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# Rapport

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## REFLECTION

Around the time I release my report, the Evaluation commission Caribbean Netherlands will also publish their final report. Although my report serves a different purpose than the report of the commission, this report gives me the opportunity to reflect back on the past 3 years during which I have been authorized to handle complaints against the public entity Bonaire (hereafter: OLB).

The OLB has managed to complete a lot of work since 10 October 2010, including introduction of new regulations and formulation of own policies. This in addition to the fact that Bonaire has unique atypical aspects that demand a lot of attention of the island government, such as the international air and maritime port, nature areas on land and at sea, a large tourism industry and a system of land leasing. Meanwhile, (still) a large number of vacancies are unfilled. It is no easy task, so I dare say: Bonaire, truly a special municipality!

Reflecting back, I see an organisation with employees that serve the citizens of Bonaire with the best of intentions. Staff from my office witnessed this during conversations and workshops, but also while working to establish an internal complaints procedure, developing policies and simplifying procedures. In practice, however, implementation is more problematic. As a result, I was required to intervene (too) often. In the process, I experienced what the complaining citizen also experiences: a government that does not respond (in a timely manner) and does not inform. Five of such cases gave me a cause to conduct this investigation.

The purpose of my investigation is to garner more attention for providing quality service, clarify how the OLB handled these five cases and what structural solutions are needed. Quality service is reflected among other things by good communication from the government to its citizens. The citizen subsequently knows what to expect, which adds to greater confidence in the government. I conclude this investigation with recommendations.

Lastly, I thank the management and employees of the OLB for their timely disclosure of the information requested by me.

Yours sincerely,

Reinier van Zutphen,

## 1 Introduction

The National ombudsman is authorized to investigate complaints against public entities Bonaire, Statia and Saba since 10 October 2012. Since then, I received a relatively large number of complaints against the OLB. I received 28 complaints in 2014. During the last work visit to Bonaire in March 2015, I received 16 complaints against the OLB. The majority of complaints are related to non-respons, long processing times and no or inadequate information.

I can ensure that the citizen receives a response from the OLB by, for example, initiating a legal procedure. The handling of complaints could also lead to a change in how the government operates, so that others will not have to run into the same problem. In any case, I always strive to achieve clarity quickly. Experience shows that following an investigation by the National ombudsman, the government often takes a good look at itself. The government experiences how important it is to inform the citizen in a timely and adequate manner. This is a characteristic of good government practice, which I assess. I, however, cannot always solve the underlying problems. In the case of a legal issue, for example, it is up to a judge to rule.

## **1.1 Background**

A complaint against agencies of the national government in the Caribbean Netherlands must be submitted to the relevant agency before the citizen can turn to the National ombudsman. However, this is not applicable with regard to the public entities. That is why I can take action immediately if citizens report complaints against the OLB to me. I commit to resolving the issue, by usually submitting an e-mail presenting the complaint to the OLB with the question whether a solution to the problem could be found, which is called an intervention. We also enter into dialogue with stakeholders during our work visits. In most cases, this leads to a solution to the problem. As a substantive response from the OLB was still forthcoming in a number of cases, however, I decided to conduct further investigation.

I selected five cases, in which I first sought by means of an intervention to arrive at a solution. My staff then sent reminders repeatedly when a reaction from the OLB remained forthcoming. Conversations with the Island Secretary and relevant department heads on the progress of cases during our biannual visits were constructive and often led to an acceleration of the process. However, this was often short-lived. Despite the reminders and the conversations, I kept waiting on the OLB to take action or declare a position. In addition, I kept receiving similar complaints about the OLB. I ascertained that the service provided to the citizen has become substantially subpar. This was cause for me to conduct an investigation.

## **1.2 Purpose of the investigation**

The purpose of my investigation is to clarify how the OLB handled these five cases. In addition, I ask the OLB to provide a reaction to the affected citizens so that they can still receive some clarity. I also analyzed what is needed to achieve a structural improvement of communication with citizens. Good communication ensures that the citizen knows what to expect from the government. This contributes to a greater sense of confidence in the government.

## **1.3 Structure of investigation**

I formally initiated the investigation on July 1, 2015. We send a letter to all concerned citizens in the five cases as well as the island government announcing that we were going to investigate these specific cases. Accompanying the letter I sent a report with findings; an outline of facts that were known to us at that time. Besides some specific questions we asked to what extent the applicants were kept informed of the progress in all of the cases. We also asked whether the complaint led to an action or measure in a more general sense, with respect to the progress and information provided. After I received a response on July 30, 2015 from the OLB, we gave all of the persons involved the opportunity to respond and/or provide corrections to my findings regarding their case. Eventually I received a response from four of the concerning persons. After completion of this investigation phase, the public report was prepared. This report provides an assessment of how the OLB handled the five cases and concludes with recommendations.

## **1.4 Reading guide**

We chose to bring together five autonomous complaints in a single public report because of the similarities of these complaints. My assessments in this report relate to all five cases. To increase readability, it was decided to give a brief description of the facts. The full report with all findings can be found as an attachment.

Chapter 2 of this report deals with the assessment framework, chapter 3 describes the five complaints and my assessment is contained in chapter 4. My recommendations are presented in chapter 5.

## 2 Assessment Framework

### 2.1 Propriety requirements

By means of propriety requirements, the National ombudsman assesses whether the government may or may not have behaved properly. These propriety requirements are in essence a code of conduct for the government. The National ombudsman has formulated 22 requirements for the government.

Because the five complaints relate to the long processing duration and the inadequate information provided by the OLB, I restricted my assessment to two of the applicable propriety requirements, namely the requirement of promptness and the requirement of good information.

The propriety requirements apply to all public authorities. As the National ombudsman, I verify the government's actions against these requirements. Citizens must be able to trust that governments are in compliance. The context in which these governments work can make abiding immediately to these requirements complicated. My efforts are hence aimed at working with the relevant authorities towards a constant improvement in compliance with the requirements of propriety.

The citizen is in many ways dependent on the government. For that reason, good communication between the citizen and the government is important. Good communication, in writing or by telephone, can solve and prevent many problems. It ensures that citizens know what to expect from the government. This also leads to citizens feeling as if they are being taken seriously. This results in greater confidence in the government.

### 2.2 Requirement of promptness

The requirement of diligence entails that the government has to act as quickly and decisively as possible. In accordance with the requirement, the given public authority should in principle process requests, appeals, complaints and other correspondence from ordinary citizens within a given deadline.

In 2003, the National ombudsman developed a Correspondence guide (see appendix) for the government. The guide provides an overview of the deadlines that the government must meet in answering letters from citizens. Foremost, the citizen should always receive a response within a reasonable term. What term constitutes a timely response depends on the context in which one is operating. The context might influence discrepancies in the actual term applicable at that time. However, the guiding principle is that people should receive a response within a reasonable term. It is also important that this term is known, as this ultimately leads to a more predictable government.

### 2.3 Requirement of good information

The requirement of good information is also of great importance. This requirement implies that the government ensures that citizens get the right information and that the information is complete and clear. Information is provided not only at the citizen's request, but also on own initiative. Moreover, the government ensures that the citizen receives solicited and unsolicited information about the progress of a request, appeal, complaint or other letter.

In the abovementioned Correspondence guide, the National ombudsman formulated standards for how the government should inform the citizen. These standards are as follows:

- Send an acknowledgment (within two or three weeks) specifying the term within which a substantive response can be expected and include mention of the attending officer or department;
- If processing is not possible within the indicated term, send a notice in the interim prior to

expiration of the term disclosing the reason for the delay, indicating a new term or motivating why it is not possible to indicate a new term.

### **3 Cases**

#### **3.1 Complaint 1**

##### **Land Lease**

As a result of a poorly drawn border at the Land Registry, the then island territory of Bonaire issued a lease on a land owned by someone else. The owners, a family, found out quickly, but a simple solution was not possible. The island government proposes a land swap in 1999 and states that they have obtained a signature from the mother. Impossible, according to the children, their mother is nearly blind and does not handle her own administration. Subsequently they pull all possible strings to get the leaseholder off their land and to undo the land lease. All in vain, a house is built and sold later on. Early 2014, one of the sons presents the case to me. By mid-2014, the OLB provides some clarifications: the plot is indeed owned by the family, but during the seventies decade in the past century, the land was not registered in the Land Registry. Simply returning the land is not an option as the lease was issued in good faith. The family is entitled to compensation.

The family maintains that the leaseholders have to vacate their land. They also claim abuse of power, forgery and fraud. Everyone in the neighborhood knew that it was their plot, says the family, even the leaseholders. They just continued construction without seeking consultation in search of a solution.

The OLB affirms that cancelling the lease contract is not possible and would turn out very costly. The current leaseholder also asserts the house was bought in good faith. As compensation, the received canon could be paid to the claimant. The island secretary also announces that the issue would be discussed further with the island government.

On July 1<sup>st</sup>, 2015 I initiate a formal investigation in this case. Soon thereafter, the OLB states that the plot cannot be returned under any circumstance. It would be disproportionately costly. The family can choose from two options. The first is land swap and compensation in the form of payment of the canons that have been collected and to cover their legal fees. The second solution is compensation equal to the current price of the land based on an independent appraisal.

The family's lawyer points out that it is reasonable for the family to want the land returned to them, especially because the claimant and his mother have fought for years to get the land, even prior to construction on the property. The family now finally has a declaration from the OLB in which they are offering solutions, but after all these years the parties have yet to reach an agreement.

#### **3.2 Complaint 2**

##### **Diving License**

In February 2012, a resort applies for a diving permit at the OLB. The representative of the resort previously had a meeting where she discussed the criteria and she was under the impression that her request would turn out fine. Furthermore, the public entity would soon start granting licenses after a temporary stop.

After two years, still no permit. Urban planning & Development (R&O) and Legal and General Affairs (JAZ), both appear to be working on the case. After a series of acknowledgments after sending reminders and various attempts to get in touch, the representative knocked on my door in February 2014.

After a few requests, I accomplish that the policy of granting permits is reviewed. According to the OLB, new regulation is in the making, so it is just a matter of patience. The representative finds this surprising. She applied two years ago conforming the criteria that were in place then. Why all of a sudden something different, she questions? Moreover, the request is for a property for which a permit has already been issued previously. The head of department at JAZ sends an email to the National ombudsman in August 2014 stating that he is not aware of the history of the place and that things are not so simple. Different sets of rules apply to conserve nature versus establishing a business. And the temporary stop on permits was in place. The representative does not know where she stands and informs us in early November 2014 that four new diving permits were issued to other companies. In mid-November, the staff of the National ombudsman brings the protracted situation in this case to the attention of the island secretary. They receive a commitment that the resort will soon be granted the permit.

Both my staff and the representative still have to stay on the case for another half year. On July 17, 2015 the diving permit is finally granted. However, I already launched an investigation into this issue on July 1, 2015.

### **3.3 Complaint 3**

#### **Landswap**

A woman and her husband request a land swap in early 2009: their property in exchange for a property of the OLB. After two and a half months, they finally receive an acknowledgement and that is the only official reaction they receive until halfway into 2014.

After the passing of her husband, the woman hires a lawyer to speed up the request. Through informal channels, she heard that the request for a land swap had produced some misunderstandings, hence causing a delay. Apparently it was understood that she wanted to buy the land and therefore permission from the Financial Supervision Commission (CFT) was required. After sending a letter, the lawyer receives an acknowledgment within four days. But that is the extent of it. The lawyer then threatens to bring the matter to me, if a substantive response remains absent. In the meantime, he speaks with an employee of the Finance Department who indicates that a settlement could be achieved quickly by simply attending to a few formalities. By then it is mid-November 2014. On November 18, 2004, the woman and a friend attend a consultation hour on Bonaire with two of my staff members. I proceed by demanding attention for this case by sending a few letters, e-mail and conducting a phone conversation.

Still, no progress is achieved in this case. On March 10, 2015, the woman and her friend speak again to staff members of the National ombudsman who are on the island for a work visit. More communication follows in vain, until I decide to initiate a formal investigation on July 1, 2015.

Thereafter I receive the substantive arguments. One property is worth more than the other, states the Finance Department. Swapping without an exchange of funds is not an option, other procedures are necessary. The woman maintains that trade should be possible. The OLB suggests two solutions: monetary payment in addition to the land swap or an exchange with another property. The choice is hers.

The OLB maintains that the fact that the case dragged on longer than desired is the result of the necessity to consult with the CFT. The OLB regrets the occurrence.

### **3.4 Complaint 4**

#### **Waterbufferarea**

An entrepreneur gets the right to lease a land that will turn out to be located unfavorably.

Unknowingly, he submits his construction plans for business activities in 2007. The case handling proceeds slow, the property appears to be located near a water buffer. A year later, it is determined that the whole property is located in a water buffer area. Construction is out of the question; this part of the island serves as protection against water.

The island government suggests a land swap, but does not put forth a specific proposal. Years go by and the entrepreneur cannot realize his plans. To his bewilderment, he still has to pay property taxes during all these years. He appeals the taxations every year.

In 2014, the entrepreneur turns to the National ombudsman. The OLB acknowledges within a few months that the man should receive arable land in the short-term and that the property tax question should be resolved quickly. According to the OLB, before the end of January 2015 everything will be settled.

The OLB does not meet the self-imposed deadline. A consultation takes place, a proposal is sent, but nothing is definite. On July 1, 2015 the National ombudsman initiates formal investigation into this matter. By mid-July the OLB makes an offer. The man gets a new piece of land that is nearly 4,000 square meters larger than the old plot as compensation for all the delay and he also receives approval for his business activities.

The OLB informs the National ombudsman that a rapid response was impossible because of all the activities surrounding elections on the island and that the man was also quite demanding. The applicant is of the opinion that he was only asking for that which he was entitled to. This new larger piece of land is in his opinion compensation for the unfavorable location of the previous plot, but does not make up for the wait and the costs associated herewith. Furthermore, the stipulations are still not put to paper in a binding document and a few details still await the review of the Spatial Development Commission of Bonaire. Presently, a land swap is yet to occur.

### **3.5 Complaint 5**

#### **Cracks in the wall**

A resident and the OLB are in correspondence for eighteen years regarding the huge cracks in the walls of her house. Eighteen years go by before it really becomes clear that the composition of the foundation of the residence is the culprit and not simply downpours. The woman brings the defects to the attention of the then DROB in 1997. She has been experiencing problems with the house since it was constructed. The cracks in the wall are currently that large that she can see straight through them. The woman is paying the OLB to lease the house and she wants to know what is causing the cracks.

The response by letter reads: The house is in an area where after heavy showers, the rainwater saturates the ground with dire consequences for the house's standing. The woman must make structural architectural engineering changes. She takes these measures, but without lasting results. In 2011, she requests the department of R&O for a technical construction inspection, which results in additional recommendations to combat rainwater.

In 2012, the woman spends large amounts of money on a concrete reinforcement for the foundation. But not much later, the foundation ruptures again, worse than ever, this after months of drought. The woman is now convinced that there must be some other cause and asks R&O in mid- 2013 for a solution. She does not get one, in fact, she never receives an answer.

By the end of 2014, she visits the consultation hour of the National ombudsman on Bonaire. After some urging from the National ombudsman, we learn that there has been contact with the occupant. An employee of the department paid her a visit and gave her non-binding advice. A letter will follow, that is

the promise.

On July 1, 2015 the National ombudsman initiates formal investigation. About a week later, the OLB acknowledges that the letter from two years earlier had not been answered. They also provide an explanation that the cracks are due to the soft subsoil. Ground improvement should have taken place prior to construction. The OLB declares that according to the lease deed, the leaseholder is responsible for whatever happens on the property. The resident disagrees. It is up to the court to solve this case.

## **4 Assessment**

This report is about five cases that seem totally different from each other in content. Yet they are more similar than it may seem at first glance. All of these five complaints have to do with long processing terms and lack of information from the OLB. For this reason, I formulated one assessment that will be applicable to all five cases.

In this report, I determine whether the OLB handled the cases with promptness and to what extent the OLB informed the concerned citizens on the progress. In a few cases, the OLB proposed solutions to the specific problems. I will not comment on these proposals, as these relate to issues for which only the court is competent to rule.

As described in chapter 2, I assess the actions of the OLB against two requirements, namely the requirement of promptness and the requirement of good information.

### **Promptness**

The government must act as quickly and decisively as possible in accordance with the requirement of promptness. This means that an administrative authority must process requests, appeals, complaints and other correspondence from ordinary citizens within a given deadline. No statutory deadlines apply in the five cases, but in my view the citizen should foremost receive a response on his/her letter within a reasonable term.

These cases dragged on for many years. It is my assessment that all of the concerned citizens had to wait unnecessarily long on the OLB to take action. The OLB therefore handled contrary to the requirement of promptness. This is not proper. The OLB also came to the conclusion that most of these cases took too long. The complexity of the cases, the need to first draft policy or that there are (hence) multiple departments involved are explanations, but not justifications for the long processing time.

### **Good information**

This requirement entails that the government ensures that citizens get the right information and that the information is complete and clear. They not only provide information if and when the citizen so requests, but also on their own initiative. In all these cases, that barely or did not happen. Not only were citizens not informed about the progress, I also noticed that the information provided to me was lacking.

Notable in these cases is the fact that the OLB quickly sent an acknowledgement in response to the letters of the involved persons, but thereafter remained silent. When prompted to deliver a response, the OLB gave no information on when the applicants could expect anything. When the OLB did communicate such a timeframe, the affirmed deadline was not met. In all of this, the OLB acted contrary to the requirement of good information. That is not proper.

## **5 Conclusion**

The complaints about the OLB are well founded, as the requirements of promptness and good information are not met.



The investigation confirmed that the OLB communicated poorly with the stakeholders. I can ascertain that the OLB only followed up with a response after quite some time had already passed or that matters only progressed after my involvement. In the mean time, all concerned citizens were kept in the dark about what they could and should expect from the OLB. As a result, they felt as if they were not taken seriously and their confidence in the public entity Bonaire severely diminished.

I assess the actions of the government against the propriety requirements. Every government agency must meet these requirements. This report places the requirements of promptness and good information central. The context in which one is working can make it difficult to meet these requirements. My efforts are aimed at achieving together with the relevant administrative authorities, an ever greater compliance with the requirements of proper governance.

My work in the Caribbean Netherlands consisted these past years mainly of individual complaints in search of a solution. In the coming years, I will publish more reports including assessments, I will regularly hold talks with the authorities agencies and potentially launch investigations on my own initiative.

With this first report, I have clarified what citizens can reasonably expect of the OLB. The island government informed me during the investigation that the OLB is already engaged in a trajectory to improve and professionalize its services. Promptness in the handling of correspondence and shortening the processing duration are important considerations in this trajectory. The OLB is reaffirming that it will take important steps towards compliance with the abovementioned requirements. On my next work visit, I would like to personally discuss the practical implementation of these intentions with the OLB.

## **6 Recommendations**

Even though the OLB eventually made specific proposals to solve the underlying issues in most of the cases, four of the cases have yet to be resolved. These cases are at an impasse, as a result of the OLB adopting a position with which the citizen does not agree. I can not break that impasse. Regarding case 4, the following is at stake: the OLB has agreed to a land swap that is conditional on the modification of the zoning plan and subject to approval by the island council. While preparing this report in September 2015, it was still not known when the island council was to take a decision. Since lack of action does fall under my jurisdiction, it gives me authority to also make an individual recommendation in this one particular case in addition to structural recommendations.

### **6.1 Structural recommendations**

I call on the island government to consider the following:

1. Determine the terms within which in principle a citizen should receive a response to any given request, appeal, complaint and other letter and determine the terms within which a citizen should receive an acknowledgement. Make a link with legislation, the complaints procedures and the Correspondence guide.
2. Make these terms widely known, so that everyone knows what to reasonably expect.
3. Ensure that in all acknowledgements, the citizen is informed of the processing duration and the attending officer or department.
4. Send interim messages, if a previously mentioned period is not achievable. Preferably also communicate the reason for the delay and propose a new deadline. Instead of a written notice, also consider communicating by telephone. Please do the latter timely, confirm these agreements internally and in writing.
5. Ensure adequate registration and monitoring of progress on requests, appeals, complaints and other letters.

## **6.2 Individual recommendation related to case 4 (Water buffer area)**

Given the aim of the island government to proceed with land swap, I see reason to provide an individual recommendation to the island government related to case 4. I implore the island government to consider the following:

1. Present the island council a decision on the modification of the property allocation as soon as possible so that the actual land swap can take place soon thereafter.

I request the island government to inform me within three months if they have complied with my recommendations.