

# Unlimited check, no balance

Systemic Investigation into KPSM's policy  
on the confiscation of motor vehicles



April **2024**

**OMBUDSMAN**

SINT MAARTEN

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## 1. Introduction

The Ombudsman has received numerous complaints, some dating back to the year 2020, regarding *Korps Politie Sint Maarten* (KPSM) confiscating motor vehicles, usually during traffic controls, for suspicion of the vehicle being stolen. Complainants allege that vehicles remain in the custody of the police/public prosecutor (OM), sometimes for months, without proper explanation, even after it has been established that the vehicle was not stolen, and complainant is the rightful owner. There have also been complaints concerning lost or misplaced keys of confiscated vehicles as well as lost or (unjustly) destroyed and misplaced vehicles. The Ombudsman observed an uptick in aforementioned complaints between the end and first quarter of 2022-2023.

### 1.2 Objective and research question(s)

The main question(s) this investigation seeks to answer is what is the policy and/or procedure of KPSM/OM with regard to confiscated vehicles that are suspected of being stolen, how the policy and procedures are communicated to the general public and are there any structural deficiencies in said policy.

### 1.3 Scope and approach

The Ombudsman has questioned and held meeting(s) with representatives of the KPSM, Public Prosecutors office, the Court and Minister of Justice in our information gathering process. Meetings were also held with insurance companies. We also reviewed the applicable legislation(s) and studied available literature to examine and analyze the way motor vehicle confiscation is organized and managed.

### 1.4 Chapter overview

Chapter 1 gives a description of the objective and scope of the report as well as provides the chapter overview. In chapter 2 the primary reason for vehicle confiscation is addressed, which is vehicle theft. In chapter 3 the legal basis of motor vehicle confiscation is analyzed and discussed. In chapter 4 the bottlenecks are identified. In chapter 5 the conclusion is presented followed by the recommendations in chapter 6.

## 2. Motor vehicle theft

Prior to addressing the issue of vehicle confiscation, we will first report on the primary source that leads to vehicle confiscation. The challenges regarding vehicular theft have been known to KPSM for some time. Since 2015, now eight years ago, a spike in car theft was observed after an in-depth analysis was carried out by the police department<sup>1</sup>. It was discovered that there was an alarming number of reported stolen cars on both sides of the island. Statistics further indicated that between January 1, 2013 and June 1, 2015 approximately 400 vehicles were stolen on Sint Maarten and approximately 700 vehicles on Saint-Martin during the same period. While several of these vehicles were never recovered, investigations showed that the stolen vehicles were not shipped off island. What was discovered was that car theft was a lucrative business. Once the vehicle is stolen the Vehicle Identification Numbers (VIN) are then altered<sup>2</sup> and then re-sold or the vehicle was stolen and then immediately re-sold several times within a short period, so that tracing it back to the original owner is almost impossible and the vehicle ends up back into circulation with a new owner who often is unaware that the vehicle they have purchased is/was stolen property.

After internal discussions, KPSM prepared a plan of action with the objective of curbing car theft on the island. Several entities on both sides of the island were involved with the plan, which included: the Government IT Department, the Department of Communications, the Inspection Department, the Island Receivers Office, Gendarmerie, Simpson Bay Service Center, the Prosecutors' Office and the Sint Maarten Insurance Association. It became clear that the best possible solution to curb car theft was to structure the procedure of transferring ownership of vehicles.

All of the abovementioned partners were very influential in the creation, reviewing and finalizing of the document. The intention was that the new standardized document would have been the only bill of sale accepted by all insurance companies, their agents and brokers on Sint Maarten effective 1 May 2016. One of the main aspects of the new bill of sale would have been that it would only be available online via Government's website, where individuals would have been prompted to fill in the form and once all the required fields were completed, then persons would have been instructed to download and print the bill of sale.

To complete the process, the document would have to be signed by both the buyer and seller before being taken to the insurance company. Documents that must accompany the bill of sale when acquiring insurance for the vehicle would have been: a copy of the seller's valid ID (valid driver's license/ ID card or passport), copy of the vehicle's last insurance policy, copy of the vehicles inspection card, '*Carte Grise*' [French original vehicle registration certificate] and a Naf. 5,00 stamp. One other control feature of the new bill of sale would have been a random

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<sup>1</sup> The Daily Herald, March 22, 2016.

<sup>2</sup> KPSM is able to determine if the VIN does not match the vehicle with a VIN Reader.

12-digit number that would be generated by the system which could later be used to provide proof of ownership, should the vehicle be stolen and later found.

Unfortunately, the bill of sale project for second hand vehicles was never finalized. It was ultimately put on hold due to other or more urgent budgetary priorities within the Ministry of Justice. There was reportedly also a Databank project in development. The Databank would have created a comprehensive vehicle registration and titling system similar to the '*Rijksdienst Wegverkeer*' (RDW<sup>3</sup>). This project was also abandoned due to budgetary issues.

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<sup>3</sup> The RDW is the organization that handles the type-approval and registration of motorized vehicles and driving licenses in the Netherlands.

### 3. Legal basis

KPSM derives its authority to investigate, confiscate (and tow vehicles) based on multiple ordinances. The general legal context of confiscation during criminal investigations is governed by the Sint Maarten's Criminal Procedural Code<sup>4</sup> (CPC) and the Confiscation Decree<sup>5</sup> (Decree). There are two main decision-making points when it comes to confiscation: grounds for confiscation and storage<sup>6</sup>. It must be noted that the CPC does not differentiate between the confiscation of motor vehicles or any other objects. KPSM's authority to confiscate vehicles is also regulated in other more specific ordinances, namely the Road traffic ordinance<sup>7</sup> and the Motor vehicle tax ordinance<sup>8</sup>. For this investigation we will be primarily focusing on the vehicle confiscation based on the CPC.

#### 3.1 Goods confiscation

The CPC describes situations in which the investigative agencies<sup>9</sup> are authorized to confiscate objects during a criminal investigation. In some cases, the Judge of Instruction is authorized to confiscate goods. Article 119 CPC states that subject to confiscation are goods and claims:

- That could be useful to uncover the truth regarding the commission of a crime or to identify illicit gain in accordance with article 1:77 CPC;
- That could be the subject of a possible future additional penalty ('*verbeurdverklaring*') or measure ('*ontrekking aan het verkeer*'), to be imposed by the Court;

The additional penalty '*verbeurdverklaring*' and the measure '*ontrekking aan het verkeer*' can be part of a verdict in criminal proceedings<sup>10</sup>. '*Verbeurdverklaring*' means that a convicted person loses ownership of a certain property, usually an object related to the crime. For example: a criminal judge could rule that the convicted (person) loses ownership of his vehicle because he committed a crime with the vehicle or the vehicle was stolen (and could not be returned to a rightful owner). '*Ontrekking aan het verkeer*' means that the object is removed from circulation in order to protect society. This often pertains to drugs or weapons, but society also needs protection from vehicles with, for example, false VIN (numbers) or stolen engine blocks. Allowing such vehicles to be part of society undermines effective prevention of vehicle theft.

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<sup>4</sup> *Landsverordening van 5 november 1996 houdende vaststelling van een nieuw Wetboek van Strafvordering.*

<sup>5</sup> *Landsbesluit houdende algemene maatregelen van 25 september 1997 ter uitvoering van enkele artikelen van het Wetboek van Strafvordering (P.B. 1996, no.164), inzake de bewaring van inbeslaggenomen voorwerpen.*

<sup>6</sup> Articles 121, 130 and 141 CPC.

<sup>7</sup> *Wegenverkeersverordening* (article 117).

<sup>8</sup> *Motorrijtuigbelastingverordening* (article 27).

<sup>9</sup> KPSM, Customs Department, National Directives.

<sup>10</sup> Response Minister of Justice dated 10 May, 2023 to NOSI.

Article 119a, CPC states further that objects could also be confiscated to ensure the ability to enforce a possible future fine or refund of illicit gain, to be imposed by the Court. This is only possible in some cases and needs authorization by the Judge of Instruction.

### 3.2 Storage procedure

Seized or confiscated objects are closed, as much as possible, and sealed in an envelope on which a notice of the day of the seizure and a statement of the person from whom they were seized, with a brief statement of the contents, is written and signed. If the objects are not suitable to be closed in an envelope, a strip is attached to them, on which the same notice and mention with a short description of the object is made and signed. As much as possible, a proof of receipt will be issued to the person from whom they have been seized<sup>11</sup>.

Confiscated objects whose safekeeping is deemed necessary are, as soon as the interest of the investigation permits, placed in the custody of a Custodian<sup>12</sup> designated by (the) Decree. The Registrar<sup>13</sup> of the Court of First Instance, or those designated by it as his replacement on each of the islands of Bonaire, Saba, Sint Eustatius and Sint Maarten, are designated as Custodians, as referred to in Article 141, second paragraph, of the CPC. The custody of a seized object, by the Custodian, shall take place at the registry<sup>14</sup> of the court where the case is being prosecuted or presumed to be prosecuted.

According to the legal framework, the following decisions should be made in the following situations with regard to confiscated objects<sup>15</sup>:

- Goods not suitable for storage (such as drugs or car wrecks): The investigating officer of KPSM in possession of a confiscated object as referred to in article 10, paragraph 1 Decree shall immediately contact the public prosecutor's office, requesting the granting of an authorization to destroy, dispose of, price or use it for a purpose other than investigation. If authorization to destroy or dispose of the good has been granted to the investigating officer in possession of the good, the officer shall immediately make the item available to the Custodian;
- When confiscation no longer serves a legal interest (as described above): goods are returned to the owner. The Prosecutor may take this decision at any applicable time during the criminal proceedings;
- All other situations: the goods need to be stored by the Custodian awaiting the outcome of the criminal proceedings. Criminal proceedings may take a while. Some goods are not suitable for long-term storage, for example when costs of ongoing storage are not

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<sup>11</sup> Article 141 CPC jo. article 3, paragraph 2 Decree.

<sup>12</sup> Seized objects may also be handed over to another custodian designated by the Public Prosecutor Service for judicial custody, if this is reasonably necessary for the preservation, destination or security of these objects.

<sup>13</sup> Article 2 Decree.

<sup>14</sup> Article 5 Decree explains the requirements of the registry.

<sup>15</sup> Response Minister of Justice dated 10 May 2023 to NOSI.

reasonable in relation to the value of the object<sup>16</sup>. In those cases, the Prosecutor may ask the Court to authorize auction or destruction of these goods.

Pursuant the article 7 of the Decree, the Prosecutor shall take a decision as soon as possible regarding the return of the confiscated object. In other words, once the seizure of the goods no longer serves a legal purpose, the goods must be returned to the owner. This can happen at any time during the investigation.

The verdict of the Criminal Court ultimately determines what should happen to the confiscated goods: return to owner, or be subject to a penalty or measure. The Custodian executes the verdict at the request of the Prosecutor. If the goods were destroyed or auctioned at an earlier stage in the proceedings, and the Court rules the destruction/auction not rightful, the owner will receive the sales value of the object (if any). The confiscated objects may however not be auctioned or destroyed without authorization from the prosecutor<sup>17</sup>.



Confiscation legal framework

<sup>16</sup> Article 10 paragraph 2 Decree.

<sup>17</sup> Article 142 CPC.



### 3.3 Complaint procedure

Considering that criminal proceedings may take a long time; owners of confiscated goods do not need to await the final verdict to dispute the confiscation. Article 150 CPC establishes that owners (or other parties of interest) may send a written complaint to the Court about the confiscation, the use of the confiscated good, the failure to return the goods or about the return to a certain person. The judge will issue a written decision to the complaint. If applicable, the judge will order the return of the goods. Although the CPC establishes that the notice of complaint must be submitted to the Registrar of the Court of First Instance before which the case is being prosecuted, or was last prosecuted, as soon as possible after the objects have been seized, it does not indicate a specific timeframe when the complaint should be handled. The Court has recently indicated that there are presently no backlogs of cases being presented to the Court, neither are there any backlogs in the rendering of verdicts<sup>18</sup>.

### 3.4 Deficiencies identified by KPSM

The Court's Registrar is the Custodian but the courthouse does not have any space for storage. As a result of not having a storage location, some goods remain at the KPSM premises<sup>19</sup> awaiting criminal proceedings, resulting in space and safety issues. Other goods are stored in other unsafe and unsuitable locations, resulting in liability risks. Confiscated vehicles are generally stored behind the Government Administration Building on Soualuiga Road. Pursuant to art. 141 paragraph 3 CPC jo. article 9, paragraph 1 Decree, the Custodian has assigned KPSM as the 'houder' of the confiscated vehicles. These agreements were formalized in a 'samenwerkingsprotocol'. The Court also rents specific locations for vehicle storage in certain individual cases. According to article 22 of 'Rijkswet Gemeenschappelijk Hof van Justitie' the management of the Court and the Administrative Council shall ensure the establishment of a registry for the benefit of the Court and the Courts of First Instance<sup>20</sup>. The registry shall have a branch office in each of the countries with a branch Registrar at its head.

### 3.5 Vehicle confiscation in practice

From complaints received at the Ombudsman it appears that the vehicle confiscation administration process does not function in accordance with procedure from the very beginning. First of all, a proof of receipt ('bewijs van inbeslagneming') is seldom provided. In some cases, the document was only provided after repeated requests and multiple visits to the police station. It is also unclear to Complainants where they need to go to get answers regarding their confiscated vehicles, the Prosecutor or KPSM. Several weeks are sometimes spent between these two offices in attempts to get answers. Complainants are informed that the Prosecutor is awaiting the documentation from KPSM, alternatively they are informed by KPSM that the Prosecutor has

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<sup>18</sup> As stated by the Court during the meeting with the Ombudsman and representatives of the Ministry of Justice on 26 June 2023.

<sup>19</sup> The KPSM premises is located at the Philipsburg Police Station.

<sup>20</sup> Pursuant to article 6 of the 'Rijksbesluit financiering Gemeenschappelijk Hof van Justitie', one of the components in terms of financing that the countries must provide to the Court is a contribution towards the cost of accommodation.

already been provided with the required documentation. Even when it is clear that KPSM is the entity to provide answers, Complainants are given the runaround. They are constantly requested to go-and-come-back, sometimes having to repeat the same account to multiple police officers, as well as having to resubmit - already provided - documentation. According to KPSM, two (2) officers are assigned to dealing with confiscated vehicles.

There are also complaints regarding the (eventual) return of property or the inability of KPSM to return said property. Confiscated objects such as keys and other personal items are sometimes lost<sup>21</sup>. There are also complaints regarding missing (lost) motorcycles and/or (mistakenly) destroyed scooters. Consequently, there seems to also be a problem with the administration and management of the registry (system).

### 3.6 Role of insurance companies

Based on the '*Landsverordening aansprakelijkheidsverzekering motorrijtuigen*' (National ordinance on Motor Vehicle Liability Insurance) all motor vehicles are required to have liability insurance<sup>22</sup>. It is a documented fact that insurance companies have sustained and continue to sustain, hundreds of thousands of dollars in losses as a result of vehicle theft. Based on figures received from KPSM, an average of 160 vehicles are stolen from Sint Maarten (South) per year and 230 vehicles from Saint-Martin (North), which is an average of 400 vehicles per year. Although via subrogation<sup>23</sup> the ownership of the vehicle reverts to the insurance company after settlement of the claim, most vehicles are never recovered, and if they are recovered, they are usually damaged. KPSM has a good working relationship with insurance companies in Great Bay in terms of how the recovered vehicles are returned etc. The insurance companies did acknowledge that a proper registry administration would help eliminate the time-consuming process to allocate the vehicles behind the Government Building. The relationship with the insurance companies in Marigot is however, according to the police, challenging as the head offices are usually located in Guadeloupe and they usually take considerable time to respond.

## 4. Bottlenecks and Challenges

The following bottlenecks and challenges have been identified during the course of the investigation.

### **Lack of written policy and procedures**

There is an overall lack of written policies and procedures. This is not only pertaining to vehicle confiscation, but in general. This was also highlighted as a bottleneck in the Ombudsman's

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<sup>21</sup> In a recent complaint (July 2023), complainant submitted a claim of in excess \$16.000 to KPSM regarding lost personal items that was in an allegedly stolen vehicle that was confiscated by KPSM (from complainant).

<sup>22</sup> Article 2 LAM.

<sup>23</sup> An injured party who has suffered damage as a result of an unlawful act or breach of contract by another person and is insured against this damage, can claim compensation from the own insurer of the person who caused the damage. If the injured party opts for its own insurer, the insurer acquires the insured's right of action against the perpetrator (article 7:962 BW).

investigation regarding KPSM's towing policy<sup>24</sup>. Documented policies, procedures and/or basic work instructions regarding vehicle seizures that can be made available to the public, and which KPSM can be held accountable for, are non-existent.

### **Lack of information provision / inadequate communication**

There are inadequacies in KPSM's /OM general communication to the public. Ineffective communication leads to misunderstandings and disagreements, and can leave persons feeling frustrated and upset. This is evident from complaints received at the Ombudsman. Basic information about the process and for example during which hours persons can visit the police station, and who are the contact persons, who will be available to answer questions regarding vehicle seizures is not known.

### **Lack of financial, personnel and material capacity**

There is a chronic lack of financial, personnel, and material capacity across the judicial chain, KPSM included. The following is quoted from the Law Enforcement Council's, State of Law Enforcement Report (2022): *'The necessary preconditions for the proper execution of tasks, continues as a common thread throughout almost all organizations in 2022. The capacity issue(s) runs like a thread through almost all topics. Time and again, the capacity shortage and its negative effects emerge across the entire judicial chain'*. The lack of financial capacity has manifested itself in several projects that would have substantially curtailed vehicle theft, namely the bill of sale and database projects. The bill of sale project was abruptly discontinued due to a lack of funds less than 6 weeks before implementation. In addition, while KPSM would like to introduce a designated window for confiscated goods, this is not feasible due to a shortage of personnel.

### **Lack of an appropriate storage facility**

As a result of not having a storage location, KPSM has acknowledged that some goods remain at the KPSM premises awaiting criminal proceedings, resulting in space and safety issues. Other goods are stored in other unsafe and unsuitable locations, resulting in liability risks. Although the Minister of Justice has expressed willingness in looking into the availability of land so that the Court could build a storage site through its own financial resources, this is an unlikely scenario, due to the lack of resources, and will not be realized in the short term.

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<sup>24</sup> OBM 2020/00146.



Vehicle storage area at the rear of the Government Administration Building

**Accidentally destroyed and/or lost goods and motor vehicles**

Pursuant to article 142 paragraph 1 CPC confiscated objects may not be auctioned or destroyed without authorization from the Prosecutor. The Ombudsman has however received complaints regarding seized items and motor vehicles that have been accidentally misplaced and even destroyed, without the required authorization. It is unclear how these incidents could have occurred. This therefore points to not only inadequacies in the storage facility but more so the manner in which items are registered as well.

**Lack of fair and timely compensation for accidentally destroyed and misplaced goods**

The Ombudsman has observed that in the event of accidentally destroyed or misplaced goods, persons are not fairly nor timely compensated. In one case, complainant was waiting for more than two (2) years for his scooter to be returned after it had been confiscated. The scooter was accidentally destroyed by KPSM. Up to present, it is uncertain if complainant has been (fairly) compensated.

### **Delayed receipt of traffic (police) reports (*proces-verbalen*)**

Insurance companies have indicated to the Ombudsman that there is a delay in the processing of traffic reports<sup>25</sup> by KPSM, which unnecessarily delay the settling of claims.

### **Lack of cooperation with insurance companies in Marigot**

KPSM has indicated that the communication and cooperation with the insurance companies in Marigot is challenging. The main offices of said insurances companies are located in Guadeloupe and usually (they) take considerable time to respond to inquiries which further delays the process. This points to a communication (language) and organizational challenge.

### **Motor Traffic Guarantee Fund (*waarborgfonds motorverkeer*) inactive**

The Motor Traffic Guarantee Fund is available to anyone who has suffered damages due to a motor vehicle accident and cannot claim said damages by their own insurer. For example, if the perpetrator drove away, is not insured or was driving a stolen motor vehicle. The motor traffic guarantee fund is also regulated in the national ordinance on motor vehicle liability insurance<sup>26</sup>. This fund has not yet been established on Sint Maarten. As a result, there is presently no recourse for victims who has suffered damages and are unable to claim the damages at their insurer.

## **5. Conclusion**

The Court is the custodian based on the law, however because of the present lack of storage facilities KPSM currently acts as the ‘holder’. As such, KPSM is usually the general public’s first point of contact. The Prosecutor also has a role to play as it relates to decisions such as to return to owner, auction or the destruction of goods. KPSM/Prosecutor has no written policy and/or procedures regarding motor vehicle confiscation. Upon questioning by the Ombudsman for same, a reference was made to the articles in the Criminal Procedural Code and the Confiscation Decree, without any further explanation regarding the practical execution of these laws. As a result, there is inadequate communication to the general public which leads to misunderstandings and frustration. KPSM has acknowledged that they are facing challenges with ensuring efficient and accurate communication to the public. Since the start of this investigation KPSM has taken swift action via the media to correct some of these shortcomings, however a sustainable communication strategy and actual structural changes are needed. Affected persons were encouraged to visit the Great Bay Police Station at specific times during the week. Names of the responsible police officers and telephone extensions were also provided. While these quick remedies are applauded by the Ombudsman, they cannot replace written transparent published policy/procedures, combined with a clear and easy breakdown of said policy, that can be made

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<sup>25</sup> The Ombudsman have also received similar complaints with reference to traffic accidents. KPSM is seemingly unable to produce this document in a timely manner.

<sup>26</sup> Article 15 Landsverordening aansprakelijkheidsverzekering motorrijtuigen.

available to the public and to which KPSM/OM can be held accountable. It must also be noted that since the introduction of the aforementioned measures the Ombudsman has continued to receive complaints. According to the Enforcement Council's, State of Law Enforcement Report (2022), the lack of financial, personnel and material capacity is the Achilles heel and the primary source of most of KPSM's current challenges, however the Ombudsman notes that cost-effective and sustained common-sense solutions must be found in particular when dealing with the public.

By letter<sup>27</sup> dated 15 February, 2024 the Minister concurred with recommendations of the Ombudsman below. The Minister indicated that the ministry is committed to diligently work with the relevant stakeholders on necessary improvements in the process of confiscation of motor vehicles.

## 6. Recommendations

Based on the facts and findings the Ombudsman proposes the following recommendations. Keeping consideration with the absence of financial, personnel and material capacity the provided recommendations are cost-effective and common-sense solutions that require limited financial resources. This however does not negate the fact that a comprehensive long-term solution for vehicular theft (that continues to be rampant on the island) as previously envisioned by KPSM c.s. should be implemented.

### **Improve information provision/communication to the public**

KPSM has already started with this process. The public was recently informed of vital information via multiple press releases. This is a positive start, but more must be done. Essential information can be posted on KPSM's website ([policexm.sx](http://policexm.sx)) or their Facebook page (Police Force of Sint Maarten), such as basic questions and answers (Q&A's) regarding motor vehicle confiscation or how and where one can object to the confiscation etc. More importantly, absent of the implementation of a standardized bill of sale (as was previously planned), KPSM must on a consistent and prolonged basis provide to the public, via PSA's or social media, guidelines or best practices when purchasing vehicles in order to stop the proliferation of the sale of stolen vehicles. Also, the timely provision of traffic reports (*'proces-verbalen'*).

### **Prepare written policy for (motor vehicle) confiscation**

The procedure that must be followed for (motor vehicle) confiscation must be properly documented and regulated via policy so that it is clear to the general public, including the role of the Prosecutor and the procedure for objection.

### **Improved registration system/process**

The registration process must be improved, starting with the timely provision of a proof of receipt of confiscation. While the issue of the lack of adequate storage space is more complex and should be comprehensively addressed in the medium to long term, there is no excuse for the

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<sup>27</sup> See chapter 7 for the Minister of Justice's response.

accidental destruction or the misplacing of a person's property. This issue can be resolved with the improvement of the registry administration process.

### **Fair and timely compensation for accidentally destroyed and misplaced goods**

When a person's property is accidentally destroyed or misplaced/lost, there must be reasonable and timely compensation. In some cases, this could be equal to double jeopardy, i.e., being (unjustly) punished twice for the same 'offence'. In such cases, in addition to the payment of legal interest, persons should be compensated for the reasonable expenses incurred for not having access to their property. This also serves as an incentive for KPSM/OM to be accountable and follow the established procedures.

### **Improve cooperation with insurance companies in Marigot**

The cooperation with the insurance companies in St-Martin (North) must be improved in order to facilitate the faster return of vehicles. Nagico Insurances, a Sint Maarten company, has branches in the French territories of Guadeloupe and Martinique.

A cooperation agreement between KPSM/OM, Nagico and their subsidiaries in these territories should not be difficult to arrange. Nagico subsidiaries in the French territories would then work as a liaison between KPSM and the other (French) insurance companies.

### **Activate the Motor Traffic Guarantee Fund**

The Motor Traffic Guarantee Fund should be activated. It is unclear why this important institution has not been established to date. There are limited financial obstacles for the government to implement the fund as the Guarantee Fund is financed by all insurance companies taking out motor insurance out in Sint Maarten. Indirectly, therefore, everyone who owns a motor vehicle (and has it insured) contributes to the Guarantee Fund.

## 7. Response Minister of Justice

By letter of 15 February 2024, the Minister responded to the Preliminary Findings Report as follows.

*Dear Ombudsman,*

*On November 9, 2023 the Ministry of Justice received the Preliminary Findings Report (hereinafter: the Report) regarding 'Systemic Investigation into KPSM's policy on the confiscation of the motor vehicles'. With reference to your letter dated November 9, 2023 requesting a response to the recommendations issued in the Report, I herewith submit the requested response which also takes account of the reaction of the KPSM, the Public Prosecutor of Sint Maarten and the Court of Sint Maarten.*

*As mentioned in your letter, the recommendations in the Report entails the following:*

- 1. Improve information provision/communication to the public;*
- 2. Prepare written policy for (motor vehicle) confiscation;*
- 3. Improved registration system/process;*
- 4. Fair and timely compensation for accidentally destroyed and misplaced goods;*
- 5. Improve cooperation with insurance companies in Marigot;*
- 6. Activate the Motor Traffic Guarantee Fund.*

*Let me start by stating that the Ministry of Justice concurs with the recommendations given by the Ombudsman and is committed to diligently work with the relevant stakeholders on necessary improvements in the process of confiscation of motor vehicles.*

*In reference to the aforementioned recommendations, it is deemed relevant to address some aspects of the recommendations.*

### *Improvement of information provision/communication*

*As it regards the improvement of information provision/communication to the public, the legal framework for the seizing of goods during a criminal investigation is set out in the Sint Maarten's Criminal Procedural Code (CPC) and the Confiscation Decree (Decree). However, we are aware that the average citizen will not dive into the legal procedures to find out the process regarding the confiscation of his/her vehicle. Hence, we echo your recommendation that the communication to the public must be improved. I am content that KPSM has already taken steps in that regard. We will continue on this path of improved communication with the public. For example, through the creation and provision of information leaflets in plain and multiple languages.*

### *Storage facility*

*The need for a central warehouse for the storage of confiscated (and towed) vehicles, is mentioned in the Report. In that regards it is relevant to state that the Ministry of Justice recognizes the urgent need for an adequate and well-secured storage location for confiscated motor vehicles. I consider the realization of such a storage location a shared responsibility of the various actors in the process of confiscation. In addition, I should note that it is essential that the realization of a storage location involves well-organized work processes between the*



*various chain partners as well as a high-quality registration system. Without these preconditions, a storage site will not be sufficiently effective.*

*Custodian*

*In closing, it is deemed necessary to correct a statement in the conclusion of the Report. The conclusion begins by stating that the, 'The Court is the custodian based on the law, however because of the lack of storage KPSM is the one presently acting as the custodian'. This is a partially inaccurate representation of the division of roles between the Court of Sint Maarten and the Police Force of Sint Maarten KPSM.*

*The Court is the custodian, based on the law and in practice but KPSM currently acts as the 'holder' due to the fact that there is no central warehouse for the Court to store confiscated items. KPSM does not 'act as' nor has taken over the role of 'custodian' from the Court.*

*I trust to have informed you adequately.*

Yours sincerely,  
Minister of Justice,

Anna E. Richardson