stakeholders.

The Complaint Process

In total the Ombudsman investigated 149 complaints during the period covered by the assignment; 20 files were selected and verified whether the internally established complaint procedure in place at the Ombudsman was complied with.

It was concluded that the internally established complaint procedure is generally being complied with. In addition, it has been noted that the procedures in place meet best practice standards.

Some recommendations provided to improve efficiency are:

- To document justification for deviation from stipulated timeline. If the timeline defined currently is not realistic, the norm should be adjusted;
- To update the procedures that if an investigation is correctly cancelled/completed during the process, the Complaint Officer can prepare a conclusion or NOT without having prepared a PFR.

It was established that follow up of recommendations is not done in accordance with the procedure. In the period of the assignment all recommendations were grouped and a complete list of recommendations is sent to the respective Ministry. It was stated that following up on the recommendations may prevent certain cases from repeating.

The Ombudsman reports that in the meantime an intern from the Netherlands has been engaged to assist with further assessment and follow up on the recommendations issued.

Financial assessment

Personnel versus Operating expense against total expenses of the Ombudsman has been established to be 70% vs. 30%.

Income Statement

- From 2015 the Ombudsman is only financed by the Government of Sint Maarten;
- 70% of the total expenses consist of payroll related expenses;

- The actual payroll expenses for the year 2015 are in line with the budgeted expenses for that year;
- The actual payroll expenses 2015 increased by 20% compared to 2014. This is due to the cost for a second Complaint Officer hired;
- The 2015 general expenses increased by 30% in comparison to 2014. This is mainly caused by an increase in ICT related expenses as well as advertising expenses.

The Ombudsman invested in improving the general public knowledge of the tasks and responsibilities of the Ombudsman by executing several advertising initiatives;

- Other Goods & Services are presented in line with the budget categories submitted to government and mainly consist of annual fee for the complaint management software, other ICT Professional services as well as printing services;
- As per correspondence with government the Ombudsman is not entitled to the unused portion of the budget. Any budget unused at year-end is therefore recorded as budget returned to government. Since the funds were not actually received during the year, this is an administrative adjustment.

Balance Sheet

Dutch GAAP requires income received for capital expenditures from grants/government contribution to be recorded as a liability and recognized as income gradually during the useful life of the tangible fixed assets. The movement of the deferred income between 2014 and 2015 is therefore equal to the depreciation expense recorded increased by fixed assets purchased during 2015.

Key Figures

- In both 2014 as well as 2015 approximately 25% of the Information Window (IW) Registry were further investigated by the Ombudsman;
- During 2015, the Ombudsman received 10% more Information Window visits in comparison to 2014;
- It was recommended to monitor the key figures periodically and set targets for the organization.

Some other important (preliminary) recommendations regarding the Financial findings are:

- To periodically follow-up on the status of the budget;
- To obtain confirmation from Parliament/Government that until the current year budget is approved, the budget of the previous year is valid;
- Preparing the Financial Statements in accordance with generally accepted accounting principles in the Netherlands;
- Organizing an annual meeting with the Minister of Finance during which the financial statements are formally presented and approved. Upon approval discharge should be obtained from the Minister.
- Further developing the periodic reporting (and to include key production figures).

Strategic Plan 2011-2021

The strategic goals, objectives and activities as identified in the Strategic Plan 2011 – 2021 were reviewed and discussed. A few items listed, but not yet having been implemented according to the Strategic Plan were identified. These concur with the annual end-of-year self-analysis of the Bureau. These items are subsequently included in the Performance Management agreement between the Ombudsman and the Bureau, signed by the Secretary General, and reflected in the individual ‘Performance Contracts’ with the staff. This method has proven to be a workable tool to further structure, develop and impact the operation of the Bureau to meet its objectives and better serve the public.

It was recommended by the auditors to further develop monitoring tools to be able to continuously monitor compliance to the ethics policy.

The Overall (preliminary) Main Findings of the Assessments are:

- a. Follow-up on the recommendations as a result of a complaint is not always done in a systematic/timely manner.
- b. The Ombudsman submits a Financial Report to Parliament and the Minister of Finance annually. This report is not prepared based on generally accepted accounting principles (GAAP)³. In addition, no feedback is received from government on the financial report.
- c. Financial management of Ombudsman is outsourced to government which creates a dependency on an outside party.
- d. The Ombudsman is not consistently consulted when budget amendments are applied by government.

VIII. Financial Reporting

The budget of the Ombudsman for 2016 amounted to NafL 1.543.550,00.

Through careful and responsible use of the budgeted funds and acquired resources, the Ombudsman continued to remain within the allotted annual budget. Just as in previous years, limited use was made of the budgeted post for professional fees (“*rechts- en deskundig advies*”), due to the available in-house expertise and international networking. Personnel costs continue to form a significant part of the Ombudsman’s budget. In 2016 personnel costs amounted to approximately 60% of the total budget. This trend is expected to continue in the coming years in order to maintain quality service to the public through in-house expertise.

³ Public Financial administration on Sint Maarten is governed by the ‘*Landsverordening Comptabliteit*’, which system is followed and applied by the Ombudsman.

In 2016 the Bureau invested in a vehicle for the Secretary General compatible to the duties of the function. The vehicle previously used by the Secretary General is maintained to be used by staff for site visits and general office duties. The funds for the purchase of the vehicle came from the capital expenditures account.

This was the first time that an investment was made to purchase a vehicle for the institution from the budget of country Sint Maarten. Previous office vehicles, purchased in 2011 and 2013 respectively, were financed through the IVB program (*“Institutionele Versterking Bestuurskracht Programma”*), which ended on 31 December 2014.

Based on the unaudited financial report for the year 2016 a total of Nafl. 1.416.942,98 was spent from the budget of Sint Maarten (see appendices 1 and 2), which is 92% of the available budget to the Ombudsman.

Expenditures in 2016	Amount:	2016 Budget
		1.543.550,00
Total Operational Expenses	1.367.361,98	
Total Assets acquired in 2016:	49.581,00	
Total Amount Allocated:		1.416.942,98
Not spent:		126.607,02

IX. Appendices

Appendix 1: Balance Sheet

Appendix 2: Financial Report

BALANCE SHEET PER DECEMBER 31 2016

Current Assets:

Money Card WIB	729.81	
Petty Cash Account WIB (new)	583.97	
Cash on Hand	78.60	
Petty Cash WIB Naf (old)	117.00	
Total Current Assets		1,509.38

Other Current Assets

Prepaid Expenses	30,600.00	
Total Current Assets		32,109.38

Office Furniture & Equipment:

ICT Equipment	247,933.86	
Acc.Depr'n to 31/12/2016	127,978.01	
Book Value:		119,955.85
Fotocopier	15,894.90	
Acc.Depr'n to 31/12/2016	10,172.72	
Book Value:		5,722.18
Office Furniture	44,936.00	
Acc.Depr'n to 31/12/2016	14,379.60	
Book Value:		30,556.40
Projector and Screen	2,034.20	
Acc.Depr'n to 31/12/2016	2,034.20	
Book Value:		-
Televisions	3,118.80	
Acc.Depr'n to 31/12/2016	3,118.80	
Book Value:		-
Total Office Furniture & Equipment		156,234.43

Other Fixed Assets:

Vehicles	133,210.00	
Acc.Depr'n to 31/12/2016	42,241.00	
Book Value:		90,969.00

Leasehold Improvements:

Archive Room	5,733.00	
Acc.Depr'n to 31/12/2016	969.90	
Book Value:		4,763.10
Server Room	8,910.00	
Acc.Depr'n to 31/12/2016	3,564.00	
Book Value:		5,346.00
Renovation Kitchen	8,736.00	
Acc.Depr'n to 31/12/2016	2,020.80	
Book Value:		6,715.20
Total Leasehold Improvements:		16,824.30
TOTAL ASSETS:		296,137.11

Current Liabilities:		
Accounts Payable	4,546.47	
Other Current Liabilities:		
Wage Tax Payable	14,600.14	
AOV.AWW Payable	8,618.55	
AVBZ Payable	2,088.15	
FZOG Payable	3,305.16	
Pension Payable	71,853.43	
Sickness Premium Payable	<u>2,102.60</u>	
Total Other Current Liabilities:	<u>102,568.03</u>	
Total Current Liabilities		107,114.50
Equity:		
Total Equity Account		<u>189,022.61</u>
Total Current Liabilities & Equity		<u><u>296,137.11</u></u>

Note: This report has not been audited.



APPENDIX 2

Income:

Operational Expense Budget: **1,454,250.00**

Actual Operational Expenses:

Personnel Costs:

Salaries & Wages Expense - Staff & Ombudsman	676,814.96	
Salaries & Wages Expense-Temporary Personell	9,957.57	
Vacation Allowances Expense	46,107.34	
Child Allowance Expense	4,865.00	
Other Allowances Expense	30,783.69	
Retroactive Payment Expense	2,722.75	
Employer's Pension Contribution Expense	70,732.03	
Employer's AOV.AWW Contribution Expense	28,972.13	
Employer's AVBZ Contribution Expense	3,540.21	
Total Personnel Costs:		874,495.68

Other Operational Expenses:

Rent Expense	133,587.36	
Legal & Other Professional Fees Expense	21,010.50	
Electricity Expense	9,382.38	
Water Expense	1,150.48	
Telephone Expense	20,752.35	
Office Supplies Expense	10,759.81	
Kitchen Supplies Expense	3,431.36	
Cleaning Supplies Expense	2,297.41	
Training & Courses Expense	13,283.27	
Travel & Accommodation Expense	53,191.82	
Repairs and Maintenance Expense-Hardware	61,449.30	
Advertisement Expense	18,763.80	
Books and Subscription Expense	270.00	
Insurance Expense-Vehicles	3,572.31	
Insurance Expense- Off.Furniture & Equipment	1,388.59	
Other Goods and Services	60,502.82	
CAROA & Other Conferences Expense	18,252.00	
Postage Expense	214.55	
Representation Expense	851.13	
Miscellaneous Expense-Bank Costs	264.00	
Literature & Subscription Fees Expense	3,845.28	
Motor vehicle tax expense	506.25	
Gasoline Expense	2,902.60	
Maintenance Vehicle Expense	1,004.05	
Total Other Operational Expenses:		442,633.42
Total Personnel and Other Operational Expenses		1,317,129.10
NET SURPLUS, before Depreciation Expense		137,120.90

Depreciation Expense:

Depreciation Expense	50,232.87
NET SURPLUS:	86,888.03

Note 1. This report has not been audited.

Note 2:

2016 Operational Budget	1,454,250.00
2016 Budget capital Investments	<u>89,300.00</u>
Total Budget	<u>1,543,550.00</u>

Total Budget Capital Investments	89,300.00
Total Capital Investments	<u>49,581.00</u>
Surplus	<u>39,719.00</u>



OMBUDSMAN

SINT MAARTEN

“Excellence is not a destination; it is a continuous journey that never ends”

- Brian Tracy -