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FINAL REPORT

(Article 21 sub 1 National Ordinance Ombudsman)

Complainant:

Date complaint filed: 5 July 2019

Complaint no.: 2019/00202_57

**Minister of Public Housing, Spatial Development, Environment and Infrastructure
Mr. E. J. Doran**

Summary of Complaint:

In a letter stamped dated 4 June 2019 to the Minister of VROMI Complainant claimed that he had been inquiring about a parcel of domain land in the “Over the Bank” area, which was allotted to him in 2016. He further claimed that he paid Cadastre a fee associated with said land.

To date of filing the complaint with the Ombudsman on 5 July 2019 no response was received to Complainant’s letter dated 4 June 2019.

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: Was propriety observed by the Ministry in handling complainant’s request for Domain Land?

The Ombudsman observes that the standard of active and adequate information provision requires that administrative bodies actively and upon request provide adequate information to the public. This implies among others the obligation to answer letters from citizens, sending an acknowledgement of receipt, and an interim notice in case the handling of a request takes longer than anticipated. Upon filing the complaint with the Ombudsman Complainant has not received an official written response to his letter dated 4 June 2019.



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Providing adequate information can clear up the air between public bodies and the citizens. In general, an individual is more willing to accept a situation when there is an explanation, or the outcome of a request is motivated. Through the intervention of the Ombudsman Complainant received an update on 9 July 2019 on the status of his application which was submitted in May 2016. Complainant had to wait more than two (2) years to receive an update on the status of his application from the Ministry. To ensure a high level of credibility in public bodies, transparency is essential. Being open and clear in providing adequate information regarding plans and actions of the government, that affect the interest of the citizen is a requirement for enhancing the credibility of public bodies. That administrative bodies are required to actively and upon request provide adequate information to the public, entails on the one hand the duty to provide citizens with information upon request. Complainant was not duly informed about the status of his request. Nor has Complainant been provided with a decision on his application for Domain Land. Public bodies have the duty to inform the citizen on its own initiative about proceedings that have a direct effect on them. Proper information provision creates legal certainty for all.

The Ombudsman further observes that the standard of adequate organization of services requires administrative bodies 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. The acting Head of Domain Affairs indicated that the current backlog faced by the Department of Domain Affairs could not be addressed in the foreseeable future. Proper service also includes organizing the administration in a manner that is lawful, effective, transparent, accessible, equipped to provide prompt service and information. During the hearing which was held with the Ministry of VROMI, the SG informed the Bureau Ombudsman that he had not received an update or reports from the acting Head of Domain Affairs regarding Complainant's complaint. Continuity should be guaranteed; proper registration and archiving are essential in achieving and guarantee continuity in the administration.

The Ombudsman observes that the standard of legal certainty requires that an expectation is justified if the citizen could reasonably think, or be under the impression that the public body or civil servant in the case is authorized. Complainant was awarded a parcel of land located in the area known as "Over the Bank" then given a draft decree dated 7 September 2016. In accordance with the process Complainant was advised by the Ministry to pay for a Certificate of Admeasurement (*'meetbrief'*) in order to finalize the decree with the information received from Cadastre. After having paid a fee to Cadastre, Complainant was subsequently informed



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via the Ombudsman that the Ministry of VROMI could not honor his request as the area does not have infrastructure to reach the property. However, through the intervention of the Ombudsman it was established that based on the process that is followed in practice by the Ministry to issue parcels of land, the Minister is required to provide Complainant with a decision which includes the Certificate of Admeasurement after which Complainant can proceed to the notary to finalize the deed. Legal certainty is essential in any state of law; it requires compliance by government that legitimate expectations are honored.

The circumstances of the case play an important role. Complainant has already been awarded the pertinent parcel of land, however the Ministry did not complete the process in order for the transfer to take place at the notary. A letter and or signed contract provokes higher expectation than word of mouth. Therefore, the Ministry is expected to complete the process. In the end a legitimate expectation on the part of the citizen has to be honored by the public body.

Considering that no reaction to the PFR was received from Minister, the Ombudsman considers the findings fact and the recommendations issued approved by the Ministry.

Judgment:

- The complaint is founded the standards of active and adequate information provision, adequate organization of services and legal certainty have been violated.
- The Ministry of VROMI acted improper with regard to the complaint.

Considering the investigation and findings as stated hereinafter, the Ombudsman recommends as follows:

Recommendation:

- Provide Complainant with a motivated response to his request submitted on 4 June 2019 to the Ministry of VROMI;
- Provide the Ombudsman with a motivated response to the NOC questions posed;
- Establish an official policy for issuing of Domain Land;
- Issue domain land based on the internal policy in the interim;

The Ombudsman requests a status report on the recommendations within three (3) months from the date of this letter, however no later than **8 October 2021**.



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Elucidation:

Intervention

On 9 July 2019 an Intervention Proposal was sent to the Minister of VROMI with the request to provide Complainant with a motivated response. By email the same day a response was received from the acting Head of Domain Affairs stating as follows:

“(…) To be clear, no parcel of land was ever officially allocated to [Complainant]. However, he did receive a “draft” decree (which in principle is supposed to be an internal document that remains with the department), and he also received a letter informing him that he can go pay Cadaster for the making up of a meetbrief (at his own risk). No official decree with a lot number has been given to no recipients at Over the Bank, and they are all well aware of this. This is because the area does not have (and has never had) infrastructure to reach the property as yet, thus making a long lease issuance illegal. A parcel of long lease land has to be accessible through a public access road. This is one of many cases where land was allocated, but with no infrastructure in place. However, the long lease right to such a property legally cannot be established. I would love to clarify this case in person if you want (…)”.

By email dated 10 July 2019 the Ombudsman informed the acting Head of Domain Affairs that Complainant should be provided with a direct response to his letter. In response to the request of the acting Head of Domain Affairs the Ombudsman proposed to meet on 16 July 2019 at 10.30 am to discuss the procedures applied by the department. The acting Head was requested to confirm attendance by 12 July 2019 however, no response was received.

Investigation:

26 July 2019: A Notification of Complaint (NOC) was sent to the Minister of VROMI with the request to respond to the NOC questions posed by 26 August 2019. The NOC questions were as follows:

1. Are you familiar with the above-mentioned complaint?
2. What is your response to the complaint? (Notwithstanding your answer to question 1).
3. Do you see a possibility to resolve this issue on a short term through intervention by the Ombudsman or otherwise?

If yes, please call us **within three (3) days** at tel.5421250/5421243 to inform us how this issue can be resolved immediately and or to discuss this matter further.



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You are requested to answer the following questions:

4. Why hasn't Complainant received a response to his letter stamped dated 4 June 2019?
5. When can Complainant expect a response to said letter?

Considering the statements made by the Acting Head Domain Affairs in the email of 9 July 2019, please answer the following questions:

1. The Acting Head stated that due to the absence of infrastructure on the property in question the issuance of long lease is illegal. Based on which law is the issuance of long lease land without infrastructure illegal?
2. If the pertinent issuance of long lease land was illegal, based on what procedures did the Minister of VROMI issue said long lease land?
3. In the draft decree Complainant received a lot number in accordance with the approved allotment plan. Please explain the statement that no lot number had officially been given out.
4. Seeing that there is an approved allotment plan, when will the infrastructure of the property in question start?
5. The Acting Head stated that "(...) he also received a letter informing him that he can go pay Cadaster for the making up of a *meetbrief* (at his own risk). Please clarify the statement "*at own risk*".
6. What is the status of Complainant's case after receiving a draft decree and "*meetbrief*" after having submitted these to Domain Affairs for further processing?
7. Explain how the pertinent procedures were implemented in practice in this case. Provide documentation of the actual procedure(s) followed, if any.

Enclose all information and documents relevant to the complaint.



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31 July 2019: The acting Head of Domain Affairs sent the Bureau Ombudsman an email stating following:

“(...) I would like to schedule a meeting with your office at your earliest convenience to discuss some of the Ombudsman cases that we keep getting. These requests are also actively making the situation at the department worse and I believe the Bureau Ombudsman is quite unaware of the staffing and backlog situation at Domain Affairs. I would like to inform you on what the current status of the department is and in what situation I encountered the department when I took the job as acting head. Maybe then some the Bureau Ombudsman can have a better understanding of why these cases keep piling up, and how it is not going to stop any time soon because there is a structural backlog of requests and cases, and no additional staff to remedy this already critical situation.(...)”

20 August 2019: The Acting head of Domain Affairs explained the extreme challenges the department is facing being severely understaffed, the attempts made to increase compliance to long-lease payments and getting Ministers to prioritize the policy needs of the department. The head of the department explained the procedure behind the decision for the allocation of leased land. He stated that the Minister did not follow the advice of the department in its entirety on who/which groups to allocate the lots located at the area known as at ‘Over the bank’. He stated that Complainant should not have received the document to go to Cadastre and pay for the meetbrief. He acknowledged that this is actually an internal affair but that has become common practice. He acknowledged that the Minister has the authority to deviate from the advice of the department and this deviation doesn’t nullify the decision of the Minister. He acknowledged that the procedure on paper and in practice is slightly different. He stated that since the transfer had not taken place the land had not been allocated to Complainant. He stated that a response would be provided to Complainant.

29 August 2019: As no response was provided to the NOC questions posed, a reminder to respond to the NOC was sent to the Minister of VROMI with the request to respond by 5 September 2019.

10 September 2019: As no response was received to the NOC questions, the Secretary General (SG) of the Ombudsman requested that the SG of the Minister of VROMI provide a response to the NOC questions posed by 17 September 2019.



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23 September 2019: As no response was received to the NOC questions posed, the SG of the Ministry of VROMI was requested to attend a hearing scheduled for 8 October 2019 to provide information regarding Complainant's complaint.

24 September 2019: The SG of the Ministry of VROMI informed the Bureau Ombudsman that he would not be able to attend the upcoming hearing scheduled for 8 October 2019.

26 September 2019: The SG of the Ministry of VROMI was requested to confirm his attendance for an upcoming hearing scheduled for 16 October 2019. By email that same day, the SG of VROMI confirmed his attendance to the upcoming hearing to discuss a number of pending cases.

16 October 2019: During a hearing with the Ombudsman the SG of the Ministry of VROMI stated that he had not received reports from the acting Head of Domain Affairs regarding the complaint filed by Complainant. The Acting head of Domain Affairs had been recently relieved of his acting head duties and a transference of documents in time for the hearing had not taken place. The SG was able to convey his opinion that the land could not be transferred because of the pending court case at the time and that there was no budget for the development of infrastructure for the area in question. The SG acknowledged that lease land had been allocated before without an infrastructure and that it is not a legal requirement for land allocation. However, he shared the opinion that allocating land without an infrastructure brings with it the obligation for Government to provide/fix the infrastructure and that is why it shouldn't be done before land allocation.

23 October 2019: The SG of the Ministry of VROMI requested that the Ombudsman provide an overview of pending cases and complaints filed with the Ombudsman against the Ministry of VROMI.

30 October 2019: The Bureau Ombudsman provided the SG of the Ministry of VROMI with an overview of pending cases and complaints filed with the Ombudsman against the Ministry of VROMI. However, to date of this Preliminary Findings Report (PFR) no response has been provided to the NOC questions or to Complainant.

7 April 2021: A PFR was sent to the Minister of VROMI with the request to respond by no later than 21 April 2021.

7 May 2021: As no response was provided to the PFR, the SG of the Ombudsman informed the SG of the Ministry of VROMI that considering no response had been provided to the



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recommendations mentioned in the PFR, the Ombudsman considers the findings factual and the recommendations approved by the Ministry.

Findings:

On **20 May 2016** Complainant submitted a request for a parcel of land to the Minister.

On **1 March 2017** Complainant paid Cadastre an amount of NAF. 2,135.00 associated with making up a '*meetbrief*' for a parcel of land.

By letter submitted on **4 June 2019** to the Government of Sint Maarten Complainant requested an update regarding his request for a parcel land.

On **5 July 2019** Complainant filed a complaint with the Ombudsman regarding the non-response to his letter dated 4 June 2019.

In response to the intervention proposal of the Ombudsman the acting Head of Domain Affairs informed the Bureau Ombudsman that no parcel of land was ever officially allocated to Complainant. The acting Head of Domain Affairs further stated that Complainant did receive a draft decree and a letter informing him to pay Cadastre for the making up of a '*meetbrief*' at his own risk. The acting Head of Domain Affairs concluded by stating that no official decree with a lot number has been given to no recipients of Over the Bank. The acting Head of Domain Affairs concluded by stating that the area does not have infrastructure to reach the property as yet, thus making a long lease issuance illegal.

By email dated 31 July 2019 the acting Head of Domain Affairs stated that the Department of Domain Affairs is currently facing a shortage of staff and a structural backlog as a result thereof. The acting Head of Domain Affairs concluded by stating that the structural backlog of requests and cases could not be addressed in the foreseeable future as there is no additional staff to remedy the already critical situation.

Subsequently, a hearing was held with the SG of the Ministry of VROMI, whereby the SG informed the Bureau Ombudsman that he had not received an update or reports from the acting Head of Domain Affairs regarding Complainant's complaint.

Through the investigation of the Ombudsman, it was established that based on the process implemented in practice by the Ministry of VROMI to issue parcels of land, Domain Affairs is required to provide Complainant with an acknowledgement of receipt. In addition, the



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process requires the Department of Domain Affairs to carry out an investigation to establish whether the parcel is available for use. Once the parcel has been deemed available research is then carried out within the Ministry of VROMI (Inspection Department, Permits Department, Public Works, New Projects Department) in collaboration with Cadastre to confirm whether the requested parcel of land can be issued to Complainant. When the investigation is completed, the Department of Domain Affairs will inform Complainant whether their requests was denied or approved. Once this has been done a concept proposal will be drafted by the Domain Affairs which is then sent to the Minister of VROMI for a decision on the issuance of the requested parcel at the price and terms stated in the draft decision. In the event of a positive decision from the Minister, Domain Affairs ensures that the measuring task is passed on to Cadastre so a Certificate of Admeasurement can be issued and paid for by Complainant. After the final decision is signed by the Minister, the applicant will be contacted by DIV to collect the decree, the decree is only made available once a payment has been made for a stamp of Naf 10.00 at the receivers. Upon collecting the decree, the applicant is required to bring a stamped copy to Domain Affairs in order for an invoice for the “13 Month” (annual payment for the first year of long lease) to be created.

The Receivers Office will then notify the applicant to satisfy their annual long lease fee as per the drafted invoice. Upon receiving the invoice, the applicant must take their receipt of payment for their annual long lease fee to a notary of their choice along with the original decree so an official deed can be made. When the deed has been signed by all parties involved, the applicant will be notified by the notary to provide their signature on the deed, up which notarial fees must be satisfied. In the event of a negative reaction or unavailability Complainant is then informed of the decision in writing.

Despite the Bureau Ombudsman sending several reminders to respond and providing an overview of pending cases to the Ministry of VROMI, to date of this Final Report (FR) no response has been provided to the NOC questions posed and Complainant’s request.

Considering no response had been provided to the recommendations mentioned in the PFR, the Ombudsman considers the findings factual and the recommendations approved by the Ministry.

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.



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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).

- ‘*Landsverordening op de uitgifte in erfpacht van gronden toebehorende aan Sint Maarten*’ AB 2014, GT no. 17
- ‘*Landsverordening overgangsbepalingen wetgeving en bestuur (AB 2010 GT no. 30)*’
- ‘*Boek 5 titel 7 Burgelijk Wetboek*’

Standard(s) of Proper Conduct:

The Ombudsman investigates whether the behavior of public bodies towards citizens is correct. The applicable standards of proper conduct in this case are *adequate organization of services and active and adequate information provision and legal certainty*.

Active and adequate information provision

In the interest of managing the affairs of the citizens administrative bodies are required to actively and upon request provide adequate information to the public. This implies among others the obligation to answer letters from citizens, sending an acknowledgement of receipt, and an interim notice in case the handling of a request takes longer than anticipated.

Providing adequate information can clear up the air between public bodies and the citizens. In general, an individual is more willing to accept a situation when there is an explanation, or the outcome of a request is motivated. To ensure a high level of credibility in public bodies, transparency is essential. Being open and clear in providing adequate information regarding plans and actions of the government, that affect the interest of the citizen is a requirement for enhancing the credibility of public bodies.

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

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,



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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.

Legal Certainty

Legal certainty is essential in any state of law; it requires compliance by government with decisions of the Court and that legitimate expectations are honored by government.

Legitimate expectations: This standard provides that justified expectations should be honored.

An expectation is justified if the citizen could reasonably think, or be under the impression that the public body or civil servant in the case is authorized. The circumstances of the case play an important role. A letter and or signed contract provokes higher expectation than word of mouth. In the end a legitimate expectation on the part of the citizen has to be honored by the public body.

Philipsburg, 9 July 2021

Ms. G. Mossel LL.M
Ombudsman