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FINAL REPORT

(Article 21 sub 1 National Ordinance Ombudsman)

Systemic Investigation Rental Tribunal

Date investigation initiated: 25 January 2018

Complaint no.: 2018/00036

Rental Tribunal (Rent Committee)

Summary of Concerns:

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

Considering that:

- The shortage of housing post-hurricane Irma and increased demand for assistance from the Rent Tribunal;
- No clarity and transparency having been provided to the Ombudsman regarding the allocation of short term emergency housing, assistance with building material and or repair, or rebuilding of existing housing damaged by the storms;
- Government's announcement that it will seek to act swiftly and accelerate the restoration of the social and economic infrastructure using the NRP as a roadmap for sustainable recovery, while no attention is directed to the main entity charged by law/National Ordinance Rent to deal with rent (*Landsverordening huur, AB 2014, no 8*);
- The jurisdiction of the Rent Tribunal regarding pricing of housing to a maximum of Nafl. 200.000, constituting the importance of the agency for middle to low income housing;

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- The services of the Rent Tribunal being free compared to addressing the Court regarding establishing rental prices and termination of rent, and more so the Court being an instance of appeal pursuant to article 246 National Ordinance Rent;
- Fair play requires that administrative bodies and civil servants provide the citizen the opportunity to properly utilize procedural opportunities provided for by law and otherwise.

The Ombudsman resolved to conduct a systemic investigation regarding:

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

Conclusion:

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

The main question for consideration is:

- Is the Rental Tribunal (RT) as presently established sufficiently and consistently able to effectively execute its task pursuant to the National Ordinance Rent.

Considering:

(all articles and paragraphs cited, refer to the National Ordinance Rent)

- That by National Decree a Committee is appointed (Article 253), tasked with the adjudication of disputes between tenant and landlord (i.e. rental prices and evictions: paragraph 2 and 3);



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- That the RT is provided with an annual budget for office operations (article 273), and the Committee members are compensated for their activities (article 256);
- That based on numerous correspondence from the RT addressed to the Prime Minister, the RT has expressed their need for additional (financial) resources in order to execute their duties pursuant to the law, as well as the importance of an increase in compensation for the Committee members;
- That until the start of this systemic investigation and follow up Hearing organized by the Ombudsman between the parties, the requests for additional resources and an increase of monetary compensation for the Committee members remain unresolved;
- That despite a Hearing having been convened on 20 September 2018 between representatives of the Prime Minister and the RT at the Bureau of the Ombudsman, during which clear resolutions were arrived at (see Synopsis Minutes Meeting/Hearing and “Investigation” stated above), to date of this Final Report no concrete decisions, short or long term, have been taken by government/the Council of Ministers to remedy the identified impediments of the RT, which hamper the proper functioning of the organization.

Conclusion

Though the systemic investigation assisted in bringing the serious challenges of the RT to adequately execute its task to the forefront, and understanding reached with steps to address and alleviate the most pressing matters on short term, the Ombudsman observes that this has not yet resulted in tangible decisions from the Council of Ministers and improvement of the critical situation.

The Ombudsman took note of the follow up by the RT pursuant to the resolutions taken at the Hearing of 20 September 2018, including a draft Rental Tribunal Process Handbook which will provide transparency regarding the organizational structure of the RT, its responsibilities and supporting services offered to the public, as well as the procedures to file a petition with the RT, the outcome of the procedure and subsequent options and rights of the persons involved. A meeting with the Secretariat of the Joined Court of Justice is an important step in the practical execution of its tasks.



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The Ombudsman recognizes that the revised structure, including the increase in staffing and the upgraded remuneration, needs to be established by National Decree. An increase of the budget requires prompt decision-making from the Council of Ministers upon the advice of the Minister of General Affairs.

With no comments from the RT and government regarding the findings established in the Preliminary Findings Report dated 27 August 2018 and the Synopsis of the Hearing of 20 September 2018, the content of same is considered factual, and forms the basis for the judgement.

Considering the facts and findings the Ombudsman concludes that the impediments experienced by the RT contravene the standards of propriety *Fairplay, Promptness, Adequate organization of Services and Cooperation*, further outlined below.

Judgement:

Devoid of adequate resources, the Rental Tribunal (RT) is not sufficiently and consistently able to effectively execute its task optimally pursuant to the National Ordinance Rent ("*Landsverordening huur*", AB 2014, no. 8).

The Ombudsman recommends as follows:

Recommendations

- 1) Government should establish the proposed and subsequently approved organizational structure of the RT, including realistic remunerations by National Decree;
- 2) The RT along with government should establish an annual budget, which includes all resources necessary that will allow the RT to effectively and efficiently execute its task pursuant to the law;
- 3) The Minister of General Affairs should promptly take the resolutions of the Hearing held on 20 September 2018 at the Bureau of the Ombudsman and subsequent follow up from the RT, to the Council of Ministers for decision-making;



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- 4) The RT should actively engage various stakeholders, including government, to discuss the identified changes, proposed based on their experiences and practical circumstances, to the National Ordinance Rent;
 - 5) The RT should continue periodical dialogue with the Joint Court of Justice to ensure that the relevant procedural matters between the two institutions remain in sync;
 - 6) The RT should formally establish and implement the draft Rent Tribunal Process Handbook, as well as a standardized form to facilitate the intake and outline of information pertaining to a Hearing.
- o I agree with the recommendation(s)
- o I do not agree with the recommendation(s) (please explain by submitting a written reaction no later than **5 December 2019**).

The Ombudsman requests a status report on the recommendation(s) within three (3) months from the date of this letter however no later than **15 March 2019**.

Elucidation

Investigation

25 January 2018: A Notification of Systemic Investigation (NOSI) was sent to the Rent Tribunal (RT) with a request to respond to the questions posed no later than 9 March 2018. A copy was sent to the Minister of General Affairs/Prime Minister and the Secretary General. (The RT was requested to enclose all information and documents relevant to this investigation).

13 April 2018: After numerous reminders and applications to the RT to respond to the NOSI, the following response, including appendices, was received:

- 1. Provide the Ombudsman an overview of the present compilation of the members and substitute members of the Rent Tribunal (include copy of Decrees).**

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Overview of present compilation of R.T. members and substitute members

Drs Errol Larmonie Acting Chairman

Ingrid Gumbs Member

Edward Jacobs Member

Catherine Conner Acting Member

Leyton James Secretary

Efforts are being made to bring the Rent Board Committee membership up to full strength, by having the active Vice Chairman made full Chairman and to appoint an Acting Chairman, Act. Secretary, Office Manager and a messenger to take care of the daily mail distribution and security duties during the hearings.

2. What is the amount provided to the members of the Rent Tribunal and Secretary pursuant to article 256 National Ordinance Rent?

Amount provided to the members of R.T. members and Secretary (Art 256)

- *determining highest permissible rent: Nafl 30. per participating member*
- *decisions (beschikking) per hearing: Nafl 40. per participating member*
- *meetings: Nafl 40. per participating member*

3. What is the yearly budget of the Rent Tribunal in order to execute its task adequately pursuant to article 273 National Ordinance Rent?

Yearly budget of the R.T. to execute tasks adequately (Art 273)

Budget: Nafl 25.000,00 (integrated in VROMI Budget).

Contact person: Alvin Bryan

4. Are the provisions stipulated by law regarding the handling of the written requests submitted to the Rent Tribunal ('Afdeling 5; paragraaf 4) further outlined in a Rule of Order ? If yes, provide a copy of same.



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Provisions stipulated regarding handling of written requests (Afd 4 §4) further outlined in rule of order?

Provisions are not stipulated in a separate Rule of Order. Article 257 sufficiently prescribes that cases can only be submitted in writing (sub 1). Conform sub 2, the Secretary never fails to be consistent in explaining or giving instructions about the prescribed format and procedures. The interaction that takes place at this stage allows for a preliminary assessment, and additional information where such is required or requested.

5. Which impediments are being experienced by the Rent Tribunal, if any, to properly execute its task pursuant to the law, including article 265 National Ordinance Rent. (Please elaborate)?

Impediments experienced by R.T. to properly execute tasks pursuant the law (incl Art 265).

Article 265 allows for conducting research or consulting with relevant expertise in preparation of a hearing or in connection with a decision to be taken.

In my tenure with the Rent Board I recall a limited number of times that this actually happened, of which the most noticeable:

- consulting with the leading appraisers about the key parameters of assessing market value of properties/dwellings,*
- consulting with the White & Yellow Cross (St. Maarten Home) pertaining to a request that was submitted on behalf of one of their inpatients (determining the state of mind and command of faculties),*
- consulting with GEBE about their policy pertaining to the use of private meters not supplied by GEBE.*

Where concerns impediments to properly execute our tasks we can point out the predominance of a dysfunctional policy regarding the regulation of our operational budget, which over the years has forced us into a survival mode despite numerous attempts to have this matter rectified following issues:

- a. remuneration of our work needs to be adjusted retroactively (see attached letter Rent Board to Min Pres March 16 2017),*



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- b. *the nature of our work requires a lot of reproduction and every time when the machine runs out of toner we have to wait for weeks to get replacements due to the inability to commission payment of suppliers; in order to safeguard continuity the Acting Chairman was forced to make use of his private printer for which he has never been able to be compensated,*
- c. *The Secretary is heavily underpaid (salary needs to be adjusted from Nafl 500 p/m for half-days to Nafl 3.000,00 p/m)*
- d. *The Secretary is overloaded with cases which makes it extremely difficult to perform the daily administrative duties, which in turn repeatedly causes him to sacrifice his weekends to catch up on his paper work*
- e. *our lack of budget does not allow for a vacancy to appoint an office manager (this level of functioning is required for the complexity of the workload, and the absolute ability to function independently),*
- f. *viewings are limited to an absolute bare minimum, because the Rent Board does not have its own vehicle; the absence of a functional budgeted (sic) does not provide for the risk of damage to private vehicles,*
- g. *when the Secretary is overwhelmed with an influx of cases some of the members need to give assistance for which they are not being remunerated,*

We suggest regulation in the following areas in consideration for improvement:

a. Reclaiming Security Deposit:

The N.R.O. acknowledges the practice of collecting a Security Deposit. There is a grave void in the absence of regulation. Reason why there is a standard practice of abuse in claiming and reclaiming Security Deposits. R.T. does not have the authority to deal with such matters. Such cases are referred to the Courts. Ideally there should be an agency where Security Deposits should be placed in Escrow.

b. Reclaiming Outstanding Rent:

Such cases are referred to the Courts. There is a blatant practice of abuse by tenants, of whom the termination of rental agreement has been approved due to excessive outstanding rent and refusal to pay rent. With simple amendment to the N.R.O.



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landlords as well as tenants will obtain clarity and given the right legal tools to reclaiming of outstanding rent.

c. Use of Utilities:

On face value it is our experience that 80 to 90% of conflicts that escalate into a point of no return stem from abusive actions by landlord as well as tenants.

For lack of regulation pertaining to installation of adequate water and light meters, rental contracts tend to include light and water, while the main meters remain in the name of the landlord. This causes a dilemma situation where one tenant will resort to over-usage (running electrical appliances like e.g. airco and ventilation fans 24 hours per day, and frequent use of washing machines), causing the other tenant with limited usage to become liable for the costs.

Landlords also resort to the abusive tactic of cutting off the supply of light and water as a means to force undesired tenants to vacate the premises.

d. Determining value of limited enjoyment (beperking huurgenot wegens gebrek):

The N.R.O. acknowledges the tenant's right to a reduction of the rent due to a limitation of enjoyment which is attributable to or which falls within the responsibility of the landlord to correct. There is no explicit regulation (read: rate-scale of deduction) in the N.R.O. that indicates fairness and reasonability. The R.T. is not authorized to determine the rate of deduction. Such matter is referred to the Courts.

e. Adjustment of highest market value for determining rent:

There is hardly any property or building that falls under the prescribed highest market value of Nafl 200.000 that allows the R.T. to conduct its task of determining rent. It is our contention that this highest market value should be adjusted to a more realistic range of Nafl 550.000 to Nafl 750.000, with consideration that we are here referring to Guilder currency which converts Nafl200.000 to US\$112,410.10.

6. What actions have been taken by the Rent Tribunal to ensure full and proper service to the public in executing its task pursuant to the law, in particular in the wake of hurricane Irma and following?



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Actions taken by R.T. to ensure full and proper service pursuant the law, in particular in wake of Hurricane Irma and following.

The office of the R.T. also suffered leakage due to roof damage, no light, no water, no telephone, and no internet. Only being able to resume operations in November 2018, members had to increase their assistance to help with processing the enormous influx of cases (no compensation).

The R.T. has also drastically increased its number of hearings, and reduced the processing time for issuing the decisions (beschikkingen) from 5 to the most 10 working days, a major improvement in comparison to 30 to 40 days (lengthy processing time due to the nature of the daily workload).

7. What actions and or conditions are required for the Rent Tribunal to function adequately in serving the public?

Actions/conditions required for R.T. to function adequately

We will come a long way if all the concerns under point 5 and 6 are addressed and resolved.

There are some areas that we were working on, but had to be put on hold due to the workload: a. a standard request form instead of a free-styled letter of request

b. a standard form to facilitate the intake and elucidation of information pertinent to the hearing. c. a digital database of handled cases, their nature, hearings, decisions, etc.

8. How is the public informed about the services available, the requirements and the procedures to be followed in filing a request with the Rent Tribunal, as well as the accessibility to the public?

Informing the public about the services available, requirements, procedures in filling requests, as well as accessibility.

The first line of information is direct. More and more tenants and landlords find their way to the office to be informed about their rights. We take ample time to give as much information as necessary.



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We have discussed the matter in meetings, and are in favor to produce some brochures or leaflets. This however needs to be put on hold because of absence of an operational budget. The influx of cases is consuming the available time of the members and there is no budget to have it outsourced. There is a first draft of an informational article for the news paper which should be published within short.

9. Considering complaints filed with the Ombudsman: How are persons filing a petition/presenting a letter to the Rent Board assisted to make same compatible pursuant to the law (article 257)?

Considering complaints filed with Ombudsman: How are persons filing a petition /presenting a letter to the R.B. assisted to make same compatible pursuant to the law (art 257).

As far as we are informed, the few complaints filed with the Ombudsman resort from tenants who do not do not agree (sic) with or flatly resent the notion that requests for termination of the rental agreement can only be processed if such request is submitted by the landlord. Careful review of the National Rent Ordinance of 2014 does not give the Rent Board the authority of arbitration. Where it concerns written requests for termination of rental agreements the R.B. is to summons parties for a formal Tribunal Hearing. As stated in our previous correspondence of November 21, 2017, these requests are processed as follows:

- 1. a request for termination or determining the rent is submitted in writing by one party,*
- 2. the other party is contacted by the Secretary to get additional understanding of the case,*
- 3. both relevant parties are summonsed for a hearing,*
- 4. the rent committee takes a decision after hearing both parties and after conducting personal viewing of the rented premises in question (when or if objective validation is required),*
- 5. both parties are duly informed of their right to appeal the decision of the rent committee, as well as within what time-frame and where,*
- 6. parties are duly notified of the decision.*



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It frequently occurs that tenants seek information about their legal position as tenant, mostly because they had an unpleasant confrontation with their landlord (or another tenant) or because have been given notice to vacate the rented premises by their landlord. Tenants are consequently threatened or harassed to “leave, or else...” by the landlord, very often on the landlord’s own unlawful account (read: without following procedures as prescribed in the Civil Code). In the process the landlord resorts to intimidation tactics such as cutting off usage of water and electricity (if you will utilities), or barring the tenant from entrance to the rented premises. This is not an incidental matter but a practice that tends to be used by landlords.

In cases such as these the standard procedure is to get in contact with the landlord to inform him/her of the proper procedure to follow and try to appeal to reasonable thinking. We do not have the authority to act against landlords (read: command/instruct) pertaining to the cutting off of utilities, and barring tenants form entry; this tantamount to illegal eviction. Considering the last, we can only advise the tenant to file a complaint at the Police Department against illegal eviction, who does have the authority to act in this particular matter.

In the event a landlord has issued an eviction notice without going through the proper procedure of submitting a request to the Rent Board in writing, we advise the tenant that regardless of the validity of the landlord’s decision to terminate the rental agreement, they are not compelled to vacate the premises until the case is heard in a formal hearing and decided upon by the R.T.

We are aware that tenants who did not get what they wanted or expected to hear, got frustrated and angered at the limitations of our authority which is perceived as our biased unwillingness to resolve their problem and seek to get their way by the Minister and even the Ombudsman. They may be more familiar with or accustomed to “the way things are done” in their home-country (notably Holland, Jamaica, Republic of Sto. Domingo, in some cases the U.S.A., and from some of the Islands of the British Commonwealth) and have shown not to comprehend or refuse to accept the rental laws of St. Maarten.

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It is also our common experience that tenants as well as landlords tend to tell only their side of the story, resorting to half-truth, extreme selective perception of the problem, highly questionable if not absence of reasoning, and an overtone of emotions.

As much as this is humanly understandable, it does not mean that the associated actions bear any reflection of what is right or permissible in the rental laws as handed down by Parliament.

10. Is there a timeline in handling requests filed with the Rent Tribunal? If yes, describe the timeline from intake of the request to a decision taken by the Committee?

Timeline in handling requests filed with R.T. from Intake to Decision.

The timeline in handling requests for termination of the rental agreement, or determining the highest permissible rent hinges on the information submitted by the requestor!

Requests for termination tend to be placed on the docket of the first next available hearing. If it pertains to a matter of emergency (e.g. the owner is living abroad and is bound to a flight itinerary, or an unconditional summons by health or housing inspectors to vacate the premises, and at times where there is a high risk of veritable danger), we allow for an earlier processing.

We often get and accommodate requests from cases where both parties are represented by lawyers to have a separate hearing on a date and time of their accord.

Requests for determining the highest permissible rent require a viewing to attain an objective assessment of property in question.

In the past the Secretary has strived to prepare for at least 1 hearing per month, averaging 15 to 20 cases from 9.00 A.M to 14.00 P.M., which would allow cases to be handled within 3 to 4 weeks after intake, and decisions to be conveyed 2 to 3 weeks after the hearing. Time allotment is set at a highly variable per-case-average of 30 minutes. Due to having experienced that tenants do not show up for the hearing, or request postponement at the last minute, two cases are scheduled per time allotment in order to optimize the effective usage of time.

When tenants do not show up we are obliged to summons a 2nd hearing. This will cause delay in processing and frustration with landlords. When tenants do not show up attempts



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are made to contact them to understand the reason, which turns out to range from non-permission from employer for leave of absence, having “forgotten”, to flat-out refusal to appear. For a 2nd summonsed hearing we proceed with or without their presence. If the landlord does not appear for the 1st or 2nd summons the case is closed and the landlord will have to re-submit.

In 2016 operations have been severely disrupted by notices that the R.B. office was to be relocated, consequently interrupted internet connection, interrupted telephone connection, austerity measures that lead the supplier for copy machine toner to refuse delivery due to non-payment of outstanding bills, and our office manager who was on loan being transferred to another department, and illness of the Secretary.

This caused an enormous backlog. In 2017 the number of hearings was doubled to 2x monthly while we had months that 3 hearings per month was not uncommon. With members of the Rent Board volunteering their time to assist in handling the workload, the backlog was gradually undone, however in the aftermath of the destruction of the Hurricanes Irma and Maria, the number of requests exploded because of house-owners/landlords looking to seek eviction of tenants in order to replace or repair destruction or damage to their property.

11. How are decisions taken by the Committee in general conveyed to the petitioner and or parties involved, to ensure timely utilization of the appeal possibility provided for by law pursuant article 246 sub 1 National Ordinance Rent ?

How are decisions taken by R.T. in general conveyed to petitioner and parties involved, to ensure timely utilization of the appeal possibility (Art 246 sub 1)

The formal procedure, namely registered mail or delivery by marshal has proven to be impossible to work with. We have been successful in calling parties by telephone and requesting them to collect the summons at the office, and stressing the importance for them to appear before the Rental Tribunal.

At the closure of every hearing the Chair verbatim advises parties of their right to appeal, the term within which, and the proper instance where such is to be submitted. Parties are also informed by when to expect to be called to collect the decision, which by the way has been narrowed down to 1 week to the absolute most of 10 days. The decision is

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accompanied by a cover letter, which indicated the date of the hearing and again advises the party of their right to appeal and the relevant procedure and instance of appeal.

12. How is the response of the public in general towards the Rent Tribunal?

Response of the public in general towards the R.T.

The gross number of people that come to the office for information are very thankful and appreciative for the unbiased and candid information that is given to them. Whenever it pertains to a matter that warrants follow up, we always inform the visiting party that we may be contacting the other party to hear their side of the story. As stated earlier, this allows for a more balanced assessment of the core of the problem when such is required. Especially during the Hearing we assure as much as possible to give parties ample time to present their case, and are given fair opportunity for additional information or rebuttal of statements.

This general response does not include the very limited number of cases where one of the parties is in absolute denial of the negative causality of their actions, cases of utter disrespect, and the highly tense cases of contention and aggression.

Before closing the hearing, parties are always advised and assured of their right to appeal if for any reason any of parties do not agree with our decision.

13. Are statistics available with regard to the amount of decisions provided by the Rent Tribunal versus appeals, and the outcome of same? If yes, you are requested to provide the pertinent information of the past three years to the Ombudsman.

Statistics available for decisions vs appeals and outcome over past 3 years.

As indicated earlier, we advise parties to exercise their right to appeal if they perceive reasons to do so. We see this as a welcome yardstick of the correctness, fairness, and reasonability of our decisions.

Exact statistics about our decisions elude us, because we rely on the appellant to inform us of the judge's verdict on our appealed decisions, as the Courts do not as a rule inform us of such.



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It is safe to say that the overwhelming majority of our decisions is upheld.

R.T. decisions have been overturned; not so much based on the correctness of our decision, but based on the judge not considering the R.T. as the competent authority to decide in the matter at hand.

The following documents were attached to the response:

1. L.B. 15-0560 van 28 augustus 2015, houdende benoeming leden H.C.
2. Besluit Nr 1598 van 24 augustus 1995, houdende vergoeding leden H.C.
3. Adviesdossier aan Min. A.Z., betreffende verhoging schadeloosstelling leden H.C.
4. Adviesdossier aan Min. A.Z., betreffende verhoging vergoeding Secretaris H.C.
5. Letter of Mar 16 2017 to Min Pres from Sec. R.T. ref: numerous points for attention
6. Letter of Aug 15 2017 from Secretary Min Pres to Act. Chairman R.T. ref. cancellation of planned appointment

4 June 2018: As a follow up to the responses provided, the Ombudsman requested additional information to allow a proper evaluation of the situation under which the Rent Tribunal is operating. The RT was requested to provide the Ombudsman the additional information no later than 29 June 2018. A copy of the document was sent to both the Prime Minister and the Secretary General of the Ministry of General Affairs.

- *General*

It was stated that efforts are being made to bring the Rent Board Committee/Rent Tribunal membership up to full strength, as well as the appointment of an Acting Secretary, Office Manager and Messenger to take care of the daily mail distribution and security duties during the hearings.

1. Considering the importance of the Rent Tribunal (RT) regarding rent regulations of dwelling spaces, as well as the Decree regulating the remuneration of members of the RT dated 24 August 1996 (nr. 1598), the impediments mentioned in your response letter, and the letters to the government in 2016 and 2017, you are requested to inform the Ombudsman about actual actions taken by the government to hear and equip the RT adequately to execute its task according to the National Rent Ordinance of 9 January 2014/AB 2014, no.8 ('*Landsverordening huur*').



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2. Does the RT receive any financial assistance or subsidy other than from the government budget?

- *The yearly budget*

Considering the task of the RT pursuant to the law, the yearly operational budget and the structural deficiencies as a result of financial constraints indicated in your response to the systemic investigation, you are requested to elaborate on the 'survival mode' mentioned.

3. How does the RT compensate for the financial shortcomings in order to still properly serve the public, meet the required legal requirements and standards of good governance/propriety that is expected from government bodies?
4. How is the operational budget accessed? Has this system been adequate for the intent and purposes of the operations?
5. What are the effects and consequences of operating from a 'survival mode' on the output of the RT? (You are requested to categorize these in relation to the budgetary constraints).
6. What would be a fair budgetary amount to adequately, efficiently and effectively execute the task of the RT pursuant to the law? Provide a summarized budget.

- *The daily operations*

7. While there is no Rule of Order further outlining the procedures before the RT, is there a policy available to the public (or in the making) describing the procedures and timeline adapted by the RT in handling petitions? (Explain)
8. Does the RT consider a timeline/steps of approach to produce and implement a standard form to file a petition with the RT and other standard forms to facilitate the intake and elucidation of information pertaining to the hearing, a public information campaign, as well as introducing a Documents Management System (DMS) to register and follow up on cases? If yes, outline same.
9. Is the adjusted approach in handling the enormous influx of cases post-Hurricane Irma bearing fruits? (Explain)
10. What is immediately required for the RT to optimize its operations and service to the public pursuant to the law?



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- *Legal requirements*

11. Were the desired amendments to the National Rent Ordinance, and/or the need for additional regulations mentioned in your responses, brought to the attention of government and/or Parliament, and/or discussed with others such as the members of the Bar association and the Court?

If yes; what is government's position on this?

If no; why were the pertinent amendments not further discussed?

12. Why has the formal procedure to convey decisions taken by the RT proven to be impossible? What are the consequences of not adhering to the formalities pursuant to the law?

(A request to enclose all additional information and documents relevant to this investigation was made).

The Chairman of the RT was furthermore informed that information with regard to, in particular, the impediments of the Rent Tribunal to optimally serve the public would be sought from the Government (the Minister of General Affairs/Prime Minister) to compliment the answers provided.

By letter dated **4 June 2018** a copy of the responses provided by the Acting Chairman of the RT was forwarded to the Honorable Prime Minister and Secretary General, with a request to provide clarification by answering the following questions. (A copy of this document was sent to the RT)

- **General**

The Acting Chairman of the Rent Tribunal (RT) indicated that efforts are being made to bring the Rent Board Committee/Rent Tribunal membership up to full strength, as well as the appointment of an Acting Secretary, Office Manager and Messenger to take care of the daily mail distribution and security duties during the hearings.

1. Is government sufficiently aware of the legal implications of the Rent Tribunal for the community of Sint Maarten, the impediments brought forward by the RT and the consequences of not being able to function optimally?



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2. Considering the importance of the Rent Tribunal (RT) regarding rent regulations of dwelling spaces, the (now National) Decree regulating the remuneration of members of the RT dated 24 August 1996 (nr. 1598), and the letters to the government from the RT in 2016 and 2017, you are requested to inform the Ombudsman about actual actions taken by the government or to be taken soonest to equip the RT adequately to execute its task according to the National Rent Ordinance of 9 January 2014/AB 2014, no.8 (*'Landsverordening huur'*), in particular considering the increase of petitions to the RT in the wake of the hurricanes of September 2017.

- **The yearly budget**

Considering the task of the RT pursuant to the law, the yearly operational budget and the structural deficiencies as a result of financial constraints indicated by the RT, you are requested to inform the Ombudsman regarding the following.

3. How is the operational budget for the RT established; has the government assessed whether the budget available to the RT is adequate for the intent and purposes of the operations?

- **The daily operations**

4. How does government intend to address the immediate requirements of the RT to optimize its operations and service to the public?

(The Prime Minister was requested to enclose all additional information and documents relevant to this investigation).

By email of **5 July 2018** the Prime Minister requested the Ombudsman the opportunity until 30 July 2018 to invite the Rent Committee to a meeting to understand their situation/challenges. An extension was granted.

On **9 August 2018** an additional extension until 23 August 2018 was granted for a response to the questions posed to the Prime Minister after the deadline for the response passed without any notification.



OMBUDSMAN

SINT MAARTEN

17 August 2018: An editorial published in the Daily Herald, titled '*Restore some order*', requested the attention from government post-Hurricane Irma to address the longstanding issues of the Rent Committee and help restore some much-needed order when it comes to renting living accommodations, in the interest of both landlords and tenants. The editorial summarized the many challenges faced by the RT over the years and made reference to the systemic investigation initiated by the Ombudsman.

Notwithstanding the extensions provided, both the Prime Minister and the Chairman of the Rent Tribunal failed to respond to the follow up questions posed by the Ombudsman.

On **20 September 2018 a Hearing** was held in the presence of representatives of both parties as no follow up information was provided to the Ombudsman, notwithstanding extension to do so was granted.

At the start of the Hearing, the Ombudsman outlined the importance of the RT for the community, and emphasized the importance of the institution, as well as the the need for the Hearing in the absence of follow up by both the Minister of General Affairs/Prime Minister and the RT to queries from the Ombudsman. Representatives of the Prime Minister's office indicated that following a meeting between the Prime Minister and the Rent Tribunal on September 12, 2018, a subsequent meeting with the Rent Tribunal was held with members of the Prime Ministers cabinet on September 17, 2018. In the last mentioned meeting the RT presented their preliminary budget which is already being considered by the Council of Ministers in the ongoing discussions regarding the Budgets 2018 (amended) and 2019.

Resolutions derived at during the Hearing:

- I. The Rent Tribunal, with support of the Secretary General AZ and the Prime Minister's cabinet, will present the proposed new structure with the accompanying budget to government no later than **12 October, 2018**, with a copy to the Ombudsman.
- II. Government will provide a formal response to the RT's structure and budget no later than **19 October, 2018** with a copy to the Ombudsman.
- III. The new (revised) structure of the Rental Tribunal must be formalized by national decree ('*landsbesluit ham*').



OMBUDSMAN

SINT MAARTEN

- IV. The Rent Tribunal will provide the Ombudsman with a copy of the correspondence(s) to the Joint Court regarding the executions of evictions (*'executie van ontruiming'*). The RT will also provide the Ombudsman with the minutes/ resolutions of the scheduled meeting with the Joint Court of Appeal on 26 September, 2018 concerning the aforementioned subject matter as well as: *'wijze van betekening'*, small claims court etc. Documents (*'beslispunten'* including underlying documents) will be provided to the Ombudsman no later than **5 October, 2018**.
- V. Considering that SG-AZ has indicated that there are remaining funds on the budget, the RT will present no later than **27 September, 2018** an actual list of eminent issues that should be addressed immediately. Government will formally respond by **4 October, 2018**, explaining exactly how the funds will be accessed, with a copy to the Ombudsman.
- VI. The Ombudsman encouraged the RT to look into the possibility of securing funds via the Trust Fund that may assist them in the execution of their mandate.

By letter dated 12 October 2018, the Secretary General of AZ requested additional time of two (2) weeks in order to finalize the advices regarding the proposed new structure of the RT and the required adjustment in the law. The SG informed the Ombudsman as follows:

"(...) In the discussions with the department of Legal Affairs the issue of the responsibility of the Minister of General affairs and the Minister of VROMI was discussed in addition to the proposed (sic) new structure. The dual responsibility can also be one of the reasons for the hampering of the functioning of the committee. It is therefore imperative that this issue be addressed and a decision be taken, indicating which Ministry will be responsible for the Rental Tribunal.

The proposed new structure and adjustment in the law therefore needs more time. Based on the above I kindly request for an extension of two weeks for us to have the advices presented to the Council of Ministers for decision-making.

In conclusion, it is still the intention to have the adjustments and advices to the Council of Ministers presented in time, so your investigation can be finalized by October 27, 2018(...)."



OMBUDSMAN

SINT MAARTEN

The requested extension was granted until **31 October 2018**. The extension included a response to all outstanding matters discussed and mentioned in the synopsis.

Considering that no response was received from the Secretary General of AZ by 31 October 2018, a reminder was sent via email on **1 November 2018**.

Via email dated **5 November 2018**, the Secretary General of AZ indicated:

“(....) On the draft to add more members to the rental committee, I can inform you that discussions has been taken place on where to put the responsibility of the rental Committee.; Ministry of Vromi or General Affairs. A draft memo informing the Minister of General Affairs advising the minister to confirm that the rental committee is the responsibility of the Ministry of VROMI, will be send later today.

On the request of the rental committee to have (some part of) the decision, for example the higher fee, to go retroactive in effect, the advice will be negative since the issue of the budget will remain the same for 2018. At the other side, if the advice to have the rental committee under the responsibility of the Ministry of VROMI is approved, the ministry may have a different opinion and the budget to do different. (.....)”

On **12 November 2018** a follow-up response and update was received from the RT, stating as follows:

“(....)

Rent Tribunal Update Items:

1. Return of Rent Tribunal Secretary

I am happy to report that about 3 weeks ago the Secretary, Mr. Leyton James, has returned to his post, and has resumed his everyday operations.

As far as I personally am concerned, the year 2018 has been an absolute challenge. Aside from being totally overwhelmed with cases that were directly related to the ravages of the hurricanes in 2017, as well as the enormous shortage of houses, vis-a-vis home owners looking desperately for a window to implement repairs to their properties, and tenants who suffered loss of income and were not able to live up to



OMBUDSMAN

SINT MAARTEN

their rental obligations. In the midst of this turn of events, the Rent Tribunal had to assume full operational responsibilities in absence of the Secretary.

2. *Meeting with the Secretariat of Court of 1st Instance on St. Maarten September 26, 2018.*

Since the year 2017 I have made numerous attempts to establish contact with the Court Recorder: from unanswered phone calls, to outright refusal to make an appointment. It was only when the Media reported that there were major internal issues that the decision was made to submit a formal request in writing, which was granted. All we wanted was to consult with the Court Recorder, if not one of the judges pertaining to procedural discrepancies related to decisions that have become irrevocably enforceable.

I am attaching for your perusal a copy of the minutes to this very fruitful meeting: "Notulen Overleg Huurcommissie -Secretariaat Gemeenschappelijk Hof van Justitie".

3. *Proposal Operational Budget 2018 and 2019.*

During the hearing with the Ombudsman the Rent Tribunal alluded to constraints of effective operations due to absence of resources. In the presence of the Secretary General of General Affairs, Mr. Hensley Plantijn, a commitment was made to draft a proposal for an operational budget for 2018 (supplementary) and for 2019. This took place and was submitted to the Council of Ministers. It is my understanding that the COM responded favorably.

I am hereby attaching copies of the drafts: "Immediate Needs of The Rental Tribunal For 2018" and "Budget Elucidation Rental Tribunal 2019" for your perusal.

4. *Rental Tribunal Process Handbook.*

Having been confronted with the void created by the sudden absence of the Secretary, the need was felt to make attempts to produce a procedural manual. Our Secretary as well as the Members of the Rent Tribunal, embody a respectable mass of knowledge and experience. After discussions to standardize processing as much as possible with use of the full extent of available digital technology, it was decided to focus attention on drafting a process handbook to have procedures adequately recorded to assure a standard for accountability and compliance. This first draft is made, without any



OMBUDSMAN

SINT MAARTEN

pretence of efficacy or completion, and should be subject to further dialogue and feedback.

I am attaching the draft: "Rental Tribunal Process Handbook" for your perusal.

5. *Upgrading remuneration of Rental Tribunal Board Members and Secretary. Over the years I have personally experienced the unwavering call for duty of every single member as well as the Secretary of the Rental Tribunal, and it has been an honor serving with every one of them.*

However, in all fairness, numerous attempts to draw the attention of the relevant authorities has proven to be futile, and it is high time to have the remuneration upgraded to minimal standards in comparison to the average Self Governing Bodies (ZBO).

In view of the obtained feedback pertaining to this matter, a letter to the Minister of General Affairs has been drafted requesting to give payment order for the upgraded remuneration.

I am hereby attaching a copy of this letter referring: "proposal and request for remuneration of Rent Tribunal Members over 2018". A copy of this document with registered DIV# will be available at a later date."

The following documents were attached to said letter:

- 'Bespreekpunten overleg' RT- HvJ Sint Maarten d.d. 26 September 2018;
- Overview immediate needs of RT for 2018;
- Elucidation RT budget 2019;
- (Draft) RT Process Handbook 2018;
- Letter dated 8 November 2018 to the Prime Minister (proposal and request for remuneration of RT Members and Secretary over 2018);

Findings

Considering the responses provided by the RT on the questions posed in the NOSI (see "**Investigation**" stated above), it is obvious that the Rent Committee is in dire need of proper attention from the government to execute its tasks and improve the service to the public, as well as review of the law.



OMBUDSMAN

SINT MAARTEN

In the meantime it was brought to the attention of the Ombudsman that the office of the RT was temporarily closed. Subsequent inquiries through the Acting Chairman of the RT revealed that the Secretary of the RT was on vacation and nobody was available to keep the operation running as the Members of the RT are volunteering their time.

Considering the mandate of the RT provided for by law, and the importance of the institution to the community of Sint Maarten, it is imminent that the RT functions properly and efficiently in the general interest of the public, in particular landlords and tenants. Clarity needs to be provided and the many issues impeding the RT to operate effectively need to be addressed by government.

As a follow up to the Hearing on 20 September 2018 with the representatives of the Prime Minister (the SG and two members of the cabinet) and the RT to discuss, seek answers and establish a plan of approach to resolve the matters subject to this systemic investigation on short term, the RT provided ample information, amongst which a Rental Tribunal Process Handbook.

The SG of the Ministry of General Affairs informed the Ombudsman that discussions had been ongoing about where the responsibility of the RT should be placed: within the Ministry of VROMI or General Affairs. Reportedly a draft memo was prepared on behalf of the Prime Minister in which it was to be confirmed that the responsibility of the RT will be placed under the Minister of VROMI. As such the matter regarding the budget increase is still under discussion.

At the time of the drafting of this Final Report the status of the following resolutions discussed at the Hearing 20 September 2018 remains unclear:

- I. Government will provide a formal response to the RT's structure and budget no later than **19 October, 2018** with a copy to the Ombudsman.
- II. The new (revised) structure of the Rental Tribunal must be formalized by National Decree (*'landsbesluit ham'*).



OMBUDSMAN

SINT MAARTEN

- III. Considering that SG-AZ has indicated that there are remaining funds on the budget, the RT will present no later than **27 September, 2018** an actual list of eminent issues that should be addressed immediately. Government will formally respond by **4 October, 2018**, explaining exactly how the funds will be accessed, with a copy to the Ombudsman.
- IV. The Ombudsman encouraged the RT to look into the possibility of securing funds via the Trust Fund that may assist them in the execution of their mandate.

Legal Basis

Pursuant to article 19 sub 1 of the National Ordinance Ombudsman, the Ombudsman is authorized to request from government bodies, civil servants, the complainant, civil servants as experts or witnesses, all information and or documents pertaining to the investigation. The persons mentioned in the aforementioned article are obliged to respond to the request within the time indicated by the Ombudsman, except in cases where the persons can appeal to legal grounds (“*verschoningsrecht*”- see article 19 sub 4).

- National Ordinance Rent (“*Landsverordening huur*”, AB 2014, no. 8)
- Editorial in the Daily Herald of August 17, 2018 (‘Restore some order’)

Standard(s) of Proper Conduct

The Ombudsman investigates whether the behavior of public bodies towards citizens is correct. The standards of proper conduct not being observed regarding the subject matter of this investigation are among others: Fairplay, Promptness, Adequate organization of services, Cooperation.

Fair play

Fair play requires that administrative bodies and civil servants provide the citizen the opportunity to properly utilize procedural opportunities provided for by law and otherwise. The principle of Fair Play entails that a public body is expected to allow the citizen the opportunity to express and defend their views and opinions, while also being able to object the position and or point of view of a public body. Thus the behavior of the public body has to attest to openness, honesty and loyalty. A public body should be transparent and cannot



OMBUDSMAN

SINT MAARTEN

prepare covert actions against a citizen. On the contrary a public body is required to actively assist the citizen in utilizing its procedural options. There are various ways to provide the citizen the opportunity to utilize the different procedural options.

Promptness

A government body should act decisive and sufficiently swift.

A public body is expected to be dynamic and as such be decisive and swift in its decision making. Hence, providing a response or decision within the legal timeframe or at least within a reasonable time is required. When a public body expects citizens to adhere to deadlines, based on the principle of equality the public body should strive to adhere to deadlines provided by law. Not adhering to a legal time frame will undermine the authority of the public body as well as tarnish its credibility with the citizen.

There are acceptable exceptions to the mentioned deadlines. A public body can miss a deadline in cases where more information is required to come to a decision. In such cases a public body is required to duly inform the citizen of the delay. Meeting a deadline however by no means guarantees that promptness has been observed. Promptness requires a decision to be taken in less than the legal timeframe in matters of urgency.

Adequate organization of services

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, 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.

External requirements are among others: 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.



OMBUDSMAN

SINT MAARTEN

Internal provisions are among others: handling of incoming mail; registration systems should be accurate and up to date; privacy of documents and information; adequate supervision of operations; proper internal communication; proper registration and handling of complaints filed by citizens.

Cooperation

Government should on its own initiative cooperate with other (government) agencies and entities in the interest of the citizen without unnecessarily sending the citizen from one Department to another Department.

A government body may not hide behind its limited task and competence, but take the initiative to work with other entities to provide the citizen the best service. One window shopping is preferred to provide the required information.

Philipsburg, 27 November 2018

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

